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**Supreme Court of Idaho Finds Carey Act
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Rights by Stockholder's Failure to Irrigate**

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Supreme Court of Idaho Finds Carey Act Companies Not Subject to Forfeiture of Water Rights by Stockholder's Failure to Irrigate*

I. INTRODUCTION

In *Aberdeen-Springfield Canal Co. v. Peiper*,¹ the Supreme Court of Idaho affirmed a district court's order granting summary judgment to Aberdeen-Springfield Canal Company (ASCC or the company) in its action to foreclose assessment liens levied against George and LaVaudis Peiper's (the Peipers) property.² The Peipers were stockholders in ASCC, a Carey Act³ company, who had not used their share of the company's irrigation water for more than thirty years.⁴ In addition, the Peipers had not paid ASCC assessments since at least 1983.⁵ ASCC brought suit in Bingham County seeking recovery of its assessments.⁶ The Peipers counterclaimed, alleging that ASCC had forfeited its right to the water appurtenant to their property.⁷ The district court transferred the case to the Snake River Basin Adjudication Court (SRBA), and the SRBA granted summary judgment in favor of ASCC.⁸ The Supreme Court of Idaho, in an opinion by Justice Silak, held that Carey Act companies were not subject to forfeiture of their water rights by a stockholder's failure to use its share of the company's water.⁹ The court also held that, regardless of whether the Peipers used the water, they benefitted by having it available and were thus responsible for payment of ASCC's assessments.¹⁰

In contrast to the traditional beneficial use doctrine, wherein unused water rights are forfeited, this decision provides considerable protection to the water appropriated by Carey Act irrigation companies regardless of whether the water is put to beneficial use by the company's shareholders. Furthermore, this case should alert Carey Act canal company stockholders, at least in Idaho, of the obligation to pay assessments in perpetuity for water that they may neither need nor want.

* Andrew Orlemann, Junior Staff Member, *Journal of Land, Resources, & Environmental Law*.

¹ 982 P.2d 917 (Idaho 1999).

² *See id.* at 919.

³ 43 U.S.C. § 641 (1994).

⁴ *See Aberdeen-Springfield*, 982 P.2d at 920.

⁵ *See id.*

⁶ *See id.*

⁷ *See id.*

⁸ *See id.*

⁹ *See id.* at 921.

¹⁰ *See id.* at 924.

II. THE CASE

In 1969, the Peipers bought agricultural land from an ASCC stockholder.¹¹ According to the ASCC bylaws, ASCC stock is automatically transferred to the new property owner when land within the ASCC system is sold.¹² The previous owner of the Peipers' property had not used ASCC water since 1962 and had irrigated using an on-site well.¹³ The Peipers inquired about using their share of the ASCC water, but the ditch connecting their property to the headgate had been destroyed and their neighbor, across whose land the ditch ran, refused to allow them to repair it.¹⁴ As a result, the Peipers never used the water available to them at the ASCC headgate.¹⁵

In 1986, ASCC brought suit against the Peipers for failure to pay their 1983, 1984, and 1985 assessments.¹⁶ This was the first of four suits filed by ASCC over the next decade seeking assessments for the years 1983 through 1996.¹⁷ The Peipers counterclaimed, alleging forfeiture, unjust enrichment, and a violation of their civil rights for which they sought restitution and a declaratory judgment that they were not liable for the assessments.¹⁸ Three of the four cases were consolidated and transferred to the SRBA, which granted summary judgment in favor of ASCC before transferring jurisdiction back to the Seventh District court.¹⁹ In 1997, the district court entered a judgment and decree of foreclosure in ASCC's favor on all four cases.²⁰

On appeal to the Supreme Court of Idaho, the Peipers presented six issues while ASCC cross-appealed on a single issue.²¹ First, the Peipers argued that the SRBA had erred in finding that ASCC had not forfeited its water rights appurtenant to their property because, under the traditional law of beneficial use, an appropriative right is lost if not used for five consecutive years.²² While agreeing with the Peipers on this general point of law, the court disagreed with the application of the rule to Carey Act companies.²³ The court reasoned that such

¹¹ *See id.* at 919.

¹² *See id.*

¹³ *See id.*

¹⁴ *See id.* at 920.

¹⁵ *See id.*

¹⁶ *See id.*

¹⁷ *See id.*

¹⁸ *See id.*

¹⁹ *See id.*

²⁰ *See id.*

²¹ *See id.* at 920–21.

²² *See id.* at 921.

²³ *See id.* at 922.

an application would have the “troubling” effect of leaving irrigation company water rights at the mercy of stockholders and that, should a stockholder choose not to use its water, “ASCC could only watch helplessly while its water right was lost.”²⁴

Second, the Peipers argued that ASCC would be unjustly enriched if allowed to collect an assessment because ASCC was benefitting from the Peipers’ non-use of their water by “renting” it to others.²⁵ The court pointed out that the Peipers were statutorily entitled to condemn an easement across their neighbor’s land for a new irrigation ditch, and their failure to do so meant that they had voluntarily given up access to ASCC water.²⁶ Under these circumstances, the court held that an equitable remedy such as restitution was inappropriate because the Peipers had a remedy at law, namely, condemnation.²⁷

Third, the Peipers claimed that, under the ASCC Articles of Incorporation, the company was only allowed to assess charges for “benefits derived,” and since the Peipers had received no benefit from the use of ASCC water, the company did not have the authority to assess them.²⁸ The court, however, disagreed with the Peiper’s contention that “benefits derived” meant “water received.”²⁹ Instead, the court held that the Peipers “benefitted greatly” from the availability of water and from the increasing value of their canal company stock in an arid state and were thus properly charged.³⁰

Fourth, the Peipers argued that the Idaho statute regulating irrigation company assessments,³¹ was unconstitutional because it violated their procedural and substantive due process rights, respectively, by failing to “provide an opportunity to challenge the assessments” and by allowing companies to collect payments even where no benefits were conveyed.³² In addition, the Peipers claimed that their civil rights had been violated under 42 U.S.C. section 1983.³³ The court dismissed the latter claim by pointing out that in order to establish a civil rights claim, the claimant must show that his or her rights were violated by “a person acting under the color of state law.”³⁴ Since ASCC was a private company and was not functioning as a public entity, the Peipers failed to meet the

²⁴ *Id.*

²⁵ *See id.*

²⁶ *See id.* at 922–23.

²⁷ *See id.* at 923.

²⁸ *See id.*

²⁹ *See id.* at 924.

³⁰ *See id.*

³¹ *See* IDAHO CODE § 42-2201 (1996).

³² *Aberdeen-Springfield*, 982 P.2d at 925.

³³ *See id.*

³⁴ *Id.*

“color of law” standard.³⁵ The court also declined to find the Idaho statute unconstitutional.³⁶ The court said that procedural due process was protected by a statutory provision requiring a “civil” proceeding for all foreclosures at which time the stockholder could challenge any assessments.³⁷ In addition, the court held that substantive due process was not violated in this case because the “overall benefit”—water available for delivery—was reasonably related to the assessment.³⁸

Fifth, the Peipers claimed that the lower courts erred in failing to dismiss the first suit filed by ASCC for failure to prosecute.³⁹ Once again, the court disagreed, holding that the Peipers had not shown that they were prejudiced by the delay.⁴⁰

Sixth, the Peipers claimed that the SRBA’s transfer of venue was procedurally defective because the SRBA failed to obtain the required Supreme Court of Idaho approval.⁴¹ While agreeing that the SRBA transfer was irregular, the court found that the Peipers had failed to show that it was prejudicial.⁴² In fact, the court said that the procedural flaw “makes little difference in this case.”⁴³ With that comment, the court disposed of the last of the Peipers’ six arguments.

The final issue in this case was raised by ASCC, and it fared little better than those brought by the Peipers. ASCC argued that the lower courts erred in declining to award it attorney’s fees.⁴⁴ The court found that only one of ASCC’s four pleadings contained language about its intention to pursue attorney’s fees that was sufficiently precise to serve as a warning to the Peipers.⁴⁵ Thus, the court held that ASCC was entitled to attorney’s fees only for that case, and the lower courts had not erred in rejecting ASCC’s request for attorney’s fees in the other three cases.⁴⁶ Lastly, the court rejected ASCC’s request for attorney’s fees on appeal.⁴⁷ The court held that the Peipers’ appeal was not frivolous and that frivolous appeals were the only circumstance in which such fees were proper.⁴⁸

³⁵ See *id.* at 927.

³⁶ See *id.* at 926.

³⁷ See *id.*

³⁸ See *id.*

³⁹ See *id.* at 928.

⁴⁰ See *id.*

⁴¹ See *id.* at 929.

⁴² See *id.*

⁴³ *Id.*

⁴⁴ See *id.*

⁴⁵ See *id.* at 930.

⁴⁶ See *id.*

⁴⁷ See *id.*

⁴⁸ See *id.*

III. BACKGROUND

In *Aberdeen-Springfield*, the Supreme Court of Idaho considered and dismissed seven claims of error. In the process, the court cited numerous statutes and cases for support. For each of the court's holdings a few of the most pertinent authorities are listed below. At the outset, however, it is important to note that the court considered most of the elements of this case in the context of the Carey Act of 1894.⁴⁹ The Carey Act was an attempt by Congress to encourage reclamation of desert lands through irrigation and agricultural settlement.⁵⁰ The Secretary of the Interior was authorized to patent "free of cost" such lands as the states could "cause" to be reclaimed.⁵¹ In response, some states, such as Idaho, provided for the creation of Carey Act canal companies to build and maintain irrigation works and to appropriate water as an aid to would-be settlers.⁵² ASCC is such a company, and the Peipers are successors to the settlers.

A. Forfeiture

Under title 42, section 222(2) of the Idaho Code, appropriative water rights are forfeited if not put to beneficial use for a period of five years.⁵³ This is an important feature of the traditional prior appropriation doctrine in the western states, and the *Aberdeen-Springfield* court noted that it had upheld the forfeiture statute in almost every case before.⁵⁴ The court, however, went on to distinguish Carey Act companies on the ground that the appropriator and user are two different entities and, therefore, the beneficial use requirement is out of the appropriator's control.⁵⁵ The court relied on *Jenkins v. Department of Water Resources*⁵⁶ in holding "that there can be no forfeiture if the appropriator is prevented from exercising his right to the water by circumstances over which he or she has no control."⁵⁷ In addition, the *Aberdeen-Springfield* court relied on *Idaho Farms Co. v. North Side Canal Co.*,⁵⁸ a federal court decision, which stated that Carey Act companies are not subject to forfeiture.⁵⁹

⁴⁹ See *id.* at 919. The Carey Act of 1894 is codified at 43 U.S.C. § 641 (1994).

⁵⁰ See *Aberdeen-Springfield*, 982 P.2d at 919 (citing *Andrus v. Idaho*, 445 U.S. 715 (1980)).

⁵¹ 43 U.S.C. § 641 (1994).

⁵² See *Aberdeen-Springfield*, 982 P.2d at 919.

⁵³ See IDAHO CODE § 42-222(2) (1996 & Supp. 1999).

⁵⁴ See *Aberdeen-Springfield*, 982 P.2d at 922.

⁵⁵ See *id.*

⁵⁶ 647 P.2d 1256 (Idaho 1982).

⁵⁷ *Aberdeen-Springfield*, 982 P.2d at 922.

⁵⁸ 24 F. Supp. 189 (D. Idaho 1938), *rev'd on other grounds*, 107 F.2d 481 (9th Cir. 1939).

⁵⁹ See *Aberdeen-Springfield*, 982 P.2d at 922.

B. Condemnation

The Supreme Court of Idaho refused to consider the Peipers' request for the equitable remedy of restitution because the Peipers had a legal remedy available that would have solved the problem of paying for water they were unable to use.⁶⁰ The court relied primarily on the clear language of the statute: "In case of the refusal of the owners or claimants of any lands, through which any ditch, canal or conduit is proposed to be made or constructed, to allow passage thereof, the person or persons desiring the right of way may proceed as in the law of eminent domain."⁶¹ Thus, the court held that the Peipers were entitled to condemn an easement, and their inability to use ASCC water was not the fault of ASCC.⁶²

C. Benefits

In response to the Peiper's argument that ASCC, under its bylaws, could only collect assessments for "benefits derived"—meaning "water received"—the *Aberdeen-Springfield* court looked to two authorities. First, under the statute authorizing Carey Act companies to collect maintenance charges,⁶³ the court noted that the company has the right to assess its stockholders "regardless of whether water is used by such [stockholder]."⁶⁴ Second, the court emphasized language from its *Colburn v. Wilson*⁶⁵ decision in which it held that the benefit derived from an irrigation company was the supply of water, not necessarily its use.⁶⁶ "Under *Colburn* and other cases, the benefit derived from belonging to an irrigation project is the right to receive water."⁶⁷

D. Due Process and Civil Rights

The court refuted the Peipers' claim that their procedural due process rights had been violated under title 42, section 2201 of the Idaho Code by pointing to the effect of a further portion of the Idaho Code.⁶⁸ The court held that

⁶⁰ See *id.* at 922–23.

⁶¹ See *id.* at 923 (quoting IDAHO CODE § 42-1106 (1996)).

⁶² See *id.*

⁶³ IDAHO CODE § 42-2201 (1996).

⁶⁴ *Aberdeen-Springfield*, 982 P.2d at 924 (quoting IDAHO CODE § 42-2201).

⁶⁵ 132 P. 579 (Idaho 1913).

⁶⁶ See *Aberdeen-Springfield*, 982 P.2d at 924.

⁶⁷ *Id.*

⁶⁸ See *id.* at 926.

the “civil action” foreclosure proceeding found in section 2207 of title 42 gives “delinquent landowners . . . all of the procedural safeguards provided by the civil court system.”⁶⁹ Thus, at the foreclosure, the Peipers would be “provide[d] a meaningful opportunity to be heard and contest the amount due.”⁷⁰ In addition, the court looked to *Flagg Bros. v. Brooks*⁷¹ for support for its position that the alleged unlawful assessments did not violate the Peipers’ civil rights because they were not committed by an entity acting under color of state law.⁷² The court noted that the passage of the Carey Act authorizing statute was “the only connection between the ASCC assessments and the state” and that the *Flagg* court had established that mere statutory authorization did not raise subsequent “private conduct . . . to the level of state action.”⁷³

E. Failure to Prosecute

In response to the Peiper’s contention that the claims should have been dismissed by the lower courts for ASCC’s failure to prosecute, the Supreme Court of Idaho quoted heavily from *Gerstner v. Washington Water Power Co.*⁷⁴ The court noted that *Gerstner* was similar to the Peipers’ case because the party bringing the motion was unable to show prejudice despite little progress in the litigation for five years.⁷⁵ Thus, the *Aberdeen-Springfield* court concluded that, like *Gerstner*, there was no “actual, demonstrated prejudice to the moving party.”⁷⁶

F. Attorney’s Fees

The *Aberdeen-Springfield* court rejected all but one of ASCC’s requests for attorney’s fees because they were not properly pled. In an earlier case, *Pancoast v. Indian Grove Irrigation District*,⁷⁷ the court held that the legislature intended the portion of the Idaho Code pertaining to attorney’s fees, to be narrowly and literally construed.⁷⁸ Subsequently, in *Cox v. Mueller*,⁷⁹ the court held that the plaintiff’s inclusion of a request for attorney’s fees in both the

⁶⁹ *Id.* (quoting IDAHO CODE § 42-2207 (1996)).

⁷⁰ *Id.*

⁷¹ 436 U.S. 149 (1978).

⁷² See *Aberdeen-Springfield*, 982 P.2d at 928.

⁷³ *Id.*

⁷⁴ 837 P.2d 799 (Idaho 1992).

⁷⁵ See *Aberdeen-Springfield*, 982 P.2d at 928.

⁷⁶ *Id.* (quoting *Gerstner*, 837 P.2d at 803).

⁷⁷ 829 P.2d 1333 (Idaho 1992).

⁷⁸ See *Aberdeen-Springfield*, 982 P.2d at 929–30 (referring to IDAHO CODE § 12-120(1) (1996)).

⁷⁹ 874 P.2d 545 (Idaho 1994).

demand letter and the closing argument was “an inadequate substitute for a proper pleading.”⁸⁰ Like *Pancoast* and *Cox*, the court found in this case that ASCC had used a “variety of language” requesting attorney’s fees in its complaints and had failed to provide the requisite specificity.⁸¹

IV. ANALYSIS

The seven issues reviewed by the Supreme Court of Idaho in *Aberdeen-Springfield* are not all of equal importance to the evolution of modern water law in Idaho and the western United States. The effect of the court’s decision on several of the issues, therefore, will be given little analytical attention while others will be more extensively explored.

A. Forfeiture

The question of whether Carey Act companies are exempt from Idaho’s forfeiture statute had, according to the *Aberdeen-Springfield* court, never before been addressed in Idaho.⁸² The holding appears to give ASCC, and other Carey Act companies, a *permanent* water right regardless of whether that water is ever used for its intended purpose—irrigation. Thus, even if most of the company’s stockholders chose not to put any water to beneficial use, the Carey Act company would retain its full water right.⁸³ This would be an unusual situation in most western states where water is lost if not used⁸⁴ and could lead to some curious results. For example, a “water trust” might become a stockholder in ASCC with no intention of ever using its water for irrigation, but with the hope that disuse would lead to an instream flow protected, of course, from new appropriation by ASCC’s relatively senior water right date.

A careful look, however, at the authority on which the *Aberdeen-Springfield* court based its decision reveals that this sort of result may be far from reality. In *Jenkins*, a water right unused for eighteen years was deemed forfeited.⁸⁵ The *Jenkins* court noted, however, that one defense to forfeiture was

⁸⁰ *Aberdeen-Springfield*, 982 P.2d at 930 (quoting *Cox*, 874 P.2d at 548).

⁸¹ *See id.*

⁸² *See id.* at 921–22.

⁸³ *See id.* The question of whether Idaho’s forfeiture statute (IDAHO CODE § 42-222(2)) provides for partial forfeiture was answered in the affirmative in *State v. Hagerman Water Right Owners*, 947 P.2d 400 (Idaho 1997). However, *Aberdeen-Springfield* makes it theoretically impossible for a canal company like ASCC to lose even a portion of its water right.

⁸⁴ *See, e.g., Bruegman v. Johnson Ranches, Inc.*, 520 P.2d 489, 490 (Wyo. 1974) (holding that Wyoming’s forfeiture statute applied to Carey Act lands where water right had not been put to beneficial use and that Carey Act water rights were “no different from any other water right”).

⁸⁵ *See Jenkins*, 647 P.2d at 1262.

that the water was unused due to forces beyond the water right holder's control.⁸⁶ The *Aberdeen-Springfield* court cites *Jenkins* for this reason only, and the policy does indeed seem to lead to the conclusion that ASCC should not be subject to forfeiture in this case.⁸⁷ *Jenkins* does not, on the other hand, seem to place any limits on the "forces beyond the water right holder's control" defense despite the sense that there must be some limits.

The more interesting authority relied on by the *Aberdeen-Springfield* court is *Idaho Farms*. The *Aberdeen-Springfield* court stated: "[t]he forfeiture statute 'was not intended to apply to settlers within a Carey Act project who were not themselves the appropriators of the water from the public stream of the state.'"⁸⁸ In *Idaho Farms*, however, the situation was reversed and the federal district court held that the Carey Act company could not declare a stockholder's right to water forfeited by non-use in order to keep that stockholder's water for itself.⁸⁹ This is not the same fact pattern that the *Aberdeen-Springfield* court faced and, strictly speaking, the *Idaho Farms* case does not provide direct support for its decision. The *Idaho Farms* court does, however, supply the missing limits to the *Jenkins* court's proposition by holding that water rights appurtenant to a specific parcel cannot be lost by failure to irrigate that parcel, but can be lost if they are not used for irrigation at all. "The [Idaho forfeiture] statute does not provide that in case a given water right be not used on any land to which it belongs, the right shall be lost, as it merely provides that the right shall be lost when it is not used at all."⁹⁰ In other words, ASCC will not suffer a forfeiture of its water right appurtenant to the Peipers' land, as long as the water is put to "beneficial use" elsewhere. Thus, a water trust's hope for instream flow rights seems likely to be disappointed.

In their counter-claim, the Peipers alleged that ASCC had profited unfairly from the Peipers' unused water by "renting" it to others.⁹¹ Under this holding, ASCC is encouraged to provide the Peipers' unused water to others as a way to make certain that the water rights are not forfeited. If the number of ASCC stockholders choosing to discontinue use reached a point where ASCC could not reasonably dispose of all its water, it seems likely that a subsequent court could distinguish this case and allow partial forfeiture of ASCC water rights. In a semi-arid state like Idaho, however, this scenario seems unlikely.

In conclusion, the *Aberdeen-Springfield* court held that it would be unreasonable to subject Carey Act companies to forfeiture under the facts

⁸⁶ See *id.* at 1261.

⁸⁷ See *Aberdeen-Springfield*, 982 P.2d at 922.

⁸⁸ *Id.* at 922 (quoting *Idaho Farms*, 24 F. Supp. at 197).

⁸⁹ See *Idaho Farms*, 24 F. Supp. at 197.

⁹⁰ *Id.*

⁹¹ See *Aberdeen-Springfield*, 982 P.2d at 922.

because the behavior of their stockholders was beyond their control.⁹² The court found authority for this position in the *Jenkins* “circumstances beyond the water rights holder’s control” defense.⁹³ This holding does not, however, appear to give Carey Act companies permanent water rights without limit. Although not noted specifically by the court, Carey Act companies will apparently still be required to put their entire appropriation to beneficial use even if individual shareholders choose not to irrigate.

B. Condemnation

In refusing to award the Peipers an equitable remedy based on their unjust enrichment claim, the *Aberdeen-Springfield* court probably did little to change existing water law in Idaho. This portion of the holding simply affirmed that equitable doctrines will not be considered where the plaintiff has a remedy at law.⁹⁴ The court concluded that since the Peipers have always had a legal right to access the water provided by ASCC, there was no need to apply the unjust enrichment doctrine to ASCC.⁹⁵ The legal right is provided by the Idaho statute, which gives irrigators the rather unusual right of private eminent domain.⁹⁶ The Peipers’ failure to take advantage of the right to condemn an easement prevented them from establishing unjust enrichment by ASCC.⁹⁷

C. Benefits

By the clear language of Idaho’s Carey Act statute, the Peipers could be assessed for their ASCC shares “regardless of whether water is used by such owner or holder.”⁹⁸ The Peipers conceded this fact but maintained that ASCC was not authorized to make such charges unless expressly provided for in the company’s articles of incorporation.⁹⁹ The ASCC articles provide, in pertinent part, that “[ASCC] shall have power to levy fixed charges and assessments ratably and according to benefits derived.”¹⁰⁰ The meaning of “benefits derived,” as used in the ASCC articles of incorporation, thus became the issue before the Supreme Court of Idaho in this case. The Peipers claimed that, under Idaho law,

⁹² See *id.*

⁹³ *Id.*

⁹⁴ See *id.* at 923 (citing *Thomas v. Campbell*, 690 P.2d 333 (Idaho 1984)).

⁹⁵ See *id.*

⁹⁶ See IDAHO CODE § 42-1106 (1996).

⁹⁷ See *Aberdeen-Springfield*, 982 P.2d at 923.

⁹⁸ *Id.* (quoting IDAHO CODE § 42-2201 (1996)).

⁹⁹ See *id.*

¹⁰⁰ *Id.* (quoting ASCC Articles of Incorporation).

“benefits derived” meant “water received,” citing *Colburn* for support.¹⁰¹ The *Colburn* court held that there is no benefit to landowners from simply constructing an irrigation system but that the benefit comes from the “water supplied.”¹⁰²

The *Colburn* court also said, however, that “the assessment shall be spread upon all the lands of the district which are or may be supplied with water by such district.”¹⁰³ The *Aberdeen-Springfield* court found the latter language persuasive and concluded that the *Colburn* court meant that all landowners benefitted from the organization and operation of a functioning irrigation system regardless of whether they chose to use the water themselves.¹⁰⁴ The court also found support for this position from other western jurisdictions and the history of settlement in the semi-arid west.¹⁰⁵ Many marginally productive lands in the public domain could only be settled by farmers—a goal of Congress for much of the late nineteenth and early twentieth centuries—if they were provided with reliable irrigation. Individual settlers, however, were often unable to finance and build systems for carrying water long distances; thus, combining forces by forming irrigation companies was often necessary.¹⁰⁶ The ensuing benefits—water and a dramatic increase in arable land—accrued not only to those actually engaged in agriculture, but to the surrounding community as well through population increases and the accompanying improvement of local services. It is under this conception that some western courts have allowed landowners to be assessed for the benefits of irrigation even if they did not partake of the water.

In sum, the *Aberdeen-Springfield* court’s holding regarding the meaning of “benefits derived” when applied to Carey Act operating companies probably deviates little from the established principles of water law in Idaho. The court simply affirmed that, given the language of the Idaho Code, the holding in *Colburn*, and the necessity of irrigation for Idaho’s historic settlement, stockholders holding rights to water were receiving a benefit whether or not they chose to use that water.¹⁰⁷ The holding does, however, leave future non-agricultural property owners in the curious position of paying perpetually for water that they do not intend to use.

¹⁰¹ See *id.* at 924.

¹⁰² See *id.* (quoting *Colburn*, 132 P. at 581).

¹⁰³ *Id.* (quoting *Colburn*, 132 P. at 581).

¹⁰⁴ See *id.*

¹⁰⁵ See *id.* (citing *Jacobucci v. District Court*, 541 P.2d 667 (Colo. 1975); *Smith v. Enterprise Irrigation Dist.*, 85 P.2d 1021 (Or. 1939)).

¹⁰⁶ See *id.* at 919.

¹⁰⁷ See *id.* at 923–24.

D. Due Process and Civil Rights

Once the court established that the Peipers were in fact receiving the benefit for which ASCC was authorized to make assessments, it was a simple extension to find that the Peipers' substantive due process rights had not been violated. Substantive due process is protected when the fee assessed is "reasonably related to the benefit conveyed."¹⁰⁸ The court held that, since the benefit was water available at the headgate and the fee was assessed for construction and maintenance of the canal system that brought the water, the two were rationally related and that there was no violation of substantive due process.¹⁰⁹

Similarly, the *Aberdeen-Springfield* court found that the Peipers' procedural due process rights had not been violated by title 42, section 2201 of the Idaho Code.¹¹⁰ First, the court noted that procedural due process requirements are "met when the defendant is provided with notice and an opportunity to be heard."¹¹¹ Second, the court asserted that the Peipers were given both of these by the operation of the foreclosure statute.¹¹² Section 42-2201 provides that the foreclosure proceeding shall be conducted "in the way of a civil action" including the opportunities for new trials and appeals.¹¹³ Thus, the court concluded that the Peipers would be given ample opportunity to contest the assessments against them at the foreclosure proceeding and that, as a result, the statute had not violated their procedural due process rights.¹¹⁴ Though this conclusion seems somewhat analogous to giving the criminal the right to defend himself only after his conviction, it, once again, seems to deviate little from the path of established western water law.

Finally, the court's rejection of the Peipers' claim that their civil rights had been violated under 42 U.S.C. § 1983 by the ASCC assessments adds little to the development of the law. Since a civil rights violation must contain the allegation that the offense was committed by an entity acting under the color of law, the Peipers' argument hinged on comparing ASCC to an irrigation district, which, the Peipers said, is a "creature of the state."¹¹⁵ The court, however,

¹⁰⁸ *Id.* at 925 (quoting *Kootenai County Property Ass'n v. Kootenai County*, 769 P.2d 553, 557 (Idaho 1989)).

¹⁰⁹ *See id.* at 926.

¹¹⁰ *See id.*

¹¹¹ *Id.* (quoting *State v. Rhoades*, 822 P.2d 960, 969 (Idaho 1991)).

¹¹² *See id.*

¹¹³ *Id.* (quoting IDAHO CODE § 42-2207 (1996)).

¹¹⁴ *See id.*

¹¹⁵ *Id.* at 927 (citing *Dufur v. Nampa & Meridian Irrigation Dist.*, 912 P.2d 687 (Idaho Ct. App. 1996)).

distinguished Carey Act companies from irrigation districts: “[w]hile Carey Act operating companies are similar to irrigation districts in some respects, they are materially different in their organization and regulation.”¹¹⁶ The Idaho Code characterizes irrigation districts as state political subdivisions while the Carey Act companies are private corporations.¹¹⁷ Thus, Carey Act companies are not state actors unless some particular conduct—acting for the state or fulfilling a state function—changes their status.¹¹⁸ In this case, the court concluded that “there was no [] state involvement in ASCC’s assessment or foreclosure against Peiper’s property.”¹¹⁹ As a result, the court held that ASCC was not acting under color of state law and could not be charged with a violation of the Peipers’ civil rights.¹²⁰

E. Failure to Prosecute and Procedural Defects

The *Aberdeen-Springfield* court’s rulings on the Peipers’ final arguments are of little consequence to Idaho water law. First, the court held that, under Idaho case law, the Peipers were required to show that they had been prejudiced by ASCC’s delays before they could prevail on their motion to dismiss for failure to prosecute.¹²¹ Likewise, the court looked for some evidence of prejudice to the Peipers as a result of the alleged procedural irregularities.¹²² On both issues the court ruled that the Peipers had failed to show that the result had been prejudicial.¹²³ Moreover, the court was unwilling to admit that the change of venue, however “irregular,” was procedurally defective.¹²⁴ In addition, the court was content to cite little precedent on these questions, and, when it did, it followed the former cases closely.¹²⁵

F. Attorney’s Fees

Finally, the court responded to ASCC’s requests for attorney’s fees by following its own precedent. The court noted that, in *Cox*, it had very strictly construed the Idaho statute pertaining to attorney’s fees and had required that the pleadings clearly state that the amount sought from the defendant was less than

¹¹⁶ *Id.*

¹¹⁷ *See id.*

¹¹⁸ *See id.* at 927–28.

¹¹⁹ *Id.* at 927.

¹²⁰ *See id.* at 928.

¹²¹ *See id.*

¹²² *See id.*

¹²³ *See id.*

¹²⁴ *See id.* at 929.

¹²⁵ *See id.* at 928–29.

\$25,000 and that the statute allowing attorney's fees would be invoked.¹²⁶ In this case, the *Aberdeen-Springfield* court found that ASCC had used general language in three of its four pleadings to the effect that ASCC expected to seek attorney's fees from all defendants on all counts, but that the Peipers and the specific amount that ASCC sought to recover from the Peipers had not been mentioned.¹²⁷ In only one of its suits did "ASCC clearly indicate that it seeks to recover from the Peipers an amount less than \$25,000, plus attorney fees."¹²⁸ Thus, the court held that ASCC was precluded from obtaining attorney's fees from the Peipers in three of the four suits because ASCC had failed to follow the terms of the statute with precision.¹²⁹

V. CONCLUSION

In *Aberdeen-Springfield Canal Co. v. Peiper*, the Idaho Supreme Court affirmed the SRBA and Seventh District courts' grant of summary judgment to Aberdeen-Springfield Canal Company in its foreclosure action against the Peipers.¹³⁰ This opinion highlights several interesting features of Idaho water law and may contribute to its development. First, the decision serves to exempt irrigation companies formed under the authority of the Carey Act from the operation of Idaho's water rights forfeiture statute when such forfeiture is caused by the failure of company stockholders to use their water. While presumably the water must still be put to beneficial use elsewhere, this holding certainly insulates Carey Act companies from the decisions about water use made by their stockholders. Second, the decision makes clear that all Carey Act company stockholders are in possession of an assessable benefit merely by having the water available, and, as a result, they can be charged for the water indefinitely, regardless of whether they ever use it. This could be lucrative for Carey Act companies who are able to assess non-agricultural stockholders while simultaneously leasing the stockholder's unused water to other interests—in effect being paid twice for one share of water.

¹²⁶ *See id.* at 930.

¹²⁷ *See id.*

¹²⁸ *Id.*

¹²⁹ *See id.*

¹³⁰ *See id.* at 931.