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UTAH

Magna Water Co. v. Strawberry Water Users Ass'n, 285 P.3d 1 (Utah Ct. App. 2012) (holding that objectors, Magna Water Company and South Farm LLC, lacked constitutional standing to challenge a proposed determination by the Utah State Engineer. However, objectors had alternative standing to challenge the recommendation which allowed for the recapture and reuse of water once return flows commingled with natural water drainage).

Under the Strawberry Valley Project, water is imported into the Utah Lake Basin and Jordan River from the Uintah Basin in the Colorado River drainage, as part of a federal reclamation project. The imported water is subsequently used and administered by the Strawberry Water Users Associations and Strawberry Highline Canal Company (collectively, "SWUA") to fulfill federal contracts with the United States Bureau of Reclamation. Some of the water returns to the Utah Lake-Jordan River hydrological system through surface runoff or groundwater seepage.

In an effort to ensure the reuse of such water, SWUA petitioned the Third District Court of Utah ("district court") to establish its right to use the return flows. The district court ordered the Utah State Engineer to prepare a recommendation for how to proceed with the return flow issue. The State Engineer proposed that the return flow could be recaptured and reused by SWUA even after the imported water had commingled with the natural drainage water in the Utah Lake-Jordan River system ("Proposal").

Magna Water Company and South Farm, LLC (collectively, "Objectors") filed an objection to the State Engineer's Proposal in the district court, claiming the Proposal would adversely affect their water rights and interests in the basin. Objectors argued that their water rights would suffer reduced diversions during drought years and that Objectors would incur considerable expenses to defend their rights.

The district court dismissed Objectors' claims on the grounds Objectors did not have standing for the following reasons: (i) Objectors' ground water rights were "up-gradient" from the Jordan River and were not connected to or affected by water levels in Utah Lake or the Jordan River; (ii) Objectors did not have a legally protected interest in the controversy; (iii) Objectors were not appropriate parties because they were not interested or positioned to effectively assist the court; (iv) the issues raised by the Proposal were likely to be raised by other parties with a stake in the matter; (v) Objectors' ownership of stock in Utah Lake-Jordan River water companies did not confer standing; and (vi) Objectors did not present evidence to support a finding that they would have suffered a distinct and particularized injury based on the proposal.

On appeal, the Utah Court of Appeals ("appeals court") held the district court properly ruled that Objectors did not have constitutional standing. Objectors again claimed that, as a result of the proposal, they would be subject to reduced diversions under their water rights during drought years. Moreover, Objectors claimed that they would have to spend considerable resources to defend their water rights against inaccurate return flow calculations. However, the appeals court agreed with the district court and found that Objectors' water

rights were “up-gradient” from the Jordan River and were in no way affected by water levels in Utah Lake.

In addition, the appeals court determined that there was no hydrological connection between Objectors’ water rights and the Utah Lake-Jordan River system. The appeals court also determined that Objectors did not show that a reasonable probability of future injury existed. Accordingly, the appeals court held that Objectors’ claims did not show a particularized injury, which is required to establish constitutional standing.

The appeals court, however, reversed the district court’s determination that Objectors also lacked alternative standing (standing based on an appropriate party raising issues of significant public importance). To establish alternative standing, the appeals court found Objectors were an appropriate party and the issues Objectors raised were of sufficient public importance to warrant standing. The appeals court held that Objectors were an appropriate party to the litigation because they had an interest necessary to aid the court in reviewing all relevant and factual issues. This interest stemmed from the fact that Objectors were water rights holders interested in preserving water resources and ensuring compliance with state laws and regulations.

Moreover, the appeals court found that Objectors were an appropriate party because no other objections had been filed regarding the State Engineer’s proposal. As such, the appeals court held that no other party with a stake in the matter was likely to raise the issue, contrary to the district court’s finding. The appeals court also determined that the issue was of sufficient public importance to warrant Objectors having standing, in part because no court in the State had yet decided whether imported water could be recaptured and reused in the manner recommended by the State Engineer.

Ultimately, the appeals court held that the dispute would resolve a novel issue in the State and had the potential to impact a significant portion of the community. Because Objectors were an appropriate party and because the public had an interest in having the issue litigated, the appeals court held Objectors properly established alternative standing.

Consequently, after affirming the district court’s determination that Objectors lacked constitutional standing, the appeals court reversed the district court and found that Objectors had alternative standing to challenge the State Engineer’s recommendation. The appeals court then remanded the case for further proceedings.

Ryan Coyne

WASHINGTON

Vander Houwen v. State Dep’t of Ecology, 170 Wash. App. 1009 (Wash. Ct. App. 2012) (holding the Department of Ecology may deny an application for a groundwater appropriation permit where it can be shown that withdrawal of groundwater would impair existing surface water rights or detrimentally affect the public welfare).

Mr. Vander Houwen (“Vander Houwen”) owns two parcels of land near Naches, Washington, one parcel with an existing groundwater well, and one parcel without. In 1992, Vander Houwen applied to the Washington Depart-