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Harmony Ditch Co. v. Ground Water Mgmt. Subdistrict (In re Application for Water Rights)

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SUPREME COURT, STATE OF COLORADO

2 East 14th Avenue
Denver, CO 80203

Case No.: 05SA205

Appeal from the District Court, Water Division 1,
Honorable Roger A. Klein, Case No. 02CW335

FILED IN THE
SUPREME COURT

FEB 16 2006

OF THE STATE OF COLORADO
SUSAN J. FESTAG, CLERK

CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE GROUND WATER
MANAGEMENT SUBDISTRICT OF THE CENTRAL COLORADO WATER
CONSERVANCY DISTRICT IN ADAMS, LARIMER, MORGAN AND WELD
COUNTIES.

Opposers/Appellants:

THE HARMONY DITCH COMPANY; THE LOGAN IRRIGATION DISTRICT, THE ILIFF
IRRIGATION DISTRICT, AND THE MORGAN-PREWITT RESERVOIR COMPANY,
acting by and through the Prewitt Operating Committee; IRRIGATIONISTS'
ASSOCIATION, WATER DISTRICT 1; NORTH STERLING IRRIGATION DISTRICT;
PAWNEE WELL USERS, INC.; CENTENNIAL WATER AND SANITATION DISTRICT;
CITY OF BOULDER; CITY OF ENGLEWOOD; CITY OF STERLING; CITY OF
WESTMINSTER; AND SOUTH ADAMS COUNTY WATER AND SANITATION
DISTRICT,

v.

Applicant/Appellee:

THE GROUND WATER MANAGEMENT SUBDISTRICT OF THE CENTRAL
COLORADO WATER CONSERVANCY DISTRICT,

and

Opposers/Appellees:

HAROLD (HAL) D. SIMPSON, State Engineer, JAMES (JIM) R. HALL, Division Engineer
for Water Division No. 1; THE CITY OF AURORA; CITY OF LAKEWOOD; BRIGHTON
DITCH COMPANY; LOWER PLATTE & BEAVER CANAL COMPANY; THE CITY OF
LONGMONT; CHERRY CREEK WATER USERS ASSOCIATION; RURAL DITCH
COMPANY; GODDING DITCH COMPANY; THE CITY OF LOVELAND; NORTHERN
COLORADO WATER CONSERVANCY DISTRICT; GREELEY IRRIGATION
COMPANY; RIVERSIDE RESERVOIR AND LAND COMPANY; RIVERSIDE
IRRIGATION DISTRICT; THE FARMERS RESERVOIR AND IRRIGATION COMPANY;
PUBLIC SERVICE COMPANY; THE CITY AND COUNTY OF BROOMFIELD;

ST. VRAIN & LEFT HAND WATER CONSERVANCY DISTRICT; THE CITY AND COUNTY OF DENVER; THE HENRYLYN IRRIGATION DISTRICT; CACHE LA POUDDRE WATER USERS ASSOCIATION; THE GREELEY AND LOVELAND IRRIGATION COMPANY; SEVEN LAKES RESERVOIR COMPANY; WATER USERS ASSOCIATION OF DISTRICT NO. 6; THE CITY OF THORNTON; VARRA COMPANIES, INC.; THOMPSON WATER USERS ASSOCIATION; LOWER LATHAM RESERVOIR COMPANY; BIJOU IRRIGATION COMPANY; BIJOU IRRIGATION DISTRICT; THE CITY OF BLACK HAWK; THE CITY OF GREELEY, acting by and through its Water & Sanitation Board; FORT MORGAN RESERVOIR & IRRIGATION COMPANY; and RANGEVIEW METROPOLITAN DISTRICT.

Opposers/Appellants:

HAROLD (HAL) D. SIMPSON, State Engineer, JAMES (JIM) R. HALL, Division Engineer for Water Division No. 1; and CITY OF ENGLEWOOD,

v.

Applicant/Appellee:

THE GROUND WATER MANAGEMENT SUBDISTRICT OF THE CENTRAL COLORADO WATER CONSERVANCY DISTRICT,

and

Opposers/Appellees:

THE HARMONY DITCH COMPANY; ILIFF IRRIGATION DISTRICT, LOGAN IRRIGATION DISTRICT AND MORGAN-PREWITT RESERVOIR COMPANY, acting by and through the Prewitt Operating Committee; IRRIGATIONISTS' ASSOCIATION, WATER DISTRICT 1; NORTH STERLING IRRIGATION DISTRICT; PAWNEE WELL USERS, INC.; CENTENNIAL WATER AND SANITATION DISTRICT; CITY OF BOULDER; CITY OF STERLING; CITY OF WESTMINSTER; SOUTH ADAMS COUNTY WATER AND SANITATION DISTRICT; DUCOMMUN BUSINESS TRUST; THE CITY OF AURORA; CITY OF LAKEWOOD; BRIGHTON DITCH COMPANY; LOWER PLATTE & BEAVER CANAL COMPANY; THE CITY OF LONGMONT; CHERRY CREEK WATER USERS ASSOCIATION; RURAL DITCH COMPANY; GODDING DITCH COMPANY; THE CITY OF LOVELAND; NORTHERN COLORADO WATER CONSERVANCY DISTRICT; GREELEY IRRIGATION COMPANY; RIVERSIDE RESERVOIR AND LAND COMPANY; RIVERSIDE IRRIGATION DISTRICT; THE FARMERS RESERVOIR AND IRRIGATION COMPANY; PUBLIC SERVICE COMPANY; THE CITY AND COUNTRY OF BROOMFIELD; ST. VRAIN & LEFT HAND WATER CONSERVANCY DISTRICT; THE CITY AND COUNTY OF DENVER; THE HENRYLYN IRRIGATION DISTRICT;

CACHE LA POUFRE WATER USERS ASSOCIATION; THE GREELEY AND LOVELAND IRRIGATION COMPANY; SEVEN LAKES RESERVOIR COMPANY; WATER USERS ASSOCIATION OF DISTRICT NO. 6; THE CITY OF THORNTON; VARRA COMPANIES, INC.; THOMPSON WATER USERS ASSOCIATION; LOWER LATHAM RESERVOIR COMPANY; BIJOU IRRIGATION COMPANY; BIJOU IRRIGATION DISTRICT; THE CITY OF BLACK HAWK; THE CITY OF GREELEY, acting by and through its Water & Sewer Board; FORT MORGAN RESERVOIR & IRRIGATION COMPANY; and RANGEVIEW METROPOLITAN DISTRICT.

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REPLY BRIEF
(SELECTIVE SUBORDINATION)

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None cited.

I. STATEMENT OF ISSUES PRESENTED FOR REVIEW

The City of Englewood (“Englewood”) joins in the statement of issues presented for review by the State Engineer.

II. STATEMENT OF THE CASE

Englewood joins in the statement of the case, including the statement of facts, provided by the State Engineer.

III. ARGUMENT

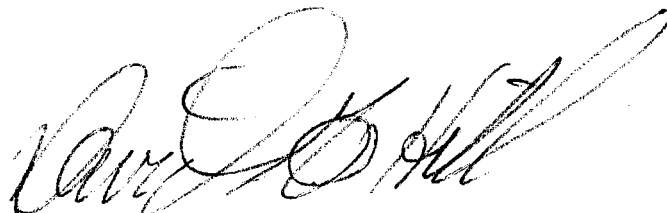
Englewood joins in the reply brief of the State Engineer (“Engineer”) in response to the argument put forth by Denver Water, City of Aurora, and amici that this issue is moot. In reply to the substantive issues raised in the answer briefs, Englewood relies upon the arguments presented in its opening brief. With respect to Denver's contentions concerning the hypothetical situations posed in Englewood's opening brief, Englewood states that it seeks to avoid dicta (or a holding) with respect to such a hypothetical until a trial court has heard the issue and there is a factual record presented to the Supreme Court. Englewood is not attempting to obtain any sort of advisory opinion or ruling on a case not yet ripe for review; rather, Englewood asks that the Court not make any sweeping pronouncements regarding the acceptability of "normal" subordinations in a case which does not squarely raise the issue.

IV. CONCLUSION

Englewood joins in the Engineer's reply brief regarding the issue of mootness, and further asks the Court to make no pronouncements concerning "normal" subordinations.

Dated: February 15, 2006

BERG HILL GREENLEAF & RUSCITTI
LLP

A handwritten signature in black ink, appearing to read "David G. Hill", written over a horizontal line.

David G. Hill

SPECIAL COUNSEL FOR OBJECTOR
THE CITY OF ENGLEWOOD

CERTIFICATE OF SERVICE

I certify that on February 15, 2005, a true and correct copy of the foregoing **REPLY BRIEF (SELECTIVE SUBORDINATION)** was served electronically by LexisNexis and/or by the United States mail, postage prepaid, addressed to the following:

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