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## Montana Dep't of Natural Res. & Conservation v. ABBCO Inv., LLC, 285 P.3d 532 (Mont. 2012)

Emily Murphy

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to the Water Commissioner's diversion of water in excess of the decreed rights under *Perry*. Second, the Court held Plaintiffs proved prior court decrees did not conclusively establish their water rights, because Plaintiffs claimed water rights not yet subject to a water decree in the lower Teton River, a portion of the river that *Perry* did not specifically adjudicate.

Moreover, the Court held the district court's determination of its authority and obligation to water users operating under a water decree alone would be contrary to the statute. The Court noted that adopting the district court's view would leave parties without conclusive water decrees without a means of protecting their water rights. Viewing Plaintiffs' complaint in a light most favorable to Plaintiffs, the Court held the district court erred in dismissing the Plaintiffs' petition and not certifying the petition to the Chief Water Judge.

Accordingly, the Court reversed the district court and held the district court's dismissal of Plaintiffs' certification under the statute was inappropriate.

*Jacob A. Watterson*

**Montana Dep't of Natural Res. & Conservation v. ABBCO Inv., LLC, 285 P.3d 532 (Mont. 2012)** (holding (i) the State of Montana held islands that arose vertically from the river bed after statehood in trust for funding for public schools; (ii) the State provided sufficient evidence of the boundary of the land to place a legal description of the land in a final judgment; (iii) the district court violated the State's due process rights when it required the State to reimburse defendants for all property taxes and improvements on the land; and (iv) the judgment in favor of the State allowed it to recover costs).

In 2006, the State of Montana brought a quiet title action in the Seventh Judicial District Court ("district court") concerning three islands with an aggregate land area of roughly 487 acres, located in the Richland County section of the Missouri River. The islands initially grew out of the riverbed due to sediment accretion. Over time, these islands became attached to the riverbank.

The State claimed that, because the islands emerged after statehood, its title to the land was superior to that of all the defendants named in the complaint, and filed a motion for summary judgment. In its motion for summary judgment, the State asserted that the lands at issue were property characterized as "vertical accretions to a navigable river" and thus the property of the State to be held in trust for common public schools. Defendants Boyde Hardy, Shirley Hardy, Hardy Investments, L.P., and Nickie Roth (collectively, "Defendants") filed an answer and cross-motion for summary judgment alleging they owned parts of the land in fee simple because they had acquired rightful title to the land by adverse possession.

The district court granted summary judgment in favor of Montana, finding the State had title to the land based under the equal footing doctrine and Defendants could not acquire title by adverse possession against public trust land. The district court further ruled, however, that the riverbeds were not school trust lands because the land board had never designated them as such. The district court also ruled *sua sponte* and under the doctrine of unjust enrichment that the State was required to reimburse Defendants for all paid property taxes and improvements on the land, but required each party to pay its own

costs and fees. Montana appealed several portions of the district court's judgment to the Montana Supreme Court.

The Court first addressed Montana's claim that district court erred in its ruling that Montana did not own the lands in trust for public schools. The Court analyzed the claim in light of the equal footing doctrine, noting that under the doctrine, Montana took the title to the real property underlying the beds of its navigable waters through its state sovereignty rather than through a federal grant. Therefore, upon statehood, Montana state law governed the land. The parties agreed that the islands were formed by vertical accretion within a navigable riverbed after statehood, and therefore, state law governed the lands. The Court also applied section 77-1-102(1)(b) of the Montana Code, which states Montana holds land beneath its navigable waters in trust for public schools, and reversed the district court's ruling on this point.

Second, the Court addressed Montana's argument that the district court erred by refusing to declare a surveyed boundary between the islands and adjacent private lands based on the State's evidence. Montana had introduced a metes and bounds description of the land in addition to the surveys and aerial photos it provided in its original claim. The Court held this evidence sufficient to support a detailed description of each island and therefore the district court erred in not entering a legal description of the land in the final judgment.

Third, the Court held the district court violated Montana's due process right when it required, *sua sponte*, Montana to reimburse Defendants for taxes paid and improvements made to the land. The Court noted that the district court violated the due process notice right when it allowed damages for unjust enrichment when the Defendants did not assert a claim for damages under this theory.

Finally, the Court awarded Montana certain costs of the case because it was the prevailing party in the quiet title action. Section 25-10-101(5) of the Montana Code provides a plaintiff who receives a favorable judgment in an action that involves the title of real estate to recover the expenses of litigation; therefore, the Court held Montana was owed the cost of producing the survey of the boundary of the land at issue.

Accordingly, the Montana Supreme Court reversed and remanded the district court's judgment for further proceedings consistent with its holdings.

*Emily Murphy*

**Town of Manhattan v. Dep't of Natural Res. & Conservation, 276 P.3d 920 (Mont. 2012)** (holding the Department of Natural Resources and Conservation had legal authority to request applicant's pre-1973 historical use information prior to reviewing its application for a change of an existing water right, and that without such information, the Department had discretion to terminate the application as incorrect and incomplete).

The Town of Manhattan ("Manhattan") filed an application with the Montana Department of Natural Resources and Conservation ("Department"), seeking approval for changes to its municipal well water rights. Manhattan sought to designate several of its wells as alternate points of diversion for existing water claims it filed in Montana's water rights adjudication process. Man-