

Sewage Treatment Pond: South Dakota Supreme Court Addresses Adjacent Landowner's Inverse Condemnation and Nuisance Claims



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The South Dakota Supreme Court ("Court") addressed in a December 19th opinion an issue involving governmental taking and nuisance claims. See *Krsnak v. Brant Lake Sanitary District*, 2018 WL 6683535.

The issues arose in the context of the construction of an ancillary sewage treatment facility built next to a vegetable farm.

The Brant Lake Sanitary District ("District") constructed a sewage treatment pond to increase the wastewater flow into the local lake area. The pond connects two previously existing treatment ponds. These preexisting treatment ponds are operated by the Chester Sanitary District.

The new District pond was placed approximately 700 feet south of a parcel of real property owned by Jimmy and Linda Krsnak ("Claimants"). Linda Krsnak is stated to have operated a vegetable farm called "Linda's Gardens" on the property since 2005. A 60-foot well is also located on the Claimant's property used to water crops.

The Claimants brought a claim in Circuit Court, alleging that the sewage pond was a nuisance. They subsequently filed an additional claim, asserting an inverse condemnation by the District. The Claimants argued that the taking occurred because their well water was contaminated by fecal matter from the pond.

The Claimants stated that they had suffered physical illness as a result of the pond's foul odor. Further, the Claimants' expert produced a report which concluded that the parcel suffered a diminution in value of \$82,800.00 because of the pond's construction. Laboratory testing of the Claimants' well water established that the level of coliform (fecal matter) present was 225 times the Environmental Protection Agency's caution level. They asserted that the pond caused such contamination.

The Circuit Court granted the District's Motion for Summary judgment as to both the nuisance and inverse condemnation damage claims. It opined that the Claimants' injury was similar to that suffered by their neighbors. Although their property may have suffered more than that of their neighbors, a nuisance violation requires a unique injury. Further, the Claimants failed to produce evidence that the pond's seepage was the cause of their property damage.

Claimants appealed to the Court.

The Court similarly opined that the Claimants' injury was not unique and that the Claimants failed to show that it was incurred because of the District's actions. The Court referenced the Claimants' expert appraisal report, noting that the report did not account for the fecal matter in the well—only the economic impact that the pond had on their property—and thus could not attest to the possible cause of the contamination. Further, because the District acted in accordance with the law when constructing the pond, the Claimants' nuisance claim was not applicable.

The Court explained:

The [Claimants'] suspicion that the coliform in their well originated from the [sewage pond], without evidence of the source of the contamination, merely raised unsupported conclusions and speculation In light of the fact that the legislature authorized sewage districts for public benefit, upon review of the evidence presented in this case, the [Claimants] have failed to establish a cause of action based upon nuisance.

The Court therefore affirmed the Circuit Court's granting of the District's Motion for Summary Judgment.

A copy of the opinion can be found [here](#).