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**Sparks v. Gray, No. 5-00-0382, 2002 WL 481567 (MII. App. Ct. Mar. 29, 2002)**

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which may remand to the special master, make a recommendation, or issue a partial decree. The district court decision is appealable to the state supreme court.

NSGWD first entered Gisler's water right proceedings with a motion to alter or amend following Gisler's agreement with the IDWR in an SF5 and the special master's endorsement of that agreement. NSGWD argued that IDWR incorrectly utilized a flood irrigation model rather than a sprinkler model when determining Gisler's water right. The special master denied the motion, and NSGWD appealed to the SRBA district court. The district court also denied the motion, stating that NSGWD's late entry and attempt to enter factual arguments into the proceedings were an attempt to circumvent the procedural requirements of the IDWR. The district court found that this was an improper forum for challenging IDWR's procedures and that regardless, the factual arguments presented by NSGWD did not demonstrate clear error. NSGWD subsequently appealed to the supreme court.

The supreme court denied the motion and held that the timing required by the IDWR process was well established, and that to permit a party to object to an agreement after the fact was an unfair burden on the claimant. By ignoring the steps outlined by IDWR, a party endangers its ability to challenge a water right. Further, the court found that the NSGWD on prior occasions attempted similar late entries with motions to alter or amend, and the court advised NSGWD of the impropriety of this practice. As such, the court found NSGWD's appeals to be frivolous, unreasonable, and lacking a foundation in law. The court awarded attorney fees and costs to Gisler.

*Chris Cummins*

## ILLINOIS

**Sparks v. Gray, No. 5-00-0382, 2002 WL 481567 (Ill. App. Ct. Mar. 29, 2002)** (holding a permanent injunction against adjacent property landowners was an appropriate solution where a significant accumulation of water on landowner's property was caused by the addition of fill dirt on adjacent property and constituted a substantial injury of a continuing nature).

Property owners, James and Margaret Sparks, sued adjoining property owners, Donald and Virginia Gray, seeking injunctive relief from the Grays spreading fill dirt on their property. The Circuit Court of Madison County, Illinois granted the injunction, enjoining the Grays from placing fill on their land. The Grays appealed to the Fifth District of the Appellate Court of Illinois claiming the court was incorrect in granting the injunction because the injury to plaintiff's

land was neither substantial nor of a continuing nature.

The Sparks and the Grays owned adjoining lots in Pontoon Beach, Illinois. Roads bordered the two lots on two sides, and a canal bordered their properties on one side. The Grays' land also had ditches on three sides that accommodated water runoff from Sparks' property. The City of Pontoon Beach required all new construction to be built on lots with an elevation of at least 417 feet above sea level. The Grays' land was under this 417-foot requirement, while the Sparks' property was 423 feet above sea level.

The Grays decided to procure a building permit for their property, but knew that in order to do so, it was necessary to elevate the land to the 417-foot level. To accomplish this, defendants brought in a large supply of fill dirt to raise the elevation of their property. This increase in elevation resulted in a reversal of the natural flow of rainwater and caused water to accumulate on Sparks' property.

The issue in this case is whether the significant accumulation of water on the Sparks' property constituted a substantial injury of a continuing nature. The Sparks requested a temporary and a permanent injunction against the Grays, claiming the flooding of their property caused irreparable harm for which they had no adequate remedy at law. During the bench trial, the court heard expert testimony that the fill on the Grays' property would affect flooding. The court granted the Sparks' request for injunctive relief and prevented the Grays' from spreading any more fill dirt on the property.

The Grays appealed, claiming there was insufficient proof that specific, substantial injury would have occurred unless the court granted the injunction. The appellate court refused to substitute their judgment for that of the trial court judge regarding the credibility of the witnesses, and deferred to the trial court's factual findings as well.

The court noted the trial judge, after hearing the witnesses and examining the property herself, determined the Spark's injury was substantial enough to grant the injunctive relief requested. The court then reviewed the record and agreed with the trial court judge, holding the evidence and reasonable inferences therefrom supported a finding of substantial injury. The appellate court ultimately found that, because the significant water accumulation on Sparks' property constituted an injury of a continuing nature, there was no adequate remedy at law and affirmed the trial court's grant of permanent injunction.

*Note:* At the time of publication, The Appellate Court of Illinois for the Fifth District reheard the case and reversed its previous decision. The court held that, because the Grays' actions only result in the displacement of water and did not result in impeding its natural flow; the Sparks failed to prove they possess a clear and protectable interest entitling them to an injunction. 777 N.E.2d 1026 (Ill. App. Ct. 2002).

*David W. Hall*