

Cherokee Metropolitan District Legal Matrix

Springs East Airport - 07GW69 / 09CV4325

Martha Whitmore, Esq. (Lead)
Kevin Donovan, Esq.

History:

Over the past two months Cherokee has been working towards settling this complaint. The settlement agreement includes protection of the lease provision limiting combined pumping to 100 AF per year. Once the settlement is completed, Cherokee will dismiss its appeal of the ruling for Springs East Airport by the Ground Water Commission.

Status:

Rather than continue litigation, the parties agreed the action will be dismissed; issues related to the lease will be resolved in the future.

Ellicott Area Denver Basin Lease Cases - 05GW15-17

Martha Whitmore, Esq. (Lead)

History:

Cherokee submitted 9 applications for determinations of Water Rights that allow the withdrawal of groundwater from the Laramie-Fox Hills, Arapahoe, and Denver Basin Aquifers. The issue raised by various objectors was whether the multiple Hayes leases included the right to withdraw the water from the Denver Basin aquifers, or whether the intent of the leases was to limit development of the water to tributary alluvial waters. Cherokee settled with many of the objectors, and the ruling of hearing officer, confirmed by the Ground Water Commission, included the Denver Basin water beneath these lands. There were some landowners who did not settle with Cherokee. The hearing officer ruled in their favor as to the intent of the Hayes leases and the Ground Water Commission upheld the determination of the hearing officer on appeal. The appeal to the Ground Water Commission was costly, and given the likely limitations by the UBSMD on exportation of the water, the Board has made a decision not to continue appealing the Order in the District Court, avoiding additional legal fees on this matter.

Status:

Case has been completed, and the decision made not to further appeal to the District Court.

Sweetwater Wells - 98CW80 (Recharge vs. Replacement)

Kevin Donovan, Esq. (Lead)
Martha Whitmore, Esq.

History:

Cherokee has been in litigation over various issues involved with the Sweetwater wells for a number of years. The 1999 Stipulation entered into to settle the diligence application on conditional rights associated with the Sweetwater wells has been the source of significant litigation, and the Supreme Court has now been asked to interpret the Stipulation and its application three times. Current litigation related to this case and the 1999 Stipulation includes an assertion by the Upper Black Squirrel Management District that wells 14-17 have been abandoned as the applications to make them absolute were not filed in accordance with the Stipulation. This motion is on appeal to the Colorado Supreme Court, has been briefed and argument heard, and we are currently waiting for a ruling. The impact of the Supreme court upholding the ruling of the water court as to abandonment could have a very devastating impact on the overall water resources of the District, so our team of attorneys have spent quite a lot of time on the effort to have the water court ruling overturned. At the same time, the UBS also moved the water court for a ruling in this case, based on an interpretation by the UBS of the Stipulation, that impacts the augmentation plan filed jointly by Cherokee and Meridian. The augmentation plan is on

Status:

We are waiting for a ruling from the Colorado Supreme Court on the status of wells 14-17. On the issue of what effect, if any, the 1999 Stipulation has on the joint augmentation plan with Meridian regarding "recharge" v. "replacement" obligation, Cherokee and UBS have filed their briefs in the case. Meridian Service Metropolitan District, Cherokee's partner in the new wastewater treatment and reclamation facility file a motion to intervene in an effort to protect their rights to their water since they were not a party to the 98CW80 litigation or the related 1999 Stipulation and Release. Division 2 Water Court Judge Maes has denied the motion and Meridian has appealed that ruling to the State Supreme Court, which has put the case on hold as to that aspect pending a ruling on that issue by the Supreme Court. Cherokee continues to be hopeful that settlement discussions with the UBS District will bear progress and a plan by which Cherokee and the UBS District can work together on a modified replacement and recharge plan that will ensure the protection and conservation of the water resources that we share. Update May 19, 2011 - Cherokee has recently submitted a supplemental brief to the court regarding comments from the Ground Water Commission. The brief is designed to further

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Duncan Well - 10CV2878

Kevin Donovan, Esq. (Lead)

History:

On May 3, 2010 Cherokee and Duncan filed a joint complaint against the Upper Black Squirrel regarding the ability to export the water from the Duncan Well and to quiet title to the well. The Upper Black Squirrel has the authority to restrict any exportation of water outside the Upper Black Squirrel Basin boundaries. The litigation was agreed upon as part of the purchase agreement for the Duncan Well as a means of ensuring that Cherokee will be able to put the well to beneficial use in our municipal delivery and supply system prior to the final purchase closing.

Status:

The District is discussing with the parties involved on an agreement in which, water can be purchased and the parties will not have to continue this dispute in court. An agreement is in the works and there should be a signed agreement by the end of the July.

Kane Water Right & Kane No. 1 Sweetwater Well - 09CV2430 / 10-13110

Kevin Donovan, Esq. (Lead)

Martha Whitmore, Esq.

Bankruptcy

Bruce Coles, Esq.

History:

The Kane Water Right is a unique and senior water right from the Sweetwater well field of which Cherokee is the senior water rights holder. The Kane Water Right was created by one of the original members of the Sweetwater Development Corporation, Mr. Andy Kane, to ensure that he would have senior access to the first 200 acre feet of water from any of the Sweetwater wells and their distribution system. In 2006, Cherokee was extremely water short and could not meet the commitments that it had made to current and future customers. Cherokee implemented rules that required developers to acquire water at their own cost and bring it into the Cherokee system in order to support their development projects. Two thirds of the 200 acre feet of Kane Water Right was purchased by several projects and deeded to Cherokee for service. Cherokee had agreed to purchase the remaining 50 acre feet from PLW, Inc., however PLW has not been successful in acquiring the right to re-drill the Sweetwater structure known as Kane No. 1, which is partially owned by Cherokee and in part by the Farmer family. The Farmer family has refused to sign the re-drill permit which has created a substantial dispute between Cherokee, PLW, Inc., and the Farmers with numerous claims of breach of contract and breach of duty.

Status:

The remaining 50 acre feet of Kane water is now an asset subject in Chapter 11 Bankruptcy Case 10-13110 and PLW has alleged that Cherokee's failure to purchase and or serve the Kane water has contributed to its financial troubles. The Kane Water Right is like a water rights lien against the Cherokee Sweetwater System and thus Cherokee has negotiated with the bank holding the Kane Water Right as collateral on a loan to PLW and come to a proposed agreement to purchase the remaining 50 acre feet for 40% of the price previously paid by Cherokee in 2006. Currently, this proposed agreement between the bank and Cherokee is on hold due to a challenge by the Farmer family. The litigation over breach of duty and contract claims is on hold pending the resolution of the Bankruptcy Court matters.

Cimarron Hills Townhouse Association, Inc. Complaint - 10C27110

Kevin Donovan, Esq. (Lead)

History:

During the summer of 2010 there was a water leak in the clubhouse at the Cimarron Hills Townhouse Association. This caused high water usage and subsequent bills. The townhouse association did not pay the water bills.

Status:

Currently, Cherokee has filed a complaint against Cimarron Hills Townhouse Association requesting payment for the past due bills. Mediation took place in the middle of June and it was decided that this case would go forward to trial. The one day trial is set for July 25.

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Legal Malpractice Complaint Against Felt Monson & Culichia

Tamara Vincelette, Esq. (Lead)

History:

From July 2006 to July 2010, the law firm of Felt Monson & Culichia, LLC represented Cherokee as General Counsel, Title 32 Special District Counsel, and Water Rights Counsel. The firm replaced Mr. Peter Susemihl, the former Cherokee legal counsel in the summer of 2006 and followed up on Mr. Susemihl's legal work. During the firm's professional service to the District, the major element of malpractice that surfaced was the failure to timely file diligence in the Division 2 Water Court with respect to preserving the water rights associated with Cherokee's well no. 17 as required by the 1999 Stipulation and Release by and between Cherokee, Goss, and the Upper Black Squirrel Management District. Division 2 Water Court made a finding of abandonment of Well 17's conditional water right. The court ruling of abandonment of the water right associated with Well No. 17 as a result of the late filing was ultimately noticed by the district and thereafter led the Board of Directors to initiate a legal malpractice suit against the firm. The Board authorized the malpractice suit to recoup damages as a result of the negligence. In the scope of developing the claims and the investigation of actions with respect to the proposed replacement plan and Well No. 17, other areas of concern were uncovered. The attorney handling

Status:

Currently, legal counsel is in the process of discovery with the legal malpractice insurance counsel representing the firm Felt Monson & Culichia. Their insurance companies, one of which was involved in the Susemihl case have retained the same legal council that provided the defense in that prior case. It should be noted that current counsel is being paid at an hourly rate and not on a contingency fee basis in attempt to realize the best possible return for Cherokee and it's customers, which will be essential to solving the water supply shortage created by the loss of water resources. Malpractice counsel is hopeful that a favorable resolution can be reached. The District will provide further updates as this case materializes. Updated April 15, 2011 - Channel 11 has done a news story relating to the allegations surrounding the allegations contained in the complaint and Cherokee is cooperating in answering any concerns that may benefit the residents of the district.

Sand Creek Augmentation Plan

Cherokee has a pending application to amend the previously approved augmentation plan for the Sand Creek wells that are used primarily to irrigate the golf courses in the District. The District is currently operating under a Substitute Water Supply Plan (SWSP), which is an annual and temporary approval to augment for the water delivered through the District's Sand Creek Irrigation Wells, pending approval by the water court. Several interested parties filed objections to the application and we are working with the objectors, their attorneys and engineers to address the concerns and resolve the objections. Update - July 5 - Most of the objections from parties have been resolved. We are still working through some issues raised by the State Engineer, but hope to have a proposed, stipulated decree ready for the water court to review, before the end of July.

Tierra Vista Housing Project

Kevin Donovan, Esq. (Lead)
Martha Whitmore, Esq.

Following a formal notice of Delinquent Tap Fee Payment in December, Tierra Vista paid their installment tap fee payment on December 29th and the associated late fee thereafter on January 12, 2011. Updated April 15, 2011 - The district manager has made substantial progress in negotiating a rate change consistent with other Cherokee customers.

Wastewater Homeowner Basement Backup

Kevin Donovan, Esq. (Lead)

History:

A customer dispute regarding the insurance payment for damages to their basement resulting from wastewater backup where a tree root caused the sewer main to plug and subsequently filled the homeowners property with overflowing sewage.

Status:

There is currently a discrepancy with the value of his personal property and the parties are working with the insurance company to seek resolution to the dispute.

Water Quality and Wastewater Issues

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Martha Whitmore, Esq. (Lead)

History:

Pre-treatment violations - Cherokee became aware of discharges into the wastewater treatment plant that did not meet the pre-treatment requirements and threatened the integrity of the wastewater system. Cherokee has been working with its technical team to contact all non-domestic wastewater users to ensure that all dischargers are aware of, and in compliance with, the pre-treatment regulations and requirements.

Ground Water Quality / Illegal Discharges from Ponds - Cherokee also became aware of illegal discharges, potentially impacting ground water, from ponds in the area and is working closely with the Colorado Department of Public Health and Environment to ensure that appropriate remediation and enforcement actions are taken to ensure that there are no further illegal hazardous waste discharges.

Status:

Pre-treatment violations - The Pretreatment Wastewater Violations for illegal discharge to Cherokee's municipal domestic wastewater collection and treatment system is being investigated with support from GMS Engineering. Cherokee has contacted the dischargers most likely to be causing the illegal discharge to ensure compliance, and is coordinating with the Colorado Water Quality Control Division on compliance and enforcement procedures.

Ground Water Quality / Illegal Discharges from Ponds - Cherokee is coordinating with CDPHE to ensure that the violator, Diamond Metals, conducts necessary and appropriate ground water monitoring, and completes remedial actions if necessary, to ensure the integrity of the quality of ground water which is the source of Cherokee's water supply.

Cherokee continues to sample and track illegal residential and commercial discharges to the domestic wastewater system while working with the permitted industrial customers to ensure their compliance.

Special Projects

Litigation on Design and Construction claims regarding the infiltration Basins

Legal Team
General Manager Cherokee is reviewing information concerning the construction and the development of the infiltration galleries. Cherokee is considering moving forward with litigation seeking damages against the parties involved due to the ponds not working properly and needing to be repaired. The litigation is in the early stages and the legal team is going through reports and requesting information to gain a clear perspective of the route to take. No court action has been taken and no party has been served with a complaint.

Long Term Water Supply Planning

Legal Team
General Manager Cherokee is reviewing its current water supply assets, developing a long term water supply needs assessment, and engaging in a planning process to ensure that it has a sufficient water supply to serve the customers of Cherokee for decades to come. As part of that effort, Cherokee is reviewing the short and long term water supply needs of the District, taking into account the pending litigation with UBSMD and potential implications for existing water supplies; the long term viability of ground water sources; the options for acquiring renewable sources of water; delivery systems for transporting water; and the costs of providing water in the future. It is the goal of this planning effort to ensure that all new and existing customers pay their fair share of the costs of developing a stable water supply to find cost efficiencies in cooperative efforts with other regional water suppliers.

Arkansas River Water Exploration Project

Martha Whitmore, Esq. As part of the Board's direction to staff and legal counsel to explore options for renewable sources of water available for use in Cherokee, we are currently reviewing several possible sources of water and delivery of Arkansas River water. This is an on-going project of significant long-term importance to all of Cherokee's customers.

Southern Delivery System Exploration Project

Martha Whitmore, Esq. Participation in the SDS project is one possible opportunity being explored to allow Cherokee to add renewable water supplies to its system.

Southeast Conservancy District Annexation

Martha Whitmore, Esq. Annexation into SECWCD is one possible avenue to further renewable water opportunities.

Super Ditch Water Leasing Program

Martha Whitmore, Esq. The "Super Ditch" proposal is another potential opportunity being explored to allow Cherokee to add renewable water supplies to its system.

Water Right Acquisition and Investigation

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Martha Whitmore, Esq. (Lead) We are reviewing a number of water rights being offered for sale, and exploring the feasibility of a number of options both
Kevin Donovan, Esq. for acquiring, developing and delivering renewable water supplies.

Upper Black Squirrel Creek Groundwater Management District Settlement Discussions

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Martha Whitmore, Esq. (Lead) Kevin Donovan, Esq.	Various disagreements with UBS have led to hostile relations and costly litigation. Settlement discussions have been initiated by Cherokee to build a better relationship with the UBS and to eliminate the cost and uncertainty of litigation.
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