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## Meridian Ranch Metro. Dist. v. Colorado Ground Water Comm'n - P.3d -, 2009 WL 3765490 (Colo. Ct. App. 2009)

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not

yet ripe for judicial resolution and declined to decide the matter in its decision

Accordingly, the court affirmed in part and reversed in part the water court's decision.

*Margaret Korey*

**Meridian Ranch Metro. Dist. v. Colorado Ground Water Comm'n, — P.3d—, 2009 WL 3765490 (Colo. Ct. App. 2009)** (holding that management districts have authority to regulate water pumping levels by rule after the Ground Water Commission issues well permits and are not preempted by the Commission's rules).

The Meridian Ranch Metropolitan District, the Meridian Service Metropolitan District, and the Cherokee Metropolitan District ("Metro Districts") are special districts created by Title 32 of the Colorado Revised Statutes. The Metro Districts own and manage wells in the Management District, organized under the 1979 Ground Water Management Act ("GWMA"). The Metro Districts operate wells permitted by the Ground Water Commission ("Commission"). In this case, the Management District adopted rules ("Rules") to ameliorate declining groundwater levels in its designated basin. The Rules focused on wells supplying water to single-family homes, whether in a subdivision or not, and commercial businesses, imposing lower use limits than the Commission originally promulgated. The Metro Districts appealed the Management District's Rules to the Commission, under Section 37-90-131(b) of the Colorado Revised Statutes. On two occasions, a Commission-designated hearing officer declared the Rules invalid; initially, the officer held that the Management District lacked authority to adopt the Rules, and later the officer held that the Rules were unreasonable. The Commission, however, overrode the hearing officer's findings, and upheld the Management District's Rules. The Metro Districts sought judicial review in the District Court for El Paso County, which upheld the Commission's ruling. The district court found that after permits are issued for a basin, a management district has wide authority to regulate the basin's water priorities. The Metro Districts appealed this determination to the Colorado Court of Appeals and simultaneously applied to the Supreme Court of Colorado for *certiorari*, which was denied.

As the Colorado Court of Appeals noted, the Supreme Court of Colorado has jurisdiction over appeals involving priorities or adjudications of individual rights. The court said, however, that though the case involved water rights, there were no issues of relative rights between individual users; thus, the case did not involve priorities or adjudication of individual rights, and the court found it had jurisdiction

over the case. Generally, rule-making is legislative in nature, and is thus non-adjudicative. However, in *Cotton Creek Circles, LLC v. Rio Grande Water Conservation District*, the Colorado Supreme Court held that, under the Water Right Determination and Administration Act of 1969, a water court's review of the state engineer's proposed rules was an adjudication. The court said that *Cotton Creek* was distinguishable from the present case because the state engineer was not subject to the same notice and hearing requirements as the Management Districts. The notice and hearing required before the Management District could adopt rules were similar to the Colorado Administrative Procedure Act, and given the court's regular exercise of jurisdiction over appeals challenging agency rulemaking authority, the court held that it maintained proper jurisdiction.

The Metro Districts argued that the GWMA did not authorize the Management District to modify existing permits' water allowances. Applying *de novo* review, the court first considered the GWMA's language. The GWMA granted the Commission authority to issue well permits, which the Colorado Supreme Court has held constitute a final determination of the quantity of water an individual can use. However, because ground water is non-renewable, the court said the appropriation doctrine had to be modified to ensure "reasonable depletion." Well users, the court held, have no right to maintain historic pumping levels.

The Commission is the only entity empowered to approve permit changes; thus, the court considered whether there were other means, beyond changing the permit, by which an individual's groundwater allowance could be reduced. The court noted that section 37-90-111(1) of the Colorado Revised Statutes allows the Commission to make changes to permits through rule-making; however, the Commission must confer with management districts in making rule changes. The Commission's authority is further limited by section 37-90-111(1) "to the extent that similar authority is vested in ground water management districts [by] section 37-90-130(2)."

The question before the court was whether management districts have "similar authority" under section 37-90-130(2). That Section, held the court, gives management districts authority to regulate water pumping levels by rule after the Commission issues well permits. The court elaborated, stating that the management districts' rules are subject to Commission review and final approval. Thus, the court rejected the Metro Districts' contention that the Commission's rules preempted the Management District's rules.

Finally, the court found that the Rules did not violate due process because the Management District provided the interested parties notice and an opportunity to be heard prior to promulgating the Rules.

Consequently, the Colorado Court of Appeals affirmed the district court's ruling.

*Andrew Reitman*