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## Mesenbrink v. Hosterman, 210 P.3d 516 (Idaho 2009)

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definition was contrary to that provided in statutory law and case law.

Finally, the court found that COGCC regulation of gas wells does not release the Engineers from the duty to permit and administer augmentation plans for CBM wells. The court did not create an exemption from the GWM and 1969 Acts for gas production.

Accordingly, the court affirmed the water court's holding and remanded the case for further proceedings.

*Sarah Felsen*

## IDAHO

**Mesenbrink v. Hosterman, 210 P.3d 516 (Idaho 2009)** (holding that riparian owners of land abutting non-navigable lakes take title to land between the ends of meander line and the center of lake).

Herman Lake ("Lake") is a 30-acre, non-navigable lake surrounded by privately owned property. The Mesenbrinks, private landowners, brought suit against the Idaho Department of Lands ("Department") and neighboring landowners ("neighbors"), the Hostermans and the Hubbards, to determine ownership of the land between their property and the Lake's waterline. The Mesenbrinks contended that their lot abutted a portion of the Lake's ordinary high water mark in 1890, when Idaho achieved statehood. They claimed that the water level had since lowered, and that they owned the land between their property line and the existing high water mark.

Subsequently, the Idaho State Board of Land Commissioners determined that the Lake was non-navigable at Idaho's statehood; thus, the state had no title to the lakebed. The Department then filed an answer to the Mesenbrinks' suit, disclaiming any interest in the Lake because the Lake was non-navigable at Idaho's statehood. As a result, the Mesenbrinks and the Department stipulated to dismissal with prejudice because the Department had disclaimed any interest in the lakebed. The District Court for the First Judicial District ("district court") dismissed the claim against the Department with prejudice. The district court tried the remainder of the case, determining the ordinary high water mark's location at the time of Idaho's statehood. The parties stipulated that the district court could enter judgment granting the Mesenbrinks property down to the Lake's current ordinary high water mark. The district court entered judgment pursuant to the stipulation and the neighbors appealed to the Supreme Court of Idaho.

On appeal, the Supreme Court of Idaho considered whether there was substantial and competent evidence supporting the district court's finding as to the Lake's ordinary high water mark at Idaho's statehood. After explaining that Idaho's ownership of land underlying navigable waters originated with the grant of statehood, the court noted that the trial court misused case law applicable to navigable, rather than non-navigable waters. Owners of land abutting non-navigable waters have different rights the trial court did not consider.

Although Idaho received title to land under navigable waters, the

court, citing *United States v. Oregon*, explained that the federal government retained title to non-navigable waters. However, courts use the relevant state law to interpret grants by the federal government for lands bounding on non-navigable waters if the grants lack a reservation or restriction of terms.

Since the meander lines encircled the Lake, the court held that the federal government did not expressly grant the Lake; as a result, the court held that the federal government impliedly conveyed the lakebed to the abutting landowners. After revisiting the court's previous decisions in *Stroup v. Matthews*, *Johnson v. Hurst*, and *Ulbright v. Baslington*, the court held that owners of land abutting a non-navigable lake also take title to the land between the ends of the meander line and the water, as well as part of the lakebed.

Since the federal government originally surveyed the land surrounding the Lake, and nothing indicated the federal government had reserved an interest in the Lake, the court concluded that the grant to the Mesenbrinks' predecessor included land along and under the Lake. The court explained that the boundary lines ran from the ends of the meander lines to the middle of the Lake, and that the ordinary high water mark is irrelevant when determining the ownership of land underlying non-navigable waters. Additionally, the court ruled the public trust doctrine inapplicable because the Lake was non-navigable.

Accordingly the Idaho Supreme Court vacated and remanded the case to the district court for proceedings in accordance with the opinion.

*Andrew Reitman*

## IOWA

**Gannon v. Rumbaugh, 2009 WL 1913668 (Iowa Ct. App. 2009)** (holding that (1) neither the holder of a dominant or servient estate may obstruct the natural flow of water running from the dominant estate onto the servient estate; (2) holders of the dominant estate may not substantially increase water flow over servient landowner's estate or interfere with the natural watercourse; and (3) drainage improvements are not "authorized by law" if the drainage district that created the improvements no longer exists).

The plaintiffs' (Gannons and Steenhoeks) farmlands adjoin the defendants' (Rumbaugh's) estate. The Steenhoeks' estate is uphill from the Rumbaugh's, making the Steenhoeks' land the dominant estate and the Rumbaugh's the servient estate. The Gannons' estate is downhill from the Rumbaugh's land, making the Rumbaugh's estate the dominant estate and the Gannons' estate the servient estate. The Gannons and Steenhoeks sued the Rumbaugh's after heavy rains flooded their farmlands. They argued that the Rumbaugh's caused the flooding when they lowered a levee on their property and filled a roadside ditch. The District Court of Jasper County found that: (1) the Rumbaugh's negligently increased the flow of water onto the Gannons' property and negligently prevented water from flowing from the Steenhoeks' lands;