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Klamath Irrigation Dist. v. United States, 227 P.3d 1145 (Ore. 2010)

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OREGON

Klamath Irrigation Dist. v. United States, 227 P.3d 1145 (Ore. 2010) (answering certified questions arising from a dispute over water rights in the Klamath Basin and concluding Oregon state law does not preclude acquiring an equitable or beneficial property interest in a water right held by the United States and, once acquired, the equitable or beneficial property interest is not subject to state water rights adjudication).

The Oregon Supreme Court accepted three certified questions from the United States Court of Appeals for the Federal Circuit concerning a dispute over water rights in the Klamath Basin. Before answering the questions, the court first outlined the procedural posture of the dispute and discussed the common law and statutory context of the Oregon statute in dispute.

Plaintiffs (“Klamath users”) are farmers and irrigation districts that use water from the Bureau of Reclamation’s Klamath Project, which stores and supplies water in the Klamath Basin. In 2001, drought conditions forced the Bureau of Reclamation to withhold the delivery of water to the Klamath Basin users to ensure water was available for three endangered fish species. Klamath Irrigation District claimed a property right to the water and brought an action in the United States Court of Federal Claims alleging a Fifth Amendment taking and breach of contract. Assuming the United States holds legal title to the water rights, the claim was solely for the taking of an equitable or beneficial interest in the water rights. The Court of Federal Claims held that federal law did not define the scope of an equitable or beneficial water right and the state law did not allow a property interest without written consent from the United States; therefore, the court granted summary judgment for the United States.

On appeal, the Federal Circuit stated that the takings issue depended upon Oregon property law and certified three state law questions to the Oregon Supreme Court. In answering the questions, the court considered a 1905 Oregon statute: Oregon General Laws, Chapter 228, section 2 (“the Statute”). In addition, the court assumed that the United States held legal title to the water rights.

The first certified question asked whether the Statute precluded the landowners and irrigation districts from acquiring a beneficial or equitable property interest in the water right acquired by the United States. The court found that the Statute did not preclude the Klamath users from acquiring a beneficial or equitable property interest held by the United States. The Statute stated that the United States appropriated water that was not under the control of the state. However, the court determined that the term “appropriation,” as used by the state legislature, did not express an intent to preclude a beneficial or equitable property interest in the appropriated right. Additionally, the Oregon legislature enacted the Statute in response to the Reclamation Act of 1902, and the court found that the state

legislature authorized the United States to appropriate water under the Statute for the benefit of those users who would put the water to a beneficial use. Therefore, the court held that the Statute did not intend to preclude the Klamath users from acquiring a beneficial or equitable property interest held by the United States.

The second question asked whether the beneficial water use by landowners and irrigation districts was sufficient to grant a beneficial or equitable property interest in the water right legally held by the United States. The court found that while a beneficial use alone is insufficient, there are three factors persuasive for determining whether the Klamath users acquired a beneficial or equitable property interest. The first factor was whether the beneficial use resulted in the water becoming appurtenant to the land. The second factor the court considered was whether the United States acquired the water right for the benefit and use of the Klamath users. Analyzing these two factors, the court found that the Klamath users had acquired a sufficiently beneficial or equitable property interest in the United States' water right because the Klamath users put the water to beneficial use by applying it to their land. Addressing the third factor, the court considered whether any contractual agreements between the United States and the Klamath users would change the relationship. Here, the court declined to give an answer because it did not have access to all the necessary documentation of contractual agreements.

The third question asked whether Oregon state law recognized any legal or equitable property interest in the use of water in the Klamath Basin that was not subject to adjudication with exceptions for pre-1909 surface water appropriation and previously adjudicated rights. The court first looked to the Oregon Revised Statute section 539.210 ("adjudication statute") which governs the adjudication of pre-1909 water rights. The adjudication statute requires that all claimants to a water right appear for adjudication. According to the court, the statutory context of the term "claimant" refers to a person who has appropriated a water right or who has legal title to a water right. The court found that by seeking only beneficial or equitable property rights, the Klamath users were not "claimants" under the adjudication statute who would be required to appear for adjudication of the right. The court held that the beneficial or equitable property interests in a water right legally owned by another are not subject to state water rights adjudication.

In conclusion, the court answered the three certified questions presented by the Federal Circuit and found that Oregon state law does not preclude acquiring an equitable or beneficial property interest in a water right held by the United States and that interest is not subject to state water rights adjudication.

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