

Case Cappaert vs. United States
U.S. Supreme Court, 1976
Chief Justice Burger, presiding

FACTS:

In 1952 President Truman set aside 40 acres of federal land, Devil's Hole, as an extension of Death Valley National Monument (now DV National Park), under the American Antiquities Preservation Act, which allows presidents to establish national monuments. These federal lands were acquired from Mexico through the Treaty of Guadalupe Hidalgo in 1848. Devil's Hole was established to protect a rare (now listed as endangered) desert fish that evolved from the drying up of the Death Valley Lake System. Truman's proclamation noted that Devil's Hole contained a "remarkable underground pool" in which lived the rare desert pupfish, found nowhere else on earth.

The Cappaert ranch consisted of 12,000 acres adjacent to Devil's Hole where 1,700-1,800 head of cattle were raised & 4,000 acres were used for crops. The total investment in the ranch was more than \$7 million, and the ranch employed over 80 people with a payroll of over \$340,000.

The Cappaerts began pumping groundwater on their ranch in 1968 only 2.5 miles from Devil's Hole. The water level of the pool that supports the desert pupfish was stable around 1.2 feet below a copper marker used as a fixed measuring point. When the Cappaerts began pumping groundwater, the water level fell to almost 4 feet below the marker in four years. Within the pool, a rock shelf becomes exposed when the water level falls to 3 feet below the marker. The shelf dries out & can no longer sustain the algae that grow on it when it is normally submerged by the water. The desert pupfish lays its eggs on the algae. Thus, if the water level falls below three feet, there are no algae on which the fish may spawn, and thus no reproduction of offspring.

In 1970, the Cappaerts applied to the State Engineer for a permit to change the use of water from several of their wells, in accordance with Nevada State law, which also required a public posting of the request. Employees of the NPS learned of the application and protested. The State Engineer found that there was no federal water right & granted the application.

In 1971, the U.S. filed suit against the Cappaerts seeking an injunction to limit pumping, except for domestic use, from the six wells near Devil's Hole. The complaint stated that in establishing Devil's Hole as part of Death Valley National Monument, the U.S. reserved the water rights to the extent necessary for the purposes and requirements of the reservation.

ISSUES:

- 1) Does the federal government reserve federal water rights in unappropriated water?
- 2) Does the implied water rights doctrine apply to groundwater?

DECISION:

Appellate Court decision was affirmed (ruled for the plaintiff, the U.S.). The U.S. Supreme Court upheld the injunction which curtailed the pumping of the groundwater only to extent necessary to preserve an adequate water level at Devil's Hole.

REASONS:

To determine if the federally reserved water right is implicit in the reservation of public land, it must be decided if the government intended to reserve the available water for the established purpose of the reservation. Since Truman's proclamation referred to "the pool" in four of the five sections, the decree was explicit and not implied. Thus, since the government intended to reserve the water for the preservation of the pupfish, the federally reserved water right was explicit in the proclamation. When the federal government reserves land, by implication, it reserves water rights sufficient to accomplish the purposes of the reservation.

The implied water rights doctrine applies to groundwater because of the connectivity of the hydrologic cycle. Thus, the water in the pool is also surface water, and the implied reservation of water rights applies to both surface & ground water. The court held that the U.S. could protect both surface and groundwater from diversion.

The implied water rights doctrine only reserves the amount of water necessary to fulfill the purpose of the reservation & no more. The level of the pool was permitted to drop to a level that did not impair the habitat of the pupfish. Thus, the water level could drop around 3 feet without preventing the pupfish from spawning.