

1-1-2012

## Mont. Trout Unlimited v. Beaver Water Co., 255 P.3d 179 (Mont. 2011)

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### Custom Citation

Sarah Barth, Court Report, Mont. Trout Unlimited v. Beaver Water Co., 255 P.3d 179 (Mont. 2011), 15 U. Denv. Water L. Rev. 555 (2012).

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merely established one water service and the City rejected the request for a second water service. The court, however, acknowledged that the parties' conduct may establish a lawful object of an implied contract and estop another party from ignoring its contractual duties.

The court ultimately determined that the parties had a lawful object for an implied contract because Conner's claim was not barred under the 1981 Agreement because Conner was not party to the 1981 Agreement. Further, because a party's conduct may manifest the terms and existence of an implied contract, despite the City's initial denial of the second water service to McNeill, it later approved the service, installed a water meter in the new lot, and billed Conner for water service. Accordingly, court held that Conner and the City did have an implied contract for water service to Conner's property.

Second, the court considered the City's claim that a local ordinance barred Conner's tort and contract claims. The ordinance provides that suits against the City for service interruption are barred when the City shuts off its water mains for "repairs or extensions or for any other purpose." The court determined that in this case, the City did not take any affirmative steps to turn off water service, but rather service was cut off due to a natural event, the freeze. Therefore, the court held the ordinance inapplicable to the present case and not a bar to Conner's claim.

Accordingly, the court reversed the district court's grant of summary judgment for the City and remanded the case to the district court for additional proceedings.

*Michael Billings*

**Mont. Trout Unlimited v. Beaverhead Water Co., 255 P.3d 179 (Mont. 2011)** (holding that in water adjudication proceedings a state agency is not the sole representative for public recreational and conservation interests; individuals or private interest groups with at least a reasonable minimal ownership interest in water that may be adversely impacted are entitled to a hearing on their objections).

This is an appeal from the Water Court's Temporary Preliminary Decree ("decree") dismissing Montana Trout Unlimited's ("MTU") objections to Beaverhead Water Company, Garrison Ranches, and the Paul H. Cleary, Jr. Trust's (collectively "Beaverhead") water rights claims for the Big Hole River Basin ("Big Hole"). MTU specifically appealed on two issues: (1) whether the Water Court erred in holding that only the Montana Department of Fish, Wildlife and Parks ("the DFWP") may represent public recreational and conservation interests in water adjudication proceedings; and (2) whether the Water Court erred in holding that only water rights claimants may request a hearing on their objections in water adjudication proceedings.

First, the Montana Supreme Court ("Court") considered the Water Court's application of statutory law, which provided in relevant part that the DFWP would serve as the public's exclusive representative in water

rights actions seeking to establish prior and existing public recreational use. The Court held that dismissal of MTU's objections under this portion of the statute constituted an overbroad application, as MTU was not claiming the establishment of any water rights claims.

Additionally, the Court determined that there were no limitations in the water rights adjudication statutes, water rights adjudication rules, or case law, that expressly limited who could file an objection to a temporary preliminary decree. Therefore, the Water Court was in error by holding to the contrary and excluding MTU's objections to the decree.

Next, the Court reviewed the Water Court's application of the "good cause" requirement in statutory law, which requires an individual to present a written statement showing that his ownership interest in water or its use had been adversely affected by the decree. The Water Court opened consideration of this issue with an evaluation of whether MTU had standing to litigate its objections to the Big Hole water rights adjudication. The Court determined that MTU had successfully demonstrated personal environmental and recreational interests in Big Hole; that these interests were distinct from those of the public at large; and that these interests could be adversely affected by the decree.

Finally, the Court addressed the Water Court's precedential history, which demonstrated a distinct practice of recognizing a broad approach to participation in the adjudication process. Under prior decisions the Water Court adopted an express "broad tent" policy with respect to consideration of objections to water compacts. The policy required that objections not be arbitrary, irrational, unreasonable, or irrelevant. Provided objections avoided these attributes, a minimal claim or interest in land or water that could feasibly be adversely affected was sufficient to constitute "good cause."

The Court held that MTU's specific interests, coupled with the State's role as owner of the waters of Montana held in public trust for the benefit of its people, and the Water Court's prior precedent, were sufficient to demonstrate an ownership interest in water or its use in satisfaction of the "good cause" requirement such that the Water Court erred in precluding MTU from obtaining a hearing on its objections.

Accordingly, the Court reversed the Water Court's decision and remanded for further proceedings consistent with the opinion.

*Sarah Barth*