

1989

Intermountain Power Agency, a Political
subdivision or the state of Utah v. Bowers-Irons
Recreation Land and Cattle Company, a
partnership, George H. Park, Marida G. Park, and
Edwin D. Park Land and Cattle Co., a Utah
corporation : Brief of Appellant

Utah Court of Appeals

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M. Byron Fisher; Fabian and Clendenin; Attorneys for Respondent.

Don R. Petersen; Leslie W. Slaugh; Howard, Lewis and Petersen; Attorneys for Appellant.

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UTAH COURT OF APPEALS
BRIEF

UTAH

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IN THE SUPREME COURT

OF THE STATE OF UTAH

DOCKET NO.

89-0410

INTERMOUNTAIN POWER
AGENCY, a political sub-
division of the STATE OF
UTAH,

Plaintiff-
Respondent,

Case No. 880002

vs.

Category 14b

BOWERS-IRONS RECREATION
LAND AND CATTLE COMPANY,
a partnership, GEORGE
H. PARK, MARIDA G. PARK,
and EDWIN D. PARK LAND
AND CATTLE CO., a Utah
corporation,

Defendants-
Appellant.

APPELLANT'S BRIEF

APPEAL FROM THE JUDGMENT AND ORDER
ENTERED BY THE FOURTH JUDICIAL DISTRICT COURT
OF JUAB COUNTY, STATE OF UTAH, THE HONORABLE
CULLEN Y. CHRISTENSEN, PRESIDING

DON R. PETERSEN and
LESLIE W. SLAUGH, for:
HOWARD, LEWIS & PETERSEN
120 East 300 North
Provo, Utah 84601

ATTORNEYS FOR APPELLANT

M. BYRON FISHER, for:
FABIAN & CLENDENIN
215 South State, 12th Floor
Salt Lake City, UT 84111

ATTORNEYS FOR RESPONDENT

IN THE SUPREME COURT
OF THE STATE OF UTAH

INTERMOUNTAIN POWER
AGENCY, a political sub-
division of the STATE OF
UTAH,

Plaintiff-
Respondent,

vs.

BOWERS-IRONS RECREATION
LAND AND CATTLE COMPANY,
a partnership, GEORGE
H. PARK, MARIDA G. PARK,
and EDWIN D. PARK LAND
AND CATTLE CO., a Utah
corporation,

Defendants-
Appellant.

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Case No. 880002

Category 14b

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215 South State, 12th Floor
Salt Lake City, UT 84111

ATTORNEYS FOR RESPONDENT

LIST OF PARTIES

The case caption contains the names of all the parties.

Co-defendants George H. Park, Marida G. Park and Edwin D. Park Land and Cattle Company, a Utah corporation, were joined in this action only to resolve a boundary dispute, and now disclaim all interest in this case. The Park defendants were represented before the trial court by Donald Eyre, Esq.

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Utah Code Ann. § 78-34-10(1) (1987).	13, 14

Other Authorities Cited:

27 Am. Jur. 2d <u>Eminent Domain</u> § 450 (1966).	11
27 Am. Jur. 2d <u>Eminent Domain</u> § 480 (1966).	11
34 Am. Jur. 2d <u>Fences</u> § 3 (1967).	14

IN THE SUPREME COURT
OF THE STATE OF UTAH

INTERMOUNTAIN POWER	:	
AGENCY, a political sub-	:	
division of the STATE OF	:	
UTAH,	:	
	:	
Plaintiff-	:	Case No. 880002
Respondent,	:	
	:	
vs.	:	
	:	
	:	Category 14b
<u>BOWERS-IRONS RECREATION</u>	:	
<u>LAND AND CATTLE COMPANY,</u>	:	
a partnership, GEORGE	:	
H. PARK, MARIDA G. PARK,	:	
and EDWIN D. PARK LAND	:	
AND CATTLE CO., a Utah	:	
corporation,	:	
	:	
Defendants-	:	
Appellant.	:	

APPELLANT'S BRIEF

JURISDICTION AND NATURE OF PROCEEDINGS BELOW

This is an appeal from a judgment and order entered after a jury trial. The Utah Supreme Court has jurisdiction over this appeal pursuant to Utah Code Ann. § 78-2-2(3)(i) (1987).

ISSUES PRESENTED

1. Where the parties had stipulated to a value for the taking of an easement by eminent domain, but defendant had expressly reserved claims for "incidental" damages, did the trial court err in holding that damages from the plaintiff's

destruction of fences and failure to install cattle guards were included in the stipulated value of the easement?

2. Did the trial court err in not allowing testimony as to construction damages within the easement where the compensation for the easement anticipated a restoration of the land to its original condition?

3. Did the plaintiff owner of the easement have an obligation to restore the land surface to its original condition?

RELEVANT STATUTES

The provisions of Utah Code Ann. § 78-34-10 (1987) are set forth in Appendix "A".

STATEMENT OF THE CASE

A. Nature of the Case. This is a condemnation action in which defendant sought to recover severance and other damages caused by the taking of an easement and the subsequent construction of power lines on property owned by defendant.

B. Course of Proceedings and Disposition Below. This action was filed on November 30, 1983 (R. 1) and sought condemnation of a portion of Bowers-Irons' land for a power line easement, immediate occupancy, resolution of a boundary dispute between Bowers-Irons and the Park defendants, and a determination of the just compensation to be paid to Bowers-Irons for the condemned right-of-way. (R. 46-53.) An order of immediate occupancy was entered on January 17, 1984. (R. 60.) On October

24, 1984, Bowers-Irons filed an Amended Answer and Cross-claim, seeking an adjudication of the boundary dispute with the Park defendants. (R. 97.) The boundary dispute and all matters in the condemnation action pertaining to the taking of property were settled except Bowers-Irons' claims for "incidental" damages, which were reserved for further consideration. (R. 131.)

The case came to trial on the remaining issues before the Honorable Cullen Y. Christensen, sitting with a jury, on September 14-15, 1987. (R. 225-26.) Prior to trial, plaintiff moved to exclude testimony as to construction damages within the easement, which motion was granted. (Tr. 12, 34.) At the conclusion of Bowers-Irons' case in chief, plaintiff reserved its right to make a motion (Tr. 218), and later moved to strike testimony as to the claims for fencing damages (Tr. 265) and concerning the value of the "homesite" affected by the condemnation. (Tr. 267.) Both motions were granted. (Tr. 275, 278.) Following this, the parties stipulated to a judgment against plaintiff for construction damages outside the easement only in the amount of \$4,330.00, and further stipulated that Bowers-Irons reserved its right to appeal the trial court's rulings striking the testimony regarding construction damages within the easement and dismissing Bowers-Irons' claim for cattle guards. (Tr. 281-82; R. 234-35.) A Final Judgment of Condemnation (R. 229-33), a Judgment (R. 234-34), and an Order Re: Dismissal of Claims (R. 236-27) were each entered on November 30, 1987.

24, 1984, Bowers-Irons filed an Amended Answer and Cross-claim, seeking an adjudication of the boundary dispute with the Park defendants. (R. 97.) The boundary dispute and all matters in the condemnation action pertaining to the taking of property were settled except Bowers-Irons' claims for "incidental" damages, which were reserved for further consideration. (R. 131.)

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Bowers-Irons' Notice of Appeal was filed on December 29, 1987. (R. 238-39.)

C. Statement of Facts. Defendant Bowers-Irons Recreation Land and Cattle Company ("Bowers-Irons") is a family partnership owned by Mr. Timothy Bowers-Irons, his wife, and their five children. (Tr. 58.) Bowers-Irons owns 5,000 acres of land, 4,300 in Dog Valley and 700 in Sage Valley, Juab County, Utah.

By 1983, the Intermountain Power Agency ("IPA") had determined that it was necessary to construct two sets of power transmission lines running from a power generation plant in Delta, Utah, to a substation near Mona, Utah. The route chosen by IPA for the construction of the power lines crossed portions of Bowers-Irons' property. (Tr. 4, 8.) In November, 1983, IPA filed this action to condemn an easement over Bowers-Irons' land. (Tr. 1.) The Park defendants were joined to force the resolution of a boundary dispute between Bowers-Irons and the Park defendants. (Tr. 4.) The boundary dispute was settled (R. 131), and thereafter the Park defendants disclaimed any interest in the action.

An order of immediate occupancy was granted (R. 60), and construction of the power lines over Bowers-Irons's property was completed. The line known as Mona 2 was completed by 1985, and the Mona 1 line was completed sometime later. (Tr. 259.) In addition to the easements for the power lines themselves, IPA obtained two access road easements. One of the roads existed previously, and the other road was constructed by IPA. Both

access road easements feed the Mona 1 power line only. (Tr. 204-05.)

The construction swath left Bowers-Irons land permanently change and severely damaged. Any place the easement crossed Bowers-Irons' pre-existing fences, those fences were cut to allow access for equipment. (Tr. 104-108.) A roadway was constructed on the easement for access by maintenance vehicles, thus destroying the vegetation and natural topography of the terrain, and other land surface damages occurred within the easement. (Tr. 33.) In places, heavy equipment moved outside of the 150 foot easement, damaging the vegetation and terrain outside of the easement. (Tr. 133-43.)

Of the fences that were cut, two were not repaired. One of those fences was a whip fence (also known as a drift fence, which was a temporary fence designed to keep the cattle from straying off the lane going down to water (Tr. 168)), the other was a perimeter fence. The perimeter fence has since been removed in the defendants' boundary dispute, but will be replaced. (Tr. 202.) In the other places where fences were cut, IPA replaced four of the cut fences with wire gates. In two of the places, cattle guards were installed by IPA pursuant to agreements with Bowers-Irons regarding the acquisition of the access road easements. (Tr. 102-103, 207.)

Since the construction of the power lines and the installation of wire gates where fences were cut, Bowers-Irons has had many problems with cattle escaping their land. These

problems are a result of the placement of wire gates where the fences were cut, inasmuch as trespassers often leave the gates open in order to use the road which IPA constructed on the easement under the power lines. (Tr. 79-80, 188-190.) The purpose of cattle guards is to prevent cattle from crossing from one area into the next. Whereas cattle will move through an open fence, they cannot cross a cattle guard. (Tr. 185-186.)

After construction, IPA did not reseed any of the land which suffered vegetation damage. (Tr. 183-84.) IPA did not construct any form of control to prevent erosion of the land occasioned by the destruction of vegetation and changes in contour of the land. (Tr. 201.) In various places, heavy equipment left ruts in the land which were not repaired by IPA. (Tr. 183-84.) The ruts are dangerous to cattle (Tr. 152), and erosion damage has occurred to Bowers-Irons' land. (Tr. 209.)

A real estate appraiser viewed Bowers-Irons land and made determinations as to the amount of compensation for the Mona 1 and the Mona 2 easements, and for amounts of compensation for severance damages, and for construction damages outside of the easement. All of the assessments of damage costs made by this appraiser were made under the assumption that the land would be restored to its prior condition. (Tr. 241-242.) This witness testified that if the land was not reseeded and put back to its original condition, then the amount of damages he estimated should be increased. (Tr. 242.)

Prior to trial, the court ruled that Bowers-Irons was not entitled to any additional damage award for damage to the land within the easement. Subsequent rulings of the trial court also eliminated Bowers-Irons' claims for damages to the homesite and for cattleguards. The parties stipulated to judgment against IPA for the construction damages outside the easement, with Bowers-Irons reserving the right to appeal, and Bowers-Irons thereafter perfected this appeal.

SUMMARY OF ARGUMENT

Plaintiff acquired only an easement over Bowers-Irons' property, not fee title. Plaintiff accordingly had a duty to restore the land to its original condition insofar as reasonably possible, in order to permit Bowers-Irons to continue to make the same use (grazing cattle) of the property as before the taking of the easement. Plaintiff failed to regrade and reseed the land surface within the easement, rendering the land unsuitable for grazing cattle. Defendant was entitled to recover for plaintiff's failure to restore the land surface to its original condition. This claim is separate from the compensation paid for the taking of the easement. The trial court erred in excluding testimony concerning damages within the easement.

Another separate item of damages which the trial court erroneously excluded concerned cattle guards. The evidence established that the wire gates installed by plaintiff were inadequate. Bowers-Irons had reserved its claims for "in-

cidental" damages, however, which would include the cattle guards, and the trial court erred in striking the testimony.

ARGUMENT

POINT I

THE TRIAL COURT ERRED IN REFUSING TO ALLOW TESTIMONY AS TO DAMAGES OCCURRING WITHIN THE EASEMENT.

Prior to trial, the parties stipulated to a fair market value of the easement, reserving Bowers-Irons' claims for "incidental" damages. (A copy of the minute entry reflecting the settlement is attached as Appendix "D".) At trial, Bowers-Irons proffered evidence concerning extensive damage which had been caused within the easement by the construction of the power lines. The trial court excluded the evidence, ruling that Bowers-Irons was entitled to no compensation, beyond that received for the easement itself, for the damaged land surface within the confines of the easement.

The trial court's ruling essentially held that plaintiff could do anything it pleased with the land surface within the easement, and that Bowers-Irons had no rights with respect to the condition of the land surface within the easement. This is akin to granting plaintiff absolute fee title to the land, and is contrary to law. The general rule concerning the easement owner's obligation to restore the land to its original condition was expressed by one court as follows:

It is settled in Louisiana, as elsewhere, that one having an easement or servitude on another's land is bound to use that easement or servitude in such manner as not unreasonably to injure the right of the owner of the servient estate, and that if the owner of the easement or servitude uses it in a negligent, unauthorized or unreasonable manner, the owner of the servient estate may maintain an action for damages resulting from such use. It is recognized, of course, that even with maximum care, damage, and sometimes inconvenience, to the servient estate is inevitable in the exercise of rights under the servitude. The obligation of the owner of the servitude is not to cause no damage, but to cause "the least possible damage." The obligation to cause the least possible damage involves the responsibility of returning the premises to its original condition so far as reasonably possible.

Duet v. Louisiana Power & Light Co., 169 F. Supp. 184, 186 (E.D. La. 1958) (citations omitted, emphasis added).

When the parties in the present action agreed to a price of compensation for the easement taking, it was premised upon the belief that the land within the confines of the easement, apart from that which constituted the maintenance road, would be returned to its original state. Plaintiff stated in answers to

interrogatories¹ that they planned to regrade and reseed the property, but failed to do so. (Tr. 7, 21.)

Further evidence of the intent of the parties is demonstrated by the testimony at trial of plaintiff's witness that his assessment of the value of the easement was based upon his belief that the land within the easement would be regraded and reseeded to its original condition. (Tr. 236-a.)

Bowers-Irons made a proffer of evidence at trial to the land surface damages which existed within the easement. Bowers-Irons is entitled to compensation for those damages because the price agreed upon for the easement did not take into consideration those damages.

It has been widely held that even where condemnation proceedings have been conducted under a constitutional statute which provides an adequate means for recovering compensation for land taken or injured, which may be instituted by the owner, the remedy for an injury to land which is not a necessary incident to the construction of the public work for which the land is taken, but is due to negligent construction or operation, is not a remedy under the statute, but rather in the nature of a common-law action of trespass or an action on the case or its modern equivalent. The

¹Plaintiff's response to Bowers-Irons's Interrogatory No. 30, which was not made part of the record, asked as follows:

State what the plaintiff will do to restore the property to its natural state after completion of work by the plaintiff.

In response, plaintiff answered as follows:

Except for access roads, land is [regraded] to original contour and reseeded as required.

wrongdoer when sued cannot successfully justify under the statute and is generally liable to the same extent as if the public work was a private enterprise

27 Am. Jur. 2d Eminent Domain § 480 (1966).

Even though Bowers-Irons received compensation for the easement itself, it has not been compensated for the damage to the land surface within the easement. The trial court erred in refusing to allow testimony to that effect at trial. Plaintiff was negligent in its construction of the power line project, in that it failed to restore the land to its original condition. This negligence resulted in a separately compensable item of damages. Typically, when a land owner is compensated for an easement taken in eminent domain, the compensation covers all future uses of the condemned property that are or should be within the contemplation of the parties at the time of the taking. Damages caused by negligent construction of an improvement, however, are not contemplated and are therefore not compensated, and are not barred by condemnation proceedings. 27 Am. Jur. 2d at § 450.

Bowers-Irons relied upon plaintiff's representation that it would regrade and reseed the land within the easement and restore it to its original condition. Bowers-Irons further relied upon the professional assessment of the value of the condemned easement as the value of an easement restored to its original condition. This representation and reliance created a contractual obligation between the parties; however, plaintiff breached this obligation when it failed to regrade and reseed

the land, excluding the maintenance road, inside the easement. Bowers-Irons is therefore entitled to recover the separate damages growing out of this breach. Gully v. Southwestern Bell Tel. Co., 774 F.2d 1287, 1294 (Tex. 1985); City of North Miami v. Florida East Coast Railway Co., 277 So.2d 62 (Fla. App. 1973); State ex rel. Herman v. Schaffer, 110 Ariz. 91, 515 P.2d 593 (1973).

The Utah Supreme Court has likewise held that, in an eminent domain case, negligent construction damages are separately compensable and not within the purview of eminent domain compensation proceedings:

Damages arising out of the carelessness or negligence or indifference in the construction of a utility upon land taken for public use are not damages contemplated by the statutes as recoverable under the principles of law pertaining to eminent domain proceedings.

Thomas E. Jeremy Estate v. Salt Lake City, 87 Utah 370, 49 P.2d 405, 407 (1935).

In the present case, the trial court erred when it ordered that Bowers-Irons would not be allowed to present evidence as to the damages within the easement.

POINT II

FAILURE TO ADEQUATELY REPAIR DAMAGED FENCES IS A SEPARATELY COMPENSABLE ITEM.

In connection with installing the power line, plaintiff created roads across Bowers-Irons' property. In several places where the roads cut existing fence lines, plaintiff installed

wire gates. In other places plaintiff installed cattle guards. Bowers-Irons presented evidence at trial that the wire gates installed by plaintiff were inadequate to control cattle and that cattle guards were necessary. Plaintiff moved to strike the testimony, and the trial court granted the motion.

In ruling on plaintiff's motion, the trial court held that the fences were improvements to the realty, and that the value or the damage thereto should have been considered in assessing compensatory damages. (Tr. 276.) While this may be true in general terms, in the present case plaintiff agreed that Bowers-Irons would be able to assert its claims for incidental damages outside of the cost of compensation for the easement. When Bowers-Irons and plaintiff arrived at a settlement as to the compensation for the taking of the easement, the parties agreed and stipulated that Bowers-Irons' claims for incidental damages were reserved for further consideration. (R. 131 (copy attached as Appendix "D").) The term "incidental" was not defined, but it appears that the parties understood it to include Bowers-Irons' claim for cattle guards. Because of this agreement, plaintiff is estopped from raising this issue at trial. Damages to the fencing was properly considered at trial apart from the compensation for the taking of the easement, and the trial court erred in striking testimony as to fencing damages.

A careful reading of Utah Code Ann. § 78-34-10(1) reveals that each item of damage is separately compensable. This statute provides in part as follows:

The court, jury or referee must hear such legal evidence as may be offered by any of the parties to the proceedings, and thereupon must ascertain and assess:

(1) the value of the property sought to be condemned and all improvements thereon appertaining to the realty, and each and every separate estate or interest therein

.

In Salt Lake City Corp. v. Utah Wool Pulling Co., 566 P.2d 1240 (Utah 1977), the Utah Supreme Court acknowledged that "Section 78-34-10 provides that each interest shall be separately assessed" Id. at 1242. In the present case, therefore, Bowers-Irons is entitled to separate compensation for damage to all appurtenances to the realty.

The fences damaged by plaintiff are improvements appertaining to the realty within the meaning of Section 78-34-10(1). "A fence permanently affixed to the land is generally considered in law as part of the realty and belongs to the person owning the land" 34 Am. Jur. 2d Fences § 3 (1967). When plaintiff took Bowers-Irons' property, it cut openings in the fences at several locations, thereafter erecting gates or installing cattle guards where the fence had been cut. At trial, Bowers-Irons presented evidence that where gates only had been installed in the cut fence, cattle easily escaped and trespassing on the property increased. This evidence supported the allegation that replacing cut fences with gates was an inadequate remedy and failed to restore the land to its prior condition. Furthermore, Bowers-Irons presented evidence that cattle guards would be an adequate remedy and would restore Bowers-Irons to as

good a position as existed prior to the condemnation. The testimony regarding this issue was struck by the trial court.

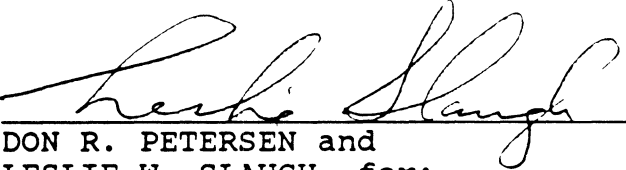
Because plaintiff agreed to reserve the issue of incidental damages for consideration beyond the compensation for the taking of the easement, Bowers-Irons was entitled to have the issue of fence damages considered by the jury. The trial court erred in striking this testimony.

CONCLUSION

The plaintiff had an obligation to restore the land surface to its original condition. Bowers-Irons was entitled to present evidence concerning the damage to the land surface within the easement. Bowers-Irons was also entitled to the installation of cattle guards, where the installation of the right-of-way road rendered the wire gates and fences inadequate.

This case should be remanded for a new trial.

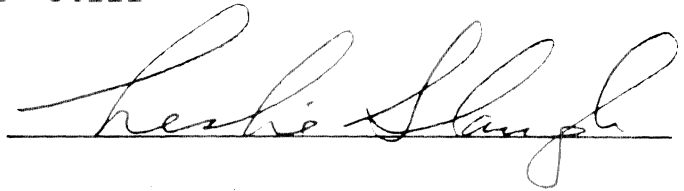
DATED this 12th day of September, 1988.


DON R. PETERSEN and
LESLIE W. SLAUGH, for:
HOWARD, LEWIS & PETERSEN
Attorneys for Appellant

MAILING CERTIFICATE

I hereby certify that four true and correct copies of the foregoing were mailed to the following, postage prepaid, this 12th day of September, 1988.

M. Byron Fisher
FABIAN & CLENDENIN
215 South State, 12th Floor
Salt Lake City, Utah 84111

A handwritten signature in cursive script, reading "Heshie Slough", is written over a horizontal line.

APPENDIX "A"

Final Judgment of Condemnation (R. 229-33)

Clerk of District Court, Juab County
FILED

NOV 30 1967

M. Byron Fisher, A1082
FABIAN & CLENDENIN,
a Professional Corporation
Attorneys for Plaintiff
Twelfth Floor
215 South State Street
Salt Lake City, Utah 84111
Telephone: (801) 531-8900

Pat P. Greenwood, Clerk _____ Deputy

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

IN AND FOR JUAB COUNTY, STATE OF UTAH

INTERMOUNTAIN POWER AGENCY, a	:	
political subdivision of the	:	
State of Utah,	:	
	:	
Plaintiff,	:	FINAL JUDGMENT OF
	:	CONDEMNATION
v.	:	
	:	
BOWERS-IRONS RECREATION LAND	:	Civil No. 5791
& CATTLE COMPANY, a	:	
partnership, GEORGE H. PARK,	:	
MARIDA G. PARK and EDWIN D.	:	
PARK LAND AND CATTLE COMPANY,	:	
a Utah Corporation,	:	
	:	
Defendants.	:	

This Court having previously entered Judgment in the above-captioned action, and plaintiff having tendered to defendant \$22,628.94 as payment in full of the stipulated judgment herein including all interest due, in full satisfaction of the stipulated fair market value and just compensation of rights of easement over real property subject to this proceeding, and the construction damages to defendant's property outside the easement taken,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that plaintiff is granted final judgment herein and granted right-of-way and easement and the right-of-way of access and entry upon and occupation for the public use and necessity for construction and continuing maintenance of electric power lines, supporting towers, access roads thereto and continued maintenance and inspection of towers and power lines, and all other required public use appurtenant thereto, of the following described parcels of real property:

See Exhibit "A" attached hereto and by this reference incorporated herein.

DATED this 27 day of ^{Nov}~~September~~, 1987.


District Judge

RECORDED

Book 21 Page 11 - 16

EXHIBIT "A"

Parcels relative to Mona 2 Transmission Line:

PARCEL 1. (M-34):

A strip of land 150 feet wide over a portion of the NW1/4 of the SE1/4 and the SW1/4 of the NE1/4 of Section 15, Township 14 South, Range 2 West, Salt Lake Meridian, Juab County, Utah, the centerline of which is described as follows:

Commencing at the S1/4 corner of said Section 15, thence N 0° 20' 34" E along the west line of the SE1/4 of said section 1894.82 feet to the point of beginning, thence N 36° 20' 44" E 2262.89 feet to the east line of said SW1/4 of the NE1/4 and the point of ending, said point being N 89° 38' 43" W 1330.52 feet and N 0° 19' 30" E 1085.58 feet from the E1/4 corner of said section.

The sidelines of said strip to be prolonged or shortened to begin on the west line of the NW1/4 of the SE1/4 and end on the east line of the SW1/4 of the NE1/4 of Section 15.

Said strip contains 7.79 acres, more or less.

PARCEL 2: (M-36):

A strip of land 150 feet wide over a portion of the SE1/4 of Section 2, Township 14 South, Range 2 West, Salt Lake Meridian, Juab County, Utah, the centerline of which is described as follows:

Commencing at the S1/4 corner of said Section 2, thence S 89° 43' 36" E along the south line of said SE1/4 a distance of 989.77 feet to the point of beginning, thence N 36° 20' 44" E 2830.13 feet to the east line of said SE1/4 and the point of ending, said point being S 0° 17' 21" W 338.59 feet from the E1/4 corner of said section.

The sidelines of said strip to be prolonged or shortened to begin on the south line and end on the east line of the SE1/4 of Section 2.

Said strip contains 9.74 acres, more or less.

PARCEL 3 (M-37):

A strip of land 150 feet wide over a portion of the NW1/4 of the SW1/4 and Lot 4 of Section 1, Township 14 South, Range 2 West, Salt Lake Meridian, Juab County, Utah, the centerline of which is described as follows:

Commencing at the W1/4 corner of said Section 1, thence S 0° 17' 21" W along the west line of said NW1/4 of the SW1/4 a distance of 338.59 feet to the point of beginning, thence N 36° 20' 44" E 1441.95 feet to the north line of said Lot 4 and the point of ending, said point being S 89° 30' 30" E 852.09 feet from the NW corner of said section.

The sidelines of said strip to be prolonged or shortened to begin on the west line of the NW1/4 of the SW1/4 and end on the north line of Lot 4 of Section 1.

Said strip contains 4.96 acres, more or less.

PARCEL 4 (M-41):

A strip of land 150 feet wide over a portion of the NW1/4 of the SW1/4 and the SW1/4 of the NW1/4 of Section 35, Township 13 South, Range 2 West, Salt Lake Meridian, Juab County, Utah, the centerline of which is described as follows:

Commencing at the W1/4 corner of said Section 35, thence S 0° 18' 55" W along the west line of said NW1/4 of the SW1/4 a distance of 338.03 feet to the point of beginning, thence N 36° 20' 44" E 2045.33 feet to the north line of said SW1/4 of the NW1/4 and the point of ending, said point being S 0° 24' 33" W 1312.82 feet and S 89° 50' 19" E 1200.94 feet from the NW corner of said section.

The sidelines of said strip to be prolonged or shortened to begin on the west line of the NW1/4 of the SW1/4 and end on the north line of the SW1/4 of the NW1/4 of Section 35.

Said strip contains 7.04 acres, more or less.

State of Utah:

Parcels relative to Mona 1 Transmission Line:

PARCEL 1 (M-129):

A strip of land 150 feet wide over a portion of Section 2, Township 14 South, Range 2 West, Salt Lake Meridian, Juab County, Utah, the centerline of which is described as follows:

Commencing at the SW corner of said Section 2, thence S 89° 42' 20" E along the S line of said Section 2 a distance of 1350.76 feet to the point of beginning, thence N 35° 52' 59" E 4232.22 feet to a point on the North line of said Section 2 which is the point of ending, said point being S 89° 38' 11" W 1385.47 feet from the SW corner of Section 34, Township 13 South, Range 2 West, Salt Lake Meridian.

The sidelines of said strip of land to be prolonged or shortened to begin on the South line and end on the North line of said Section 2.

Said strip contains 14.57 acres, more or less.

PARCEL 2. (M-130):

A strip of land 150 feet wide over a portion of the SW1/4 of Section 34, Township 13 South, Range 2 West, Salt Lake Meridian, Juab County, Utah, the centerline of which is described as follows:

Commencing at the SW corner of said Section 34, thence N 89° 38' 11" E along the S line of said Section 34 a distance of 1251.12 feet to the point of beginning, thence N 35° 52' 59" E 24.12.52 feet to a point on the E line of said SW1/4, which is the point of ending, said point being N 00° 50' 34" E 1946.10 feet from the SW1/4 corner of said Section.

The sidelines of said strip of land to be prolonged or shortened to begin on the S line and end on the E line of the SW1/4 of said Section 34.

Said strip of land contains 8.31 acres, more or less.

PARCEL 3. (M-131):

A strip of land 150 feet wide over a portion of the S1/2 of the NE1/4 of Section 34, Township 13 South, Range 2 West, Salt Lake Meridian, Juab County, Utah, the centerline of which is described as follows:

Commencing at the NE corner of said Section 34, thence S 00° 24' 33" W along the E line of said Section 34 a distance of 1312.82 feet to the NE corner of said S1/2 of the NE1/4, thence N 89° 31' 44" W along the N line of said S1/2 of the NE1/4 a distance of 1185.79 feet to the point of beginning, thence South 35° 52' 59" West 1621.53 feet to a point on the South line of said S1/2 of the NE1/4 and the point of ending, said point being N 89° 45' 52" W 2126.83 feet from the E1/4 corner of said Section 34.

The sidelines of said strip of land to be prolonged or shortened to begin on the N line and end on the S line of the S1/2 of the NE1/4 of said Section 34.

Said strip of land contains 5.58 acres, more or less.

APPENDIX "B"

Judgment (R. 234-34)

Clerk of District Court, Juab County
FILED

NOV 30 1987

Pat P. Greenwood, Clerk — Deputy

M. BYRON FISHER (1082), for:
FABIAN & CLENDENIN
ATTORNEYS AND COUNSELORS AT LAW

Twelfth Floor
215 South State Street
Salt Lake City, UT 84111
Telephone: (801) 531-8900

Attorneys for Plaintiff

IN THE FOURTH JUDICIAL DISTRICT COURT OF JUAB COUNTY

STATE OF UTAH

INTERMOUNTAIN POWER AGENCY, :
a political subdivision of the :
State of Utah, :

Plaintiff, :

vs. :

BOWERS-IRONS RECREATION LAND :
& CATTLE COMPANY, a partnership, :
GEORGE H. PARK, MARINDA G. :
PARK, and EDWIN D. PARK LAND :
AND CATTLE COMPANY, a Utah :
Corporation, :

Defendants. :

JUDGMENT

Civil No. 5791

This matter came before the Court for trial on Monday, September 14, 1987, with the plaintiff present and represented by its attorney, M. Byron Fisher of the firm of Fabian and Clendenin, and the defendant present and represented by its attorney, Don R. Petersen of the firm of Howard, Lewis & Petersen. Upon Motion and Stipulation this case was concluded on Tuesday, September 15, 1987, at which time motions to strike were granted and the parties stipulated to Judgment on all other issues.

The Court having heretofore entered its Order dismissing defendant's claims as to damages within the easement taken, claims for replacement of fence gates with cattle guards, and claims for severance damages as to a claimed home site the defendants reserving the right to appeal these issues and the parties having stipulated as to Judgment in favor of defendant for claims as to construction damages to defendant's property outside the easement taken, now therefore;

JUDGMENT BE AND HEREBY IS entered in favor of defendant Bower-Irons Recreation Land & Cattle Company, a partnership, and against plaintiff Intermountain Power Agency in the total sum and amount of \$21,330.00, less the sum and amount of \$17,000.00 heretofore paid to said defendant through the Clerk of this Court, plus interest on the balance of \$4,330.00 at the rate of eight percent (8%) from and after January 17, 1984, the date of immediate occupancy granted to the plaintiff.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff have judgment condemning for its use, as set forth more fully in the Complaint and the Amended Complaint, an easement and right-of-way for access thereto, over the property described in the aforementioned Complaint and Amended Complaint.

DATED this 27 day of November, 1987.

BY THE COURT:


DISTRICT JUDGE

APPROVED AS TO FORM:



DON R. PETERSEN, for:
HOWARD, LEWIS & PETERSEN
Attorneys for Defendant Bowers-Irons
Recreation Land & Cattle Company

RECORDED

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APPENDIX "C"

Order Re: Dismissal of Claims (R. 236-27)

U.S. District Court, Juab County
FILED

NOV 30 1987

M. Byron Fisher, A1082
FABIAN & CLENDENIN,
a Professional Corporation
Attorneys for Plaintiff
Twelfth Floor
215 South State Street
Salt Lake City, Utah 84111
Telephone: (801) 531-8900

H. P. Greenwood, Clerk — Dept.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
IN AND FOR JUAB COUNTY, STATE OF UTAH


INTERMOUNTAIN POWER AGENCY, a	:	
political subdivision of the	:	
State of Utah,	:	
	:	
Plaintiff,	:	ORDER RE: DISMISSAL
	:	OF CLAIMS
v.	:	
	:	
BOWERS-IRONS RECREATION LAND	:	Civil No. 5791
& CATTLE COMPANY, a	:	
partnership, GEORGE H. PARK,	:	
MARIDA G. PARK and EDWIN D.	:	
PARK LAND AND CATTLE COMPANY,	:	
a Utah Corporation,	:	
	:	
Defendants.	:	

This matter came for trial before this Court in Juab County, Utah, on September 14 and 15, 1987, Judge Cullen Y. Christensen, Judge presiding. Bowers-Irons Recreation Land & Cattle Company, a partnership, was present and represented by Don R. Petersen, Attorney-at-Law. Defendants George H. Park and Marida G. Park and Edwin D. Park have filed disclaimer of any interest herein. Plaintiff was present and was represented by M. Byron Fisher, Attorney-at-Law. Prior to commencement of the


trial, plaintiff made motion to strike all claims for construction damages to defendant's property within the acquired easement. Thereafter, defendant presented evidence and testimony and rested their case in chief. At that time, plaintiff made motions for dismissal of all claims for damages for replacement of fence gates with cattle guards and for dismissal of all claims for severance damages for a claimed home site. Both parties presented argument as to these motions and submitted the same for determination. The Court being advised of the facts and the law herein makes the following:

IT IS HEREBY ORDERED as a matter of law that plaintiff's motion to strike any evidence as to claims for damages to defendant's property that lies within the easement acquired is granted. Plaintiff's motion to dismiss defendant's claims for fence replacement with cattle guards is granted. Plaintiff's motion to dismiss defendant's claims for severance damages for a claimed home site wherein defendants offered no evidence as to market value except the opinion of the owner is hereby granted.

DATED this 27 day of Mar, 1987.


District Judge

APPROVAL AS TO FORM:


Don R. Peterson
Attorney for Defendant,
Bowers-Irons Recreation
Land & Cattle Company

RECORDED

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APPENDIX "D"

Minute Entry (R. 131)

IN THE DISTRICT COURT OF UTAH COUNTY, STATE OF UTAH

Clerk of District Court, Juab County,
FILED

AUG 22 1985

Alice M. Roundy, Clerk _____ Deputy

INTERMOUNTAIN POWER AGENCY,

Plaintiff,

Case No. 5791

vs.

MINUTE ENTRY

BOWERS IRONS RECREATION LAND
AND CATTLE CO., et al

Defendants.

Counsel having contacted the Court have indicated that the claims asserted under the cross-claim between Bowers and Park for Quiet Title have been settled and the cross-claim is to be dismissed.

With respect to the condemnation action, all matters pertaining to the taking of property have been settled, but Defendant's Bowers-Irons claims for incidental damages are reserved for further consideration. The trial settings for August 26 and 28th are vacated.

Dated this 21st day of August, 1985.

cc: to counsel