The Niobrara River

The Eighth Circuit has rejected a claim by farmers in Nebraska's Niobrara Watershed that their civil rights were violated when the state's Department of Natural Resources issued "Closing Notices" ordering them to stop drawing water. The farmers asserted that they were entitled to a due process hearing before the property rights granted by their state-issued surface water appropriation permits could be cut off. The court, however, found that their property rights had not been infringed. Nebraska is a prior appropriation state, and the complaining farmers' water rights were junior to those of the Nebraska Public Power District. Junior appropriators have the right to use water only when there is enough to supply all senior appropriators. Therefore, the court held, "the issuance of Closing Notices does not impact the property right bestowed by the permit to use the surface water when there is sufficient capacity." Since no property right was affected, the farmers were not entitled to a pre-closing hearing.