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Nelson v. Big Lost River Irrigation Dist., 219 P.3d 804 (Idaho 2009)

IDAHO

Nelson v. Big Lost River Irrigation Dist., 219 P.3d 804 (Idaho 2009) (holding that the universal shrink method of apportionment implemented by the Irrigation District did not violate Idaho statutory law or case law).

The Big Lost River Irrigation District (“Irrigation District”) purchased the Mackay Dam and Reservoir, and storage water rights in the reservoir, in order to supplement the decreed water rights owned by various water users in the Irrigation District. The Big Lost River runs through the Mackay Reservoir, and the Irrigation District uses the river to convey the water from the reservoir to the landowners in the Irrigation District. A significant amount of this water seeps through the gravel deposits and porous soils over which the river flows. This loss of water through seepage comprises “conveyance loss” or “shrink.”

Historically, the Irrigation District apportioned conveyance loss to the landowners in two different ways. Prior to 1994, the Irrigation District used the “universal shrink” method, which allocated the conveyance loss equally to all landowners in the District – regardless of their location on the river. In 1994, the Irrigation District began using a formula, known as “river reach,” that divided conveyance loss based on the section or reaches of the river. Under this system, a larger percentage of the conveyance loss fell upon water users farther downstream. In 2005, the Directors of the District voted to revert to the universal shrink method.

Sixty-four landowners (“upriver landowners”) on the upper reaches of the river brought this action in the district court of the Seventh Judicial District seeking an injunction to prevent the Irrigation District from re-implementing the universal shrink method. The upstream landowners also requested declaratory judgment that a state statute – Idaho Administrative Procedures Act (“IDAPA”) Rule 37.03.12.040.03.b (“Rule 40.03.b”) – required conveyance loss apportionment by reach. The upriver landowners also argued that they received the storage water from the river as appropriators of the natural flow from the river, not as landowners within an irrigation district. The district court held that Rule 40.03.b did not apply to the Irrigation District’s apportionment of conveyance loss among its water users, and entered judgment requiring the Irrigation District to allocate conveyance loss by the universal shrink method.

On appeal by the upriver landowners, the Supreme Court of Idaho (the “court”) addressed two issues: (1) whether the district court erred in ruling that a 1936 decree does not limit the Irrigation District’s discretion to adopt the universal shrink method; and (2) whether the district court erred in ruling that the universal shrink method is lawful.

The court held that the 1936 decree did not require apportioning of conveyance losses by river reach. The court found that the decree Irrigation District was the appropriator of the water, not the water users as the upriver landowners contended, because the Irrigation District

held title to the storage water rights. The court then examined the findings of fact of the 1936 decree. In the findings of fact, the decree assigned the same dollar value per acre-foot of storage water in the reservoir for each subdivision of land, regardless of its distance from the reservoir, implied the use of the universal shrink method. The findings of fact also addressed the issue of deducting conveyance loss, but did not provide a required method for dividing those losses. Therefore, the court found that the findings of fact and the 1936 decree more likely pointed to the use of the universal shrink method of apportioning conveyance losses.

Further, the court held that the universal shrink method of apportioning conveyance losses was lawful. In doing so, the court found that Rule 40.03.b, requiring the Idaho Department of Water Resources' watermaster to apportion conveyance losses according to water reach, only applied to appropriators of water. The court also examined previous cases and determined that the implementation of the universal shrink method was in accordance with existing case law. The court emphasized that the legislature intended irrigation districts to benefit all landowners equally, and that assessments placed on the landowners by an irrigation district cannot vary according to river reach.

Accordingly, the court affirmed the judgment of the district court.

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INDIANA

Long v. IVC Indust. Coatings, Inc., 908 N.E.2d 697 (Ind. Ct. App. 2009) (holding that (1) whether water travelling through ditches was surface water and (2) whether water containing mud ceased to be surface water were genuine issues of material fact which preclude summary judgment).

David and Connie Long ("Longs") and IVC Industrial Coatings, Inc. ("IVC") owned property on opposite sides of a county road. The Longs constructed two farm ponds between 10 and 20 feet deep at various parts on the property, which the Longs stocked with fish. Before 2001, IVC's property was a field. Rain falling on the field would drain through an established course and eventually move to a culvert travelling under the road between the properties and into the Long's farm ponds. Beginning in 2001, IVC began improving its property and hired contractors to begin construction on a manufacturing facility, including a significant amount of earthwork resulting in a "rather large mound of earth" on the side of the property nearest the road.

During that time and continuing into 2002, rain caused mud, silt, and sediment to run off the mound, to the culvert, and eventually into the Long's ponds, causing deposits that made the ponds muddy and unfishable, and significantly decreasing their depth. In January 2002, Dale Walker, an employee of the Indiana State Department of Agriculture, issued an evaluation report indicating there was evidence