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Spanish Fork West Field Irrigation Co. et al v. United States et al : Brief for Appellants

Utah Supreme Court

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No. 9314

In the Supreme Court of the State of Utah

SPANISH FORK WEST FIELD IRRIGATION COMPANY, A
CORPORATION, ET AL., PLAINTIFFS AND RESPONDENTS

v.

THE UNITED STATES, A NATION, ET AL., DEFENDANTS
AND APPELLANTS

APPEAL FROM THE FOURTH JUDICIAL DISTRICT COURT OF THE
STATE OF UTAH IN AND FOR UTAH COUNTY

BRIEF FOR APPELLANTS, THE UNITED STATES, THE SEC-
RETARY OF THE INTERIOR, AND THE COMMISSIONER OF
RECLAMATION

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(1)

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STATEMENT OF FACTS

This is the second appeal in this case. In *Spanish Fork West Field Irr. Co. v. United States*, 9 U. 2d 428, 347 P. 2d 184, this Court reversed the judgment with directions to enter judgment in accordance with the views expressed in the opinion which is printed in the appendix hereto, *infra*, p. 8.

After hearing the parties, the district court entered amended conclusions of law and judgment. Among other things, the amended conclusions of law state in paragraph 13:

That by their applications for water rights in the Strawberry project, the applicants, upon

approval of their applications and subject to payments required of them, acquired rights to share ratably, in proportion to the number of acre feet applied for, in the waters of the project as a whole, including both storage water and water available under appropriations by the United States in the flow of the Spanish Fork River.

The amended decree concludes with the following provision :

13. That the Strawberry Water Users Association, in its management and operation of the Strawberry Project, does not have the right to allow diversion of water from the River without making a just and equitable charge against the user thereof.

14. That the charge to be made should be adequate to properly and equitably protect the rights of other applicants holding approved applications under the project.

15. That, since it appears reasonably probable that, if a 100 per cent charge is made for water diverted during early spring or periods of flood or high water, a substantial portion of such water will go unused and be lost to the project, the use of project river water during such periods should be permitted at a lesser percentage of charge, but which will be equitable and just, after giving due consideration to value of use of the water at the time and to conservation of stored water and also due consideration to the rights of all other owners of approved applications under the project.

16. That all water users should be charged in full for water used either from storage or from project river water during periods when stor-

age water is being released. The term "project river water" as herein used refers to water from Spanish Fork River available under appropriations made by the United States in the flow of Spanish Fork River.

Objections of the United States to these provisions as proposed by the plaintiffs having been overruled, this appeal was taken.

STATEMENT OF POINTS

1. Paragraphs 13 through 16 of the Amended Decree are not in accord with the mandate of this Court and exceed the jurisdiction of the trial court.

2. Paragraph 13 of the Amended Conclusions of Law is not in accord with the mandate of this Court and exceeds the jurisdiction of the trial court.

ARGUMENT

I

Paragraphs 13 through 16 of the Amended Decree are not supportable and should be stricken

The opinion of this Court treats this case in two different aspects. The first deals with the priority which plaintiffs enjoy to use up to 390 second feet of Spanish Fork River waters. We do not now raise before this Court any question as to this aspect of the case since the United States had, by contract, agreed that plaintiffs did have a priority in use of Spanish Fork River waters.¹

¹ It was our view on the earlier appeal as stated in footnote 2 of "Brief for Appellants, the United States," etc., that no such issue was presented in this case.

As we read this Court's opinion, a decree prejudicial to the interests of the United States is not authorized or contemplated. Hence, the jurisdictional questions whether the United States

The second aspect of the case concerned the amount the defendant water users should be charged for use of the waters of the river, both Courts having agreed that under the circumstances a charge for less than the full amount of water used from the river was justified. This Court rejected the plaintiffs' attack upon the administrative practice in this connection. It rejected the formula decreed by the trial court, reversed the attempted transfer to the State Engineer of functions performed by project management and the United States, and likewise rejected the court's retention of jurisdiction. Thus, as to the second aspect of the case this Court held that plaintiffs' objections lacked merit and, had that been the sole aspect of the case, would clearly have directed dismissal of the action.

The trial court should, we submit, have accomplished that purpose by eliminating all reference to the second aspect of the case.² But, rather than doing so, it entered paragraphs 13 through 16 above quoted. At first glance these provisions would seem to be harmless as requiring no more than the law would require, i.e., that the charges shall be "just and equitable," etc. And since the charges are diminished only during the spring season, paragraph 16, *supra*, would appear to be harmless. However, circum-

has consented to this suit and whether it could be maintained against the government agents would not seem to be presently important. However, if our assumption above stated is wrong, we continue to maintain the position that the action should have been dismissed for lack of jurisdiction.

² The first 12 paragraphs of the decree relate to the first aspect of the case.

stances may change in the future. There could be occasions of very high flood when storage water was being released and charges should be reduced. Situations might arise when a factor other than "value of use of the water * * * conservation of stored water * * * [and] the rights of all other owners of approved applications * * * " might become important [paragraph 15]. There is nothing in the findings to suggest that the management was threatening to reduce charges for other than the reasons given. Also the "project" might be expanded or supplemented.

Since no specific defect was found in the present methods of administration these provisions could have operational effect only in prejudging issues that might arise in the future under different circumstances. A separate suit seeking a declaration as to the manner of conducting possible future operations, of which there is no present threat, would clearly have presented no justiciable controversy and would not have authorized entry of a decree like the present one. The fact that unfounded objections to present administration were made does not justify issuance of a decree otherwise unwarranted.

It is no answer to say the decree might be amended in the future if circumstances change. Having done nothing wrong, the federal agents and project management should be free to proceed to administer the project without the impediment created by the cloud of possible claims of violation of the injunction. So far as general principles are concerned, they are contained in this Court's opinion. But the attempt to

make specific application to all circumstances, as does the amended decree, is a far different matter. There is no justification for hanging the sword of threatened contempt over the administrators and compelling them either to compromise what they may believe to be correct principles and just and equitable or face the necessity of instituting further litigation to modify the decree or, alternatively, face the risk of contempt proceedings. Important in this latter connection, is the fact that litigation in this field of water rights is almost inevitably long drawn out. The present case was filed in December 1954.

We submit that there is no equity in permitting plaintiffs' unsuccessful assertion of objections to present administration to cloud future administration of the project in this manner. The paragraphs should be stricken both because they are not in accord with the mandate of this Court,³ whose opinion did not refer to any defect in administration, and because they constitute an attempt to prejudge further litigation rather than settling a present controversy.⁴

³ A trial court is, of course, bound by the appellate court's mandate, e.g., *Forbes v. Butler*, 73 U. 522, 275 Pac. 772 (1928).

⁴ The fact that the declaratory judgment procedure was invoked does not change the situation. Borchard, *Declaratory Judgments* (1934), points out (p. 26) that there must be a controversy to authorize such an action and states at page 40 that "the facts on which a legal decision is demanded must have accrued, for the principle of a declaratory judgment is that it declares the existing law *on an existing state of facts*." (Emphasis supplied.)

II

Paragraph 13 of the conclusions of law should be stricken

Paragraph 13 of the conclusions of law purports to describe what rights the applicants acquired in waters of the river. Since there has not been found to be any violation of rights they have acquired, the only effect that the attempted definition of these rights could have would be to prejudge future controversy. For the same reasons that the attempted prejudgment of the future administration is unwarranted (*supra*), this declaration is unwarranted. It is no answer to say that this is a correct definition under existing circumstances. Defendants have a right to be free of the possible cloud of this declaration in the event of future controversy under circumstances not now predictable. For example, if the "project" should be expanded what would be the rights then?

CONCLUSION

For the foregoing reasons it is submitted that paragraphs 13 through 16 should be stricken from the decree and paragraph 13 should be stricken from the conclusions of law.

Respectfully submitted.

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DECEMBER 1960.

APPENDIX

IN THE SUPREME COURT OF THE STATE OF UTAH

No. 8994

SPANISH FORK WEST FIELD IRRIGATION COMPANY, A
CORPORATION, ET AL., PLAINTIFFS AND RESPONDENTS,

v.

THE UNITED STATES, A NATION, ET AL., DEFENDANTS,
STATE ENGINEER OF THE STATE OF UTAH, APPELLANT
WADE, *Justice*:

Plaintiffs represent the water users of the five original canal companies which were the first appropriators of the waters of the Spanish Fork River. They seek a declaratory judgment that their rights to use up to 390 cubic feet per second of the Spanish Fork River water are prior to the rights of the United States. They also seek a declaration that under their contracts with the United States for supplemental waters from the Strawberry Valley Reservoir that the Highline Canal water users, whose only source of water supply is the government, appropriated high waters of the Spanish Fork River and the storage waters of the Strawberry Valley Reservoir, must, as against the plaintiffs have credited on their contracts for water from the government, all the water which they receive both from the Spanish Fork River and the reservoir.

Practically all the users of the Spanish Fork River waters have contracts with the government to use government appropriated waters from the reservoir. More than half of the water users of this project

receive part of their supply of government appropriated waters from the Spanish Fork River. There are hundreds of water user government contracts each specifying a limit to the number of acre feet which the government agrees to furnish to such water users annually. Usually the limit is two acre feet per acre, with some contracts specifying more and some less than that amount. The government has fixed an overall limit to the number of acre feet per season which it would contract to deliver but the amount actually contracted to be delivered is less than such fixed amount.

The Strawberry Reservoir storage capacity exceeds 270,000 acre feet. The amount of water available for storage in the reservoir fluctuates greatly from year to year. The smallest recorded supply was 8,153 acre feet for 1934, and the largest was 153,668 acre feet for 1952, with an average annual yield of 61,688 acre feet from 1913 to and including 1955. Only 13 years during that period of 42 years has the project failed to deliver 100% of the water called for under these contracts. Such years were 1932 through 1945, except in 1939, when 100% delivery was made. The plaintiffs' project water supply comes exclusively from the reservoir and of course they cannot complain about how the water is charged on defendants' contracts as long as 100% of the water contracted for is delivered. However, during the years when 100% of the water contracted for is not available if defendants' contracts are not credited with the full amount of the water which they receive from the river then the defendants will take a larger share of the reservoir waters and the amount available to plaintiffs from the reservoir will to that extent be reduced.

From 1926 to the present time the Water Users Association, an organization of the water users of the

waters of this project, has managed the project under a contract with the United States. Nine of the 16 directors of the association are elected from districts made up of defendants' interests.

Because of the great number of interested parties plaintiffs sue as representatives of a class and join the defendants as representatives of the opposing class.¹ Among the defendants is the United States which built and still owns the reclamation project, some governmental executive officers connected with the project, the Strawberry Water Users Association, High Line Canal Companies, the Utah State Engineer and others, some of whose interests were the same as plaintiffs but who refused to join as plaintiffs.²

The trial court refused to dismiss the case against the United States, or its officers. It held that plaintiffs' rights to use up to 390 second feet of the Spanish Fork River water are prior to the rights of the United States. It refused to require that full credit be charged against defendant water users for all Spanish Fork River waters used by them under contracts with the United States. It made a formula by which such charge should be determined. It required the State Engineer to make certain estimates and regulations and retained jurisdiction of the matter for 10 years.

The defendants appeal and the plaintiffs cross-appeal. Defendants contend (1) that the finding that plaintiffs have up to 390 second feet prior right to the use of Spanish Fork River waters is not supported by substantial evidence, (2) that the United States is immune from this suit, (3) that the trial court correctly held that the defendants should not

¹ See Rule 23, Utah Rules of Civil Procedure.

² See Rule 19, Utah Rules of Civil Procedure.

be charged with all the waters they use from Spanish Fork River, (4) that the formula for determining the defendants' charge for river waters used is not related to the contract and usurps an executive function, (5) that the court's directions to the State Engineer were erroneous, and (6) the court erred in retaining jurisdiction for 10 years. We consider these contentions in the order named.

(1) The evidence supports the finding that plaintiffs have priority in the use of up to 390 second feet of Spanish Fork River waters. Plaintiffs allege and originally defendants admitted that the United States had by express contract with each plaintiff canal company recognized the priority of plaintiffs to the river waters amounting to a total of 390 second feet. During the trial defendants amended their answers to deny such allegations. These denials were based on the McCarty decree of 1899 and the Booth decree of 1901, which adjudicated only 243 second feet of the Spanish Fork River to plaintiffs.

A contract between each plaintiff canal company and the United States made at the beginning of the operation of this project was introduced in which the United States expressly recognized the validity of plaintiffs' claims. Testimony was also received that throughout the entire operation of the project the United States had recognized the validity of plaintiffs' prior claims to the use of this river water up to 390 second feet. The record discloses no evidence to the contrary. This finding was reasonable and is affirmed.

(2) The United States is not immune from this action. 43 U.S.C.A., Section 666 provides:

Consent is hereby given to join the United States as a defendant in any suit (1) for the adjudication of rights to the use of water of a river system, or other source, or (2) for

the administration of such rights, where it appears that the United States is the owner of or is in the process of acquiring water rights by appropriation under state law by purchase or exchange or otherwise and the United States is a necessary party to such suit. The United States, when a party to any such suit shall (1) be deemed to have waived any right to plead that the state laws are inapplicable or that the United States is not amenable thereto by reason of its sovereignty, and (2) shall be subject to the judgments, orders and decrees of the court having jurisdiction, and may obtain review thereof in the same manner and to the same extent as a private individual under like circumstances; *Provided*, That no judgment for costs shall be entered against the United States in any such suit.

This is a clear consent of the United States to the maintenance of this suit. It is clearly an adjudication of the rights to use the waters of a river system. It also is a suit for the administration of such rights, and here the United States is the owner of water rights of this system and is a necessary party to this action. We conclude that the United States has consented to this action.

(3) The court correctly held that the defendant water users need not be charged the full amount of the water which they use from the river. The defendants, appellants here, agree with the above proposition but plaintiffs, cross-appellants here, strenuously disagree therewith. Their disagreement is based on the fact that the government expressly limited the number of acre feet of water it would contract to furnish to all water users from this project and the following or similar provision is in all the contracts between the government and water users for the furnishing of project waters:

The quantitative measure of water right hereby applied for is that quantity of water which shall be beneficially used for the irrigation of said irrigable land up to, but not exceeding two (2) acre feet per acre per annum, measured at the head of Strawberry High Line Canal, and in no case exceeding the share proportionate to irrigable acreage of the water supply actually available as determined by the Project Manager or other proper officer of the United States, or its successor, in the control of the project during the irrigation season for the irrigation of the lands under said unit.

This limitation that the water supplied to the water users shall "not exceed 2 acre feet per acre per annum" and shall in no case exceed "the share proportionate to irrigable acreage of the water supply actually available" with over-all limit to the amount of acre feet which the government would contract to supply from the project indicates an intention that each project water user is entitled to his proportionate share of the water supply for each year. This construction, if there were no other factors, would, in fairness to plaintiff water users, require that all the water used by the defendant water users both from the river and the reservoir be credited as a part of the water which the government contracted to furnish to them. It would reduce the amount of water available for the plaintiff water users who use only reservoir waters from this project, if the water which defendant water users use from the river were only partly counted as a part of the water which the government contracted to supply to them. This is especially true of years when the full contract water supply is not available, and it would reduce the reservoir supply for future years even in years when the full supply was furnished.

Usually for a short time each spring there is more water in the Spanish Fork River than is beneficially used. There is no reservoir or other means of storing these runoff waters. Often a part of such surplus water is diverted into the canals for cleaning purposes to wash moss, silt and debris out of the canal. Such water which is not actually used for irrigation of his land of course cannot be counted as a part of the government contract water supply furnished to a defendant water user.

Some years the river threatens or actually reaches flood proportions, creating a flood control problem. As a flood control measure the canals are filled and the water users are urged to divert the water onto their lands if they can do so in safety, though the land may be already saturated from storms. Water used as a flood control measure should not be counted as water furnished from the project under government contracts.

Finally there is the situation of an ample supply of water in the river and not much need for water on the land. If as much of the river water as can be beneficially used is used as long as the supply lasts the demand for reservoir water will thereby be delayed and the total amount of reservoir water required reduced. This will make a saving of reservoir water to the benefit of all concerned. The reservoir water which can be used after the high water has subsided is much more valuable than the river runoff water when there is more than enough. By reducing the price of the surplus river water and by not counting the full amount used as a part of the amount to be furnished to the water users under the government contracts more river water may be used and less reservoir water required. Under such circumstances when there is evidence that a saving of reservoir water may thereby be effected the project manage-

ment could offer such reductions to the water users in order to effect a saving of the reservoir water. Such action, if held to reasonable limits would benefit both plaintiffs and defendants. For the purpose of saving reservoir water the project management is authorized to reduce these charges.

(4) The court's formula for reducing these charges would seem to handicap the management rather than be useful. The time when the credit for water used should be reduced requires good judgment and sound discretion, in the light of all available knowledge of the facts and circumstances. This cannot be produced by a formula. Such reduction is permissible only for the purposes above approved and when there is a reasonable certainty that such purposes will thereby be accomplished.

(5) No good reason is shown for taking from the United States and the project management certain engineering functions and giving them to the State Engineer. No doubt these two departments should work together. But the decreed change made is not justified.

(6) No justification for the court retaining jurisdiction is shown. Both sides object thereto. That provision should be eliminated.

Reversed, with directions to enter judgment in accordance with the views herein expressed.

No costs awarded.

WE CONCUR:

J. ALLAN CROCKETT,
Chief Justice.

ROGER I. McDONOUGH,
Justice.

E. R. CALLISTER,
Justice.

HENRIOD, *Justice* (concurring and dissenting):

I concur, save for the conclusion that the U.S. waived its immunity. The petition and its prayer clearly envision a cause seeking a declaration that the administrators (not the U.S.) for the use of the subject water, should charge early spring runoff water users 100% of the spring water they used against their later-season contracted, permanent reservoir water rights. The U.S.' appropriated rights were admitted and unassailed. No conflict was asserted between it and any other appropriator. No allegation suggested any design to compel an adjudication of the rights of the U.S. There was no contention that the U.S. was an administrator of rights or that it objected to any existing administration thereof. The petition's prayer does not hint that the U.S. was a "necessary party" as that phrase connotes. From a casual reading of 43 U.S.C.A., 666, it seems obvious that the U.S. did not waive its sovereign immunity.