

SUPREME COURT OF NEBRASKA

Department of Natural Resources v. Bose

267 Neb. 430 (2004) · No. No. S-03-599 · Decided February 20, 2004

SUMMARY

The Nebraska Supreme Court affirmed the Department of Natural Resources’ cancellation of water appropriation A-4924 for nonuse for more than three consecutive years. The court held that the hearing notice satisfied statutory requirements, the verified field investigation report supported the Department’s finding, and the landowners failed to establish sufficient cause for nonuse.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Wright, J.; Hendry, C.J.; Connolly, J.; Gerrard, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.
JURISDICTION	Nebraska
DECIDED	February 20, 2004
DOCKET	No. S-03-599
DISPOSITION	affirmed
PROCEDURAL POSTURE	The landowners appealed the Nebraska Department of Natural Resources' order canceling water appropriation A-4924 for nonuse exceeding three consecutive years. The Nebraska Supreme Court reviewed the agency decision.
STANDARD OF REVIEW	The court reviews the Department director's factual determinations to determine whether they are supported by competent and relevant evidence and are not arbitrary, capricious, or unreasonable. Questions of law, including statutory interpretation, are reviewed independently.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential
PARTIES	Lee Bose, Craig Bose v. Department of Natural Resources

TOPICS

- judicial review of agency action
- administrative law
- standard of review
- statutory interpretation
- appellate procedure

PRACTICE AREAS

Administrative law

Water rights

Environmental law

Appellate procedure

QUESTIONS PRESENTED

1. Whether the Department's hearing notice adequately stated the issues involved and included the information required by Neb. Rev. Stat. § 46-229.02.
2. Whether the Department's finding that appropriation A-4924 had not been used for more than three consecutive years was supported by competent and relevant evidence and was not arbitrary, capricious, or unreasonable.
3. Whether the Boses established sufficient cause for nonuse under Neb. Rev. Stat. § 46-229.04(3)(c) or (e).

HOLDINGS

1. The Department's notice adequately stated the issues to be addressed at the hearing and included the information required by Neb. Rev. Stat. § 46-229.02.
2. The Department's finding that appropriation A-4924 had not been used for more than three consecutive years was supported by competent and relevant evidence and was not arbitrary, capricious, or unreasonable.
3. An agency factual determination is upheld when supported by competent and relevant evidence and when it is not arbitrary, capricious, or unreasonable.
4. The Boses did not establish sufficient cause for nonuse under § 46-229.04(3)(c) or (e).

KEY QUOTATIONS

“In an appeal from the Department, an appellate court's review of the director's factual determinations is limited to deciding whether such determinations are supported by competent and relevant evidence and are not arbitrary, capricious, or unreasonable; however, on questions of law, which include the meaning of statutes, a reviewing court is obligated to reach its conclusions independent of the legal determinations made by the director.”

“The language of the statute clearly indicates that the burden is upon the appropriator to present evidence showing either that water was taken, contrary to the report filed by the Department [of Water Resources], or that some excuse existed for the water not being taken.”

FACTUAL BACKGROUND

Water appropriation A-4924 authorized diversion of up to 0.67 cubic feet per second from the Republican River to irrigate 77.2 acres in Harlan County, Nebraska. A Department field investigation report stated that the land had not been irrigated from the river for approximately 10 years and was instead irrigated with groundwater wells. Lee Bose acknowledged that the appropriation had generally not been used during the preceding decade, except for a single incident in the mid-1990s when a well failed, and testified that the use of groundwater was more convenient.

PROCEDURAL HISTORY

The Department held a hearing after notifying the Boses that it would determine whether appropriation A-4924 should be canceled for nonuse. Following the hearing, the Department's director canceled the appropriation under Neb. Rev. Stat. § 46-229.04. The Boses' petition for rehearing was denied, and they appealed to the Nebraska Supreme Court, which affirmed.

DISPOSITION

affirmed

CASES CITED

- In re Water Appropriation A-5000, ante p. 387, ___ N.W.2d ___ (2004)
- City of Lincoln v. Central Platte NRD, 263 Neb. 141, 638 N.W.2d 839 (2002)
- Bethesda Found. v. Buffalo Cty. Bd. of Equal., 263 Neb. 454, 640 N.W.2d 398 (2002)
- In re Application of Neb. Pub. Serv. Comm., 260 Neb. 780, 619 N.W.2d 809 (2000)
- Pittman v. Sarpy Cty. Bd. of Equal., 258 Neb. 390, 603 N.W.2d 447 (1999)
- In re Applications T-61 and T-62, 232 Neb. 316, 440 N.W.2d 466 (1989)