Eastern Nebraska feeling significance of water issues

By Russ Pankonin
The Imperial Republican

The recent decision by the Nebraska Department of Natural Resources (DNR) to reverse its stance of a fully-appropriated Lower Platte will have little if any effect on the Republican River Basin.

In late March, DNR reversed an earlier decision to declare the Lower Platte as fully appropriated.

Natural resources districts in the basin joined forces to contest the declaration. If implemented, the ruling would have significantly limited further irrigation development in that basin.

Eight NRDs hired consultants and proved the methodology used by DNR to determine the designation was flawed.

While the decision will keep the basin from a fully-appropriated designation this year, it's possible things could change in the future.

DNR makes an annual assessment of each basin in the state to determine whether it's fully- or over-appropriated.

The Republican Basin has been declared fully-appropriated since the early 2000s as a result of the Kansas-Nebraska Compact settlement.

Upper Republican NRD Manager Jasper Fanning said it's unlikely the Republican Basin will ever move out of the designation because of the compliance issues with Kansas over the 2002 settlement.

The situation in the Republican Basin is far different than the Lower Platte because of the compact and efforts to comply with the settlement.

The Upper Republican NRD has been under water controls for nearly 30 years so people in the district understand water issues.

Fanning said the process in the Lower Platte developed a new understanding in eastern Nebraska about the significance of water issues in the state—the significance irrigators in the URNRD have understood for years.

While the Lower Platte faces different issues than the Republican Basin, Fanning said they still have to deal with water issues in that region of the state.

He's hoping the current situation enlightens eastern Nebraska interests, especially in the Legislature, of the plight being faced in the Republican Basin.

Dan Smith, manager of the Middle Republican NRD in Curtis, said the state realized their data in the Lower Platte was incorrect and backed off their earlier decision.
problems.

He's hoping this process will begin opening some minds about the importance of water issues in the entire state.

Fanning attends arbitration trial

Fanning went to Denver, Colo., recently to sit in on every day of the arbitration trial between Kansas and Nebraska.

The trial ran from March 9 through March 19.

In a preliminary ruling in late December, 2008 by arbitrator Karl J. Dreher, Nebraska and its irrigators got two key rulings in their favor from Dreher.

The two rulings addressed damages due Kansas by Nebraska's non-compliance with the

compact in 2005 and 2006, and the accounting methods used to determine compliance.

Both Nebraska and Kansas made their case in front of Dreher in the arbitration trial.

Fanning said Nebraska made a good case on the damage issue and the accounting issue.

Kansas originally sought damages based on the gain Nebraska got from its alleged overuse of water. Estimates as high as $75 million had been tossed out by Kansas.

However, in December, Dreher ruled Kansas could only seek the actual damages it suffered. As a result, the burden of proof fell on Kansas.

Fanning said Nebraska's counsel made a good case on the damage issue, which is projected to be anywhere from $1 to $9 million for 2005 and 2006.

In terms of the compact accounting issues, Fanning said the testimony proved highly technical but illustrated the problems with calculating the virgin water supply for compact compliance purposes.

One issue remains outstanding, he noted.

The Bureau of Reclamation is serving as an expert witness for Kansas.

Bureau officials must still go through the deposition process which will lead to another one to two days in court.

Fanning said it's unusual for a government entity to take sides in a case between states.

Nebraska has raised their objection and Fanning said Nebraska's congressmen have been apprised of the situation, as well.

Fanning noted the arbitration trial is still non-binding on Kansas. However, the trial lays the foundation if Kansas decides to take the issue to the U.S. Supreme Court.

A decision by Dreher will come sometime in June.

Frankly, Smith said he was surprised DNR backed off on the designation. But more importantly, he said it proves the process does work.

Like Fanning, Smith said eastern Nebraska is beginning to feel some of the pain from water issues that western Nebraska has experienced for years.

Smith said they've tried to talk to the Legislature and other leaders in eastern Nebraska about the issues being faced out here.

Until now, he said the general attitude has been that western Nebraska has to deal with their own