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## Montross v. Burks Ranch, Inc., No. A-03-1164, 2005 Neb. App. LEXIS 165 (Neb. Ct. App. Aug. 2, 2005)

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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-

nel. In January 2001, a licensed line surveyor determined the northern-most and southern-most meander lines of the Republican River. From his findings, he derived a legal description of the Montross and Burks properties, setting the boundary at the mean between the north and south meander lines of the river.

In its *de novo* review, the Nebraska Court of Appeals noted that under Nebraska law, title to riparian land runs to the thread or center of the contiguous stream. The thread of a channel is the line that gives the landowners on either side access to the water whatever its stage might be, particularly at its lowest flow. Where the thread of the main channel of a river is the boundary line between two estates and it changes by the slow and natural processes of accretion and reliction, the boundary follows the channel. Avulsion occurs when a stream forming the boundary between two properties suddenly abandons its old bed and seeks a new one. Such a change of channel does not change the boundary line. The boundary remains as it was in the center of the old channel. The court reasoned that the avulsive event of 1935 did not effect a change to the boundary between the Montross and Burks properties. It would remain as it was, in the center of the old channel rather than shifting to the thread of the new channel.

On appeal, the Montrosses claimed that the boundary should have been set at the southern-most boundary of their property, the pre-1935 position of the Republican River. This claim suggested that the river meandered south between 1872 and 1935. The court noted that a party seeking to have title quieted to him or her on the ground of accretion maintained the burden of proving such accretion by a preponderance of the evidence. The court found no evidence to support the Montrosses' claim. The court affirmed the rulings of the trial court, finding no error in recognizing the mean between the meander lines, rather than the location of the thread of the river, as the most equitable solution for all parties.

*William S. Hoebel, III*

**Edlund v. 4-S, LLC, 702 N.W.2d 812 (Neb. Ct. App. 2005)** (holding the trial court erred in determining that, because no channel was conclusively established as the thread of the stream, the property line lay equidistant between two main channels of the stream).

Eleanor M. Edlund ("Edlund") brought an action to ascertain and establish the boundary line between her land and the land of 4-S, LLC ("4-S"), a landowner to her north. The parties agreed that the boundary line between their properties was the thread of the stream of the Platte River, but disagreed on the location of the thread. Where the thread of a stream is the boundary between estates and the stream has two channels, the thread of the main channel is the boundary between the estates. Holding the evidence to be inconclusive, the District