

CERTIFIED FOR PUBLICATION

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

MICHAEL ABATTI, as Trustee, etc., et al.,

Plaintiffs and Appellants,

v.

IMPERIAL IRRIGATION DISTRICT,

Defendant and Appellant.

D072850

(Super. Ct. No. ECU07980)

ORDER MODIFYING OPINION
AND DENYING PETITION FOR
REHEARING

NO CHANGE IN JUDGMENT

THE COURT:

It is ordered that the opinion filed herein on July 16, 2020, be modified as follows:

1. On page 26, footnote 15, the following sentences are to be added at the end:

In addition, Abatti stated in his combined brief that "the [District's] [f]armers have pre-1914 water rights," but explained in a petition for rehearing that he is asserting an interest in the District's water rights, not legal title to pre-1914 rights. We accept the clarification.

Accepting this clarification, we make the following further modifications:

On page 28, second paragraph, the sentence beginning with "And it is" is to end after "Imperial Valley."

On page 32, first paragraph, the first two sentences, starting with "Abatti raises" and ending with "the District" are to be deleted and replaced with:

Abatti raises a related issue here. He contends that because the District's predecessor, the CDC, held water rights for private use, those rights remained private following establishment of the District.

On pages 33 and 34, the paragraph spanning these pages, starting with "Second, Abatti" and ending with "CDC," and footnote 22 therein are to be deleted, which will necessitate renumbering of all the subsequent footnotes.

On page 60, partial paragraph at the bottom of the page, the sentence starting with "He argues" and ending with "industrial use" is to be deleted and replaced with:

He argues that farmers can assert injury because they are beneficial users of the District's water rights, and because the District's permit is subject to "vested rights"; Abatti maintains that, under its permit, the District would have "no power to transfer . . . water" other than for the original irrigation and domestic purposes and would have to comply with the no injury rule to add industrial use.

On page 61, first full paragraph, the sentence starting with "Abatti has not" and ending with "implicated" is to be deleted and replaced with:

The key issue here is not whether the farmers are legal users; it is that there is no relevant injury since, as noted, there was no change to the point of diversion or place or purpose of use and thus, the no injury rule is not implicated.

2. The opinion is also modified as follows:

On page 33, partial paragraph at the top of the page, the sentence starting with "The issue" and ending with "undisputed" shall be deleted and replaced with:

The issue is not whether the District had to continue to provide some level of service upon acquiring its water rights; that appears to be undisputed.

On page 35, first full paragraph, the sentence starting with "In addition" and ending with "as well" is to be deleted and replaced with:

In addition, present perfected rights are not based entirely on farming, but municipal and industrial use, as well, and farming was not the only historical use.

There is no change in judgment.

The petition for rehearing is denied.

BENKE, Acting P. J.

Copies to: All parties

KEVIN J. LANE, Clerk of the Court of Appeal, Fourth Appellate District, State of California, does hereby Certify that the preceding is a true and correct copy of the Original of this document/order/opinion filed in this Court, as shown by the records of my office.

WITNESS, my hand and the Seal of this Court.

08/05/2020

KEVIN J. LANE, CLERK

By A. Galvez
Deputy Clerk

