

SUPREME COURT OF COLORADO

Meridian Service Metropolitan District v. Ground Water Commission

361 P.3d 392 (Colo. 2015) · Decided November 16, 2015

SUMMARY

The Colorado Supreme Court held that the Colorado Ground Water Commission had initial jurisdiction to determine whether storm runoff sought for appropriation constituted designated ground water. The court affirmed the finding that a portion of the runoff was designated ground water subject to Commission administration, rejecting arguments based on jurisdiction, preclusion, stare decisis, public policy, and constitutional challenges.

CASE DETAILS

COURT	Supreme Court of Colorado
WRITING FOR THE COURT	Justice Gabriel
JURISDICTION	Colorado
DECIDED	November 16, 2015
DISPOSITION	affirmed
PROCEDURAL POSTURE	Meridian appealed the district court's order determining that water it sought to appropriate was designated ground water subject to the jurisdiction of the Colorado Ground Water Commission. The Colorado Supreme Court reviewed the legal issues de novo and the district court's factual findings for record support.
STANDARD OF REVIEW	The court reviewed legal issues de novo and would not disturb the district court's factual findings unless they lacked support in the record.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Meridian Service Metropolitan District v. Ground Water Commission, Upper Black Squirrel Creek Ground Water Management District, Edna Farmer, Dan Farmer, Jerry Farmer, Joe Farmer, Jr., Teresa Farmer, Farmer Pipeline Company, LLC

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QUESTIONS PRESENTED

1. Whether the Colorado Ground Water Commission or the water court had initial subject-matter jurisdiction to determine whether the water Meridian sought to appropriate was designated ground water.
2. Whether the storm runoff at issue was designated ground water rather than surface water in or tributary to a natural stream.
3. Whether claim preclusion, issue preclusion, or stare decisis barred the Commission from classifying the runoff as designated ground water despite the 1968 basin-designation order.
4. Whether public policy required allowing Meridian to appropriate the storm runoff under the Water Right Determination and Administration Act of 1969.
5. Whether the Colorado Groundwater Management Act was unconstitutional because it interfered with Meridian's asserted right to divert unappropriated natural-stream water.

HOLDINGS

1. When a jurisdictional controversy turns on whether water is designated ground water, the Colorado Ground Water Commission must make the initial determination; jurisdiction shifts to the water court only if the Commission determines that the water is not designated ground water.
2. A portion of the storm runoff generated by Meridian's proposed development was designated ground water because, under natural conditions, it would not be visible on the surface and would contribute to aquifer recharge rather than reach a natural tributary stream.
3. Claim preclusion did not bar the Commission from classifying a portion of Meridian's development-generated runoff as designated ground water because the present claim involved different runoff and could not have been brought in 1968.
4. Public policy did not support allowing Meridian to appropriate the runoff free from the priority system and Commission oversight, and the court did not reach the constitutional challenge because the water was designated ground water rather than unappropriated natural-stream water.

KEY QUOTATIONS

“Jurisdiction shifts to the water court only if the Commission concludes that the water at issue is not designated ground water.” (361 P.3d at 396)

“Claim preclusion prevents re-litigation of claims that were or could have been litigated in a prior proceeding.” (361 P.3d at 398)

“To hold any other way would be to weaken the priority system, and create a super class of water rights never before in existence.” (361 P.3d at 399)

“For these reasons, we affirm the district court's order and remand the case to that court for further proceedings consistent with this opinion.” (361 P.3d at 400)

FACTUAL BACKGROUND

The Upper Black Squirrel Creek Basin was designated a designated ground water basin by a 1968 Commission order after findings that most basin water was underground and that surface flow occurred only during and immediately after heavy rainfall. In 2011, Meridian sought conditional rights to divert and store storm runoff generated in part by proposed development. Evidence showed that runoff from precipitation would ordinarily infiltrate alluvial sediments and recharge the aquifer, would not reach a tributary stream, and that Meridian's proposed impermeable surfaces would increase surface runoff. The Commission and district court concluded that the portion of the water representing recharge was designated ground water.

PROCEDURAL HISTORY

Meridian applied in the District Court for Water Division No. 2 for conditional surface-water rights to divert and store storm runoff from an unnamed tributary to the Upper Black Squirrel Creek. After opposers challenged the water court's jurisdiction, the water court stayed its proceedings and directed that the issue be addressed initially by the Commission. A hearing officer found that a portion of the runoff constituted recharge and designated ground water; the Commission affirmed, and the district court affirmed on de novo review. The Supreme Court affirmed the district court and remanded for further proceedings consistent with its opinion.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The case was remanded to the district court for further proceedings consistent with the opinion.

CASES CITED

- McKenna v. Witte, 2015 CO 23, 346 P.3d 35, 40
- Closed Basin Landowners Ass'n v. Rio Grande Water Conservation Dist., 734 P.2d 627, 636 (Colo. 1987)
- Gallegos v. Colo. Ground Water Comm'n, 147 P.3d 20, 28, 31-32 (Colo. 2006)
- State ex rel. Danielson v. Vickroy, 627 P.2d 752, 756-60 (Colo. 1981)
- Pioneer Irrigation Dists. v. Danielson, 658 P.2d 842, 846-47 (Colo. 1983)
- In re German Ditch & Reservoir Co., 56 Colo. 252, 139 P. 2 (1913)
- Univex Int'l, Inc. v. Orix Credit All., Inc., 914 P.2d 1355, 1358 (Colo. 1996)
- Farmers High Line Canal & Reservoir Co. v. City of Golden, 975 P.2d 189, 199 (Colo. 1999)
- Upper Black Squirrel Creek Ground Water Mgmt. Dist. v. Goss, 993 P.2d 1177, 1182-84 (Colo. 2000)

- State Eng'r v. Castle Meadows, Inc., 856 P.2d 496, 505-06 (Colo. 1993)
- Se. Colo. Water Conservancy Dist. v. Shelton Farms, Inc., 187 Colo. 181, 529 P.2d 1321, 1325-27 (Colo. 1974)
- Thompson v. Colo. Ground Water Comm'n, 194 Colo. 489, 575 P.2d 372, 381-82 (1978)
- Fundingsland v. Colo. Ground Water Comm'n, 171 Colo. 487, 468 P.2d 835, 839 (1970)

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