

Press Release – April 19, 2016

Immediate Release

Thedford, Neb. - A Nebraska ranch couple filed suit against Nebraska Public Power District challenging the right of the power company to enter onto ranch land in the Sandhills to survey for power line right away and asserts that Nebraska Revised Statute § 76-702 is unconstitutional.

The case, *Brush Creek Ranch, LLC. v NPPD*, was filed in District Court, Thomas County NE. Dan and Barbara Welch of Thedford own Brush Creek Ranch. They contend the Legislature gave only a limited grant of eminent domain to public power districts, including NPPD. Brush Creek is represented by lawyers Dave Domina and Brian Jorde of Omaha and Rodney Palmer of Ainsworth.

They contend this limited grant does not include a statute governing pre-condemnation surveying. The Welch's further contend the Legislature intentionally withheld §76-702 authority from public power districts.

The Ranch company argues that even if the law relied on by NPPD to try to survey ranches is available to power companies, the law is invalid because it limits compensation to personal property and does not provide just compensation for damage to real estate, and contains no hearing procedures.

The lawsuit describes Brush Creek Ranch as one of the most pristine ranches in the Nebraska Sandhills. It asserts that no all-terrain vehicle is permitted on the Ranch at any time. Horses are used, and livestock is carefully regulated, grazed, and controlled. The Ranch consists of highly-sensitive, fragile native Sandhills' grasses growing over sand dunes that are archaeologically active.

The lawsuit says the Ranch is home to flora and fauna on the endangered species and protected species lists.

Court papers filed at Thedford also say the Ranch is home to, and a resting site for, migratory and unique species of birds including Whooping Cranes, Sandhills Cranes, Piping Plovers, Least Terns, and is from time to time Burrowing Owls and perhaps Mountain Terns. The Ranch also provides resting space for migratory birds. It is also the home of the Blowout Penstemon and the American Burying Beetle both of which are endangered species.

Past Troubles

The Complaint says NPPD personnel actually went out onto the Ranch in on April 14 after promising not to do so the previous day. The lawsuit says a meeting was held at the Ranch involving its owners, employees, NPPD personnel, the county sheriff and two officers of the Nebraska State Patrol. “Conversations were calm, peaceful, and appropriate.”

The suit continues “it was agreed that NPPD would not cause or permit its personnel to enter onto the Ranches’ real estate without first proceeding to court”. But the next morning, the Ranch owners discovered NPPD personnel had gone out onto the land early in the morning. This discovery was made when the Thomas County Attorney called the Ranch owners telling them the NPPD people found themselves locked into the Ranch when they returned to the highway.

According to the Court papers, on the morning of April 14th locks and chains were placed around the gates along Highway 83. This was done before Ranch personnel knew NPPD people were on the property. They were immediately allowed to leave, and the gates were promptly locked to keep them out again.

The lawsuit challenges NPPD authority to take the action it initiated. It contends NPPD overtly “lied” about its intentions to enter on the property without court permission.

No hearing date has been scheduled. The lawsuit notes that ranch owners have notified the Nebraska Attorney General of their lawsuit.

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