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enforced; and (3) a mistake of law is not a ground for rescission or cancellation of a deed. Applying these rules, the court found the Herrmanns had no remedy of rescission or cancellation of the warranty deed and thus affirmed the trial court's judgment.

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Kim v. Pollution Control Hearing Bd., 61 P.3d 1211 (Wash. Ct. App. 2003) (holding an "industrial purposes" exception to a permitting requirement for public ground waters applies to commercial horticultural uses).

Joo Il Kim and Keum Ja Kim ("Kims") sought judicial review of a final decision by the Pollution Control Hearing Board of Olympia, Washington ("PCHB"). PCHB affirmed an order by the Department of Ecology ("DOE"), requiring the Kims to apply for a permit to use well water for their commercial nursery. The Superior Court for Kitsap County affirmed the decision of the PCHB. The Kims appealed to Division Two of the Court of Appeals of Washington. The court decided the issue of whether the use of 100 to 300 gallons per day to water plants for sale to the general public constituted "an industrial purpose," thus falling under an exception to the permitting requirement. The court reversed and held that the Kim's nursery fell within the industrial exception.

The main controversy came from an interpretation of a 1945 statute requiring a permit to use the public ground waters of Washington subject to a "small withdrawals" exception. This exception applied in four instances: (1) any quantity of water for livestock; (2) any amount of water for a noncommercial garden of a half acre or less; (3) not more than 5,000 gallons per day for domestic use; and (4) not more than 5,000 gallons per day for an industrial purpose.

In 1995, the DOE altered its interpretation of "industrial purposes." DOE first asserted that the term "industry" excluded agriculture. Second, the DOE argued that interpreting the industrial exception to apply to irrigation made the exemption for noncommercial gardens of one-half acre or less meaningless. Third, it concluded that defining industrial purposes to include agriculture or horticulture drastically increased the scope of the exception and undermined the statute's purpose. In 1998, the DOE required that the Kims file for a permit.

The court rejected all of the DOE's changed interpretations of the 1945 statute. The court noted that twenty-four Washington statutes, ten Washington cases, and six Washington regulations refer to the "agriculture industry." The court also used the dictionary and numerous other examples of reference to the "agriculture industry"

from other jurisdictions to conclude that the "industrial purposes" exception applied to the Kim's nursery. The court also rejected the DOE's second argument because the noncommercial garden provision differs from the Kim's commercial garden irrigation uses. Finally, the court rejected the DOE's third argument because the DOE interpreted the statute and applied it differently than in the past. An agency may not alter the plain meaning of a statute to cater to changed societal conditions. The legislature must amend the statute to properly remedy a statute's application to changing societal needs.

Thus, the court reversed the superior court's ruling, and held that the Kim's nursery fell within the industrial exception.

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McNally v. Zadra, No. 20426-0-III, 2003 Wash. App. LEXIS 68 (Wash. Ct. App. Jan. 21, 2003) (holding plaintiff landowners' rights in water system passed appurtenant to their land; plaintiff landowners' efforts to promote their shared water system's continued use complied with easement agreement; and defendant landowner forfeited rights in the water system by drilling a private well).

Plaintiffs William and Melody McNally ("McNallys") owned Lots C and D, among other property, located adjacent to defendant Elizabeth Zadra ("Zadra"), the owner of Lot A. Significantly, the lots shared a water system which included buried water lines spanning across the lots and a cistern on Lot A. The parties' predecessor in interest conveyed the lots by real estate contract establishing appurtenant easement rights in the water system. A few years later, the parties' predecessor reassigned the rights in the water system to Lot 3. In 1993, Mr. McNally disconnected power to the pump house on his land and removed the water line from the cistern located on Zadra's lot to make repairs to the water system. As a result, a series of disputes transpired between the landowners including issues of ownership and responsibility for the water system.

The McNallys sued Zadra alleging the right to receive water by running it over Zadra's lot. In 1996, the Superior Court of Stevens County granted the McNallys' motion for partial summary judgment, holding the easement in the water system was appurtenant to the McNallys' land; therefore, it passed to them as a matter of law. The McNallys also claimed Zadra drilled a separate well and should forfeit her rights in the water system. The McNallys sought damages and equitable relief for Zadra's interference with their easement rights. Zadra counterclaimed alleging breach of water and road easements, trespass, outrage, conversion and trespass to chattels. Subsequently, at a bench trial in 1999, the trial court concluded the McNallys had not breached the easement agreement and Zadra's separately drilled well effectively relinquished her rights in the water system. As such, she was