

1-1-2011

Bingham v. Roosevelt City Corp., 235 P.3d 730 (Utah 2010)

Kelly Miller

Follow this and additional works at: <https://digitalcommons.du.edu/wlr>



Part of the [Law Commons](#)

Custom Citation

Kelly Miller, Court Report, Bingham v. Roosevelt City Corp., 235 P.3d 730 (Utah 2010), 14 U. Denv. Water L. Rev. 465 (2011).

This Court Report is brought to you for free and open access by the University of Denver Sturm College of Law at Digital Commons @ DU. It has been accepted for inclusion in Water Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

Bingham v. Roosevelt City Corp., 235 P.3d 730 (Utah 2010)

defined flood water, although here, the court suggested that flood water must breach its containment, either due to a natural occurrence or due to a failure in a man-made system. The court held that the collection system purposely directed the water onto M&M's land, and was therefore not "flood water" under the policy because it did not breach any containment.

In summary, the court answered all three certified questions in the negative; namely that the collected rainwater was not surface water, that it could not regain its status as surface water after exiting the collection system, and that it was not flood water under the policy.

Sarah Stout

UTAH

Bingham v. Roosevelt City Corp., 235 P.3d 730 (Utah 2010) (holding that Roosevelt City's diversion of water and the resulting lowering of the surrounding water table did not constitute a taking or interference under the Utah and U.S. Constitutions; however, Roosevelt City's diversion did give rise to a negligence claim with regard to the City's duty to the landowners).

Several property owners in the North Hayden Area ("Group") appealed the district court's grant of summary judgment. The Group alleged that nearby Roosevelt City ("City") diverted water from the Neola-Whiterocks Aquifer ("Aquifer"), which lowered the surrounding water table and soil saturation levels. The Group claimed that this caused higher irrigation costs and impairment of their ability to raise crops and livestock.

In 1983, the City had purchased property including two wells and the associated water rights in the North Hayden area. Soon after, the City filed applications with the Utah State Engineer to change the point of diversion for two of its existing water rights to the location of the two wells. The City also deepened the two wells and drilled three additional wells, known collectively as the Hayden Well Field. Although the Group protested the applications and the drilling of the additional wells, the State Engineer granted the applications.

The Aquifer below the Hayden Well Field is an unconfined shallow aquifer. Unlike confined aquifers, where less permeable stone separates the water from the adjacent soil, unconfined aquifers draw water through the surrounding soil. Consequently, unconfined aquifers can cause a drop in the water table should water be extracted more quickly than replenished. Historical data indicated that since the creation of the Hayden Well Field, the water level had dropped dramatically. As a result, Group members were unable to irrigate their crops. The Group asserted that beneath the unconfined Aquifer laid a confined aquifer from which the City could extract its water without affecting the surrounding water table.

The Group filed suit against the City seeking damages and injunctive relief. The Group asserted three causes of action: interference with water rights, takings, and negligence. Notably, the Group did not allege that the City used a water right or source without the State Engineer's approval, nor did it assert a claim for any of the City's water rights. The City moved for summary judgment, arguing that the takings clauses of U.S. and Utah Constitutions did not protect the Group's property interests; the Group could not prevail on their claims because the City lawfully appropriated the water; and the City did not owe the Group any duty to preserve the water table. The City also argued that the Governmental Immunity Act of Utah ("Act") barred the interference claim and the Statute of Limitations barred all of the Group's claims. The Eighth District Court in Utah granted the City summary judgment, ruling in favor of the City on all the issues.

On appeal, the Utah Supreme Court ("court") first considered whether the Group had suffered a taking because of the City's Hayden Well Field. The court held that in order to find a taking under the Utah Constitution, the Group must have had a protectable interest in property. The court looked to the type of interest the Group had in the property rather than the interests attached to the property. The court found that in order to enjoy protection under the takings clause, an alleged property interest must be more than a unilateral expectation of continued privileges. Here, the Group argued that the level of soil saturation was a component of its lawfully appropriated water rights. The court disagreed noting that the Group's claims were analogous to the unilateral expectation of continued privileges, and the level of soil saturation underlying the Group's land was not a protectable property interest. Furthermore, because the Group did not lawfully appropriate the water, it lacked a lawful claim to the continued presence of water in its soil and, therefore, did not fall within the takings protection of the Utah Constitution. As for the U.S. Constitution, the court held that the constitutional provisions do not protect against all government action that might negatively affect the value of the land, and because the Group had no protectable interest in the water table underlying the land, it did not deserve protection.

The court then considered the Group's interference claim and held that the district court did not err in granting summary judgment. However, the court disagreed with the district court on the issue of the Act, concerning the Group's interference claim. The court held that the Group's allegation that the City's activities manifested knowing and reckless indifference for and disregard of property rights encompassed an allegation of negligence. Therefore, the claim fell within the waiver of governmental immunity for negligent acts or omissions under the Act. Accordingly, the court held that the Act did not bar the Group's claim for interference; however, the court upheld the district court's granting of summary judgment for the Group's interference claim because the Group did not have an established right to the water in the soil, as discussed in the court's analysis of the

Group's takings claim.

Next, the court held that the statute of limitations did not bar the Group's negligence claim, and the City owed the Group a duty of care with regard to the method the City used to divert water pursuant to its established water rights. The court further held that the City's continued negligence was a natural extension of the continuing tort doctrine and, therefore, tolled the statute of limitations. In addition, the lawful appropriation of the water right did not relieve the City of its obligation to exercise care in obtaining its water. Accordingly, the court found that the City owed a duty of reasonable care to the Group.

Finally, the court elaborated on the Group's recommendation that the City use the alternative confined aquifer instead of the unconfined aquifer. It noted that, if viable, the Group could prevail on its negligence claim and it would be unreasonable for the City not to implement the change.

Accordingly, the court affirmed the district court's grant of summary judgment with regard to the Group's takings and interference claims, reversed the district court's grant of summary judgment with regard to the Group's negligence claim, and remanded for further proceedings.

Kelly Miller

WASHINGTON

Lummi Indian Nation v. State, 241 P.3d 1220 (Wash. 2010) (holding that statutory amendments to the state's water law act that alter the requirements for private water rights to vest do not facially violate due process or separation of powers).

To acquire water rights in Washington, a prospective user first must submit an application specifying a proposed beneficial use to the Department of Ecology ("Department"). If the Department determines the proposed use is beneficial and water is available, it issues a permit that quantifies the user's water right and identifies all permitted uses. This permit represents a conditional right that is perfected when the user applies the water to its designated beneficial use. If the user perfects the right with reasonable diligence, the Department issues a certificate relating back to the time of application. Since the 1950s, the Department and its predecessor quantified numerous certificates based on need and capacity rather than actual beneficial use, contrary to case law. In 1998, the Washington Supreme Court held in *Department of Ecology v. Theodoratus* that new private water rights do not fully vest until the water is put towards an actual beneficial use, not when the capacity to use the water was built. The court held that because the private developer in that case was not a municipal water supplier, his conditional water use permit should be quantified based on actual beneficial use, not capacity. The court