

# **Bond Case Briefs**

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## **INVERSE CONDEMNATION - NEBRASKA**

### **Hill v. State**

**Supreme Court of Nebraska - March 10, 2017 - N.W.2d - 296 Neb. 10 - 2017 WL 952106**

Farmers who used water from river basin brought inverse condemnation action against Department of Natural Resources after Department issued orders and sent closing notices to holders of surface water permits in basin.

The District Court dismissed complaint, and farmers appealed.

The Supreme Court of Nebraska held that:

- Farmers did not have property rights superior to interstate Compact;
- Department's actions were not a permanent physical invasion of farmers' property;
- Department's actions did not deprive farmers of all economically beneficial use of their property; and
- Department's failure to curtail ground water pumping that depleted surface waters was not a taking.

Farmers who used water from river basin did not have property rights superior to interstate Compact that allowed diversion of surface water from basin for beneficial use, and thus Department of Natural Resources order and closing notices sent to farmers was not a taking in farmers' inverse condemnation action. Compact was federal law, and as federal law, the allocations set forth under the Compact were supreme law in State, and the Department had to ensure State remained within its allocation under the Compact.

Regulatory actions undertaken by Department of Natural Resources, in which Department sent order and closing notices sent to farmers who used river basin, was not a permanent physical invasion of farmers' property in farmers' inverse condemnation action; farmers' property rights to use the water were subject to Department's enforcement of compliance with Compact between states for use of river basin.

Regulatory actions undertaken by Department of Natural Resources, in which Department sent order and closing notices sent to farmers who used river basin, did not deprive farmers of all economically beneficial use of their property, although farmers showed there was a decrease in production during two growing seasons on the farmers' land, the data indicated there was still production on the land.

Department of Natural Resources did not have authority to administer a river basin's ground water users for the benefit of surface water appropriators, and thus Department's failure to curtail ground water pumping that depleted surface waters that was used by farmers was not a taking to support inverse condemnation action brought by farmers against Department.

