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## Fellows v. Office of Water Comm'r, 285 P.3d 488 (Mont. 2012)

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applied the same deferential arbitrary and capricious standard of review to Pioneer's decisions to deny projects on, and remove projects from, its property.

Notably, the Court rejected the district court's ruling that irrigation entities retain an exclusive interest in their easements and rights-of-way. The Court reasoned that Idaho common law provides for community and individual use and enjoyment of an irrigation district's property so long as such use does not unreasonably interfere with the irrigation district's purpose. The Court held no other Idaho statutes on point indicated the legislature wished to abrogate this right.

Accordingly, the Court held that a deferential arbitrary and capricious review of Pioneer's decisions was appropriate. The Court also affirmed the district court's ruling authorizing Pioneer to provide or withhold permission for the construction of the City's drainage system on Pioneer's property, and to remove those pipes Pioneer believed interfered with its own system.

The concurring justices disagreed that Idaho law mandated such deferential review of Pioneer's decisions. The concurrence argued that applying limited review to a party's decisions simply because the party had acted in a quasi-municipal capacity would improperly extend limited review to an indefinite number of non-government parties. The concurrence argued the Court should instead review an irrigation entity's decisions over encroachments on its easements and rights-of-way by determining whether the trespass was unreasonable or materially interfered with the irrigation district's system. Under this approach, irrigation districts could challenge potentially unreasonable encroachments but not unilaterally remove systems that were rightfully in place. For these reasons, the concurrence also argued irrigation districts should not be permitted to remove encroachments prior to receiving a judicial order finding the encroachment unreasonable.

*Lauren Varner*

\* Editor's Note: As of the date of publication, the opinion summarized above has been withdrawn and superseded by *Pioneer Irr. Dist. v. City of Caldwell*, 288 P.3d 810 (Idaho 2012). Please see Volume 16, Issue 2 of the *Water Law Review* for a summary of the amended opinion.

## MONTANA

**Fellows v. Office of Water Comm'r**, 285 P.3d 448 (Mont. 2012) (holding a Montana district court lacked authority to adjudicate water rights but a water right holder's factual allegations related to hydrologic connectivity between two water courses and its request for a declaratory ruling were sufficient grounds upon which the water right holder could invoke the district court's declaratory judgment power).

In 1908, the Montana Eleventh Judicial District Court adjudicated the water rights on the upper portion of the Teton River and appointed a water commissioner to administer the decreed rights. Fifty to sixty years later, the water commissioner began to divert the entire flow of the upper Teton River

through the Bateman Ditch diversion around the Springhill Reach, a portion of the river that lost a significant amount of water to seepage. The water commissioner implemented this diversion through the Bateman ditch without the approval of the Eleventh Judicial District Court and without any other agreement between the affected parties.

Charles Fellows ("Fellows") owns a water right in Spring Creek near Choteau, Montana, which was adjudicated and decreed in 1892. In February 2011, Fellows filed a complaint in the District Court, Ninth Judicial District, Teton ("district court"), pursuant to section 85-5-301(1) of the Montana Code, which permits the holder of a vested water right who is dissatisfied with a water commissioner's method of distribution to file a complaint with the district court. Fellows alleged the water commissioner's diversion of the upper Teton River through the Bateman Ditch around the Springhill Reach substantially injured his senior water right in Spring Creek. Fellows asked the district court to grant declaratory relief until the state's water court settled all the water rights between the upper Teton River and Spring Creek.

The district court determined whether Fellows had standing to bring a complaint against the water commissioner of the upper Teton River under section 85-5-301(1) depended on his ability to prove the upper Teton River's hydrological connection with Spring Creek through the Springhill Reach. The district court dismissed Fellows' complaint, finding he must first establish his standing against the water commissioner by resolving the connectivity issue with the state's water court.

Instead, Fellows appealed to the Montana Supreme Court. The Court reversed the district court, holding the district court was the proper venue for the determination of the connectivity issue and the complaint against the upper Teton River water commissioner. In examining the claim against the water commissioner, the Court held that because Fellows' right was not derived from any rights on the Teton River, he had no statutory claim against the water commissioner.

Second, the Court examined Fellows' connectivity claim. The Court held that while the water court has exclusive jurisdiction over the determination of existing water rights, the district court has jurisdiction over the distribution of decreed water rights. Therefore, the Court held the district court was the proper venue for both the connectivity issue and the complaint against the water commissioner because the water court had already decreed the rights in Spring Creek and the upper Teton River.

Therefore, viewing Fellows' allegations of the hydrological connection between Spring Creek and the upper Teton River, and the allegations against the water commissioner in a light most favorable to Fellows, the Court held the district court erred in dismissing Fellows' complaint.

The Court reversed the district court's order of summary judgment against Fellows and remanded the issue of the connectivity between Spring Creek and the upper Teton River to the district court.

*Jacob A. Watterson*