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City of Livingston v. Park Conservation Dist., 307 P.3d 317 (Mont. 2013)

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ment of the implied easement test. The Court also did not have to determine if the district court properly held that the easement was abandoned because the Rolands failed to establish that they received an implied easement in the first place.

Accordingly, the court affirmed the district court's holding that the Rolands did not have an implied ditch easement that crossed the Davis property.

Dane Mueller

City of Livingston v. Park Conservation Dist., 307 P.3d 317 (Mont. 2013) (holding the Park Conservation District's declaratory ruling was not arbitrary or capricious because the weight of evidence supported Natural Streambed and Land Preservation Act governance of the disputed channel as a natural stream).

The City of Livingston ("City") unsuccessfully appealed to the Supreme Court of Montana ("Court") a Sixth Judicial District Court order, which affirmed the decision of the Park Conservation District ("PCD"). The PCD decision declared that a channel adjacent to the Yellowstone River was part of the natural watercourse of the Yellowstone River and, therefore, the Natural Streambed and Land Preservation Act ("Act") governed the channel.

The disputed channel is located near Livingston, Montana. Heart K Ranch ("Ranch") used the disputed channel to divert water to satisfy Ranch's water rights. In order to obtain water, Ranch had to remove rocks and other accumulated debris to allow the water to flow into the channel during times of low flows. The PCD approved this practice under the Act, which allowed a water right holder to alter the state of a natural stream with approval from the conservation district.

In 2011, the City petitioned the PCD for a declaratory ruling on the Act. The City argued that the channel was not subject to the Act because it was not a natural watercourse and, thus, Ranch did not have the authority to conduct maintenance activities to remove accumulations on the channel. The PCD reviewed the narrow issue of whether the channel in question was a natural watercourse subject to the Act, or an irrigation ditch that would not be subject to the Act. There was no dispute as to whether the Yellowstone River itself was subject to the Act. The PCD ruled high flows shaped the channel as a natural part of the Yellowstone river. Furthermore, no evidence indicated the channel was a man-made irrigation channel. Thus, the PCD held the disputed channel was a natural watercourse and Ranch's maintenance activities fell under the governance of the Act. The City appealed the PCD ruling to the district court, which affirmed the PCD ruling. The City then appealed the decision to the Court.

On appeal, the City contended the PCD's decision was arbitrary and capricious, and the channel was not a natural channel from the Yellowstone River, but rather a man-made irrigation ditch. The Court first set out a standard of review, explaining that a court cannot alter a decision by the PCD, even if evidence in the record is inconsistent or could support another result, unless the PCD was arbitrary or capricious .

The Court first examined whether the disputed channel fit the PCD definition of a natural stream. The PCD applies the Act to natural, perennial streams, including flood channels, high water channels, and other channels where water naturally enters during high water or normal flow. The Court noted the channel was a contiguous channel to the Yellowstone River, an undisputed natural stream under the Act, and water naturally entered the channel at times of high water flow. These facts were sufficient for the Court to uphold the PCD determination that the channel was a natural stream under the Act.

To determine if the PCD's declaratory ruling was arbitrary or capricious, the Court next reviewed the PCD's decision making process. The City argued PCD overlooked various documents in the record referring to the disputed channel as a "ditch." The Court held the City did not show that these references to a ditch arose in the context in which the decision maker was deciding whether the channel was natural or man-made. Furthermore, the reference to the channel as a ditch was only marginally relevant to the specific channel's status under the Act, especially compared to actual physical evidence to the contrary. Moreover, other similar historical references to the waterway supported its status as a natural channel of the Yellowstone. Although there was evidence in the record that could support a different decision by the PCD, the court held it was not enough to overturn the declaratory ruling under the arbitrary and capricious standard of review.

Because the PCD relied on numerous pieces of evidence to support its decision and reasonably concluded that the channel was a natural watercourse the court accordingly affirmed the declaratory ruling of the PCD.

Sarah Cassinis

Weinheimer Ranch, Inc. v. Pospisil, 299 P.3d 327 (Mont. 2013) (holding water court made no administrative or judicial error in denying, for lack of sufficient evidence, a water right holder's motion to amend his water right to an earlier priority date).

In 1991 Weinheimer Ranch, Inc. ("Ranch") acquired a sixty acre-foot per year water right from Francis Weinheimer. Francis acquired the water right from his father Franz Weinheimer, who originally filed a notice of appropriation for the water right in 1971. In 1984 the Montana Water Court ("water court") issued a Temporary Preliminary Decree ("decree") for the Judith Basin River that provided a 1900 priority date and a historical diversion point in Section Four for the Ranch's water right. The decree also provided an 1897 priority date for George Pospisil's ("Pospisil") senior water right. Pospisil owns land adjacent to the Ranch. According to the decree, Odenwald Creek was the point of diversion for both water rights.

In 2002, after Pospisil placed a call on Odenwald Coulee, the Ranch filed a motion with the water court to amend its water right's historical right, priority date, and source. The Ranch filed a supplemental motion in 2003. Pospisil thereafter filed an objection to the Ranch's proposed amendment of the historical right and priority date. However, Pospisil did not contest that, due to a past clerical error, the listed source should be amended from Odenwald Creek to Odenwald Coulee. Before the water court considered the motion,