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## V Bar Ranch LLC v. Cotton, 233 P.3d 1200 (Colo. 2010)

John Bartholomew

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rulings in both cases and remanded for further proceedings consistent with its opinion.

*Justine Shepherd*

**V Bar Ranch LLC v. Cotten, 233 P.3d 1200 (Colo. 2010)** (holding that the State Engineer has the power to change and revoke well permits, and that the beneficial use of water on the date of appropriation controls the scope of water rights).

V Bar Ranch LLC (“V Bar”) drilled a well in 1946 (“Well No. 1”) that predated state law requiring wells be registered or permitted. For two decades, V Bar used Well No. 1 to irrigate only the Southwest Quarter of Section 3. In 1966, V Bar obtained the Northwest Quarter of Section 3 and subsequently used Well No. 1 to irrigate both quarters. In 1972, V Bar applied to the District Court for Water Division 3 (“water court”) for adjudication of Well No. 1. The water court gave the well an appropriation date of 1946 without assigning an acreage or volumetric limitation. V Bar irrigated the Southwest and Northwest Quarters of Section 3 until 1978. In 2005, the State Engineer issued a replacement well permit that allowed V Bar to irrigate both quarters. George Gallegos, a neighboring landowner then petitioned the State to revoke V Bar’s replacement well permit on the grounds that the State Engineer erroneously allowed V Bar to expand its water rights beyond the confines of the Southwest Quarter in violation of C.R.S § 37-90-137(1).

A hearing officer found that the date of Well No. 1’s appropriation, 1946, was the operative date in determining the scope of V Bar’s water rights. The officer also found that the State Engineer issued the replacement well permit erroneously by allowing V Bar to expand its water use without a proper decree from a water court. The State Engineer affirmed the decision. On V Bar’s appeal, the water court likewise affirmed, upholding application of the 1946 appropriation date and rejecting V Bar’s contention that the State Engineer lacked jurisdiction to hear and act upon Gallegos’s petition for revocation of the replacement well permit. V Bar appealed to the Colorado Supreme Court (“court”) to contest the State Engineer’s jurisdiction and object to the operative date for determination of scope. V Bar also argued for application of the doctrine of equitable estoppel to prevent the State Engineer from modifying the replacement well permit.

The court first addressed the question of jurisdiction. The court found two legislative acts useful in assessing the extent of the State Engineer’s authority: the Colorado Administrative Procedures Act (“APA”), and the Water Rights Determination and Adjudication Act of 1969 (“1969 Act”). The APA authorizes state agencies to revoke licenses; the court noted that a well permit is a “license” under the APA criteria. The 1969 Act establishes the framework for the existing water courts and extends exclusive jurisdiction to these courts in “water matters.” Though the 1969 Act does not define “water

matters," the court pointed to past decrees from the Generally Assembly and language in several Colorado statutes delegating power to the State Engineer in some of these matters. Specifically, these authorities charge the State Engineer with the duty to investigate improper issuance of wells and to decide whether the permit ought to be modified or revoked.

Next, the court considered V Bar's objection to the operative date for determination of the scope of the water rights. V Bar argued that the adjudication date should be applied, thus permitting V Bar to irrigate both quarters. The court disagreed, noting Colorado law indicating that appropriation and subsequent confirmation through judicial decree form water rights. Common law further indicates that water appropriated for use on a given parcel of land cannot expand to other lands unless the water court issues a decree allowing such a change. The court noted that V Bar never attempted to obtain a decree from the water court, nor did V Bar seek appropriation for the Northwest Quarter upon its request for adjudication in 1972. The 1969 Act also calls for the evaluation of the beneficial use of the water, whereby only an amount of water that is "reasonable and appropriate" may be appropriated to "accomplish without waste" the purpose of the appropriation. In the case of Well No. 1, the court ruled that the water court appropriated the beneficial use exclusively for the Southwest Quarter in 1946. As a result, the court concluded that V Bar had no grounds to expand its appropriation to the Northwest Quarter.

The court also found the Groundwater Management Act of 1965 ("1965 Act") valuable in dismissing V Bar's argument procedurally. The 1965 Act requires parties seeking to drill new wells or expand existing wells to obtain a permit from the State Engineer. V Bar neglected to petition the State Engineer for this permit upon irrigation of the Northwest Quarter in 1966, thereby failing to satisfy the terms of the 1965 Act. The court concluded that the adjudication of Well No. 1 confined use to the Southwest Quarter and that the State Engineer did not have the power to expand irrigation to the Northwest quarter.

Lastly, the court examined grounds for invoking equitable estoppel against the State Engineer. V Bar asserted that it attempted to register Well No. 1 and list both quarters but claimed that the State Engineer told V Bar this was not necessary. Additionally, V Bar claimed detrimental reliance upon the replacement well permit due to the purchase and installation of a sprinkler system. The court rejected V Bar's claims, citing common law indicating that the State Engineer only administers rights upon the decrees of the water court. Thus, the State Engineer had no authority to create or expand V Bar's rights beyond the scope of the 1946 appropriation.

Accordingly, the court affirmed the water court's decision that the State Engineer acted properly in modifying the replacement well permit. Moreover, the court agreed that the beneficial use on the appropriation date controlled the scope of water rights. Finally, the

court found no grounds to invoke equitable estoppel.

*John Bartholomew*

## IDAHO

**Lake CDA Inv., LLC v. Idaho Dep't of Lands, 233 P.3d 721 (Idaho 2010)** (holding that the state's highway easements extended to a lake's ordinary high water mark and, subsequently, did not terminate the landowner's littoral rights; the fill the state added to the lake was part of the public land trust but also did not eliminate littoral rights; and the landowner's did not need to apply for highway encroachment permits for proposed docks that would rest on the public land trust fill).

In 2006, Lake CDA Investments and Chris Keenan ("Landowners") applied for dock permits for separate properties located on Lake Coeur d'Alene with the Idaho Department of Lands ("Land Board") and the Idaho Transportation Department ("ITD"). On March 30, 2007, the Land Board held an administrative hearing, combining the Landowners' applications.

At the hearing, an ITD surveyor testified that the Landowners' predecessor in interest deeded a 1940 highway easement ("1940 easement") to the State of Idaho. The surveyor further testified that this easement extended out into the lake and, therefore, made the Landowners' riparian rights subordinate to the easement. The hearing officer recommended the Land Board reject the applications, finding that the Landowners' littoral rights were subordinate to the 1940 easement. The hearing officer reasoned that without littoral rights the Landowners were not qualified to apply for the dock permits. The Land Board subsequently rejected the Landowners' applications based on the hearing officer's recommendations.

The Landowners then appealed to the Idaho District Court. The district court vacated the Land Board's decision, ruling that the 1940 easement did not affect the Landowners' littoral rights because the easement only extended down to the ordinary high water mark. In addition, the district court awarded the Landowners attorneys' fees and costs of \$23,128.51.

The Land Board and ITD then appealed to the Supreme Court of Idaho ("court"). The Land Board and ITD argued that the first issue, whether the 1940 easement extinguished the Landowners' littoral rights, was analogous to the court's rulings on railroad easements, which required exclusive easements. However, the court distinguished railroad easements from highway easements, reasoning that the state holds highways in trust for public use, and thus, highways do not require exclusive easements. Furthermore, the court ruled that the 1940 easement did not grant an easement over the disputed area because the Landowners, as littoral owners, only took