the parental preference doctrine and conclude that Alicia had a superior right to custody of Jaime. If the court had given proper legal effect to the acknowledgment, the court would have viewed both Cesar and Alicia as legal parents to Jaime, and the issues in this case would have, and should have, been considered within this legal framework. The orders of August 19 and September 16, 2010, are reversed. Because our finding of plain error resolves this appeal, we need not consider the assignments of error raised by the parties.

## CONCLUSION

We conclude that the district court erred when it failed to give proper legal effect to the acknowledgment of paternity that was signed by Cesar and Alicia and notarized at the time of Jaime's birth, named Cesar as Jaime's father, and was not challenged by Alicia. The acknowledgment established Cesar as Jaime's legal father. See § 43-1409. We reverse the August 19 and September 16, 2010, orders regarding custody and other issues, and remand the cause to the district court for further proceedings. In the absence of a challenge to the acknowledgment, the court should consider the issues raised in this proceeding regarding custody and support within the framework that under the applicable statutes, Cesar is legally Jaime's father.

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.

HEAVICAN, C.J., not participating in the decision.
WRIGHT, J., not participating.

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# FRENCHMAN-CAMBRIDGE IRRIGATION DISTRICT, APPELLANT AND CROSS-APPELLEE, V. DEPARTMENT OF NATURAL RESOURCES, APPELLEE AND CROSS-APPELLANT.

801 N.W.2d 253

Filed July 29, 2011. No. S-10-608.

1. **Parties: Standing: Jurisdiction.** A party must have standing before a court can exercise jurisdiction, and either a party or the court can raise a question of standing at any time during the proceeding.

2. **Standing: Jurisdiction.** Standing relates to a court's power, that is, jurisdiction, to address issues presented and serves to identify those disputes which are appropriately resolved through the judicial process.
3. **Standing.** Under the doctrine of standing, a court may decline to determine merits of a legal claim because the party advancing it is not properly situated to be entitled to its judicial determination. The focus is on the party, not the claim itself.
4. **Standing: Jurisdiction.** Standing requires that a litigant have such a personal stake in the outcome of a controversy as to warrant invocation of a court's jurisdiction and justify exercise of the court's remedial powers on the litigant's behalf.
5. **Standing: Proof.** To have standing, a litigant must clearly demonstrate that it has suffered an injury in fact. That injury must be concrete in both a qualitative and temporal sense. The complainant must allege an injury to itself that is distinct and palpable, as opposed to merely abstract, and the alleged harm must be actual or imminent, not conjectural or hypothetical.
6. **Standing: Statutes: Presumptions: Legislature: Intent.** If mere interest in the outcome of an application was all that was necessary for standing, then every citizen of the state would have standing to object to an application. In construing a statute, it is presumed that the Legislature intended a sensible rather than an absurd result.
7. **Standing: Jurisdiction.** The requirement of standing is fundamental to a court's exercising jurisdiction, and litigants cannot confer subject matter jurisdiction on a judicial tribunal by either acquiescence or consent.

Appeal from the Department of Natural Resources. Appeal dismissed.

Jeanelle R. Lust and Katherine S. Vogel, of Knudsen, Berkheimer, Richardson & Endacott, L.L.P., for appellant.

Jon Bruning, Attorney General, Justin D. Lavene, and Marcus A. Powers for appellee.

HEAVICAN, C.J., GERRARD, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ., INBODY, Chief Judge, and MOORE, Judge.

HEAVICAN, C.J.

## INTRODUCTION

The Frenchman-Cambridge Irrigation District (FCID) appeals from the decision of the Department of Natural Resources (DNR) denying FCID's petition to reevaluate relevant portions of the Republican River Basin to determine if such areas are overappropriated. FCID challenges the DNR's interpretation of the term "interstate cooperative agreement" as it appears in Neb.

Rev. Stat. § 46-713(4)(a) (Reissue 2010). FCID alleges that the status of the basin should be changed from "fully appropriated" to "overappropriated," which would allow the DNR to assert more authority over the basin. Section 46-713(4)(a), as interpreted by the DNR, allows the DNR to declare a river basin "overappropriated" only if it was subject to an "interstate cooperative agreement" as of July 16, 2004. The Republican River Basin is currently subject to an "interstate compact," which FCID claims is the equivalent of an "interstate cooperative agreement." The DNR has cross-appealed, alleging that FCID failed to demonstrate an injury in fact for standing purposes. We find that FCID does not have standing, and we therefore dismiss the cause for lack of jurisdiction and do not reach the merits of the litigation.

## FACTS

### *Republican River Basin "Interstate Compact."*

FCID holds surface water appropriations for purposes of irrigation within the Republican River Basin. The basin has been the subject of an interstate compact between Colorado, Kansas, and Nebraska since 1943, the Republican River Compact (Compact).[1] On January 19, 1999, the U.S. Supreme Court granted Kansas' motion for leave to file a bill of complaint alleging that Nebraska was using more than its share of water, as per the 1943 Compact.[2] The special master assigned to the case found that ground water depletions to streamflow should be accounted for. In early 2002, the states notified the special master that they had reached a settlement. The parties filed the final settlement stipulation (FSS) with the special master, who recommended approval. The U.S. Supreme Court approved the FSS on May 19, 2003.[3] The FSS was signed by the governors and attorneys general of the three states.

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[1] See, e.g., Pub. L. No. 78-60, 57 Stat. 86 (1943); 2A Neb. Rev. Stat. appx. § 1-106 (Reissue 2008).

[2] *Kansas v. Nebraska*, 525 U.S. 1101, 119 S. Ct. 865, 142 L. Ed. 2d 767 (1999).

[3] *Kansas v. Nebraska*, 538 U.S. 720, 123 S. Ct. 1898, 155 L. Ed. 2d 951 (2003).

The Compact and the FSS require that water usages of each state fluctuate depending on the water available each year. During wet years, each state has more available water, while during dry years, the states have less. The Compact and the FSS therefore require that Nebraska live within its allocation of the Republican River Basin supply.

*Platte River Basin "Interstate Cooperative Agreement."*

In contrast, the Platte River Basin is subject to an "interstate cooperative agreement" between Nebraska, Wyoming, and Colorado. The interstate cooperative agreement is a voluntary agreement between the three states. The states entered into the first cooperative agreement in 1997, and then entered into a second agreement in 2006. The cooperative agreements apparently require Nebraska to return to 1997 levels of water usage for the Platte River Basin. That agreement, which is now called the Platte River Recovery Implementation Program, does not apply to the Republican River Basin.

*L.B. 962.*

The Nebraska Legislature enacted 2004 Neb. Laws, L.B. 962, in order to address the determination of fully appropriated and overappropriated river basins. L.B. 962 was intended to implement changes in Nebraska's water policy. The law was also intended to "modify the existing law to be more proactive and requirement [sic] certain management actions be taken jointly by the department and natural resources district in basins that are declared to be over appropriated (currently this would be the Platte River Basin above Elm Creek) or fully appropriated."[4] L.B. 962 modified and expanded the Ground Water Management and Protection Act, Neb. Rev. Stat. §§ 46-701 to 46-754 (Reissue 2004), which includes the statutes at issue in this case.

As part of the changes brought about by L.B. 962, the DNR was required to designate, within 60 days of July 16, 2004, which river basins were overappropriated under § 46-713(4)(b).

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[4] Introducer's Statement of Intent, L.B. 962, Committee on Natural Resources, 98th Leg., 2d Sess. (Jan. 21, 2004).

On September 14, 2004, the DNR designated portions of the Platte River Basin as overappropriated. In contrast, in 2004, portions of the Republican River Basin were declared fully appropriated pursuant to § 46-720(3)(b).

*FCID's Petition for Reconsideration.*

FCID is an irrigation district organized under Nebraska's irrigation district laws, Neb. Rev. Stat. §§ 46-101 to 46-1,163 (Reissue 2010). As noted, FCID owns water rights for surface water natural flow within the Republican River Basin for irrigation purposes and receives supplemental stored water from federal reservoirs. As an irrigation district, FCID provides surface water for irrigation purposes and is dependent upon the surface water supply of the basin. Because FCID supplies surface water for irrigation in the basin, the parties stipulated that it is an "interested" party under § 46-713(2)(a) (Reissue 2010) and had standing to request a reevaluation of relevant portions of the basin.

On February 27, 2009, FCID filed a petition requesting the DNR to reevaluate a portion of the Republican River Basin according to the criteria in § 46-713. FCID asked the DNR to determine whether the basin met the criteria to be considered "overappropriated" rather than "fully appropriated." FCID claimed the basin should be reclassified.

With its petition, FCID filed information showing that (1) new scientific data or other information relevant to the determination of whether the Republican River Basin was fully appropriated or overappropriated had become available since the basin was last appropriated, (2) the DNR had relied on incorrect or incomplete information since the basin had last been evaluated, and (3) the DNR had erred in its interpretation or application of the information available when the basin had last been evaluated.

In its order denying FCID's petition to reevaluate the Republican River Basin, the DNR noted that it was authorized to reevaluate a river basin under § 46-713(2) if it had reason to believe that a reevaluation might lead to a different determination. However, the DNR stated that the criteria for determining whether a basin is overappropriated under § 46-713(4)(a)

had nothing to do with a scientific or technical determination of any sort: "The criteria are satisfied only when the State of Nebraska and the [DNR] had taken certain actions on or before July 16, 2004, i.e., entered into an interstate cooperative agreement, declared a moratorium on surface water appropriations, and requested a moratorium on ground water well construction permits."

The DNR stated that it did not interpret the term "interstate cooperative agreement" to include interstate compacts. In support of its reasoning, the DNR cited the fact that the Ground Water Management and Protection Act refers to both "interstate compacts" and "interstate cooperative agreements" and that the two terms are not used interchangeably.

The DNR found that the FSS approved by a decree of the U.S. Supreme Court regarding the Republican River Basin was not an interstate cooperative agreement, but was part of the original interstate Compact.[5] Because the basin was not the subject of an "interstate cooperative agreement," the DNR could not find that the basin was overappropriated. FCID appeals from that determination.

*DNR's Cross-Appeal.*

On cross-appeal, the DNR argues that FCID has failed to allege sufficient facts to establish an injury in fact. Although the parties stipulated that FCID was an interested party, the DNR argues that our recent decision in *Central Neb. Pub. Power Dist. v. North Platte NRD* (*Central*)[6] requires an irrigation district to allege an injury in fact, rather than a mere interest in water rights. FCID argues that § 46-713 provides that any "interested" party may request a reevaluation, and that the stipulation overrides any potential insufficiencies in the record.

## ASSIGNMENTS OF ERROR

FCID contends that the DNR's interpretation of § 46-713(4) is wrong for three reasons: (1) The Compact and the 2002 FSS

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[5] See *Kansas v. Nebraska, supra* note 3.

[6] *Central Neb. Pub. Power Dist. v. North Platte NRD*, 280 Neb. 533, 788 N.W.2d 252 (2010).

should satisfy the condition of the statutes; (2) under Neb. Rev. Stat. § 61-206(1) (Reissue 2009), the DNR has broad authority to reevaluate the appropriation status of a river basin; and (3) in so refusing to reevaluate the Republican River Basin, the DNR has interpreted § 46-713(4) in a manner that violates the prohibition in Neb. Const. art. III, § 18, against special legislation. On cross-appeal, the DNR assigns as error that it found that FCID had alleged sufficient facts to demonstrate an injury in fact for standing purposes.

## STANDARD OF REVIEW

[1] A party must have standing before a court can exercise jurisdiction, and either a party or the court can raise a question of standing at any time during the proceeding.[7]

## ANALYSIS

[2-4] We first address the DNR's claim on cross-appeal that FCID lacks standing because it did not plead an injury in fact. Standing relates to a court's power, that is, jurisdiction, to address issues presented and serves to identify those disputes which are appropriately resolved through the judicial process.[8] Under the doctrine of standing, a court may decline to determine merits of a legal claim because the party advancing it is not properly situated to be entitled to its judicial determination. The focus is on the party, not the claim itself.[9] And standing requires that a litigant have such a personal stake in the outcome of a controversy as to warrant invocation of a court's jurisdiction and justify exercise of the court's remedial powers on the litigant's behalf.[10]

[5] The DNR cites *Central*,[11] a case we decided after the DNR issued its final opinion in this case. Although FCID and the DNR stipulated to the fact that FCID was an interested

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[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.*

party, the DNR argues that *Central* requires FCID to plead an injury in fact in order to have standing. In *Central*, we stated that

> a litigant first must clearly demonstrate that it has suffered an "'"injury in fact."'" That injury must be concrete in both a qualitative and temporal sense. The complainant must allege an injury to itself that is distinct and palpable, as opposed to merely abstract, and the alleged harm must be actual or imminent, not conjectural or hypothetical.[12]

FCID argues that § 46-713 allows any "interested" party to request reevaluation of a river basin. FCID claims that it is an entity with a specific interest in the appropriation status of the Republican River Basin because it holds surface water appropriation rights within that basin. FCID also claims that if the basin is overappropriated, its own appropriation rights will not be satisfied and it will not be able to generate as much revenue. FCID argues that it relied on the DNR's stipulation and therefore did not present evidence of an injury in fact. FCID distinguishes its case from that of *Central*, because in *Central*, the parties did not stipulate that Central Nebraska Public Power and Irrigation District was an interested party.

The DNR argues that *Central* changed the traditional understanding that irrigation districts have standing by virtue of holding water rights. The DNR contends that we now require that a party state an injury in fact in order to have standing. The DNR cites *Metropolitan Utilities Dist. v. Twin Platte NRD*[13] to support its contention that the use of "interested party" in a statute does not supplant the common-law understanding of standing.

[6] In *Metropolitan Utilities Dist.*, we discussed Neb. Rev. Stat. § 46-233 (Reissue 1993), which provided that "[a]ll interested parties" be allowed to testify and present evidence in a public hearing regarding an application for appropriation of

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[12] *Id.* at 542, 788 N.W.2d at 260.

[13] *Metropolitan Utilities Dist. v. Twin Platte NRD*, 250 Neb. 442, 550 N.W.2d 907 (1996).

induced ground water recharge. We stated: "If mere interest in the outcome of an application was all that was necessary for standing, then every citizen of the state would have standing to object to an application. In construing a statute, it is presumed that the Legislature intended a sensible rather than an absurd result."[14] The DNR argues that the same logic applies to the present case and that "interested party" does not supplant the common-law definition of standing in § 46-713.

We recently had cause to address the definition of an "interested" party as it appears in § 46-713(2). In *Middle Niobrara NRD v. Department of Nat. Resources*,[15] we discussed what was necessary to be considered an interested party and determined that the natural resources districts were interested parties because they were asserting the rights of the taxpayers whose interests were represented. Specifically, we reasoned that the DNR's action triggered duties for the natural resources districts that would require the entities to spend public funds.[16] And the natural resources districts alleged that the action of the DNR required regulatory measures that would be costly to the taxpayers in their districts.[17]

Here, FCID is not asserting the rights of taxpayers, however, and it has not alleged any specific injury it suffered when the DNR did not declare the river basin overappropriated. FCID alleged only that *if* the basin is overappropriated, its appropriation rights will not be satisfied and it will not be able to raise enough revenue. FCID did not claim that its appropriation rights are currently unsatisfied or that it has not been able to raise enough revenue. This case is more akin to that of *Central*, in which the speculative nature of the irrigation district's claims was insufficient to plead an injury in fact, which is imperative to standing.

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[14] *Id.* at 451, 550 N.W.2d at 913.

[15] *Middle Niobrara NRD v. Department of Nat. Resources, ante* p. 634, 799 N.W.2d 305 (2011).

[16] *Id.*

[17] *Id.*

[7] The requirement of standing is fundamental to a court's exercising jurisdiction, and litigants cannot confer subject matter jurisdiction on a judicial tribunal by either acquiescence or consent.[18] In this case, FCID and the DNR stipulated to standing, but FCID made no claim that it had suffered an injury in fact. Because FCID did not plead an injury in fact, it does not have standing and we do not have jurisdiction over FCID's claims.

## CONCLUSION

FCID has failed to plead an injury in fact and therefore has not established standing. Without standing, we have no jurisdiction over FCID's claims, and we therefore dismiss for lack of jurisdiction.

APPEAL DISMISSED.

WRIGHT and CONNOLLY, JJ., not participating.

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[18] *State v. Baltimore*, 242 Neb. 562, 495 N.W.2d 921 (1993).

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RONALD FRY, APPELLANT, V.
JANET R. FRY, APPELLEE.
800 N.W.2d 671

Filed July 29, 2011. No. S-10-698.

1. **Judgments: Statutes: Appeal and Error.** Statutory interpretation is a matter of law in connection with which an appellate court has an obligation to reach an independent, correct conclusion irrespective of the determination made by the trial court.

Appeal from the District Court for Douglas County: THOMAS A. OTEPKA, Judge. Affirmed.

David A. Domina and, of Counsel, Mark D. Raffety, of Domina Law Group, P.C., L.L.O., for appellant.

Susan A. Anderson and Molly M. Blazek, of Anderson & Bressman Law Firm, P.C., L.L.O., for appellee.

HEAVICAN, C.J., CONNOLLY, GERRARD, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.