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## Lake CDA Inv., LLC v. Idaho Dep't of Lands, 233 P.3d 721 (Idaho 2010)

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court found no grounds to invoke equitable estoppel.

*John Bartholomew*

## IDAHO

**Lake CDA Inv., LLC v. Idaho Dep't of Lands, 233 P.3d 721 (Idaho 2010)** (holding that the state's highway easements extended to a lake's ordinary high water mark and, subsequently, did not terminate the landowner's littoral rights; the fill the state added to the lake was part of the public land trust but also did not eliminate littoral rights; and the landowner's did not need to apply for highway encroachment permits for proposed docks that would rest on the public land trust fill).

In 2006, Lake CDA Investments and Chris Keenan ("Landowners") applied for dock permits for separate properties located on Lake Coeur d'Alene with the Idaho Department of Lands ("Land Board") and the Idaho Transportation Department ("ITD"). On March 30, 2007, the Land Board held an administrative hearing, combining the Landowners' applications.

At the hearing, an ITD surveyor testified that the Landowners' predecessor in interest deeded a 1940 highway easement ("1940 easement") to the State of Idaho. The surveyor further testified that this easement extended out into the lake and, therefore, made the Landowners' riparian rights subordinate to the easement. The hearing officer recommended the Land Board reject the applications, finding that the Landowners' littoral rights were subordinate to the 1940 easement. The hearing officer reasoned that without littoral rights the Landowners were not qualified to apply for the dock permits. The Land Board subsequently rejected the Landowners' applications based on the hearing officer's recommendations.

The Landowners then appealed to the Idaho District Court. The district court vacated the Land Board's decision, ruling that the 1940 easement did not affect the Landowners' littoral rights because the easement only extended down to the ordinary high water mark. In addition, the district court awarded the Landowners attorneys' fees and costs of \$23,128.51.

The Land Board and ITD then appealed to the Supreme Court of Idaho ("court"). The Land Board and ITD argued that the first issue, whether the 1940 easement extinguished the Landowners' littoral rights, was analogous to the court's rulings on railroad easements, which required exclusive easements. However, the court distinguished railroad easements from highway easements, reasoning that the state holds highways in trust for public use, and thus, highways do not require exclusive easements. Furthermore, the court ruled that the 1940 easement did not grant an easement over the disputed area because the Landowners, as littoral owners, only took

title of the property down to the ordinary high water mark. The state reserves the property below the ordinary high water mark in trust for the public's use and benefit. Therefore, because the state did not have an exclusive easement over the disputed area, the Landowners could exercise their littoral rights and apply for dock permits.

The ITD further argued that the state added fill to the lakebed to widen and straighten the highway, and the fill, in turn, stayed as public trust land. The court agreed with ITD but held that while the fill does stay as public land trust, the fill does not eliminate the Landowners' littoral rights because, otherwise, the Landowners would have to cross the fill to exercise their basic littoral rights. Accordingly, the court found that the existence of the public land trust did not exclude the Landowners' littoral rights.

Next, ITD argued that the Landowners were required to apply for highway encroachment permits with ITD before they could request dock permits. The court found that the Landowners did not need highway encroachment permits because the proposed docks would rest on the fill, which, as discussed above, rests on the public land trust and is not part of the highway right-of-way. Therefore, the court held that it would be inappropriate for the Landowners to apply for highway encroachment permits for the public land trust.

Finally, the court reversed the district court's award of attorneys' fees and costs, ruling that the Land Board and IDT had a reasonable basis in fact or law for arguing against the Landowners' action.

In summary, the court affirmed the district court, finding that highway easements do not terminate the Landowners' littoral rights because the easement extends only to a lake's ordinary high water mark. The court further found that the state's actions of adding fill to the lake does not eliminate the Landowners' littoral rights because the added fill stays in the public trust, and the Landowners' are not required to apply for highway encroachment permits for proposed docks that would rest on the public land trust fill.

*Nicole Tachibana*