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## **Spear T. Ranch, Inc. v. Neb. Dep't. of Natural Res., 699 N.W.2.d 379 (Neb. 2005)**

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system that addressed direct conflicts between users of surface water and groundwater that is hydrologically connected).

Central Nebraska Public Power and Irrigation District (“Central”) filed an amended complaint with the Nebraska Department of Natural Resources (“Department”) claiming that groundwater diversions by registered irrigation well owners in the Platte River watershed deprived Central of approximately 100,000 acre-feet in annual surface water appropriations. Central asserted that groundwater users were subject to prior appropriations and requested that the Department order the well owners to cease unappropriated diversions. The Department dismissed Central’s amended complaint for lack of jurisdiction to grant the relief requested.

On appeal to the Nebraska Supreme Court, Central argued that the Nebraska Constitution granted the Department jurisdiction to regulate groundwater users or administer groundwater rights for the benefit of surface water appropriators. The Department argued that the Nebraska Constitution limited its authority to the regulation of surface water and that the legislature statutorily delegated the regulation of groundwater to natural resource districts.

In rejecting Central’s argument, the court first noted that Nebraska had separate systems for distributing and regulating surface water and groundwater. The court recognized that the Department regulated surface water appropriators, while natural resources districts regulated groundwater users pursuant to the Nebraska Ground Water Management and Protection Act. Next, the court stated that the Nebraska Constitution did not address the use of groundwater and that the reasonable use rule historically governed groundwater regulation. Finally, the court reemphasized its finding in *Spear T Ranch v. Knaub* that the legislature had not created an appropriation system to address direct conflicts between users of surface water and groundwater that is hydrologically connected.

After reviewing the legislative and case law histories, the court found no authority or rationale for applying the rules of surface water appropriations to groundwater use. Therefore, the court held that the Department’s authority to regulate surface water appropriators did not give it authority to regulate groundwater users or administer groundwater rights for the benefit of surface water appropriators. The court affirmed the Department’s dismissal of Central’s amended complaint.

*Jonathan P. Long*

**Spear T Ranch, Inc. v. Neb. Dep’t. of Natural Res., 699 N.W.2d 379 (Neb. 2005)** (holding that the Nebraska Department of Natural Resources has no common law or statutory duty to regulate groundwater use or administer groundwater appropriations with respect to surface water appropriations).

Spear T Ranch, Inc. (“Spear T”) owned a ranch adjacent to Pumpkin Creek in western Nebraska, where it held two surface water appropriation permits for irrigation and raising livestock. Spear T filed an action against the Nebraska Department of Natural Resources (“DNR”) in the Morrill County District Court, alleging that DNR’s failure to curtail groundwater withdrawals within the drainage basin of Pumpkin Creek caused the water in the creek to become brackish and unsuitable for the uses to which Spear T had a senior right. The district court granted a motion for summary judgment in favor of DNR on all allegations, and Spear T appealed to the Nebraska Supreme Court.

On appeal, Spear T argued that DNR had both a common law duty and a statutory duty to protect the rights of surface water appropriators, which DNR negligently breached. In establishing its common law negligence claim, Spear T relied on the court’s decision in *State, ex rel. Sorensen v. Mitchell Irrigation District*, which held that “the [s]tate ha[s] the right to enforce compliance with laws that [will] protect the rights of all users of water for irrigation purposes.” The court held the language did not imply a duty on DNR to resolve conflicts between surface water appropriators and groundwater users. Instead, the court held that because statutory and constitutional provisions establish the rights to appropriate water, such rights are limited in their scope by the language of their creation.

For its claim that DNR had a statutory duty to protect surface water appropriators, Spear T relied on Neb. Rev. Stat. § 46-226, which required DNR to “make proper arrangements for the determination of priorities of the right to use the public waters of the state and to determine the same.” DNR argued in response that the Nebraska legislature delegated authority to regulate surface water appropriations to DNR, but left the regulatory authority over groundwater to individual water or groundwater districts. The court agreed.

According to the court, Spear T based its statutory cause of action on the presumption that DNR had a duty to resolve conflicts between surface water appropriators and groundwater users. However, DNR has only that authority which the legislature has specifically conferred upon it by statute or construction necessary to achieve the purpose of the relevant act. Nebraska has two systems for the distribution of water resources: DNR regulates surface water appropriators, and natural resource districts regulate groundwater users. For this reason, there was no statutory authority for DNR to regulate the use of groundwater, and DNR therefore had no legal duty to resolve conflicts between surface water appropriators and groundwater users.

Finally, Spear T argued a separate cause of action for inverse condemnation. The Nebraska constitution requires just compensation for takings of private property. The court upheld the district court’s dismissal of the cause of action, reasoning that because DNR did not have

authority to regulate groundwater users, or administer groundwater rights for the benefit of surface water appropriators, neither its action nor inaction amounted to a taking.

In conclusion, the court upheld the district court's judgment granting summary judgment in favor of DNR on Spear T's claims for negligently failing to curtail groundwater use and dismissing Spear T's claim of inverse condemnation.

*Donald E. Frick*

**Montross v. Burks Ranch, Inc., No. A-03-1164, 2005 Neb. App. LEXIS 165 (Neb. Ct. App. Aug. 2, 2005)** (holding that the trial court did not err in setting an equitable riparian boundary or in dismissing claims of acquiescence and damages).

Ronald and Janice Montross ("Montrosses") filed this action in the district court for Hitchcock County, Nebraska, seeking a determination of the boundary line between their property and that of their adjoining neighbor, Burks Ranch, Inc. ("Burks"). The Montrosses set forth a claim for adverse possession; they alleged that the parties and their predecessors in title recognized that the boundary line between the properties was the centerline of "the meandering channel of the Republican River," and they sought damages for Burks' alleged trespass on and removal of trees from their property. Burks filed a counterclaim, seeking to set the legal boundary between the properties at the northern-most meander line of the Republican River and claiming the Montrosses' predecessor in title had agreed to that boundary. The trial court dismissed the Montrosses' claims of adverse possession, acquiescence in a boundary, and damages, and dismissed Burks' crossclaim, holding that there was no evidence supporting any finding of a mutual agreement or acquiescence in light of an outstanding lease agreement between the parties and their predecessors in title. The trial court set the boundary line at the mean of the river's northern-most and southern-most meander lines. Both parties appealed the decision.

In 1872, the Republican River represented the boundary line between the Montross property to the north and the Burks property to the south. In 1935, a flood caused the river to change its course and begin flowing in an easterly direction to the north of its original channel. By 1943, the Republican River had returned to its original channel. However, a series of flash floods between 1945 and 1952 caused the river to again flow north of its original channel, where it has remained since. The change in the river's course left approximately 70 to 80 acres of the Montross property lying south of the river channel and approximately 15 to 20 acres of the Burks property lying north of the channel. A 1952 survey completed to resolve the boundary dispute located and marked the north meander line of the original river chan-