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## N. Snake Ground Water Dist. v. Gisler, 40 P.3d 105 (Idaho 2002)

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modifications.

The court reiterated that the Commission must consider other permitting and regulatory agencies' actions when protecting the public interest. For example, the Commission expressed concern about the proposed septic tank having a designed flow of 13,950 gallons a day. The Commission noted that larger septic systems have more potential for heavy impact than individual septic systems. The court pointed to the fact that the State Department of Environmental Protection must approve, permit, and regulate every septic tank with a capacity exceeding 5,000 gallons a day.

The court acknowledged that all five concerns constituted public interest in need of protection. Upon a scrupulous review of the record, it also determined that the Commission had no reasonable basis to conclude that the denial of Delmar's applications would protect these public interests. Mere possibility of harm would not be enough to validate a denial, but rather the record must contain evidence of the potential harm and the probability that such harm will occur.

*Adriano Martinez*

## IDAHO

### **N. Snake Ground Water Dist. v. Gisler, 40 P.3d 105 (Idaho 2002)**

(affirming denial of water district's challenge of special master's conclusions regarding a decree of a water right and awarding attorney fees).

The North Snake River Ground Water District ("NSGWD") appealed the decision of the Fifth Judicial District Court of the Snake River Basin Adjudication ("SRBA") to the Supreme Court of Idaho concerning the Bradley and Linda Gisler's ("Gisler") water right decree. The court affirmed Gisler's decree, stating that the NSGWD failed to follow the procedures required by the Idaho statute for challenging a right.

Under Idaho law, a time-sensitive process exists for both claiming a water right and challenging that right. A claimant files a water right claim, after which the Idaho Department of Water Resources ("IDWR") investigates the claim and issues a director's report, to which any interested party may file objections or responses. The claimant may then contest the report by utilizing a streamlined, non-judicial process known as the "standard form five" ("SF5") process, or by referral to a special master, who issues a recommendation. Subsequently, a party may file a motion to alter or amend, which the special master will review and rule upon. The special master's final decision may be challenged and reviewed by the SRBA district court,

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