

By Russ Pankonin The Imperial Republican

Deputy Attorney General David Cookson brought some good news to last week's Upper Republican Natural Resources District meeting.

Cookson said the U.S. Department of Justice (DOJ) filed a favorable brief with the U.S. Supreme Court on the Special Water Master's November 2013 ruling.

Last fall, the Water Master ruled on a number of issues in the ongoing fight between Kansas and Nebraska over the water in the Republican River.

Cookson said the DOJ backed up the Water Master's ruling in favor of Nebraska on two key points.

First, the DOJ said Kansas is not entitled to its demand that Nebraska permanently shut down 302,000 irrigated acres.

When Kansas filed its suit for relief in May 2010 they sought an injunction to shut down wells irrigating more than 300,000 acres in the Republican Basin.

Secondly, the DOJ supported Nebraska's claim to adjust the compact accounting of water supply to include "imported water" from the Platte River basin to the Republican River basin.

Each year, the Republican River Basin's water supply is boosted by imported water from the Platte River Basin.

This water comes into the basin from the seepage of water from Platte River irrigation canals at the edge of the Republican Basin.

This "imported water" accumulates annually in an area referred to as the "mound" because the water "mounds" up underground.

The amount of water in the mound ranges anywhere from 6,000 to 10,000 acre-feet.

The 2002 settlement stipulated use of imported water would not be charged against Nebraska's consumption.

Since 2006, Nebraska has contended the groundwater accounting model incorrectly charged this use against Nebraska. The special master agreed and said all accounting from 2007 to present must be refigured.

One thing the DOJ did side with Kansas on was the special master's ruling that Nebraska owed Kansas \$5.5 million in damages for overuse. However, that amount was far below the \$80 million Kansas originally sought.

Nebraska had claimed the damages should be limited to \$3.3 million.

Cookson said the brief also reinforced the integrated management plans being used by the Republican Basin NRDs to ensure compliance with the compact settlement ratified by the U.S. Supreme Court in 2003.

That shows the state and the NRDs are on the right track to manage water in the basin for compliance purposes.

Cookson said his office met with the DOJ after the Water Master's ruling, asking for them to support Nebraska. Kansas did the same. However, neither knew whether the DOJ would weigh in on the ruling.

He said he was surprised the DOJ did take a position and secondly that it would be a position different than another government agency—the Bureau of Reclamation.

"This is a good turn of events," he told the board.

The U.S. Supreme Court must still approve the Special Water Master's report. That is expected to occur sometime during 2014.

Rule changes

The URNRD board discussed possible rule changes, with the goal of taking them to hearing in June.

Changes under consideration would address the allocation of tracts that are in a pool but will be removed from the pool due to a change in ownership of the tract.

In addition, the distance limit on transfers, which is now limited to be within a floating township, could expand.

In such cases, historical use and distance of the old and new withdrawal points will serve as factors in determining the amount of allocation and carryforward that would be forfeited.

Condemnation by N-CORPE

Manager Jasper Fanning said N-CORPE had to resort to condemnation proceedings on one property along the creek where the augmentation project water will flow.

Fanning said three larger culverts need to be installed along the water route to accommodate the size of the flow. That will be completed once they get authority to do so.

He said the project has been operating and could be at full capacity once all necessary culverts are replaced.