

SUPREME COURT OF COLORADO

Jim Hutton Educ. Found., Non-Profit Corp. v. Rein (In re Rein)

2018 CO 38 (2018) · No. 17SA5 · Decided May 21, 2018

SUMMARY

The Colorado Supreme Court affirmed dismissal of the Jim Hutton Educational Foundation's as-applied constitutional challenge to a statute governing challenges to designated groundwater basin boundaries. The court held that the Colorado Groundwater Commission must first determine whether the water at issue is designated groundwater before jurisdiction can vest in the water court, making the constitutional claim unripe absent that threshold determination.

CASE DETAILS

COURT	Supreme Court of Colorado
WRITING FOR THE COURT	Justice Boatright
JURISDICTION	Colorado
DECIDED	May 21, 2018
DOCKET	17SA5
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Foundation appealed a certified final order dismissing its constitutional challenge to Senate Bill 10-52 for lack of subject matter jurisdiction under C.R.C.P. 12(b)(1).
STANDARD OF REVIEW	Subject matter jurisdiction under C.R.C.P. 12(b)(1) is reviewed de novo when the jurisdictional challenge involves no disputed facts; the plaintiff bears the burden of proving jurisdiction.
PRECEDENTIAL VALUE	published and precedential Colorado Supreme Court opinion
PARTIES	The Jim Hutton Educational Foundation, a Colorado non-profit corporation v. Kevin Rein, in his capacity as the Colorado State Engineer, David Nettles, in his capacity as Division Engineer in and for Water Division No. 1, State of Colorado, Colorado Division of Water Resources, Colorado Division of Parks and Wildlife, Yuma County Water Authority Public Improvement District, Colorado Ground Water Commission, Marks Butte Ground Water Management District, East Cheyenne Ground Water Management District, Frenchman Ground Water Management District, Sandhills Ground

Water Management District, Central Yuma Ground Water Management District, Plains Ground Water Management District, W-Y Ground Water Management District, Arikaree Ground Water Management District, Republican River Water Conservation District, City of Wray, City of Holyoke, Harvey Colglazier, Lazier, Inc., Marjorie Colglazier Trust, Mariane U. Ortner, Timothy E. Ortner, Protect Our Local Community's Water, LLC, Saving Our Local Economy, LLC, The North Well Owners, Tri-State Generation and Transmission Association, Inc., Dirks Farms Ltd, Julie Dirks, David W. Dirks, Don Andrews, Myrna Andrews, Nathan Andrews, Happy Creek, Inc., J&D Cattle, LLC, 4M Feeders, Inc., May Brothers, Inc., May Family Farms, 4M Feeders, LLC, May Acres, Inc., Thomas R. May, James J. May, Steven D. Kramer, Kent E. Ficken, Carlyle James as Trustee of the Chester James Trust, Colorado Agriculture Preservation Association, Colorado State Board of Land Commissioners, City of Burlington

TOPICS

appellate jurisdiction

mootness

ripeness

administrative law

constitutional law

PRACTICE AREAS

water law

administrative law

constitutional law

appellate procedure

QUESTIONS PRESENTED

1. Whether the water court properly dismissed the Foundation's as-applied constitutional challenge to Senate Bill 10-52 for lack of subject matter jurisdiction.
2. Whether the Foundation was required to obtain an initial determination from the Colorado Groundwater Commission that the water at issue was not designated groundwater before the water court could acquire jurisdiction.

HOLDINGS

1. When a water dispute involves both designated-groundwater interests and surface-water interests, the Colorado Groundwater Commission must first determine whether the water at issue is designated groundwater; jurisdiction vests in the water court only after the Commission determines that the water is not designated groundwater.
2. The Foundation's as-applied constitutional challenge was not ripe because the Commission had not determined that the water at issue was not designated groundwater.
3. The water court properly dismissed the Foundation's second claim for lack of subject matter jurisdiction.

KEY QUOTATIONS

“Jurisdiction vests in the water court only after the Commission first concludes that the water at issue is not designated groundwater.” (¶ 21)

“If the Commission determines that the water at issue is not designated groundwater, then jurisdiction will vest in the water court.” (¶ 24)

“We therefore conclude that the water court correctly dismissed that claim for lack of subject matter jurisdiction.” (¶ 26)

FACTUAL BACKGROUND

The Foundation owns senior surface-water rights in the Republican River Basin and alleged that permitted wells in the Northern High Plains Basin were pumping water that was not properly designated groundwater, injuring its surface-water rights. It sought ultimately to alter the designated groundwater basin’s boundaries to exclude improperly permitted wells. Senate Bill 10-52 amended Colorado’s Management Act to prohibit altering a finalized designated groundwater basin’s boundaries to exclude a well for which a conditional or final permit had been issued. The Foundation filed an as-applied constitutional challenge in water court without first obtaining a determination from the Colorado Groundwater Commission concerning the status of the water.

PROCEDURAL HISTORY

The Foundation filed an action in the Weld County District Court, Water Division 1, asserting, among other claims, that Senate Bill 10-52 was unconstitutional as applied because it prevented a challenge to the boundaries of a designated groundwater basin. The water court dismissed that claim, concluding that the Colorado Groundwater Commission first had to determine whether the water at issue was designated groundwater and that the constitutional claim was therefore not ripe. The water court certified the dismissal as a final judgment under C.R.C.P. 54(b), and the Colorado Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Gallegos v. Colo. Ground Water Comm’n, 147 P.3d 20 (Colo. 2006)
- Meridian Serv. Metro. Dist. v. Ground Water Comm’n, 2015 CO 64, 361 P.3d 392
- Pioneer Irrigation Dists. v. Danielson, 658 P.2d 842 (Colo. 1983)
- State ex rel. Danielson v. Vickroy, 627 P.2d 752 (Colo. 1981)
- Tulips Invs., LLC v. State ex rel. Suthers, 2015 CO 1, 340 P.3d 1126
- Cash Advance & Preferred Cash Loans v. State ex rel. Suthers, 242 P.3d 1099 (Colo. 2010)
- People v. Maxwell, 2017 CO 46, 401 P.3d 523
- Qwest Servs. Corp. v. Blood, 252 P.3d 1071 (Colo. 2011)

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