

9-1-2004

In re General Determination of the Rights to Use All of the Water, 98 P.3d 1 (Utah 2004)

Charles P. Kersch

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



Part of the [Law Commons](#)

Custom Citation

Charles P. Kersch, Court Report, In re General Determination of the Rights to Use All of the Water, 98 P.3d 1 (Utah 2004), 8 U. Denv. Water L. Rev. 317 (2004).

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.

In re General Determination of the Rights to Use All of the Water, 98 P.3d 1 (Utah 2004)

After rehearing the case, and finding the jury instruction regarding “water in the state” harmed Watts, the Texas Court of Appeals reversed the trial court’s judgment and remanded the case for a new trial.

Meredith Ginn

UTAH

In re General Determination of the Rights to Use All of the Water, 98 P.3d 1 (Utah 2004) (affirming district court ruling granting summary judgment and holding: (1) a single water user cannot claim more water than he can beneficially use, nor can he claim for himself water beneficially used by others; and (2) under appropriate circumstances, the use of water to irrigate natural vegetation can constitute a beneficial use).

Pinecrest Pipeline Operating Company (“PPOC”) operated and maintained a pipeline that provided water to residents of the Pinecrest community. Prior to PPOC’s incorporation, property owners managed by LeRoy Meyer (“Meyer”) undertook construction of the pipeline doing business as the Pinecrest Water Users Association (“PWUA”). Meyer contacted an official from the State Engineer’s office regarding the pipeline system and the water being used by the homes connected to the line. He also applied for water rights associated with the line. The State Engineer published the proposed determination of water rights recommending Water User’s Claim (“WUC”) 57-8492 transfer to PPOC as successors in interest to the PWUA. Meyer brought suit in the Third District Court, Salt Lake claiming he filed WUC 57-8492 on his own behalf, therefore the water rights belonged to him personally. The court granted summary judgment in favor of PPOC, dismissing Meyer’s claim to the water rights.

Meyer appealed to the Utah Supreme Court, maintaining he filed the WUC without the PWUA’s knowledge or direction and with the intention of reserving the right for himself. PPOC cross-appealed a decision from a separate proceeding, holding Butler, Crockett & Walsh Development Corporation (“BCWDC”), Meyer’s predecessors in interest, did not forfeit WUC 57-3442.

The Utah Supreme Court identified three reasons why the lower court properly dismissed Meyer’s claim. First, Meyer failed to object to the State Engineer’s proposed determination within the statutory period of ninety days as proscribed by statute. Meyer signed a receipt and waiver of service of the State Engineer’s proposed determination in March 1994 and it, therefore, barred him from contesting the disposition of WUC 57-8492. Second, because a water user’s appropriations are limited to the amount the user puts to beneficial use, no one can acquire the right to use more water than is necessary to satisfy his beneficial requirements. Meyer’s claim of sole ownership to WUC 57-8492 failed because he could not claim more water than he could benefi-

cially use, nor could he claim for himself water beneficially used by others. Finally, when filing for WUC 57-8492, Meyer selected PWUA c/o LeRoy Meyer as the petitioner for the water right. Meyer claimed this was his personal d/b/a, however, the court determined this was blatantly incompatible with PPOC's records where the property owners association referred to itself as the PWUA.

With respect to the cross-appeal, PPOC claimed the trial court erred by: (1) finding BCWDC actively used water for irrigation during the alleged forfeiture period, (2) giving weight to the State Engineer's proposed determination identifying BCWDC as owner of WUC 57-3442, and (3) determining BCWDC beneficially used the water. The court confirmed that watering indigenous vegetation was generally not a beneficial use and may be wasteful, but stated the determination relied on individual facts and circumstances. Here, however, because BCWDC cultivated plants, harvested berries, and gifted trees, the irrigation of natural vegetation constituted a beneficial use. Additionally, since the trial judge personally inspected BCWDC's property and found sufficient evidence of irrigation, the court concluded the trial court did not give undue weight to the State Engineer's proposed determination, and affirmed the trial court's ruling that BCWDC did not forfeit rights to WUC 57-3442.

In conclusion, the Utah Supreme Court affirmed the trial court's summary judgment regarding ownership of WUC 57-8492, because Meyer's failed to file a timely objection; Meyer could not claim more water than he could beneficially use; and as an individual user, he could not claim for himself water beneficially used by others. The court also affirmed the trial court's ruling that BCWDC did not forfeit its water rights under WUC 57-3442, because PPOC failed to establish forfeiture of water for a continuous five-year period.

Charles P. Kersch, Jr.

WASHINGTON

Port of Seattle v. Pollution Control Hearings Bd., 90 P.3d 659 (Wash. 2004) (holding: (1) the Pollution Control Hearings Board ("PCHB") was within its authority to impose conditions on the section 401 certification when those conditions are necessary to reach reasonable assurance that water quality standards will be met; (2) PCHB should review all relevant information when evaluating section 401 certification regardless of whether that information was submitted prior or subsequent to the original grant of the certification; (3) PCHB reliance on future information is not only permitted, but necessary in light of the predictive nature of section 401 certification; (4) mitigation is only required to the level at which the environment is affected; (5) mitigation plans that use stormwater to maintain existing flow levels are considered "stormwater management" and does not require a water right; (6) Chapter 210 is not unconstitutional special legislation, and was