DISTRICT COURT, ARCHULETA COUNTY, COLORADO Court Address: 109 Harman Park Drive Pagosa Springs, Colorado 81147 (970) 264-8160	DATE FILED December 5, 2025 2:48 PM CASE NUMBER: 2024CV30069
Plaintiff: **PAGOSA AREA WATER AND SANITATION DISTRICT acting by and through its WATER ACTIVITY ENTERPRISE** Defendant: **SAN JUAN WATER CONSERVANCY DISTRICT**	**^COURT USE ONLY^** Case Number: **2024CV30069** Division: 3 Courtroom: 3

ORDER GRANTING IN PART, AND DENYING IN PART, DEFENDANT'S MOTION FOR SUMMARY JUDGMENT FOR DECLARATORY RELIEF

THIS MATTER comes before the Court on San Juan Water Conservancy District's (hereinafter "SJWCD") motion for summary judgment for declaratory relief, and the Court, having reviewed the motion and responsive pleadings and being familiar with the record, hereby enters the following order.

Undisputed Facts and Procedural History

The parties have a long history with one another which is documented in the record and which will not be recounted in detail here. As relevant to the current motion, it is undisputed that SJWCD is a Colorado water conservancy district organized pursuant to C.R.S. § 37-45-101 *et seq*. Pagosa Area Water and Sanitation District (hereinafter "PAWSD"), a water and sanitation district governed by Title 32 of the Colorado Revised Statutes, owns and operates a municipal water system serving the town of Pagosa Springs and rural Archuleta County. Since at least 2001, PAWSD and SJWCD have cooperated in the development of a water storage project known as Dry Gulch Reservoir (also referred to as the "Project").

In 2008 the districts jointly purchased land intended to serve as part of the proposed Dry Gulch Reservoir site known as the Running Iron Ranch (hereinafter "RIR"). They own RIR as tenants in common, with PAWSD owning an 89.27% interest and SJWCD owning a 10.73% interest. The Colorado Water Conservation Board (hereinafter "CWCB") provided grant funding to SJWCB and a loan to PAWSD to finance the purchase (and pay off an initial loan from Wells Fargo Bank).

In 2015 the districts entered into an agreement with the CWCB to restructure the original loan by splitting it into two loans (Loan A and Loan B) and lowering the interest rates (hereinafter "Restructure Agreement"). The Restructure Agreement also established a 20-year loan repayment term for Loan A which became the "Planning Period" for the two districts to develop the Project. The districts agree that the Planning Period has not yet ended.

PAWSD now desires to sell RIR. SJWCD opposes the sale. The parties disagree on the proper interpretation of the Restructure Agreement terms governing a sale of RIR during the Planning Period. In this motion, SJWCD requests summary judgment pursuant to C.R.C.P. 56 on the following points:

I. Entry of a declaratory judgment pursuant to Rules 56 and 57 and C.R.S. §§13-51-101 *et seq*., declaring as follows:

   A. The Restructure Agreement establishes a Project Planning Period of not less than 20 years that extends until at least October 27, 2035;

   B. PAWSD does not have a right to sell the Running Iron Ranch during the Planning Period absent a showing that it has made every effort to retain it but cannot;

   C. PAWSD does not have a right to sell Running Iron Ranch at this time;

   D. The parties agreed in the Restructure Agreement that PAWSD cannot abandon the Project during the Planning Period; and

E. PAWSD waived its equitable right to partition while the Restructure Agreement remains in force.

II. Entry of judgment for SJWCD and against PAWSD on PAWSD's second claim for relief for partition.

Motion for Summary Judgment for Declaratory Relief (May 1, 2025), p. 18. PAWSD opposes judgment on all of these points.

Summary Judgment Standard

Summary judgment is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." C.R.C.P. 56(c). Summary judgment is a "drastic remedy" only proper on a "clear showing" that there is no genuine issue of material fact. *Peterson v. Halsted,* 829 P.2d 373, 375 (Colo.1992). A material fact is one which will affect the outcome of the case. *Id*. The movant bears the initial burden of showing the absence of issues of material fact. *Terry v. Sullivan*, 58 P.3d 1098 (Colo. App. 2002). Once the movant meets the initial burden, the burden shifts to the nonmoving party to establish the existence of a triable issue of fact. *AviComm, Inc. v. Colorado Public Utilities Com'n*., 955 P.2d 1023 (Colo. 1998). The nonmovant is "entitled to all favorable inferences that may reasonably be drawn from the undisputed facts, and all doubts must be resolved against the moving party." *HealthONE v. Rodriguez ex rel. Rodriguez*, 50 P.3d 879, 881 (Colo. 2002).

Rules of Contract Interpretation

Contract interpretation is a question of law. *Pepcol Mfg. Co. v. Denver Union Corp.,* 687 P.2d 1310, 1313 (Colo.1984). "The primary goal of contract interpretation is to determine and effectuate the intent and reasonable expectations of the parties. To determine the intent of the parties, the court should give effect to the plain and generally accepted meaning of the contractual language." *Copper Mountain, Inc. v. Indus. Sys., Inc.*, 208 P.3d 692, 697 (Colo. 2009) (citations

omitted). A contract should be interpreted "in its entirety with the end in view of seeking to harmonize and to give effect to all provisions so that none will be rendered meaningless." *Pepcol Mfg.,* 687 P.2d at 1313. A contract's meaning should be determined by examining "the entire instrument and not by viewing clauses or phrases in isolation." *U.S. Fidelity & Guar. Co. v. Budget Rent–A–Car Sys., Inc.,* 842 P.2d 208, 213 (Colo.1992).

Whether a contract provision is ambiguous is also a question of law. *Pepcol Mfg.,* 687 P.2d at 1314. "It is only where the terms of an agreement are ambiguous or are used in some special or technical sense not apparent from the contractual document itself that the court may look beyond the four corners of the agreement in order to determine the meaning intended by the parties." *Id.*

Mere disagreement between the parties on the proper interpretation is not sufficient to create ambiguity. *Cary v. United of Omaha Life Ins. Co.*, 108 P.3d 288, 290 (Colo. 2005). "A document is ambiguous "when it is reasonably susceptible to more than one meaning.'" *Cheyenne Mountain Sch. Dist. No. 12 v. Thompson*, 861 P.2d 711, 715 (Colo. 1993), quoting *Northern Ins. Co. of New York v. Ekstrom,* 784 P.2d 320, 323 (Colo.1989). "Once a contract is determined to be ambiguous, the meaning of its terms is generally an issue of fact to be determined in the same manner as other disputed factual issues." *Union Rural Elec. Ass'n, Inc. v. Pub. Utilities Comm'n of State*, 661 P.2d 247, 251 n.5 (Colo. 1983).

Analysis

Issue I.A.

Whether summary declaratory judgment is warranted that the Restructure Agreement establishes a Project Planning Period of not less than 20 years that extends until at least October 27, 2035.

PAWSD does not dispute that the Restructure Agreement establishes a 20-year Planning Period and argues that for that reason SJWCD's request should be denied because (1) there is no actual controversy, so SJWCD is asking for an impermissible advisory opinion, and (2) SJWCD is really "craftily asking the Court for an order that SJWCD can later construe as finding that the Restructure Agreement guarantees SJWCD an absolute and immutable 20 year period before PAWSD may sell Running Iron Ranch." Response to Motion for Summary Judgment (May 30, 2025), p. 3. SJWCD responds that the controversy is live because the Restructure Agreement is unclear on the date when the Planning Period began and therefore, the legally significant date on which it ends has not been determined.

The Court finds that this presents an actual controversy appropriate for decision by declaratory judgment. *See* C.R.C.P. 57(b) ("Any person …whose rights, status, or other legal relations are affected by a . . . contract . . . may have determined any question of construction . . . and obtain a declaration of rights, status or other legal relations thereunder."). The Court may refuse to declare a right where doing so " would not terminate the uncertainty . . . . " C.R.C.P. 57(f). The Restructure Agreement gives the parties different rights and responsibilities during and after the Planning Period, so it is important for the parties to clearly know its beginning and end dates for future interactions.

The Restructure Agreement ¶ 4.1 states that the "twenty (20) year repayment term for Loan A will become the planning period for PAWSD and SJWCD to develop the Project ("Planning Period")." The Restructure Agreement ¶ 5.3.1 refers, in relevant part, to the time at which "the planning Period expires, twenty (20) years from the date the contract for Loan A is

signed . . . ." Loan A's Loan Contract Amendment implementing the Restructure Agreement, attached as Exhibit B to SJWCD's motion for summary judgment, was signed by PAWSD and CWCB in June and July 2016, respectively, but not signed by the State Controller until September 27, 2016. By its express terms, as a matter of state law (C.R.S. §24-30-202), the Loan Contract Amendment was not valid and enforceable until the Controller signed it.

The Court therefore concludes that the Planning Period began on September 27, 2016, and will end on September 27, 2036. This conclusion is not a finding that the Restructure Agreement guarantees SJWCD an absolute and immutable 20 year period before PAWSD may sell RIR. It is only a declaration of the beginning and end dates of the Planning Period.

Issues I.B. and I.C.

Whether summary declaratory judgment is warranted that PAWSD has no right to sell the RIR during the Planning Period absent a showing that it has made every effort to retain it but cannot; and that PAWSD has no right to sell at this time.

The parties disagree on the proper interpretation of Restructure Agreement ¶ 5.2.1, which governs sale of RIR during the Planning Period. It states:

> 5.2.1 PAWSD agrees to make every effort to retain the Running Iron Ranch during the Planning Period made possible by this Agreement. In the event that PAWSD, in its sole discretion but after consultation with SJWCD and CWCB, does sell the Running Iron Ranch during the Planning Period, the following terms [addressing loan repayment] shall take effect:

Restructure Agreement ¶ 5.2.1. SJWCD emphasizes the first sentence's "every effort" clause, arguing that it requires PAWSD to show it has done everything possible to retain RIR and can only sell it during the Planning Period if it has no other alternative, for example in the case of insolvency. It notes that PAWSD does not want to sell RIR for these reasons, but because it determined that owning RIR is no longer in PAWSD's best interest due to changed circumstances.

SJWCD contends that its interpretation aligns with the parties' intent and reasonable expectations upon entering the Restructure Agreement.

PAWSD responds that SJWCD ignores the second sentence of ¶ 5.2.1 which gives PAWSD the right to sell RIR *in its sole discretion*, after consultation with SJWCD and CWCB. It argues that the "every effort" clause must yield to PAWSD's sole discretion to sell RIR in light of its fiduciary duty to act in its constituents' best interests, and public policy favoring a local governing body's independent decision-making authority, citing *Great Western Producers Co-op v. Great Western United Corp*., 613 P.2d 873 (Colo. 1980).[1] It argues that it has made every effort to retain RIR as that term is construed by Colorado law and that regardless, whether it has fulfilled the "every efforts" requirement presents a genuine issue of disputed material fact, not appropriate for decision on summary judgment.

In reply, SJWCD contends that PAWSD's focus on its "sole discretion" to sell ignores the "every effort" clause, which should be construed as a condition precedent to selling RIR during the Planning Period. It argues that doing otherwise violates the rule of contract interpretation requiring courts to give meaning to each provision. SJWCD maintains that interpreting the "every effort" clause as a condition precedent to sale binds PAWSD to its commitment to develop the Project while giving it an exit strategy in the event unforeseen circumstances make it impossible for PAWSD to retain ownership of RIR. In SJWCD's view, PAWSD has not made every effort to retain RIR as evidenced by the fact that it is actively trying to sell it, and has not

[1] The Court does not agree with PAWSD that *Great Western* is dispositive of this case. *Great Western's* discussion of the relationship between fiduciary duty and contractual obligations is enlightening and potentially relevant in PAWSD's case, yet *Great Western* is factually distinct. The parties were corporate, not governmental, the contract did not require every effort but instead, best efforts (which the Court is not persuaded are interchangeable), and the object of the contract was a single transaction involving sale of stock rather than a long term agreement to develop a water project.

alleged the type of circumstances, for example insolvency, that would justify a sale during the Planning Period.

The rules of contract interpretation require this Court to interpret ¶ 5.2.1, harmoniously as a whole to determine and effectuate the parties' intent. ¶ 5.2.1 requires PAWSD to make "every effort" to retain RIR during the Planning Period in its first sentence and then gives PAWSD "sole discretion" after consultation to sell RIR in its second sentence. Rather than being ambiguous, meaning subject to more than one reasonable interpretation, these two requirements appear outright contradictory.

Yet the Court is not at liberty to ignore or prioritize one over the other absent some indication, not present here, of the parties' intent that it do so. The Court must give effect to the entire section. The juxtaposition of the "every effort" and "sole discretion" sentences indicates the parties' intent that they be effectuated in relation to one another. The only way that can occur is if ¶ 5.2.1 is interpreted to require PAWSD to make every effort to retain RIR before exercising its sole discretion, after consultation, to sell it. To decide otherwise would be to ignore PAWSD's promise to make every effort to retain RIR.

The Court does find, however, that the scope of that promise as expressed in ¶ 5.2.1 is ambiguous. The Court cannot determine the parties' intent regarding the meaning of the phrase "every effort" from the four corners of the Restructure Agreement. SJWCD urges the Court to take the phrase "every effort" literally in accordance with its plain meaning, which it states would require PAWSD to do everything short of becoming insolvent before deciding to sell. PAWSD argues that the "sole discretion" clause was intended to override the "every efforts" clause at least to the extent that continuing to make efforts to retain RIR would conflict with its fiduciary duties to constituents.

Both of these interpretations are reasonable. A plain meaning interpretation of "every effort" would literally mean exactly that, and that may be what the parties agreed to. However, the Court is also aware that when one says they will make "every effort" it may not be meant literally. To "make every effort" is understood to mean "to do all one can," indicating to the Court that the required effort is tempered by some degree of reasonableness. Merriam-Webster.com Dictionary, https://www.merriam-webster.com/dictionary/make%20every%20effort . Perhaps the parties' intent was to allow certain circumstances to excuse PAWSD from literally making every effort possible. Which interpretation of "every effort" correctly reflects the parties' intent is a question of fact that cannot be decided by summary judgment.

Further, the Court agrees with PAWSD that whether PAWSD met the requirement to use every effort, however that phrase is eventually interpreted, presents questions of fact that preclude summary judgment. The Court therefore denies entry of summary judgment on SJWCD's requests for declaratory judgments that PAWSD does not have a right to sell the RIR during the Planning Period absent a showing that it has made every effort to retain it but cannot; and the related issue that PAWSD does not have a right to sell RIR at this time.

Issue I.D.

Whether the parties agreed in the Restructure Agreement that PAWSD cannot abandon the Project during the Planning Period.

The Restructure Agreement mentions PAWSD's right to abandon the Project in seven subparagraphs.[2] Restructure Agreement ¶¶ 4.2 , 4.2.2, 4.3, 5.3.1, 5.3.3, 5.4.1, and 5.4.3. None

[2] Restructure Agreement ¶ 4.2 ("At the end of the twenty (20) year Planning Period . . . PAWSD . . . may elect to extend the Project planning period . . . or may elect to abandon the Project."); ¶ 4.2.2. (PAWSD "may elect to abandon the Project and sell the [RIR] pursuant to the terms of Paragraph 5 below."); ¶ 4.3 ("At the end of the Planning Period, if the Project is not constructed" PAWSD must notify SJWCD and CWCB of its "decision either to extend the Planning Period or abandon the Project and sell the [RIR]."); ¶ 5.3.1 ("When the Planning Period expires . . . PAWSD shall have the option to abandon the Project and sell the [RIR] ...."); ¶ 5.3.3. ("If the PAWSD elects to sell [RIR] and abandon the Project . . . ."); ¶ 5.4.1 ("At any time after the Planning Period expires . . .

of these subparagraphs are found in paragraphs that pertain to the parties' rights and responsibilities during Planning Period.

PAWSD rightly states that it never expressly promised not to abandon the Project during the Planning Period. The Restructure Agreement ¶ 5.2. contains no mention of abandonment of the Project during the Planning Period. However, this is clearly not a case where the parties failed to consider the abandonment option in general. Reading the agreement as a whole rather than focusing solely on ¶ 5.2, the parties expressly authorized PAWSD to abandon the Project once the initial 20-year Planning Period ended. Nothing indicates that leaving abandonment out as an option during the Planning Period was an inadvertent oversight that does not convey the parties' true intent. The Court cannot read an implied right to abandon the Project into ¶ 5.2, which by its own terms deals only with the sale of RIR, when the parties expressly granted that right in the post-Planning Period. See *Brennan v. Monson*, 50 P.2d 534, 536 (1935) ("'Courts should not make new contracts for parties. It would result in filching the property or property rights from one man, and donating them to another.' We must take the contract as we find it, and discover from it the intention of the parties and the extent to which they by apt expressions have bound themselves."), quoting *Buchhalter v. Myers*, 276 P. 972, 980 (1929).

The Court recognizes that selling RIR pursuant to the terms of ¶ 5.2 could, as a practical matter, result in the abandonment of the Project during the Planning Period. It appears from the record and the terms of the Restructure Agreement that RIR is integral to Project development. [3] But the relationship between the Project and RIR is not at issue here. The Restructure

---

PAWSD . . . shall have the option to abandon the Project and sell the [RIR] . . . ."); ¶ 5.4.3 ("If the PAWSD elects to sell [RIR] and abandon the Project, the CWCB shall be entitled to: ....").

[3] PAWSD faulted SJWCD for wrongly (in its opinion) equating the sale of RIR with the abandonment of the Project, Response at 18, even though it earlier justified selling RIR because it no longer needed to develop the Project. Response at 12-13.

Agreement expressly gives PAWSD the right to abandon the Project only after the Planning Period ends, and not before. A summary declaratory judgment to that effect is therefore warranted.

Issues I.E. and II

Whether PAWSD waived its equitable right to partition while the Restructure Agreement remains in force, warranting entry of judgment for SJWCD and against PAWSD on PAWSD's second claim for relief for partition.

PAWSD filed an alternative claim for partition of RIR, in the event the Court rules it currently lacks the right to sell RIR. SJWCD counterclaimed for a declaratory judgment that PAWSD waived its right to partition RIR when it executed the Restructure Agreement. SJWCD only requests a declaratory judgment in its favor on PAWSD's claim and not on its own counterclaim. PAWSD argues that since its claim was brought in the alternative, SJWCD's request is premature.

The claim and counterclaim are mirror images of each other, raising the same issues, and a ruling on one is a de facto ruling on the other. While PAWSD is right that a ruling on its alternative claim is premature, a ruling on SJWCD's counterclaim is not. SJWCD did not request that and therefore the Court will not rule on that; yet SJWCD did raise the partition issue. There are no disputed issues of material fact precluding a judgment as a matter of law as to whether PAWSD waived its right to partition RIR. SJWCD as a tenant in common whose rights in RIR are affected by the Restructure Agreement is entitled to certainty pursuant to C.R.C.P. 57(b) as to whether partition is an option for PAWSD.

The Restructure Agreement contains the following clause in the Recitals section: "WHEREAS, the Parties recognize the importance of holding on to the land already purchased as a whole, that partitioning the property or selling off parties of the property would severely hamper

and impede completions of the Project; . . . ." Restructure Agreement at 2. That is the only place that partition is mentioned. SJWCD contends that PAWSD impliedly waived its right to partition RIR by agreeing to this recital. PAWSD states this recital is not an implied waiver, that there is no express waiver in the Restructure Agreement, and that the parties did expressly agree that PAWSD had sole discretion, after consultation, to sell RIR.

In general, a tenant in common is entitled to partition, but the right is not inalienable and maybe contracted away. *McIntire v. Midwest Theatres Co.*, 298 P. 959 (Colo. 1931); accord *Colorado Korean Ass'n v. Korean Senior Ass'n of Colorado*, 151 P.3d 626, 630 (Colo. App. 2006) (waiver by contract is one of three exceptions to the right to partition real property). "An agreement made by cotenants not to partition may arise by implication, and where a contract between them cannot be carried out in event of partition, then a cotenant has no right of partition." *Twin Lakes Reservoir & Canal Co. v. Bond*, 401 P.2d 586, 590 (Colo. 1965). SJWCD argues that partitioning RIR would permit PAWSD to avoid its contractual duties in relation to the Project, in derogation of *Twin Lakes*, which would deprive SJCWD of the benefit of the bargain it struck with PAWSD in the Restructure Agreement.

The Court finds that PAWSD did not impliedly waive its partition right. To begin with, "[r]ecitals and titles, not being strictly part of the contract, cannot extend contractual stipulations, though they may have material influence on the construction of the instrument and the determination of parties' intent." *Engineered Data Products, Inc. v. Nova Office Furniture, Inc.*, 849 F. Supp. 1412, 1417 (D. Colo. 1994), citing *Las Animas Consol. Canal Co. v. Hinderlider,* 68 P.2d 564, 566 (Colo. 1937); accord *Spring Creek Expl. & Prod. Co., LLC v. Hess Bakken Inv., II, LLC*, 887 F.3d 1003, 1018 (10th Cir. 2018). The recital at issue is not an enforceable promise not to partition RIR because it extends the parties' duties beyond their actual agreements about

dealing with RIR, which do not include any mention of partition. Had the parties intended to bar partition, they could have done so expressly.

Next, even if the recital at issue here could be enforced as a promise, its plain language indicates that it is nothing more than the parties' acknowledgment that retaining RIR as a whole would be important and partitioning it would impact the Project. This is undisputed. There is nothing to enforce.

Moreover, the parties gave PAWSD the right to sell RIR in its sole discretion during the Planning Period, in accordance with the conditions of ¶ 5.2.1. It would be nonsensical if the Restructure Agreement permitted PAWSD to sell the undivided RIR but not to partition it and sell its part.

Finally, the recital states only that partitioning RIR would "severely hamper and impede completion of the Project; . . . ." It doesn't state that the Project can't be completed, or that the agreements made in the Restructure Agreement can't be carried out, if RIR is partitioned. The recital does not meet the *Twin Lakes* standard for finding an implied waiver.

The Court therefore finds that summary, declaratory judgment is warranted that PAWSD did not impliedly waive its right to partition RIR by entering the Restructure Agreement.

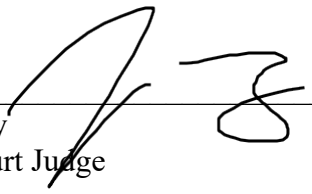
IT IS, THEREFORE, ORDERED THAT:

1. Summary judgment is granted on SJWCD's request for declaratory judgment to establish the Planning Period of the Restructure Agreement. It began on September 27, 2016, and will end on September 27, 2036;
2. Summary judgment is denied on SJWCD's request for declaratory judgment that PAWSD does not have a right to sell the RIR during the Planning Period absent a showing that it has made every effort to retain it but cannot. PAWSD may sell RIR

during the Planning Period by complying with the terms of the Restructure Agreement ¶ 5.2.1. The parties' intent in employing the phrase "every effort" and whether PAWSD has met that requirement are genuine issues of material fact precluding summary judgment;

3. Summary judgment is denied on SJWCD's request for declaratory judgment that PAWSD does not have a right to sell RIR at this time for the reasons stated in the previous paragraph.
4. Summary judgment is granted on SJWCD's request for declaratory judgment that the Restructure Agreement expressly gives PAWSD the right to abandon the Project only after the Planning Period ends; and
5. Summary judgment is denied on SJWCD's request for declaratory judgment that PAWSD waived its right to partition RIR by entering the Restructure Agreement; PAWSD did not waive that right.

SO ORDERED this 5th day of December, 2025.



Justin P. Fay
District Court Judge