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**IN THE COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON**

Douglas County Superior Court Cause No. 18-2-00396-09

WENATCHEE RECLAMATION DISTRICT,
a RCW 87 Irrigation District,

Plaintiff/Respondent

v.

DOUGLAS COUNTY, a RCW 36 Washington County,

Defendant/Appellant

RESPONDENT'S BRIEF

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I. STATEMENT OF THE CASE

A. **WRD's Interest in the Access Road.**

In the early 1900's, the Wenatchee Reclamation District's ("WRD") predecessor, Wenatchee Canal Company ("WCC"), constructed the irrigation canal east of Baker Avenue. When WCC constructed the irrigation canal, it was also granted access by various surrounding landowners to an access road ("Access Road") for the operation and maintenance of the irrigation canal. CP 477, 491-492. The Access Road extended from Baker Avenue to the irrigation canal east of Baker Avenue and has been continuously owned, maintained and utilized by WRD (and its predecessor WCC) since the early 1900's for the operation and maintenance of the irrigation canal and Blocker Canyon Spillway. CP 477, 492-493.

A May 6, 1907 instrument (recorded November 8, 1907), documents a conveyance by the then landowner, George I. Evans, to WRD's predecessor (WCC) of a right of way, constituting the Access Road in exchange for irrigation system water rights. CP 492, 495. The instrument provides:

That the said party of the first part [WCC], for an in consideration of the party of the second part [Evans] giving and granting unto [WCC] a right of way across the Southeast quarter of section 35 in Township 23 North, of Range 20 E.W.M., in Douglas County, Washington, the receipt of deed to which is hereby acknowledged, agrees to sell to [Evans]. . .a right to the use of water perpetually from the Irrigation System of [WCC]. . .

CP 495.

Additionally, an August 1, 1912 instrument (recorded January 11, 1913) documents a conveyance from W.R. and Maude E. Prowell and F.W. and Claudia E. Hoffman to WCC of property rights that include the Access Road. CP 492, 496-498. The instrument provides:

That the Purchaser in consideration of the construction of the canal and laterals of the Company [WCC] for the purpose of securing a water supply for the irrigation of said lands. . .for value received, do by these presents grant, bargain, sell, convey, and confirm unto the Company [WCC], rights of way, for the main canal and for the location and construction and maintenance of all lateral ditches of said Company [WCC] on, over, across and through the lands herein before described for the irrigation of other lands with the right and permission to enter upon said lands for the survey, location, construction and repair of said laterals and to construct, maintain and repair the same by the Company [WCC].

CP 496.

WRD gained these property rights from WCC in the early 1900's. A May 15, 1916 Warranty Deed documents WCC's conveyance to WRD of the property rights that include the Access Road. CP 492, 499-506.¹

¹ See attached Appendix A for a more legible copy of CP 499-506, which was filed with and reviewed by the Superior Court.

B. Douglas County's Interest in the Access Road.

Douglas County, almost 20 years after WRD was granted its interest in the Access Road, was granted a right of way in the same vicinity. CP 493, 520. Douglas County's right of way was granted in a 1926 deed from the Prowell Hoffman Company. *Id.*

Additionally, on September 7, 2016, Douglas County acquired the portion of the property on which the lower portion of the Access Road sits via a quitclaim deed from Francis Collins ("Mr. Collins"). CP 494, 526-530. Mr. Collins had obtained the property in March 12, 2008 via a special warranty deed from Arthur C. Davis. CP 494, 531-534. That deed expressly excepted the following:

Right and liabilities under customary agreement for water right in Wenatchee Reclamation District, including...the granting of an easement for lateral ditches and pipelines used in connection therewith....

Id.

C. Douglas County's Vacation and Destruction of the Access Road.

In the Spring of 2017, as WRD was preparing for the upcoming irrigation season, it learned that Douglas County had demolished the lower portion of the Access Road, preventing WRD from using it. CP 493. WRD learned of the destruction of the lower portion of the Access Road when it attempted to use the Access Road on April 13, 2017 and could not do so.

Id. No one from Douglas County contacted WRD about its plan to demolish this portion of the Access Road before such action was taken. *Id.*

Prior to the destruction of the lower portion of the Access Road, Douglas County held a hearing on September 6, 2016, regarding the vacation of the right of way it was granted in 1926. *Id.* WRD was not present at this hearing because it was not notified that such a hearing was occurring. *Id.* At the hearing, Douglas County purported to vacate the upper portion of the Access Road. CP 494, 523-525. However, while Douglas County's purported vacation of the right of way assumed it was in the same location as WRD's Access Road, Douglas County's right of way was actually in a different location entirely. CP 535-536, 539.² Moreover, Douglas County never notified WRD of the hearing, vacation, or subsequent destruction of the lower portion of the Access Road despite WRD's property interest in the Access Road. CP 493, 521-522.

D. Procedural History.

In September 2016, Douglas County vacated its own right of way over the upper portion of the Access Road and demolished the lower portion of the Access Road, but did so without giving notice to WRD and without any legal right. CP 493-494, 521-525. As a result, WRD filed a Complaint

² See attached Appendix B for a color copy of CP 539, which was filed with and reviewed by the Superior Court.

and Motion for Summary Judgment, requesting an order from the Superior Court directing Douglas County to restore the lower portion of the Access Road to its prior condition. CP 29-34, 374. The Motion for Summary Judgment was heard on January 24, 2020 and granted in favor of WRD. CP 588-590. Additionally, the Superior Court ordered Douglas County to restore the lower portion of the Access Road to its prior condition before it was improperly destroyed. *Id.* Douglas County subsequently filed a Notice of Appeal on February 19, 2020. CP 593.

II. ARGUMENT

A. Standard of Review on Appeal and Summary Judgment Authority.

The standard of review for a trial court's ruling on a motion for summary judgment is de novo. *Babcock v. Mason County Fire District*, 144 Wn.2d 774, 784, 30 P.3d 1261 (2001).

Summary judgment is appropriate when the evidence, viewed in a light most favorable to the non-moving party, can lead to only one reasonable factual determination. *Vallandigham v. Clover Park Sch. Dist. No. 400*, 154 Wn.2d 16, 26, 109 P.3d 805 (2005); *Heg v. Alldredge*, 157 Wn.2d 154, 160-61, 137 P.3d 9 (2006). The moving party has the burden to show there are no genuine issues as to any material fact and that the moving party is entitled to judgment as a matter of law. CR 56(c). If that

burden is satisfied, the nonmoving party must present evidence demonstrating that material facts are in dispute. *Vallandigham*, 154 Wn.2d at 26. If it fails to do so, entry of summary judgment is proper. *Id.*

However, a nonmoving party must provide more than mere allegations or denials to rebut summary judgment; the party must provide specific facts showing genuine issues exist. CR 56(e). More than speculation or mere possibility is required to successfully oppose summary judgment. *Chamberlain v. Dep't of Transp.*, 79 Wn. App. 212, 215–16, 901 P.2d 344 (1995). “Mere unsupported conclusory allegations and argumentative assertions will not defeat summary judgment.” *Absher Constr. Co. v. Kent Sch. Dist. No. 415*, 77 Wn. App. 137, 141–42, 890 P.2d 1071 (1995).

Here, WRD has presented evidence that there are no genuine issues as to any material fact and that it is entitled to judgment as a matter of law. Douglas County has been unable to present any disputed facts, aside from unsupported conclusory allegations, and as such summary judgment was properly granted by the Superior Court.

B. WRD’s Due Process Rights Were Violated Because It was Never Notified of the Vacation Proceeding.

Douglas County argues that the Superior Court erred in finding that no notice of the vacation proceeding was provided to WRD because Douglas County complied with the statutory notice provisions required for

vacation proceedings. Brief of Appellant at 7-9. However, the Superior Court properly applied the Fourteenth Amendment of the United States Constitution in finding WRD had been deprived of due process of law and Douglas County's purported vacation could not invalidate WRD interest in the Access Road.

The Fourteenth Amendment of the United States Constitution provides that no state shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. A fundamental requirement of due process in any proceeding which seeks to deprive a person of life, liberty, or property is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. See *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

In *Mullane*, the constitutional sufficiency of notice by publication to beneficiaries of a trust was considered by the United States Supreme Court. 339 U.S. 306 (1950). The court determined that notice by publication was insufficient and did not provide adequate due process to known present beneficiaries whose place of residence were known by the trustee, even though the notice provided was sufficient under the New York State banking statute. *Id.*

Where the names and post office addresses of those affected by a proceeding are at hand, the reasons disappear for resort to means less likely than the mails to apprise them of its pendency. . . . **The statutory notice to known beneficiaries is inadequate, not because in fact it fails to reach everyone, but because under the circumstances it is not reasonably calculated to reach those who could easily be informed by other means at hand.**

Id. at 318-319 (emphasis added).

Mullane is analogous to the case at hand. Here, WRD admits and agrees that Douglas County complied with RCW 36.87.050 by publishing a Notice of Hearing for the vacation proceedings and by posting said notice on the Access Road. However, the September 6, 2016 hearing and subsequent vacation proceeding were improper because even though Douglas County complied with RCW 36.87.050, such notice was inadequate to provide WRD with due process. Douglas County knew that WRD used the Access Road frequently during the irrigation season and had an interest in the property. CP 542, 489. Douglas County could have easily, and at little cost, notified WRD of the vacation proceedings via means other than publication or posting, such as mail or personal service, since WRD is a public agency whose address is widely available. Several United States Supreme Court cases have held that less reliable forms of notice by the state are unreasonable when there are inexpensive and efficient mechanisms such as mail service available. See e.g., *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 799 (1983); *Greene v. Lindsey*, 456 U.S. 444, 455 (1982).

Moreover, Douglas County notified some individuals with interest in the property and utilities in the area personally, but chose not to notify WRD. CP 493, 521-522. Thus, it is clear that other means were available and Douglas County knew of its obligation to personally notify some individuals with an interest in the vacation proceeding. Under these circumstances, notice by publication and posting was not sufficient because it was not reasonably calculated to reach WRD when Douglas County knew about WRD's interest and could have easily informed WRD of the proceeding by other means such as mailing or personal service.

Douglas County's brief contends that the Superior Court "must have adopted the idea that agents and/or employees must have qualification of some sort. . . .this seems to create an exception or conditions for those exposed to a notice posting." Brief of Appellant at 9. This statement is without support from the record or any order entered by the Superior Court. The Superior Court simply ruled that Douglas County did not provide WRD with adequate notice. CP at 591-592. As such, any arguments from Douglas County regarding the creation of an "exception" and the absurd effect that would have on the statute should be disregarded as no such "exception" was created.

WRD does argue that an employee driving along the Access Road should not be expected to know or understand the legal significance of a

posting regarding a vacation proceeding. However, this is precisely the purpose for due process and the *Mullane* standard and does not attempt to impose an exception as Douglas County has argued. Notice is required to be reasonably calculated, under the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. *Mullane*, 339 U.S. at 314. In this circumstance, hoping that a WRD employee driving on the Access Road would see the posted sign, stop to read it, understand the legal significance of information, and pass that information along to his superiors, was not reasonably calculated to apprise WRD of the vacation proceeding and afford it an opportunity to present its objections.

Douglas County relies on two cases to argue that simply publishing and posting notice of the vacation proceeding was reasonably calculated to apprise WRD of the pendency of the action. Brief of Appellant at 10. However, such reliance is erroneous as these cases support WRD's contention that actual notice by means such as mailing to the interested party is often required in order to afford proper due process and meet the *Mullane* standard.

The court in *In re Marriage of McLean*, 132 Wn.2d 301, 937 P.2d 602 (1997), after first stating "[i]t is well-settled that notice by mail may satisfy due process requirements," dealt with the issue of whether such

mailed notice must actually be received by the addressee in order to satisfy the due process requirements. 132 Wn.2d at 306, 309. The court held:

where a dissolution decree was entered in Washington and the Washington court accordingly has continuing jurisdiction over an award of child support and the parties, RCW 26.09.175(2) and due process are satisfied by mailing the pleadings in a child support modification proceeding by certified mail to a valid address, even if the mail is returned unclaimed or refused. Here, the father does not claim an invalid address was used or that the mother had any reason to believe that he would not receive a mailing sent to his Idaho address.

Id. at 314.

Douglas County argues that such a holding must leave this court to conclude that Douglas County's publication and posting of the vacation proceeding notice is reasonably calculated to apprise WRD of the pendency of the action because mailed notice returned unclaimed or refused was held to be reasonable in *In re Marriage of McLean*. Brief of Appellant at 10. However, the holding does not support that argument. *In re Marriage of McLean* simply stands for the proposition that in instances where a notice of a proceeding is sent by mail to the individual's valid address, such notice meets due process requirements, even if it is returned unopened. *In re Marriage of McLean*, 132 Wn.2d at 314. In the case at hand, Douglas County sent no notice to WRD by mail, and thus reliance on *In re Marriage of McLean* is misplaced as there is no argument over receipt of mailed notice.

In re Marriage of McLean, along with *Tulsa Professional Collection Service, Inc. v. Pope*, 485 U.S. 478 (1988), support the proposition that notice by mail may be required to satisfy due process requirements. In *Tulsa*, the United States Supreme Court analyzed the notice requirement under the nonclaim provision of Oklahoma's Probate Code. *Tulsa*, 485 U.S. at 478. The court began by reviewing the *Mullane* standard stating:

In the years since *Mullane* the Court has adhered to these principles, balancing the “interest of the State” and “the individual interest sought to be protected by the Fourteenth Amendment.” The focus is on the reasonableness of the balance, and, as *Mullane* itself made clear, whether a particular method of notice is reasonable depends on the particular circumstances.

Id. at 484.

The court then went on to consider the state’s interest in expeditious resolution of probate proceedings against a requirement to provide actual notice by mail to creditors.

In assessing the propriety of actual notice in this context consideration should be given to the practicalities of the situation and the effect that requiring actual notice may have on important state interests. . . . Providing actual notice to known or reasonably ascertainable creditors, however, is not inconsistent with the goals reflected in nonclaim statutes. Actual notice need not be inefficient or burdensome. **We have repeatedly recognized that mail service is an inexpensive and efficient mechanism that is reasonably calculated to provide actual notice.** . . . On balance then, a requirement of actual notice to known or reasonably ascertainable creditors is not so cumbersome as to unduly hinder the dispatch with which probate proceedings are conducted.

Id. at 489-490 (internal citations omitted) (emphasis added).

Similarly, in *Mennonite Board of Missions v. Adams*, 462 U.S. 791 (1983), decided just a few years prior to *Tulsa*, the United States Supreme Court held:

Notice by mail or other means as certain to ensure actual notice is a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interests of any party, whether unlettered or well versed in commercial practice, if its name and address are reasonably ascertainable.

Mennonite, 462 U.S. at 800 (emphasis added).

As such, based on the precedence set by the United States Supreme Court, it is clear that actual notice by mail or other means can be reasonable and required under the *Mullane* standard and the Fourteenth Amendment in certain instances. Moreover, Douglas County has not presented any interests of the state that would outweigh WRD's interest in notice to a proceeding affecting its property rights. Especially when mail service, which is inexpensive and efficient, was available to Douglas County and Douglas County could have easily ascertained WRD's address.

Regardless of the issue of notice, WRD's right to the Access Road via express easement predated Douglas County's right of way and Douglas County's attempt at vacating its right of way would have no legal effect on WRD's access rights.

C. WRD Was Granted an Express Easement Over the Access Road in 1907 and 1912 Instruments.

An easement is the right to use the land in possession of another. An easement can be acquired in many different ways including by express act, by necessity, by implication, and by prescription. In Washington State an easement by express act is created via an instrument having the form of a deed. See e.g., *State ex rel. Shorett v. Blue Ridge Club*, 22 Wn.2d 487, 156 P.2d 667 (1945); *Smith v. King*, 27 Wn. App. 869, 620 P.2d 542 (1980); *Beebe v. Swerda*, 58 Wn. App. 375, 793 P.2d 442 (1990). Additionally, an instrument creating an easement must at least describe the parcel of land over which it runs. *Berg v. Ting*, 125 Wn.2d 544, 886 P.2d 564 (1995).

In this case, WRD was granted an express easement in two different instruments taking substantially the form of a deed and describing the parcel of land over which the easement runs, first in 1907 and again in 1912. The 1907 instrument conveyed by the then landowner, George I. Evans, to WRD's predecessor (WCC) a right of way, constituting the Access Road. The instrument provides:

That the said party of the first part [WCC], for an in consideration of the party of the second part [Evans] giving and granting unto [WCC] a right of way across the Southeast quarter of section 35 in Township 23 North, of Range 20 E.W.M., in Douglas County, Washington, the receipt of deed to which is hereby acknowledged, agrees to sell to [Evans]. . .a right to the use of water perpetually from the Irrigation System of [WCC]. . .

CP 495 (emphasis added).

The 1912 instrument documents the conveyance from W.R. and Maude E. Prowell and F.W. and Claudia E. Hoffman to WCC, providing for:

. . . rights of way, for the main canal and for the location and construction and maintenance of all lateral ditches of said Company [WCC] on, over, across and through the lands herein before described for the irrigation of other lands **with the right and permission to enter upon said lands for the survey, location, construction and repair of said laterals and to construct, maintain and repair the same by the Company.**

CP 496 (emphasis added).

Both the 1907 and 1912 instruments establish that WRD was granted an express easement under Washington law. However, Douglas County, in its brief states:

WRD's claim that it was granted an express easement in 1907 and 1912 is not a fact. . . . The 1907 document makes no mention of any access road. . . . The only specificity mention is ". . . a right to the use of water. . .

Brief of Appellant at 11-12.

Such a statement is largely inaccurate, as the right to the use of water is being granted to Evans, rather than WCC, as Douglas County seems to indicate in its brief. While the 1907 instrument does not mention the Access Road, it does specifically grant a right of way across the land to WCC in exchange for WCC selling to Evans a right to the use of water from the

Irrigation System. Moreover, the 1912 instrument specifically grants WCC the right to enter the land for the purpose of “survey, location, construction and repair of said laterals and to construct, maintain and repair the same.” CP 496. Such instruments constitute expressly granted easements.

1. The Scope of the Express Easement is for Ingress and Egress.

Douglas County fails to understand the nuance allowing for both an express and an ambiguous easement to coexist and instead erroneously states that, “If the purpose is not specified, then the ‘fact’ of an express transfer is not a fact. . . .” Brief of Appellant at 12. Furthermore, Douglas County has taken the position that neither the 1907 or 1912 instrument grant WRD the easement for ingress and egress over the Access Road. Brief of Appellant at 11. However, the scope of the easements granted to WRD in the 1907 and 1912 instruments do include an easement for ingress and egress.

Under Washington law an easement can be both expressly granted and ambiguous as to its scope. When an easement is created by express language, of course it is appropriate to look to the specific language to determine the permitted uses and determine the parties' intent as to the scope of the easement. See *Wilson & Son Ranch, LLC v. Hintz*, 162 Wn.App 297, 306, 253 P.3d 470, 475 (2011). However, if the language creating the easement is ambiguous regarding the scope, the parties' intent may be

determined by certain factors and extrinsic evidence outside the terms of the grant. *Logan v. Brodrick*, 29 Wn. App. 796, 799–800, 631 P.2d 429 (1981). When utilizing extrinsic evidence to determine the scope of an easement, courts “look to the intentions of the parties connected with the original creation of the easement, the nature and situation of the properties subject to the easement, and the manner in which the easement has been used and occupied.” *Id.* at 799, 631 P.2d 429.

In this case, the language used in the 1907 and 1912 instruments grants an express easement to WRD for a right of way across the land. CP 495-498. However, the scope of these express easements granted by the instruments is ambiguous in that the exact location and purpose of the easements is not specifically defined. As such, the Superior Court looked to extrinsic evidence to determine the scope and ultimately found such evidence supported an easement for ingress and egress across the Access Road to construct, maintain, and repair the canals.

The Court did review the conveying documents to back in the turn of the century documents. It seems those documents, even though they don't describe a road in question, they do describe that there's a need for access to maintain, repair and construct the canal. The aerial photos here clearly show that there is an access roadway to the – that leads all the way to the canal as such. Court is, from the record here presented, going to grant a -- the plaintiff's request for summary judgment. . . .

Transcript of Proceedings at 36:7-16.

- i. *The Extrinsic Evidence Presented by WRD and Relied Upon by the Superior Court Clearly Establishes the Parties' Intent to Include Ingress and Egress Over the Access Road.*

The extrinsic evidence presented by WRD establishes: 1) that the parties intended the easement to include construction and maintenance of the canal; 2) that the parties intended the easement to include ingress and egress over the Access Road to support the construction and maintenance of the canal; and 3) that WRD used and occupied the easement over the Access Road in that manner for over 100 years.

The instruments executed in 1907 and 1912 were agreements for water rights in exchange for easements to construct and maintain irrigation canals. CP 495-498. In order to construct and maintain these irrigation canals, the parties intended to include ingress and egress over the granted easement, otherwise WRD (or its predecessor) would have no access to the canals to construct or maintain them. This intent is evidenced by the fact that the canals and the Access Road were both created, used, and maintained for over 100 years after the instruments were executed.

Additionally, confirming the parties' intent in the original instruments, the Access Road has been used by WRD as an ingress and egress point to access the canal for maintenance and construction since the construction of the canal in the early 1900s. This is evidenced by aerial

photos, dating back to 1949, showing the existence and location of the Access Road. CP 507-519.³ Moreover, during irrigation season, WRD's canal patrol persons have driven the Access Road twice daily as a part of maintaining the canal. CP 492-493. No property owner in the years since these easements were granted has taken issue with the use of the Access Road in this manner by WRD.

ii. The Extrinsic Evidence Does Not Give Rise to Competing Inferences or Disputes as to Material Facts.

Douglas County relies on *Kelley v. Tonda*, 198 Wn.App. 303, 393 P.3d 824 (2017), to support its contention that material facts in this proceeding are in dispute and it is not ripe for summary judgment. Brief of Appellant at 12. In *Tonda* the appellate court held that granting a summary judgment was improper when extrinsic evidence which gave rise to competing inferences was relied upon by the trial court in its decision. *Tonda*, 198 Wn.App at 318.

Contract interpretation is a question of fact when extrinsic evidence is relied on and more than one reasonable inference can be drawn from that evidence. The language of the 1907 writing, context of the 1907 agreement, and subsequent acts of the parties in executing a deed and causing that deed to be recorded give rise to competing inferences.

Id. (emphasis added).

³ See attached Appendix C for a color copy of CP 507-519, which was filed with and reviewed by the Superior Court.

Tonda is merely an example of when the use of extrinsic evidence can lead to a case being improper for disposition on summary judgment. It does not dictate that all cases in which courts examine extrinsic evidence are automatically questions of fact that must proceed to trial.

Tonda is distinguishable from the case at hand because here there are no competing inferences from the extrinsic evidence presented by WRD. Moreover, Douglas County presents no specific facts or evidence regarding the intentions of the parties connected with the original creation of the easement, the nature and situation of the properties subject to the easement, or the historical manner in which the easement has been used and occupied over the past 100 years, which show that a genuine issue of material fact is in dispute, as is required by the summary judgment standard.

2. Any Property Interest Granted to Douglas County Over the Access Road is Subject to WRD's Easements.

WRD acknowledges that Douglas County was granted a right of way in 1926 in the same general area as WRD's easement over the Access Road. CP 493, 520. Douglas County also acknowledges the 1926 interest in the Access Road it was granted, "but disputes WRD's claim that it inherited an express easement over the access road." Brief of Appellant at 13. However, Douglas County's position is not supported by the facts or law. The right of way granted to Douglas County in 1926 is subsequent in

time to the rights of WRD, which were granted in 1907 and 1912. WRD was granted and recorded its easement prior to 1926, thus Douglas County's rights are inferior, and subject to the rights of WRD. See, e.g., *Kendrick v. Davis*, 75 Wn.2d 456, 452 P.2d 222 (1969); *Strong v. Clark*, 56 Wn.2d 230, 352 P.2d 183 (1960).

Additionally, Douglas County was deeded property containing the lower portion of the Access Road in September 2016 from Mr. Collins. CP 494, 526-530. Mr. Collins took the property via a special warranty deed in 2008 subject to rights and liabilities under an agreement for water right in WRD, which included an exception for an easement to WRD for lateral ditches and pipeline in connection therewith. CP 494, 531-534.

“By definition, quitclaim deeds convey only the grantor's interest subject to valid encumbrances, so that the grantee is in the same position as the grantor.” *Thorstad v. Federal Way Water and Sewer Dist.*, 73 Wn.App. 638, 642, 870 P.2d 1046, 1048 (1994) (citing *Corning v. Aldo*, 185 Wn. 570, 577, 55 P.2d 1093 (1936)). Since Douglas County obtained the property from Mr. Collins via a quitclaim deed, it also took the property subject to the easement in WRD's favor.

Consequently, Douglas County had no legal right to destroy the lower portion of the Access Road or cut off WRD's rightful access to its easement, since Douglas County's interest in the property is subject to the

easement rights of WRD. Douglas County's statement that it disputes this claim is supported by no factual or legal authority, and is merely a conclusory allegation intended to create an issue of fact where none exists.

3. No Further Discovery or Investigation is Needed to Fairly Adjudicate the Property Interest at Issue in This Case.

Douglas County argues that the Superior Court erred in granting summary judgment because:

[D]isputed issues of material fact remain. Douglas County posits that WRD has no property interest in the access road. WRD claims otherwise. In the interest of fairness, this requires more discovery and fact finding.

Brief of Appellant at 16.

However, Douglas County provides no factual or legal support for its assertions and arguments.

First, simply stating that Douglas County believes WRD has no property interest is an unsupported conclusory statement that is not sufficient to overcome a properly supported motion for summary judgment, which WRD has provided.

Second, discovery was conducted in this case, including interrogatories (CP 45-473, for example), and Douglas County had every opportunity to conduct whatever fact-finding it needed to do to support its position. The Complaint was filed on or about June 5, 2018. CP 29-34. The Motion for Summary Judgment was filed on or about December 16, 2019.

CP 474-475. The parties had approximately 18 months between when the Complaint was filed and when the Motion for Summary Judgment was set for hearing to conduct discovery. WRD completed the discovery it thought necessary in the interim. If Douglas County failed to do discovery it now argues is necessary, such failure was due to its own lack of diligence during the 18 months it had to complete such discovery.

Third, Douglas County argues that the Superior Court was confused regarding the Access Road, a “maintenance road” and a “connector road,” and that confusion entitles it to additional discovery and investigation prior to adjudication. Brief of Appellant at 16. Douglas County’s brief quoted several sections of the Summary Judgment hearing where the Superior Court discussed the difficulty it had distinguishing the black and white copies of the maps provided. Brief of Appellant at 15-16. However, Douglas County failed to also mention in its brief that the Superior Court was provided with color copies of the maps during the Summary Judgment hearing, and both counsel for Douglas County and WRD approached the bench while counsel for WRD showed the Superior Court various pictures and pointed out the Access Road and other important landmarks. See Transcript of Proceedings at 22:19 to 26:1-20.

Douglas County further argues that the Superior Court failed to understand and apply information provided in his Response to Opposition

to Plaintiff's Motion for Summary Judgment regarding the existence of a maintenance road parallel to the canal that could be used to access the canal. Brief of Appellant at 15. That maintenance road is irrelevant to the discussion of the Access Road, and Douglas County's continuous attempts to bring it into the case are misguided and only serve to cause confusion.

At the Summary Judgment hearing, the Superior Court was clear that it understood where the Access Road was, even in relation to the maintenance road.

. . .[Y]ou can see that it clearly loops and accesses the canal and the other road that runs along the canal. . . . It comes from Baker Street, travels up to the canal and then there's a road along the canal and comes back.

Transcript of Proceedings at 36:24 to 37:1-6.

There is no support, legal or otherwise, for Douglas County's argument that disputed issues of material fact remain, or that the case requires additional discovery and fact-finding before it can be adjudicated.

D. Francis Collins, as Trustee of the Francis J.V. Collins and Gabrielle O. Collins Trust, is Not an Indispensable/Necessary Party.

Douglas County argues that Mr. Collins is a necessary party to this proceeding, and that the Superior Court erred in not requiring him to be joined as a party prior to adjudication. Brief of Appellant 16-18. Under the rule requiring joinder of persons needed for just adjudication, CR 19, the

trial court must undertake a two-part analysis. First, it must determine whether a party is necessary for just adjudication, and second, if the absent party is necessary, but it is not possible to join the party, then the court must determine whether in equity and good conscience the action should proceed among parties before it, or the case should be dismissed, the absent party being thus regarded as “indispensable.” See *Gildon v. Simon Property Group, Inc.*, 158 Wn.2d 483, 145 P.3d 1196 (2006). The burden of proof for establishing indispensability of an absent party is on the party arguing for dismissal. *Id.*

A “necessary party” under CR 19(a) has been defined as one who “has sufficient interest in the litigation that the judgment cannot be determined without affecting that interest or leaving it unresolved.” *Harvey v. Board of County Com'rs of San Juan County*, 90 Wn.2d 473, 584 P.2d 391 (1978); *Kitsap County Fire Protection Dist. No. 7 v. Kitsap County Boundary Review Bd.*, 87 Wn. App. 753, 943 P.2d 380 (1997). Just because a person may be a proper party with a right to intervene does not make that person a party who must be joined as a defendant. *Crosby v. County of Spokane*, 137 Wn.2d 296, 971 P.2d 32 (1999). The law provides that persons who may be involved in the subject matter of an action are not necessary parties if no recovery is sought against them and they would not

be prejudiced by the judgment. *In re Wilson's Estate*, 50 Wn.2d 840, 315 P.2d 287 (1957).

Douglas County's sole argument for why Mr. Collins is a necessary or indispensable party in this proceeding is based on his (as the Trustee of the Francis J.V. Collins and Gabrielle O. Collins Trust) status as the "undisputed legal owner of the property between WRD's irrigation canal and North Baker Road." Brief of Appellant at 16. However, Douglas County fails to identify any specific way in which Mr. Collins would be prejudiced by a judgment in this proceeding, or any way in which his property rights would be impaired. Douglas County argues that based on his status as the legal property owner Mr. Collins would automatically be "most affected" by any order or decision in this legal proceeding. Brief of Appellant at 17. However, Washington courts have considered and disagreed with just that argument.

In *In re Long and Fregeau*, 158 Wn.App. 919, 930, 244 P.3d 26, 31 (2010), the court held that a title owner of a property is not a necessary party based solely on its status as a record owner when nothing about the legal proceeding impairs their interest in the property or subjects them to conflicting liability. As discussed below, there is no evidence that an adjudication in this proceeding will affect Mr. Collins' property interests or subject him to any liability.

Douglas County cites to two main cases for support that Mr. Collins is an indispensable party. First, Douglas County relies on *City of Federal Way v. King County*, 62 Wn.App 530, 815 P.2d 79 (1991), however, such reliance is misplaced because there is no evidence that an adjudication of this proceeding will invalidate or affect Mr. Collins' property rights. In *City of Federal Way v. King County*, the City of Federal Way failed to join a property owner whose property interest they intended to take away by challenging a vacation action. The court specifically found:

The owner of affected property, here SLC, is an indispensable party. . . . This is because "he is 'most affected' by the granting of the writ of review, and **he should be a party to any proceeding, the purpose of which is to invalidate or affect his interest.**

Id. at 539 (emphasis added).

City of Federal Way is distinguishable from the case at hand because this proceeding would in no way invalidate or otherwise affect Mr. Collins' property interest. The recovery and remedy requested by WRD does not involve Mr. Collins, as WRD's easement and the Access Road will stay the same as it has always existed across Mr. Collins' property. There is no conflict with Mr. Collins. WRD only requests that Douglas County return the Access Road to its original condition before it was improperly destroyed. The real conflict and remedy in this litigation lies between Douglas County and WRD, not between WRD and Mr. Collins.

Additionally, Douglas County cites to *Woodfield Neighborhood Homeowner's Assn. v. Graziano*, 154 Wn.App. 1, 225 P. 3d 246 (2009), to support the contention that Mr. Collins is an indispensable party. Once again, any reliance is misplaced as *Woodfield* is distinguishable from the facts here. The court in *Woodfield* held that Pierce County was a necessary party to the dispute because the relief requested by Graziano, a title free and clear of any restrictions, could not be granted without Pierce County's presence. *Id.* at 4. In our case, the relief requested by WRD can be granted without Mr. Collins' presence. Again, WRD seeks no recovery against Mr. Collins. Douglas County destroyed the Access Road, not Mr. Collins. WRD only seeks recovery against Douglas County, asking that Douglas County restore the lower portion of the Access Road to its prior condition.

Douglas County simply argues that Mr. Collins is an indispensable party because he is the owner of real property over which portions of the Access Road lie without any evidence of how his property interest will be invalidated or affected. As such, Douglas County has failed to meet its burden to establish that Mr. Collins is a necessary or indispensable party because it is clear from Washington case law that persons involved in the subject matter, including legal property owners, are not defacto necessary parties to a lawsuit. *In re Long and Fregeau*, 158 Wn.App. at 930. Moreover, if there is no recovery sought against the person, or they would

not be prejudiced by the judgment, then they are not a necessary party. *In re Wilson's Estate*, 50 Wn.2d 840. Mr. Collins is not a necessary party in this proceeding because as stated above, WRD seeks no recovery against Mr. Collins and only seeks recovery against Douglas County. Additionally, Mr. Collins will not be prejudiced by the judgment because it only returns the road to the status quo before Douglas County improperly destroyed it.

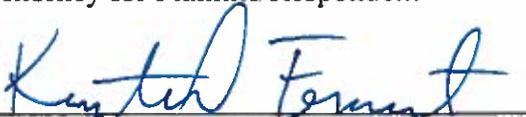
III. CONCLUSION

Based on the foregoing, WRD respectfully requests that the Court affirm the Superior Court's grant of summary judgment and order directing Douglas County to restore the Access Road to its prior condition.

Respectfully submitted this 13th of July, 2020.



Steve D. Smith, WSBA No. 16613
Attorney for Plaintiff/Respondent



Krystal N. Frost, WSBA No. 51496
Attorney for Plaintiff/Respondent

Appendix A

Attached is a more legible copy of CP 499-506. This document is the Warranty Deed from Wenatchee Canal Company conveying the interest in the Access Road to WRD. In the CP, the Deed is unreadable. However, the Deed originally filed by WRD was of higher quality.

WARRANTS

The Grantor, **WENATCHEE CANAL COMPANY**, a corporation organized and existing under the laws of the State of Washington, with principal place of business at Wenatchee, Washington, for and in consideration of Ten (\$10.00) Dollars in hand paid, (the receipt whereof is acknowledged), convey and warrants, subject, however, to the provisions hereinafter mentioned, to **WENATCHEE IRRIGATION DISTRICT**, an irrigation district organized and existing under the laws of the State of Washington, in Shelan and Douglas Counties, State of Washington, with principal place of business at Wenatchee, Washington, in and to the several parcels of land, situated in the counties of Shelan and Douglas, State of Washington, to-wit:

The entire irrigation system owned by the Wenatchee Canal Company, consisting of rights to divert and use water from the Wenatchee River and main and lateral canals, and ditches, bridges and works, together with all canals, ditches, pipes, drains, tunnels and other conduits and waste-ways, by the same or now constructed and located upon the ground, together with all rights of way over the same, and all rights to divert and use water from the Wenatchee River owned by said Wenatchee Canal Company, together with all rights of way over and across lands owned by other persons in which the said Wenatchee Canal Company owns an interest.

The general location and position of the main canal, including the pipes, ditches, tunnels and other conduits, of which the same is composed, as now located and constructed upon the ground, and the right of way therefor, is now particularly described as follows:

beginning at a point in the southeast quarter of section twenty-six (26), in township twenty-four (24), North of Range eighteen (18), N.W.M., at the head end of Flume Number 2 of the Wenatchee Canal Company, where the said Flume connects with the canal now owned by the Wenatchee Valley Gas & Electric Company and formerly owned by Valley Power Company, which point is on the west side of canyon commonly known as Williams Canyon; and thence following the canal as now surveyed and located, and constructed, through the southeast quarter of Section 30, Township 24, North of Range 18, N.W.M., through Sections 29, 28 and 26, Township 24 North, Range 18 N.W.M., through Sections 31, 32 and 33, Township 24, North Range 18 N.W.M., through Sections 4, 5, 8, 11, 14 and 13 of

Township 23, North Range 19, through Sections 18, 19 and 20, Township 23, North Range 20, to point in northeast quarter of Section 20, which point is the intake of the Wenatchee Canal Company's pipe line across the Wenatchee River, and also is the intake of the Columbia lateral of the Wenatchee Canal Company.

From the intake of the Wenatchee Canal Company's Wenatchee River pipe, as above described, run in an easterly direction on above mentioned Columbia Lateral through Sections 20, 16 and 21, to its terminus in Section 21.

From intake of Wenatchee River pipe in northeast quarter of Section 20, as above described; thence following the Wenatchee Canal Company's Wenatchee River pipe-line as now located and constructed through Sections 20, 21, 28 and 29, Township 23, North Range 20, to the outlet of said Wenatchee River pipe, which outlet is in the Southeast quarter of Section 29, Township 23, North Range 20 E.W.M.

Thence following the Wenatchee Canal as now surveyed, located and constructed, through Sections 29 and 32, Township 23, North of Range 20, E.W.M., through Sections 6, 8, 9, 16 and 18, Township 22, North Range 20 E.W.M., to a point in the northwest quarter of Section 15, which is the intake of the Wenatchee Canal Company's pipe-line across the Columbia River.

From the intake of Columbia River pipe a branch line running in a southeasterly direction through sections 15 to its terminus in southeast quarter of Section 15.

From intake of Columbia River pipe, thence following the Wenatchee Canal Company's Columbia River pipe-line, as now located and constructed through Sections 15 and 10 and 11, to West bank of Columbia River in Chelan County; thence to its outlet on east side of Columbia River in Section 11, Township 22 North, Range 20, E.W.M., in Douglas County, Washington.

From outlet of Columbia River pipe, in Section 11, Township 22, North Range 20, E.W.M., in a northerly direction along Wenatchee Canal Company's canal as now located and constructed, through Sections 11 and 8, Township 22, North Range 20, E.W.M., through Sections 35, 26 and 23, Township 23, North Range 20, E.W.M., to its terminus in Section 23, Township 23, North Range 20, E.W. in Douglas County, Washington.

From outlet of Columbia River pipe as above described, in southeasterly direction following the Wenatchee Canal Company's canal as now surveyed, located and constructed through Sections 11, 18 and 13, Township 22, North Range 20, E.W.M., through Sections 18, 19, 20, 21, 22, 23, 24, 25 and 26 of Township 22, North Range 21, E.W.M., and Sections 30 and 19 of Township 22, North Range 22, E.W.M. to its terminus in Section 19, Township 22, North of Range 22, E.W.M., Douglas County, Washington.

The above description is intended to describe, and this conveyance is intended to convey all the physical properties of the Wenatchee Canal Company lying in Chelan and Douglas Counties, State of Washington, including rights of way, canals, flumes, tunnels, pipe lines, and other conduits, and the bridge across the Wenatchee River, which bridge is subject to the perpetual right of the Wenatchee Water Power Company to carry a pipe line not exceeding 24 inches in diameter over said bridge, and including the perpetual right and easement from the State of Washington to carry the pipe line of the Wenatchee Canal Company across the Columbia River on the state bridge near Wenatchee, subject to a charge of one-third the maintenance cost of said bridge, and including all other rights and appurtenances that may be attached to said properties, including all rights and interests in that certain appropriation of the right to divert and use water from the Wenatchee River made by W. T. Clark on the 12th day of May, A.D. 1902, and transferred by him to the Wenatchee Canal Company.

The intent of this instrument is to convey to Wenatchee Reclamation District the entire irrigation system of the Wenatchee Canal Company in Chelan and Douglas Counties, as the same now exists and is located on the ground, and should there be any discrepancy as to the description of the property above described and the actual location of same upon the ground, the actual location shall govern and shall be conclusive.

Situated in Chelan and Douglas Counties, State of Washington.

IT IS UNDERSTOOD AND AGREED that the Wenatchee Canal Company has heretofore made water deeds to the several owners, whereby it has agreed to supply water for irrigation of substantially all of the lands within the said Wenatchee Reclamation District and

for some lands without the said District, and this conveyance is made subject to the rights and interests of the said various water users and water deed holders; and the Wenatchee Canal Company hereby sells and assigns to the said Wenatchee Reclamation District all its rights, title and interest in or by virtue of each of the several said water right deeds, and authorizes the said Wenatchee Reclamation District to receive the full benefits therefrom as fully to all intents and purposes as the Wenatchee Canal Company might or could do had this conveyance not been made, and particularly authorizes the said Wenatchee Reclamation District to collect and receive for its own use and benefit all of the maintenance charges and other fees accruing on the said water right deeds for the season of 1916 and thereafter. It being further understood and agreed that there is excepted and reserved from the operation of this deed all outstanding water right contracts in accordance with the terms of a certain agreement made on the date hereof between the District and the Old National Bank of Spokane.

AND IT IS FURTHER UNDERSTOOD AND AGREED: that the Wenatchee Canal Company did, on the 17th day of November, A.D., 1912, convey to the Union Trust & Savings Bank, Trustee, Spokane, Washington, a certain water users contract for the irrigation of 535 acres of land situated in Douglas County, State of Washington, and particularly bounded and described as follows, to-wit:

15 acres in the $\frac{1}{2}$ of the $\frac{1}{2}$ of the NW $\frac{1}{4}$, and 25 acres in the $\frac{1}{2}$ of the $\frac{1}{2}$ of the NW $\frac{1}{4}$ and the $\frac{1}{2}$ of the $\frac{1}{2}$ of the NW $\frac{1}{4}$, and 60 acres in the $\frac{1}{2}$ of the $\frac{1}{2}$ of the SW $\frac{1}{4}$ and the $\frac{1}{2}$ of the $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Section 23, T. 23, N. R. 20 E.W.M.; and 40 acres in Government Lot 3, and 40 acres in Government Lot 4, and 70 acres in the $\frac{1}{2}$ of the SW $\frac{1}{4}$, and 25 acres in the $\frac{1}{2}$ of the $\frac{1}{2}$ of the NE $\frac{1}{4}$ of Section 11, T. 23, N. R. 20 E.W.M.; and 90 acres in the SE $\frac{1}{4}$ and 25 acres in the $\frac{1}{2}$ of the $\frac{1}{2}$ of the NE $\frac{1}{4}$ of Section 2, T. 23, N. R. 20 E.W.M.; and 40 acres in Government Lot 1, and 40 acres in Government Lot 2, in Section 3, T. 23, N. R. 20 E.W.M., and 65 acres in that part of the SE $\frac{1}{4}$ of Section 35, T. 24 N. R. 20 E.W.M., lying east of the Columbia River

the said contract being #457; and this deed being made subject to and with reservation of the rights embodied in said contract #457. And that said 635 acres lie without the said Wenatchee Reclamation District, and that said water right is equal to 5.35 cubic feet of water per second of time, and that the said water right may be separated and conveyed so that the same shall not be appurtenant to the lands described in said water right and that said lands be released from the lien thereof; and that said water right may be applied to other lands either within or without the Wenatchee Reclamation District; PROVIDED, it is expressly agreed that the Wenatchee Reclamation District shall not be required to deliver said water at any point other than at the bank of its canals as now constructed or as the same shall be hereafter constructed, and that the same shall not be delivered by the said Wenatchee Reclamation District at a less rate annually than the water users within the said Wenatchee Reclamation District are required to pay for similar service, including all tolls, assessments, and other charges; nor shall the Wenatchee Reclamation District be required to make any such delivery until the party owning or to whom said water shall be transferred shall execute the necessary contracts and conveyances in writing in order to charge the lands to which the same is to be applied with the lien for the payment of said tolls and assessments upon the same basis and to the same effect as if the said lands lay within the said Wenatchee Reclamation District.

The Wenatchee Canal Company hereby sells, assigns, transfers, conveys and sets over to the Wenatchee Reclamation District all its rights, property and interests secured to it by reason of that certain contract entered into on the first day of March, A.D. 1907, between Wenatchee Canal Company and the Valley Power

Company, a Washington corporation, which contract is recorded in Volume 51 at page 137, Record of Chelan County, Washington, and is in words and figures as follows, to-wit:

"AGREEMENT FOR RIGHT OF WAY.

"THIS AGREEMENT, Made and entered into this 1st day of March, 1907, by and between the WENATCHEE CANAL COMPANY, a Washington corporation, the party of the first part, and the VALLEY POWER COMPANY, a Washington corporation, the party of the second part;

WITNESSETH: That for and in consideration of the sum of One dollar, lawful money of the United States, and in consideration of the covenants and agreements herein contained, to be performed as herein stated, the party of the first part conveys to the party of the second part, subject to the conditions and terms hereinafter contained, the following described real property, situated in the County of Chelan, State of Washington, to-wit:-

That portion of the right of way and main canal of the party of the first part, lying between stations 00 and 115; said property is also described as follows, to-wit:

Commencing at the head gate or intake, where the main canal of the party of the first part leaves the Wenatchee river, thence following said main canal down the Wenatchee river, a distance of 11500 feet to station No. 115; and together with the right of way of the party of the first part on either side of said main canal between stations 00 and 115.

The conditions of this conveyance are as follows, to-wit:- The party of the second part shall perpetually and at its own cost and expense during the irrigation season of each and every year, viz: between the 15th day of April and the 31st day of October of each and every year, furnish to the party of the first part at station No. 115 of the main canal of the party of the first part all of the water required by the party of the first part for the purpose of operating and maintaining its irrigation system not exceeding two hundred cubic feet per second of time; and it is expressly agreed and understood that if the second party shall at any time fail or refuse to furnish to the party of the first part the water, at the time and in the quantity hereinbefore stated, the property herein conveyed shall at the option of the party of the first part, revert to the said party of the first part, its successors or assigns, and the second party shall forfeit all rights under and by virtue of this conveyance.

IN WITNESS WHEREOF, the parties hereto have caused this

instrument to be signed by their Presidents and Secretaries and the corporate seals of said parties to be hereunto affixed the day and year first above written.

(Corporate Seal)

WENATCHEE CANAL COMPANY,
By J. T. Clark, President
and Marvin Chase, Secretary

(Corporate Seal)

VALLEY POWER COMPANY.
By F. E. Scheble, President,
and J. T. Clark, V.P.
Marvin Chase, Secy."

IT IS HEREBY INTENDED to convey to the Wenatchee Reclamation District the right to the reversion of the said above described lands as well as all other rights under the said contract.

IN WITNESS WHEREOF the Wenatchee Canal Company has caused its corporate name and seal to be hereunto affixed, by its President and Secretary thereunto duly authorized, this 1st day of May, A.D. 1916.

WENATCHEE CANAL COMPANY

By J. T. Clark
Its President.

Attest: Marvin Chase
Its Secretary.

STATE OF WASHINGTON)
) SS.
County of Shelan)

THIS INSTRUMENT was on this 1st day of May, A.D. 1916, before the undersigned, a Notary Public in and for the State of Washington, personally appeared J. T. CLARK, to me known to be the President, and DEVERE UTTER, to me known to be the Secretary of the WENATCHEE CANAL COMPANY, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for

the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument, and that the seal thereunto affixed is the corporate seal of said corporation.

WITNESS my hand and official seal the day and year in this certificate first above written.


Notary Public in and for the state
of Washington, residing at Wenatchee
in said State.

Appendix B

Attached is a color copy of CP 539. This document is a map created by surveyor Bruce Dawson and shows discrepancies in the Access Road location and the legal description of the road that was vacated by Douglas County. The map in the CP is in black and white. However, WRD originally filed the map in color.



$\Delta = 31^{\circ}06'00''$
 $R = 286.43$
 $L = 158.50$
 $(DOC = 29^{\circ}00'00'')$

$\Delta = 28^{\circ}41'59''$
 $R = 336.43$
 $L = 168.54$
 $(DOC = 17^{\circ}01'41'')$

- NOTES:
- 1) THIS EXHIBIT IS BASED ON QUIT CLAIM DEED RECORDED UNDER AUDITOR'S FILE NUMBER 16378, BOOK 75, PAGE 197, APRIL 6, 1926.
 - 2) DATA SHOWN IN () IS REGARD.
 - 3) NO FIELD WORK WAS DONE.



SIGNED: 12-2-19



SCALE IN FEET

EXHIBIT FOR
STEVE SMITH

SECTION 35, T.23N., R.20E. W.M.
DOUGLAS COUNTY, WASHINGTON

DAWSON SURVEYS & GEOMATICS, LLC

P.O. Box 656
Waterville, WA 98858
509-433-4358
dawson.survey@nwi.net

DATE:	10-02-19	DWG NAME:	1936.DWG
DRAWN BY:	BWD	JOB NO.:	1936
SCALE:	1"=100'	SHEET 1 OF 1	

Appendix C

Attached are color copies of CP 507-519. These documents are photographs showing the location of the Access Road from various vantage points over the years since 1949. The photographs in the CP are in black and white. However, WRD originally filed the photographs in color.

1949 Photo

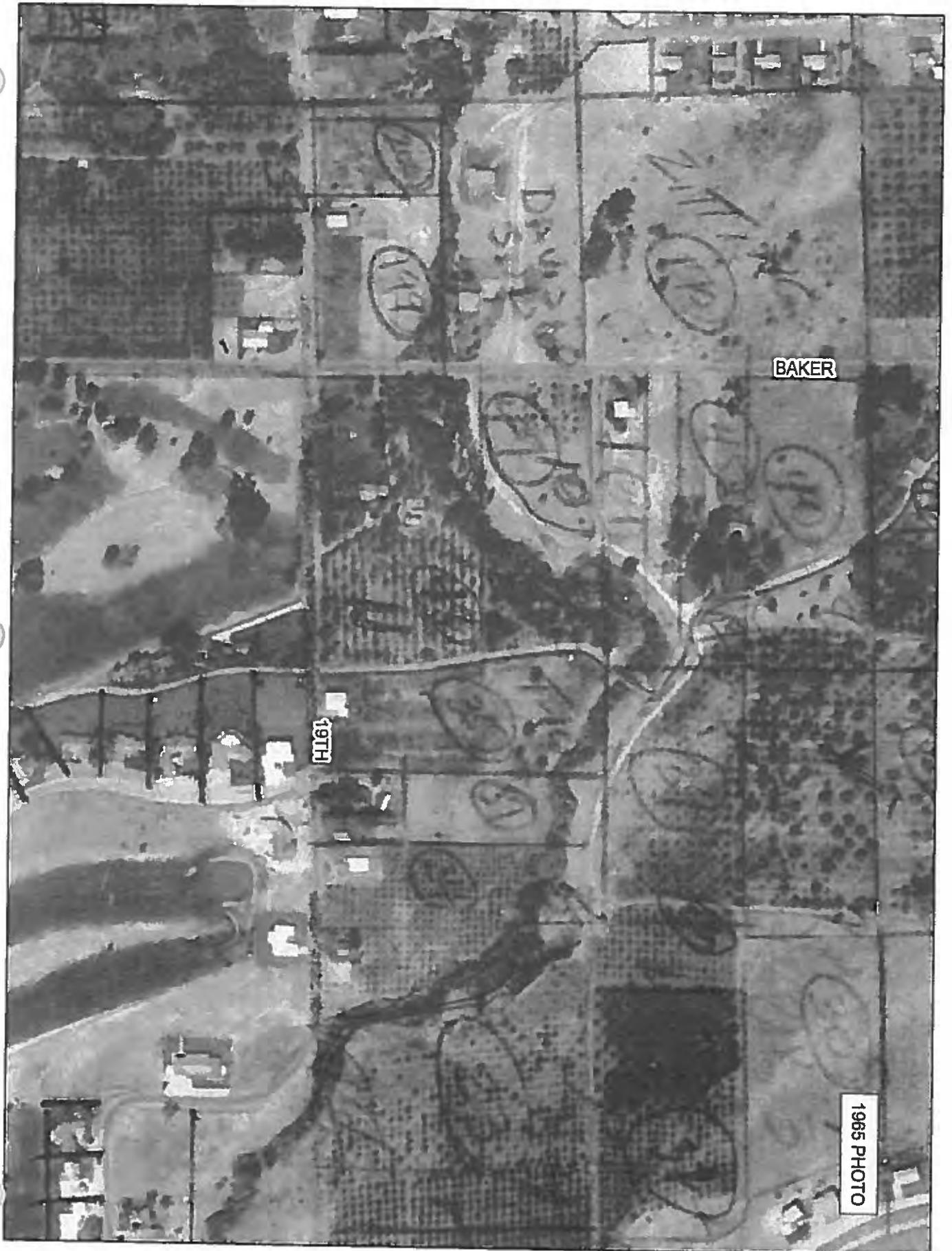


(01)



1955 PHOTO

(11)



BAKER

19TH

1965 PHOTO



28

Sunset Hwy

1st St NE

2nd St NE

3rd St NE

4th St NE

Autumn Pl

Baker Ave

U.S. Gaudin St

5th St NE

Highway Pl

6th St NE

Country Club Dr

N Devon Ave

Crystal Ct

Diamond Ct

Beado Ct

Stoneridge Ct

Peace Haven Ct

King Pl

Valley View Blvd

Google Earth

Imagery Date: 8/20/1996 47°26'11.86" N 120°17'25.15" W elev: 337 ft eye alt: 4037 ft



Sunset Hwy

N Baker Ave

Image U.S. Geological Survey
Imagery Date: 8/1/1998 47°26'11.86" N 120°17'25.16" W elev: 837' ft - eye alt: 4957' ft

Country Club Dr

19th St

N Devon Ave

Hideaway Pl

Crystal Ct

Diamond Ct

Donado Ct

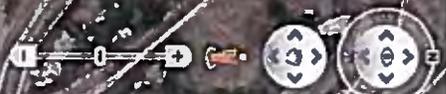
Stoneridge Dr

Beach Haven Ct

King Pl

Valley View Blvd

Google Earth







Imagery Date: 12/31/2003 47°26'11.86 N 120°17'25.16 W elev: 337 ft elev: 4357 ft

Google Earth



Imagery Date: 7/31/2005 47°28'11.96" N 120°17'25.16" W elev. 837 ft. copyright 2005 Google

Google Earth





Sunset Hwy

Baker Ave

191st St NE

Hideaway Pl

County Club Dr

N Devon Ave

Diamond Dr

191st Pk NE

Boulder Ct

Stoneridge Dr

East Haven Rd

King St

Valley View Blvd

Imagery Date: 8/8/2011 47°26'11.80" N 120°17'25.15" W elev: 837 ft - Overall: 4557 ft

Google earth









Imagey Date: 7/1/2017 08:26:11.06 N 120° 17' 25.16 W elev: 4337 ft - pressure: 4957 ft

Google Earth

CERTIFICATE OF SERVICE

I, Megan L. Heimbigner, hereby declare as follows:

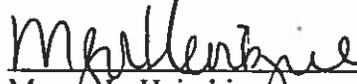
1. I am a citizen of the United States and of the State of Washington, living and residing in Douglas County, in said State, I am over the age of eighteen years, not a party to the above-entitled action, and competent to be a witness.

2. On the 13th day of July, 2020, I mailed a copy of the Respondent's Brief to James T. Mitchell, postage paid, as follows:

James T. Mitchell
Deputy Prosecuting Attorney
Douglas County Prosecutor's Office
P.O. Box 360
Waterville WA 98858

I declare under the penalty of perjury under the laws of the State of Washington the foregoing is true and correct.

Dated this 13th day of July, 2019, at Wenatchee, Washington.


Megan L. Heimbigner

DAVIS ARNEIL LAW FIRM, LLP

July 13, 2020 - 1:19 PM

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Appellate Court Case Title: Wenatchee Reclamation District v. Douglas County
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