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Colorado Supreme Court -- June 12, 2006

No. 05SA205. *Harmony Ditch Company v. Ground Water Management Subdistrict of the Central Colorado Water Conservancy District.*

<p>SUPREME COURT, STATE OF COLORADO Two East 14th Avenue Denver, Colorado 80203 Appeal from the District Court, Water Division 1, Case No. 02CW335 Honorable Roger A. Klein, Judge</p>	<p>Case No. 05SA205</p>
<p>CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE GROUND WATER MANAGEMENT SUBDISTRICT OF THE CENTRAL COLORADO WATER CONSERVANCY DISTRICT IN ADAMS, LARIMER, MORGAN AND WELD COUNTIES.</p> <p>Opposers/Appellants:</p> <p>THE HARMONY DITCH COMPANY; THE LOGAN IRRIGATION DISTRICT, THE ILIFF IRRIGATION DISTRICT, AND THE MORGANPREWITT RESERVOIR COMPANY, acting by and through the Prewitt Operating Committee; IRRIGATIONISTS' ASSOCIATION, WATER DISTRICT 1; NORTH STERLING IRRIGATION DISTRICT; PAWNEE WELL USERS, INC., CENTENNIAL WATER AND SANITATION DISTRICT; CITY OF BOULDER; CITY OF ENGLEWOOD; CITY OF STERLING, CITY OF WESTMINSTER; AND SOUTH ADAMS COUNTY WATER AND SANITATION DISTRICT,</p> <p>v.</p> <p>Applicant/Appellee:</p> <p>THE GROUND WATER MANAGEMENT SUBDISTRICT OF THE CENTRAL COLORADO WATER CONSERVANCY DISTRICT,</p> <p>and</p> <p>Opposers/Appellees:</p> <p>HAROLD (HAL) D. SIMPSON, State Engineer, JAMES (JIM) R. HALL, Division Engineer for Water Division No. 1; THE CITY OF AURORA; CITY OF LAKEWOOD; BRIGHTON DITCH COMPANY; LOWER PLATTE & BEAVER CANAL COMPANY; THE CITY OF LONGMONT; CHERRY CREEK WATER USERS ASSOCIATION; RURAL DITCH COMPANY; GODDING DITCH COMPANY; THE CITY OF LOVELAND; NORTHERN COLORADO WATER CONSERVANCY DISTRICT; GREELEY IRRIGATION COMPANY; RIVERSIDE RESERVOIR AND LAND COMPANY; RIVERSIDE IRRIGATION DISTRICT; THE FARMERS RESERVOIR AND IRRIGATION COMPANY; PUBLIC SERVICE COMPANY; THE CITY AND COUNTY OF BROOMFIELD; ST. VRAIN & LEFT HAND WATER</p>	

CONSERVANCY DISTRICT; THE CITY AND COUNTY OF DENVER; THE HENRYLYN IRRIGATION DISTRICT; CACHE LA POUDE WATER USERS ASSOCIATION; THE GREELEY AND LOVELAND IRRIGATION COMPANY; SEVEN LAKES RESERVOIR COMPANY; WATER USERS ASSOCIATION OF DISTRICT NO. 6; THE CITY OF THORNTON; VARRA COMPANIES, INC.; THOMPSON WATER USERS ASSOCIATION; LOWER LATHAM RESERVOIR COMPANY; BIJOU IRRIGATION COMPANY; BIJOU IRRIGATION DISTRICT; THE CITY OF BLACK HAWK; THE CITY OF GREELEY, acting by and through its Water & Sanitation Board; FORT MORGAN RESERVOIR & IRRIGATION COMPANY; and RANGEVIEW METROPOLITAN DISTRICT.

JUDGMENT AFFIRMED
EN BANC
June 12, 2006

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PER CURIAM

JUSTICE EID does not participate

The Ground Water Management Subdistrict of the Central Colorado Water Conservancy District filed an application for approval of a plan for augmentation for approximately 1,000 wells in the South Platte River basin, in Water Division No. 1, on December 23, 2002. The plan for augmentation proposed to allow out-of-priority well pumping by replacing the resulting out-of-priority depletions. Approximately 50 entities and individuals, including the state engineer, filed statements of opposition to the application.

On June 3, 2005, the water court entered a decree approving the plan for augmentation, which provides, in pertinent part: "Pursuant to § 37-92-305(8), C.R.S., the State Engineer shall curtail all outofpriority diversions, the depletions from which are not so replaced as to prevent injury to vested water rights." The Harmony Ditch Company and various other opposers appealed directly to this court, assigning error to the decree's description of the state engineer's duty of curtailment in the language of the statute itself. Harmony contends that section 37-92-305(8) compels such decrees to "require that the state engineer curtail all out-of-priority diversions, the depletions from which are not so replaced as to prevent injury to vested water rights," and that this mandate remains unfulfilled unless the statutory language is construed to mean, and the decree also specifies, that the state engineer is authorized to curtail out-of-priority diversions *only* when the augmentation plan is not being operated in compliance with the other terms and conditions of the decree.

The mandate of section 37-92-305(8) –that decrees approving plans for augmentation impose a duty of curtailment, under certain circumstances, on the state engineer –is entirely a creature of statute, and the statute itself specifies what the decree must demand of the state engineer. By imposing a duty of curtailment on the state engineer in terms of the precise formula required by statute, the water court has complied with the mandate of the statute. Should a party suffer injury as a result of the state engineer's attempt to comply with his obligation, avenues exist to challenge the scope of his authority, as intended by the legislature and decreed by the water court, in the context of the particular circumstances.

The judgment of the water court is therefore affirmed.

These opinions are not final. They may be modified, changed or withdrawn in accordance with Rules 40 and 49 of the Colorado Appellate Rules. Changes to or modifications of these opinions resulting from any action taken by the Court of Appeals or the Supreme Court are not incorporated here.

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