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In re Sanders Beach, 147 P.3d 75 (Idaho 2006)

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gument, finding that Joyce only has a right to the water, that the right does not give Joyce a possessory interest in the federal land, and thus that Joyce's right does not threaten the ability of others to use the federal lands.

The court upheld the district court's ruling that Joyce had a right to water, and that the United States did not have a water right. It vacated the district court's priority date, and remanded for consideration of when Joyce's predecessors actually appropriated water for stock watering.

Benjamin Skeen

In re Sanders Beach, 147 P.3d 75 (Idaho 2006) (holding a lake's vegetation line may be used to determine its ordinary high water mark only under specific conditions, and owners of lakeshore property do not have littoral rights to exclude public from exposed lake bed between the ordinary high water mark and ordinary low water mark).

Lake Coeur d'Alene ("Lake") is a navigable lake located within the City of Coeur d'Alene, Idaho. On October 19, 2004, the city of Coeur d'Alene and Kootenai County Prosecuting Attorney initiated an action in the First Judicial District of Idaho to determine the ordinary high water mark ("OHWM") of Sanders Beach, which is part of the Lake's shoreline. On June 14, 2005, Sanders Beach property owners filed a motion for summary judgment, seeking a ruling that the owners' littoral rights permitted them to exclude the public from any exposed lake bed between the OHWM and the ordinary low water mark ("OLWM"). The district court determined, based on the vegetation line, that the OHWM was 2130 feet above mean sea level. In addition, the district court rejected the property owners' right to exclude the public from exposed lake bed between the OHWM and the OLWM. On appeal, the Idaho Supreme Court considered whether the OHWM was 2130 feet, and whether lakeshore property owners' littoral rights permitted them to exclude the public from exposed land between the OHWM and OLWM.

The court first addressed whether 2130 feet was the accurate OHWM of the Lake. The court explained the vegetation line is the line along a lake's shore resulting from water remaining at a level long enough to deprive the underwater soil of vegetation. The court was careful to point out that the vegetation line may be used to determine the OHWM only in certain circumstances. The line must be at a consistent elevation along the whole lake and cannot vary from place to place, cannot be determined by just one particular spot, and must be the line that existed at the time the state joined the Union. The court held that the district court erroneously used the vegetation test because it recognized varying vegetation lines along the lake, and because the court did not know the vegetation line's elevation in 1890,

the year that Idaho joined the Union. The court held that the district court should have determined the OHWM through historical facts.

The court explained that in 1907 the Washington Water Power Company completed dams on the Lake's outlet river. Every year since their completion, the dams kept the OHWM at 2128 feet, the same OHWM level as 1890. The court rejected the district court's finding of 2130 feet because, based on historical facts, the OHWM could not have been higher than 2128 feet.

The court next addressed whether the lakeshore property owners had any right to exclude the public from the exposed lake bed between the OHWM and OLWM. Like the district court, the state supreme court rejected the property owners' contention that English common law applied to the case. English common law cannot apply to Idaho state court decisions when it is inconsistent with state law. The English case at issue recognized a private land owner's title to land down to the lake's OLWM. Conversely, Idaho common law recognized a littoral owner's rights only down to the OHWM. The title to the lake's bed below the OHWM belonged to Idaho and was held in a trust for the public. Even more damaging to the lakeshore owners' claim was an Idaho statute that specifically stated that lakeshore between the Lake's OHWM and OLWM is devoted to public use. Due to inconsistencies between English and Idaho law, the court held that lakeshore property owners could not exclude the public from exposed lake bed between the OHWM and OLWM.

The court vacated the district court's judgment and remanded for further proceedings.

Kurt Kropp

MARYLAND

Neifert v. Dep't of the Env't, 910 A.2d 1100 (Md. 2006) (holding that denial of application for sewer service and wetland fill permits did not violate equal protection or amount to an unconstitutional taking).

On April 3, 2003 Euginia Neifert, Melvin Krolczyk, and Teresa Krolczyk ("Neifert & Krolczyk") filed suit against the Maryland Department of the Environment ("Department") seeking damages and attorneys fees resulting from the Department's denial of sewer service and wetland fill permits. Neifert & Krolczyk claimed that the Department's denial of the permits deprived Neifert & Krolczyk of equal protection and constituted a taking under both the United States Constitution and Maryland Declaration of Rights. The Circuit Court of Worcester County granted summary judgment in favor of the Department. Neifert & Krolczyk appealed to the Maryland Court of Special Appeals. The Maryland Court of Appeals granted certiorari on its own initiative to hear the case, and affirmed the circuit court's decision.