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United States v. Braren, 338 F.3d 971 (9th Cir. 2003)

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sufficient evidence to determine the effects the transfers would have on the hydrological system; therefore, the state engineer should have required the USFWS to conduct further studies. The court of appeals agreed with the district court, holding that the state engineer had substantial evidence to consider, including two groundwater studies prepared by the United States Geological Survey and an EIS for the eight transfers prepared by the USFWS as required by the Settlement Act. Evidence also showed that two of the water rights at issue were in an area that was not a significant geological recharge zone and that the remaining six rights were from an area no longer suited for agricultural use. Considering all of the evidence available, the court held the state engineer acted well within his authority in choosing not to require any further studies, granted the transfer permits, and dismissed Fallon and Churchill's protests.

Churchill and Fallon also contended that each transfer should have been contemplated in relationship to the effects that all planned transfers for the wetlands restoration would have on the hydrological system; therefore, the state engineer erred in only considering the transfers on an individual basis. The court pointed out that Nevada law only requires the state engineer to make an assessment of a proposed transfer on an individual basis and to hold otherwise would expand the discretionary authority of the state engineer beyond the limits listed in applicable state statutes.

Finally, Fallon and Churchill asserted the state engineer should have determined the adequacy of the EIS prepared by the USFWS in compliance with NEPA. Alternatively, they asserted the state engineer should have put any action on the transfer petitions on hold while litigation was pending before the court of appeals on the USFWS' compliance with NEPA. With no parallel provision in Nevada law, the court held that the state engineer correctly ruled he had no authority to determine compliance with a federal statute. With regard to delaying action on the water right transfers, the state engineer did not issue the transfers until after the district court had ruled in favor of the USFWS. By the time this case came before the court, the appellate court had already affirmed the district court's decision regarding the EIS, making the issue moot. The Ninth Circuit Court of Appeals thus affirmed the district court's ruling upholding the validity of the water right transfers granted to the USFWS.

Sean R. Biddle

United States v. Braren, 338 F.3d 971 (9th Cir. 2003) (holding that dispute seeking to clarify both Klamath Tribes' water rights and assess propriety of water rights standard not ripe for federal adjudication).

Over the last twenty-five years, the United States, the Klamath Tribes ("Tribes"), and numerous individual landowners have sought to determine water rights to the Klamath River Basin ("Basin") in

Oregon. In 1979, the United States District Court for the District of Oregon announced standards for prioritizing how water is applied to fulfill water rights granted by treaty to the Tribes, but left to Oregon the task of allocating water to each of the Basin claimants. After the United States Court of Appeals for the Ninth Circuit affirmed the district court's findings, Oregon developed and executed a comprehensive administrative adjudication of over 5000 claims to those rights.

Although adjudication was incomplete, the United States and the Tribes initiated this action seeking a declaratory judgment that the Tribes had a water right to support the gathering of plants and asking the district court to clarify the nature and scope of the standards announced in its earlier decision. The district court issued a declaratory judgment holding the Tribes had a water right to support resources the Tribes gather, and announcing a two-part standard for quantifying the water right. Oregon and several individual defendants (collectively the "Brarens") appealed.

On appeal, Oregon argued the dispute was not ripe and that the district court should have abstained from exercising its jurisdiction; the Brarens appealed the district court's declaration of the two-part standard for quantifying water rights. The court agreed with Oregon that the dispute was not ripe and as a result did not address the Brarens appeal.

In reaching its decision, the court outlined two components for the determination of ripeness: constitutional ripeness and prudential ripeness. The court held that the facts sufficiently alleged constitutional ripeness. A dispute is constitutionally ripe when there is a "substantial controversy" between parties with adverse legal interests. The court held that the conflict between Oregon and the Tribes constituted a constitutionally ripe dispute. Oregon did not allege otherwise.

The court, however, held the case did not satisfy the prudential ripeness standard. To satisfy prudential ripeness, a party must show: (1) fitness of the issues for judicial decision, and (2) hardship to the parties should the court deny consideration. Analyzing these standards, the court found that this case failed both prongs of the prudential ripeness requirement. First, the United States alleged that the adjudication embraced a standard contrary to the Tribes' rights, even though adjudication was nowhere near completion. However, the court held the issues unfit for judicial decision because Oregon had not officially adopted a standard to apply to federal water claims. Second, the court found no resulting hardship to the United States and the Tribes in waiting for additional factual developments. The court stated that even if the district court's declaratory judgment were enforced, the United States and the Tribes must nonetheless wait for completion of adjudication to ultimately realize the relief sought.

The court thus held that the dispute was not ripe for federal adjudication. The court vacated the district court's judgment and remanded the case to the district court for entry of an order staying all

federal proceedings pending completion of adjudication and related appellate review.

Kyle K. Chang

TENTH CIRCUIT

Rio Grande Silvery Minnow v. Keys, 333 F.3d 1109 (10th Cir. 2003)
(holding the Bureau of Reclamation has discretion to reduce previously contracted water deliveries to comply with the Endangered Species Act; diversion of water for the protection of endangered species constitutes a beneficial use; and delivery contracts between the Bureau of Reclamation and the water district did not create a perpetual and exclusive right to the water by the district).

This action was the culmination of twelve years of litigation between non-profit environmental and conservation groups and the federal agencies charged with administering water diversion and storage facilities along the Middle Rio Grande. The basis of this action was to determine whether the federal agencies had the discretion to reduce deliveries of available water under its contracts with various water districts in New Mexico to comply with the Endangered Species Act (“ESA”).

Defenders of Wildlife, Forest Guardians, National Audubon Society, New Mexico Audubon Council, Sierra Club, and Southwestern Environmental Center (collectively “Environmental Groups”) initiated the litigation leading to this appeal. The Environmental Groups, on behalf of the Rio Grande silvery minnow and the Southwestern willow flycatcher,¹ sued John W. Keys, III, Commissioner of the United States Bureau of Reclamation (“BOR”), the United States Army Corp of Engineers (“Corps”) and the United States Fish and Wildlife Service (“FWS”) (collectively “Federal Agencies”) for violations of the ESA in the United States District Court for the District of New Mexico.

The ESA created a process by which federal agencies must ensure that no harm comes to endangered or threatened species or their habitat. After the FWS proposes a species for listing and identifies its habitat, the ESA is triggered. The ESA prohibits any action that would irreparably harm or jeopardize an endangered or protected species or destroy or adversely modify its habitat. Environmental Groups alleged the federal agencies, by fulfilling their contracts with various water districts, jeopardized the endangered Rio Grande silvery minnow.

The United States District Court for the District of New Mexico

1. Both species were named in the original complaint. The district court noted that the Southwestern Willow Flycatcher had increased in total numbers, prompting the parties to concentrate solely on the Silvery Minnow. The Tenth Circuit subsequently confined their discussion to the Silvery Minnow.