

# **Bond Case Briefs**

*Municipal Finance Law Since 1971*

---

## **EMINENT DOMAIN - WASHINGTON**

### **Maslonka v. Public Utility District No. 1 of Pend Oreille County**

**Supreme Court of Washington - August 3, 2023 - P.3d - 2023 WL 4939152**

Landowners brought action against public utility district, alleging district's operation of dam entitled landowners to damages based on inverse condemnation, trespass, nuisance, and negligence.

District counterclaimed for declaration of prescriptive easement. On summary judgment, the Superior Court declared a prescriptive easement in favor of utility district and dismissed landowners' claims. Landowners appealed. The Court of Appeals affirmed in part, reversed in part, and remanded. Review was granted.

The Supreme Court held that:

- As a matter of apparent first impression, the "subsequent purchaser rule," prohibiting landowners from suing, through an inverse condemnation action, for property damage caused by governmental conduct that occurred prior to their ownership, is a doctrine of standing rather than an affirmative defense;
- Landowners were subsequent purchasers as to taking that occurred when dam was built, supporting finding that they were precluded from bringing an inverse condemnation claim;
- There was no evidence that alleged increase in flooding on property was attributable to district, as could render increased flooding a new taking that would allow inverse condemnation claim; and
- Landowners were precluded from asserting a nuisance claim against district based on same flooding as "backup" for inverse condemnation claim.

The "subsequent purchaser rule," prohibiting landowners from suing, through an inverse condemnation action, for property damage caused by governmental conduct that occurred prior to their ownership, is a doctrine of standing rather than an affirmative defense.

Landowners were "subsequent purchasers" as to taking that occurred when dam was built and thus were precluded from bringing an inverse condemnation claim arising from public utility district's dam operations that had flooded landowners' property, where landowners bought property at a purchase price that represented known seasonal flooding from dam operations.

There was no evidence that alleged increase in flooding on landowners' property was attributable to public utility district, as could render increased flooding a new taking that would allow inverse condemnation claim by landowners, as subsequent purchasers whose purchase of property was at a price that reflected known flooding from district's dam operations.

Landowners were precluded from asserting a nuisance claim against public utility district, based on flooding of landowners' property from district's dam operations, as "backup" for landowners' inverse condemnation claim, which was barred by subsequent-purchaser rule given that landowners had purchased property at a price that accounted for known flooding due to dam operations, where parties did not dispute that a taking occurred.

