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NEW MEXICO

Mimbres Valley Irrigation Co. v. Salopek, 140 P.3d 1117 (N.M. Ct. App. 2006) (holding the appellate court lacked jurisdiction because the lower court's decision regarding a peremptory writ of mandamus was not a "final and appealable order").

The San Lorenzo Community Ditch Association ("San Lorenzo") appealed the District Court of Luna County's ("district court") decision to quash a writ of mandamus to compel the Water Master to enforce a 1993 decree on the Mimbres River.

The 1993 final decree determined San Lorenzo had water diversion rights on the river senior to the rights of upstream individuals and entities and appointed a Water Master to enforce it. In 2003, San Lorenzo filed a petition for a preliminary and permanent injunction against the upstream junior water users. San Lorenzo sought to prevent those users from diverting water when the flow level was less than 6.7 cubic feet per second. According to the petition, San Lorenzo's senior right could not be fulfilled if the flow level fell below this threshold. The district court ordered the Water Master to meet with San Lorenzo and the upstream junior water users to establish a rotation schedule for water distribution. The parties did not reach an agreement, so the Water Master created a rotation schedule on April 8, 2004. San Lorenzo did not abide by the schedule, and the Water Master moved for the San Lorenzo to be held in contempt.

On June 28, 2004, one day prior to the contempt hearing, San Lorenzo filed a petition for a peremptory writ of mandamus. The petition alleged the Water Master failed to perform his duties under the decree and that upstream junior users were violating San Lorenzo's senior right on the Mimbres. The district court issued the writ and ordered the Water Master to respond. In his answer, the Water Master countered that the writ should be denied because San Lorenzo's injunction petition constituted an adequate remedy at law and factual issues remained unresolved. Accordingly, the district court quashed the writ. San Lorenzo appealed the order to the Court of Appeals of New Mexico ("appellate court").

The appellate court only has jurisdiction when a lower court has issued a "final and appealable" order. Therefore, the court considered whether the district court's decision on the writ of mandamus met this standard.

When the facts present a clear legal duty for a public official, a writ of mandamus requires the public official to perform that duty. Courts require undisputed facts to determine if a writ is proper. Further proceedings, such as a trial, are necessary to clarify the official's duty if the facts are in dispute. When an official's duty is clear and a lower court

renders a decision on the propriety of the writ, the order is “final and appealable.”

The appellate court cited several facts in dispute in the writ and answer including: the accuracy of the diversion rate of 6.7 cubic feet per second, the amount of water adjudicated to San Lorenzo with priorities of December 1869 and 1875, and the sufficiency of the measuring devices for the Water Master to perform his duty. The district court cited these factual differences in its decision not to issue the writ. Accordingly, the appellate court reasoned that the district court’s decision did not concern whether the writ of mandamus was proper; rather, the district court deemed the writ insufficient to adjudicate the parties’ rights, making further proceedings necessary. Citing precedent, the appellate court held that the district court’s order was not “final and appealable” because of the disputed facts and necessity of further proceedings. Therefore, the appellate court lacked jurisdiction over the matter. Additionally, also because of the facts in dispute, the appellate court did not consider the issue of whether San Lorenzo’s petition for a preliminary injunction was an adequate remedy of law.

The Court of Appeals of New Mexico remanded the case to the district court for resolution of the facts and a clarification of the Water Master’s duty under the decree

Matthew Larson

OKLAHOMA

Jacobs Ranch L.L.C. v. Smith, 148 P.3d 842 (Okla. 2006) (holding that a temporary moratorium on the issuance of water permits for a “sole source” aquifer does not qualify as an unconstitutional state special law, nor is it a taking, nor a violation of the equal protection clause).

In 2003, the Oklahoma legislature passed Senate Bill No. 288 temporarily halting the state from issuing water-use permits for any groundwater basin that the United States Environmental Protection Agency (“EPA”) had determined to be a “Sole Source Aquifer.” The EPA defined this label as basins that are “the principle source of drinking water for the area and which, if contaminated, would create a significant hazard to public health.” At the time the bill passed, the EPA had identified only one aquifer in Oklahoma as a sole source aquifer, the Arbuckle-Simpson Groundwater Basin. The aquifer lies entirely underneath the state and has unpredictable recharge and discharge rates due to its geology. The Oklahoma Water Resources Board (“OWRB”) would reconsider the moratorium on issuing permits once the OWRB determined the maximum annual yield to ensure that the aquifer was not over-pumped.

The state had issued temporary permits to Jacobs Ranch (“Jacobs”) since 1986, but in 2003 the state denied them. In 2003 they intended