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RIPARIAN RIGHTS - WASHINGTON

Richert v. Tacoma Power Utility

Court of Appeals of Washington, Division 2 - March 4, 2014 - P.3d - 2014 WL 839962

Landowners of property below a dam whose riparian rights had been condemned in prior litigation brought class action against city for property damage caused by increased water flow. The city filed a motion for summary judgment based on res judicata. The Superior Court entered judgment in favor of class members. The city appealed.

The Court of Appeals held that:

- Landowners' claims did not have concurrence of identity with prior litigation, and
- Landowners could not have brought current claims in prior litigation.

Landowners' class action against city for water damage caused by increased flow of river from dam did not have a concurrence of identity with prior litigation that led to condemnation of their riparian rights, and thus res judicata doctrine did not bar their claims, where their claims were for water damage to property from an increased water flow that led to flooding and a high water table, rather than for a violation of riparian rights.

Landowners whose riparian rights were condemned by city in prior litigation could not have brought their more recent class action claims against city for property damage due to increased water flow from a dam in the prior litigation, and thus res judicata did not bar their claims, where their claims were based, in part, on aggradation in the river bed that occurred only after the condemnation of their riparian rights, the increased water flow from the dam did not occur until several decades after the initial condemnation, and the court that heard the prior litigation explicitly stated that the condemnation was occurring due to a diminishment of the river's flow, rather than an increase.

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