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## USI Properties East, Inc. v. Simpson, 938 P.2d 168 (Colo. 1997)

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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

water court approved the stipulation effective as of March 1971.

The stipulation stated that Englewood, Denver, and Climax would not make a call on the waters of Beaver Creek to supply any of their water right priorities in the Fraser River Basin, if the call would prevent owners of specified water rights from making maximum use of the water claimed under said rights. This stipulation was to apply regardless of priority dates.

Subsequently, in 1991, Sloan sold USI certain water rights subject to the stipulation. USI sought various changes in the point of diversion and the place of use. As a result of the opposition to the application, USI and Englewood entered into a stipulation regarding diversions to particular ditches. In 1995, USI sought clarification of the Englewood stipulation in an effort to prevent Englewood from asserting specific water rights. The court found that the stipulation, by its own terms, applied only to Beaver Creek and did not affect Englewood's rights on the Fraser River.

USI sought the same clarification from the court regarding the stipulation with Climax and Denver. It asserted that the stipulation applied to the Fraser River as well as Beaver Creek. Adhering to basic contract interpretation, the court found no ambiguity in the stipulation and the plain and ordinary meaning limited the effect of the call provision in the stipulation to the waters of Beaver Creek.

*Tracy Rogers*

**Watson v. Vouga Reservoir Ass'n, 969 P.2d 815 (Colo. Ct. App. 1998)** (holding association's assessment for restoration of reservoir outlet was a "repair" within the meaning of the statute which allowed forfeiture of shareholder's shares for nonpayment).

The Vouga Reservoir Association ("Association") organized under Colorado's Ditch and Reservoir Companies statute. Plaintiff, Watson, owned thirty-five percent of the company's shares. In 1994, the Colorado State Engineer discovered a defect in the reservoir's outlet pipe. After failed attempts to correct the defect, the Colorado Division of Water Resources ordered that the Association could not store water in the reservoir until it took appropriate remedial measures.

The majority shareholders authorized that the Association levy a pro rata assessment on the shareholders pursuant to Colo. Rev. Stat. § 7-42-104(1) to pay for the remedial measures, which cost in excess of \$1 million. Watson refused to pay his pro rata assessed amount, and the Association forfeited his shares as allowed under the statute.

Watson sued to enjoin the dam repair and to dissolve and liquidate the Association. He also alleged conversion of his shares by the Association. Watson argued that the extent of the work constituted a reconstruction rather than a repair authorized by the statute. The trial