

SUPREME COURT OF COLORADO

Upper Eagle Regional Water Authority v. Wolfe

230 P.3d 1203 (Colo. 2010) · No. 09SA168; 09SA169 · Decided May 24, 2010

SUMMARY

The Colorado Supreme Court considered whether retained jurisdiction under section 37-92-304(6), C.R.S., could be invoked to address injury or likely injury arising from the operation of augmentation plans. The court held that petitions alleging operational evidence of inadequate replacement-water accounting were sufficient to require further proceedings, even absent proof of actual injury or use of particular reservoir releases. The court reversed the water court's dismissals and remanded for evidentiary proceedings and possible extension or revision of the augmentation-plan decrees.

CASE DETAILS

COURT	Supreme Court of Colorado
WRITING FOR THE COURT	Justice Hobbs
JURISDICTION	Colorado
DECIDED	May 24, 2010
DOCKET	09SA168; 09SA169
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The State and Division Engineers and the Colorado Water Conservation Board appealed judgments of the water court dismissing their petitions to invoke retained jurisdiction over two augmentation plan decrees.
STANDARD OF REVIEW	The court reviewed the water court's decision whether to invoke or extend retained jurisdiction for abuse of discretion, statutory construction de novo, and dismissal under C.R.C.P. 12(b)(5) by accepting allegations as true and drawing reasonable inferences in favor of the petitioners.
PRECEDENTIAL VALUE	published precedential opinion of the Colorado Supreme Court
PARTIES	State and Division Engineers, Colorado Water Conservation Board v. Upper Eagle Regional Water Authority

TOPICS

statutory interpretation

legislative history

motions to dismiss

standard of review

appellate procedure

PRACTICE AREAS

water rights

administrative law

civil procedure

environmental law

QUESTIONS PRESENTED

1. Whether retained jurisdiction under section 37-92-304(6), C.R.S., may be invoked to preclude likely future injury as well as remedy actual injury.
2. Whether the water court erred by dismissing the petitions after concluding that the augmentation plans had not operated because no releases had been made from the supplemental reservoirs.
3. Whether the retained-jurisdiction periods should be extended because nonoccurrence of injury had not been conclusively established.

HOLDINGS

1. Section 37-92-304(6) authorizes the water court to invoke retained jurisdiction to preclude likely future injury to vested water rights and decreed conditional water rights, even before actual injury has occurred.
2. An augmentation plan is effective for operational purposes upon entry of its decree, even if it will not become fully operational until a later date; reservoir releases are not a prerequisite to invoking retained jurisdiction.
3. The petitions stated sufficient facts which, if proved, would satisfy the petitioners' burden of going forward to show that injury had occurred or was likely to occur because the existing decree provisions were inadequate.
4. The party seeking to reopen an augmentation-plan decree must initially plead and prove facts showing actual or likely injury attributable to inadequate decree provisions; if that burden is met, the decree holder must establish noninjury and the adequacy of the existing protective provisions.

KEY QUOTATIONS

“As a matter of law, the retained jurisdiction period contained in an augmentation decree begins and the augmentation plan is effective for operational purposes upon entry of the decree, even though the plan may not become fully operational until sometime later in the future.” (at 1215)

“The General Assembly’s use of the word “preclude” makes clear its intent that retained jurisdiction be invoked to prevent anticipated injury to vested water rights and decreed conditional water rights, even if actual injury has not yet occurred.” (at 1216)

“A petitioner who seeks to have the water court reopen an augmentation plan decree must plead sufficient facts which, if proved, meet its burden of going forward to show that injury has occurred or is likely to occur, based on operational experience involving the out-of-priority diversions and depletions covered by the augmentation plan.” (at 1217)

FACTUAL BACKGROUND

Upper Eagle Regional Water Authority used a monthly depletion table based on projections from older augmentation-plan decrees to calculate depletions from out-of-priority diversions serving six member entities. The Engineers and the CWCB alleged that actual metered-use and accounting data from 2001 through 2005 showed that the table underestimated actual depletions, resulting in inadequate replacement water and injury or likely injury to vested and conditional water rights. They also alleged that Eagle River flows fell below the CWCB's decreed instream-flow right in September 2006.

PROCEDURAL HISTORY

The Engineers and the CWCB filed verified petitions in 2006 alleging that the Authority's depletion-table accounting understated actual depletions and injured or threatened to injure other water rights. The water court initially granted motions to amend and denied the Authority's motions to dismiss, but later reconsidered and dismissed both petitions on the ground that the augmentation plans had not operated because the identified reservoir sources had not released water. The Colorado Supreme Court reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The water court must conduct additional proceedings. The Engineers and the CWCB must present sufficient evidence that injury has occurred or is likely to occur because the existing decree provisions are inadequate. If they meet that burden, the Authority must demonstrate noninjury and the adequacy of the existing provisions. The water court must then make findings of fact and conclusions of law and revise the decrees as appropriate; if operational experience remains insufficient to determine injury or conclusively establish noninjury, it must extend retained jurisdiction for a specified additional period.

CASES CITED

- Farmers Reservoir & Irrigation Co. v. Consol. Mut. Water Co., 33 P.3d 799 (Colo. 2001)
- Medina v. State, 35 P.3d 443 (Colo. 2001)
- Simpson v. Bijou Irrigation Co., 69 P.3d 50 (Colo. 2003)
- Well Augmentation Subdist. of the Cent. Colo. Water Conservancy Dist. v. City of Aurora, 221 P.3d 399 (Colo. 2009)
- Empire Lodge Homeowners' Ass'n v. Moyer, 39 P.3d 1139 (Colo. 2002)
- Colo. Water Conservation Bd. v. City of Central, 125 P.3d 424 (Colo. 2005)
- Buffalo Park Dev. Co. v. Mountain Mut. Reservoir Co., 195 P.3d 674 (Colo. 2008)
- Alamosa-La Jara Water Users Prot. Ass'n v. Gould, 674 P.2d 914 (Colo. 1984)
- In re Plan for Augmentation of the City & County of Denver ex rel. Bd. of Water Comm'rs, 44 P.3d 1019 (Colo. 2002)
- Williams v. Midway Ranches Prop. Owners Ass'n, 938 P.2d 515 (Colo. 1997)

- Wadsworth v. Kuiper, 562 P.2d 1114 (Colo. 1977)
- Aspen Wilderness Workshop, Inc. v. Colo. Water Conservation Bd., 901 P.2d 1251 (Colo. 1995)
- Upper Eagle Reg'l Water Auth. v. Simpson, 167 P.3d 729 (Colo. 2007)
- City of Thornton v. Clear Creek Water Users Alliance, 859 P.2d 1348 (Colo. 1993)

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/colorado-supreme-court-of-colorado/2010/upper-eagle-regional-water-authority-v-wolfe-j261jktm>