

9-1-2000

## Weaver v. Stafford, 8 P.3d 1234 (Idaho 2000)

M. Elizabeth Lokey

Follow this and additional works at: <https://digitalcommons.du.edu/wlr>



Part of the [Law Commons](#)

---

### Custom Citation

M. Elizabeth Lokey, Court Report, Weaver v. Stafford, 8 P.3d 1234 (Idaho 2000), 4 U. Denv. Water L. Rev. 238 (2000).

This Court Report is brought to you for free and open access by the University of Denver Sturm College of Law at Digital Commons @ DU. It has been accepted for inclusion in Water Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact [jennifer.cox@du.edu](mailto:jennifer.cox@du.edu), [dig-commons@du.edu](mailto:dig-commons@du.edu).

---

Weaver v. Stafford, 8 P.3d 1234 (Idaho 2000)

transfers, IDWR issued the disputed order. IDWR's order found a portion of Sagewillow's rights forfeited and voided the approval given on the previous application.

Sagewillow appealed IDWR's decision to the District Court of the Seventh Judicial District. The district court affirmed, finding resumption of use is not a valid defense to forfeiture of a water right. Sagewillow appealed to the Supreme Court of Idaho. While several substantive issues were raised, a procedural matter prevented the supreme court from reaching those issues.

The supreme court noted resolution of water right and water use disputes occurs only through the framework designated by the Idaho Legislature. Changes to existing water rights must be made by application to the IDWR. State statute allows judicial review of an IDWR decision. Unless another provision of law exists, an aggrieved party may obtain judicial review in the district court where either the hearing was held, the final agency was taken, the aggrieved party resides, or the property is located.

The supreme court considered the ongoing Snake River Basin Adjudication ("SRBA") to be "another provision of law" which precluded review by the District Court of the Seventh Judicial District. In 1987, the Idaho Legislature created the SRBA to adjudicate all water rights within the Snake River Basin, and the supreme court designated the fifth district as the exclusive SRBA district court. Thus, the SRBA precludes all private actions for water right adjudications within the Snake River Basin.

Because Sagewillow's water rights were part of the Snake River water system, its appeal fell under the exclusive jurisdiction of the SRBA. Therefore, the District Court of the Seventh Judicial District lacked jurisdiction over Sagewillow's appeal, and the supreme court vacated and remanded the case to the designated SRBA district court.

*Sara Wagers*

**Weaver v. Stafford, 8 P.3d 1234 (Idaho 2000)** (holding: (1) defendant's actions in filling in an original dirt ditch running along boundary between defendant and plaintiff's property constituted abandonment of any prescriptive easement; (2) defendant committed trespass by erecting a new fence between his and plaintiff's property; and (3) plaintiff did not negligently interfere with defendant's water rights).

This dispute involved three parcels of land owned by Plaintiff Max Weaver ("Weaver") and Defendant Frank Stafford ("Stafford"). At the core of the dispute was the original location of a fence and a dirt irrigation ditch that existed as a boundary between the parcels long before either party acquired title to their respective land. After

purchasing his property in October 1994, Stafford removed the original fence and filled in the original dirt ditch located between his parcel ("Stafford property") and Weaver's parcel ("Lot 16"). In 1995, Stafford filled in all irrigation laterals running from the original dirt ditch that serviced his property. That same year he erected a new fence between the parcels. Weaver regarded the fence as an encroachment upon Lot 16 and demanded its removal. After removing the fence in 1997, Stafford excavated a new dirt ditch that followed approximately the same line as the new fence. In 1995 and 1997, a surveyor conducted two boundary surveys between the Stafford property and Lot 16 based on existing monuments. He initially concluded the new fence encroached upon Lot 16 by a minimum of two feet. Later, he concluded the new ditch encroached by approximately five to ten feet.

A cement irrigation ditch containing water ran parallel to the original dirt ditch boundary between Lot 16 and the Stafford property. This cement ditch existed for many years prior to this dispute and irrigated fields on Lot 16 prior to 1969. During the 1995 and 1996 irrigation seasons, Stafford diverted water from the cement ditch to irrigate his property. Weaver filed a complaint against Stafford alleging Stafford committed trespass by erecting a fence and subsequently excavating a ditch on his property. Stafford asserted affirmative defenses and counter-claimed. He asserted he was entitled by prescription or boundary by agreement to maintain a fence between the adjoining properties. Stafford also maintained a prescriptive right-of-way existed. His counter-claim alleged Weaver intentionally interfered with his appropriative water rights and that Stafford acquired an easement by prescription to maintain an irrigation ditch on Weaver's property. The district court entered a judgment in favor of Weaver, finding Stafford trespassed upon Lot 16. Stafford appealed.

The Supreme Court of Idaho determined it would only set aside findings of facts if the facts were not supported by substantial and competent evidence. The supreme court found substantial and competent evidence to support the district court's determination that Stafford did not enter Lot 16 under color of title. In other words, Stafford failed to present any written evidence that purportedly gave him title to the portion of Lot 16. The supreme court also agreed that Stafford failed to establish a prescriptive easement in the original dirt ditch. Witness testimony failed to establish the open, notorious, or uninterrupted nature of any prior use of the original dirt ditch or that Weaver or any previous owner of Lot 16 had knowledge of the use. In addition, the supreme court dismissed Stafford's argument that he had an irrigation right-of-way by agreement in the original ditch. First, Stafford presented no evidence of an express or implied agreement between Stafford and Weaver, or their predecessors. Second, Stafford destroyed the original ditch and then sought to relocate the ditch on Lot 16.

The supreme court next turned to Stafford's assertion that Weaver interfered with his water rights. This allegation arose from the fact that Weaver made changes to an irrigation lateral that provided water to both parties' property. While the precise facts of the changes to the lateral are complicated, Stafford basically contended Weaver prevented him from receiving water. The court dismissed this argument as non-meritorious because Stafford produced no evidence of historic flow rate and because Stafford filled in the very ditch that would have received irrigation water from the pipe Weaver installed.

Because Stafford failed to provide evidence of a prescriptive easement or right-of-way by agreement, the supreme court affirmed the district court's decision that Stafford trespassed and that he demonstrated a willful disregard for Weaver's property rights by erecting a new fence and excavating a new ditch without Weaver's permission. In addition, the supreme court affirmed the denial of Stafford's negligent interference with water rights claim.

*M. Elizabeth Lokey*

## IOWA

**ACCO Unlimited Corp. v. Johnston, 611 N.W.2d 506 (Iowa 2000)**  
(holding a city's condemnation of property owner's land did not violate either the owner's procedural or substantive due process rights, or his equal protection rights).

Andrew Christenson ("Christenson") owned eighteen acres in Johnston, which he leased to ACCO Unlimited ("ACCO"), his solely owned corporation. The land resides within a "100-year floodplain," an area which has a one percent chance of flooding each year. The City of Johnston ("City") condemned Christenson's land in an effort to obtain federal flood relief from the Economic Development Administration ("EDA") following a massive flood in 1993. The EDA, as a condition to dispensing funds, required the City provide evidence that had it either acquired the Christenson property, obtained restrictive covenants, or rezoned it as a conservation district in order to ensure the land would not be developed. Christenson wanted to develop the land, and sought to have the condemnation nullified, arguing that development could have been discouraged by means other than condemnation.

Christenson filed suit against the City seeking a permanent injunction and declaratory relief. A condemnation commission awarded Christenson and ACCO damages for the taking of the land, the amount of which was subsequently increased upon Christenson's appeal. In the present equity action, the district court ruled in the City's favor. The City filed a motion to dismiss Christenson's appeal of