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Hagan v. Upper Republican Nat'l Res. Dist., 622 N.W.2d 627 (Neb. 2001)

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of avulsion is to mitigate the hardship of a change in title resulting from a sudden movement of a river.

The court noted this case involved a novel fact situation in which some facts illustrated accretion and other facts illustrated avulsion. The court found it important that the new main channel formed very rapidly after the peninsula was cut off and that the disputed land existed in the same form before and after the change in the course of the river. The court noted that in circumstances such as this, both federal and state case law recognize an exception to the generalized definitions of accretion. This exception is analogous to the “island rule” in which a boundary once established on one side of the island by a river channel remains at its original position even though the main channel shifts to the other side of the island. Ultimately, the court concluded the Bouie River changed its position relative to the disputed land by an act of avulsion. Therefore, title to the disputed land remained with Cox and the court remanded the case for an adjudication of Prestress’ claim of adverse possession.

Vanessa L. Condra

NEBRASKA

Hagan v. Upper Republican Nat’l Res. Dist., 622 N.W.2d 627 (Neb. 2001) (holding landowners and irrigators had standing to challenge settlement agreement between defendant hog farmer and the Upper Republican Natural Resources District because the agreement gave defendant access to water from the same aquifer underlying plaintiffs’ lands).

During the time period relevant to this action, the Upper Republican Natural Resources District (“District”) adopted a moratorium on new well construction. The plaintiff irrigators and landowners (collectively, the “Irrigators”) applied for a variance to use underground water for crop irrigation. The defendant hog farmer applied for a variance to use underground water to operate its “hog confinement facilities.” Both variance applications requested underground water from the same aquifer. The District denied the Irrigators’ variance, but agreed to a settlement that gave the hog farmer use of underground water as applied for originally.

Irrigators filed a petition for declaratory relief asking that the settlement agreement between the District and the hog farmer be declared *ultra vires*. The district court denied the petition, and found the Irrigators had no standing to bring the claim because they could allege no injury different than that shared by the general public. The appeals court reversed, and the hog farmer appealed to the Nebraska Supreme Court.

The court acknowledged that while the public owns groundwater,

the overlying landowner has a right to use that groundwater. The court found the Irrigators' allegations of injury from aquifer depletion stated a cause of action. As overlying landowners, the Irrigators' allegations were sufficient to give them some legal or equitable right, title, or interest in the subject of the controversy. In addition, their petition alleged direct injury as a result of the settlement agreement, and not merely a general interest common to all members of the public. Therefore, the court held the Irrigators' had standing to bring their suit and directed the district court to reinstate the petition.

Susan P. Klopman

NEVADA

Turnipseed v. Truckee–Carson Irrigation Dist., 13 P.3d 395 (Nev. 2000) (holding the Third Judicial District Court erred in refusing a preemptive challenge to change both the presiding judge and the venue because it improperly interpreted applicable judicial rules and statutory law).

This case involved numerous applications to appropriate water from the Truckee River in Churchill County, Nevada. Among the applicants were the two parties present in this case, the Truckee–Carson Irrigation District (“District”) and the Pyramid Lake Paiute Tribe of Indians (“Tribe”). The Tribe brought this action, requesting the Nevada Supreme Court to issue a writ of mandamus ordering the Third Judicial District Court to grant a preemptive challenge as authorized under applicable judicial rules. Additionally, the Nevada State Engineer, R. Micheal Turnipseed, (“State Engineer”) petitioned the supreme court to reverse the district court’s denial of his motion to change the venue.

On May 31, 1994, the State Engineer held a hearing to determine whether to grant various water applications to appropriate water from the Truckee River. As part of this hearing, the State Engineer considered a motion from Corkhill Bros., Inc., (“Corkhill”) to intervene in the proceedings as an interested party. The State Engineer denied both the Corkhill’s intervention motion and the District’s applications to appropriate water from the Truckee River. Subsequent to the decision, the District and Corkhill filed separate petitions with the district court, challenging the State Engineer’s decisions and requesting the district court stay the State Engineer’s actions. The district court consolidated the cases (upon motion from the State Engineer) and granted both petitions, remanding the District’s application to the State Engineer for further review.

On November 24, 1998, the State Engineer issued a final order denying all but the Tribe’s applications to appropriate water from the Truckee River. Since the District’s applications were a part of the