

3-27-2020

Navajo Nation v. United States Department of the Interior

Adam W. Johnson

Alexander Blewett III School of Law at the University of Montana, adam8.johnson@umontana.edu

Follow this and additional works at: <https://scholarship.law.umt.edu/plrlr>



Part of the [Administrative Law Commons](#), [Agriculture Law Commons](#), [Animal Law Commons](#), [Cultural Heritage Law Commons](#), [Energy and Utilities Law Commons](#), [Environmental Law Commons](#), [Indian and Aboriginal Law Commons](#), [Land Use Law Commons](#), [Natural Resources Law Commons](#), [Oil, Gas, and Mineral Law Commons](#), [Science and Technology Law Commons](#), and the [Water Law Commons](#)

Recommended Citation

Johnson, Adam W. (2020) "Navajo Nation v. United States Department of the Interior," *Public Land & Resources Law Review*. Vol. 0 , Article 10.

Available at: <https://scholarship.law.umt.edu/plrlr/vol0/iss10/10>

This Case Summary is brought to you for free and open access by The Scholarly Forum @ Montana Law. It has been accepted for inclusion in Public Land & Resources Law Review by an authorized editor of The Scholarly Forum @ Montana Law.

***Navajo Nation v. United States Department of the Interior*, No. CV-03-00507-PCT-GMS, 2019 U.S. Dist. LEXIS 143801, 2019 WL 3997370 (D. Ariz. Aug. 23, 2019)**

Adam W. Johnson

The Navajo Nation sued the United States government alleging the government breached its trust obligation over the allocation of water rights in the Colorado River Basin. On remand, the district court denied the Navajo Nation leave to file its third amended complaint for futility, holding that the general trust relationship was insufficient to support the Nation's breach of trust claim.

I. INTRODUCTION

Navajo Nation v. Department of the Interior involves a long-running quarrel concerning challenges to the Department of the Interior's ("Interior") "shortage" and "surplus" guidelines for allocation of water from the Colorado River.¹ The Navajo Nation ("Nation") sued under the Administrative Procedure Act ("APA"), claiming that Interior's guidelines violated the National Environmental Policy Act ("NEPA") by failing to protect the Nation's water rights.² Additionally, the Nation alleged a breach of the federal government's trust responsibility for (1) "failing to determine the quantities and sources of water required to make the Navajo Reservation a permanent homeland for the Navajo people" and (2) "failing to protect the sovereign interests of the Navajo Nation by securing an adequate water supply to meet those homeland purposes."³

After dismissing the Nation's NEPA suit for lack of standing, the United States Court of Appeals for the Ninth Circuit remanded the case to the United States District Court for the District of Arizona to consider the merits of the breach of trust claim.⁴ The district court then held the Nation failed to establish the existence of a fiduciary duty and the general trust responsibility was inadequate to support a breach of trust claim.⁵

II. FACTUAL AND PROCEDURAL BACKGROUND

The Nation is a federally recognized Indian tribe with a reservation covering thirteen million acres in parts of Arizona, New Mexico, and

1. *Navajo Nation v. Dep't of the Interior*, No. CV-03-00507-PCT-GMS, 2019 U.S. Dist. LEXIS 143801, 2019 WL 3997370, at *5 (D. Ariz. Aug. 23, 2019) [hereinafter "*Navajo Nation I*"].

2. *Navajo Nation v. Dep't of the Interior*, 876 F.3d 1144, 1159 (9th Cir. 2017) (referencing *Navajo Nation v. U.S. Dep't of the Interior*, 34 F. Supp. 3d 1019 (D. Ariz. 2014)) [hereinafter "*Navajo Nation P*"].

3. *Navajo Nation II*, 2019 U.S. Dist. LEXIS at *7 (internal citations omitted).

4. *Navajo Nation I*, 876 F. 3d at 1174.

5. *Navajo Nation II*, 2019 U.S. Dist. LEXIS at *24.

Utah.⁶ The Nation—“the largest riparian landowner” apart from the federal government—“occupies vast reservation lands along the Colorado River but has no judicially decreed rights in its waters.”⁷ Interior regulates the “control, storage, and delivery” of the waters of the Colorado River to various western states.⁸ Facing droughts and increasing demands for water, Interior published guidelines in 2001 and 2008 clarifying how it would allocate water in both “surplus” and “shortage” years.⁹ In 2001, Interior adopted the Colorado River Interim Surplus Guidelines (“Surplus Guidelines”), which would “determine the conditions under which the Secretary would declare the availability of surplus water for use within” the states located in the Lower Basin of the Colorado River, as well as how that water would be allocated.¹⁰

The adoption of the Surplus Guidelines “coincided with the driest eight-year period in the recorded history of the River.”¹¹ Accordingly, in 2008, Interior adopted criteria for when and how Interior would declare a shortage and “implemented procedures for the coordinated operation of the Lake Mead and Lake Powell reservoirs in times of low water and shortage.”¹²

In its comments on the draft environmental impact study for the guidelines, the Nation objected to both the Surplus and Shortage Guidelines, calling them “deeply and fatally flawed.”¹³ Specifically, the Nation claimed that the guidelines “did not account for its unquantified rights in the Lower Basin and fostered reliance by third parties on water to which it was, or would or could be, entitled.”¹⁴

The Nation filed its original complaint in March 2003, first claiming that Interior’s “failure to adequately consider and protect the Nation’s rights to, and interest in, water violated [NEPA].”¹⁵ The Nation also asserted that Interior breached its trust obligation to the tribe by failing to protect its water rights.¹⁶ With the parties jointly seeking a settlement, the

6. *Navajo Nation I*, 876 F. 3d at 1152.

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.* at 1157 (quoting *Colorado River Interim Surplus Guidelines*, 66 Fed. Reg. 7,772, 7,773 (Jan. 25, 2001)).

11. *Id.* at 1158 (citing *Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead*, 73 Fed. Reg. 19,873 (Apr. 11, 2008)).

12. *Id.* (citing *Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead*, 73 Fed. Reg. 19,873, 19,874 (Apr. 11, 2008)).

13. *Id.* (quoting *Final Environmental Impact Statement: Colorado River Interim Surplus Criteria*, U.S. DEP’T OF THE INTERIOR, BUREAU OF RECLAMATION B-187, B-196 (Nov. 2007)).

14. *Id.* (quoting *Final Environmental Impact Statement: Colorado River Interim Surplus Criteria*, U.S. DEP’T OF THE INTERIOR, BUREAU OF RECLAMATION B-187–B-190 (Nov. 2007)).

15. *Id.* at 1159.

16. *Id.*

court agreed to stay the proceedings.¹⁷ After lengthy negotiations proved unsuccessful, the court lifted the stay, and the Nation amended its complaint to add a challenge to the Shortage Guidelines.¹⁸ However, the district court dismissed the complaint without prejudice, “holding that the Nation lacked Article III standing to bring its NEPA claims and that its breach of trust claim was barred by sovereign immunity.”¹⁹

Upon review, the court of appeals affirmed the dismissal of the NEPA claim for lack of standing but reversed the district court’s ruling that the suit was barred by sovereign immunity, instead holding that the breach of trust claim could proceed under the broad waiver of sovereign immunity in § 702 of the APA.²⁰ The case was remanded to the district court to “consider fully the Nation’s breach of trust claim in the first instance, after entertaining any request to amend the claim more fully to flesh it out.”²¹

III. ANALYSIS

On remand, the district court considered the Nation’s Renewed Motion for Leave to File Third Amended Complaint.²² The court began by laying out the legal standard for leave for permissive amendments, stating that while leave should be granted liberally, it should be denied if the proposed amendment would prove futile.²³ “An amendment is futile when no set of facts can be proved under the amendment to the pleadings that would constitute a valid and sufficient claim or defense.”²⁴

In its proposed amended complaint, the Nation alleged that Interior violated its trust obligations “(1) by failing to determine the quantities and sources of water required to make the Navajo Reservation a permanent homeland for the Navajo people, and (2) by failing to protect the sovereign interests of the Navajo Nation by securing an adequate water supply to meet those homeland purposes.”²⁵ Interior insisted that the proposed amendments were futile, because “[t]he mere existence of a trust relationship between the United States and the Navajo Nation is, by itself, an insufficient basis for an actionable claim.”²⁶

The court then discussed Indian trust relationship caselaw, noting that while a trust relationship exists between Indian tribes and the federal government,²⁷ that relationship is general in nature and is not equivalent

17. *Id.* at 1160.

18. *Id.*

19. *Id.*

20. *Id.* at 1173.

21. *Id.*

22. *Navajo Nation II*, 2019 U.S. Dist. LEXIS at *6.

23. *Id.* (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

24. *Id.* (quoting *Missouri ex rel. Koster v. Harris*, 847 F.3d 646, 656 (9th Cir. 2017)).

25. *Id.* at *7 (internal citations omitted).

26. *Id.* (quoting Doc. 369 at 4).

27. *Id.* (citing *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 17, 8 L.

to a private trust that creates specific fiduciary duties.²⁸ For a valid breach of trust claim, a tribe must "identify a substantive source of law that establishes specific fiduciary or other duties, and allege that the Government has failed to perform those duties."²⁹ Thus, the law required the Nation to "point to a specific treaty, agreement, executive order, statute, or regulation that the government violated in order to bring a breach of trust claim, even one for injunctive relief rather than money damages."³⁰ The court then considered whether the Nation had met this standard in its claimed substantive sources of a fiduciary duty.³¹

A. *Treaty and Winters Rights*

The court first examined whether a specific trust responsibility arose from a combination of treaties signed between the Nation and the United States—and the Supreme Court's decision in *Winters v. United States*.³² The *Winters* Court held that, in entering into a treaty, the United States impliedly reserves enough water appurtenant to the reservation to make it fit for its purpose of operating as a functioning home of the tribe.³³ The Nation signed numerous treaties with the United States, creating the Navajo Reservation and placing the Nation under its exclusive jurisdiction and protection.³⁴ Therefore, the Nation argued that under *Winters*, and through its treaties, the United States has a fiduciary duty to "(1) determine the quantities and sources of water required to make the Navajo Reservation a permanent homeland for the Navajo people, and (2) protect the sovereign interests of the Navajo Nation by securing an adequate water supply to meet those homeland purposes."³⁵

The district court disagreed for two reasons. First, the court held that *Winters* "only applies in certain situations: it only reserves water to the extent it is necessary to accomplish the purpose of the reservation, and it only reserves water if it is appurtenant to the withdrawn land."³⁶ The court found that the water at issue was not sufficiently geographically appurtenant to the Navajo Reservation for the *Winters* doctrine to apply.³⁷ It noted that recent Ninth Circuit caselaw has interpreted the word "appurtenant" for *Winters* doctrine purposes to be a strict geographical limitation

Ed. 25 (1831)).

28. *Id.* (citing *United States v. Jicarilla Apache Nation*, 564 U.S. 162, 173 (2011)).

29. *Id.* at *8 (quoting *United States v. Navajo Nation*, 537 U.S. 488, 506 (2003)).

30. *Id.* at *10.

31. *Id.*

32. *Id.*

33. *Id.* at *11 (citing *Winters v. United States*, 207 U.S. 564 (1908)).

34. *Id.* at *12 (quoting *Treaty with the Navaho, 1849*, Sept. 9, 1849, 9 Stat. 974)).

35. *Id.* at *13 (internal quotations omitted).

36. *Id.* at *14 (quoting *Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water Dist.*, 849 F.3d 1262, 1268 (9th Cir. 2017)).

37. *Id.* at *14–15.

and not a more flexible legal concept as it was previously considered.³⁸ Second, the court held that even to the extent that the Nation possessed implied water rights in the Colorado River, the existence of such rights was insufficient to create the sort of broad enforceable trust duties that the Nation claimed, reiterating that “[t]he Government assumes Indian trust responsibilities only to the extent it expressly accepts those responsibilities by statute.”³⁹

B. Other Sources of a Trust Duty

Having rejected the Nation’s claims regarding its *Winters* and treaty rights, the court next considered a number of other potential sources of a trust obligation.⁴⁰ The court first elaborated on the trust obligation standard established in *United States v. Jicarilla Apache Nation*.⁴¹ In 1980, the Supreme Court held that the language of the General Allotment Act, which required the United States to hold allotted land “in trust,” was not sufficiently specific to create enforceable fiduciary duties regarding management of the Quinalt Indian Nation’s timber resources.⁴² However, the Court later held that subsequent statutes were sufficiently specific to create those enforceable obligations.⁴³ For example, there were statutes which specifically “required the government to manage Indian forest resources, obtain revenue through that management, and pay the proceeds to the tribal landowners.”⁴⁴

The court then turned to the sources of law that the Nation claimed created an enforceable trust obligation, finding each one of them lacking the specificity that the Supreme Court has required. For instance, the Nation pointed to language in the *Indian Health Care Amendments of 1988*, which states that “it is in the interest of the United States, and it is the policy of the United States, that all Indian communities and Indian homes, new and existing, be provided with safe and adequate water supply systems”⁴⁵ However, the court held that this language “merely sets forth a policy position” and did not create a specific duty.⁴⁶ Similarly, *The Northwest Ordinance of 1787* imposes a duty of the “utmost good faith” when dealing with Indian tribes but establishes no specific duties.⁴⁷

38. *Id.* at n.3.

39. *Id.* at *16 (quoting *United States v. Jicarilla Apache Nation*, 564 U.S. 162, 177 (2011)).

40. *Id.*

41. *Id.* at *17 (citing 564 U.S. 162 (2011)).

42. *Id.* (citing *United States v. Mitchell*, 445 U.S. 535, 542 (1980)).

43. *Id.* at *18 (citing *United States v. Mitchell*, 463 U.S. 206, 224–25 (1983)).

44. *Id.* (citing *United States v. Mitchell*, 463 U.S. 206, 219–23 (1983)).

45. *Id.* at *19 (quoting 25 U.S.C. § 1632 (2018)).

46. *Id.*

47. *Id.* at *22 (citing *Government of the North-West Territory provided for.*; *Chapter VIII*, 1 Stat. 50, 52 (1789)).

The Nation also pointed to the *Snyder Act*⁴⁸ and the *American Indian Trust Management Reform Act of 1994*.⁴⁹ The *Snyder Act* directs the Bureau of Indian Affairs to "direct, supervise, and expend such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians throughout the United States . . . for the development of water supplies."⁵⁰ The *American Indian Trust Management Reform Act of 1994* requires that the federal government "appropriately manag[e] the natural resources located within the boundaries of Indian reservations and trust lands."⁵¹ Despite this language, the court held that neither act "require[s] the United States to analyze the extent of the Nation's water needs and secure water rights on its behalf."⁵²

IV. CONCLUSION

The United States District Court for the District of Arizona interpreted Supreme Court and Ninth Circuit precedent to bar the Nation's breach of trust claim because the Nation failed to point to any statutes creating specific, enforceable trust duties, and "[t]he general trust relationship between the Nation and the United States [wa]s insufficient to support the Nation's breach of trust claim."⁵³ Accordingly, the court denied the Nation's Renewed Motion to for Leave to File a Third Amended Complaint for futility and dismissed this long-running action.⁵⁴

48. 25 U.S.C. § 13 (2018).

49. Pub. L. 103-412, 108 Stat. 4239 (1994).

50. *Navajo II*, 2019 U.S. Dist. LEXIS at * 22 (quoting 25 U.S.C. § 13 (2018)).

51. *Id.* at *23 (quoting 25 U.S.C. § 162a(d)(8) (2018)).

52. *Id.*

53. *Id.* at *24.

54. *Id.*