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Pyramid Lake Paiute Tribe of Indians v. Ricci, 245 P.3d 1145 (Nev. 2010)

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allocation and to promulgate new rules for ground water allocation to restore historic surface water flows. The district court dismissed Central's petition for lack of standing, which Central then appealed to the Supreme Court of Nebraska ("court").

The court first examined whether Central was an aggrieved person within the meaning of the APA. It held that Central was not an aggrieved person because Central was outside of NRD jurisdiction, and although Central was a surface water appropriator, NRD's rules would not directly affect Central's appropriations. Central could not sue on behalf of the public interest or assert claims based on third parties' interests and rights because it did not have a legal or equitable right in the subject matter of the controversy.

Next, the court determined whether Central met the three-part test for standing: injury in fact, causation, and redressability. The court found that Central did not prove injury in fact because Central had no right to the water in the creek or river that fed into Lake McConaughy. The court further reasoned that, although Central did have water use interests and served the public through diverting, storing, transporting, and delivering water, the injuries it alleged were to its constituents, not itself.

The court also held that Central did not prove causation. The court found that the causal link for which Central argued was too attenuated. The court held that it was too weak a link to connect NRD's regulation changes to what Central hyperbolized as the destruction of Lake McConaughy due to lower water levels.

Next, the court held that Central did not meet the redressability requirement for standing. A party shows redressability by showing that a court can provide a meaningful remedy. The court reasoned that a favorable ruling for Central would result in restored water flows, which would help other interested parties with valid appropriation rights. Central did not have appropriation rights to the subject water. Therefore, a favorable ruling would not benefit Central.

Finally, the court did not find Central's action against NRD to be frivolous. Accordingly, the court did not grant NRD's cross-appeal for attorney's fees. However, the court affirmed the district court's dismissal of Central's petition due to lack of standing.

Amanda Becker

NEVADA

Pyramid Lake Paiute Tribe of Indians v. Ricci, 245 P.3d 1145 (Nev. 2010) (holding that a tribe did not have an implied right to basin groundwater and, therefore, did not have priority over a company's change use application, and that the change use application did not affect a tribe's water rights in the Truckee River or harm the public interest).

The Nevada Land and Resource Company, LLC ("NLRC")

applied for a change to its water rights in the Dodge Flat Basin (“Basin”) groundwater from a temporary use in mining and milling to a permanent use for industrial power generating purposes. After the State Engineer granted the application, the Pyramid Lake Paiute Tribe of Indians (“Tribe”) filed a petition for review in the Second Judicial District Court in Washoe County (“district court”). The district court denied the petition, and the Tribe appealed to the Supreme Court of Nevada (“court”). The Tribe argued that the State Engineer erred by granting the change use application without taking into consideration the Tribe’s current use of the Basin groundwater. Specifically, the Tribe opposed NLRC’s application on three grounds: (1) there was no unappropriated water at the Basin; (2) groundwater pumping from the Basin would interfere with the Tribe’s senior water rights in the Truckee River; and (3) further groundwater pumping from the Basin would be detrimental to the public interest.

First, the court found that the Tribe did not have an implied right in the Basin groundwater. The Orr Ditch Decree, which granted the Tribe two senior claims on the Truckee River, did not include any implied water rights for the Tribe. Consequently, the Tribe’s use of the Basin groundwater, based on its belief that it had additional implied water rights, was unauthorized. Accordingly, the court held that the State Engineer appropriately excluded the Tribe’s unauthorized use to determine that the Basin contained unappropriated water available for NLRC’s permanent use.

Next, the court rejected the Tribe’s claim that groundwater pumped from the Basin would affect the Tribe’s rights in the Truckee River due to a hydrological connection between the Basin and the Truckee River. The court based its finding on the Tribe’s own evidence that the change use application would not affect its senior water rights in the Truckee River. Accordingly, the court held that the State Engineer correctly concluded that NLRC’s application would not affect the Tribe’s existing water rights.

Finally, the court held that the change use application did not threaten to prove detrimental to the public interest by reducing the Truckee River’s water quality and threatening native fish habitats. NLRC’s change use application permitted the company to pump water only up to the amount of unappropriated perennial yield, a limitation the State Engineer imposed to protect the Truckee River water quality and native fish habitats. Therefore, the court concluded that any potential threat to the public interest was not the result of NLRC’s proposed change but, rather, the consequence of the Tribe’s continued unauthorized pumping of the Basin groundwater.

Accordingly, the court affirmed the State Engineer’s ruling.

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