

# **Bond Case Briefs**

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## **EMINENT DOMAIN - NEBRASKA**

### **Cappel v. State Department of Natural Resources**

**Supreme Court of Nebraska - December 22, 2017 - N.W.2d - 298 Neb. 445 - 2017 WL 6543842**

Farmers brought inverse condemnation action and related claims against Department of Natural Resources (DNR) following regulation of surface water use in river basin under interstate Compact.

The District Court determined the State was not protected by sovereign immunity, but dismissed the complaint without leave to amend because no taking took place. Farmers and DNR appealed.

The Supreme Court of Nebraska held that:

- Farmers' § 1983 claim was barred by sovereign immunity;
- Farmers did not have property rights superior to interstate Compact;
- Department's actions were not a regulatory taking;
- State did not waive its sovereign immunity with respect to claims for violations of due process;
- Section 1983 provided farmers with the exclusive remedy to obtain damages for alleged violations of procedural and substantive due process;
- District Court lacked subject matter jurisdiction over farmers' due process claims; and
- District Court lacked subject matter jurisdiction over farmers' restitution claim.