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## City of Livingston v. Park Conservation District

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*City of Livingston v. Park Conservation District*, 2013 MT 234, 371 Mont. 303, 307 P.3d 317.

**Graham Coppes**

**I. Abstract**

On appeal from the Park County District Court, the Montana Supreme Court upheld the Park Conservation District’s designation of a channel of the Yellowstone River near the City of Livingston as part of the natural course of the river as reasonable and worthy of judicial deference, even though the record demonstrated that the channel had been continuously used as an irrigation conveyance system and local parties had historically referenced the stream with inconsistent characterizations. Looking ahead, this decision illustrates the Court’s strong deference to the resolutions and statutory interpretations of the state’s local conservation districts. To a lesser degree, the Court’s acceptance of the analytic framework used in determining the stream’s classification could potentially broaden the scope of the statute’s application, allowing more irrigation conveyance systems to fall within its purview.

**II. Introduction**

In July of 2013, the City of Livingston, Montana appealed the decision of the Park County District Court that affirmed the Park Conservation District’s (PCD) determination that a channel adjacent to the Yellowstone River near town was a part of the natural course of the river and thus subject to the statutory provisions of Montana’s Natural Streambed and Land Preservation Act. The City sought classification of the stream because it believed city property was injured by the PCD’s permitting of maintenance operations under the authority of the Natural Streambed and Land Preservation Act.<sup>1</sup> On appeal, the City argued the district court erred in upholding the PCD’s determination, contending its conclusion was an arbitrary and

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<sup>1</sup> *City of Livingston v. Park Conservation Dist.*, 234 MT 2013, ¶ 3, 371 Mont. 303, 307 P.3d 317 (Mont. 2013). [Hereinafter “Livingston”]

capricious abuse of their discretionary authority to issue declaratory rulings for their constituents.<sup>2</sup> The City further claimed that PCD abused its discretion in failing to adequately analyze documents in the record containing several references to the disputed watercourse as a “ditch.”<sup>3</sup> The Court quickly dismissed these arguments, stating that the PCD’s thorough examination of the river’s physical characteristics was sufficient to show that their conclusion was reasonable in light of the overriding policy purpose of the Act itself.<sup>4</sup> Ultimately, the Court held the City failed to show that the PCD reached its classification decision in an arbitrary or capricious manner.<sup>5</sup>

### **III. Background**

The heart of this litigation involves the physical nature of a stream channel adjacent to the Yellowstone River, near the town of Livingston, Montana. Historical evidence shows that during periods of runoff, when the river flows are high, water from the Yellowstone flows into this channel naturally and returns to the river’s main body downstream.<sup>6</sup> Since the 19<sup>th</sup> century, this channel has been utilized by the Heart K Ranch (“Heart”) to transport their vested rights to surface water from the river.<sup>7</sup> However, Heart does not have a head gate on the channel controlling the river’s inflows and, as a result, the Yellowstone’s natural alpine snowmelt regime leaves significant accumulations of rock and debris in the channel that must be removed for the channel to continue to deliver water to Heart during times of lower flows.<sup>8</sup> Heart operates this channel maintenance routine under the authority of a permit issued to it by the PCD, pursuant to

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<sup>2</sup> *Id.* at ¶ 2.

<sup>3</sup> *Id.* at ¶ 15.

<sup>4</sup> *Id.* at ¶ 16.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at ¶ 3.

<sup>7</sup> *Livingston*, at ¶ 3.

<sup>8</sup> *Id.*

the provisions of the Act.<sup>9</sup> Immediately adjacent to the channel is property owned by the City. The City claims that Heart's maintenance activities have resulted in injury to their property and that the permit issued to Heart to undertake such projects is invalid because the channel itself falls outside the scope of the Act, thus stripping PCD of authority to issue the permit.<sup>10</sup>

The City petitioned PCD for a declaratory ruling in accordance with the procedure laid out by section 75-7-125 of the Montana Code Annotated.<sup>11</sup> The PCD accepted the City's request appointing the Chief of the Conservation Districts Bureau as hearing officer for the proceeding.<sup>12</sup> Based on testimony given at a public hearing, exhibits submitted by all parties and a physical visit to the site itself, the hearing officer issued findings of fact and a recommendation.<sup>13</sup> Shortly thereafter, the PCD issued its official Declaratory Ruling on the matter stating that the channel is "a flood channel, high water channel, or side channel of the Yellowstone River, and is therefore subject to the Act."<sup>14</sup>

Applying the Act, internal administrative regulations and those adopted by the Montana Department of Natural Resource and Conservation, the PCD determined that the Yellowstone's dynamic nature created a migration zone, where scouring and deposition of fluvial materials continually alter the confines of the system.<sup>15</sup> Critical to their conclusion was that during an on-premise site inspection the PCD "found no evidence of spoil piles to indicate that the channel is a man-made ditch."<sup>16</sup> Upon receiving this information, the City sought judicial review from the district court, who upheld the PCD's findings, leading to this appeal.

#### **IV. Analysis**

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at ¶ 4.

<sup>12</sup> *Livingston*, at ¶ 5.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at ¶ 6-7.

<sup>16</sup> *Id.* at ¶ 7.

In the opening section of its analysis, the Court lays out the foundational principles and standards that govern the review of a conservation district’s declaratory ruling. Set out in section 75-7-125(4) of the Montana Code, a court offering judicial review over these types of decisions may reverse or alter a district’s decision only if “substantial rights of the appellant have been prejudiced because the decision violates constitutional or statutory provisions; is in excess of statutory authority; is affected by error of law; or is arbitrary or capricious, characterized by abuse of discretion or a clearly unwarranted exercise of discretion.”<sup>17</sup> Importantly, the Court concluded its analysis of the applicable standard of review by reiterating the principle that mere inconsistencies in the evidence, or even a finding of evidentiary pieces supporting an alternate conclusion will not suffice to meet the required threshold of arbitrary or capricious.<sup>18</sup>

A review of the legislative history shows that the Act was intended to promote the goals of Article II and Article IX of the Montana Constitution and to provide for the preservation and protection of the State’s rivers and streams.<sup>19</sup> Additionally, the Act lays out the procedural process for approval of plans to modify or alter the condition of water bodies held under the statute’s authority.<sup>20</sup> In acknowledging Heart’s adherence to these guidelines, the Court also laid out precedential support for usage of natural streams in conveyance of appropriative rights.<sup>21</sup>

Upon analyzing the definitional provisions of all three guiding bodies law<sup>22</sup> and prior case law requiring districts to analyze these types of decisions under the totality of the circumstances<sup>23</sup>, the Court set aside a few undisputed issues. Neither party contested that the

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<sup>17</sup> *Id.* at ¶ 10.

<sup>18</sup> *Livingston*, at ¶ 10.

<sup>19</sup> *Id.* at ¶ 11.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> The Act, the implementing rules of the Montana DNRC and the PCD’s internal rules each provide provisions for the definition of a natural stream.

<sup>23</sup> *Bitterroot River Protective Assoc. v. Bitterroot Conservation District*, 2008 MT 377, ¶ 40, 346 Mont. 507, 198 P.3d 219

Yellowstone itself falls within the coverage of the Act's mandates. The Court found it similarly apparent that the contiguous channel at issue receives substantial amounts of the river's natural flow during specific times of year.<sup>24</sup> Ultimately synthesizing these conclusions, the Court's analysis applied the various organizational definitions in conjunction with the legislative intent, effectively ending the review of the City's substantive arguments.<sup>25</sup> Yet, the Court summarily dissected the rest of the City's contentions.<sup>26</sup> In concluding its analysis, the Court again referenced the confines of its own probative framework, reiterating the imposing and high bar judicial deference requires. Succinctly, the Court explained that the City's claim of an arbitrary result was simply without merit based on the diligent and extensive efforts undertaken by the PCD.<sup>27</sup>

## **V. Conclusion**

This case represents a definitive example of the Montana Supreme Court applying principles of judicial deference and review. Uniquely, the Court here applies these doctrines to an agency operating at the county level, showcasing the Court's belief in and support for logically sound and well-reasoned arguments, regardless of the level of office. Going forward, this opinion may provide a foundation for other local agencies to defend their own bases of statutory interpretation whether under the provisions of the Natural Streambed and Land Preservation Act or otherwise.

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<sup>24</sup> *Livingston*, at ¶ 14.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at ¶ 15.

<sup>27</sup> *Id.* at ¶ 16.