

1-1-2007

Jacobs Ranch L.L.C. v. Smith, 148 P.3d 842 (Okla. 2006)

Zackary Smith

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



Part of the [Law Commons](#)

Custom Citation

Zackary Smith, Court Report, Jacobs Ranch L.L.C. v. Smith, 148 P.3d 842 (Okla. 2006), 10 U. Denv. Water L. Rev. 524 (2007).

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.

Jacobs Ranch L.L.C. v. Smith, 148 P.3d 842 (Okla. 2006)

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

to sell 20 billion gallons of water annually to an out-of-basin municipality. Jacobs sued the state and lost in Oklahoma County District Court. They appealed to the Oklahoma Supreme Court, which affirmed the lower court's decision. On appeal, Jacobs argued that the law was unconstitutional, amounted to a taking, and that the state had denied them equal protection under state and federal constitutions.

The court prefaced its holding by reminding the parties that the Legislature may exercise its police powers, which covers the state's water supply "irrespective of the rights of private owners of the land most immediately concerned," to secure public welfare. It then moved to the first issue: Jacobs' argument that distinguished "general laws" from "special laws." Special laws are unconstitutional under Oklahoma's constitution because they target particular persons or things, but not the whole class of either, and if the groundwater law was special, the court must strike it down. Jacobs argued that because the moratorium only affected one basin, it was a special law. The court defined a general law as: one that is a rightful subject for legislative regulation; one in which the class identified in the law (i.e. the type of basin) must have "a substantial and reasonable distinction," and be rationally related to that classification; and finally one that operates uniformly across the state.

Here, the law met the first element because the statute "relates to the state's water resources that supply safe drinking water to the basin area," and thus subject to the legislature's prerogative. The court found because of the EPA's own distinction of the basin as a sole source aquifer, the basin differs substantially and reasonably from other basins in Oklahoma. The court also found the law rationally related to the classification of the basin. Because as the aquifer acts as the backbone of the water system in the area, the law endeavored to ensure the preservation of that water for the in-basin communities until the OWRB could make an educated decision.

The court also found uniformity in the legislation's application, despite Jacobs' argument. Jacobs argued because the Arbuckle-Simpson aquifer was the only so-designated aquifer in the state, the state had singled it out. The court determined that "[t]he fact that there was only one groundwater basin designated by the EPA . . . does not destroy its uniform operation throughout the state." If the EPA later designated another basin this way in Oklahoma, the moratorium would apply to that basin as well. Therefore, the water statute was a general law and constitutional.

Jacobs then argued that this law constituted a taking under the state and federal constitutions because Jacobs had not received just compensation. The court disagreed, again referencing the Legislature's police power. It further cited the U.S. Supreme Court ruling under *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, in which the Court says that just compensation is not necessar-

ily required when government regulations “prohibit a property owner from making certain uses of her private property.” The court determined that if the “means adopted . . . tend toward the preservation of public welfare, health, safety, or morals,” the legislation was a proper act of the legislature’s police power and fell under the Supreme Court’s ruling.

Jacobs’ final argument concerned whether the law caused “disparate treatment of landowners,” violating their rights under the equal protection clauses of both state and federal constitutions. Because the complaint was not based on race or any other fundamental constitutional right, the court used a relaxed standard of review. The court held the legislature may draw lines that create distinctions as long as they relate to the task and do not infringe upon a constitutionally protected right.

Justice Opala dissented on two bases: standing and judicial expansion of the legislation. Specifically, Justice Opala argued the legislation did not apply statewide as the court found, but only to the Arbuckle-Simpson Groundwater Basin.

The court affirmed the district court’s decision in favor of the state.

Zackary Smith

Heldermon v. Wright, 2006 OK 86 (Okla. 2006) (holding that the trial court cannot determine the rights of parties without proof that the Oklahoma Water Resources Board received notice of the suit).

Danny Wright, an upstream riparian property owner, began construction of a dam on an unnamed stream that ran through the property. Teddy Neal Heldermon, a downstream riparian landowner, brought an action against Wright in Caddo County District Court seeking a determination of competing rights to the stream’s water. Neither party had permits from the Oklahoma Water Resources Board (“OWRB”) to appropriate waters of the stream, so both parties asserted riparian rights to the waters. Heldermon did not notify the OWRB about the pending lawsuit.

The trial court granted Heldermon a temporary injunction until Wright obtained an OWRB permit. During Wright’s effort to obtain an OWRB permit, the trial court held that Wright must release enough water so that downstream users had enough water for domestic use. Oklahoma law requires a riparian without an OWRB appropriation to store a maximum of a two-year domestic supply of water and requires the riparian collecting the water for domestic use to provide for the continued natural flow of the stream. Both parties appealed to the Supreme Court of Oklahoma, where the central issue was whether the OWRB needed notification of pending water right lawsuits.

The Oklahoma legislature intended that a party seeking to adjudicate its rights to stream water give the OWRB notice of the suit. The