

9-1-2003

Groundwater Appropriators of the S. Platte River Basin, Inc. v. City of Boulder, 73 P.3d 22 (Colo. 2003)

Katherine J. Ellison

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



Part of the [Law Commons](#)

Custom Citation

Katherine J. Ellison, Court Report, Groundwater Appropriators of the S. Platte River Basin, Inc. v. City of Boulder, 73 P.3d 22 (Colo. 2003), 7 U. Denv. Water L. Rev. 194 (2003).

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.

Groundwater Appropriators of the S. Platte River Basin, Inc. v. City of Boulder, 73 P.3d 22 (Colo. 2003)

and repair of the ditch, that the TLR property manager made a series of attempts between 1972 and 1998 to put the water to beneficial use, and that the ditch never appeared on the state engineer's abandonment list. Furthermore, the court found that TLR and Lake County took legal actions during their ownerships that were consistent with the use and protection of their water rights, including the investigation of water rights applications, TLR's 1995 filing of a statement of opposition to an application, TLR's application to correct invalid points of diversion for the ditch, and Lake County's 1998 joint filing with the City of Aurora requesting the ditch be used as an alternate point of diversion in a change case. Additionally, the court found evidence in the record of TLR's ten-year lease of the ditch to Box Creek Mining Company beginning in 1980, and also determined that TLR's repeated efforts to sell the ranch demonstrated the partnership's intent not to abandon. Lastly, the court found that TLR's inability to secure funds to line the ditch represented an economic obstacle to exercising the water right. In summary, the court found support in the record for six of the seven factors showing intent not to abandon, and held that the cumulative weight of these factors was sufficient to rebut the presumption of abandonment. Thus, the Colorado Supreme Court affirmed the water court's decision.

Kate O. Lively

Groundwater Appropriators of the S. Platte River Basin, Inc. v. City of Boulder, 73 P.3d 22 (Colo. 2003) (holding the Colorado Rules of Civil Procedure do not authorize imposition of attorneys' fees in cases dismissed with prejudice, and finding the opponent's requested injunction inapplicable in the present case).

Groundwater Appropriators of the South Platte River Basin ("GASP"), a corporation owning more than 3000 wells, filed applications for conditional water rights in 1995, 1996, and 1998. Various interested parties, including the City of Boulder ("Boulder") and local irrigation companies, filed statements of opposition to at least one of GASP's applications. GASP filed for partial summary judgment, requesting the District Court for Water Division One to not require GASP to identify augmented well depletions as a qualification for the conditional water rights sought. Boulder joined the irrigation companies in a cross-motion for summary judgment, seeking either an outright denial of GASP's applications, or alternatively, a requirement that GASP identify potential depletions and submit plans for augmentation. Boulder and the irrigation companies also sought an injunction to prevent GASP members from out-of-priority pumping. The water court granted GASP's motion for partial summary judgment.

Before trial on the remaining issues, GASP filed a motion to

dismiss its 1995 and 1996 applications with prejudice. The irrigation companies and Boulder argued the water court should only dismiss the applications if it would also order GASP to pay the companies' and Boulder's attorneys' fees associated with their opposition to GASP's 1995 and 1996 applications. The water court granted the motion to dismiss, and ordered GASP to pay the requested attorneys' fees. GASP appealed to the Colorado Supreme Court on the issue of attorneys' fees, and the irrigation companies and Boulder cross-appealed the Division One's failure to address their out-of-priority pumping claim.

Addressing the issue of attorneys' fees, the Colorado Supreme Court looked to federal case law regarding the Federal Rules of Civil Procedure and the virtually identical provision in the Colorado Rules of Civil Procedure. Based on federal authorities, the court held the Colorado Rules of Civil Procedure did not authorize the imposition of attorneys' fees in cases dismissed with prejudice, except in cases of bad faith. The court reasoned that if a plaintiff were subject to attorneys' fees upon moving to dismiss its own claims, there would be little incentive to dismiss such claims rather than pursuing litigation.

On the issue of the requested injunction, the court agreed with the water court, finding the request outside the scope of the current proceeding. Under Colorado law, statements of opposition filed regarding the adjudication of water rights or conditional water rights may only "set forth facts as to why the application should not be granted or why it should be granted only in part or on certain conditions." Boulder and the irrigation companies had requested an injunction regarding GASP members' out-of-priority pumping—a subject not at issue in the present case. Thus, the Colorado Supreme Court reversed the water court's order imposing attorneys' fees, and affirmed the water court's denial of the motion for injunction.

Katharine J. Ellison

Vought v. Stucker Mesa Domestic Pipeline Co., 76 P.3d 906 (Colo. 2003) (affirming water court's decision that pipeline company satisfied requirements for obtaining conditional water right decree prior in time to absentee landowner).

The dispute in this case arose between Peter Vought ("Vought") and Stucker Mesa Domestic Pipeline Company ("Stucker Mesa") concerning which party gained an earlier appropriation date for the right to use water from several springs located on Vought's property. The Colorado Supreme Court held Stucker Mesa obtained an earlier appropriation date because it satisfied all of the requirements to obtain a conditional water right decree before Vought.

Vought, an absentee land owner, applied for a conditional water right decree in the Division Four Water Court on October 23, 2000. Vought stated he first intended to use several springs on his land for domestic use in 1970; however, he did not act on that intent for