

9-1-2011

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Frenchman Cambridge Irrigation Dist. v. Dep't of Natural Res., 801 N.W.2d 253
(Neb. 2011)

NEBRASKA

Frenchman Cambridge Irrigation Dist. v. Dep't of Natural Res., 801 N.W.2d 253 (Neb. 2011) (holding that the Frenchman Cambridge Irrigation District lacked standing to appeal the Department of Natural Resources' denial of its reevaluation petition for the Republican River Basin because it had not shown a distinct and particularized, present, or imminent injury).

Frenchman Cambridge Irrigation District ("FCID") owns water rights in the Republican River Basin, which spans Colorado, Nebraska and Kansas. In 2004, the Nebraska Department of Natural Resources ("DNR") designated the basin as fully appropriated. In 2009, FCID petitioned the DNR to reevaluate its designation, arguing that new scientific information and a correction of the DNR's past interpretive errors would make the basin overappropriated, a status that would allow the DNR greater authority over the basin. The DNR denied the petition, stating that Nebraska law only authorized it to reevaluate a designation where the potential existed for a change in result. The DNR reasoned a change in result was impossible because a statute defined as overappropriated only those basins that were subject to an interstate cooperative agreement on or before July 16, 2004.

While the Republican River Basin was subject to an interstate compact, the DNR ruled that an interstate compact was not the same as an interstate cooperative agreement because the two terms are not used interchangeably where they appear in other regulations. Interstate cooperative agreements are voluntary agreements between states. The Nebraska Legislature had passed laws for the specific purpose of modifying state water policy to better accomplish the obligations of such interstate cooperative agreements.

The Republican River interstate compact, by contrast, did not arise from a voluntary agreement; rather, it resulted from an interstate lawsuit under which a final settlement stipulation required Nebraska to adhere to its allocation scheme. FCID appealed the DNR's denial of FCID's petition to reevaluate the Republican River Basin designation. FCID challenged the DNR's distinction between interstate compacts and interstate cooperative agreements, and further argued that the DNR has broad authority to evaluate a basin's appropriation designation. The DNR cross-appealed for dismissal, arguing that FCID, having no injury, lacked the requisite standing to bring a claim in court.

The Nebraska Supreme Court ("Court") first considered whether FCID had standing, or the requisite personal stake in the matter to invoke judicial review. To have standing, a party must have suffered an injury in fact. The injury must be (i) concrete and particularized to that party (that is, not abstract or of general harm to many); and (ii) actual or imminent, not merely "possible." The Court affirmed that, although statutory language allows parties interested in the outcome of a water ap-

propriation to offer testimony or evidence on that application, that fact alone does not confer standing on such a party.

FCID argued that it would suffer an imminent injury of lost revenue if overappropriation of the Republican River Basin were to curtail its own allocation. FCID further argued that it did not provide evidence of actual, present injury because it relied on the DNR's stipulation that it was an interested party.

The DNR pointed out that a 2010 Nebraska Supreme Court decision, which occurred after the DNR had stipulated FCID's interest, held that the mere possession of a water right is insufficient to establish standing because standing requires injury-in-fact.

Because FCID failed to allege a specific injury, the Court held that FCID lacked standing to pursue review of the DNR's decision. The Court further held that neither stipulation by a party nor a court's acquiescence could supplant this fundamental jurisdictional principal requiring actual injury. The Court reasoned that FCID's claims of future lost revenue, dependent on the possibility that the basin was overappropriated, were too speculative.

Accordingly, the Court dismissed FCID's appeal.

Gregory Angstadt

NEVADA

Redrock Valley Ranch, L.L.C. v. Washoe Cnty., 254 P.3d 641 (Nev. 2011) (holding that (i) the State Engineer's approval of Redrock Valley Ranch's proposed water transfer did not preclude Washoe County from appropriately denying its application for a special use permit; and (ii) public testimony regarding the detrimental effects of the proposed water transfer under a county land use ordinance provided sufficient evidence to support Washoe County's decision to deny the permit).

Redrock Valley Ranch, L.L.C. ("RVR") applied to the State Engineer for a permit to transfer water from one hydrographic basin in Washoe County, Nevada to another for irrigation, domestic, and municipal purposes. After an initial hearing, the State Engineer approved some, but not all, of the water transfer applications upon determining the project would not conflict with existing water rights or protectable interests in domestic wells, and would not be detrimental to the public interest. The State Engineer placed certain conditions on the remainder of RVR's applications.

After facing local resistance, RVR entered into a stipulation with Washoe County, agreeing to limit its water use in exchange for Washoe County's support of the water transfer. RVR concurrently entered into an agreement with Truckee Meadows Water Authority granting it a right of first refusal to purchase RVR's transferable water rights. This agreement required RVR to apply to Washoe County for a special use permit for the water transfer facilities.