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MINNESOTA

Gillette v. Peterson, 2004 Minn. App. LEXIS 614 (Minn. Ct. App. June 1, 2004) (affirming the district court's decision that defendants' construction of dams on private property across a creek violated the doctrine of "reasonable use" and environmental laws where the dams harmed downstream property owners).

Landowners, the Gillettes and the Sheelys (collectively "Gillettes"), brought suit against adjacent landowners, the Petersons, alleging that field crossings on the Peterson property prevented drainage resulting in damage to the Gillettes' crops. The Petersons installed three field crossings across Roberts Creek that impaired upstream drainage, diminished water flow, and degraded water quality, all resulting in less dissolved oxygen downstream.

The Mower County District Court held that the Petersons violated the doctrine of "reasonable use" and state environmental quality standards by constructing the dams without a public water works permit. The district court awarded the Gillettes damages under the Minnesota Environmental Rights Act ("MERA") and the Petersons appealed.

On appeal, the Petersons contended they did not violate the doctrine of "reasonable use" and no basis for awarding damages existed, because the creek was not considered public water within their property boundaries. The doctrine of "reasonable use" requires: (1) a reasonable necessity for water drainage; (2) the property owner must take reasonable care to avoid unnecessary injury to the burdened land; (3) the benefit to the drained land must outweigh the gravity of harm to the burdened land; and (4) drainage must be accomplished by reasonably improving and aiding the natural system of drainage if practicable.

The Court of Appeals of Minnesota affirmed the district court's findings that the Petersons did not take reasonable care when designing the field crossings to avoid harm to the adjacent, downstream landowners. The Petersons acknowledged the availability of less harmful alternatives. The court found no utility accruing to the Peterson property that outweighed the gravity of the harm to the adjacent landowners' properties. Accordingly, the court held the district court did not err in its finding that the Petersons violated the doctrine of "reasonable use."

The court found that the State may require permits even if the field crossings were not located on public waters. The court held the Petersons needed to obtain a permit, since the field crossings changed and diminished the course and current of the public watercourse downstream of the Petersons' property. In conclusion, the court upheld both of the district court's rulings and found the district court did not err in awarding damages under MERA.

Michael Graetz

MONTANA

Hidden Hollow Ranch v. Fields, 92 P.3d 1185 (Mont. 2004) (holding: (1) the district court did not exceed its jurisdiction when it recognized the existence of an independent source of water, determined that source's flow rate, and settled controversies between appropriators from water source; (2) the district court properly denied a party's motion to certify the issue involving controversy as to the source of water rights to the chief water judge; and (3) the district court did not deprive a party of due process of law by not permanently modifying the decree).

The dispute in this case, which concerned the appropriate distribution of water from the Confederate Creek and its tributaries, related back to the Confederate Creek Decree ("Decree"). In the Decree, the First Judicial District Court, Broadwater County, decreed the water rights of Confederate Creek and its tributaries to the predecessors in interest to Hidden Hollow Ranch ("Hidden Hollow") and Gregory W. Field ("Field") on September 24, 1940.

Pursuant to the rights established in the Decree, Field's lower diversion was prior to Hidden Hollow's points of diversion. Consequently, very little water bypassed Field's lower point of diversion and traveled toward Hidden Hollow's points of diversion. This led to a number of incidents between Field and Hidden Hollow, which included Hidden Hollow's attempt to alter Field's diversion structure, Hidden Hollow's manipulation of the Field's valve, and Field's installation of an improved diversion structure and padlock. Hidden Hollow eventually filed an action against Field, in which Hidden Hollow sought to hold Field in contempt for violating the Decree and enjoin Field from further interference with Hidden Hollow's water rights.

Following a bench trial, the First Judicial District Court, Broadwater County dismissed Hidden Hollow's petition and enjoined it from further interference with Field's diversion works and water conveyance system. Hidden Hollow appealed the district court's decision to the Montana Supreme Court. Hidden Hollow raised four primary issues on appeal.

The court first addressed Hidden Hollow's argument that the district court exceeded its jurisdiction and re-adjudicated the parties' underlying water rights as previously decreed in the Decree. According to Hidden Hollow, the district court re-adjudicated the water rights by recognizing the existence of an independent source of water and determined the source's flow rate. The court rejected Hidden Hollow's argument. The court noted district courts have the authority to supervise the distribution of previously adjudicated water, enforce an existing water decree, and fill in pre-1973 decrees with further delineations.