

Irrigation district sues to set aside new NRD water management plans



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The Frenchman-Cambridge Irrigation District (FCID) made good on its threat to sue the Upper Republican Natural Resources District (URNRD) over its new integrated management plan (IMP).

The URNRD isn't alone in the suit. FCID included the Middle and Lower Republican NRDs, the Department of Natural Resources and its director and the Nebraska attorney general in the suit filed in Lancaster District Court Jan. 7.

The suit comes prior to this year's Jan. 16 date when the new IMPs officially take effect. The three NRDs approved similar IMPs after public hearings in late 2015. DNR Director Jeff Fassett signed off on the new plans.

During testimony at the URNRD's Nov. 17 public hearing on the new IMP, FCID Manager Brad Edgerton all but assured the NRD they would sue if the new IMP was approved.

He offered the same threat to the other NRDs during their public hearings.

FCID is contesting the new IMPs on the basis that restrictions on groundwater pumping reductions were eased in the new plan.

Edgerton told the URNRD board that reducing the pumping standards "will put your NRD, your farmers, our irrigation district, our farmers, and the state on a collision course with a damaging outcome."

The Bureau of Reclamation, also testified against the plan. Aaron Thompson, area manager of the Bureau's Nebraska-Kansas area office in McCook, said they too were "reserving all objections and remedies" if the proposed IMP was adopted. While local NRDs regulate groundwater pumping in the state, DNR administers the state's surface water.

In 2013 and 2014, DNR delivered FCID surface water to Kansas to remain in compliance with a 2002 compact settlement. As a result, surface water irrigators lost some or all of their water in those years.

FCID has already filed suit against DNR and the state to recover the damages suffered by the loss of water those two years.

FCID wants IMPs set aside

During the November hearing, Edgerton said his surface water irrigators were "victims of decisions necessitated by over-pumping groundwater." FCID contends upstream groundwater pumping, especially in the Upper and Middle Republican NRDs, has depleted streamflow that would otherwise be available to their irrigators.

They have requested the court to issue a stay to prevent the IMPs from taking effect Jan. 16. Moreover, they want the new plans to be declared invalid.

They contend the IMPs are invalid for several reasons, the first being that the plans are unconstitutional.

The suit also notes the current IMPs, which are still in effect until Jan. 16, were used by the state as a basis to defend itself in lawsuit filed by Kansas in the U.S. Supreme Court.

The current IMPs require a 25 percent reduction in groundwater pumping from the baseline period of 1998-2002.

In early 2015, Nebraska received a favorable ruling by the U.S. Supreme in the suit brought by Kansas.

In its suit, FCID contends the Supreme Court ruling prohibits modifying the IMPs without the high court's approval.

FCID is also seeking damages of an unknown cost for having to maintain its canal delivery system in dry or under-utilized conditions.

They said their irrigators will face an emergency assessment to help cover these costs.

With reduced water supplies due to groundwater pumping, the district says it cannot generate enough income from water sales to meet federal lease obligations, resulting in further injury to the district.

Pumping versus depletions

The first IMPs developed after Kansas sued Nebraska and called for a 20 percent reduction in groundwater pumping in the basin from the baseline years of 1998-2002.

The current IMP increased that pumping reduction to 25 percent.

The new IMPs bring the pumping reductions back to the original 20 percent standard and shift the focus from reducing pumping to reducing streamflow depletions.

That's the result of two factors: augmentation projects and the accounting rule change won by Nebraska in the U.S. Supreme Court ruling.

The accounting change provides Nebraska an additional 10,000 acre-feet to work with towards compact compliance.

Even though the URNRD may not meet the pumping reduction standards for 2015, the augmentation pumping will still reduce streamflow depletion.

Going forward, DNR sees reducing streamflow depletion as more crucial for compact compliance with Kansas than the amount of water pumped. As a result, the pumping reductions moved back to the 20 percent standard.

The new IMP still includes a shutdown of wells in the 10-5 rapid response areas along the streams and rivers in the district if compliance isn't met.