

# **Bond Case Briefs**

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## **WATER LAW - COLORADO**

### **Glover v. Serratoga Falls LLC**

**Supreme Court of Colorado - November 15, 2021 - P.3d - 2021 WL 5296927 - 2021 CO 77**

Owners of water-rights easement in ditch brought action against adjacent property owner asserting multiple claims arising from adjacent owner's construction activities.

Adjacent owner brought counterclaims seeking declaration of scope of easement owners' water rights, permission to alter ditches, and declaration of parties' maintenance obligations associated with each ditch. The Water Court entered judgment on the merits for adjacent owner and awarded attorney fees to adjacent owner. Easement owners appealed.

The Supreme Court held that:

- Water court had jurisdiction over claims;
- Adjacent property owner did not trespass on water-rights easement; and
- Water court acted within its discretion in awarding attorney fees against easement owners.

Claims in which owners of easement to access certain water rights through ditch sought declaratory judgments or "adjudications" related to the scope of those water rights and easements to convey those water rights presented "water matters" within exclusive jurisdiction of water court; before resolving dispute over location and maintenance of ditch, court first had to determine exact scope of decreed water rights in ditches and reservoir, which involved court deciding numerous right-to-use issues.

Adjacent property owner did not trespass on water-rights easement in ditch when performing construction work on adjacent property, which resulted in damage to physical infrastructure of ditch; adjacent property owner did not move ditch, adjacent property owner promptly repaired any damages without moving or altering ditch, and adjacent property owner properly came to water court to propose altering easement from open-air ditch to underground pipeline.

Water court acted within its discretion in finding that owners of water-rights easement in ditch lacked substantial justification for bringing trespass claim, and thus award of attorney fees against owners was authorized; court had determined that owner of adjacent property had not engaged in unilateral movement or alteration of ditch without consent and that adjacent owner did not interfere with easement owners' rights, and adjacent owner recognized that it would need to come to water court to propose alteration to ditch easement.

Water court acted within its discretion in determining that claim of trespass to water right, which was based on right to one fill of reservoir during each irrigation season, lacked substantial justification, warranting award of attorney fees; water court concluded that there was no evidence that any groundwater that was diverted caused injury to water right, and court found that reservoir continued to fill to capacity after installation of subdrains.

