STATE OF IDAHO)
County of KOOTENAI)ss

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CLERK OF DISTRICT COURT

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Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE

STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

DIANNE RUDDY-LAMARCA, *Plaintiff*, vs. **DALTON GARDENS IRRIGATION DISTRICT, a political subdivision of the State of Idaho** *Defendant*.	Case No. **CV 2010 5048** **MEMORANDUM DECISION, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER FOLLOWING COURT TRIAL**

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

This matter is before the Court following the two-day court trial held June 15-16, 2011. The issue at trial was the scope of an easement (width) for a water pipe in Dalton Gardens, Idaho.

Following the court trial, on July 11, 2011, the defendant, Dalton Gardens Irrigation District (District), filed Defendant's Closing Argument and Defendant's Proposed Findings of Fact and Conclusions of Law, and on July 12, 2011, the plaintiff, Dianne Ruddy-Lamarca (Ruddy-Lamarca) submitted Plaintiff's Post-Trial Closing Memorandum and Plaintiff's Proposed Findings of Fact and Conclusions of Law. The Court notes Lamarca has been spelled differently by Lamarca's counsel at different times. The Court will use the spelling provided by Lamarca's counsel in the Complaint.

At the court trial, the parties stipulated to the admission of all exhibits submitted. The Court has reviewed those exhibits. The parties have agreed that an easement

exists in favor of the District over Ruddy-Lamarca's land for installation, construction, maintenance and repair of irrigation pipeline and appurtenances. Stipulated Facts for Trial, p. 1, ¶ 1. Lamarca has apparently conceded that there is an express easement across her land in favor of the district. Plaintiff's Proposed Findings of Fact, Conclusions of Law, p. 4, Conclusion of Law ¶ 1.

Lamarca filed this lawsuit on June 11, 2010. What remained at issue for trial just over a year later was the "scope" of the easement, specifically the *width* of the easement and the location of the easement. The District claims it has a deeded easement across Ruddy-Lamarca's land to maintain its water line. However, the District admits no width is specified in that easement, nor is the location specified. Defendant's Memorandum Concerning Creation of Easement, pp. 4-13; Defendant's Closing Argument, p. 2. The District also claims an easement by prescription, as its water system has existed in the area since 1911, and at its specific location across Ruddy-Lamarca's land since 1954 when the United States Bureau of Reclamation rebuilt the irrigation system for the District. Defendant's Memorandum Concerning Creation of Easement, pp. 13-16. Ruddy-Lamarca contends it does not matter whether the easement is express or prescriptive, as the width would be the same in either event. Plaintiff's Trial Brief, p. 9. The District agrees. Defendant's Closing Argument, p. 2. Ruddy-Lamarca claims the express easement was lost due to a break in the chain of title. Plaintiff's Trial Brief, pp. 3-5. Ruddy-Lamarca claims that whether express or prescriptive, the easement is only sixteen (16) feet wide. *Id.,* p. 8. The District contends the easement width is thirty-seven (37) feet wide at its widest, and slightly narrower where the easement is along the road and a fence. Defendant's Closing Argument, p. 23. Thus, the parties' disagreement as to the width of this easement is by a difference of more than twenty feet.

The impetus for this lawsuit arose when the District made plans to excavate down to the existing four-inch water line, which, according to the District, is approximately four feet under the surface. Defendant's Closing Argument, p. 7. The District's plan is to leave the existing line but replace it with a new ten-inch water line placed immediately adjacent to the four-inch line. *Id.* The District estimates this project would be performed with three pieces of heavy equipment (track-hoe to dig the trench, a rubber tired machine to locate the pipe and backfill, and a rubber tired machine to compact and rough grade the area), which would be able to complete the job across Ruddy-Lamarca's land in no more than two days, but would use the entire width requested by the District. *Id.,* p. 9. The District is critical of Ruddy-Lamarca's proposal which would involve only one piece of equipment (track-hoe) and would take more than four work days, but would involve a portion of her property of significantly less width, specifically, sixteen feet according to her expert. *Id.,* p. 9. Ruddy-Lamarca testified at trial. She did not discuss any concerns as to the number of days this project might take under either method. Thus, her concerns are obviously the width of the easement.

II. ANALYSIS.

Robert Wuest, Watermaster for the District testified on behalf of the District's plans. Gary Sterling, an excavator in the area since 1984, testified on behalf of Ruddy-Lamarca. Neither Wuest nor Sterling testified that the other's excavation plan is not feasible. The only criticism Wuest had of Sterling's plan was Wuest's concern that the track-hoe straddling the trench would risk collapse of the trench wall. Defendant's Closing Argument, p. 10. Accordingly, the District implores:

> This Court should find that the method proposed by Mr. Sterling is, in that regard, not reasonable. Otherwise, the Court would be, in effect, directing Mr. Wuest to have the work performed in a manner that Mr. Wuest does not deem prudent.

Id. This Court finds Sterling credible. This Court finds Sterling has more experience with excavating than Wuest. Furthermore, this trench is only going to be *four feet deep, five feet at most*. While the District claims their existing four-inch water line is four feet deep, Sterling excavated a test hole on Ruddy-Lamarca's land, and found the water line to be located exactly five feet deep. Even if calamity were to strike and the trench wall cave in, even at five feet, the track-hoe could crawl its way out of trouble. Sterling specifically testified the trench would not cave in. The Court finds the likelihood of any sloughing at a five-foot depth to be very remote. Due to his test hole and due to his review of the historical photos showing the 1954 installation of the system, Sterling is familiar with the type of soil on site. This Court finds there is simply no risk of injury or loss of equipment with Sterling's plan.

Upon review of the Court's notes regarding trial testimony of Wuest and Sterling, neither testified as to which method of replacing this water line would cost more. Thus, the Court assumes that the cost of each method must be roughly equivalent, or at least close enough to equivalent that neither side chose to make it an issue at trial. Thus, while the width of the easement is what is at issue, as the following shows, this Court finds the paramount issue in determining that width is which construction method is used.

A great deal of testimony was taken by both sides, and most of the exhibits offered by both sides and admitted concerned the history of this water system back to 1911, the plans and construction methods used in 1954 and again in 1961 when the pipe placed in 1954 did not hold up. Wuest testified that the plans are "sometimes" accurate with what was actually placed in the ground.

Much testimony was given regarding where the various plans show the water line to be located on Ruddy-Lamarca's property, and whether the existing water line is

where the plans indicate the water to be. The Court appreciates the detail of the evidence in that regard, as the Court eventually must come up with a metes and bounds description of this easement. *Harwood v. Talbert,* 136 Idaho 672, 673, 39 P.3d 612, 613 (2001); *Phillips Industries, Inc. v. Firkins,* 121 Idaho 693, 695, 827 P.2d 706, 708 (Ct.App. 1992). However, the metes and bounds description of this easement is not the paramount concern of either the District or Ruddy-Lamarca. The paramount concern for the District is to be able to install the new water line with the method it would prefer, while the paramount concern for Ruddy-Lamarca appears to be having the District install the water line in the least disruptive manner, at least as the disruption concerns her land.

The Court can appreciate that given the fact that the parties are more than 20 feet apart as to their position on the width of this easement, this case might not resolve short of trial. However, given the fact that a construction method was available to the District (which apparently would cost no more than the District's preferred method), which would have fit into the width proposed by Ruddy-Lamarca, it is perplexing that this case was not capable of resolution prior to trial. The cost of preparing and taking this matter to trial would have certainly offset any possible difference in cost between the two proposed methods (again, no difference in cost was shown).

The solution to the issue before the Court is much simpler than as argued to the Court by the parties. Ruddy-Lamarca does not dispute that the District has an easement of some kind. The location of that easement can be established *after* the installation of the new line, and established with precision. The centerline of the easement will track the centerline of the existing four-inch water line. However, before installation of the new line begins, the parties need to know the width of the easement.

Whether this is an express easement or an easement by prescription, the scope

(in this case the width) of the easement is limited by Idaho case law. The parties are correct, that it matters not whether this is a vague express easement or an easement by prescription, when it comes to the Court determining the width. For obvious reasons, case law restricts the easement to no more than is necessary so as to minimize the burden on the servient land owner while allowing the purpose of the easement in the dominant owner to be met. An express grant which is indefinite as to width and location "must impose no greater burden than is necessary. *Coulsen v. Aberdeen-Springfield Canal Co.,* 47 Idaho 619, 628, 277 P. 542, 545 (1929).

> It is the long established rule in this jurisdiction [Idaho] that any right gained by prescription is confined to the right as exercised during the prescriptive period. "It is limited by the purpose for which it is acquired and the use to which it is put."

Plaintiffs' Brief on Remand, p. 5, *citing Idaho Forest Indus., v. Hayden Lake Watershed Imporvement Dist.,* 112 Idaho 512, 515, 733 P.2d 733, 736 (1987); *citing Azteck Limited, Inc. v. Creekside Inv. Co.,* 100 Idaho 566, 568, 602 P.2d 64, 66 (1979). "[P]resciption acts as a penalty against a landowner and thus the rights obtained by prescription should be closely scrutinized and limited by the courts. *Id., citing Gibbens v. Weisshaupt,* 98 Idaho 633, 570 P.2d 870 (1977). The character and extent of a prescriptive easement generally is fixed and determined by the use under which it was acquired. No different or materially greater use can be made of such an easement, except by further adverse use for the prescriptive period. 25 Am.Jur.2d Easements and Licenses § 81.

The Court finds the District has both an express easement (though vague and not located) and a prescriptive easement, over Ruddy-Lamarca's property.

Next, the Court must determine the "use" of the easement.

There is no practical significance to the District wishing to replace the four-inch line with a ten-inch line, leaving the four-inch line in place. "In *Weaver v. Natural Gas*

Pipeline Co. (1963), 27 Ill.2d 48, 188 N.E.2d 18, the court held that the replacement of an original four-inch sewer pipe with a new ten-inch sewer pipe was within the intention of the easement." *Continental Illinois Nat. Bank and Trust Co. of Chicago v. Village of Mundelein,* 85 Ill.App.3d 700, 705, 407 N.E.2d 1052, 1056, 41 Ill.Dec. 554, 558 (Ill.App. 2 Dist. 1980). This Court finds the increase from a four-inch line to a ten-inch line to be a permissible increase in use, and an increase which has no measurable negative effect on Ruddy-Lamarca's use and enjoyment of her sevient land.

If the "use" for this easement is to *install* a water line (as opposed to the *presence* of the water line itself once installed), then the "use" a half century ago has not changed to the present time, but the technology to execute that "use", that is, the technology to install that water line, has changed in the interim. The equipment used in 1962 was a Barber-Green TA-55 trenching machine. Plaintiff's Exhibit 2, 3. This is a relatively large machine that cut a clean trench with a rotary shovel. The machine straddled the trench as it moved forward. The rotary shovel then deposited the excavated soil onto a conveyor which was part of the machine, which then placed the soil on the ground adjacent to but several feet from the ditch that was simultaneously being excavated. A different and equally large machine then placed the pipe which was located in a pile a good distance from the trench and the spoils pile. Plaintiff's Exhibit 1. Considering the pipe stockpile, spoils pile, trench and equipment, this Court finds that at least thirty feet width of easement was used back in 1962, if not 40 feet. *Id.*

Concomitantly, the use of the servient land has changed drastically in the last sixty years. The photographs taken back in the mid 1950's show a Dalton Gardens which was entirely agricultural. Plaintiff's Exhibit 1, 2, 3, 4. There is a fence, but no homes and little vegetation other than the crops growing in the fields. Today, Dalton

Gardens is suburban with a residence and associated additional structures and a variety of well established trees on nearly every parcel. While the parcels remain large (usually five to ten acres) in comparison with other areas, Dalton Gardens today is entirely different than the wide open expanse shown in the photographs from a half-century ago. While in a portion of *Bentel v. Bannock County*, 104 Idaho 130, 134, 656 P.2d 1383, 1387 (1983), the Idaho Supreme Court cautions against a distinction between urban and rural areas, that caution is limited to inferring a prescriptive right for water and sewer underneath an express roadway easement.

Thus, in the past half-century the need to be more "surgical" in the placement of the water line has increased due to the conversion of the area from agricultural to suburban. The good news is, at the same time, the ability to be more "surgical" in the placement of the water line has also improved. Given those factual findings, where does that leave us in light of easement law?

Most easement cases delineate the relevant time period for determining the extent of the use as the time in which the prescriptive period began. *Idaho Forest Indus., v. Hayden Lake Watershed Imporvement Dist.,* 112 Idaho 512, 515, 733 P.2d 733, 736 (1987); *citing Azteck Limited, Inc. v. Creekside Inv. Co.,* 100 Idaho 566, 568, 602 P.2d 64, 66 (1979). While this Court is mindful of that, the Court is also mindful that case law also requires the easement "impose no greater burden than is necessary." *Coulsen v. Aberdeen-Springfield Canal Co.,* 47 Idaho 619, 628, 277 P. 542, 545 (1929). Those competing concepts clash in the present case, because if the prescriptive period began in the 1950's and 1960's when this was wide open agricultural land and the equipment used was very large, the easement might be 40 feet wide, when, present day, due to construction advances over time, only about 25% of that width is necessary. The

clash is more pronounced due to the fact that the nature of the land has changed as well, and the area is now suburban, no longer a large expanse of flat agricultural land.

This Court finds, for the following enumerated reasons, that the "use" of the easement for purposes of installing a new line is to be restricted to the least practicable interference with Ruddy-Lamarca's land, given the realities of modern-day equipment.

First, easement law allows reasonable expansion of a prescriptive easement or an undefined express easement. As noted by the Idaho Supreme Court: "Although the use of a prescriptive easement may change under the proper circumstances, such change must not unreasonably increase the burden on the servient estate and must have been foreseeable at the time that the easement was established." *Bentel v. Bannock County*, 104 Idaho 130, 133, 656 P.2d 1383, 1386 (1983), *citing Gibbens v. Weisshaupt,* 98 Idaho 633, 570 P.2d 870 (1977). Prescriptive easements are to be viewed as restrictively as possible so as not to burden the servient land any more than reasonably necessary. Although the use made of a prescriptive easement may evolve beyond the original prescriptive uses, new uses cannot substantially increase the burden on the servient estate or change the nature and character of the easement's original use. *Price v. Eastham,* 75 P.3d 1051, 1058 (Alaska 2003).

Since the use can be reasonably expanded, and since these easements are to be viewed as restrictively as possible, why wouldn't new technology cause the easement use to decrease, just as changed circumstances (increased population creating a need for larger diameter water and sewer pipes or increased carrying capacity on power lines) allow reasonable increases? There is no logical reason to not allow that decrease. If, as the Alaska Supreme Court stated in *Price*, easements may "evolve", why cannot easements "devolve"?

While *Bentel* shows that public prescriptive easements are more broadly construed than private prescriptive easements, "common experience shows that width [is] no more than sufficient for the proper keeping up and repair of roads generally." *Id., citing , Meservey v. Gulliford,* 14 Idaho 133, 148, 93 P. 780, 785 (1908).

Second, at least regarding prescriptive easements, the "use" is what gives the servient owner notice of the presence of the easement.

> A use must be sufficiently open and notorious so that a reasonable person would have discovered its occurrence. 4 *Powell on Real Property,* § 34.10(2)(f) (2000). "The purpose of the requirement that prescriptive use be open and notorious is to give the owner of the servient tenement knowledge and opportunity to assert his rights." *Baxter v. Craney,* 135 Idaho 166, 173, 16 P.3d 263, 270 (2000).

Backman v. Lawrence, 147 Idaho 390, 396, 210 P.3d 75, 81 (2009). Because she had drinking and irrigation water when she moved in back in 1990, Ruddy-Lamarca was on notice that there was probably a water line on her property. However, Ruddy-Lamarca was not on notice of the behemoth equipment which was present on her land for probably only a few days over a half century ago, when that water line was installed. Again the question becomes is the "use" the water line itself or is the "use" the historical width of the equipment used over fifty years ago which travelled upon the land for a very brief period of time? When the purpose for the "use" (to provide notice), the Court finds it is the former (existence of a water line), not the latter (the width of the area needed to replace that line).

Third, case law makes it clear the prescriptive easement (and ambiguous express easements) should be viewed as restrictively as possible, yet still allowing the use for which it was created. As the Alaska Supreme Court held in *Price*:

> Courts have restricted the scope of prescriptive easements significantly to limit the burden on the servient estate. For example, courts have limited use of prescriptive easements to specific times of the year and have

limited the width of prescriptive easements.

75 P.3d 1051, 1058-59. (footnotes omitted). Again, the "use" is what is important. If the "use" is the existing installed water line, then the use has not changed in this case. Only the technology to install that water line has. Concomitantly, the use of the servient land has changed drastically from agricultural to suburban in the last sixty years. Given the fact that case law requires this Court to restrict prescriptive easements (and vague express easements), there is no reason for this Court to find to width of the easement upon the servient land is as wide as the large equipment that originally dug the trench and placed the pipe sixty years ago, when a fraction of that width is all that is reasonably needed today.

Fourth, the holder of an easement may not materially increase the burden placed upon the servient tenement beyond that originally contemplated. *Great Lakes Gas Transmission Co v MacDonald,* 193 Mich.App 571, 577, 485 NW2d 129, 132-33 (Mich.App. 1992). The burden on Ruddy-Lamarca's land originally contemplated is the burden of having a water pipe buried underneath it and the burden of the District maintaining or improving that line from time to time. If the easement width to maintain and improve the water line has decreased due to technology, the burden should keep pace with that technology.

Once the width of the prescriptive easement is established, plaintiffs must show a legal reduction of width or change in character of its use. *Berkey and Gay Furniture Company v Valley City Milling Company,* 194 Mich. 234, 243-44, 160 N.W. 648, 652 (Mich. 1916). In that case a right of way was held to have changed course and was narrowed due to a building being built by the servient landowner. Just as an easement holder cannot unilaterally increase the extent of the easement, neither can the servient

estate unilaterally decrease the extent of the easement. *Mrozinski v. Onekama Marine, Inc.,* 2002 WL 1767705 (Mich.App. 2002). (unpublished opinion). In the present case, Ruddy-Lamarca has done nothing to unitlaterally decrease the extent of the easement. Rather, it is the passage of time that has decreased the width of the easement reasonably necessary to satisfy the District's needs.

Fifth, the District's own by-laws are consistent with this result and inconsistent with the District's position for an easement several feet wider. The Board of Directors of the District have established its Pipe Line Right of Way policy as follows:

> The District shall reserve the right of way of the pipe line for necessary maintenance, repair or replacement purposes, thereby eliminating anything being built or planted which might render these services impossible. Property owner must allow at least (10) feet on each side of the pipe line. If any structures, trees, shrubs, or fences are in the easement area and, maintenance is required, they will be removed at the property owner's expense. The district has the right to construct, repair, or replace the lines any place within the boundaries of the district. This may involve Earth moving Equipment and other Motorized Vehicles. This does not however give the right to other property owners to abuse this easement. The land is and does belong to the land owner and is only to be used by adjacent land owner to have access to the Irrigation Weir.

Plaintiff's Exhibit 8, page 3 of 4, Article VI; District Proposed Findings of Fact, p. 6, ¶ 19. At trial when confronted with this by-law, Wuest claimed it was set at ten feet only because he copied them from another water district's by-laws, and that the District has it on its agenda to change this by-law. Nonetheless, it is the by-law at the time of trial. Even if through its own negligence, the District has recognized that 20 feet is sufficient width it requires to replace a pipeline.

Sixth, the "reasonableness" concept pervades this area of law. "The law is well settled that the scope of a prescriptive easement is determined by the scope of the use giving rise to the easement." *Widell v. Tollefson,* 158 Wis.2d 674, 686, 462 N.W.2d 910, 914 (Wisc.Ct.App.1990). "Because no use can ever be exactly duplicated, the use

giving rise to a prescriptive easement determines only the general outlines of the easement, rather than the minute details of the interest." *Id.* A prescriptive easement awarded by virtue of adverse possession should reasonably comport with the prior use made of the land subjected to the easement. *Id.* at 686-87, 462 N.W.2d at 914.

Seventh, Idaho Code § 42-1102, allows for rights-of-way for irrigation. That statute reads in pertinent part: "The right-of-way shall include, but is not limited to, the right to enter the land across which the right-of-way extends, for the purposes of cleaning, maintaining and repairing the ditch, canal or conduit, and to occupy such width of the land along the banks of the ditch, canal or conduit as is necessary to properly do the work of cleaning, maintaining and repairing the ditch, canal or conduit *with personnel and with such equipment as is commonly used, or is reasonably adapted, to that work*." (italics added). Thus, while the right of way may be for the water line itself, and is based on *historical* use at the time the prescriptive period ran, the right of way to maintain and replace that line is based on *present day* situations. This Court finds the language "…such equipment as is commonly used…" refers to present day equipment commonly used. Sterling testified the large equipment used a half century does not exist present day, at least not in working condition. The District, after quoting the above portion of I.C. § 42-1102, then makes the argument: "There is netiehr case law nor statutory language that this statutory provision reduces the scope of an easement even if some methods can be used to maintain and repair and [an] existing conduit that might use less space that [than] were previously used." Defendant's Closing Argument, p. 3. This Court could not disagree more. The easement holder has a right under that statute, to use such equipment commonly used for the work of repairing that conduit, and commonly can only refer to present day. Any

other interpretation makes no sense. Any other interpretation ignores the reasonableness standard the Court must keep in mind. Any other interpretation ignores case law that requires this Court impose no greater burden on the servient landowner than is reasonably necessary.

III. FINDINGS OF FACT.

1. Ruddy-Lamarca resides in Kootenai County, Idaho, and is subject to the personal jurisdiction of this Court.

2. District is a political subdivision of the State of Idaho and is subject to the personal jurisdiction of this Court, and venue is properly before this Court.

3. Ruddy-Lamarca owns certain real property located in Kootenai County, Idaho and more particularly described as:

> A tract of land located in Tract 48 of the DALTON GARDENS ADDITION to HAYDEN LAKE IRRIGATED LANDS, according to the plat thereof filed in Book "B" of Plats at page 151, records of Kootenai County, Idaho more particularly described as follows:
>
> BEGINNING at a point on the East line of said Tract 48; 135.15 feet South of the Northeast corner thereof; thence South 195.15 feet to the Southeast corner of said Tract 48; thence West along the South line of said Tract a distance of 649.6 feet to the Southwest corner of said Tract; thence North along the West line of said Tract 330.4 feet to the Northwest corner of said Tract 48; thence East along the North line of said Tract 390.3 feet to a point in said North line which lies 260.2 feet West of the Northeast corner of said Tract 48; then South a distance of 135.17 feet; thence East a distance of 260.3 feet to the POINT OF BEGINNING.
>
> Such property is subject to the *in rem* jurisdiction of this Court.

4. On December 5, 1907, the Hayden-Coeur d'Alene Irrigation Company, a Washington Corporation ("Irrigation Company") recorded the Dalton Gardens Addition Hayden Lake Irrigated Lands subdivision. The Irrigation Company subsequently sold parcels of property within this subdivision.

5. In March 1912, Malloy Brothers applied for and was issued Water Permit No. 2518 by the Idaho State Engineer (the predecessor of the Idaho Department of Water Resources). Tract 48 was included in the water permit.

6. A map of the domestic and irrigation system as it existed December 30, 1911, was submitted to the State Engineer in connection with an application for the amendment to Water License No. 2518. This map indicated that an irrigation ditch ran close to the northern boundary of Tract 49, immediately south of the southern boundary of Tract 48, then turned north and ran along the western boundary of Tract 48. Domestic water lines were located along the eastern boundary of Tract 48 adjacent to what is now known at 16th Street.

7. Tract 48 (Ruddy-Lamarca parcel) was conveyed to E.H. Foltz by deed dated July 18, 1911, and recorded March 5, 1914. This deed reserved an easement for canals, flumes and water tanks.

8. Tract 48 is a servient estate and subject to an easement in gross in favor of Dalton Irrigation District that traverses a portion of the parcel that is adjacent to the southern boundary of the parcel and that traverses a portion of the parcel that is adjacent to the public right of way on Sixteenth Street.

9. Ruddy-Lamarca purchased a portion of Tract 48 in 1990.

10. In 1955-1963, the United State Department of the Interior Bureau of Reclamation rehabilitated the irrigation works. The Interior Department Appropriation Act, 1954, the Act of July 31, 1953 (67 Stat. 261, Public Law 83-172) authorized the emergency rehabilitation of the Dalton Gardens Project. Further emergency pipe rehabilitation was authorized by the Act of September 22, 1961 (75 Stat. 588, Public Law 87-289). Construction Rehabilitation of the irrigation works began June 11, 1954,

and was completed on April 28, 1955. Emergency pipe rehabilitation work began in 1962 and was completed in 1964.

11. The Bureau relocated the irrigation system from Tract 49 to Tract 48. The installation of the irrigation pipeline was the first use of Tract 48 as party of the irrigation system.

12. The Bureau used tracked equipment centered on the trench to excavate the trench for the pipeline. This practice imposed the least amount of burden on the property.

13. The Bureau used its different equipment sequentially (the trenching machine followed by the pipe-laying machine) during the excavation, which allowed for narrower widths of land to be used in the project.

14. The width used by the Bureau south of the existing pipeline along the southern boundary of Ruddy-Lamarca's parcel is not capable of exact measurement based on the photographs, but was in excess of six (6) feet as claimed by Ruddy-Lamarca. Plaintiff's Proposed Findings, p. 4, ¶ 13. The width used north of the existing pipeline along the southern boundary of Ruddy-Lamarca's parcel is likewise not capable of exact measurement based on the photographs, but was in excess of the ten (10) feet claimed by Ruddy-Lamarca. *Id.*

15. The width used by the Bureau as it traversed the eastern portion of Ruddy-Lamarca's parcel adjacent to the public right of way along Sixteenth Street is not capable of exact measurement based on the photographs, but was in excess of the six (6) feet claimed by Ruddy-Lamarca. *Id.,* ¶ 14.

16. The District allowed by acquiescence, Ruddy-Lamarca's predecessor to locate two trees along the fence line of the southern boundary that are within the its easement. The District has knowledge of approximately where its lines are located,

and there was no testimony about any complaint by the District as to the location of Ruddy-Lamarca's trees. The District must take reasonable precautions during the installation of the pipeline to preserve these trees.

17. The District allowed by acquiescence, Ruddy-Lamarca to place a drain field north of the existing pipeline along the southern boundary. Ruddy-Lamarca testified she replaced her drainfield in about 1996 or 1997, and that her contractor, Bettis Excavating, called the District before doing so. Plaintiff's Exhibit 7. This testimony was uncontroverted. A portion of the drain field is within ten feet of the existing pipeline. Placing heavy equipment with tires on this drain field may cause it to fail, pursuant to the unrebutted testimony of Gary Sterling. This District shall make every effort to avoid damage to Ruddy-Lamarca's drain field and should only use track equipment over the drain field.

18. The District's bylaws set forth the area in which encroachments will considered by the District to be incompatible with the District's use of its easements. The trees along the fence line and the drain field constitute an encroachment into the easement area.

From the foregoing Findings of Fact, the Court now makes the following:

II. CONCLUSIONS OF LAW.

1. District has an express easement over Ruddy-Lamarca's property. The District also has an easement by prescription over Ruddy-Lamarca's property. These easements are identical in location and in width.

2. The construction of the water pipeline by the Bureau fixed the location, width, course and the character of the means to be employed to convey the irrigation water. This use measured the District's rights. The location of that water pipeline is the centerline for the District's easement.

3. The dimensions of the easement are eight feet either side of that centerline, for a total width of sixteen (16) feet.

4. The District's easement is not extinquished with respect to the two trees along the fence line and the drain field. However, the District shall make every effort to preserve these encroachments in any repair, maintenance, or replacement of its pipeline.

IV. ORDER.

For the reasons stated above,

IT IS HEREBY ORDERED the District has an express easement across Ruddy-Lamarca's property, but the location of that easement is entirely unknown. Ruddy-Lamarca has not met her burden of proving that such express easement was extinguished and apparently concedes this point. Plaintiff's Proposed Findings of Fact, Conclusions of Law, p. 4, Conclusion of Law ¶ 1.

IT IS FURTHER ORDERED the District has a prescriptive easement across Ruddy-Lamarca's property.

IT IS FURTHER ORDERED that both the express easement and the prescriptive easement are currently located where the existing four-inch water line exists at present (and since 1962) on the Ruddy-Lamarca property. This is the centerline of the easement. The easement, based on historical evidence regarding the installation of the easement, coupled with evidence of modern day practices for replacing the water line, is eight (8) feet wide either side of centerline, for a total width of sixteen (16) feet. This is true regardless of the location of the pipe relative to streets, fences, trees, and any drain field.

IT IS FURTHER ORDERED that contemporaneous with replacement of the water line, the District shall cause a metes and bounds survey to be conducted, establishing the exact location of its existing four inch water line upon Ruddy-Lamarca's

property. This survey must occur while the existing water line is exposed during installation of the new water line. The survey must be presented to Ruddy-Lamarca, and after her approval (or if no approval a filed written objection with subsequent hearing) the survey must be filed with the Court, a suitable judgment prepared by the District and the survey must be recorded.

Entered this 2nd day of August, 2011.

_____
John T. Mitchell, District Judge

Certificate of Service

I certify that on the _____ day of August, 2011, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

Lawyer	**Fax #**	**Lawyer**	**Fax #**
Susan P. Weeks	667-1684	Malcolm Dymkoski	664-6089

_____
Jeanne Clausen, Deputy Clerk