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U.S. v. State Water Resources Control Bd.—Ninth Circuit holds that the *Colorado River* doctrine does not allow partial stays except in rare circumstances

In *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976), the Supreme Court held that a federal district may "[i]n the interest of '[w]ise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation,' a district court can dismiss or stay 'a federal suit due to the presence of a concurrent state proceeding.'" The district court in *United States v. State Water Resources Control Board*, 418 F. Supp. 3d 496 (E.D. Cal. 2019), applied the *Colorado River* doctrine to stay three state law claims brought by the United States in a suit filed concurrently in state court with those claims but not a federal claim alleging violation of intergovernmental immunity principles contained only in the federal action. The state law claims were brought against California State Water Resources Control Board and alleged violation of the California Environmental Quality Control Act in connection with approval of an amended plan for operation of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary system. The United States added the intergovernmental immunity claim through an amended complaint filed three months into the litigation. The district, however, did deny the Board's request to abstain under *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941). The United States appealed; the Board did not.

The Ninth Circuit reversed. *U.S. v. State Water Resources Control Bd.*, ___ F.3d ___, 2021 WL 716991 (9th Cir. Feb. 24, 2021). Although finding "it is unclear whether we would have jurisdiction pursuant to the normal finality rules of [28 U.S.C.] § 1291[,]" the panel deemed the district court's decision final for appealability purposes under the collateral order doctrine announced in *Cohen v. Beneficial Loan Corp.*, 337 U.S. 541 (1949).

On the merits, the panel recognized that "[n]either we ... nor it appears any other circuit court has considered the propriety of a partial *Colorado River* stay. ... However, multiple district courts within the Ninth Circuit have issued partial *Colorado River* stays." Those courts were wrong:

> We have repeatedly emphasized that a *Colorado River* stay is inappropriate when the state court proceedings will not resolve the entire case before the federal court. In *Intel Corporation* [*v. Advanced Micro Devices, Inc.*, 12 F.3d 908, 913 (9th Cir. 1993)], we noted the Supreme Court's declaration that "a district court may enter a Colorado River stay order only if it has 'full confidence' that the parallel state proceeding will end the litigation." ... We further described how "the requirement of 'parallel' state court proceedings implies that those proceedings are sufficiently similar to the federal proceedings to provide relief for all of the parties' claims."

The panel later reiterated that "[a] partial stay does not further the basic purpose of the *Colorado River* doctrine. The doctrine exists for the 'conservation of judicial resources.'" It carved out the possibility for the "strong presumption" against partial stays being overcome where "gamesmanship" via forum shopping existed. But here "[t]he United States filed its state and

federal suits on the same day. The United States informed both courts of the other suit. From the beginning, the United States apprised the California state court of its 'preferred choice of a federal forum to resolve its claims,' including the state law CEQA claims." Also weighing against a partial stay were the facts that "[t]he United States does not appear to be seeking refuge in federal court to avoid an impending loss in state court" and that "[t]he state proceeding cannot resolve the United States' intergovernmental immunity claim because the United States has not raised such a claim in that forum." Finally, the panel rejected the Board's argument that the *Pullman* doctrine provided an alternative basis for the district court order because "[i]f the district court had abstained pursuant to *Pullman*, it would not have allowed the intergovernmental immunity claim to proceed"—thus modifying the lower court's order in the absence of an appeal of the *Pullman* abstention denial.

Decision link: https://cdn.ca9.uscourts.gov/datastore/opinions/2021/02/24/20-15145.pdf