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Spear T Ranch, Inc. v. Knaub, 713 N.W.2d 489 (Neb. 2006)

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process such a permit before allowing Trout to contest DNRC's interpretation of groundwater.

The court also found DNRC's interpretation of groundwater conflicted with the Basin Closure Law. It held that the interpretation did not provide sufficient protection demanded by the statute because it failed to take into consideration the impact of prestream capture of tributary groundwater. The court reversed the decision of the trial court and remanded for further proceedings to re-interpret the meaning of groundwater within the statute.

Jacki Lopez

NEBRASKA

Spear T Ranch, Inc. v. Knaub, 713 N.W.2d 489 (Neb. 2006) (denying an irrigation district's motion to intervene as a plaintiff in an action brought by a surface appropriator against several ground water users because the district's complaint did not allege a direct and legal interest in the subject matter of the action and it would not gain or lose anything by a judgment in favor of either party).

The Nebraska Supreme Court considered whether the Central Nebraska Public Power and Irrigation District ("Central") had a right to intervene in an action between an individual surface appropriator, Spear T Ranch ("Spear T"), and several ground water users pursuant to Section 25-328 of the Nebraska Revised Statutes. The court remanded the original action, giving Spear T leave to amend its complaint. Subsequently, Central moved to intervene as a plaintiff in the District Court for Morrill County. The district court denied the motion to intervene and Central appealed. The Nebraska Supreme Court reviewed the district court's decision *de novo*.

The court first detailed the applicable law concerning the underlying dispute. In the initial action between the parties, prior to remand, the court adopted the Restatement (Second) of Torts § 858 to govern disputes between surface appropriators and ground water users, which stated a ground water user was not liable for a beneficial use of appropriated water unless the withdrawal (1) had a direct and substantial effect on a watercourse or lake, and (2) unreasonably caused harm to a person entitled to use of its water. The court then outlined the requirements for Central's intervention in the action. Under Neb. Rev. Stat. § 25-328, Central could intervene as a plaintiff or a defendant in the action only if it initially alleged a direct and legal interest in the subject matter of the dispute such that it would lose or gain as a direct result of the judgment rendered. An "indirect, remote, or conjectural interest" was not enough to support intervention.

The court considered Central's complaint in detail and concluded that it did not allege a direct and legal interest. Although Spear T al-

leged specific damages including harm to crops, insufficient water for livestock, and diminished beauty and value of its property, Central made no specific damage claims. While Spear T sought injunctive relief to prevent future harm by the removal of water that would specifically be available to it but for the defendants' actions, Central sought injunctive relief to prevent defendants' use of water that would be "otherwise available" to it primarily for storage. Spear T limited its complaint to that amount of water which defendants "unreasonably" removed, while Central sought to enjoin all upstream uses by the defendants. Finally, Spear T's complaint sought relief from particular defendants, while Central generally opposed ground water appropriators. The underlying law required that the court balance the specific competing interests of the surface users and the ground water appropriators. Because Central's claimed interests did not align with those claimed by Spear T, the court did not find an adequate link between Central's claims and the subject matter of the action such that a judgment rendered for either party would directly affect Central.

The court affirmed the district court's denial of Central's motion to intervene, noting that Central was free to bring an action against the defendants based on its own interests in preventing ground water appropriation.

Kathleen Ott

NEW HAMPSHIRE

In re Town of Nottingham, 904 A.2d 582 (N.H. 2006) (affirming the Department of Environmental Services issuance of an extensive groundwater withdrawal permit to USA Springs, Inc., for a proposed water bottling plant based on the Department's reasonable interpretation of the statutory language contained in the Groundwater Protection Act).

In May of 2001, USA Springs, Inc. ("Springs") applied to the New Hampshire Department of Environmental Services ("DES") seeking a groundwater withdrawal permit to withdraw over 400,000 gallons of water per day from a single spring and three bedrock wells. Subsequent to hydrogeologic testing, DES denied the application in August of 2003. DES denied the application due to failure to meet regulatory requirements regarding withdrawal quantities and quality. DES granted a rehearing, but DES again denied the application. Four months later, Defendant submitted a second application for the same withdrawal permit and in March of 2004, DES approved the application and issued the groundwater withdrawal permit.

Two New Hampshire Towns, Nottingham and Barrington, along with the environmental group, Save Our Groundwater (collectively "SOG"), challenged DES's issuance of the permit to USA Springs un-