

# **Bond Case Briefs**

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## **EMINENT DOMAIN - NEBRASKA**

### **Estermann v. Bose**

**Supreme Court of Nebraska - April 7, 2017 - N.W.2d - 296 Neb. 228 - 2017 WL 1293574**

After joint water management entity filed a petition to condemn, landowner filed a complaint seeking an injunction against board members of the entity. Entity moved for summary judgment.

The District Court granted the motion. Landowner appealed.

The Supreme Court of Nebraska held that:

- Joint water management entity created by four natural resource districts was authorized to exercise the power of eminent domain;
- Joint water management entity was not required to obtain permits from Department of Natural Resources;
- Joint water management entity was not required to obtain permits from two of the natural resource districts;
- As a matter of first impression, an appellate court reviews de novo an underlying legal conclusion that proposed amendments to a complaint would be futile;
- Joint water management entity was not required to obtain approval from entity administering Republican River Compact; and
- Flowage and right-of-way easement sought by joint water management entity over landowner's property was for a public use.

Joint water management entity created by four natural resource districts pursuant to Interlocal Cooperation Act (ICA) was authorized to exercise the power of eminent domain. Districts that formed entity each individually held the power of eminent domain, and the districts were able to jointly exercise that individually held power through the mechanism of the joint entity they created.

Joint water management entity formed by four natural resource districts was not required to obtain a conduct water permit from Department of Natural Resources prior to initiating condemnation proceedings seeking a flowage and right-of-way easement over landowner's property in order to augment waterflow into a creek. Entity was not attempting to guarantee that a certain quantity of water was used for a beneficial use or reached a certain point downstream for a particular use, but rather sought to simply to add water to a river basin in order to offset water depletion.

Joint water management entity formed by four natural resource districts was not required to obtain a ground water transfer permit from Department of Natural Resources prior to initiating condemnation proceedings seeking a flowage and right-of-way easement over landowner's property in order to augment waterflow into a creek. While some of the water would eventually reach Kansas, purpose of the project was to increase the amount of water available in a river basin, and it was not the purpose of the project to transport water explicitly for use in Kansas.

Joint water management entity formed by four natural resource districts was not required to obtain permits from two of the districts prior to initiating condemnation proceedings seeking a flowage and

right-of-way easement over landowner's property in order to augment waterflow into a creek. By voting in favor of project, the two districts concluded that project was in compliance with their rules and regulations and waived the necessity of individual permits, if otherwise required.

An appellate court reviews a district court's denial of a motion for leave to amend a complaint for an abuse of discretion; however, an appellate court reviews de novo an underlying legal conclusion that the proposed amendments would be futile.

Joint water management entity formed by four natural resource districts was not required to obtain approval from entity administering Republican River Compact prior to initiating condemnation proceedings seeking a flowage and right-of-way easement over landowner's property in order to augment waterflow into a creek. Project did not constitute an "augmentation plan" under section of settlement that modified the Compact, as an "augmentation plan" under the section set forth the methods for how to calculate the augmentation credit the state wished to receive that would be taken into account when considering whether the state has complied with its allocated percentage of use of the virgin water supply in the Republican River Basin under the Compact.

Flowage and right-of-way easement sought by joint water management entity over landowner's property in condemnation action was for a public use, not a private use. Purpose of easement was to augment flows of creek to offset surface water depletions through a river basin in order to achieve the target flows identified in the Republican River Compact, and any use of the water by private irrigators was incidental to that purpose.