

9-1-2012

## Town of Manhattan v. Dep't of Natural Res. & Conservation, 276 P.3d 920 (Mont. 2012)

Natalia Schissler

Follow this and additional works at: <https://digitalcommons.du.edu/wlr>

---

### Custom Citation

Natalia Schissler, Court Report, Town of Manhattan v. Dep't of Natural Res. & Conservation, 276 P.3d 920 (Mont. 2012), 16 U. Denv. Water L. Rev. 215 (2012).

This Court Report is brought to you for free and open access by the University of Denver Sturm College of Law at Digital Commons @ DU. It has been accepted for inclusion in Water Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact [jennifer.cox@du.edu](mailto:jennifer.cox@du.edu), [dig-commons@du.edu](mailto:dig-commons@du.edu).

costs and fees. Montana appealed several portions of the district court's judgment to the Montana Supreme Court.

The Court first addressed Montana's claim that district court erred in its ruling that Montana did not own the lands in trust for public schools. The Court analyzed the claim in light of the equal footing doctrine, noting that under the doctrine, Montana took the title to the real property underlying the beds of its navigable waters through its state sovereignty rather than through a federal grant. Therefore, upon statehood, Montana state law governed the land. The parties agreed that the islands were formed by vertical accretion within a navigable riverbed after statehood, and therefore, state law governed the lands. The Court also applied section 77-1-102(1)(b) of the Montana Code, which states Montana holds land beneath its navigable waters in trust for public schools, and reversed the district court's ruling on this point.

Second, the Court addressed Montana's argument that the district court erred by refusing to declare a surveyed boundary between the islands and adjacent private lands based on the State's evidence. Montana had introduced a metes and bounds description of the land in addition to the surveys and aerial photos it provided in its original claim. The Court held this evidence sufficient to support a detailed description of each island and therefore the district court erred in not entering a legal description of the land in the final judgment.

Third, the Court held the district court violated Montana's due process right when it required, *sua sponte*, Montana to reimburse Defendants for taxes paid and improvements made to the land. The Court noted that the district court violated the due process notice right when it allowed damages for unjust enrichment when the Defendants did not assert a claim for damages under this theory.

Finally, the Court awarded Montana certain costs of the case because it was the prevailing party in the quiet title action. Section 25-10-101(5) of the Montana Code provides a plaintiff who receives a favorable judgment in an action that involves the title of real estate to recover the expenses of litigation; therefore, the Court held Montana was owed the cost of producing the survey of the boundary of the land at issue.

Accordingly, the Montana Supreme Court reversed and remanded the district court's judgment for further proceedings consistent with its holdings.

*Emily Murphy*

**Town of Manhattan v. Dep't of Natural Res. & Conservation, 276 P.3d 920 (Mont. 2012)** (holding the Department of Natural Resources and Conservation had legal authority to request applicant's pre-1973 historical use information prior to reviewing its application for a change of an existing water right, and that without such information, the Department had discretion to terminate the application as incorrect and incomplete).

The Town of Manhattan ("Manhattan") filed an application with the Montana Department of Natural Resources and Conservation ("Department"), seeking approval for changes to its municipal well water rights. Manhattan sought to designate several of its wells as alternate points of diversion for existing water claims it filed in Montana's water rights adjudication process. Man-

hattan sought the Department's authorization to withdraw a total of 646 acre feet of water per year from any combination of five wells, and to expand its place of use to include the geographic area within which Manhattan is authorized to adopt a growth policy. All of the well rights in question had been established prior to July 1, 1973.

The Department requested additional information concerning Manhattan's pre-1973 historical use of the well rights. Specifically, the Department requested a map of Manhattan's service area and a list of each water hook-up and the volume of water delivered to each hook-up, as those conditions existed prior to July 1, 1973. Manhattan contended such information was irrelevant to its application because Manhattan's water rights included the right to expand water use as needed for municipal growth.

When Manhattan failed to comply with the Department's request, the Department dismissed Manhattan's application as incorrect and incomplete. Manhattan appealed the ruling to the Eighteenth Judicial District Court, Gallatin County, Montana, which affirmed the Department's ruling. Manhattan then appealed to the Montana Supreme Court.

The Court focused its analysis on the requirements of the Montana Water Use Act ("Act"). The Act recognizes lawful water rights that existed prior to July 1, 1973, prescribes an application procedure to change the existing water rights, and allows the Department to adopt rules to implement the Act. Pursuant to this authority, the Department adopted a rule ("Rule") that required applicants intending to change pre-1973 water rights to provide information regarding the historical use of the rights prior to July 1, 1973.

Manhattan did not challenge the validity of the Rule. Instead, it argued that the Department assigned improper weight to its historical use information when it reviewed Manhattan's application. Manhattan argued, pursuant to a 1985 Temporary Preliminary Decree from the Montana Water Court, that its existing municipal water rights included expansion of water use to satisfy municipal growth. Manhattan argued the Department's review of its historical use information would be irrelevant. However, because the Department terminated the application as incorrect and incomplete without making a decision on the application, the Court held none of Manhattan's arguments were ripe for review. The Court also held the Department properly followed its existing Rule.

Accordingly, the Court affirmed the district court's decision that the Department had the requisite authority to request historical use information from Manhattan in connection with reviewing Manhattan's application.

*Natalia Schissler*

## NEBRASKA

*In re 2007 Administration of Appropriations of the Waters of the Niobrara River*, 820 N.W.2d 44 (Neb. 2012) (holding (i) the law-of-the-case doctrine did not prevent junior water rights holders from objecting to issues over the burden of proof and the Department of Natural Resources' alignment as a party litigant; (ii) the alignment of the Department as an adverse party was proper in a case where plaintiffs challenged its method of administration; (iii)