

Frenchman Cambridge Irrigation District Water Users Lose Case Before State Supreme Court

Frenchman Cambridge Irrigation District water users who claimed their property rights were superior to the Republican River Compact and that state administration of surface water to comply with the Compact deprived them of all economic benefits failed to persuade the Nebraska Supreme Court.

On Friday, the state high court upheld Furnas County District Court's earlier dismissal of the FCID water users' case.

The surface water users and their attorney, David Domina of Omaha, based their complaints on the state's administration of surface water in 2013 and 2014 to maintain compliance with the Republican River Compact. During oral arguments, Domina argued that the water users hold water use permits that don't mention the Compact. His arguments proved unsuccessful.

"We reject the appropriators' argument that the Compact is an inferior use to the use rights given to the appropriators under their permits," says the ruling from the state high court. "...As federal law, the allocations set forth under the Compact are the supreme law in Nebraska and the DNR must ensure Nebraska remains within its allocation under the Compact. Therefore, the appropriators' rights to use water is subject to the superior obligation of the state to ensure compliance with the Compact."

The ruling goes on to say that there was no sign that the state Department of Natural Resources exercised its powers arbitrarily, capriciously, or unreasonably.

The FCID water users also argued that administration of surface water by the state amounted to a "permanent physical invasion of their property and that such regulation deprives them of all economically beneficial use of that property." But data showed that there was still crop production on their land in 2013 and 2014 and despite claims from the water users, "it does not appear, as the appropriators allege, that the farmland has been converted into permanent dryland..." the ruling says.

The water users and Domina also argued that the state failed to adequately regulate groundwater.

"This court has consistently held that the DNR has no authority to regulate groundwater," the ruling says.