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Okanogan Wilderness League v. Town of Twisp, 947 P.2d 732 (Wash. 1997)

Eric V. Snyder

filed a complaint against the County and an association of downstream landowners ("Association") intervened, claiming their prescriptive easement precluded the County from installing another culvert which would threaten their land.

On the date of trial, the Landowners and the County agreed on a consent judgment. The Association appealed the lower court's holding which accepted the Landowners and the County's consent judgment. The consent judgment provided that the Landowners would release the County from any liability and, in return, the County would install another sixty-inch culvert in the road, as well as monitor water levels that would flow through the culverts.

The court held that one party — whether an original party, a party joined later, or an intervenor — could not stop other parties from settling their own disputes. Thus, while an intervenor is entitled to present evidence and have its objection heard at a hearing on whether to approve a consent judgment, the party does not have the power to block a decree by withholding its consent.

Further, the court held as a matter of law that any prescriptive easement the Association might have would not begin to accrue until there was damage. Downstream land would have to sustain flood damage before the Association could impose a prescriptive easement on the Landowners. Since downstream land had not sustained any flood damage, the lower court properly dismissed the Association's claim.

The Association also asserted that the lower court erred when it dismissed its claims as a matter of law, arguing that they were entitled to a trial on whether injunctive relief should be granted. The court held that the Association's only basis for an injunction was their claim regarding a prescriptive easement and since this cause of action was invalid, the Association had no basis on which to grant injunctive relief.

Loretta L. Schouten

WASHINGTON

Okanogan Wilderness League v. Town of Twisp, 947 P.2d 732 (Wash. 1997) (holding that nonuse of a water right for nearly fifty years raised a presumption of abandonment, and that municipality was not statutorily exempt).

In 1912, the Town of Twisp acquired a water right with the intent to divert 10 cubic feet per second ("cfs") from the Twisp River. Twisp perfected the right by diverting water. In 1927, Twisp sought approval from the state to change the point of diversion on the Twisp River. In

1930, a certificate of change was issued that documented a water right of 10 cfs from the Twisp River. However, based on the size of the new pipe used to divert water, the most Twisp ever used was 3.85 cfs.

Sometime between 1939 and 1948, Twisp stopped diverting surface water from the river and began to draw water from groundwater wells located in town. Twisp later applied for and received two groundwater well certificates with priority dates of 1967 and 1971 for the instantaneous withdrawal of 3.55 cfs. Twisp then applied for and received a change in the point of diversion of the 1912 water right which changed diversion from the surface waters of the Twisp River to the two new wells located within the town.

The Okanogan Wilderness League ("OWL") claimed that the 1912 right had been abandoned. The Pollution Control Hearings Board ("Board") rejected their argument and concluded that no intent to abandon had been shown. After OWL filed a petition for judicial review, the Okanogan County Superior Court affirmed the Board's decision by memorandum opinion and denied the petition for review. OWL appealed the decision of the superior court.

The main issue presented to the Washington Supreme Court was whether Twisp's failure to beneficially use the 1912 water right for nearly fifty years precluded a change in the diversion point. Resolution of this issue depended upon whether that right had been abandoned or otherwise extinguished. A change in the diversion point may be granted only to the extent the water has been put to a beneficial use, has not been abandoned or otherwise extinguished, and does not cause detriment or injury to other water right holders.

The court noted the general rule in western water law that nonuse is evidence of intent to abandon, and that long periods of nonuse raise a rebuttable presumption of intent to abandon. As a defense to the common law abandonment rule, Twisp argued that a 1967 statute exempted its municipal water rights from statutory relinquishment through nonuse. The court held the statute inapplicable, followed the common law rule of abandonment, and shifted the burden of proof to Twisp to give reasons justifying why its nonuse was consistent with the high priority of putting water to a beneficial use.

The court held that, due to the date when the statute was enacted, the statutory forfeiture exemption for municipalities did not exempt Twisp from the common law abandonment rule. The court held that in light of the nonuse of the water right since at least 1948, there was a presumption of abandonment. Twisp's explanation of its nonuse was insufficient to overcome the presumption of intent to abandon. The decision of the lower court was subsequently reversed.

Eric V. Snyder