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Berman v. Yarbrough, 267 P.3d 905 (Utah 2011)

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read, “a right for which a certificate has been issued pursuant to N.R.S. 533.425.” Therefore, under the clarified law, a groundwater right for which a certificate of beneficial use has been issued is still subject to the State’s forfeiture proceedings. The legislative amendments clarified that the statute’s forfeiture provision applied to groundwater rights that had already been issued a certificate of beneficial use (a certificated right), instead of those rights merely held under a permit (a permitted right). Notably, permitted rights could be lost by cancellation under separate statute. In enacting these amendments, the Legislature stated that it intended to “clarify rather than change” the statute’s application. Because the Legislature was clear that it was “clarifying” the law, the Court held that the amended statute has retroactive effect.

Under a separate statute (N.R.S. 533.380), the State Engineer has the express power to grant a permit holder up to ten consecutive years to put groundwater rights to beneficial use before effecting a forfeiture of those rights. Without the clarification regarding certificated rights, the five-year provision in the amended statute would have been in direct conflict with this provision.

Thus, notwithstanding the fact that Jackrabbit failed to put its groundwater to beneficial use for five years, its permit remained in good standing. Because the Legislature clarified that a permitted right was not subject to the same forfeiture proceedings as a certificated right, Jackrabbit’s permit had not been forfeited and Jackrabbit was entitled to apply to amend its groundwater permit.

Accordingly, the Court affirmed the district court’s denial of the Tribe’s challenge.

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Berman v. Yarbrough, 267 P.3d 905 (Utah 2011) (holding that a Motion to Enforce an adjudicated water right must be based on a court order directing a party to perform a specific act, and cannot be used to address matters beyond the scope of the underlying judgment).

Daniel L. Berman owned water rights in both Utah and Wyoming that he used to support his property in Wyoming. The Smith Fork River supplied these water rights, which entitled Berman to divert and store water in China Lake, located in Utah. Until 2002, Wyoming water officials had recognized Berman’s Utah water rights for 131 acre-feet under a 1901 priority and 87 acre-feet under a 1935 priority. In 2002, after determining that Berman’s 1901 water right was not properly documented, these same officials requested that Berman file a secondary permit in Wyoming to record his Utah water rights. Berman did not comply, and then Wyoming water officials began only providing the 1935 water right to the Wyoming property.

Berman filed suit in Utah's Third District Court against John Yarbrough, the Wyoming Lead Hydrographer, to compel supply of the adjudicated water to his Wyoming property. In 2007, the court issued a Final Order recognizing both the 1901 and 1935 water rights and determining that Berman was entitled to 500 acre-feet of storage water from China Lake. However, the court refused to rule on the issue of compelling Wyoming officials to comply with the order and found that the court did not have authority to dictate the conduct of Wyoming officials. Neither party appealed this decision.

In 2009, another Wyoming water official refused to supply Berman's property with water from China Lake because the official claimed the water was stored out of priority. Berman responded by filing a Motion to Enforce, asking the court to order Yarbrough and other Wyoming water officials to comply with the district court's Final Order and supply his Wyoming property with the adjudicated Utah water. In 2010, the district court issued an order denying the motion, again declaring Utah water rights not subject to Wyoming's priorities, and denying Utah jurisdiction to order Wyoming water officials. Berman appealed.

Berman first argued that the district court erred in denying the Motion to Enforce. The Utah State Supreme Court recognized that in this context, a Motion to Enforce is only appropriate when a party fails to comply with a legal obligation arising from a court order directing a party to perform a specific act. This would require the order to be an unequivocal mandate, as a court's power to enforce a judgment is limited to the four corners of the judgment. Absent this mandate for a party to undertake a certain action, a Motion to Enforce is procedurally improper. The court denied Berman's Motion to Enforce because it was based on the Final Order, which did not contain an unequivocal mandate, and because the Motion attempted to compel other Wyoming officials who were not party to the initial suit.

Berman also argued that the Motion to Enforce was really a petition for injunctive relief. While the court recognized that a petition for injunctive relief based on a declaratory judgment was a valid pleading, it held that Berman's motion failed to meet the requirements of a petition. Petitions for injunctive relief must be styled as a petition, require the identification of a standard for issuing injunctions, and be based on an underlying judgment that contains an unequivocal mandate for a party to undertake a certain action. Berman's motion failed to satisfy any of these requirements.

The court concluded that the Final Order only quantified Berman's Utah water rights and did not direct any Wyoming officer to undertake any action. For this reason, the Motion to Enforce was procedurally improper as an attempt to short-circuit the usual adjudicative process. The court also refused to construe the motion as a petition for injunctive relief as it failed to meet the requirements of a valid petition.

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