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Pit River Tribe v. U.S. Forest Service

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Pit River Tribe v. U.S. Forest Service, 615 F.3d 1069, 2010 WL 2991395, 2010 U.S. App. Lexis 15969 (9th Cir. Aug. 2, 2010).

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ABSTRACT

The Pit River Tribe of northern California sued the U.S. Forest service for not conducting a full environmental impact statement on a proposed natural gas plant near a sacred site. The Ninth Circuit Court of Appeals ruled that a district court's remand order to a Forest Service administrative panel did not constitute a final decision by a court and therefore the order itself was not subject to appellate review. Furthermore, the Court held that where a gas lease was extended past its original terms and the extension was later rejected because it violated NEPA, the lessee had a right to reclaim the original lease and was not subject to an open bid process.

I. INTRODUCTION

Pit River Tribe v. U.S. Forest Service was decided by the Ninth Circuit Court of Appeals on August 2, 2010.[323] The court faced two issues on appeal. First, whether an appellate court could exercise jurisdiction over a case where the trial court had not rendered a "final decision," and second, whether a geothermal lease should be subject to reclamation by the original leaseholder at the end of litigation.[324] The court's decision was not the first concerning the Pit River Tribe's dispute with federal agencies and the Calpine Corporation, a natural resource development firm.[325] In this second round of litigation, the court found itself having to act as the

[323] *Pit River Tribe v. U.S. Forest Serv.*, 2010 WL 2991395 (9th Cir. Aug. 2, 2010).
[324] *Id*.
[325] *Id*. at *1.

interpreter of its first *Pit River* decision (*Pit River I*)[326] because the disputes in second round of litigation (*Pit River II*) were over what mandate was created by the court's order in *Pit River I*.[327]

II. FACTUAL BACKGROUND

In 1988, the Bureau of Land Management (BLM) entered into two ten-year geothermal lease agreements with a developer near Medicine Lake in Northern California, a place of cultural significance to the Pit River Tribe (Pit River) and other Native American groups in the region.[328] These leases were later acquired by the Calpine Corporation, which proceeded to drill exploratory wells in the leased areas.[329] In 1995, after extensive exploration of the leases, Calpine submitted a plan to the BLM and other federal agencies to build a power plant in an area called Fourmile Hill.[330] In May 1998, the BLM extended Calpine's original 1988 leases for five years.[331]

In September 1998, the BLM and the other federal agencies released a complete Environmental Impact Statement (EIS) on the proposed Fourmile Hill power plant and in 2000 issued a Record of Decision (ROD) approving the plant.[332] In 2002, BLM extended Calpine's leases for an additional forty years.[333] Subsequently, the Pit River Tribe filed suit in the United States District Court for the Eastern District of California, claiming the federal agencies granting the lease extensions had violated several federal laws during the leasing process, including the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA).[334]

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[326] *Pit River Tribe v. United States Forest Service*, 469 F.3d 768 (9th Cir. 2006).
[327] *Pit River II*, 2010 WL 2991395 at *2.
[328] *Id*. at *1.
[329] *Id*.
[330] *Id*.
[331] *Id*. (citing 43 C.F.R. § 3203.1-4(c) (1998)).
[332] *Id*.
[333] *Id*.
[334] *Id*.

III. PROCEDURAL BACKGROUND

The district court entered summary judgment in favor of the agencies and Calpine, and Pit River appealed.[335] In *Pit River I*, the Ninth Circuit reversed the district court's grant of summary judgment for the agencies and Calpine and held the agencies should have completed an EIS before granting the May 1998 lease extensions.[336] Furthermore, the court held that the September 1998 EIS on the Fourmile Hill power plant did not remedy the agencies' oversight.[337] Because the 1998 and 2002 lease extensions were granted in violation of NEPA and NHPA, the court held they must be undone.[338] Furthermore, because the approval of the Fourmile Hill power plant was based on lease extensions that were invalidated, the court held that Fourmile Hill project must be halted as well.[339] The court remanded the issue back to the district court with orders to grant summary judgment in favor of Pit River.[340] On remand, Calpine and the agencies argued that the district court need only reconsider the May 1998 lease extensions and the subsequent decisions based on those extensions, such as the Fourmile Hill approval and the 2002 lease extensions.[341] Pit River argued that because the original 1988 leases had long since expired and all lease extensions were invalidated by the Ninth Circuit, Calpine had no rights to the geothermal deposit, and a new open bid leasing process must begin.[342]

As ordered by the Ninth Circuit, the district court granted summary judgment in favor of Pit River on the claims that the agencies violated federal law.[343] However, the district court did not accept Pit River's argument that the leasing process for the Medicine Lake site must start

[335] *Id*.
[336] *Id*.
[337] *Id*. (citing *Pit River I*, 469 F.3d at 785-786).
[338] *Id*. at **1-2 (citing *Pit River I*, 469 F.3d at 788).
[339] *Id*. at *2 (citing *Pit River I*, 469 F.3d at 788).
[340] *Id*. (citing *Pit River I*, 469 F,3d at 788).
[341] *Id*.
[342] *Id*.
[343] *Id*.

over, stating that a "mere finding of a NEPA violation does not automatically and retroactively invalidate anything."[344] Rather, the district court remanded to the agencies with instructions to perform the proper NEPA and NHPA reviews and deliver a new EIS for the future lease extensions and the Fourmile Hill project, giving the BLM complete discretion to end or extend the leases to the Medicine Lake site.[345] Pit River again appealed to the Ninth Circuit.[346]

IV. THE NINTH CIRCUIT'S DECISION IN *PIT RIVER II*

A. Jurisdiction Issues

The Ninth Circuit's three-judge panel unanimously delivered the decision in *Pit River II*.[347] Before determining the merits of Pit River's claims, the court performed a detailed analysis of several jurisdictional issues, focusing on whether the district court had issued a "final decision," and if not, whether the court still had jurisdiction to hear the case.[348]

Both Calpine and Pit River asserted that the court had jurisdiction under 28 U.S.C. § 1291.[349] That section states that appellate jurisdiction extends only to the "final decisions of the district courts."[350] Remand orders are generally not considered final decisions.[351] The Ninth Circuit established the exception to this general rule in *Alsea Valley Alliance v. Department of Commerce,* where the court held that a remand order can be considered a final decision when:

> (1) the district court conclusively resolves a separable legal issue,
> (2) the remand order forces the agency to apply a potentially erroneous rule which may result in a wasted proceeding, and
> (3) review would, as a practical matter, be foreclosed if an immediate appeal were unavailable.[352]

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[344] Id.
[345] Id.
[346] Id.
[347] J. Clifford Wallace, Senior Circuit Judge, Sidney R. Thomas, and Kim McLane Wardlaw, Circuit Judges.
[348] *Pit River II*, 2010 WL 2991395 at *3.
[349] Id.
[350] Id. (citing 28 U.S.C. § 1291 (2006)).
[351] *Id*. (citing Chugach Alaska Corp. v. Lujan, 915 F.2d 454, 457 (9th Cir. 1990)).
[352] Id. (citing Alsea Valley Alliance v. Dept. of Com., 358 F.3d 1181, 1184 (9th Cir. 2004)).

In *Alsea*, a private party challenged a regulation passed by the National Marine Fisheries Service (NMFS).[353] The district court granted summary judgment in favor of Alsea and remanded the matter to the NMFS.[354] As a result of the remand, the Oregon Natural Resources Council (ORNC), fearing the NMFS would not challenge the district court's remand, filed an appeal with the Ninth Circuit to overturn the remand.[355] The court held the district court's remand order failed the third prong of the test and therefore, was not a final decision.[356] The court concluded that the appeal by the ONRC was unnecessary because the NMFS had not yet acted on the remand order.[357] The court reasoned that the ONRC would have as much power as any concerned party in lobbying the NMFS to render a fair administrative decision.[358] If after the final administrative decision was made, the ONRC still felt wronged, it could file an appeal of that decision, but until that point the ONRC had to exhaust its administrative remedies.[359]

In *Pit River II,* the court rejected the argument that the district court's remand order was a final decision.[360] The court stated that because no administrative decision had been made as a result of the district court's remand, neither party could assert they have suffered from the remand.[361] The court noted that both parties would have the power to participate in the administrative process in order to effect a fair decision.[362] Until an administrative decision was

[353] *Id*. (citing *Alsea*, 358 F.3d at 1183).
[354] *Id*. (citing *Alsea*, 358 F.3d at 1183).
[355] *Id*. (citing *Alsea*, 358 F.3d at 1184).
[356] *Id*. at *4 (citing *Alsea*, 358 F.3d at 1184).
[357] *Id*. (citing *Alsea*, 358 F.3d at 1185).
[358] *Id*. (citing *Alsea*, 358 F.3d at 1185).
[359] *Id*. (citing *Alsea*, 358 F.3d at 1185).
[360] *Id*. at *5.
[361] Id.
[362] Id.

reached by the agencies, the court held that any ruling would be unnecessary.[363] Because no final decision was made, the court ruled it had no jurisdiction under 28 U.S.C. § 1291.[364]

Arguing in the alternative, Calpine asserted jurisdiction under 28 U.S.C § 1292(a)(1), which gives an appellate court jurisdiction district court's interlocutory orders refusing an injunction.[365] In *Alsea*, the court described 12 U.S.C. § 1292(a)(1) as "'a limited exception to the final-judgment rule,' which should be construed 'narrowly.'"[366]

Calpine's argument in favor of 28 U.S.C. § 1292(a)(1) jurisdiction was that the district court refused Pit River's request for a preliminary injunction when remanded to the agencies rather than setting the leases aside. The court rejected this interpretation of Pit River's argument, pointing out that Pit River did not argue for an injunction cancelling or invalidating the leases, but instead argued the leases could not be extended as a matter of law.[367] As a result, the court held it had no jurisdiction under 28 U.S.C § 1292(a)(1).[368]

Pit River's final argument was that appellate jurisdiction existed under the All Writs Act (28 U.S.C. § 1651(a)) because the remand order of the district court violated the mandate of the *Pit River I* decision.[369] The All Writs Act allows appellate courts to issue writs of mandamus "to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so."[370] When an order by a lower court violates the mandate of a higher court, a writ of mandamus may be issued and appellate jurisdiction established.[371] Citing *Vizcaino v. U.S. District Court*, the court granted a writ of mandamus

[363] *Id*.
[364] *Id*. at *6.
[365] *Id*. (citing 28 U.S.C. § 1292(a)(1)).
[366] *Id*. (citing *Alsea*, 358 F.3d at 1186).
[367] *Id*.
[368] *Id*. at *7.
[369] *Id*.
[370] *Id*. (citing *Will v. U.S.*, 389 U.S. 90, 95 (1967)).
[371] *Id*. (citing *Vizcaino v. U.S. District Court*, 173 F.3d 713, 718-719 (9th Cir. 1999)).

under the All Writs Act to determine whether the district court's remand order violated the "letter and spirit" of the *Pit River I* decision.[372]

B. The Medicine Lake Leases

On appeal, Pit River argued that the district court's remand order was inappropriate because the 1988 leases to the Medicine Lake site had expired and would thus be incapable of extension after the ordered environmental reviews.[373] In support of its argument, Pit River cited passages from the *Pit River I* decision where the court stated that the lease extensions violated NEPA and must be undone.[374]

The court first rejected Pit River's argument that, because the 1988 leases had expired and the *Pit River I* decision invalidated any extension, a new open-bid leasing process must begin.[375] The court stated that allowing a litigant who successfully challenged a lease extension to deprive a lessee of all contractual rights would set a dangerous precedent.[376] The court determined that the only way to interpret *Pit River I* was that where there is a successful challenge to a lease extension the result can only be the undoing of the lease extension and not the entire lease.[377] The court held that the district court did not violate the mandate of *Pit River I* when it ordered that the 1988 leases be deemed capable of extension after proper environmental review by the federal agencies.[378]

In its conclusion, the court stated that it would "substantially" uphold the remand order of the district court, with two minor exceptions.[379] The first was a mischaracterization by the district court of a passage in *Pit River I* which the court determined was, as "a practical matter,"

[372] *Id*.
[373] *Id*. at *8.
[374] *Id*.
[375] *Id*. at *9.
[376] *Id*.
[377] *Id*.
[378] *Id*. at *10.
[379] *Id*. at *14.

a harmless error, and the second was a typographical error that both parties addressed in their appellate briefs.[380]

V. CONCLUSION

The court in *Pit River II* established two precedents for future courts to consider. First, the detailed analysis of when an appellate court has jurisdiction where there is no "final decision" by a lower court provides a road map for district courts to use in the future. Second, the court affirmatively established the vested right of a lessee to reclaim their lease even if the original terms have expired during litigation, and all lease extensions have been invalidated.

[380] *Id*. at **12-14. In its remand order, the district court used the word "until" where it meant "unit." This caused the parties to dispute the proper interpretation over the meaning of the usage of "until" in the remand order. *Id*. at *14.