

Prokop v. Lower Loup Natural Res. Dist

Case Number

S-18-0082

Case Audio

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October 31, 2018

Court Number

Valley

Case Location

Lincoln

Case Summary

S-18-0082 Robert J. Prokop (Petitioner-Appellant) v. Lower Loup Natural Resources Dist.; Joseph Citta, Jr., Chairman; Leon ?Butch? Koehlmoos, General Manager; and Russel Callan, Assistant General Manager (Respondents-Appellees)

Valley County District Court, Judge Karin L. Noakes

Attorneys: Donald G. Blankenau, Kennon G. Meyer (Blankenau Wilmoth Jarecke L.L.P.) (Attorneys for Amicus Curiae, Nebraska Groundwater Coalition) --- Blake E. Johnson, Katherine J. Spohn (Bruning Law Group) (Appellees) Brian C. Buescher, Dwyer Arce (Kutak Rock L.L.P.)(Appellant)

Civil: Cease and desist; Due Process

Proceedings below: The trial court found that 1) the LLNRD complied with its own Rules and Regulations when issuing a cease and desist order on Appellant; 2) the LLNRD provided due process when issuing the cease and desist order; 3) the LLNRD?s cease and desist order did not result in the taking of a constitutionally-protected property right requiring compensation; 4) the LLNRD complied with the requirements of the APA in delivering a copy of the administrative record to the trial court; and the trial court declined to consider certain evidence outside of the administrative record. Appellant filed a petition to bypass, which was granted by the Supreme Court.

Issues: Whether the trial court erred 1) in affirming the LLNRD?s penalty on Appellant for failing to provide information in his annual reports; 2) in affirming a one-year suspension of Appellant?s access to groundwater on his own property, and affirming in part the LLNRD?s imposition of a four-year suspension of Appellant?s access to groundwater, as a penalty; 3) in affirming the LLNRD?s order in part because it violated Appellant?s right to procedural due process; 4) in affirming the LLNRD?s order in part because it violated Appellant?s due process rights of limiting the possibility of competent judicial review; 5) in holding that the LLNRD?s suspension of Appellant?s access to groundwater did not constitute a taking without just compensation; 6) in granting the LLNRD?s motion to strike exhibits offered by Appellant for limited purpose; and 7) in failing to reverse the LLNRD?s order banning Appellant from irrigating with groundwater and failing to award Appellant fees
