STATE OF IDAHO)
County of KOOTENAI)ss
FILED 12/11/2023
AT 1:00 O'Clock P. M
CLERK OF DISTRICT COURT
Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

Eagle Crest Water Users Assocaition, Inc.) an Idaho nonprofit corporation, for itself) and on behlaf of its members,)
)
Plaintiff, **)**
vs.)
)
David V. Finley, Debra W. Coop, and Dave) and Debie Vanture, LLC, an Idaho Limited) Liability Company)
)
Defendants. **)**

Case No. **CV28-23-6176**

MEMORANDUM DECISION DENYING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

This matter is before the Court on a Motion for Preliminary Injunction, brought by plaintiff EAGLE CREST WATER USERS ASSOCAITION, Inc. ("Association"), filed on November 22, 2023, against defendant DAVID V. FINLEY, DEBRA W. COOP, and DAVE AND DEBIE VENTURES, LLC, an Idaho Limited Liability Company (collectively "Dave and Debie Ventures"). The Association is represented by Scott Poorman. Dave and Debie Ventures are represented by Kevin P. Holt.

Plaintiff's Motion for Preliminary Injunction requests that this Court issue an Order "granting a preliminary injunction directing and restraining the defendants":

1. To immediately disconnect the defendants' water pipe from the plaintiff's water supply pipeline and to restore the plaintiff's water supply pipeline to its prior condition; and

2. To refrain from any action that might damage, disturb or interfere with the plaintiff's water supply pipeline and water drain line located on the defendants' real property.

Mot. for Prelim. Inj. 1 ¶¶ 1, 2. For the foregoing reasons, this Court denies plaintiff's Motion for Preliminary Injunction.

A. Relevant Factual Background

This matter involves a supply water pipeline, owned by the Association, which crosses the adjacent land owned by Dave and Debie Ventures.

The Association is an Idaho nonprofit corporation "and the owner and holder of Idaho Water Right No. 95-8735 and Idaho Water Right No. 95-16518." Compl. 1, ¶ 1. The Association "owns, operates and maintains a private water system which provides potable water to its members." *Id.* The Association's members are five of the adjacent land owners of the defendants, Dave and Debbie Ventures. Dave and Debbie Ventures are not members of the Association. Mem. in Supp. of Mot. for Prelim. Inj. 2, ¶¶ 5, 6.

Ron Thompson ("Thompson") is the President of the Association, and owns land to which the Association provides water. Thompson Decl. 1 ¶¶ 1, 2. According to Thompson:

> The Association water system draws water from Lake Coeur d'Alene through a pump that is operated and controlled by the Association's water system and electrical service. A pipeline carries the Lake water through a culvert under Coeur d'Alene Lake Drive. That pipeline emerges onto land currently owned by defendant DAVE AND DEBIE VENTURES, LLC. The defendant's land is not one of the parcels served by the Association water system. The Association's supply pipeline crosses the defendant's property along the surface of the land as generally depicted in Exhibit 3 of the plaintiff's complaint. That pipeline delivers Lake water to a storage reservoir maintained by the Association on land owned by Association members Dennis and Gloria LeKander. The Lake water is treated and then delivered via a second pump in the reservoir to the parcels served by the Association water system. The supply pipeline that delivers water from the Lake only contains water when it is actively filling the storage

> reservoir. When the Lake pump shuts off, water from the supply pipeline drains through gravity back into Lake Coeur d'Alene.

Decl. of Ron Thompson In Supp. of Mot. for Prelim. Injun. 2, ¶ 5.

The Association claims that the "water pipeline has existed in its current location and been in constant use for over 30 years." Mem. in Supp. of Mot. for Prelim. Inj. 5.

On or about May 31, 2023, Dave and Debbie Ventures purchased the real property that is adjacent to the land served by the Association. Decl. of David Finley In Opp'n to Pl.'s Mot. for Prelim. Inj. ("Finley Decl.") 1, ¶ 3. Dave and Debie Ventures claim that they were not aware of the water pipe upon their first examination of the property, as they claim that the water pipeline was "fully obscured by dirt and/or undergrowth and foliage" and that the "line was discovered by accident upon further examination." Finley Decl. 2, ¶¶ 5, 6.[1] Thereafter, in or about June 2023, Dave and Debbie Ventures "installed a T-fitting and shutoff valve on the water pipe." Decl. of David Finley In Opp'n to Pl.'s Mot. for Prelim. Inj. ("Finley Decl.") 2 ¶ 8.

In or about July, 2023, the Association discovered the defendant's connection. Mem. in Supp. of Pl.'s Mot. for Prelim. Inj. 3, ¶ 10. The Association claims that it has since "began to experience problems with the water system that had not existed before the defendants' modifications." *Id.* This language describing the problems present with the water system is similar to the language presented in the Complaint, filed two months prior: "[t]he plaintiff's water system has experienced new and numerous problems since the defendants T-connection was installed." Compl. 5, ¶ 26. The Association never

[1] While the defendants never expressly claim that the subject water pipe was "underground," the case law cited by the defendants relate to an underground water pipe. Mem. in Opp'n to Mot. for Prelim. Inj. 2. The Court specifically finds that at no point since Dave and Debbie Venture purchased the property was the water pipe underground, and then dug back up to be in its current state - the surface of the land.

describes or states explicitly what problems are being experienced. Instead, the Association states that, "[t]he defendants' unauthorized modifications to the plaintiff's water pipeline have already impacted the plaintiff's water system and create an imminent danger to the plaintiff's members and their sole source of domestic water." Mem. in Supp. of Pl.'s Mot. for Prelim. Inj. 4, ¶ 12. This vague and conclusory statement cites to the following paragraphs in Ron Thompson's Declaration for support:

> 8. The defendants have installed a pipe running from their T-connection to a collection of campers and trailers parked on adjacent land as depicted in Exhibit 3 to the plaintiff's complaint. When the Association pump in Lake Coeur d'Alene is actively delivering water to the Association storage reservoir, water is diverted into the defendants' T-connection and pumped to the adjacent land. When the Lake pump shuts off, water from the Association pipeline must flow past the defendants' T-connection and shut-off valve in order to properly drain into the Lake. The pipe connected to the defendants' T-connection does not slope uniformly downhill, but includes "bellies" and flat segments that will hold water even if the other end of that pipe is open. One of these bellies is immediately adjacent to the T-connection as shown in the photograph attached hereto as **Exhibit B**.
>
> 9. The Association has no control over the water that flows into or out of the defendants' T- connection.
>
> 10. The defendants' unauthorized modification to the Association supply pipeline creates the potential for water to freeze and block the flow of water to the storage reservoir. Freezing water might also cause the Association's supply pipeline to burst or become damages and interrupt the supply of domestic water to the Association and its members.

Thompson Decl. 3, ¶ 8-10. (emphasis in original). This testimony of Thompson is equally vague and conclusory as to what problems are actually being experienced by the Association. Thompson only points to a "potential" for water to freeze, not an actual problem. Id. at ¶ 10. The Association uses similar language to additionally state that, "the defendants' actions have the potential to deprive the Association and its members of their only source of domestic water and will likely result in physical and financial damage to the plaintiff." Mem. in Supp. of Pl.'s Mot. for Prelim. Inj. 5. Given that

I.R.C.P. 65(e)(2) allows for a preliminary injunction "when it appears by the complaint or affidavit that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury to the plaintiff," the word "potential" to describe the problem sought to be protected against is really disqualifying language. This Court finds it would be an abuse of this Court's discretion to enjoin vague and conclusory problems which only have the "potential" to actually come to fruition.

B. Relevant Procedural History

On September 22, 2023, the Association filed the Complaint in this matter. On October 17, 2023, the defendants filed their Answer and Counterclaim. To date, the Association has not filed an Answer to the defendant's Counterclaim.

On November 22, 2023, the Association filed a Motion for Preliminary Injunction, Memorandum in Support of their motion, and a Declaration of Ron Thompson. On November 29, 2023, the defendants filed a Memorandum in Opposition to the Motion for Preliminary Injunction, and Declaration of Davin Finley in Opposition. At oral argument on this matter, the Association claimed that it had not been served a copy of the defendants Memorandum in Opposition to the Motion for Preliminary Injunction or Declaration of Davin Finley in Opposition. Despite not receiving these pleadings, the Association proceeded with the hearing on their Motion.

This case is set for a three-day court trial beginning on June 10, 2024.

A hearing on the Association's Motion for Preliminary Injunction took place on December 6, 2023. At such hearing, this Court announced its decision to deny the plaintiff's Motion for Preliminary Injunction. This Memorandum Decision and Order is to make clear this Court's factual and legal findings for that decision denying plaintiff's motion for preliminary injunction.

II. STANDARD OF REVIEW

The decision whether to grant or deny injunctive relief is left to the district court's discretion. *Munden v. Bannock Cnty.*, 169 Idaho 818, 829, 504 P.3d 354, 365 (2022). When reviewing a discretionary decision of the trial court, the relevant inquiry is "[w]hether the trial court: (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason." *Lunneborg v. My Fun Life*, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018). This Court appreciates that plaintiff's motion for a preliminary injunction is a matter committed to its discretion, this Court is certain that it is acting within the outer boundaries of that discretion, is acting consistently within the legal standards applicable to the specific choices available to this Court, and is reaching its decision by the exercise of reason.

III. ANALYSIS

The plaintiff moves for a preliminary injunction "directing and restraining the defendants" to "immediately disconnect the defendants' water pipe from the plaintiff's water supply pipeline and to restore the plaintiff's water supply pipeline to its prior condition," and "refrain from any action that might damage, disturb or interfere with the plaintiff's water supply pipeline and water drain line located on the defendants' real property." Mot. for Prelim. Inj. 1, ¶¶ 1, 2.

While the plaintiff does not specify what subsection of Idaho Rule of Civil Procedure 65(e) that the Motion for Preliminary Injunction is being made under, the Association does discuss that it has a substantial likelihood of prevailing on their

underlying claim for a prescriptive easement, (Mem. in Supp. of Mot. for Prelim. Inj. 5), that "there can be no doubt the plaintiff and its members will suffer irreparable injury if the defendants' actions cause the water system to fail," (*Id.* at 6), and that, "whether or not the plaintiff ultimately prevails on its prescriptive easement claim, there is no legal or factual justification for the defendants to unilaterally tap into the plaintiff's water supply pipeline without permission." *Id.* As such, this Court assumes that the Motion is being made under Idaho Rule of Civil Procedure 65(e), subsections (1) and (2).

Idaho Rule of Civil Procedure 65(e) "enumerates the grounds upon which a district court may grant a preliminary injunction." *Gordon v. U.S. Bank Nat'l Ass'n*, 166 Idaho 105, 115, 455 P.3d 374, 384 (2019). These grounds include:

> (1) when it appears by the complaint that the plaintiff is entitled to the relief demanded, and such relief or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually;
> (2) when it appears by the complaint or affidavit that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury to the plaintiff;
> (3) when it appears during the litigation that the defendant is doing, threatening, procuring or allowing to be done, or is about to do, some act in violation of the plaintiff's rights, respecting the subject of the action, and the action may make the requested judgment ineffectual;
> (4) when it appears, by affidavit, that the defendant is about to remove or to dispose of the defendant's property with intent to defraud the plaintiff;
> (5) for the defendant upon filing of a counterclaim praying for affirmative relief upon any of the grounds mentioned above in this section, subject to the same rules and provisions provided for the issuance of injunctions on behalf of the plaintiff.

I.R.C.P. 65(e).

When an injunction is sought under Idaho Rule of Civil Procedure 65(e), subsection (1) and (2), the court applies a "conjunctive standard." *Planned Parenthood Great Nw. v. State*, 172 Idaho 321, 532 P.3d 801, 806 (2022). Specifically, when a

preliminary injunction is sought under either subsections (1) or (2), the court may grant the motion only when a party establishes *both* that the party is entitled to the relief demanded "and it appears that irreparable injury will flow from its refusal.'" *Munden*, 169 Idaho at 829, 504 P.3d at 365; *Planned Parenthood,* 172 Idaho 321, 532 P.3d at 806 ("To grant preliminary injunctive relief without applying a conjunctive standard would transform an extraordinary form of relief into an ordinary remedy.").

When an argument for a preliminary injunction is based on entitlement to the requested relief, the moving party must demonstrate "a *substantial* likelihood of success on the merits or a 'clear right' to the ultimate relief requested." *Planned Parenthood,* 532 P.3d at 806. The substantial likelihood of success necessary to demonstrate that the party seeking a preliminary injunction is entitled to the relief demanded cannot exist where complex issues of law or fact exist which are not free from doubt. *Id.*

"A preliminary injunction is the 'strong arm of equity' which, as an extraordinary remedy, must be exercised with great restraint." *Id.,* 532 P.3d at 805 (citing to *See Bonaparte v. Camden & A.R. Co.*, 3 F. Cas. 821, 827 (C.C.D.N.J. 1830); *see also Munaf v. Geren*, 553 U.S. 674, 689, 128 S.Ct. 2207, 171 L.Ed.2d 1 (2008) ("A preliminary injunction is [a] [...] *drastic* remedy[.]" (emphasis added)).

A district court should grant a preliminary injunction "only in extreme cases" where the right to relief is "very clear and it appears that irreparable injury will flow from its refusal." *Gordon v. U.S. Bank Nat'l Ass'n,* 166 Idaho 105, 115, 455 P.3d 374, 384 (2019) (quoting *Harris v. Cassia County*, 106 Idaho 513, 518, 681 P.2d 988, 993 (1984); *Brady v. City of Homedale*, 130 Idaho 569, 572, 944 P.2d 704, 707 (1997) (same); *Munden v. Bannock Cnty.*, 169 Idaho 818, 829, 504 P.3d 354, 365 (2022) (same). A

party seeking a preliminary injunction bears "the burden of proving the right thereto . . ." *Gordon*, 166 Idaho at 115, 455 P.3d at 384.

The Court must determine whether the Association has met its burden to demonstrate a substantial likelihood of success on the merits of its complaint and that irreparable injury will flow to the Association absent the preliminary injunction.

1. The Association did not meet its burden to show a substantial likelihood of success on the merits, or a "clear right" to the ultimately requested relief.

The Association claims that the facts alleged in their Complaint show that it has a substantial likelihood of prevailing on its prescriptive easement claim. Mem. in Supp. of Mot. for Prelim. Inj. 5. In response, Dave and Debie Ventures claims that there is a "primary problem" regarding the "elements of open and notorious, and with the knowledge of the owners of the servient estate." Mem. in Opp'n to Mot. for Prelim. Inj. 1.

"An easement is the right to use the land of another for a specific purpose that is not inconsistent with the general use of the property by the owner." *Hodgins v. Sales*, 139 Idaho 225, 229, 76 P.3d 969, 973 (2003). In Idaho, prescriptive easements are disfavored and are to be "closely scrutinized." *Neeser, Tr. of Gerald E. Neeser Revocable Living Tr. v. Inland Empire Paper Co.*, 170 Idaho 692, 699, 516 P.3d 562, 569 (2022) (citing to *Latvala v. Green Enterprises, Inc.*, 168 Idaho 686, 700, 485 P.3d 1129, 1143 (2021) (emphasis added). There are five elements necessary to prove the existence of a prescriptive easement: the plaintiff must show that the use of the disputed property was "(1) open and notorious, (2) continuous and uninterrupted, (3) adverse and under a claim of right, (4) with the actual or imputed knowledge of the owner of the servient tenement (5) for the statutory period of [twenty] years." *Id.* at 696, 485 P.3d at 1139; (quoting *Backman*, 147 Idaho at 394, 210 P.3d at 81); Idaho Code §

5-203. The trial court must make findings for each required element to be sustained on appeal. *Id.* "To disentangle Idaho prescriptive easement law, we emphasize the need for courts to streamline their analysis by focusing simply on whether the five prescriptive easement elements have been satisfied based on the facts before them." *Cook v. Van Orden,* 170 Idaho 46, 54, 507 P.3d 119, 127 (2022).

The Court will not address all factors necessary to prove the existence of a prescriptive easement; instead, the Court addresses the specificity of the factors that preclude a granting of their Preliminary Injunction claim.

The prescriptive easement that the Association alleges relates to the supply water pipeline at issue, which it claims has been in its current position for the last thirty years. In 2006, the statutory time period for a prescriptive easement was extended from the five years previously required to the twenty years currently required. *Latvala v. Green Enterprises, Inc.*, 168 Idaho 686, 699, 485 P.3d 1129, 1141 (2021). The Idaho Supreme Court has established that, "the twenty year time period does not apply to an easement by prescription acquired prior to the amendment." *Id.* (quoting *Capstar Radio Operating Co. v. Lawrence*, 153 Idaho 411, 420 n.2, 283 P.3d 728, 737 n.2 (2012)). Thus, because the Association claims that the water pipeline had been in its current position since 1992, the five-year time period applies, instead of the twenty-year period. However, in its pleadings, the Association it does not establish what five-year time period in which it is claiming a prescriptive easement was established.

Further, it is not obvious from the Complaint that the Association's water pipeline was established, or maintained, adversely and under a claim of right. In the Complaint, the Association claims that "[t]he water pipeline installed by Paul Finney in the late

1980's crossed under US Highway 10 in a culvert where it emerged from the water of the Lake, ran across adjacent lots then owned by his Aunt, Thelma Finney, then continued North to a storage tank. . ." Compl. 2-3 ¶ 9. (emphasis added). With such assertion, it seems as if the water pipeline that currently runs adversely over Dave and Debie Ventures' land was originally allowed to be installed and maintained when the property was owned by Thelma Finney. It is established in Idaho that:

> A prescriptive right cannot be granted if the use of the servient tenement was by permission of its owner, because the use, by definition, was not adverse to the rights of the owner. Indeed, the rule is well established that no use can be considered adverse or ripen into a prescriptive right unless it constitutes an actual invasion of or infringement on the rights of the owner.

Backman v. Lawrence, 147 Idaho 390, 397, 210 P.3d 75, 82 (2009) (quoting *Hughes v. Fisher,* 142 Idaho 474, 480, 129 P.3d 1223, 1229 (2006).

Because the Association does not provide the years for which it is alleging that a prescriptive easement was established, and seemingly provides that the pipeline was established with permission from the previous owner of the servient land, the Association fails to meet their burden by showing a substantial likelihood of succeeding on their claims.

This reasoning is additionally applicable to the Association's claims for trespassing. Because the Association, at this point, is unable to show ownership of the pipeline that crosses Dave and Debie Venture's land pursuant to a prescriptive easement, there is not a clear right under which the Association can allege trespass.

2. The Association did not meet It's Burden to Show that Irreparable Injury will Flow from the Refusal of the Preliminary Injunction.

The Court recognizes that because it applies a "conjunctive standard" to injunctions sought under Idaho Rule of Civil Procedure 65(e), subsection (1) and (2),

that a determination of subsection (2) is not required because the burden under subsection (1) was not met. *Munden*, 169 Idaho at 829, 504 P.3d at 365; *Planned Parenthood Great Nw.*, 172 Idaho at 321, 532 P.3d at 806. However, the Court, as an alternative to the denial of the Motion for Preliminary Injunction, additionally determines that the Association has not shown that irreparable injury will flow from the refusal of the preliminary injunction.

As the Court has previously noted, the T-connection and shut-off valve were installed by Dave and Debie Ventures approximately three months prior to the Association's initiation of this lawsuit, and five months prior to the Association's filing of the Motion for Preliminary Injunction. At the onset of this lawsuit, the Association claimed that, "[t]he plaintiff's water system has experienced new and numerous problems since the defendants T-connection was installed." Compl. 5, ¶ 26. In support of their Motion for Preliminary Injunction, the Association claims that it has "began to experience problems with the water system that had not existed before the defendants' modifications." Mem. in Supp. of Pl.'s Mot. for Prelim. Inj. 3, ¶ 10.

These passive statements are similar to the other statements echoed in their pleadings: "[t]he defendants' unauthorized modifications to the plaintiff's water pipeline have already impacted the plaintiff's water system and create an imminent danger to the plaintiff's members and their sole source of domestic water," (Mem. in Supp. of Pl.'s Mot. for Prelim. Inj. 4, ¶ 12), "the defendants' actions have the potential to deprive the Association and its members of their only source of domestic water and will likely result in physical and financial damage to the plaintiff." (*Id.* at 5), and

> 10. The defendants' unauthorized modification to the Association supply pipeline creates the potential for water to freeze and block the flow of

> water to the storage reservoir. Freezing water might also cause the Association's supply pipeline to burst or become damages and interrupt the supply of domestic water to the Association and its members.

Thompson Decl. 3 ¶ 10.

The Court above indicated that a "potential" injury is unlikely to be enjoined, anda "potential" speculative injury certainly should not be enjoined. While the potential injury set forth in the Association's pleadings, if it came to fruition, *might* be significant as to the damage, the injuries sustained if the pipes were to freeze or burst would not be irreparable. Most importantly, any damage would certainly be ascertainable and capable of being compensated for with a monetary damage award. While having an adequate remedy at law is not a bar to the issuance of an injunction, it is certainly a valid factor in the Court's exercise of its discretion to deny a preliminary injunction. *Goble v. New World Life Ins. Co.*, 57 Idaho 516, 67 P.2d 280, 281-82 (1937) As brought up at the oral argument, if the "potential" problem becomes an "actual" problem, there is a possibility for the Association to bring in water by truck to fill the storage reservoir. The costs associated with both bringing the water in, and repairing the pipeline, are quite capable of being calculated and compensated.

Again, from the pleadings, declarations and other evidence before this Court, it is unclear from the Association's perspective what *the potential likelihood of harm might be*. This is because the Association, the party with the exceptionally high burden of proof on a preliminary injunction, never expressly states what, if any, specific problems have actually occurred since the defendant's connection to the pipeline. Instead, the Association states in general and conclusory ways that problems have arisen, and that injury is likely to occur *if* the defendant's actions *potentially* cause the water line to fail. The Court notes that it has been about six months since the defendants' connected to

the water pipeline, and no specific damage has resulted. If damage does occur, there is no evidence that such damage will result in irreparable injury to plaintiff or that such injury would not be ascertainable and compensable by monetary damages.

Thus, the Association's Motion for Preliminary Injunction is denied.

3. Additional Reasons Plaintiff's Motion Must be Denied

a. Plaintiff's Mistaken Belief that no "Security" is Needed.

This Court notes that if it were to grant the Association's Motion for Preliminary Injunction, a further discussion of the security under Idaho Rule of Civil Procedure 65(c) would be necessary. The Association's current argument, not responded to by the Dave and Debie Ventures, is that a security is not required because the "defendants can suffer no damage as a result of being enjoined from continuing to take water that they have no legal basis to receive," and that the preliminary injunction would "deprive the defendants of no property right," and:

> Security from the plaintiff is also unnecessary to cover attorney fees the defendants may incur if the defendants ultimately prevail on their counterclaim. Even if the plaintiff is found to have trespassed on the defendants' property, the defendants will still not be awarded water from the plaintiff's water system. The security consideration set forth in Rule 65(c) is not intended to protect conduct that was not authorized, and will never be authorized under any conceivable outcome of the case.

Mem. in Supp. of Pl.'s Mot. for Prelim. Inj. 7. This Court finds such argument to be a misstatement of the law. Idaho Rule of Civil Procedure 65(c) essentially makes some "security" mandatory, or nearly mandatory. That rule reads "the court may issue a preliminary inunction or a temporary restraining order only if the movant give security in an amount that the court considers proper to pay the costs and damages, including reasonable attorney's fees, sustained by any party found to have been wrongfully enjoined or restrained." This Court cannot envision a situation where a bond in at least

the amount of attorney fees would not be mandated under this rule. The Association's position that it would not have to pay a security is fatally flawed.

b. Injunctions are Improper for Completed Acts.

Though not brought up by the either party, the fact that the Association wants defendants' action of tapping into their water line, undone. The Association requests, in part, a preliminary injunction that would require Dave and Debie Ventures to a) "remove their unauthorized shut-off valve and T-connection from the plaintiff's water supply pipeline and restoring that pipeline to its original condition within 48 hours from the entry of said Order," or in the alternative, b) "an Order authorizing the plaintiff to immediately contract for the professional removal of the defendants' unauthorized modifications and restoration of the pipeline, and requiring the defendants to reimburse the plaintiff for all costs incurred." Mem. in Supp. of Pl.'s Mot. for Prelim. Inj. 7 ¶¶ A, B. The third requested relief is an order "restraining and enjoining the defendants from taking any other action to interfere with or modify any part of the plaintiff's water system on the defendants' land or elsewhere." *Id.* at ¶ C. As concerns the first two types of requested relief, stated in another way, the Association would like an act, already completed by the defendants, to be undone with this Preliminary Injunction. However, an injunction cannot restrain an act already completed. *Ameritel Inns, Inc. v. Greater Boise Auditorium Dist.*, 141 Idaho 849, 851, 119 P.3d 624, 626 (2005); *Brady v. City of Homedale*, 130 Idaho 569, 572–73, 944 P.2d 704, 707–08 (1997); *Wilson v. Boise City,* 7 Idaho 69, 73, 60 P. 84, 85 (1900) ("That act already taken place, a writ of injunction could not prevent it.").

In *Ameritel*, there was no way to put the plaintiffs back in their original position. The election had already been held and public funds were used to promote the position of the Auditorium District. There is no way to undo what had happened. 141 Idaho 849, 850-852, 119 P.3d 624, 625-27. In *Brady*, "The building was completed at the time hearing was conducted before the district court. Consequently, there was no act to enjoin by the district court." 130 Idaho 569, 572-73, 944 P.2d 704, 707-08.

Thus, even if the Association were to prevail on the merits of their Motion for Preliminary Injunction, two of the three requested prayers for relief would not be available. The defendant's completed the act of installing a T-connection and shut-off valve approximately three months prior to the Association's initiation of this lawsuit, and about five months prior to the Association's filing of the Motion for Preliminary Injunction.

Neither of the two above additional reasons are dispositive of the Association's motion for preliminary injunction (a bond could still be established by the Court and the remaining requested relief of enjoining defendants' future acts is capable of being enjoined were evidence to support such), but they do provide additional reasons for this Court to exercise its discretion and deny the Association's motion for preliminary injunction.

IV. CONCLUSION AND ORDER.

A preliminary injunction is an extreme remedy. There is a high burden of proof required. Plaintiff has not met that burden. Plaintiff has not provided any evidence of actual damage due to defendants' actions. Plaintiff has not provided any proof of irreparable harm due to defendant's actions. Two of the three actions requested by this

Court are entirely incapable of being enjoined. No bond was discussed by plaintiffs. For all of these reasons, the Association's motion for preliminary injunction must be denied.

IT IS HEREBY ORDERED the plaintiff Association's Motion for Preliminary Injunction is DENIED.

Entered this 11th day of December, 2023.

John T. Mitchell, District Judge

Certificate of Service

I certify that on the 11th day of December, 2023, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

Lawyer	**email**
Scott Poorman	office@poormanlegal.com
Kevin Holt	kholt@holtlawoffice.com

Jeanne Clausen, Deputy Clerk