

Nebraska Supreme Court rules in favor of river augmentation project

By LORI POTTER Apr 8, 2017

LINCOLN — The Nebraska Supreme Court has ruled in favor of a river augmentation project that is the centerpiece of the state's efforts to comply with the 1943 Republican River Compact.

A Supreme Court ruling issued Friday upheld the Lincoln County District Court's dismissal of a 2014 lawsuit challenging use of eminent domain and other authorities for the Nebraska Cooperative Republican Platte Enhancement Project.

N-CORPE was created under the state's Interlocal Cooperation Act by four natural resources districts — Upper, Middle and Lower Republican and Twin Platte. A large Lincoln County farm was purchased, and groundwater was retired from irrigation and repurposed to augment streamflows in the two river basins.

Water is delivered to the Republican River via Medicine Creek.

The need in that basin is to increase streamflows to avoid having to regularly shut down irrigation to maintain compliance with the 1943 Republican River Compact by ensuring adequate streamflows into Kansas.

A history of the case is part of the Supreme Court ruling. It says Lincoln County landowner J. Daniel Estermann filed a complaint for an injunction against N-CORPE board members — one from each NRD — in response to N-CORPE's condemnation proceedings for an easement sought across Estermann's property.

The April 1, 2014, complaint alleged, in part, that N-CORPE did not have eminent domain authority; the project was causing flooding on Estermann's property, with increasing and irreparable damage to his land and crops; the condemnation was not for a public use; N-CORPE failed to obtain approval and permits from such agencies as the Lincoln County Board of Commissioners and Nebraska Department of Natural Resources; and failed to obtain approval from Kansas.

A later motion claimed approval also was not obtained from the Republican River Compact Administration.

Over 18 months, the Lincoln County District Court reviewed and denied several additional filings by Estermann seeking temporary injunctions.

Key rulings included rejecting the claim that N-CORPE could not exercise the power of eminent domain. The district court decision said the NRDs have eminent domain authority and could authorize N-CORPE to exercise any of their powers and authority while acting on their behalf.

The district court also rejected the argument that the condemnation did not meet a public purpose, saying that complying with Nebraska's obligation under an interstate compact is "certainly a public purpose."

That ruling said that while Estermann had standing to challenge the taking of the easement on his land, he did not have standing to challenge whether N-CORPE had the permits needed to use the easement.

After the district court dismissed the case, Estermann appealed.

The Supreme Court opinion says the court affirmed the district court's dismissal, but had some differences in reasoning.

The Supreme Court agreed that N-CORPE had eminent domain authority, did not need certain permits and approvals as alleged by Estermann, and that there was no material issue of fact about whether the condemnation was for public use.

“Therefore, we affirm the decision of the district court which granted the appellees’ motion for summary judgment and dismissed Estermann’s complaint,” according to the court opinion’s conclusion.