Leading Water Rights Cases

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I. Supreme Court Cases

***Orff v. United States*, 545 U.S. 596 (2005)**
Holding:

> District court lacked jurisdiction over breach of contract claim by water users against the United States. The jurisdictional statute is best understood as "[C]onsent to join the United States in an action between other parties—for example, two water districts, or a water district and its members—when the action requires construction of a reclamation contract and joinder of the United States is necessary. It does not permit a plaintiff to sue the United States alone."

***Nevada v. United States*, 463 U.S. 110 (1983)**
Holding:

> Although the United States holds title to water rights for a reclamation project, it may not shift the use of that water to other non-reclamation purposes. "Once these lands were acquired by settlers in the Project, the Government's ownership of the water rights was at most nominal; the beneficial interest in the rights confirmed to the Government resided in the owners of the land within the Project to which these water rights became appurtenant upon the application of Project water to the land."

***California v. United States*, 438 U.S. 645 (1978)**
Holding:

> Under section 8 of the Reclamation Act of 1902, a State may impose any condition on control, appropriation, use or distribution of water in a federal reclamation project, which is not inconsistent with clear congressional directives. "The legislative history of the Reclamation Act of 1902 makes it abundantly clear that Congress intended to defer to the substance, as well as the form, of state water law."

***Arizona v. California*, 373 U.S. 546 (1963)**
Holding:

> Congress may by statute effectuate an apportionment of waters among the states without reference to prior appropriation or equitable apportionment principles. "We have concluded, for reasons to be stated, that Congress in passing the Project Act intended to and did create its own comprehensive scheme for the apportionment among California,

Arizona, and Nevada of the Lower Basin's share of the mainstream waters of the Colorado River, leaving each State its tributaries."

***Dugan v. Rank*, 372 U.S. 609 (1963)**
Holding:

Construction of a federal dam which impairs downstream water rights is a taking under the Fifth Amendment. "When the government acted with the purpose and effect of subordinating the rights of riparian and overlying owners to beneficial use of waters of a river to uses of a water reclamation project, whenever the government saw fit, there was an imposition of such servitude as constituted an appropriation of property for which compensation should have been paid."

***Ivanhoe Irrigation District v. McCraken*, 357 U.S. 275 (1958)**
Holding:

The 160-acre limitation for water supplied to any individual under the Reclamation Act did not violate due process or equal protection. "The project was designed to benefit people, not land. It is a reasonable classification to limit the amount of project water available to each individual in order that benefits may be distributed in accordance with the greatest good to the greatest number of individuals."

***United States v. Gerlach Live Stock Co.*, 339 U.S. 725 (1950)**
Holding:

Navigation servitude did not authorize taking of water rights without just compensation. "Even if we assume, with the Government, that Friant Dam in fact bears some relation to control of navigation, we think nevertheless that Congress realistically elected to treat it as a reclamation project. It was so conceived and authorized by the President and it was so represented to Congress. Whether Congress could have chosen to take claimants' rights by the exercise of its dominant navigation servitude is immaterial. By directing the Secretary to proceed under the Reclamation Act of 1902, Congress elected not to in any way interfere with the laws of any State . . . relating to the control, appropriation, use, or distribution of water . . . used in irrigation, or any vested right acquired there under."

***Nebraska v. Wyoming*, 325 U.S. 589 (1945)**
Holding:

Although the United States held title to reclamation project water rights, the beneficial ownership of those water rights was vested in the project irrigators. "We can say here what was said in *Ickes v. Fox*: Although the government diverted, stored, and distributed

> the water, the contention of petitioner that thereby ownership of the water or water rights became vested in the United States is not well founded."

***Ickes v. Fox*, 300 U.S. 82 (1937)**
Holding:

> Although the United States held title to reclamation project water rights, the beneficial ownership of those rights remained in the irrigators. "Appropriation was made not for the use of the government, but, under the Reclamation Act, for the use of the landowners; and by the terms of the law and of the contracts signed with the United States government, the water rights became the property of the landowners, wholly distinct from the property right of the government in the irrigation works. The government was, and remained simply a carrier and distributor of the water, with the right to receive the sums stipulated in the contracts as reimbursement for the cost of construction and annual charges for operation and maintenance of the works."

***International Paper Co. v. United States*, 282 U.S. 399 (1931)**
Holding:

> Requisition of water to produce hydropower for the government is a taking under the Fifth Amendment. "There is no room for the quibbling distinctions between the taking of power and the taking of water rights. The petitioner's right was to the use of water; and when all the water that it used was withdrawn from the petitioner's mill and turned elsewhere by government requisition for the production of power it is hard to see what more the Government could do to take the use."

***IDE v. United States*, 263 U.S. 497 (1924)**
Holding:

> United States possesses state-created ditch easement to convey water to reclamation project. "We conclude that the plaintiff has a lawfully reserved right of way over the tracts of the defendants for such ditches as may be needed to effect the irrigation of the lands which the project is intended to reclaim, and that the defendants were apprised of this right by the patents which passed the tracts to them. In short, they received and hold the title subject to the exercise of that right."

II. Federal Circuit Court of Appeals Cases

Casitas Mun. Water Dist. v. United States, 543 F.3d 1276 (Fed. Cir. 2008), *reh'g and reh'g en banc denied*, 556 F.3d 1329 (Fed. Cir. 2009).

Physical diversion of water from diversion canal to fishway is a taking.

Stockton East Water Dist. v. United States, 583 F.3d 1344 (Fed. Cir. 2009).

Taking claims allowed for years when no breach of Reclamation water contract found.

***Klamath Irrigation Dist. v. United States,* 532 F.3d 1376 (Fed. Cir. 2008).**

Questions as to whether plaintiffs possessed a compensable water right certified to Oregon Supreme Court.

***Colvin Cattle Co., Inc. v. United States*, 468 F.3d 803 (Fed. Cir. 2006)**
Holding:

> Any water right could not include an attendant right to graze on public land, and, thus, interference with grazing on public land was not taking of water rights. The loss of value to ranch by virtue of cancellation of lease to graze on federal land did not result in taking of ranch. Lastly, wild horses could not constitute an instrumentality of the government capable of giving rise to a taking of landowner's water rights.

***Washoe County, Nevada v. United States*, 319 F.3d 1320 (Fed. Cir. 2003)**
Holding:

> A water right is property subject to constitutional protection, it is usufructuary in nature, meaning that it is a right to use water in conformance with applicable laws and regulations that is protected. However, denial of a permit to run a pipeline across federal lands to access the water did not effect a taking.

***H.F. Allen Orchards v. United States*, 749 F.2d 1571 (Fed. Cir. 1984)**
Holding:

> Farmers, who were owners of water supplied from federal irrigation project and beneficiaries of irrigation project, were true parties in interest and had standing to sue under consent decree, which specified obligation of United States to deliver water and which provided for instance in which shortage occurred.

III. Court of Federal Claims

***Hansen v. United States*, 65 Fed. Cl. 76 (2005)**
Holding:

Ranch owner had a constitutionally protected property interest in groundwater under the ranch that could not be taken without just compensation. Owner had standing to pursue taking claims, although the contamination first occurred before he purchased the ranch and he had sold the ranch under a contract for deed.

***Tulare Lake Basin Water Storage District v. United States*, 49 Fed. Cl. 313 (2001)**
Holding:

Federal prohibition on use of irrigation water in order to protect endangered fish constitutes a taking under the Fifth Amendment. "In the context of water rights, a mere restriction on use—the hallmark of regulatory action—completely eviscerates the right itself since plaintiffs' sole entitlement is to the use of the water. Unlike other species of property where use restrictions may limit some, but not all of the incidents of ownership, the denial of a right to the use of water accomplishes a complete extinction of all value. Thus, by limiting plaintiffs' ability to use an amount of water to which they would otherwise be entitled, the government has essentially substituted itself as the beneficiary of the contract rights with regard to that water and totally displaced the contract holder.

The federal government is certainly free to preserve the fish; it must simply pay for the water it takes to do so.

***Mitchell v. United States*, 41 Fed. Cl. 617 (1998)**
Holding:

Government's construction of a fence which prevented landowners from using public lands for grazing purposes and its cancellation of range improvements associated with State water rights did not effect a taking of such rights, where landowners remained able to sell the water rights at issue to a willing buyer, and thus there was an alternative beneficial use.

***Store Safe Redlands Associates v. United States*, 35 Fed. Cl. 726 (1996)**
Holding:

While grazing permit held by ranch owner was not a property right, it did not follow that the owner had no property interest in water right in national forest for purposes of owner's taking claim but, rather, part of claim was based on taking of stockwater rights which existed regardless of grazing permit, though analysis of legal characteristics of grazing permit may be pertinent to scope and value of rights.

***Ball v. United States*, 1 Cl. Ct. 180 (1982)**
Holding:

> In general terms, water rights and surface waters, whether riparian or appropriative, constitute "property" which cannot be taken for public use except on payment of just compensation.

***Bean v. United States*, 163 F. Supp. 838 (Cl. Ct. 1958)**
Holding:

> A beneficial use of waters alone gives user no vested right to them, and preceding the beneficial use there must have been a filing of a notice of intent to appropriate.