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Fort Lyon Canal Co. v. High Plains A & M, LLC, 167 P.3d 726 (Colo. 2007)

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the subject of the action and is so situated that the disposition of the action in his absences may (i) as a practical matter impair or impede his ability to protect that interest.” Section 389 goes on to state that if a party is necessary and cannot be made a party the court should determine whether the action should proceed with the parties named, or should be dismissed with prejudice. One factor the court should consider is to what extent a judgment entered in the parties’ absence would be prejudicial. The court should consider these factors with fairness and equity in mind. The court also considered CEQA, which requires that the courts should avoid thwarting the purpose if CEQA through harsh application of the indispensable parties rule. The underlying policy of CEQA is to inform the public and decision makers of any environmental consequence of a proposed project.

In its decision, the court also examined section 21167.6.5 of the Public Resources Code, which requires naming approval recipients in CEQA litigation and includes any recipient of approval. The court found Metropolitan and Coachella within the class of transferees the Legislature sought to protect as “recipients of approval” under section 21167.6.5. The court found that the named parties were covered under section 21167.6.5 and had different interests than the other parties named in the action because of their different functions with respect to the water. In determining that Metropolitan and Coachella were recipients of approval, the court looked to the status of the proposed transfer. The court found that because the Board’s order unambiguously approved the future transfer of 100,000 afy of water to Metropolitan and Coachella, those parties were recipients of approval under section 21167.6.5.

The court then reviewed the ruling for abuse of discretion. The court concluded there was no abuse of discretion in finding that the unnamed districts were indispensable parties and that potential prejudice exists, namely the loss of 100,000 afy under the transfer agreement and the potential affect on the DSA. The court noted that the County did not fashion any relief to avoid prejudice. Furthermore, the court noted that Metropolitan and Coachella had differing interests in the proceeding than Imperial, San Diego, and the County, and that the County had other forums in which to challenge the adequacy of the original petition. Therefore, the court affirmed the trial court’s ruling and denied the County’s petition.

Claire Soto

COLORADO

Fort Lyon Canal Co. v. High Plains A & M, LLC, 167 P.3d 726 (Colo. 2007) (holding that a mutual ditch company’s bylaws do not require stockholders to pay legal and engineering expenses when challenging the determination for a water change in a water court).

The Fort Lyon Canal Company (“Company”), a mutual ditch company, filed for declaratory relief in the Water Court for Division 2 of Colorado (“water court”) naming High Plains and others (“stockholders”) as defendants. The Company sought an order declaring the stockholders liable for the legal costs incurred in defending the Company’s determination for a change of a water right. The water court granted summary judgment in favor of the stockholders. The Company appealed directly to the Supreme Court of Colorado.

When stockholders in the Company desire to change the use of their water, they must make a written request to the Company’s Board of Directors. If the Board of Directors determines that a change is permissible, they can place conditions on the grant necessary to prevent injury to the canal. The Company bylaws require stockholders to pay the legal and engineering expenses incurred in making the original determination. If the stockholders disagree with the Board’s determination, or the conditions placed upon the grant, they can challenge the determination in water court.

The Company argued that the bylaws held stockholders liable not only for the legal expenses incurred in making a determination for a water change, but the legal expenses the Company incurred in defending a stockholder challenge in water court as well. The court noted that its enforcement of company bylaws requiring stockholders to pay legal fees was consistent with express statutory provisions that allow for the awarding of reasonable attorney’s fees, as long as the bylaw that affects a water right is consistent with the jurisdiction of the water court. Reading the relevant provision in the bylaws, the court held that stockholders were only responsible for legal expenses incurred when requesting a water change. Stockholders were not liable for the legal fees if the board of directors decided to participate in subsequent water court proceedings.

The Company further argued that the circumstances surrounding the adoption of the provision demonstrated the intent to hold stockholders responsible for all expenses associated with a request for a water change. The court noted that extrinsic evidence may be helpful in determining the intent of parties when the adopted bylaw was ambiguous. The court held, however, that the bylaw was unambiguous, and the intent of parties when adopting the provision can not contradict the unambiguous language of the bylaw.

Accordingly, the court affirmed the water court’s ruling.

Christopher Hudson

In re Tonko, 154 P.3d 397 (Colo. 2007) (holding that the district court lacked subject matter jurisdiction to determine certain water rights because applications for a change of decreed water rights are within the exclusive jurisdiction of the water courts, and that issue preclusion did not bar action in the water court because the non-