

ADVANCE SHEET HEADNOTE
April 8, 2002

No. 01SA56, The Board of County Commissioners of the County of Park and James B. Gardner and Amanda Woodbury v. Park County Sportsmen's Ranch: Mootness - Declaratory Judgments - Water Court - Section 37-92-305(9)(b) - Section 37-92-305(9)(c) - Section 37-87-101(1) - Section 37-92-103(10.5) - Underground Recharge, Augmentation, and Storage - Conjunctive Use - Tributary Aquifer Hydrology - Statutory Construction - Trespass - Colo. Const. art. XVI, secs. 14 and 15 - Eminent Domain - Constructed Waterworks

Park County Sportsmen's Ranch (PCSR) and the Park County Board of County Commissioners, James Gardner, and Amanda Woodbury (Landowners) own property in South Park, Colorado. PCSR filed an application for a conditional water rights decree and plan for augmentation and exchange in which PCSR proposed to store water in underground aquifers underlying approximately 115 square miles in South Park. The Landowners opposed the water rights application and sought a declaratory judgment that the storage of water in the aquifers underneath their land would constitute a trespass. Upholding the water court, the Supreme Court holds that: (1) artificial recharge activities involving the movement of underground water into, from, or through tributary aquifers underlying surface lands of the Landowners would not constitute a trespass; and (2) PCSR's proposed project would not require the Landowners' consent or condemnation and the payment of just compensation under the provisions of Article XVI, sections 14 and 15, section 37-87-101(1), or the other statutes the Landowners invoke, because the project did not involve the construction of any of the facilities on or in the Landowners' properties.

ADVANCE SHEET HEADNOTE
December 17, 2001 As Modified February 11, 2002

No. 00SA211, Empire Lodge Homeowners' Association v. Anne Moyer and Russell Moyer: Water Court - Section 37-80-120 - Substitute Supply - Section 37-92-305(8) - State Engineer Authority - Exchanges - Augmentation Plans - Out-of-Priority Diversions - Adjudication - Call - Futile Call - Priority - Legislative History - Statutory Construction - Standing - Injury - Injunction

Empire Lodge Homeowners' Association operated unadjudicated out-of-priority diversions to fill fishing and recreation ponds. It sued Anne and Russell Moyer, downstream senior appropriators, invoking the futile call and enlargement doctrines. The Moyers counterclaimed for an injunction to halt Empire Lodge's diversions. The Water Court ruled in favor of the Moyers and ordered an injunction against Empire Lodge's out-of-priority diversions until it obtained an augmentation plan decree from the water court.

On appeal, Empire Lodge sought to set aside the order enjoining its diversions. The Supreme Court holds that: (1) Empire Lodge lacked standing in water court to invoke the futile call or enlargement doctrines against the Moyers' water use; (2) Empire Lodge's out-of-priority diversions required an augmentation plan decree authorizing them; and (3) the Water Court did not abuse its discretion in enjoining Empire Lodge's out-of-priority diversions pending an adjudication authorizing them.