

Nelson & Dahle, P.C.

316 North 26th Street Billings, Montana 59101 p: 406.867.7000

DISTRICT COURT

VERDICT: Defense, alfalfa damage, frozen ditch.

A Dillon jury found that Rock Chuck Ranch and Randall Brooks were not negligent in connection with flooding damage to Burk Ranches' alfalfa pasture, did not engage in conduct which constitutes trespass upon the property of Burk causing damage to Burk, did not engage in conduct which constitutes interference with a canal or ditch easement of Burk causing it damages, and did not engage in actual malice.

Burk alleged that its alfalfa was damaged when water in the ditch froze, overflowed onto the pasture, and then formed ice. Water into the ditch was controlled by a headgate from Rock Creek. The water commissioner closed the headgate 9/3/02. Burk alleged that Rock Chuck's employee Randall Brooks reopened the headgate, allowing water into the ditch, and then failed to close it. While Brooks acknowledged irrigating Rock Chuck property from the ditch after this date, he denied opening the headgate, but claimed that when he discovered the water in the ditch he put it to use. Rock Chuck and Brooks contended that the most likely explanation for water in the ditch was Burk's longstanding practice of flood irrigating evidenced by dams and intentional "takeouts" in the side of the ditch. Dams had been found in the ditch in years past, including 2002 and 2004. Burk did not close the headgate until 3/18/03 because of ice in the creek. Rock Chuck and Brooks contended that Burk was comparatively negligent and failed to mitigate by not closing the headgate when it had the chance in early 11/02 before the creek froze.

Plaintiff's expert: Ron Johnson, Dillon (pasture damage appraisal).

Defendant's expert: none.

Demand, \$35,000; offer, \$7,500. Jury request, \$45,500; jury suggestion, 0. Mediator, Mark Parker.

Jury deliberated 1½ hours 3rd day; Judge Tucker.

Burk Ranches v. Rock Chuck Ranch and Brooks, Beaverhead DV 04-12690, 6/30/05.

David McLean (Browning, Kaleczyc, Berry & Hoven), Missoula, for Burk; Jared Dahle (Nelson & Dahle), Billings, for Defendants (Mountain West Farm Bureau Mutual Ins.)

