

NRDs seeking direction for repayment of LB 701 property taxes

By Russ Pankonin

The Imperial Republican

District Court Judge David Urbom of McCook will hear a motion today (Thursday) on whether unconstitutional property taxes collected under LB 701 can be repaid.

The three natural resources districts (NRDs) in the Republican River Basin each filed suit against parties seeking refunds for the property taxes.

By filing suit, the NRDs sought direction from the courts on whether they can refund the LB 701 property taxes, and if so, how.

Tax created in LB 701

In 2007, LB 701 created a special 10-cent levy that NRDs in the basin could collect to assist with paying for compact compliance activities.

More than \$1.13 million was collected by the Upper Republican NRD to help pay for bonds to be issued for the purchase of surface water from irrigation districts. The Middle and Lower Republican also collected property taxes.

Before that money could be used, a McCook-based group, Friends of the River, challenged the constitutionality of the tax.

A Lancaster County District Court judge ruled the tax was unconstitutional because the tax only applied to a closed class—the Republican Basin.

On appeal, the Nebraska Supreme Court then ruled the tax was unconstitutional because it was a local tax collected for a state purpose—compact compliance.

The Supreme Court did not address the closed class ruling of the district court.

Suit seeks direction from court

Efforts to refund the property taxes last year stalled when it was learned Nebraska had no statutes on how to refund such a tax and to whom.

The Legislature did not advance a bill last year that would have addressed the issue because senators believed it jeopardized property tax funding for schools.

As a result, the three basin NRDs filed suit against petitioners in an effort to get direction from the court.

The NRDs were successful in getting the three suits combined, so that the same judge would hear all three suits at the same time.

The URNRD's legal counsel, Joel Burke, told the board at their monthly meeting Thursday, Jan. 14, that they are seeking a summary judgment to make the refunds.

He said there will be no live testimony given, with written affidavits submitted instead. The parties will also submit briefs urging the refund and the process to do so.

If the judge doesn't approve the refunds, then the NRDs are asking what can be done with the excess funds.

State Senator Mark Christensen of Imperial introduced new legislation to address the refunds if the court delays a ruling or it is not favorable for the NRDs.

Compliance options

URNRD manager Jasper Fanning said the Department of Natural Resources has outlined in a letter time lines they would like the basin NRDs to follow in adopting plans for water-short year

regulations.

Fanning said the time lines are far too short and they have notified DNR that the earliest the board could address an integrated management plan with the regulations would be late February or early March.

He said DNR has acknowledged the new time lines and is willing to work with the NRDs.

Mike Clements, manager of the Lower Republican NRD, said their board has developed a fourth option to address the needs of their district.

They have submitted the plan to DNR for review and withheld any comments on their plan until DNR responds to them.

The URNRD and MRNRD are both looking for alternatives to just pure regulation, as proposed by DNR.

Augmentation study continues

Fanning told the board that the areas identified for an augmentation project appear to have little effect on Republican River flows.

While that is positive, he said more study must be completed to see if any draw down would occur in the area near the project.

Hopes look slim for capturing water from a purification project at the Hastings ammunition dump for augmentation purposes.

The Little Blue NRD said they prefer to keep the water for in-district use rather than selling it for transfer into the Republican Basin.

Pelster remains chair

During the board reorganization of officers, Greg Pelster of Elsie was re-elected as the board chair.

Terry Martin of Haigler was re-elected as vice-chair and Tom Terryberry of Imperial was re-elected as the secretary/treasurer.