

Presentation on theme: "Injunctions and other Remedies in Water Right Proceedings Professor Cynthia Ford The University of Montana School of Law October 02, 2009."— Presentation transcript:

☐ Jurisdiction Over Water Rights in Montana

The Montana Water Court has exclusive jurisdiction over the final determination of "existing water rights" (i.e. water right claims with Pre-July 1, 1973, priority dates). See § 85- 2-215, MCA. The District Courts have jurisdiction over water distribution controversies and "may grant injunctive or other relief necessary and appropriate to preserve property rights or the status quo pending issuance of the final decree." The District Court also has jurisdiction over ditch easement conflicts. See § 70- 17-112, MCA.

☐ MT Water Rights Enforcement Statutes

MCA § 85-2-114. Judicial enforcement.

MCA § 85-2-309. Hearings on objections -- jurisdiction.

Procedure for Enforcement under 85- 2-114

Department may petition for court order to cease-and-desist or for TRO, or preliminary or permanent injunction TRO requirements substantially relaxed County Attorney, AG also authorized to seek relief even without request by department

MCA § 85-2-114. Judicial enforcement (1) If the department ascertains, by a means reasonably considered sufficient by it, that a person is wasting water, using water unlawfully, preventing water from moving to another person having a prior right to use the water, or violating a provision of this chapter, it may petition the district court supervising the distribution of water among appropriators from the source to: (c) issue a temporary, preliminary, or permanent injunction to prevent a violation of this chapter. Notwithstanding the provisions of Title 27, chapter 19, part 3, a temporary restraining order must be granted if it clearly appears from the specific facts shown by affidavit or by the verified complaint that a provision of this chapter is being violated.

No Private right for Penalties, Fees Under 85-2-114

Faust v. Utility Solutions, 2007 –No private right of action for civil penalties under Water Use Act –No private right for attorneys’ fees –Undecided if private right to injunctive relief under Water Use Act

Injunctions v. Declaratory Judgments Injunctions –Direct Order of Court –Disobedience is contempt: jail, fine, both –Irreparable Injury Rule Declaratory Judgment –Declares respective rights –No contempt –Convert to Injunction

Irreparable Injury Rule Applies to equitable remedies, injunctions No equitable relief where adequate remedy exists at law Same as: irreparable injury necessary Water loss is irreparable injury Hence, relaxation of rule in this context

Injunctions ∨ MCA § 27-19-101. Definition of injunction -- by whom granted. An injunction is an order requiring a person to refrain from a particular act. The order may be granted by the court in which the action is brought or by a judge thereof and, when made by a judge, be enforced as the order of the court.

Injunctions in General ∨ Injunctions may be affirmative: “Defendant must ...” ∨ Injunctions may be negative: “Defendant must not...” ∨ Equitable, so no right to jury trial ∨ Court should issue ∨ Findings of Fact ∨ Conclusions of Law ∨ Order/Judgment

Types of Injunctions: TROs MCA § 27-19-314. Temporary restraining order. Where an application for an injunction is made upon notice or an order to show cause, either before or after answer, the court or judge may enjoin the adverse party, until the hearing and decision of the application, by an order which is called a temporary restraining order.

Types of Injunctions: TROs Temporary Restraining Order (TRO) –Emergency –Limited temporally –Usually very hard to get, lack of information –BUT SEE MCA 85-2-114: “ Notwithstanding the provisions of Title 27, chapter 19, part 3, a temporary restraining order must be granted if it clearly appears from the specific facts shown by affidavit or by the verified complaint that a provision of this chapter is being violated.”

Eliason v. Evans (1978) It is well settled that a temporary restraining order is an interlocutory order issued often on an ex parte basis. The restraining order is intended to preserve the status quo until a show cause hearing can be held. A temporary restraining order is effective only for the reasonable time necessary to give notice and schedule a hearing to determine the appropriateness of an injunction pendente lite.

It is well established that substantive property rights cannot be adjudicated in a summary way. ..In the same vein, water rights should not be resolved in a preliminary proceeding for injunctive relief. The problems inherent in trying the merits of a case at an injunctive hearing are obvious. Typically, an injunction, or a motion for an injunction is filed very early in the proceedings, usually before discovery has been completed and often before the pleadings of the parties are complete. At such juncture, the District Courts normally do not have sufficient evidence to conclusively resolve the merits of the case.

27-19-316. Contents and filing of restraining order granted without notice. Each temporary restraining order granted without notice must: (1) be endorsed with the date and hour of its issuance (2) be filed immediately in the clerk's office and entered in the record; (3) define the injury and state why the injury is irreparable and why the order was granted without notice; and

(4)...expire by its terms within the time after entry, not to exceed 10 days, as the court or judge fixes. TRO without notice

Preliminary Injunctions Also before trial Longer than TRO Bridge gap between TRO and trial More information to court via hearing, evidence from both sides Evidence from TRO and preliminary injunction hearings need not be repeated at trial

An injunction order may be granted in the following cases: (1) when it appears that the applicant is entitled to the relief demanded and the relief or any part of the relief consists in restraining the commission or continuance of the act complained of; MCA 27-19-201 When preliminary injunction...

(2) when it appears that the commission or continuance of some act during the litigation would produce a great or irreparable injury to the applicant; (3) when it appears during the litigation that the adverse party is doing or threatens or is about to do or is procuring or suffering to be done some act in violation of the applicant's rights, respecting the subject of the action, and tending to render the judgment ineffectual;

(4) when it appears that the adverse party, during the pendency of the action, threatens or is about to remove or to dispose of the adverse party's property with intent to defraud the applicant, an injunction order may be granted to restrain the removal or disposition;

Preliminary Injunction/TRO Procedure Open case with complaint Motion for TRO or Preliminary Injunction Affidavit(s) in Support of Motion (Facts) Brief in Support of Motion (Law) Notice of Hearing Proposed Findings, Conclusion, Order Bond

Permanent Injunctions Issued after trial May be limited or infinite in time "Permanent" means the court has issued its final ruling Easier to get than TRO or preliminary injunction "Irreparable Injury" rule Satisfied by statute, water irreplaceable

Temporary Restraining Orders - Conclusions District Court is likely to grant temporary restraining orders: when a pooling agreement for construction of the irrigation system created an easement for repair and maintenance and the cost-sharing agreement did not limit the duration of the easement. (Espy) when the DNRC can not determine whether the applicants' proposed change would adversely affect the use of the Tribes' rights in the absence of a quantification of the Tribes' reserved rights. (Clinch-2007)

Temporary Restraining Orders - Conclusions SUPREME COURT is likely to affirm: when a pooling agreement for construction of the irrigation system created an easement for repair and maintenance and the cost-sharing agreement did not limit the duration of the easement. (Espy) MTSC is unlikely to affirm: when the District Court exceeds its authority and "fills in " a water decree with further delineation and a water purchase contract precluded district court from requiring irrigator to forfeit the remainder of his entitlement during water shortfall. (Deadman's) because State appropriative water rights are based on actual use and are governed by state law; Indian reserved water rights are established by reference to the purposes of the reservation, rather than to actual, present use of the water, and the basis for an Indian reserved water right is the treaty, federal statute, or executive order setting aside the reservation. (Clinch-2007)

Attorneys' Fees in Water Litigation MCA § 85-2-125. Recovery of costs and attorney fees by prevailing party (1) If a final decision of the department on an application for a permit is appealed to district court, the district court shall award the prevailing party reasonable costs and attorney fees. (2) The party obtaining injunctive relief in an action to enforce a water right must be awarded reasonable costs and attorney fees. For the purposes of this section, "enforce a water right" means an action by a party with a water right to enjoin the use of water by a person that does not have a water right.

Attorneys' Fees Available Under 70- 17-112. (1) A person with a canal or ditch easement has a secondary easement to enter, inspect, repair, and maintain a canal or ditch.(2) No person may encroach upon or otherwise impair any easement for a canal or ditch...(5) If a legal action is brought to enforce the provisions of this section, the prevailing party is entitled to costs and reasonable attorney's fees.

Attorneys' Fees awarded to prevailing party Awarded in Ditch Litigation: –a party must successfully prevail on all claims raised pursuant to MCA §70- 17-112 in order to be a prevailing party entitled to attorney's fees under MCA § 70-17-112(5) Property owner, which prevailed in action alleging interference with its easement rights in reservoir, attendant ditch, distribution system, and interference of its secondary easements to access the interests, was entitled to attorney fees and costs. (Sitz) Because plaintiff successfully prevailed on all claims raised pursuant to MCA § 70-17-112, he is entitled to his attorney's fees and costs pursuant to MCA § 70-17-112(5), regardless of the fact that he was not the prevailing party on defendant's counterclaim. (Espy) Graveley's encroachment claim is the only claim he brought pursuant to this statute. He prevailed on that claim. The District Court therefore correctly granted him attorney's fees. (Graveley)

Sitz Angus v. Dallaserra, 2002 MT 295N (12/12/02) Reasoning of the Court: “The District Court’s declaration that Sitz owns 1/3 and Dallaserras own 2/3 interest in Bloomquist Spring was not an adjudication of water rights, but merely a recognition that the parties presented no question of fact regarding ownership of such water rights based upon previous use and conveyances...Such adjudication of property rights is properly within the jurisdiction of the District Court”

Injunction Procedure “While the findings of fact, conclusions of law and memorandum do not directly address the granting of injunctive relief to Sitz, the District Court included in the findings the ultimate fact that [defendants have] ‘deprived and is depriving Sitz’ the full use of its 1/3 interest in the water. This...is sufficient...”

An injunction order may be granted in the following cases: (1) when it appears that the applicant is entitled to the relief demanded and the relief or any part of the relief consists in restraining the commission or continuance of the act complained of; MCA 27-19-201 When preliminary injunction...

\*\* (2) when it appears that the commission or continuance of some act during the litigation would produce a great or irreparable injury to the applicant; \*\* (3) when it appears during the litigation

that the adverse party is doing or threatens or is about to do or is procuring or suffering to be done some act in violation of the applicant's rights, respecting the subject of the action, and tending to render the judgment ineffectual;

Irreparable Injury Rule satisfied “Generally, injunctive relief is not granted where an action for monetary damages will afford an adequate remedy.” “The test to determine whether a preliminary injunction should issue when monetary judgment may be made ineffectual by the actions of the adverse party thereby irreparably injuring the applicant is: (1) likelihood that the movant will succeed on the merits, (2) likelihood that the movant will suffer irreparable injury absent the issuance of the injunction, (3) threatened injury to the movant outweighs whatever damage proposed injunction may cause opposing party, and (4) injunction, if issued, would not be adverse to the public interest. MCA § 27-19-201.

Security Generally 27-19-306. Security for damages (1) on granting an injunction or restraining order, the judge shall require a written undertaking to be given by the applicant for the payment of the costs and damages that may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained..

27-19-306(1) Except as provided in subsection (2), the undertaking: (a) must be fixed at a sum that the judge considers proper; and (b) may be waived: –(i) in domestic disputes; or –(ii) in the interest of justice

Damages for Wrongful Injunction (4) This section does not prohibit a person who is wrongfully enjoined from filing an action for any claim for relief otherwise available to that person in law or equity and does not limit the recovery that may be obtained in that action.

Hidden Hollow Ranch v. Fields, 2004 MT 153 (06/15/04) Plaintiff's Claim: Plaintiff, downstream appropriator, brought action against upstream appropriator, seeking to hold defendant in contempt for violating prior court decree concerning rights to divert water from creek. Plaintiff had first altered defendant's diversion; defendant acted on advice of DNRC and installed sturdier diversion with bypass tube; plaintiff “manipulated” the new valve to get more water; defendant padlocked the valve; plaintiff sued (and lost) Prevailing Party: DEFENDANT Trial Court Remedy: Dismissed plaintiff's petition; enjoined plaintiff from interfering with defendant's diversion works; further enjoined Water Commissioner to ensure that plaintiff did not interfere with diversion or valve.