

# NEBRASKANS FIRST NEWSLETTER



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## Groundwater - Surface Water Irrigation Conflicts / "The Supremes" Keep the Train on the Track

Back in January 21, 2005, the Nebraska Supreme Court issued one of its most significant decisions in history involving irrigation rights and how conflicts between groundwater and surface water users will be handled. The case was *Spear T Ranch v. Knaub*. Simply stated, Spear T Ranch held two surface water appropriation permits for diversions from Pumpkin Creek which flows through Banner and Morrill Counties. Spear T Ranch alleged that groundwater pumping by Melvin Knaub and other upstream groundwater irrigators had depleted Pumpkin Creek's streamflow, and thereby deprived Spear T Ranch of its surface water rights, and hence, its ability to irrigate crops and provide water for livestock. Spear T Ranch sought compensation for the value of its surface water appropriations taken by Knaub and others, as well as an injunction on groundwater pumping by Knaub, et al.

This case reached the state supreme court after the District Court for Morrill County dismissed the lawsuit for a variety of reasons, but primarily because the district court judge knew the matter was too complex and far-reaching. Technically, the judge ruled that not all necessary and indispensable parties (all Pumpkin Creek groundwater irrigators) were joined, and also that the district court lacked subject matter jurisdiction.

This case raised the major question of whether groundwater, which is hydrologically connected to a river, stream or tributary, should be legally treated as surface water, which in turn would mean that conflicts between surface water and groundwater users would be resolved using the first-in-time, first-in-right doctrine. Such a determination, once made by the state supreme court - the court of last resort and with no further appeals, would have destroyed groundwater irrigation in Nebraska because the vast majority of surface water rights are far older and thus senior to groundwater pumping permits.

### RETROSPECTIVE

*Remember back in 1995 when the state legislature*

*passed LB 108 against the strong opposition of Nebraskans First and many staunch rural senators? In that debate we predicted that the conjunctive use doctrine recognized by LB 108 that linked groundwater and surface water together would open a Pandora's Box of new, major problems and conflicts between water users as well as between local natural resources districts (NRDs) which have primary jurisdiction over groundwater pumping and the state Department of Natural Resources (DNR) which regulates all surface water appropriations.*

*Nebraskans First also warned the state senators that if LB 108 became law it would give the green light to Kansas to sue us over alleged Republican River Compact violations that hinged on whether groundwater use was part of the 1943 compact.*

*We were right in our predictions. Kansas sued, the NRDs and DNR began fighting, and surface water users began pushing hard against groundwater pumpers. This issue came to a head with the Spear T Ranch case. This case was huge. Fortunately, our state supreme court in a twenty-seven page opinion stepped up big time and ruled properly and against the politically correct cries of those who seek to stifle and destroy groundwater irrigation in Nebraska.*

\* \* \*

Here are the key findings and rulings of *Spear T Ranch v. Knaub* in the high court's own words:

- "The prior appropriation rule that Spear T advocates would give first-in-time surface water appropriators the right to use whatever they want to the exclusion of later-in-time groundwater users. This could have the effect of shutting down all wells in an area where surface water appropriations are hydrologically connected to groundwater. This would unreasonably deprive many groundwater users. Accordingly, we decline to apply the

*continued on page 2...*