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S. Fork Water & Sanitation Dist. v. Town of S. Fork, 252 P.3d 465 (Colo. 2011)

J. Tobin Weiner

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The court rejected both of these arguments because they were based on a misconception of the nature and scope of the rights at issue. Despite the temporal relation between the priority of the rights and the 1969 Act, Owners' rights had always been qualified by Colorado's doctrine of prior appropriation, which prohibits use of water that would injure senior rights. The order enforced this doctrine by addressing injurious effects to senior rights resulting from pumping wells tributary to the South Platte out of priority. Because the court held that Owners did not have an unqualified, constitutionally protected property interest in the use of water in their wells, Owners could not show that the State took their property. The court accordingly affirmed the water court's dismissal of Owners' takings claims.

In her dissent, Justice Eid disagreed that the water court had exclusive jurisdiction over Owners' claims, and instead asserted that the claims involved issues of ownership proper for the district court. Justice Eid reasoned that if the water court held in favor of Owners, it would have been required to transfer the case to the district court and that is problematic for two reasons. First, the eminent domain statute gives the district court jurisdiction over inverse condemnation actions and does not intend for the water court to be entitled to an initial review. Second, the dissent found the majority approach to be repetitive, as evidence presented at water court would also need to be presented in district court.

John Lahner

S. Fork Water & Sanitation Dist. v. Town of S. Fork, 252 P.3d 465 (Colo. 2011) (holding that a special district cannot withhold approval to allow a municipality to provide water service for its residents when the special district has failed to do so itself).

Between 2001 and 2003, the South Fork Water and Sanitation District ("District"), a special district and quasi-municipality formed to provide sewerage services, took preliminary steps toward creating a centralized water service. However, the project was not constructed because the District failed to secure funding. In 2006, the Town of South Fork ("Town"), which is located within the District, began preparing to provide a water service to its residents by amending its Land Use and Development Code to require the commitment of water rights as a condition for subdivision approval. The District then filed a declaratory judgment complaint alleging the town was providing a water service within the District without the District's approval, which was a violation of Colorado statutory law. In response, the Town filed a petition for exclusion from the District pursuant to state law, but ultimately withdrew the petition after over 100 voters petitioned for an election regarding the question of exclusion. In 2007 and 2008, the Town negotiated three letters of intent to obtain private water systems.

Through the application of Colorado case law, the Colorado District Court for the 12th Judicial District in Rio Grande County construed the applicable state statute to require a reasonable exercise of the approval

power. The district court found that the District's withholding of the approval was unreasonable because the District itself was unable to provide water service. The district court held that it was within the Town's police powers to require the dedication of water rights as a condition of subdivision approval.

The Colorado Court of Appeals upheld the district court's ruling. The appellate court concluded that the District's attempt to bar the Town from furnishing water service was an unreasonable exercise of their approval power because it had neither the intent nor financial resources to provide water service itself.

The Colorado Supreme Court granted certiorari. The court began with an overview of the powers that the General Assembly conferred to special districts and statutory towns. Special districts have the power to "acquire water rights and construct and operate lines and facilities within and without the district," while statutory towns have general police powers. The court then discussed the two applicable sections of Colorado statute that address the operation of water and sewer systems. Because special districts are considered municipalities for the purposes of the statute, the powers conferred apply to both the District and the Town. The statute prevents one municipality from providing water services in another municipality without the approval of the other municipality.

The District argued that it must approve the Town's furnishing of water services because their territories overlap. The Town argued that because the District was unable to provide water services, the District could not prevent the Town from providing water services. The court looked at the statute as a whole and determined that consistent with case law and the legislative intent, the statute intended to promote rather than hinder, an essential service. Therefore, the approval power was not unlimited and must be exercised reasonably. The court held that the District could not prevent the Town from exercising its police and land use powers to promote public health and to regulate the distribution and supply of water to its own residents within its own territory.

The court affirmed the judgment of the court of appeals.

J. Tobin Weiner

S. Ute Indian Tribe v. King Consol. Ditch Co., 250 P.3d 1226 (Colo. 2011) (holding that a water rights determination can include reviews of prior court decrees and the service requirements for such water rights determinations are satisfied by resume notice and newspaper publication).

Between 2001 and 2006, seven of the eight ditch companies with water rights in the Pine River system ("ditch companies") filed applications for winter stock watering rights. The Southern Ute Indian Tribe ("Tribe"), another rights holder on the Pine River, filed statements of opposition to each application. After consultation, the state Division Engineer determined that the applications were unnecessary because pri-