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Coastal Marshlands Prot. Comm. v. Ctr. for a Sustainable Coast, 649 S.E.2d 619 (Ga. Ct. App. 2007)

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mineral-related activities, such as oil and gas activities, are subject to the scrutiny of state water law.

The district court then examined whether the diversion of water in connection with CBM production is an appropriation of water. Appropriation is the application of a specified portion of the waters of the state to a beneficial use pursuant to the procedures prescribed by Colorado law. The definition of beneficial use depends on specific circumstances of the case and the court should broadly interpret its meaning.

The General Assembly intended to integrate the appropriation, use, and administration of underground water tributary to a stream with the use of surface water in a way to maximize the beneficial use of all of the waters of Colorado through the Water Act.

The district court concluded that the removal of water during CBM production, regardless of the fact that the division of water is inadvertent, occurred as a result of the active and intentional pumping of water to accomplish the intended purpose. Therefore, the district court found that the pumping of water in the course of CBM production is an appropriation for a beneficial use.

The next issue considered by the district court dealt with whether the CBM drilling operation that removed water from the ground constituted a well within the meaning of the Ground Water Act. The Ground Water Act defines a well as any structure or device used for the purpose or with the effect of obtaining ground water for beneficial use from an aquifer. Using this definition, the district court concluded that a CBM drilling operation that removes ground water constitutes a "well." The district court contended that, while the objective is not the water produced from the drilling operation, the effect of the drilling operation is to obtain ground water from the aquifer. The district court further held that an oil and gas well is not subject to the technical criteria applicable to construction of a water well, but an oil and gas well that affects water rights is subject to the permitting requirements of the Ground Water Act.

The district court granted summary judgment in favor of the Ranchers along with the requested relief.

Niceta Bradburn

GEORGIA

Coastal Marshlands Prot. Comm. v. Ctr. for a Sustainable Coast, 649 S.E.2d 619 (Ga. Ct. App. 2007) (holding that the Coastal Marshlands Protection Act does not allow the Coastal Marshlands Protection Committee to consider the adverse impacts of integrated upland developments' storm water runoff when the upland development does not service or augment the marshland project).

The Coastal Marshlands Protection Committee (“the Committee”) granted Point Peter LLLP (“Point Peter”) a permit to build up to 1,200 residential homes as part of the Cumberland Marina development project in Georgia’s coastal marshland. Subsequently, the Committee granted Point Peter a permit to build two public marinas, three day docks, and adjoining upland offices and parking lots. Since the residential development and the marina are interconnected, the Administrative Law Judge (“ALJ”) remanded the decision back to the Committee to consider the effect of the residential development project on storm water runoff into the marshland. Point Peter appealed the decision.

After granting a construction permit in the coastal marshlands, the Coastal Marshlands Protection Act (“CMPA”) required the Committee to consider whether the project is in the public’s interest and whether feasible alternative sites exist. Public interest concerns required weighing, among other things, the effects of storm water runoff and erosion into the marshlands “in the context of not only the marshland component of the project, but also . . . [the upland] component intended to serve or augment the marshland component of the project.”

The Georgia Court of Appeals found the ALJ erred by interpreting the CMPA to require the Committee to consider the effects of the adjacent upland residential development on storm water runoff into the marshland. According to the ALJ, the upland residential project may “otherwise alter” the storm water runoff into the marshlands, and thus required consideration. The court disagreed and found such an interpretation would expand coverage of the CMPA “far beyond the legislature’s intended scope” to require considering any runoff that passes through coastal marshlands. The court noted that other statutes already regulate runoff falling outside the CMPA’s reach. The court used a canon of statutory construction to determine that the CMPA only regulated projects with “direct physical alteration” of marshlands. Thus, the court held that the CMPA authorized the Committee to consider the effects of storm water runoff created by a project’s upland component only when the upland component “services or augments” the proposed marshland project.

In this case, the Cumberland Harbor development involved two interconnected projects: the marina and dock project, and the residential development project. The CMPA did not authorize the Committee to consider the residential development project’s effects on the marshland because the residential development project was not an upland component that “services or augments” the marshland project. The Committee needed to only consider the effects that the office and parking lots have on storm water runoff because they “service or augment” the marshland project.

Ultimately, the court reversed the ALJ’s decision which required the Committee to consider the residential development’s effects on

storm water runoff and affirmed the ALJ's findings that the marina did not unreasonably increase erosion or interfere with endangered species.

William Garehime

IDAHO

American Falls Reservoir Dist. No. 2 v. Idaho Dep't of Water Res., 154 P.3d 433 (Idaho 2007) (holding that: (1) parties must exhaust administrative remedies before the court analyzes the constitutionality of the Idaho Department of Water Resources' Rules for Conjunctive Management of Surface and Ground Water Resources ("CM Rules"); (2) because the CM rules reference existing Idaho law, the CM Rules' perceived failure to define specific procedural components was not unconstitutional; and (3) the CM Rules were constitutional in addressing partial decrees and treatment of carryover water).

Anticipating shortages, a group of water entities including the American Falls Reservoir District No. 2, A & B Irrigation District, Burley Irrigation District, Minidoka Irrigation District and Twin Falls Canal Company (collectively "American Falls") issued a Delivery Call to the Director of the Idaho Department of Water Resources ("Director") in January 2005, requesting the Director to curtail junior ground-water use during the 2005 irrigation season. Rangen, Inc., Clear Springs Foods, Inc., Thousand Springs Water Users Association, and Idaho Power Company joined the group and collectively represented surface water rights in the Snake River canyon and storage contracts for the Upper Snake River reservoirs.

The Director responded that he would make a determination of injury after receiving inflow forecasts for the Upper Snake River Basin, and also requested additional data for 15 prior irrigation seasons regarding diversions of natural flow, storage water, and ground water; number of water rights holders and corresponding average monthly head gate deliveries; total reservoir storage; amount of water leased or made available to other users; number of acres irrigated by flood or sprinkler; and type of crop planted. American Falls responded with the requested information and also objected to the scope of the request.

The Director issued a Relief Order within two weeks of receiving the inflow forecast and confirmed that shortages were likely for 2005 and would materially injure American Falls. He ordered junior ground-water rights holders to supply replacement water to offset the American Falls supply or risk curtailment. Both American Falls and subsequent intervener Idaho Ground Water Appropriators, Inc. ("IGWA") requested an administrative hearing of the decision.

Prior to the hearing, American Falls filed a declaratory judgment action in district court, claiming that the CM Rules were unconstitu-