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United States Fuel Co. v. Huntington-Cleveland Irrigation Co., 79 P.3d 945 (Utah 2003)

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the phrase 'southeast of Little Valley' was a misleading description of the diversion points, and (3) the notice should have listed Leucadia as the applicant, instead of Bloomington. The Utah Supreme Court addressed these claims in turn.

Examining Prisbrey's first claim, the court found that the Engineer followed Utah law in describing the proposed diversion points. The court noted that the law required published applications to include the applicant's name; a description of the water right; the quantity of water used; the stream or source; the current and proposed points of diversion; the places, purposes, and extent of present and proposed use; and any other information the engineer needs. The court held the Engineer had satisfied all requirements and that Prisbrey's claim focused merely on the nomenclature used to describe the diversion points. According to the court, the Engineer used customary language that complied with elementary rules of punctuation. Thus, "as long as the published notices fully and accurately disclose the statutorily required information," the publication's form is within the Engineer's discretion. The court also stated that there is a presumption that members of the "water-right holding community" understand the Engineer's nomenclature.

The court held Prisbrey's second claim failed because the Engineer did not intend "Little Valley" to be a specific description because he had already given specific locations of the diversions in legal detail. The court concluded that the phrase simply enabled interested readers to quickly find the water notices they needed to read. Further, the court stated that Prisbrey had again challenged the form of the term and had failed to provide statutory support for his claim.

Regarding Prisbrey's last claim, the court held that based on prior rulings, only a water right owner was entitled to change a water right. Thus, as the water right owner, Bloomington was the proper party to apply for a diversion point change. Leucadia, as lessee, held only a terminable possessory interest in rights and a future right to purchase the water right; it would be illogical to allow Leucadia to make permanent changes in the diversion point.

Because Prisbrey failed to exhaust his administrative remedies by filing a timely protest and because the Engineer's published notice complied with all statutory requirements, the court upheld the trial court's grant of summary judgment in Bloomington's favor.

Jeff Gillio

United States Fuel Co. v. Huntington-Cleveland Irrigation Co., 79 P.3d 945 (Utah 2003) (holding trial court should abstain from hearing private suits for relief inconsistent with an uncontested proposed determination by the state engineer).

In 1932, several irrigation companies merged and created

Huntington-Cleveland Irrigation Company ("HCIC"), a mutual water company. As a result, HCIC acquired the Cleveland Canal, which runs from the mouth Huntington Creek to the town of Cleveland, Utah, crossing Cedar Creek, a tributary of Huntington Creek. Due to Cedar Creek's heavy spring run-off flows that would wash out the canals, HCIC built a cement "flood bridge" across the Cleveland Canal to allow up to ten cubic feet per second ("cfs") of water to flow into the canal. As part of the State Engineer's general adjudication of the San Rafael River, HCIC claimed a right to 10 cfs from Cedar Creek in 1970. Though United States Fuel Company ("U.S. Fuel") diverted water from Cedar Creek as well, it did not protest HCIC's claim. On December 1, 1982, the State Engineer issued a proposed determination recognizing HCIC's senior irrigation right on Cedar Creek. On December 2, a U.S. Fuel agent received the State Engineer's determination, but did not file an objection until ninety-one days later. In 1989, HCIC demanded U.S. Fuel release the first ten cfs in Cedar Creek for HCIC's use. In 1992, U.S. Fuel, ANR Co., Inc., and intervenor Intermountain Power Agency and their predecessor-in-interest (collectively "USF") brought this action before the Emery County District Court to quiet title to its water rights and prevent HCIC from interfering with its use. In a counterclaim, HCIC asserted it possessed a senior water right and requested the trial court find USF abandoned its rights. On September 10, 2001, the trial court disregarded the State Engineer's previous determination and held USF had a priority water right to the Cedar Creek. HCIC appealed directly to the Utah Supreme Court, arguing (1) the trial court lacked jurisdiction over this dispute; (2) neither waiver, estoppel nor laches barred USF's claim to a senior priority right; (3) estoppel barred HCIC from submitting evidence of Cedar Creek's tributaries; and (4) USF had not forfeited its water rights.

On appeal, HCIC argued the trial court lacked jurisdiction over this matter because permitting USF to challenge the determination through an independent action outside of the pending general adjudication violated Utah Code section 73-4-11. Section 73-4-11 requires a claimant to object to the State Engineer's proposed determination of water rights by filing an objection within ninety days of the date of service. If the claimant fails to do so, section 73-4-12 requires the court to render a judgment in accordance with the proposed determination. USF argued the requirements in section 73-4-11 were only permissive, not mandatory.

After noting the State Engineer's special qualifications for understanding water disputes, the court conceded the State Engineer was an executive officer that could not serve a judicial function; therefore, generally, the proposed determinations were persuasive only and could not bar private claims over water rights. However, the court found the plain language of section 73-4-12 created an exception to the general rule by mandating courts to render judgments consistent with uncontested determinations. Furthermore, the court reiterated, "the adoption of uncontested state engineer's proposed

determinations by operation of law did not unconstitutionally confer adjudicative power on the state engineer.” Acknowledging USF’s ability to seek leave of court to excuse its untimely objection, the court concluded that until USF explored that remedy, HCIC was entitled to the ten cfs water right reflected in the State Engineer’s proposed award.

Thus, because USF did not object to the proposed determination within ninety days, the trial court lacked authority to hear an action that could result in a judgment inconsistent with an uncontested determination. Therefore, the court held the trial court lacked jurisdiction over this claim and vacated the judgment.

Jessica L. Grether

Washington County Water Conservancy Dist. v. Morgan, 82 P.3d 1125 (Utah 2003) (holding that Utah Water Conservancy Act did not create standing for a water conservancy district to bring cause of action for forfeiture; and party protesting a change application does not gain standing, by virtue of the protest, to petition the court for a declaration of forfeiture).

The Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter Day Saints (“CPB”) submitted a change application to the State Engineer for certain water rights located in Washington County, Utah. The Washington County Water Conservancy District (“Conservancy District”) submitted a challenge to the change application, asserting that CPB forfeited some of its water rights. The State Engineer granted CPB’s request, noting that it lacked jurisdiction to determine whether CPB forfeited its water rights. The Conservancy District then petitioned the Washington County District Court challenging the State Engineer’s determination of the change application, and charged that CPB had forfeited the water rights at issue. The trial court ruled that the Conservancy District lacked standing to bring its cause of action and the Conservancy District appealed directly to the Utah Supreme Court.

On appeal, the court considered three issues: (1) whether the Utah Water Conservancy Act (“Act”) granted standing to the Conservancy District, (2) whether the Conservancy District’s participation in the change application proceedings gave standing to challenge the state engineer’s determination, and (3) whether the Conservancy District qualified for standing under traditional standing requirements.

First, in addressing standing under the Act, the court concluded that the Act did not grant the Conservancy District standing. The court reached this conclusion by noting that the Act contained broad statements outlining the purposes of conservancy districts. Subsequent to these broad statements were specific powers that the legislature