

Saturday, November 12, 2022

CLIMATE CHANGE: THE CHALLENGES FACING THE JUDICIARY IN THE STATE OF NEBRASKA

CONTENTS:

INTRODUCTION – The Honorable Thomas K. Harmon

OVERVIEW OF POTENTIAL LITIGATION ISSUES IN NEBRASKA

1. Carbon capture and underground storage which is now authorized in Nebraska. Adoption of in 2021 of the Geological Storage of Carbon Dioxide Act - Neb. Rev. Stat. § 57-1601 et seq.
2. Disputes regarding Wind Turbine Farms – Discussion of Preserve the Sandhills, LLC v. Cherry County, Nebraska case argued in the Nebraska Supreme Court on November 4, 2022. Case centered on conflict of interests among County Commissioners and standing. Matter is pending decision in the Nebraska Supreme Court having been argued on November 4, 2022; Discussion of local County Boards opposing Windmill Turbines.
3. Effect of climate change on recreational use of water – the brain eating ameba. Will litigation be filed alleging that the State of Nebraska failed to adequately monitor the recreational area? Did the State of Nebraska owe a duty to warn the child and his family as to whether it was foreseeable that the fresh water amoeba existed in the Elkhorn River in Nebraska due to climate information. Use as a guide **Daviess-Martin Cty. Joint Parks & Rec. Dep't v. Estate of Abel**, 77 N.E.3d 1280, 1288 (Ind. App., 2017).
4. Potential Litigation involving nitrates in drinking water in the State of Nebraska. Increased use of nitrogen fertilizer increases corn production and it seeps into soil right into drinking water of many Nebraskans. Could we have claims based on our favorite television commercials for “Camp Lejeune Water Contamination Claims”.
5. Declining levels of water found in the Ogallala Aquifer – Nebraska is in ongoing drought with a significant reduction in annual precipitation and if use of irrigation continues to be unrestrained by the Courts, depletion rate could significantly increase.
6. Eminent domain and construction of the Perkins County Canal - the Nebraska State Legislature for allocated \$53.5 million to begin design work on the project and to get options on land in Colorado to build the Perkins County Canal which will take about ten - 10 years to complete.
7. Competing interests for agricultural water use will increase as the soil becomes drier based on data provided by the Nebraska Department of Natural Resources. The following significant data must be considered:
 - Temperatures have risen about 1° since 1895
 - Frost-free season has increased 5-25 days since 1895
 - Very heavy precipitation events have increased 16% in the Great Plains Region

Projected temperature increase of 4-5°F (low emissions scenario) or 8-9°F (high emissions scenario) by 2100

Projected summer of 2100 will have 13-25 days over 100°F

Number of nights over 70°F will increase by 20-40 days by 2100

Soil moisture is projected to decrease 5-10% by 2100

Reduced snowpack in Rocky Mountains = reduced stream-flows in our rivers

Increasing heavy precipitation events

Increasing flood magnitude

Increasing drought frequency and severity

8. Ceasing to provide hail insurance coverage in Nebraska due to climate change.

CONCLUSION