

MAR 05 2015

CHRISTOPHER D. RICH, Clerk  
By LUCILLE DANSEREAU  
DEPUTY

THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ADA COUNTY HIGHWAY DISTRICT, a  
body politic corporate of the State of Idaho,  
  
Plaintiff,  
  
vs.  
  
BROOKE VIEW, INC., *et. al.*  
  
Defendants.

Case No. CV-OC-2012-12275

DECISION RE: NAMPA MERIDIAN  
IRRIGATION DISTRICT EASEMENT

Brooke View, Inc, *et.al.* (Brooke View) moved for partial summary judgment on four issues. Ada County Highway District (ACHD) opposed and the Court heard argument February 12, 2015. The Court orally ruled on two of Brooke View's issues and took the rest of the matters under advisement on February 13, 2015. Brooke View supplemented its argument with Heather Cunningham's Third Affidavit dated February 25, 2015, filed at the Court's request.

Based on the following the Court finds that whether the south entry way wall encroaches into any alleged one hundred-foot (100') easement of the Nampa Meridian Irrigation District is irrelevant to determining the damages sustained by Brooke View as a result of ACHD's taking. The Court further finds that ACHD's taking encompasses the additional area.

**BACKGROUND**

Relevant to the motion, as of 1960, the Nampa-Meridian Irrigation District was comprised of approximately 27,000 acres of "Ridenbaugh lands" and 40,000 acres of project lands. Although the parties did not discuss the legal and historical nature of the Nampa-Meridian Irrigation District and the Ridenbaugh Canal, the Idaho Supreme Court has recounted its history in numerous cases. Its history provides a backdrop for understanding the issues presented by Brooke View's motion. See *e.g.*, *Brizendine v. Nampa Meridian Irrigation Dist.*, 97 Idaho 580, 582, 548 P.2d 80, 82 (1976); *Little v. Nampa-Meridian Irr. Dist.*, 82 Idaho 167, 170-72, 350 P.2d 740, 742 (1960);

Copple

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1 *Nampa & Meridian Irr. Dist. v. Manville*, 31 Idaho 397, 173 P. 113, 113-14 (1918); *Nampa &*  
2 *Meridian Irr. Dist. v. Briggs*, 27 Idaho 84, 147 P. 75, 77-78 (1915).

3 Relevant to Brooke View's motion, the case law indicates that on August 7, 1877, Wm. B.  
4 Morris recorded his water location notice. He claimed sufficient water from Boise River to fill a  
5 ditch or canal "eight feet wide at the bottom and twelve feet wide at the top and three feet in  
6 perpendicular depth." That water would be diverted from the south side of Boise River. In  
7 conformity with his appropriation, from 1877 and 1878, he constructed the canal (which came to  
8 be known as the Ridenbaugh Canal) in substantial conformity with the description in the notice.

9 Morris died about 1880, and William H. Ridenbaugh and his wife Lavina T. Morris  
10 inherited Morris' title to the water right and ditches. The dimensions and length of the  
11 Ridenbaugh Canal (12 feet at its top) remained practically unchanged until 1889.

12 The Ridenbaughs deeded certain land to various individuals over the next few years.<sup>1</sup> On  
13 August 20, 1888, Ridenbaugh made a new appropriation of 30,000 inches of the waters of Boise  
14 River, measured under a 4-inch pressure, "to be used for irrigation and other domestic,  
15 agricultural, and mechanical purposes upon the lands below said point of diversion to the extent  
16 and for the distance to which the same may be utilized." In 1889, the canal was enlarged and  
17 greatly lengthened by the Central Canal & Land Company, the then owner, its principal  
18 stockholder being Ridenbaugh, to accommodate this additional appropriation. In the notice the  
19 ditch was to be "50 feet wide on the top, 30 feet wide on the bottom, and 8 feet deep." The canal  
20 as actually enlarged was a trifle smaller than these specifications. *See e.g., Nampa & Meridian Irr.*  
21 *Dist. v. Manville*, 31 Idaho 397, 173 P. 113, 113-14.

22 The Nampa-Meridian Irrigation District was organized in 1905, and acquired the  
23 Ridenbaugh system and water rights, subject to the vested rights of the land owners.

24 The Federal Bureau of Reclamation constructed the "Boise Project" in 1909, and it  
25 encompasses approximately 165,000 acres of land in the Boise valley. *See e.g., Little v. Nampa-*  
26 *Meridian Irr. Dist.*, 82 Idaho 167, 170-72, 350 P.2d 740, 742. The main canal of this project, the  
27 New York Canal, diverts water from the Boise River about four miles above the Ridenbaugh  
28 diversion. About 40,000 acres of the Boise Project lands are situated within the boundaries of the

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31 <sup>1</sup> The Court has not included the entire history because most is not relevant to this decision.

1 Nampa-Meridian Irrigation District. Some of the Boise Project lands within the district are served  
2 with Boise Project water, through the Ridenbaugh Canal system, which was enlarged by the  
3 reclamation bureau for that purpose. The remainder of the project lands within the district are  
4 served with project water through the project distribution system. Other lands of the Boise Project  
5 are located within the boundaries of four other irrigation districts.

6 Prior to 1926, the Federal Bureau of Reclamation controlled and operated the "Boise  
7 Project" system. In 1926, the operation and control of the project irrigation system, with exception  
8 of the dams, reservoirs and head works, were vested in the Boise Project Board of Control.  
9 Representative directors from the boards of the five irrigation districts composed the Board of  
10 Control. The federal government and the Nampa-Meridian Irrigation District entered into a  
11 contract effecting the transfer of control, known as the 1926 Contract.

12 Under the federal law the owner of land in a federal reclamation project is required to pay,  
13 in advance, annual charges or tolls levied and collected to cover the cost of operation and  
14 maintenance, on the basis of the amount of water delivered. U.S.C.A., Title 43, § 492. *Id.* In 2000,  
15 Congress in the NAMPA AND MERIDIAN CONVEYANCE ACT (PL 106-466 (S 3022)) directed the  
16 Secretary of Interior to convey certain irrigation facilities to the Nampa and Meridian Irrigation  
17 District. The law provides in relevant part as follows:

18 \*\*\*

19 Be it enacted by the Senate and House of Representatives of the United States of  
20 America in Congress assembled,

21 SECTION 1. SHORT TITLE.

22 This Act may be cited as the "Nampa and Meridian Conveyance Act".

23 SEC. 2. CONVEYANCE OF FACILITIES.

24 The Secretary of the Interior (in this Act referred to as the "Secretary") shall, as  
25 soon as practicable after the date of enactment of this Act, convey facilities to the  
26 Nampa and Meridian Irrigation District (in this Act referred to as the "District") in  
27 accordance with all applicable laws and pursuant to the terms of the Memorandum  
28 of Agreement (contract No. 1425-99MA102500, dated 7 July 1999) between the  
29 Secretary and the District. The conveyance of facilities shall include all right, title,  
30 and interest of the United States in and to any portion of the canals, laterals, drains,  
and any other portion of the water distribution and drainage system that is operated  
or maintained by the District for delivery of water to and drainage of water from  
lands within the boundaries of the District.

31 \*\*\*

1 SEC. 4. EXISTING RIGHTS NOT AFFECTED.

2 Nothing in this Act affects the rights of any person except as provided in this Act.  
3 No water rights shall be transferred, modified, or otherwise affected by the  
4 conveyance of facilities and interests to the Nampa and Meridian Irrigation District  
5 under this Act. Such conveyance shall not affect or abrogate any provision of any  
6 contract executed by the United States or State law regarding any irrigation  
7 district's right to use water developed in the facilities conveyed.

8 NAMPA AND MERIDIAN CONVEYANCE ACT, PL 106-466, November 7, 2000, 114 Stat 2024.

9 The Secretary of the Interior fulfilled this directive by executing a Quit Claim deed  
10 conveying whatever title it had to the Nampa and Meridian Irrigation District on July 13, 2001.  
11 See Exhibit G, Andrew Kempe Affidavit, dated December 18, 2014.

12 In 2003, the Idaho legislature enacted I.C. § 42-1209 providing in relevant part as follows:

13 [N]o person or entity shall cause or permit any encroachments onto the easements  
14 or rights-of-way ... without the written permission of the irrigation district ...  
15 owning the easement or right-of-way, in order to ensure that any such  
16 encroachments will not unreasonably or materially interfere with the use and  
17 enjoyment of the easement or right-of-way. Encroachments of any kind placed in  
18 such easement or right-of-way, without such express written permission shall be  
19 removed at the expense of the person or entity causing or permitting such  
20 encroachments, upon the request of the owner of the easement or right-of-way, in  
21 the event that any such encroachments unreasonably or materially interfere with  
22 the use and enjoyment of the easement or right-of-way.

23 I.C. § 42-1209.

24 Prior to this enactment, the property owner constructed a wall in 1999 located where the  
25 wall at issue in this case was constructed by Brooke View in 2003. Both walls were constructed  
26 before the legislature enacted I.C. § 42-1209. There is no evidence that at any point during the  
27 time a wall has been located in this same location that the Nampa Meridian Irrigation District  
28 could not maintain the canal ditch or that the irrigation district has ever complained about its  
29 placement.

30 **ANALYSIS**

31 ACHD argues that the wall Brooke View claims was damaged during construction of its  
32 project invades an easement belonging to Nampa Meridian Irrigation District along the Ridenbaugh  
33 Canal and, thus, the irrigation district is an indispensable party. It also argues that this affects Brooke  
34 View's valuation. Brooke View responds that it has "not asked the Court to determine the number

1 of feet that the easement *is*, but the Court can determine that, based on the fact there is no express  
2 width established, it is not 100' and is limited in width by statute to what is reasonably necessary  
3 for maintenance." Brooke View also requests the Court expand the taking to include a small  
4 portion.

5 The Court grants Brooke View's motion as to the two remaining issues. The Court finds  
6 that whether the south entry way wall encroaches into any alleged one hundred-foot (100')  
7 easement of the Nampa Meridian Irrigation District is irrelevant to determining the damages  
8 sustained by Brooke View as a result of ACHD's taking and the valuation of its property. The  
9 Court further finds that ACHD's taking encompasses the additional area identified by Brooke  
10 View.

11 **I. The irrigation district is not an indispensable party.**

12 ACHD argues that Nampa Meridian Irrigation District is an indispensable party to this  
13 eminent domain case. It further contends that in effect Brooke View is requesting "relief in the  
14 form of a declaratory judgment regarding the width of the Ridenbaugh Canal right-of-way owned by  
15 the Nampa Meridian Irrigation District." The Court disagrees with both assertions. Idaho Rule of  
16 Civil Procedure 19(a)(1) provides a party shall be joined if:

17 (1) in the person's absence complete relief cannot be accorded among those already  
18 parties, or (2) the person claims an interest relating to the subject of the action and  
19 is so situated that the disposition of the action in the person's absence may (i) as a  
20 practical matter impair or impede the person's ability to protect that interest or (ii)  
21 leave any of the persons already parties subject to a substantial risk of incurring  
22 double, multiple, or otherwise inconsistent obligations by reason of the claimed  
23 interest.

24 The Supreme Court has held that joinder of all parties with an interest in the subject matter of the  
25 suit is not required; rather, only those who have an interest in the object of the suit should be  
26 joined. *Tower Asset Sub Inc. v. Lawrence*, 143 Idaho 710, 713-14, 152 P.3d 581, 584-85 (2007);  
27 *Pro Indiviso, Inc. v. Mid-Mile Holding Trust*, 131 Idaho 741, 746, 963 P.2d 1178, 1183 (1998);  
28 *Idaho Irrigation Co. v. Dill*, 25 Idaho 711, 716, 139 P. 714, 716 (1914).

29 Neither the Court nor the jury is being asked to quiet title to any easement the irrigation  
30 district may enjoy. An irrigation easement is not exclusive. *See Pioneer Irr. Dist. v. City of  
31 Caldwell*, 153 Idaho 593, 601-02, 288 P.3d 810, 818-19 (2012). The irrigation district is the

1 dominant estate holder, whereas the land that the canal is located upon is the servient estate.  
2 *Bratton v. Scott*, 150 Idaho 530, 536, 248 P.3d 1265, 1271 (2011). Thus, as discussed below,  
3 Brooke View, as the servient estate, may use the easement. *Pioneer Irr. Dist. v. City of Caldwell*,  
4 153 Idaho 593, 601–02, 288 P.3d 810, 818–19 (2012).

5 The value of Brooke View’s property before and after the taking can be determined  
6 without affecting the ditch owner’s rights because Brooke View need not quiet title to the  
7 easement in order to enforce any right it may have to use the easement. Therefore, Nampa  
8 Meridian Irrigation District is not an indispensable party to the request for injunctive relief. *Tower*  
9 *Asset Sub Inc.*, 143 Idaho at 713-14, 152 P.3d at 584-85.

10 **II. Irrigation easements are not exclusive.**

11 It is unclear whether the ditch itself (not the easement) is even held in fee simple. Since  
12 ACHD does not contend (as it could not) that the wall extends into the ditch itself, title to the  
13 ditch is irrelevant to the case. Likewise, as further explained, the easement is irrelevant.

14 An easement is the right to use the land of another for a specific purpose that is not  
15 inconsistent with the general use of the property by the owner. *Tower Asset Sub Inc.*, 143 Idaho at  
16 714-15, 152 P.3d at 585-86; *Akers v. D.L. White Const., Inc.* 142 Idaho 293, 301, 127 P.3d 196,  
17 204 (2005). An easement may be express or created by statute or law.

18 An express easement, being an interest in real property, may only be created by a written  
19 instrument, between the owner of the dominant estate and the owner of the servient estate. *Shultz*  
20 *v. Atkins*, 97 Idaho 770, 773, 554 P.2d 948, 951 (1976) (citing I.C. § 9–503; *McReynolds v.*  
21 *Harrigfeld*, 26 Idaho 26, 140 P. 1096 (1914)). “No particular forms or words of art are necessary  
22 [to create an express easement]; it is necessary only that the parties make clear their intention to  
23 establish a servitude.” *Benninger v. Derifield*, 142 Idaho 486, 489, 129 P.3d 1235, 1238 (2006)  
24 (quoting *Seccombe v. Weeks*, 115 Idaho 433, 436, 767 P.2d 276, 279 (Ct.App.1989)).

25 An express easement may also be created by a deed from the owner of the servient estate  
26 to the owner of the dominant estate. Where the owner of the dominant estate is selling the  
27 property to be subjected to the servitude, an express easement may be created by reservation or by  
28 exception. “An express easement by reservation reserves to the grantor some new right in the  
29

1 property being conveyed; an express easement by exception operates by withholding title to a  
2 portion of the conveyed property.” *Akers*, 142 Idaho at 301, 127 P.3d at 204.

3 The easement or right of way at issue in this case involves the Ridenbaugh Canal ditch and  
4 any appurtenant easements. The law in Idaho has long been clear.

5 The use of right of way for a ditch or canal does not require the exclusive  
6 possession of, or complete dominion over, the entire tract which is subject to the  
7 “secondary” as well as the principal easements. *City of Bellevue v. Daly*, 14 Idaho,  
8 545, 94 P. 1036, 15 L. R. A. (N. S.) 992, 125 Am. St. Rep. 179, 14 Ann. Cas.  
9 1136; *Durfee v. Garvey*, 78 Cal. 546, 21 P. 302.

10 *Coulsen v. Aberdeen-Springfield Canal Co.*, 47 Idaho 619, 277 P. 542, 544-45 (1929).

11 In other words, an irrigation easement is not exclusive. *Morgan v. New Sweden Irr. Dist.*,  
12 156 Idaho 247, 253-54, 322 P.3d 980, 986-87 (2014), *reh'g denied* (May 2, 2014); *Pioneer Irr.*  
13 *Dist. v. City of Caldwell*, 153 Idaho 593, 601-02, 288 P.3d 810, 818-19 (2012). The irrigation  
14 district is the dominant estate holder, whereas the land that the canal is located upon is the  
15 servient estate. *Id.*; *Bratton v. Scott*, 150 Idaho 530, 536, 248 P.3d 1265, 1271 (2011). When  
16 specific easement privileges are granted, “the easement owner's rights are paramount to those of  
17 the servient owner.” *Id.* Idaho Code section 42-1102 states that a right-of-way includes “the right  
18 to enter the land across which the right-of-way extends, for the purposes of cleaning, maintaining  
19 and repairing the ditch ....” *Id.*

20 The parties do not agree on the width of any easement or right-of-way that Nampa  
21 Meridian Irrigation District holds. But its width is not relevant to determining Brooke View’s  
22 damages. Furthermore, ACHD has presented no admissible evidence that the wall is actually within  
23 any right-of-way enjoyed by the Nampa Meridian Irrigation District.

24 **A. The 2001 Quit Claim deed is irrelevant to determining what, if any estate, the  
25 Nampa Meridian Irrigation District has and is irrelevant to these proceedings.**

26 In making its argument, ACHD relies heavily on the Quit Claim deed executed by the  
27 Secretary of the Interior in July 2001. However, that deed is irrelevant and does not establish the  
28 width or *even existence* of any easement or right-of-way. It only passed whatever interest the federal  
29 government had in the property quitclaimed at the time.

30 A quitclaim is a deed intended to pass any title, interest, or claim which the grantor  
31 may have in the premises but not professing that such title is valid. [footnote  
32 omitted] In fact, a quitclaim deed does not import that the grantor has any interest

1 at all. [footnote omitted] It conveys nothing more than what the grantor owns.  
2 [footnote omitted]

3 23 AM. JUR. 2d Deeds § 10. To determine what interest passes by a quitclaim deed, a grantee, or  
4 any interested person, must look to the chain of title prior to the deed to determine what interest  
5 the grantor had to convey and subtract therefrom any express reservation in the quitclaim deed. 23  
6 AM. JUR. 2d Deeds § 277.

7 Without that chain of title, the quitclaim is irrelevant. ACHD failed to include any  
8 evidence regarding a chain of title.

9 **B. At most, Nampa Meridian Irrigation District enjoys an easement for  
10 maintenance and repair.**

11 There is no evidence that Nampa Meridian Irrigation District enjoys an easement on Brooke  
12 View's property different in character to that held by any other irrigation district or that it has ever  
13 *asserted* a greater estate. Therefore, whatever estate is at issue, at most it is an easement for  
14 maintenance and repair.

15 The Idaho legislature enacted a specific statute reserving a right-of-way for irrigation  
16 ditches or canals providing, in relevant part, as follows:

17 [Ditch or canal] owners . . . are entitled to a right-of-way through the lands of  
18 others, for the purposes of irrigation. The right-of-way shall include, but is not  
19 limited to, the right to enter the land across which the right-of-way extends, for the  
20 purposes of cleaning, maintaining and repairing the ditch, canal or conduit, and to  
21 occupy such width of the land along the banks of the ditch, canal or conduit as is  
22 necessary to properly do the work of cleaning, maintaining and repairing the ditch,  
23 canal or conduit with personnel and with such equipment as is commonly used, or  
24 is reasonably adapted, to that work. The right-of-way also includes the right to  
25 deposit on the banks of the ditch or canal the debris and other matter necessarily  
26 required to be taken from the ditch or canal to properly clean and maintain it, but  
27 no greater width of land along the banks of the canal or ditch than is absolutely  
28 necessary for such deposits shall be occupied by the removed debris or other  
29 matter.

30 . . . .

31 The existence of a visible ditch, canal or conduit shall constitute notice to the  
32 owner, or any subsequent purchaser, of the underlying servient estate, that the  
33 owner of the ditch, canal or conduit has the right-of-way and incidental rights  
34 confirmed or granted by this section.

35 I.C. § 42-1102.

1 As owners of the servient estate Brooke View is entitled to use the land occupied by the  
2 ditch, including any easement for maintenance, in any way and for any purpose not inconsistent  
3 with the easement. *Reynolds Irr. Dist. v. Sproat*, 69 Idaho 315, 333, 206 P.2d 774, 785 (1948);  
4 *Coulsen v. Aberdeen-Springfield Canal Co.*, *supra*; 28 C.J.S., Easements, § 72, page 750; 17 AM.  
5 JUR. 993. As the Idaho Supreme Court opined in *Coulsen v. Aberdeen-Springfield Canal Co.* in  
6 1929:

7 The use of right of way for a ditch or canal does not require the exclusive  
8 possession of, or complete dominion over, the entire tract which is subject to the  
9 “secondary” as well as the principal easements. (citation omitted.)

10 If the difference in uses did not exist, and if sections 18, 19, and 20 of the Act of  
11 March 3, 1891, stood alone, there would be but little to distinguish the character of  
12 the titles conveyed. Section 21 of the act (43 USCA § 949), however, provides:  
13 “That nothing in this act shall authorize such canal or ditch company to occupy  
14 such right of way except for the purpose of said canal or ditch, and then only so far  
15 as may be necessary for the construction, maintenance, and care of said canal or  
16 ditch.”

17 It seems clear that Congress by that section intended to limit a canal company in its  
18 appropriation of the public land to an amount reasonably necessary for the  
19 construction, the convenient operation, and the necessary maintenance and  
20 repair of its canal, and did not intend, as in the case of railroads, to determine  
21 the amount of land necessary for the use. By that section Congress limited the  
22 canal company's right to possession to the reasonable requirements of the use.  
23 No greater burden was to be placed upon the servient tenement than  
24 reasonably necessary for the exercise of the right. We think it clear that  
25 appellant did not have title to the strip of land of 100 feet in width, in addition to  
26 the width of its spillway, but had an easement only, and that its rights are to be  
27 measured and governed by the law relating to that subject. It was expressly held in  
28 *Whitmore v. Pleasant Valley Coal Co.*, 27 Utah, 284, 75 P. 748, that a canal  
29 company acquired but an easement under the act referred to. In *United States v.*  
30 *Big Horn Land & Cattle Co. (C. C. A.)* 17 F.(2d) 357, it was held that the  
31 appropriation of a natural lake for reservoir purposes under the act of 1891 did not  
32 confer on the grantee the exclusive fishing privileges, or permit him to exclude  
other persons desiring to fish in the lake. In *Uhrig v. Crane Creek Irr. Dist.*, 44  
Idaho, 779, 260 P. 428, this court referred to the right as an easement.

The grant under which appellant claims was indefinite as to width and location of  
the canal as well as to the character of the conduit to be constructed. The only  
limitation was that fixed by section 21-that no greater burden be imposed than was  
necessary. In such case the practical construction placed upon the grant by the  
parties to it fixes the limits of the burden imposed. The construction of the ditch by

1 appellant as definitely fixed its location, its width, its course, and the character of  
2 the means to be employed to convey the waste water from the ditch to the bottom  
3 land as if such matters had been specifically fixed by formal contract. The initial  
4 use measures appellant's rights under an indefinite grant (*White Bros. & Crum Co.*  
5 *v. Watson*, 64 Wash. 666, 117 P. 497, 44 L. R. A. (N. S.) 254; *Felsenthal v.*  
6 *Warring*, 40 Cal. App. 119, 180 P. 67; *Winslow v. City of Vallejo*, 148 Cal. 723, 84  
7 P. 191, 5 L. R. A. (N. S.) 851, 113 Am. St. Rep. 349, 7 Ann. Cas. 851; *Kern Island*  
8 *Irrigating Co. v. City of Bakersfield*, 151 Cal. 403, 90 P. 1052; *Vestal v. Young*,  
9 147 Cal. 715, 82 P. 381; *Patterson v. Chambers' Power Co.*, 81 Or. 328, 159 P.  
10 568).

11 By the express provisions of section 19 of the act referred to, the land passes from  
12 the government burdened with the easement or right of way of the canal company.  
13 The company, however, **was entitled to no greater right than it could have**  
14 **enjoyed under an express grant by deed of right of way for waste ditch of the**  
15 **size and location and with the precise means of conducting water as that**  
16 **actually constructed.** As against respondent, appellant had the right to continue  
17 the use of the right of way in the manner and to the extent that these rights were  
18 fixed **by the original construction.** Respondent or his predecessor acquired from  
19 the government the entire estate not then appropriated by the right of way, and also  
20 the right to limit appellant's encroachments to the first use made. His estate was  
21 subject to the easement fixed by the act of the appellant or its predecessor in  
22 locating and constructing its canal and the implied "secondary easements," and it  
23 could not thereafter be subjected to a greater burden. *White Bros. & Crum Co. v.*  
24 *Watson*, *supra*; *Felsenthal v. Warring*, *supra*; *Hurst v. Idaho-Iowa L. & R. Co.*,  
25 *supra*; *Vestal v. Young*, *supra*; *Oliver v. Agasse*, 132 Cal. 297, 64 P. 401.

26 *Coulsen v. Aberdeen-Springfield Canal Co.*, 47 Idaho 619, 277 P. at 544-45 (emphasis added).

27 As the Idaho Supreme Court observed, in Idaho, the common law has long recognized that  
28 irrigation easements and rights-of-way are not exclusive. *Pioneer Irr. Dist. v. City of Caldwell*,  
29 153 Idaho 593, 601-02, 288 P.3d 810, 818-19 (2012); *City of Bellevue v. Daly*, 14 Idaho 545,  
30 550-51, 94 P. 1036, 1038-39 (1908) (owner of servient estate not liable for pollution caused to  
31 irrigation waters by his cattle in the ordinary course of husbandry and likewise not responsible for  
32 constructing a wall to protect the irrigation easement or right-of-way); *Coulsen v. Aberdeen-*  
33 *Springfield Canal Co.*, 47 Idaho 619, 630-31, 277 P. 542, 546 (1929) (irrigation easement owner  
34 not entitled to exclusive possession of property upon which easement is located and cannot assert  
35 trespass where servient estate owner's cattle enter easement; rather where easement owner fails to  
36 adequately maintain irrigation conduit and injury to servient estate owner's cattle results, easement  
37 owner is liable); *Pioneer Irr. Dist. v. Smith*, 48 Idaho 734, 739, 285 P. 474, 476 (1930) (irrigation

1 district's right-of-way is not exclusive and servient landowner's reasonable, ordinary, and usual  
2 farming of hogs near and on easement is permissible; irrigation easement owner is responsible for  
3 damages to irrigation conduit resulting therefrom); *Nampa & Meridian Irr. Dist. v. Mussell*, 139  
4 Idaho 28, 33, 72 P.3d 868, 873 (2003) (owners of servient estate "entitled to make any uses of  
5 their property that d[o] not unreasonably interfere with the District's enjoyment of its [irrigation]  
6 easement."). In fact, this Court has expressly recognized railroad easements as distinguishable  
7 from irrigation and other types of easements and rights-of-way, and held that only railroad  
8 easements are exclusive. *Lake CDA Invest., LLC v. Idaho Dep't of Lands*, 149 Idaho 274, 281-82,  
9 233 P.3d 721, 728-29 (2010) (citing *Coulsen*, 47 Idaho at 627-28, 277 P. at 544-45).

10 Thus, the only evidence before this Court is that Nampa Meridian Irrigation District enjoys  
11 an easement for maintenance and repair of the ditch. That is all.

12 **C. There is no evidence Nampa Meridian Irrigation District has ever been**  
13 **impeded in performing maintenance and repair of the Ridenbaugh Canal**  
14 **through Brooke View's property.**

15 Here, assuming Nampa Meridian Irrigation District holds an easement to enter Brooke  
16 View's land, that easement is limited to what is necessary to clean, maintain, and repair the canal  
17 – not a specific width. I.C. § 42-1102. Brooke View's land is the servient estate and is entitled to  
18 use any alleged easement.

19 Idaho Code section 42-1102's plain language indicates that a right-of-way's width  
20 is the area "necessary to properly do the work of cleaning, maintaining and  
21 repairing ... with personnel and with such equipment as is commonly used, or is  
22 reasonably adapted, to that work." Thus, the width must be necessary to properly  
23 clean, maintain, or repair the canal with the "equipment as is commonly used, or is  
24 reasonably adapted" to that work.

25 *Morgan v. New Sweden Irr. Dist.*, 156 Idaho 247, 253-54, 322 P.3d 980, 986-87 (2014), reh'g  
26 denied (May 2, 2014).

27 As Brooke View notes, its wall and the predecessor wall, has been in the same location since  
28 1999, more than fifteen years. There is no evidence that the Nampa Meridian Irrigation District has  
29 ever been hindered in performing its maintenance and repair. *See also, Pioneer Irr. Dist. v. City of*  
30 *Caldwell*, 153 Idaho 593, 597-98, 288 P.3d 810, 814-15 (2012).

1 Thus, any alleged easement is irrelevant to the valuation in the eminent domain action.  
2 ACHD has not presented any admissible or relevant evidence that the wall infringes on the  
3 irrigation district's right of way or affects the irrigation district's ability to maintain its ditch.

4 **III. Brooke View is entitled to compensation for the taking of the portion of the center**  
5 **median at the Brooke View entry way.**

6 It is uncontested that ACHD's taking includes a larger area than previously known. ACHD  
7 argued that Brooke View knew about the taking and that this motion is too late. However, based  
8 on Heather Cunningham's third affidavit, the Court finds Brooke View was not aware and that  
9 ACHD's sidewalk invades Brooke View's property.

10 ACHD also argues that this sidewalk is within the Nampa Meridian Irrigation District's  
11 right-of-way.<sup>2</sup> As already determined, whether it is within the right-of-way<sup>3</sup> or not, Brooke View  
12 has the right to make every reasonable use of its property. *Coulsen v. Aberdeen-Springfield Canal*  
13 *Co.*, 47 Idaho 619, 277 P. 542, 546 (1929). Brooke View has the right to build its wall. *Id.* The  
14 only limitation on this right is that no use could be made by Brooke View that would interfere  
15 with the Nampa Meridian Irrigation District in the operation, maintenance, or repair of its  
16 irrigation ditch. It is not necessary that the right of the owner of the servient tenement to occupy  
17 and use his land be expressly reserved to him; it is reserved, unless expressly conveyed. *Id.*; *see*  
18 *also Nampa & Meridian Irrigation District v. Washington Federal Savings*, 135 Idaho 518, 20  
19 P.3d (2001) (holding that a sidewalk and proposed fence did not unreasonably interfere with the  
20 irrigation district's easement and that the servient estate owner is entitled to make uses of the  
21 property that do not unreasonably impair cleaning, maintaining and repairing canals).

22 There is no evidence the wall interferes with Nampa Meridian Irrigation District in the  
23 operation, maintenance, or repair of its irrigation ditch. The only evidence before the Court  
24 demonstrates ACHD's take includes a larger portion of Brooke View's land. There must be just  
25 compensation for an additional taking in an eminent domain action.

26  
27  
28 <sup>2</sup> The Court observes that ACHD did not, and has not, begun an eminent domain action against the irrigation district.  
29 Thus, apparently it does not believe that its sidewalk extends into the irrigation district's easement. *See* I.C. § 7-702  
(2).

30 <sup>3</sup> As previously observed, there is no admissible evidence that this portion of the sidewalk is located within the Nampa  
31 Meridian Irrigation District's right-of-way.

1 The Court grants Brooke View's partial summary judgment on this issue.

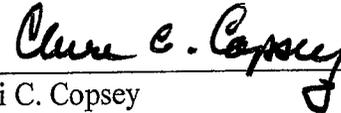
2 **CONCLUSION**

3 The Court finds that whether the south entry way wall encroaches into any alleged one  
4 hundred-foot (100') easement of the Nampa Meridian Irrigation District is irrelevant to  
5 determining the damages sustained by Brooke View as a result of ACHD's taking. There is no  
6 evidence of a one hundred-foot (100') easement or that Brooke View's wall infringes on the  
7 irrigation district's right-of-way.

8 The Court further finds that ACHD's taking encompasses the additional area and is  
9 entitled to compensation for the taking of the portion of the center median at the Brooke View  
10 entry way.

11 **IT IS SO ORDERED.**

12 Dated this 5th day of March 2015.

13 

14 Cheri C. Copsey  
15 District Judge

1  
2  
3 **CERTIFICATE OF MAILING**

4 I hereby certify that on the 6<sup>th</sup> day of March 2015, I mailed (served) a true and correct  
5 copy of the within instrument to:

6 KIMBELL D. GOURLEY  
7 JONES, GLEDHILL, FURMAN P.A.  
8 P.O. BOX 1097  
9 BOISE, IDAHO 83701

10 E. DON COPPLE  
11 HEATHER CUNNINGHAM  
12 DAVISON, COPPLE, COPPLE, & COPPLE LLP  
13 P.O. BOX 1583  
14 BOISE, IDAHO 83701

15 CHRISTOPHER D. RICH  
16 Clerk of the District Court

