

the creditors' committee would have jumped on the bandwagon instead of opposing the petition as vehemently as it has.

The Court therefore concludes that the debtor has not sustained its burden of proof with regard to good faith. After careful consideration of all the evidence before it, the Court finds that it is unreasonable to expect that a plan of reorganization can be effected and hence the petition is not filed in good faith. Accordingly, debtor's petition for a Chapter X reorganization is dismissed.



FRIENDS OF THE EARTH et al.,
Plaintiffs,

v.

Gillis L. ARMSTRONG, Commissioner,
Bureau of Reclamation, and Rogers C.
B. Morton, Secretary of the Interior,
Defendants.

Civ. No. 116-71.

United States District Court,
D. Utah, C. D.

April 21, 1973.

Action in nature of mandamus to prevent commissioner of Bureau of Reclamation and Secretary of Interior from unlawfully allowing waters of reservoir impounded behind Glen Canyon dam on Colorado river to flow into Rainbow Bridge National Monument and to require those officials to perform their statutory duties and take adequate protective measures to preclude impairment of Rainbow Bridge National Monument. The District Court, Ritter, Chief Judge, held that plaintiffs had standing to sue, that defendants could not invoke the doctrine of sovereign immunity, that Wyoming and New Mexico, as beneficiaries of upper Colorado river basin

fund, were not indispensable parties to the suit, that the Colorado River Storage Act section declaring congressional intent that no dam or reservoir constructed under Act be within national park or monument was intended to apply to Rainbow Bridge National Monument and Glen Canyon dam and that such section had not been repealed by implication.

Order accordingly.

Judgment vacated, 10 Cir., Aug. 2, 1973.

1. Mandamus $\text{C}\text{O}\text{23(1)}$

Individual who had special use permit to conduct guided tours in Glen Canyon National Recreation Area and conducted tours to Rainbow Bridge and who lived in the general area had standing to bring mandamus action against commissioner of Bureau of Reclamation and Secretary of Interior to prevent them from unlawfully allowing waters of reservoir impounded behind Glen Canyon dam on the Colorado river to flow into Rainbow Bridge National Monument and to require them to perform their statutory duties and take adequate protective measures to preclude impairment of Rainbow Bridge National Monument. 28 U.S.C.A. § 1361.

2. Mandamus $\text{C}\text{O}\text{23(1)}$

Club which organized trips on behalf of its members to Rainbow Bridge National Monument each summer had standing to bring action in nature of mandamus to prevent commissioner of Bureau of Reclamation and Secretary of Interior from unlawfully allowing waters of reservoir impounded behind the Glen Canyon dam on Colorado river to flow into Rainbow Bridge National Monument and to require those officials to perform their statutory duties and take adequate protective measures to preclude impairment of Rainbow Bridge National Monument. 28 U.S.C.A. § 1361.

3. Administrative Law and Procedure $\text{C}\text{O}\text{673}$

An organization whose members are injured may represent those members in a proceeding for judicial review.

4. Mandamus \approx 23(1)

Where such members of conservation group as had visited Rainbow Bridge National Monument were members of organization for purpose of furthering such interests as led them to visit monument, it was not inappropriate that conservation group should represent them, and such group had standing to bring action in nature of mandamus to prevent commissioner of Bureau of Reclamation and Secretary of Interior from unlawfully allowing waters of reservoir impounded behind Glen Canyon dam on Colorado river to flow into Rainbow Bridge National Monument and to require those officials to perform their statutory duties and take adequate protective measures to preclude impairment of Rainbow Bridge National Monument. Colorado River Storage Project Act, § 3, 43 U.S.C.A. § 620b.

5. Federal Civil Procedure \approx 103

One who alleges injury in fact, due to administrative action of federal officer, to interest which reflects aesthetic, conservation, recreational or economic values arguably within zone of interest protected by statute has standing to sue for redress in federal court, and crucial question is not magnitude of injury but whether act said to result in injury is one proscribed by statute and whether plaintiff has interest of such magnitude that injury to it is judicially cognizable. 28 U.S.C.A. § 1361.

6. United States \approx 125(32)

Action in nature of mandamus to prevent commissioner of Bureau of Reclamation and Secretary of Interior from unlawfully allowing waters of reservoir impounded behind Glen Canyon dam on Colorado river to flow into Rainbow Bridge National Monument and to require those officials to perform their statutory duties and take protective measures to preclude impairment of Rainbow Bridge National Monument was not an unconsented suit against the United States, and defendants could not invoke doctrine of sovereign immunity. 28 U.S.C.A. § 1361.

7. United States \approx 125(26)

Suit to enjoin acts of officer is not to be regarded as suit against sovereign where acts complained of are alleged to be in violation of statute of sovereign limiting authority of officer to act. 28 U.S.C.A. § 1361.

8. Mandamus \approx 151(2)

Wyoming and New Mexico, as beneficiaries of upper Colorado river basin fund, were not indispensable parties to action in nature of mandamus to prevent commissioner of Bureau of Reclamation and Secretary of Interior from unlawfully allowing waters of reservoir impounded behind Glen Canyon dam on Colorado river to flow into Rainbow Bridge National Monument and to require those officials to perform their statutory duties and take adequate protective measures to preclude impairment of Rainbow Bridge National Monument. 28 U.S.C.A. § 1361.

9. Waters and Water Courses \approx 222

Colorado River Storage Act section stating congressional intent that no dam or reservoir constructed under the Act be within any national park or monument applied to Glen Canyon dam and Rainbow Bridge National Monument, and limiting height of Lake Powell to extent that might be necessary to protect the Rainbow Bridge National Monument was not too untoward a result to have been contemplated in passage of that section. Colorado River Storage Project Act, § 3, 43 U.S.C.A. § 620b.

10. Statutes \approx 159

All that is authorized by doctrine of implied repeals is that where legislature has made a second, equally explicit, contrary statement of its intentions with regard to subject, court may apply second act and treat first as repealed, and doctrine authorizes no breaches in ancient rule that judgment of court will not be substituted for that of legislature.

11. Statutes \approx 161(1)

To have impliedly repealed the Colorado River Storage Act section stating

congressional intent that no dam or reservoir constructed under act be within any national park or monument, Congress would have to have affirmatively required operation of dam in such a way that Rainbow Bridge National Monument must be flooded, and it would not be sufficient that Congress have authorized construction of Glen Canyon dam in such a way that its operation might flood Rainbow Bridge Monument. Colorado River Storage Project Act, § 3, 43 U.S.C.A. § 620b.

12. Statutes ⇨158

Where, contemporaneously with any measures claimed to work an implied repeal, Congress had repeatedly refused express repeal, to find implied repeal of Colorado River Storage Act section, stating congressional intent that no dam or reservoir constructed under Act should be within any national park or monument, would violate cardinal rule that intent of legislature to repeal be clear and manifest. Colorado River Storage Project Act, § 3, 43 U.S.C.A. § 620b.

Memorandum in Support of Order Denying Motion for Stay Pending Appeal

13. Courts ⇨405(15)

Criteria for determining whether motion for stay pending appeal should be granted are: (1) whether petitioner has made strong showing that he is likely to prevail on merits of appeal, (2) whether petitioner has shown that without a stay he will be irreparably injured, (3) whether issuance of stay will substantially harm other parties interested in proceedings and (4) the public interest.

14. Courts ⇨405(15)

Presumably it was not intended that district court could refuse to stay its order pending appeal upon precisely same grounds as those on which it issued order. Colorado River Storage Project Act, § 3, 43 U.S.C.A. § 620b; Fed.Rules Civ.Proc. rules, 8, 62, 28 U.S.C.A.

15. Courts ⇨405(15)

On motion for stay of judgment pending appeal from judgment for plain-

tiffs in their action in nature of mandamus to prevent commissioner of Bureau of Reclamation and Secretary of Interior from unlawfully allowing waters of reservoir impounded behind Glen Canyon dam on Colorado river to flow into Rainbow Bridge National Monument and to require them to perform their statutory duties and take adequate protective measures to preclude impairment of Rainbow Bridge National Monument, defendants and intervenors made no adequate showing of loss. Colorado River Storage Project Act, § 3, 43 U.S.C.A. § 620b; Fed.Rules Civ.Proc. rules 8, 62, 28 U.S.C.A.

16. Courts ⇨405(15)

Court could base its decision to stay judgment pending appeal on irreparable injury to petitioner reasonably inferred from facts properly proven, but court could not base its decision upon showing of injury which was entirely speculative. Colorado River Storage Project Act, § 3, 43 U.S.C.A. § 620b; Fed.Rules Civ.Proc. rules 8, 62, 28 U.S.C.A.

17. Courts ⇨405(15)

For purposes of motion by defendants and intervenors for stay pending appeal of a judgment for plaintiffs in their action in nature of mandamus to prevent commissioner of Bureau of Reclamation and Secretary of Interior from unlawfully allowing waters of reservoir impounded behind Glen Canyon dam on Colorado river to flow into Rainbow Bridge National Monument and to require those officials to perform their statutory duties and take adequate protective measures to preclude impairment of Rainbow Bridge National Monument, it was of no moment that court had not enjoined a less extensive flooding in prior year, that expected flooding would not reach arch or that flooding would only be temporary. Colorado River Storage Project Act, § 3, 43 U.S.C.A. § 620b.

18. Courts ⇨405(15)

Allegations of defendants' motion, for stay pending appeal, with regard to