

## SUMMARY STATEMENT

Docket No. 51376

*Wilson v. Idaho State Board of Land Commissioners*

This case concerns the rights of landowners to use their land bordering the shoreline of a still body of water, such as a lake, which are known as “littoral rights.” Gregory M. Wilson is a littoral landowner on Priest Lake in Bonner County, Idaho. On his property is a “log crib” structure that extends below the lake’s high water mark and is partially embedded in the lakebed. While this structure has been there since the 1960s, Wilson has since added cobblestone and sandbags to the structure to accumulate sand on his property, thereby giving him more beachfront at the expense of his neighbors.

Pursuant to the Lake Protection Act (LPA), and as prompted by the Idaho Department of Lands (IDL), Wilson filed an application for his underlying structure with IDL. Because the structure pre-dated passage of the LPA, he filed for an existing encroachment permit under Idaho Code section 58-1312, which requires a showing of (1) documentation that the encroachment was built prior to January 1, 1975, and (2) documentation that the encroachment has not been modified since 1974. However, because Wilson admitted that he had added cobblestone and sandbags to the original structure, IDL denied his permit application, finding he had modified it within the definition of the statute. After an agency hearing on the case, the Director of the IDL affirmed the initial denial in a Final Order. Thereafter, Wilson filed a petition for judicial review in district court.

On petition for review, the district court affirmed IDL’s Final Order. The district court concluded that IDL had properly processed Wilson’s application pursuant to Idaho Code section 58-1312; therefore, no additional procedures were necessary. Wilson appealed the district court’s decision to the Idaho Supreme Court. He argued that the district court erred because he had a protected property interest in his log crib encroachment and the district court failed to properly apply Idaho’s two-step constitutional due process analysis. He also maintained that he did not modify the original structure; therefore, IDL improperly denied his application.

On appeal, the Idaho Supreme Court affirmed the district court. The Supreme Court ruled that several of Wilson’s arguments were not properly preserved for appeal, including his argument regarding Priest Lake’s Ordinary High Water Mark (OHWM) and Artificial High Water Mark (AHWM), as well as his regulatory taking claim. The Supreme Court also ruled that IDL properly denied Wilson’s existing encroachment application under Idaho Code section 58-1312 and that Wilson had not established he had a protected property interest in his log crib below the water mark.

***\*\*\*This summary constitutes no part of the opinion of the Court, but has been prepared by court staff for the convenience of the public.\*\*\****