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Cent. Neb. Pub. Power & Irrigation Dist. v. N. Platte Natural Res. Dist., 788 N.W.2d 252 (Neb. 2010)

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nonuse. First, the court found that the Nelsons' economic reason for nonuse, prohibitive pumping costs, did not constitute a due and sufficient cause. Instead, Eulert merely opted not to irrigate because it was too expensive to divert the water. These economic reasons did not actually prevent irrigation. Next, the court contemplated the Nelsons' argument that adequate rainfall alleviated the need to divert the water. The Nelsons argued that because Eulert's alfalfa crops relied on groundwater they did not require full or partial irrigation. However, the court found that this was not due and sufficient cause for nonuse because adequate rainfall is only an acceptable cause where a crop requires full or partial irrigation. Irrigation was only necessary to start an alfalfa crop, and because alfalfa did not require irrigation in subsequent years, adequate rainfall was not an acceptable reason for not irrigating in those years. Finally, the court looked at the unavailability of water due to low flows. When Eulert filed reports of low flows, the court found either: (1) the reports were not the sole reason for nonuse because they accompanied claims of nonuse due to economic reasons, or (2) Eulert did not start alfalfa crops in those years, which rendered irrigation unnecessary because those crops had already rooted to groundwater and suggested that low flows did not in fact prevent irrigation because there was no need to divert water.

The court concluded by finding that the agency provided substantial evidence to support their findings of fact and conclusions of law. The court reversed and remanded with directions to reassign the order terminating the Nelsons' water right.

Jonathan King

NEBRASKA

Cent. Neb. Pub. Power & Irrigation Dist. v. N. Platte Natural Res. Dist., 788 N.W.2d 252 (Neb. 2010) (holding that litigants, including public power and irrigation districts, without a substantial interest in the outcome of a case and who assert a claim based on third parties' interests and rights do not have standing).

Central Nebraska Public Power and Irrigation District ("Central") claimed that, under the Administrative Procedure Act ("APA"), the North Platte Natural Resources District ("NRD") erroneously implemented new rules that lowered ground water allocation from fourteen inches per acre to twelve. Central asserted that a lower ground water allocation would decrease surface water in Pumpkin Creek, which, in turn, would not feed as much water into the North Platte River and deplete the amount of water available for storage in Lake McConaughy. Central managed Lake McConaughy and supplied water for irrigation and power stations, using water to produce power. It petitioned the Scotts Bluff County District Court ("district court") to require NRD to reverse the new regulations for ground water

allocation and to promulgate new rules for ground water allocation to restore historic surface water flows. The district court dismissed Central's petition for lack of standing, which Central then appealed to the Supreme Court of Nebraska ("court").

The court first examined whether Central was an aggrieved person within the meaning of the APA. It held that Central was not an aggrieved person because Central was outside of NRD jurisdiction, and although Central was a surface water appropriator, NRD's rules would not directly affect Central's appropriations. Central could not sue on behalf of the public interest or assert claims based on third parties' interests and rights because it did not have a legal or equitable right in the subject matter of the controversy.

Next, the court determined whether Central met the three-part test for standing: injury in fact, causation, and redressability. The court found that Central did not prove injury in fact because Central had no right to the water in the creek or river that fed into Lake McConaughy. The court further reasoned that, although Central did have water use interests and served the public through diverting, storing, transporting, and delivering water, the injuries it alleged were to its constituents, not itself.

The court also held that Central did not prove causation. The court found that the causal link for which Central argued was too attenuated. The court held that it was too weak a link to connect NRD's regulation changes to what Central hyperbolized as the destruction of Lake McConaughy due to lower water levels.

Next, the court held that Central did not meet the redressability requirement for standing. A party shows redressability by showing that a court can provide a meaningful remedy. The court reasoned that a favorable ruling for Central would result in restored water flows, which would help other interested parties with valid appropriation rights. Central did not have appropriation rights to the subject water. Therefore, a favorable ruling would not benefit Central.

Finally, the court did not find Central's action against NRD to be frivolous. Accordingly, the court did not grant NRD's cross-appeal for attorney's fees. However, the court affirmed the district court's dismissal of Central's petition due to lack of standing.

Amanda Becker

NEVADA

Pyramid Lake Paiute Tribe of Indians v. Ricci, 245 P.3d 1145 (Nev. 2010) (holding that a tribe did not have an implied right to basin groundwater and, therefore, did not have priority over a company's change use application, and that the change use application did not affect a tribe's water rights in the Truckee River or harm the public interest).

The Nevada Land and Resource Company, LLC ("NLRC")