

9-1-2014

Nelson v. Brooks, 329 P.3d 558 (Mont. 2014)

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dismiss Telford Lands as a party to the condemnation claim. In so concluding, the Court upheld the district court's finding that Telford Lands shared in costs with the other Ranchers, Telford Lands's well produced the most water and was necessary to produce a sufficient flow, and Telford Lands had a two-year lease to use water from the Old Moss Well, which flowed through the disputed pipeline. On appeal, the Cains contended that temporary leaseholders do not have the private power of eminent domain. The Court cited Idaho Constitution Article 1, section 14, in finding that an easement for temporary use can be condemned. However, the Court noted that easements for temporary use must be limited to the time that the party can use the land burdened by the condemned easement. Because the district court's judgment did not limit the right of Telford Lands to use the disputed pipeline only for the duration of its two-year water lease, the Court remanded this issue.

Lastly, the Court reviewed whether the district court erred in dismissing the Cains' counterclaim for trespass. The Court noted that there was conflicting evidence as to whether the Ranchers installed the disputed pipe with the Cains' permission. There was also nothing in the record to suggest that the Cains intended to abandon the claim, and the Ranchers never addressed the district court's dismissal of the Cains' counterclaim. The Court therefore vacated the district court's dismissal of the Cains' counterclaim and remanded the case for further proceedings regarding this issue.

Accordingly, the Court vacated and remanded the portions of the district court's judgment that dismissed the Cains' counterclaim and provided Telford Lands with a perpetual easement, but affirmed the remainder of the judgment granting the condemnation of an easement across the Cains' property.

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MONTANA

Nelson v. Brooks, 329 P.3d 558 (Mont. 2014) (holding that (i) the claimants' motion to amend a Statement of Claim was not a repudiation of the originally filed water rights claim; (ii) a claim of an existing right is prima facie proof of its contents; (iii) a water court's determination of the type of water right should be reviewed for harmless error; and (iii) ownership of the land containing the water source is not dispositive of ownership of the water right related to that source).

This case involved a dispute over the water rights to a well ("Disputed Well") located on Bureau of Reclamation land in Beaverhead County, Montana. Minerals Engineering originally drilled the Disputed Well, along with other wells in the area, in the 1950s. During that time, Carl Kambich ("Kambich") owned a ranch immediately adjacent to the Minerals Engineering site. In 1953 Minerals Engineering and Kambich entered a contractual agreement ("the Indenture") that granted Kambich the exclusive right to a water well on "Minerals No 3 mill site mining claim." The Indenture contained no other description of the well or its location. In 1982 Kambich filed a Statement of Claim to the Disputed Well for existing water rights. The Statement of Claim listed a priority date of January 1, 1954, a pump as the means of diversion, a

flow rate of one hundred gallons per minute ("gpm"), and its purpose of use as stock water. Attached to the claim was the Indenture and a copy of a 1963 Declaration of Vested Rights originally recorded by Minerals Engineering for the Disputed Well.

The Brooks bought the Kambich Ranch in 1990. Kambich filed a notice of transfer of water right for the claim to the Brooks the same year. The Brooks maintained that, beginning in 1990, the Disputed Well provided water to a barn located on the ranch. The Brooks used the water for a bathroom and kitchen, and as stock water. Later, in 2006 or 2007, the Brooks converted the barn into a home for their son and ceased using the Disputed Well as the barn's water source. In the same year the Brooks constructed a new home located in the same quarter section and began using the Disputed Well as the water source for this home. The Brooks never filed a request to change the place of use, but claimed they had been using the Disputed Well at this location since 1993 at a trailer while they were building their home.

In 1976 Minerals Engineering stopped its mining operations. In 2002 Apex Abrasives ("Apex"), a company organized by objector Ernest Nelson ("Nelson"), purchased the minerals interest in the land. In 2007 Nelson received a permit for mining operations on the site and later discovered the Brooks' use of the Disputed Well. In 2011 the Brooks filed a motion to amend Kambich's Statement of Claim. Their motion sought to (i) amend the place of use to the current location; (ii) change the priority date to June 15, 1953; (iii) amend the type of right to "use" rather than "filed"; and (iv) change the flow rate to ten gpm. A DNRC specialist accepted all amendments and the matter proceeded to a hearing with the Water Master. The Water Master found that the claim belonged to the Brooks and accepted the Brooks' amendments.

Pursuant to Nelson's objection, the Montana Water Court ("water court") reviewed the case. The water court found that the Indenture referenced a well in a different section of land and did not convey title of the Disputed Well to Kambich. However, the water court concluded that, even though the Indenture did not convey title to Kambich, it did not affect the Brooks' ownership of the water right. The water court found that Nelson failed to meet his burden of proof in contesting the prima facie evidence of the filed claim, finding that the "slight discrepancy" in the legal descriptions for the well was not determinative of ownership.

On appeal, the Montana Supreme Court ("Court") first addressed whether Nelson ever held an adjudicated right to the Disputed Well. Nelson argued that, based on two claims he held for wells in the same section of land, he had a prior adjudicated right to the Disputed Well. The Court dismissed this argument and upheld the water court's determination that Nelson's previously adjudicated claims were for two different wells located on another tract of land.

The Court then addressed whether the Brooks' motion to amend the Statement of Claim served as repudiation of the originally filed claim. Nelson argued that the Brooks repudiated the original Statement of Claim by filing a motion to amend the claim's priority date, place of use, and amount of use. The Court, however, stated that Nelson failed to present a valid argument as to why the filing of such a motion would serve as repudiation. The Court noted that an originally filed claim is considered prima facie proof of its contents, but that the

claimants have the burden to prove the requested amendments by a preponderance of the evidence. Accordingly, the Court rejected Nelson's argument and held that the Brooks' motion to amend did not serve as a repudiation of the original claim.

The Court then addressed whether the water court erred by relying on the Brooks' Statement of Claim as *prima facie* evidence of the water right. The Court noted that a claim of an existing right "constitutes *prima facie* proof of its contents until the issuance of a final decree, and that an objector has the burden to prove by a preponderance of the evidence that the elements of the original claim do not reflect the actual beneficial use of the water, as it existed prior to July 1, 1973." Nelson's argument relied on the inference that since the mine was in operation until 1976, Minerals Engineering was likely using the Disputed Well until that time. The Court dismissed this argument and held that the water court correctly concluded that such inferences are not sufficient to overcome the *prima facie* proof of a filed Statement of Claim.

The Court next addressed whether the water court erred by concluding that it did not need to consider whether the Brooks' claimed right was a "use" right or a "filed" right. A "use right" is a right that puts water to a beneficial use without written notice, filing, or decree, whereas a "filed right" is a right filed and recorded prior to July 1, 1973. The Court then upheld the water court's determination that it need not consider what type of right was in question because, in this case, the type of right was immaterial because both types require proof of beneficial use, and because the amount of use, priority date, and purpose of use are not related to the type of right.

Finally, the Court addressed whether the water court erred by concluding that ownership of the land containing the point of diversion for the claim was not dispositive of the ownership of the water right. Nelson claimed that the water court incorrectly disregarded evidence as to Apex's ownership of the mining claim where the Disputed Well was located. The Court held that a water right is a "usufructuary" right, rather than a physical ownership right, and therefore, "ownership of land where water has its source does not necessarily give exclusive right to such waters so as to prevent others from acquiring rights therein." Therefore, Nelson's claim of ownership of the mining claim where the Disputed Well was located was not dispositive of the issue of ownership of the Disputed Well's water.

Accordingly, the Court affirmed the water court's determination that the claim belonged to the Brooks, and that Nelson failed to prove by a preponderance of the evidence that the Brooks' use of the Disputed Well did not accurately reflect the use as it existed prior to 1973.

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***Pub. Lands Access Ass'n v. Bd. of Cnty. Comm'rs of Madison Cnty.*, 321 P.3d 38 (Mont. 2014)** (holding that (i) a public road right-of-way includes the land reasonably necessary for maintenance, repair, and enjoyment; (ii) remand was necessary to determine the width of the public right-of-way established by prescriptive use; (iii) public use of the road right-of-way to access the Ruby River for recreational purposes was permissible; and (iv) access to the river through the public road right-of-way did not constitute an unconstitutional taking of the