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## City of Grand Junction v. City and County of Denver, 960 P.2d 675 (Colo. 1998)

Matt Diliman

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City of Grand Junction v. City and County of Denver, 960 P.2d 675 (Colo. 1998)

nontributary water pursuant to the Groundwater Management Act. Landowners have no absolute right to ownership of water underneath their land.

According to the court, the state engineer and the water court acted within their authority in determining that the aquifer water under the subdivision was not nontributary. Additionally, the deeds did not "withhold from the homeowners their inchoate right to use the not nontributary water under their lots." Further, whether nontributary or not nontributary, an applicant for recognition of a right to use groundwater in the Denver Basin aquifers cannot receive a permit or decree unless he or she is the overlying landowner or has the landowner's consent. The Development Company and Chatfield Well owned no land in the subdivision when Chatfield Well filed its application for a decree with the water court, nor had either completed a well into the Arapahoe aquifer, nor had they obtained the consent of the homeowners to the application. Chatfield Well relied solely on the effect of its quitclaim deed from Development Company when asserting its entitlement to the groundwater.

Another issue brought on appeal by Chatfield Well dealt with the adoption of Senate Bill 96-74 prior to the trial of this case. The Bill amended the definition of nontributary ground water by stating that "not nontributary groundwater . . . in the Denver Basin shall not become nontributary groundwater as a result of the aquifer's hydrostatic pressure level dropping below the alluvium of an adjacent stream due to Denver Basin well pumping activity." The provisions addressed a previous issue that arose in prior augmentation cases involving not nontributary Denver Basin water in the context of considering an alleged break in the aquifer's connection with the natural stream system. Here, the court concluded that the intent of the legislature was that Senate Bill 96-74 should apply to pending decree and permit applications. Chatfield Well argued that if the Bill was applied retroactively, it would violate the Colorado Constitution. The prohibition of retroactivity set forth in the Colorado Constitution applied solely to statutes that impair or take away a vested right. Chatfield Well did not have any vested rights at the time this statute was enacted; thus the water court applied Senate Bill 96-74 to this case as the legislature had intended. The court determined that this is not unconstitutional as applied.

The deeds at question here did not withhold from the homeowners their inchoate right to use the not nontributary water under their lots. Subsequently, since the homeowners did not consent to Chatfield Well's application, the water court correctly dismissed the application.

*Beth A. Bulmer*

**City of Grand Junction v. City and County of Denver, 960 P.2d 675 (Colo. 1998)** (holding Denver's application for a refill right with re-

spect to Dillon Reservoir did not implicate the federal court's exclusive jurisdiction to implement the Blue River Decree and the Blue River Decree did not preclude reservoir refill rights).

This case came to the Colorado Supreme Court on appeal of the District Court, Water Division 5 holding that the Blue River Decree did not limit Dillon Reservoir to one fill per year. Grand Junction contended that, pursuant to the Blue River Decree, the federal court retained exclusive jurisdiction over Denver's application for a refill right. Grand Junction also argued Denver's claimed refill right conflicted with the terms of the Blue River Decree because the Blue River Decree restricts Dillon Reservoir to only one fill each year.

The Blue River Decree is the result of a dispute dating to 1937. In that year, Congress authorized a reclamation project known as the Colorado-Big Thompson Project ("CBT"). One purpose of the CBT was to store replacement water at Green Mountain Reservoir for use by western slope interests to compensate for other Colorado River water diverted to the eastern slope as part of the CBT. On October 12, 1955, the federal court entered a final decree and judgment (the "Blue River Decree") which recognized the United States' right to fill and utilize Green Mountain Reservoir and described Denver's rights to the use of Blue River water and its tributaries. As part of the Blue River Decree, the federal court expressly retained continuing jurisdiction for the purposes of effectuating the objectives of the Decree. It is within this context that Grand Junction asserted that the water court lacked subject matter jurisdiction over Denver's application for a Dillon Reservoir refill right.

The Colorado Supreme Court responded by stating that subject matter jurisdiction relates to a court's authority to deal with the class of cases in which it renders judgment. An application for the determination of a water right or a conditional water right involves a "water matter" over which a water court has special statutory jurisdiction. Subject matter jurisdiction vests in the water court upon the timely filing of the application and publication of the resume notice. Because Grand Junction did not contend that Denver failed to comply with any statutory procedures relating to application for adjudication of a water right, the water court possessed subject matter jurisdiction over Denver's application, absent special circumstances divesting the court of jurisdiction.

Grand Junction asserted the water court lacked jurisdiction because the long-standing principles of water law prohibit a court from interpreting or enforcing decrees entered by another court. The Colorado Supreme Court rejected this argument as a rule per se. In so doing, the court held that the water court possessed the authority to review the Blue River Decree in order to ascertain whether Denver's application would interfere with the terms or objects of the decree. The court also held that a court of coordinate jurisdiction does not possess the authority to enter a decree that modifies or interferes with

the objectives or terms of another court's decree. As the water court explained, the federal court in the Blue River Decree addressed only those relative priorities at issue at the time of adjudication.

Grand Junction also contended that the water court's decree directly conflicted with the Blue River Decree. Grand Junction argued the Blue River Decree expressly prohibits the parties to the decree from asserting or claiming, as against each other, any different priorities than those specified in the final Blue River Decree. The Colorado Supreme Court rejected this argument as well. The court stated that Denver's application for a refill right with a 1987 priority date does not concern or interfere with any provision of the Blue River Decree, including rights junior to Denver's original fill right. The refill right is junior to all the appropriations adjudicated in 1955, and, according to the terms of the water court's judgment, cannot be exercised to the detriment of any priority awarded in the Blue River Decree. Consequently, Denver's application for a refill right did not directly conflict with the Blue River Decree nor did it implicate the federal court's exclusive jurisdiction to implement the Blue River Decree.

*Matt Dillman*

**O'Neill v. Simpson, 958 P.2d 1121 (Colo. 1998)** (holding that the doctrines of res judicata and collateral estoppel barred claim that water court lacked jurisdiction).

In March 1912, six water rights in the Cache Creek, Arlington, and Clear Creek Ditches were decreed to Twin Lakes Placers, Limited. In June 1912, an injunction was entered against Twin Lakes because its hydraulic mining process polluted the Arkansas river. As a result, Twin Lakes abandoned the six water rights.

This appeal to the Colorado Supreme Court represented Dennis O'Neill's fourth attempt to revive these abandoned water rights. In the subject appeal, O'Neill argued that the water court lacked jurisdiction in the first trial ("O'Neill I") to determine whether the water rights had been abandoned. In O'Neill I, the water court rejected O'Neill's initial attempt to revive the six water rights and held that these rights had been abandoned.

In the present case, O'Neill contended that the water court lacked jurisdiction in O'Neill I due to a defective service of process and because the water court's judgment represented a collateral attack on a series of possessory and use rights determined in various prior quiet title decrees. The water court dismissed O'Neill's subsequent complaint and awarded attorney's fees to the Defendant State Engineer. After sternly warning O'Neill that further non-meritorious attempts to relitigate these matters would result in severe sanctions, the court affirmed the water court's determination.

The court held that the doctrines of res judicata and collateral estoppel barred relitigation of the trial court's jurisdiction unless the