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Upper Yampa Water Conservancy Dist. v. Wolfe, 255 P.3d 1108 (Colo. 2011)

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Addressing Opposers' contest of a particular source of potential replacement water, the Closed Basin Project, the Court held that the adequacy of replacement water sources would be addressed through the Subdistrict's annual replacement procedures and declined to address the Plan's inclusion of this source water in this decision.

Finally, Opposers argued that the Plan's inclusion of phreatophyte evapotranspiration changes in its modeling calculations unlawfully considered phreatophyte destruction as a water source. The Court rejected this argument, reasoning that the computer model's consideration of phreatophyte evapotranspiration changes - changes caused by normal fluctuations in ground water levels - was not the same as destroying phreatophytes as a source of replacement water.

Accordingly, the Court held the Subdistrict's water management plan met all statutory requirements and approved the Plan.

Gregory Angstadt

Upper Yampa Water Conservancy Dist. v. Wolfe, 255 P.3d 1108 (Colo. 2011) (holding that the Upper Yampa Water Conservancy District, in seeking to perfect a conditional water rights decree, must demonstrate (i) a beneficial use other than storage of water; and (ii) quantifiable usage in excess of all existing absolute rights).

In 1964, the Upper Yampa Water Conservancy District ("District") obtained a conditional decree for water rights on Four Counties Ditch Number 3 ("Four Counties Rights"). In 1972 and 1978, the District secured further conditional decrees, enlarging the Four Counties Rights and changing their use. These decrees allowed for water storage in the Stagecoach Reservoir, but recognized rights to rates of flow only, not volumetric amounts. The District perfected a portion of these rights in 1994 and 1997, gaining absolute rights to a total of 151 cubic feet per second ("cfs"). In the 1994 and 1997 decrees, the water court stated that the District had stored water in the Stagecoach Reservoir, but made no finding that it had released water for any beneficial use.

In June 2006, the inflow of the Stagecoach Reservoir exceeded its outflow. The District accordingly applied to the District Court, Water Division 6 ("water court") to perfect the remaining Four County Rights. The State Engineer and the Water Division 6 Engineer ("Engineers") opposed the application. In considering the District's motion for summary judgment, the water court required the District to show actual beneficial use of the water, along with quantifiable evidence that its use had exceeded the amount of its existing absolute water rights. When the District could not provide quantifiable evidence on either point, the water court granted summary judgment to the Engineers.

On appeal to the Colorado Supreme Court, the District first argued that actual use is not necessary to perfect a water right and that storing water in a reservoir fulfills the "beneficial use" requirement of Colorado's prior appropriation system. The Court disagreed, holding that the Dis-

trict's mere act of storing water, without applying it to an actual use, resembled "speculative hoarding" more than beneficial use. Counting storage as beneficial use, it stated, would motivate owners of conditional rights to hoard water in anticipation of absolute decrees. The Court further rejected the District's alternate argument that it was storing water for drought protection (a beneficial use), finding that the District's storage really served a variety of purposes.

The District next challenged the water court's "absolutes first" doctrine, which bars perfection of conditional rights unless the owner's total usage has exceeded the amount of its absolute rights. The District based its challenge on the proposition that a water court cannot, after granting a conditional decree, reconsider a holder's need for that water right. The Court rejected the District's proposition and held the opposite – that water courts *must* consider a party's need for a conditional right when evaluating an application to perfect the right. Because this was a novel holding, the Court derived its position from precedent that acknowledged that water courts have authority to reconsider conditional rights in certain situations, and from the nature of conditional rights (for example, they would not be "conditional" if they were immune to reconsideration).

Accordingly, the Court affirmed the water court's decision, and refused to perfect the District's remaining conditional Four Counties Rights.

Matthew Watson

IDAHO

In re SRBA Case No. 39576, No. 37723-2010, 2012 WL 29338 (Idaho Jan. 5, 2012) (holding (i) the Idaho Department of Water Resources properly attached a condition to the City of Pocatello's ability to use any well as an alternate point of diversion for each of its water rights; (ii) the source of water related to a water right cannot be transferred under the Idaho law; (iii) an applicant must file an application and undergo an administrative transfer proceeding to obtain a change in the purpose of a water right after a general stream adjudication has begun; and (iv) the district court did not clearly err in determining the priority dates for two water rights because the City of Pocatello did not produce any evidence of earlier priority dates).

On November 19, 1987, the Idaho State Legislature enacted legislation to begin the Snake River Basin Adjudication ("SRBA"), which is aimed at cataloging water right claims in the Snake River Basin of Idaho. The City of Pocatello ("Pocatello") filed its claims in April 1990. Idaho passed a statute in conjunction with the SRBA that allowed parties with water right claims to assert any change in period of use, nature or purpose of use, point of diversion, or place of use that occurred prior to the commencement of the SRBA, so long as such a change did not injure any