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## Rice v. Brandon, 961 P.2d 1092 (Colo. 1998)

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Rice v. Brandon, 961 P.2d 1092 (Colo. 1998)

water matter. It also noted that New Anderson was a proper party in the proceeding despite the fact that the entity had dissolved.

*Stephanie Pickens*

**Rice v. Brandon, 961 P.2d 1092 (Colo. 1998)** (holding that ballot initiative #105, requiring Rio Grande Water Conservation District to make payments for benefit of public school districts, did not violate the Colorado Constitution's single-subject requirement; titles and summaries for three proposed initiatives (#105, #102, and #103) were not misleading or confusing; and initiative title setting board did not abuse its discretion in setting titles and summaries for the three ballot initiatives).

Registered Colorado electors brought suit challenging various actions of the Initiative Title Setting Board (the "Board"). Colorado Constitution article V section 1 states that before an initiative is placed on the ballot, the Board must affix a title and summary to it that informs the voters about the initiative's purpose. The Board had approved the titles and summaries affixed to three ballot initiatives—two statutory amendments and an amendment to the Colorado Constitution, all up for voter approval in the 1998 election year. The electors brought suit in an effort to keep the initiatives off the ballot, due to their fear that the new laws' passage would adversely affect their water rights. A common theme throughout the case was the electors' assertion that titles and summaries affixed by the Board were misleading because they omitted the proponents' overall scheme, allegedly crucial to voter understanding of the initiatives.

Initiative 105 would have amended the Colorado Constitution by adding a new section requiring that the Rio Grande Water Conservation District pay \$40 to the state per acre-foot of water pumped from aquifers under state trust lands for use by the Closed Basin Project. The Closed Basin is located in Colorado's San Luis Valley, and is characterized by a sump area that collects water flowing into the basin. The water cannot escape to the nearby Rio Grande River due to a natural barrier at the southern boundary of the basin. Water trapped there is lost to evaporation and evapotranspiration. The Closed Basin Project, authorized by the Reclamation Project Authorization Act of 1972, was designed to withdraw water from an unconfined aquifer in the Closed Basin for delivery to the Rio Grande River, through which it flows to New Mexico and Texas to help satisfy Colorado's obligations under the Rio Grande Compact. The lands under which the aquifer lies are state trust lands.

Under Colorado's Enabling Act, the legislature granted certain public lands in trust to the people for the purpose of funding public schools and governmental activities (e.g., erecting public buildings for

the legislature and judiciary). Initiative 105 would have required the Rio Grande Water Conservation District to reimburse the state for all water it had pumped and would have pumped in the future from beneath the state trust lands in the Closed Basin. The initiative earmarked the money for use by public schools located in Water Division 3.

The electors asserted that Article V section 1(5.5) prohibited the Board from affixing a title and summary to Initiative 105 because the initiative encompassed more than a single subject (the single-subject requirement limits the scope of an initiative, and that scope must be expressed in its title). The Colorado Supreme Court found that although Initiative 105 denoted two steps for assessing and allocating fees for water pumped from beneath the Closed Basin, the two steps did not comprise two separate subjects.

The electors also alleged that the titles and summary were misleading because: (1) they omitted any statement of effect on the public school fund and Division 3 school districts; (2) the fiscal impact statement grossly underestimated the costs of the new law to the conservation district and failed to state which taxpayers would receive a refund; and (3) they omitted information about the proponents overall reasoning, crucial for voter understanding. In reviewing whether the Board's titles and summary fairly reflected the proposed initiative so as not to mislead petition signers and voters, the court found that the titles and summary were not misleading because: (1) they identified the uncertainty of the initiative's effect; (2) the fiscal impact statement adequately described the impact on the conservation district; and (3) the titles' and summary's failure to specify which taxpayers would receive a refund did not render the initiative confusing.

The two statutory amendments directly affected the Rio Grande Water Conservation District. Initiative 102 would have required that members of the District's board of directors be elected rather than appointed to office. It would also have increased each director's term from three to four years, implemented staggered terms, and imposed specific qualifications on those seeking election. Initiative 103 would have required the District's board of directors to refund all monies received from court judgements during a ten year period (from 1985-1995) to the taxpayers. The electors asserted that the Board's titles and summaries for these two initiatives were misleading for various reasons. However, the court again held that the Board properly affixed the titles and summaries.

Justice Hobbs, in his dissent, articulated the electors' concerns about their water rights. Justice Hobbs agreed with the electors' assertions that Initiative 105 encompassed more than a single subject, and that the titles and summary contained a material omission regarding the initiative's effect. Justice Hobbs found that income generation to benefit public schools was only one purpose of the initiative. He also found that Initiative 105 would convert a locally owned water rights decree into a state trust asset, for the use of which

the state could charge water appropriators a fee.

Under Colorado Constitution Article XVI, waters of natural streams are public property subject to appropriation. Closed Basin water was found by the water court in *Closed Basin Landowners Ass'n v. Rio Grande Water Conservation District* to be within a natural surface stream system subject to appropriation, and was so appropriated under Water Division 3 decree W-3038. Pursuant to W-3038, the Rio Grande Water Conservation District owned a vested property right to Closed Basin waters. Initiative 105 would convert Closed Basin tributary water from a vested property right into a state trust asset, for the use of which the state could charge a fee. Justice Hobbs held that the Board's failure to alert the voters about this conversion constituted a material omission in its Initiative 105 summary because such conversion would compromise Colorado's over one hundred year old constitutional and statutory water rights acquisition scheme.

*Debbie Eiland*

Ed. Note: The Colorado electorate defeated all three initiatives in the November 1998 general election.

**USI Properties East, Inc. v. Simpson, 938 P.2d 168 (Colo. 1997)** (holding that the terms of stipulation among various parties unambiguously limited the effect of the call limitation provision to Beaver Creek, and the water court's denial of water users' motion for declaratory judgment concerning the stipulation was not inconsistent with the court's granting the City of Englewood's summary judgment motion).

USI Properties East, Inc. ("USI") appealed from the water court's decision concerning the interpretation of a stipulation regarding the water rights between USI and the City and County of Denver ("Denver") and Climax Minerals ("Climax"). The water court had denied USI's motion for declaratory judgment and granted summary judgment for the city of Englewood.

In 1951, USI's predecessor in interest, Sloan, diverted water from Beaver Creek to supplement ditch flow. In 1955, Englewood purchased conditional water rights on the Cabin-Meadow Creek System, in the Fraser River Basin, and sought a point of diversion on Beaver Creek. Subsequently, Englewood, Denver, and Climax entered into an agreement regarding the Cabin-Meadow Creek System water. In 1970 Englewood, due to the conditional water right, filed for a finding of reasonable diligence. Sloan opposed the application. As a result, Sloan, Englewood, and Climax entered into a stipulation. The