

Bond Case Briefs

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NUISANCE - SOUTH DAKOTA

Preserve French Creek, Inc. v. County of Custer

Supreme Court of South Dakota - July 24, 2024 - N.W.3d - 2024 WL 3532519 - 2024 S.D. 45

Creek preservation group petitioned for writ of mandamus to compel enforcement of county ordinance that was passed by citizen initiative and that declared city's discharge of treated wastewater into creek, pursuant to a state surface water discharge permit obtained from Department of Agriculture and Natural Resources (DANR), to be a nuisance.

The Circuit Court denied relief. Preservation group appealed.

The Supreme Court held that:

- State law preempted ordinance, and
- City and county were not estopped from asserting that ordinance was preempted.

County ordinance declaring that city's discharge of treated wastewater into creek was a nuisance conflicted with statute providing that nothing that was done or maintained under the express authority of the state could be deemed a nuisance, and thus the ordinance was preempted and unenforceable, where city's wastewater treatment facility was operating under a permit issued by the Department of Agriculture and Natural Resources (DANR) in compliance with state law including provisions of the Water Pollution Control Act.