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Pioneer Irrigation Dist. v. City of Caldwell, 288 P.3d 810 (Idaho 2011)

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The Court next examined the Commission's judicial notice of the pineapple factory's ownership status. The Court held the Commission improperly considered the ownership of the pineapple factory. While holding taking judicial notice of the change of ownership itself was not improper, the Court held the fact the Commission went on to predict the impact of that change on the water supply was improper due to evidentiary rules and its speculative nature.

Finally, the Court held the Commission properly considered HC's alternative source, Well Number Seven. Similar to its analysis of the system loss, the Court concluded state law required the Commission to balance the instream values with the importance of the non-instream uses when considering alternative sources. Allowing a user to divert from the stream when that user has access to an alternative source diminishes the importance of diverting for a non-instream use. The Court held, however, the Commission did not simply balance the instream values against the noninstream values. Specifically, the Court noted the Commission considered the cost to HC as the determinative factor in concluding Well Number Seven was not a viable alternative source to diverting Nā Wai 'Ehā water. Also, the Court analyzed the Commission's failure to consider recycled wastewater as a sufficient alternate source. Based on these considerations, the Court held the Commission erred, because the wastewater was enough to provide a significant contribution to Nā Wai 'Ehā users' needs.

Accordingly, the Court vacated the Commission's findings of fact, conclusions of law, decision, and order, and remanded the matter to the Commission for further proceedings.

Aubrey Markson

IDAHO

Pioneer Irrigation Dist. v. City of Caldwell, 288 P.3d 810 (Idaho 2011) (holding a ditch owner had discretion to grant or deny an encroachment on its easements or rights-of-way and may engage in self-help removal of an unpermitted encroachment if the encroachment unreasonably or materially interferes with the ditch owner's easements or rights-of-way; however, ditch owner does not have exclusive interest in the easements or rights-of-way, and judicial review of ditch owner's decision to grant, deny, or remove an encroachment is limited to whether the decision was arbitrary and capricious or made in an unreasonable manner).

Pioneer Irrigation District ("Pioneer") filed suit against the City of Caldwell ("City") in 2008, seeking declaratory and injunctive relief for removal of urban storm water discharge conduits constructed by the City without Pioneer's permission. Pioneer alleged that, because the City adopted a new municipal storm water management manual, the City caused or permitted developers to install storm water discharge pipes that discharged municipal storm water into Pioneer's irrigation delivery and drainage facilities without Pioneer's permission. Pioneer claimed these discharge pipes unreasonably and materially interfered with its irrigation easements and rights-of-ways. Pioneer sought several declarations, including that Pioneer was authorized to remove and prohibit future construction of unauthorized, unreasonable encroachments, under Idaho Code Ann. § 42-1209 ("statute").

The Idaho District Court, Third Judicial District, Canyon County ("district court") granted most of Pioneer's motion for summary judgment, holding: (i) Pioneer had discretion to permit or deny encroachments of its easements or rights-of-way; (ii) Pioneer may engage in self-help under the statute if an encroachment unreasonably or materially interferes with Pioneer's easements or rights-of-way; (iii) judicial review of Pioneer's decisions to grant, deny, or remove an encroachment is limited to whether the decisions were arbitrary and capricious, or made in an unreasonable manner; and (iv) Pioneer has exclusive interests in its irrigation easements and rights-of-way. The City appealed the district court's partial summary judgment ruling to the Idaho Supreme Court.

The Court reviewed the district court's decision *de novo*. It first explained that under a plain language reading of the statute, a ditch owner must meet four conditions to engage in self-help removal: (i) the encroachment must occur after the statute's effective date; (ii) the ditch owner did not permit the encroachment's construction; (iii) the encroachment unreasonably or materially interferes with the use and enjoyment of the easement or right-of-way; and (iv) the ditch owner requested that the party responsible for encroachment remove it. The statute further places the financial burden for removal on the encroaching party.

The statute is silent, however, as to the situation in which the encroaching party fails to act upon the demand within a reasonable period of time. Looking to public policy, the Court reasoned that, because irrigation facilities play an "essential role" in Idaho, the statute advances the public policy of preventing parties from constructing encroachments that unreasonably or materially interfere with irrigation operations.

Further, the Court reasoned, forcing a ditch owner into time-consuming litigation without letting the owner engage in self-help contradicts this policy. Additionally, the Court stated a ditch owner should execute self-help at the encroacher's expense, such that a ditch owner may remove an encroachment first and then sue the encroacher for damages. The Court found its holding consistent with common law predating the statute, in that an easement owner has a right to removal so long as the encroachment is unreasonable and there is no "breach of peace."

Because the Idaho Legislature imposed certain specific duties upon ditch owners, the Court held that, in some situations, it will be imperative for ditch owners to have the authority to respond quickly to unreasonable encroachments of their easements and rights-of-ways, and to address or remove those encroachments without judicial pre-approval. The Court reasoned that this advances the legislative objective to permit ditch owners to meet the needs of water users and protect the persons and property of third parties.

The Court held Pioneer was therefore entitled to deference in its decisions involving the maintenance of its irrigation ditches and the approval, denial, or removal of encroachments thereof. According to the Court, the Legislature granted irrigation districts the authority to make such decisions through the statute, which allows a ditch owner to review, permit, or deny a third party's request for encroachment.

The Court further held ditch owners, particularly irrigation districts, must also satisfy comprehensive statutory obligations and risk exposure to liability for failing to reach those obligations. Judicial review of a ditch owner's decision to grant, deny, or remove an encroachment, the Court held, is therefore limited to whether the ditch owner's decisions were arbitrary and capricious, or whether the ditch owner reached its decisions in an unreasonable manner.

Finally, the Court overturned the district court's ruling that Pioneer had an exclusive right to its primary easement and right-of-way. The Court cited a long list of common law rulings that all indicated a ditch owner's easement interests are not absolute, even if the owner is an irrigation district entitled to judicial deference in its decision-making process. The Court refused to read a statute as abrogating the common law without evidence the Legislature intended to do so. Pioneer's ownership of its easements and rights-of-ways was therefore neither absolute nor exclusive, and could potentially interfere with the ownership interests of landowners and other third parties.

Accordingly, the Court affirmed in part and reversed in part the district court's ruling.

Chris Stevens

Ruddy-Lamarca v. Dalton Gardens Irrigation Dist., 291 P.3d 437 (Idaho 2012) (holding (i) the less intrusive installation method for a water pipe defined the permissible width of an easement; and (ii) the trial court's order directing the easement owner to make every effort to preserve trees and drain field on the servient estate was reasonable).

Dalton Gardens Irrigation District ("District"), owner of an express easement over Ruddy-Lamarca's ("Lamarca") land, unsuccessfully appealed the trial court's determination of the width of its easement in this case. The District's easement granted it a "right-of-way for the construction, enlargement, and maintenance of all canals, flumes, and water tanks of the vendor, heretofore constructed or hereafter to be constructed, over and across said lands for the irrigation of other lands."

Historically, the District has owned a four-inch buried pipe on the easement across Lamarca's five-acre tract of land, which is located in Kootenai County, Idaho. The District sought to replace the existing four-inch pipe with a new ten-inch pipe. The District's proposed method of replacing the existing pipe, however, required the use of heavy machinery and supplies, and the space required for the excavated soil measured approximately thirty to forty feet in width. This could have potentially killed two forty-to-fifty-year-old maple trees on Lamarca's property and caused Lamarca's septic system to fail.

At trial, the District Court, First Judicial District, Kootenai County ("trial court") found that the District had both an express and a prescriptive easement that were identical in location and width to one another. The trial court determined the easement to be sixteen feet in width, with its centerline at the location of the present pipeline. The trial court also found that the District had previously acquiesced in the location of the trees and drain field, and ordered the District to "make every effort" to preserve them when repairing, maintaining, or replacing the pipeline. The District timely appealed to the Supreme Court of Idaho.