

SUPREME COURT OF COLORADO

Cherokee Metropolitan District v. Simpson

148 P.3d 142 (Colo. 2006) · Decided November 27, 2006

SUMMARY

The Colorado Supreme Court affirmed a water court’s interpretation of a stipulated decree governing the use of Cherokee Metropolitan District’s wells in and outside the Upper Black Squirrel Creek Designated Ground Water Basin. The court held that the decree permitted out-of-basin use of Wells No. 1-8 only for short-term emergency and backup purposes related to the water supply commitments existing when the stipulation was entered, not as a permanent primary supply for later growth. The court also rejected Cherokee’s promissory estoppel argument against the State Engineer’s office.

CASE DETAILS

COURT	Supreme Court of Colorado
WRITING FOR THE COURT	Justice Hobbs; Justice Coats; Justice Eid
JURISDICTION	Colorado
DECIDED	November 27, 2006
DISPOSITION	affirmed
PROCEDURAL POSTURE	Cherokee appealed from the Water Court for Water Division No. 2’s judgment construing a stipulated decree provision governing the use of Cherokee Wells No. 1-8 and denying Cherokee’s motion to enforce its broader interpretation of that provision.
STANDARD OF REVIEW	Contract interpretation of a stipulated decree is reviewed de novo. The water court’s factual findings are accepted if supported by the record, while its legal conclusions are reviewed de novo.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of Colorado
PARTIES	Cherokee Metropolitan District v. Upper Black Squirrel Creek Ground Water Management District, State Engineer, Colorado Ground Water Commission

TOPICS

contract interpretation

contracts

standard of review

appellate procedure

promissory estoppel

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the stipulated decree permitted Cherokee to use Wells No. 1-8 to supply water outside the Designated Basin whenever the Sweetwater Wells were insufficient to meet Cherokee's current or future commitments.
2. Whether the State Engineer was estopped from asserting the narrower interpretation of the stipulated decree because of statements or actions by State Engineer personnel.

HOLDINGS

1. The stipulated decree permits Wells No. 1-8 to supply water outside the Designated Basin only for short-term emergency and backup purposes when the Sweetwater Wells cannot produce sufficient water to meet the out-of-basin commitments existing when the 1999 stipulation was entered. It does not permit Wells No. 1-8 to become a permanent or primary source of out-of-basin supply for later-developed demand.
2. Cherokee failed to establish promissory estoppel because the record did not show a promise by the State Engineer's office on which Cherokee reasonably and detrimentally relied. Administrative statements or consultation materials did not alter the meaning of the stipulated decree or bind the Management District.

KEY QUOTATIONS

"Any scenario that would place Wells No. 1-8 into permanent operation as a primary supply for service areas outside of the Designated Basin would undermine the principal anti-export language and purpose of the stipulated decree provision, which dedicates those wells for use only within the Designated Basin, except for short-term emergency and backup situations." (148)

"Accordingly, we conclude that the water court's construction of the contested stipulated decree provision correctly reflects the language of the agreement and the parties' intent." (151)

FACTUAL BACKGROUND

Cherokee operates Wells No. 1-8 in the northern portion of the Upper Black Squirrel Creek Designated Ground Water Basin and Sweetwater Wells in the southern portion. The 1999 stipulated decree limited Wells No. 1-8 primarily to in-basin beneficial uses, allowing out-of-basin use only for emergency and backup purposes, including inability to obtain sufficient supply from the Sweetwater Wells. At the time of the stipulation, Cherokee's out-of-basin commitments totaled approximately 2,683 acre-feet annually, but its commitments later increased to nearly 5,000 acre-feet while the Sweetwater Wells produced less than Cherokee had anticipated. Cherokee therefore sought to use Wells No. 1-8 as a primary source for out-of-basin demand.

PROCEDURAL HISTORY

The water court incorporated the parties' January 1999 stipulation into a March 8, 1999 conditional water-rights diligence decree. In 2005, Cherokee moved for an order requiring the State Engineer to follow Cherokee's

interpretation that Wells No. 1-8 could serve as a primary source of out-of-basin supply when the Sweetwater Wells were insufficient. After a two-day evidentiary hearing, the water court found the provision ambiguous, considered extrinsic evidence, rejected Cherokee's interpretation, and held that out-of-basin use was limited to emergency and backup purposes satisfying commitments existing when the stipulation was executed. The Colorado Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Sweetwater Development Corp. v. Schubert Ranches, Inc., 188 Colo. 379, 384, 535 P.2d 215, 218-19 (1975)
- Colo. River Water Conservation Dist. v. Bar Forty Seven Co., 195 Colo. 478, 481, 579 P.2d 636, 638 (1978)
- City of Golden v. Simpson, 83 P.3d 87, 93-94 (Colo. 2004)
- United States v. N. Colo. Water Conservancy Dist., 608 F.2d 422, 430 (10th Cir. 1979)
- USI Props. E., Inc. v. Simpson, 938 P.2d 168, 173 (Colo. 1997)
- Lane v. Urgitus, 145 P.3d 672, 679 (Colo. 2006)
- Bd. of County Comm'rs v. Crystal Creek Homeowners' Ass'n, 14 P.3d 325, 340-41 (Colo. 2000)
- Vought v. Stucker Mesa Domestic Pipeline Co., 76 P.3d 906, 913 (Colo. 2003)
- Berg v. State Bd. of Agric., 919 P.2d 254, 259 (Colo. 1996)
- Santa Fe Trail Ranches Prop. Owners Ass'n v. Simpson, 990 P.2d 46, 49, 58 (Colo. 1999)
- Upper Black Squirrel Creek Ground Water Mgmt. Dist. v. Goss, 993 P.2d 1177, 1183 (Colo. 2000)
- Town of Estes Park v. Northern Colorado Water Conservancy District, 677 P.2d 320, 327-28 (Colo. 1984)
- Gallegos v. Colo. Ground Water Comm'n, 147 P.3d 20, 27 (Colo. 2006)