

SUPREME COURT OF IDAHO

Nelson v. Big Lost River Irrigation District, 148 Idaho 157

219 P.3d 804 (2009) · No. No. 35543-2008 · Decided September 30, 2009

SUMMARY

The Idaho Supreme Court affirmed a judgment requiring the Big Lost River Irrigation District to allocate conveyance losses from storage water using a universal shrink method. The court held that a 1936 decree did not require allocation by river reach and that the Idaho Department of Water Resources rule governing watermaster accounting did not control the District's allocation among its water users.

CASE DETAILS

COURT	Supreme Court of Idaho
WRITING FOR THE COURT	Eismann, Chief Justice; Burdick; Eismann; Horton; Jones; J. Jones; W. Jones
JURISDICTION	Idaho
DECIDED	September 30, 2009
DOCKET	No. 35543-2008
DISPOSITION	affirmed
PROCEDURAL POSTURE	Water users appealed from a district court judgment requiring the Big Lost River Irrigation District to allocate conveyance losses from storage water using the universal shrink method.
STANDARD OF REVIEW	The Supreme Court reviewed the summary-judgment decision for error, considering only issues raised by the pleadings; interpretation of the 1936 decree and applicable statutes and rules was a question of law reviewed independently.
PRECEDENTIAL VALUE	Published Idaho Supreme Court opinion; precedential within Idaho.
PARTIES	David Nelson, Loy Pehrson, Plaintiffs-Appellants v. Big Lost River Irrigation District, Board of Directors, Richard Reynolds, Charlie Huggins, Kent Harwood, Joel Anderson, M. Marx Hintze, Idaho Department of Water Resources, David R. Tuthill, Jr., Robert Waddoups, Jay F. Pearson, Defendants-Respondents, Intervenor-Respondents

TOPICS

administrative law

statutory interpretation

appellate procedure

standard of review

PRACTICE AREAS

Administrative law

Water law

Irrigation district law

Appellate procedure

QUESTIONS PRESENTED

1. Whether the 1936 decree limited the irrigation district's discretion to allocate conveyance losses using the universal shrink method.
2. Whether the universal shrink method of allocating conveyance losses among the irrigation district's storage-water users was lawful.
3. Whether any party was entitled to attorney fees on appeal.

HOLDINGS

1. The 1936 decree did not require conveyance losses from the district's storage water to be apportioned by river reach and therefore did not restrict the district from using the universal shrink method.
2. The universal shrink method is lawful because conveyance loss is a cost of delivering storage water, and the irrigation district may allocate that cost proportionately among the district's storage-water users.
3. No party was entitled to attorney fees on appeal, although respondents were awarded costs.

KEY QUOTATIONS

“The issue with which we are here confronted is founded on an erroneous theory which has been advanced from time to time by counsel for some of the ditch and irrigation companies and water users, to the effect that a water user who has acquired his right through “sale, rental or distribution” from a ditch or canal company or an irrigation or drainage district acquires the rights of an appropriator of the water and is entitled to the same consideration in all litigation involving the original appropriation to which the canal or ditch company or irrigation or drainage district is entitled. Such is not the law and it has never been so held or recognized in this state.” (at 810)

“[I]t was the intention of the Legislature that all lands within an irrigation district available for and subject to irrigation, under the system constructed, must be considered as a whole, and that the assessment shall be spread upon all the lands of the district which are or may be supplied with water by such district, under said system.” (at 811)

“The above cases show that an irrigation district cannot vary the assessments to the landowners within the district based upon the cost of delivering them water.” (at 812)

FACTUAL BACKGROUND

Big Lost River Irrigation District owns storage water rights associated with Mackay Dam and Reservoir and conveys that water through the Big Lost River to diversion points serving district landowners. Significant seepage, called conveyance loss or shrink, occurs as the water travels downstream, with greater losses in lower

reaches. The district historically used both a universal shrink method and a reach-based method, but in 2005 its directors voted to resume universal shrink, under which the loss is allocated pro rata among storage-water users. Plaintiffs, who receive storage water from upper reaches, challenged that allocation method.

PROCEDURAL HISTORY

Plaintiffs filed an action seeking to prevent the irrigation district from using the universal shrink method and later sought a declaratory judgment concerning the meaning and application of an Idaho Department of Water Resources rule. The district court entered a partial judgment dismissing the complaint, and an initial appeal was dismissed because the judgment was not final. After remand, the district and intervenors stipulated that universal shrink was required, and the district court entered judgment on February 20, 2008, requiring that method. Plaintiffs' motion for reconsideration was unsuccessful, and they timely appealed.

DISPOSITION

affirmed

CASES CITED

- Vanvooren v. Astin, 141 Idaho 440, 444, 111 P.3d 125, 129 (2005)
- O'Guin v. Bingham County, 139 Idaho 9, 15, 72 P.3d 849, 855 (2003)
- Farmers' Co-operative Ditch Co. v. Riverside Irr. Dist., 14 Idaho 450, 458-59, 94 P. 761, 763 (1908)
- Yaden v. Gem Irr. Dist., 37 Idaho 300, 308, 216 P. 250, 252 (1923)
- Nampa & Meridian Irr. Dist. v. Barclay, 56 Idaho 13, 18, 47 P.2d 916, 918 (1935)
- Colburn v. Wilson, 24 Idaho 94, 132 P. 579 (1913)
- Gedney v. Snake River Irrigation District, 61 Idaho 605, 104 P.2d 909 (1940)
- Niday v. Barker, 16 Idaho 73, 101 P. 254 (1909)
- Callaghan v. Callaghan, 142 Idaho 185, 190, 125 P.3d 1061, 1066 (2005)
- Fenwick v. Idaho Dept. of Lands, 144 Idaho 318, 324, 160 P.3d 757, 763 (2007)
- Downey v. Vavold, 144 Idaho 592, 596, 166 P.3d 382, 386 (2007)
- Marcia T. Turner, L.L.C. v. City of Twin Falls, 144 Idaho 203, 212, 159 P.3d 840, 849 (2007)
- Bradshaw v. Milner Low Lift Irr. Dist., 85 Idaho 528, 545, 381 P.2d 440, 449 (1963)

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