

By Russ Pankonin

The Imperial Republican

Nebraska officials liked what they saw in a draft report released last week by Special Master William J. Kayatta on the dispute between Nebraska and Kansas regarding water usage in the Republican River Basin.

Although the report is still subject to further revision after oral comments by counsel for both states Jan. 24, it appears Nebraska will prevail on a number of issues contested by Kansas.

Kansas sued to have Nebraska retire 300,000 irrigated acres in the basin permanently. Along with that, they wanted up to \$80 million in damages for water use in 2006.

While Kayatta did find that Kansas was entitled to some relief for Nebraska failing to meet the 2006 compliance test, he proposed damages of only \$5 million.

Perhaps even more important, the draft from Kenyatta rules that all of Kansas' remaining requests for relief, including requests for injunctive relief, sanctions and appointment of a River Master, should be denied.

Nebraska Attorney General Jon Bruning said the report represents a positive step for "our basin irrigators who have worked hard to keep Nebraska in compliance with the Compact on an annual basis since 2007."

While Bruning thought the \$5 million award was still too high, he was pleased that Kansas' request for \$80 million in damages would be denied.

Nate Jenkins, assistant manager at the Upper Republican Natural Resources District (URNRD), said the draft appears to give Nebraska a favorable outcome.

In addition, it would limit Kansas from seeking further relief, such as forcing the shutdown of irrigation wells in the basin.

Joe Anderjaska of Hayes Center, president of the Nebraska Association of Resources Districts and a Middle Republican NRD board member, praised the efforts of the governor, the Nebraska Department of Natural Resources and Bruning's legal team.

They deserve praise for their diligent efforts to defend Nebraska's economy and the right to use water in the basin, he said.

He also praised groundwater irrigators in the basin for their compliance with regulatory actions and willingness to work with the NRDs and the State of Nebraska.

"The local NRDs will continue to support the local economy of Nebraska while also providing adequate regulations to protect the water resources," he said.

Other recommendations

Kayatta also issued several other recommendations in the draft report. They include:

- Republican River Compact Administration (RRCA) Accounting Procedures should be corrected for accounting years after 2006 so that Nebraska is not charged with the consumption of Imported Water Supply as if it were Virgin Water Supply. The specific terms of the technical correction should be established by subsequent order.
- 100 percent of the evaporation from Harlan County Lake during 2006, as calculated under the RRCA Accounting Procedures, should be charged to Kansas.
- Kansas' request that Nebraska be found in contempt should be denied.

One topic that wasn't included in the lawsuit was the amount of credit Nebraska should receive for water added to the stream flow through augmentation.

Jenkins said it's possible that issue could go to arbitration. The URNRD has an augmentation

project ready to come online in early February.

In addition, a newly-formed group of NRDs in the Republican and Platte Basins have joined together to purchase 16,000 acres of land in Lincoln County.

Their plans call for retiring irrigation and use the water for streamflow augmentation to assist compliance efforts with Kansas.

Two surface water irrigation districts in the Republican Basin, Frenchman Cambridge Irrigation District and Bostwick Irrigation District, have filed suit to stop the project from being implemented.

Correction

In last week's NRD story about proposed allocations, The Imperial Republican stated water use for 2012 was around 12 inches.

That figure was incorrect. Water use in the district for 2012 was around 18 inches.