

2016

EVAN JOHNSON, Objector and Appellant. vs. KENT L. JONES, STATE ENGINEER, State Engineer and Appellee, and PROVO RIVER WATER USERS ASSOCIATION, METROPOLITAN WATER DISTRICT OF SALT LAKE & SANDY, UTAH LAKE DISTRIBUTING COMPANY, CENTRAL UTAH WATER CONSERVANCY DISTRICT, and THE UNITED STATES OF AMERICA IN RE: GENERAL ADJUDICATION, Affected Parties and Appellees. : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

IN THE MATTER OF THE GENERAL DETERMINATION OF THE RIGHTS TO THE USE OF WATER, BOTH SURFACE AND UNDERGROUND WITHIN THE DRAINAGE AREA OF THE UTAH LAKE AND JORDAN RIVER IN UTAH, SALT LAKE, DAVIS, SUMMIT, WASATCH, SANPETE AND JUAB COUNTIES.

Case No. 20160547

EVAN JOHNSON,

Objector and Appellant.

vs.

KENT L. JONES, STATE ENGINEER,

State Engineer and Appellee,

and

PROVO RIVER WATER USERS ASSOCIATION, METROPOLITAN WATER DISTRICT OF SALT LAKE & SANDY, UTAH LAKE DISTRIBUTING COMPANY, CENTRAL UTAH WATER CONSERVANCY DISTRICT, and THE UNITED STATES OF AMERICA IN RE: GENERAL ADJUDICATION,

Affected Parties and Appellees.

BRIEF OF APPELLEES

PROVO RIVER WATER USERS ASSOCIATION, METROPOLITAN WATER DISTRICT OF SALT LAKE & SANDY, AND UTAH LAKE DISTRIBUTING COMPANY

IN THE UTAH COURT OF APPEALS

IN THE MATTER OF THE GENERAL
DETERMINATION OF THE RIGHTS TO
THE USE OF WATER, BOTH SURFACE
AND UNDERGROUND WITHIN THE
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Case No. 20160547

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and

PROVO RIVER WATER USERS
ASSOCIATION, METROPOLITAN
WATER DISTRICT OF SALT LAKE &
SANDY, UTAH LAKE DISTRIBUTING
COMPANY, CENTRAL UTAH WATER
CONSERVANCY DISTRICT, and THE
UNITED STATES OF AMERICA IN RE:
GENERAL ADJUDICATION,

Affected Parties and Appellees.

BRIEF OF APPELLEES
PROVO RIVER WATER USERS ASSOCIATION,
METROPOLITAN WATER DISTRICT OF SALT LAKE & SANDY, AND
UTAH LAKE DISTRIBUTING COMPANY

Appeal from the Order Granting Motion for Summary Judgment of Objection filed by
Evan Johnson of the
Third Judicial District Court, Salt Lake County,
Honorable Laura Scott
Civil No. 360057298

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LIST OF PARTIES TO THE PROCEEDING

Evan Johnson

Kent L. Jones, Utah State Engineer

Central Utah Water Conservancy District

Provo River Water Users Association

Metropolitan Water District of Salt Lake & Sandy

Utah Lake Distributing Company

United States of America

East Warm Creek Irrigation Company

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STATEMENT OF JURISDICTION

Evan Johnson appeals from the Third District Court's Order Granting Summary Judgment of Objection Filed by Evan Johnson. The Utah Court of Appeals has jurisdiction to hear this appeal, which was transferred from the Utah Supreme Court. Utah Code Ann. § 78A-4-103(2)(j).

STATEMENT OF THE ISSUES

Provo River Water Users Association (PRWUA) and the Metropolitan Water District of Salt Lake & Sandy (MWDSLs), acting on its own behalf and as attorney-in-fact for Utah Lake Distributing Company (ULDC), join and adopt the State Engineer's Statement of the Issues.

DETERMINATIVE STATUTES

Utah Code Sections 73-4-3, 73-4-4, 73-4-5, 73-4-9, 73-4-11, 73-4-12, 73-4-22, and 73-5-13, which are set forth verbatim in Addendum C to the State Engineer's Brief.

STATEMENT OF THE CASE

PRWUA, MWDSLs, and ULDC join and adopt the State Engineer's Statement of the Case.

STATEMENT OF FACTS

PRWUA, MWDSLs, and ULDC join and adopt the State Engineer's Relevant Facts. They write separately to identify their interest in Mr. Johnson's Objection and this appeal.

PRWUA is a Utah non-profit mutual irrigation corporation that has the right and responsibility to operate, maintain, and care for the Deer Creek Division of the Provo

River Project (PRP). (R. 631.) Pursuant to a 1936 repayment contract, PRWUA is repaying the construction costs of the PRP. (*Id.*) The primary feature of the PRP is Deer Creek Dam and Reservoir, which provides water to users in Wasatch, Summit, Utah and Salt Lake Counties. (*Id.*) The majority (by volume) of the PRP's rights to beneficially use Provo River water depend on the level of Utah Lake. (*Id.*) If the Proposed Determination is amended to recognize D6916, as advocated in Mr. Johnson's Objection, Utah Lake will be adversely affected, impairing PRWUA's rights. (*Id.*)

ULDC is a Utah non-profit mutual irrigation company that holds a secondary right to beneficially use Utah Lake water. (*Id.*) Again, if the Proposed Determination is amended to recognize D6916, Utah Lake water levels will be affected, impairing ULDC's right. (*Id.*)

MWDSLS is a local district created in 1935 that provides wholesale supplemental drinking water to its two member cities, Salt Lake City and Sandy City. (*Id.*) These cities rely on water from MWDSLS to provide drinking water to more than 400,000 inhabitants of the Salt Lake Valley. (*Id.*) MWDSLS is a petitioner for water from the M&I (municipal and industrial) System of the Bonneville Unit of the Central Utah Project (CUP). (*Id.*) This water is stored in Jordanelle and Deer Creek Reservoirs, and, like the PRP, the ability of Central Utah Water Conservancy District (CUWCD) to beneficially use this water without increased demands on other supplies is dependent upon the level of Utah Lake. (R. 631-32.) As such, MWDSLS would suffer impairment as a result of the impairments experienced by CUWCD if the Proposed Determination is amended to recognize D6916. (R. 632.)

MWDSLS is additionally the majority shareholder in PRWUA. (*Id.*) As such, it would suffer impairment as a result of the impairment experienced by PRWUA if the Proposed Determination is amended. (*Id.*) Furthermore, MWDSLS depends on ULDC's Utah Lake water right under a 1958 exchange agreement. (*Id.*) As such, it would be impaired as a result of the impairment to ULDC's right caused if the Proposed Determination is amended. (*Id.*) Each of these impairments would impact MWDSLS's water supply and its ability to provide treated water to its member cities—a function that is of vital public importance.

It was for these reasons PRWUA, MWDSLS, and ULDC opposed the State Engineer's motion seeking approval of the settlement with Mr. Johnson (R. 630-34) and joined the State Engineer's motion for summary judgment (R. 1076-79).

SUMMARY OF THE ARGUMENT

PRWUA, MWDSLS, and ULDC join and adopt the State Engineer's Summary of the Argument.

ARGUMENT

PRWUA, MWDSLS, and ULDC join and adopt the State Engineer's Summary of the Argument. As explained more fully in the State Engineer's Brief, (1) the district court correctly held that D6916 was barred by the general adjudication statutes because the Canal Company did not file it within 90 days of receiving notice as required; (2) Mr. Johnson cannot rely on a late-filed diligence claim (D6916) to attack the original Proposed Determination because the only proper way to contest a proposed determination is by filing a timely objection; (3) Mr. Johnson's due process rights have not been

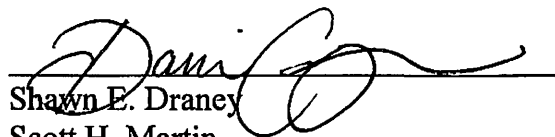
violated because he and the Canal Company received adequate notice and opportunity to be heard throughout the general adjudication process; and (4) Mr. Johnson failed to preserve his arguments based on the State Engineer's historical practices and past statutory interpretation.

CONCLUSION

For the reasons stated in the State Engineer's Brief, the Court should affirm the district court's Order Granting Motion for Summary Judgment of Objection Filed by Evan Johnson.

Dated this 21st day of December, 2016.

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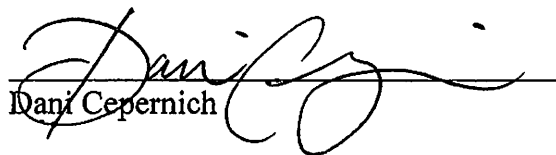
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Dani Cepernich

CERTIFICATE OF SERVICE

I hereby certify that two true and correct copies of the foregoing **BRIEF OF APPELLEES PROVO RIVER WATER USERS ASSOCIATION, METROPOLITAN WATER DISTRICT OF SALT LAKE & SANDY, and UTAH LAKE DISTRIBUTING COMPANY** were mailed by United States mail, first-class postage, prepaid this 21st day of December, 2016 to each of the following:

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ADDENDA

All required documents are included as addenda to the State Engineer's Brief, which PRWUA, MWDSL, and ULDC join and adopt.