

By Russ Pankonin

The Imperial Republican

A lawsuit filed in late 2012 to stop four Nebraska natural resource districts (NRDs) from using augmentation projects for compliance purposes was dismissed by U.S. District Judge Joseph Batallion Tuesday.

The suit was brought by the Frenchman Cambridge Irrigation District (FCID), headquartered in Cambridge, and the Nebraska Bostwick Irrigation District (NBID), headquartered in Red Cloud. They were joined by three board members of FCID, Dale Cramer, Jay Schilling and Steve Henry.

The plaintiffs have 30 days to appeal the decision to the 8th Circuit Court of Appeals. They could also file the suit in a lower Nebraska court.

They asked for injunctive and declaratory relief to stop the augmentation projects. They claimed the projects interfere with stream flow and keep the districts from obtaining the water outlined in contracts with the U.S. government.

The suit also named the Upper Republican Natural Resources District (URNRD), Gov. Dave Heineman, Department of Natural Resources Director Brian Dunnigan, N-COPRE, which includes four Nebraska NRDs, and five federal agencies and officials.

In his order, Judge Batallion said the plaintiffs didn't have standing to sue federal officials and agencies.

He said the Eleventh Amendment to the U.S. Constitution protects the federal government from suits, unless it waives its right to that protection.

Lincoln Attorney Don Blankenau defended the URNRD and N-COPRE in the proceedings. He said the plaintiffs could still appeal the decision or re-file in state court.

However, he felt confident the outcome wouldn't be any different since the issue of standing would still be in question.

In addition, Batallion said the irrigation districts and board members failed to show conclusively if they had been damaged, and if so, how much that damage represented.

Batallion left the door open for the plaintiffs to bring further action.

While the federal agencies are entitled to immunity in the case, he noted "it appears that the NRD defendants are not arms of the state entitled to immunity, but rather are political subdivisions subject to suit."

Course unknown at this time

David Domina of Omaha, the attorney for the plaintiffs, said late Tuesday he hadn't visited with his clients yet on the ruling.

As a result, he didn't know what course of action they might take.

He noted the two irrigation districts exist by virtue of federal reclamation laws. These laws also obligate the districts to pay the government for use of the water along with other operating costs.

"Without water they cannot do so. Without water, they are out of business and their water users are unable to engage in farming with a reliable supply of life-giving water for their crops and livestock," he said.

He said the Federal Court decided against wading into what it perceives as a need for Nebraska to address and resolve water policy issues that have not had comprehensive attention.

Patchwork statutes and fragmentary solutions have caused the delays that now make policy decisions more difficult, and, for many people, much more urgent, he noted.

He hopes one day soon, state elected officials “will see, address and discharge the responsibility to establish comprehensive water policy.”

Big news for N-CORPE

Barring an appeal or the re-filing of the suit in the Nebraska court system, the dismissal represents good news for N-COPRE.

The interlocal agency was formed to purchase 19,000 acres of irrigated land in Lincoln County. Irrigation will be retired, with groundwater being pumped to augment stream flows for compact compliance issues in both the Republican and Platte River Basins.

Jasper Fanning, URNRD manager, is optimistic the dismissal will halt efforts to stop N-CORPE from developing and operating the augmentation project in Lincoln County.

While N-CORPE obtained bond financing for the land purchase, the lawsuit has blocked efforts to sell bonds to cover infrastructure costs.

If no further appeal or re-filing of the suit occurs, Fanning said they should be able to sell bonds to cover the cost of infrastructure needed for the project.

This would result in significant interest savings if they are able to do so, Fanning said.