

URNRD awaiting arbitration decision on Rock Creek credits

Written by Wauneta Breeze
Friday, 20 September 2013 17:24 -

By Russ Pankonin

The Imperial Republican

The Upper Republican Natural Resources District awaits an arbiter's decision on how much credit the NRD should receive on augmentation pumping from the Rock Creek project.

Attorneys with the Nebraska Attorney General's office presented their case, alongside Kansas state attorneys, to an arbitrator last August. The arbitration hearing was held in Denver, Colo.

During the URNRD's regular meeting Tuesday, Sept. 10, Manager Jasper Fanning said he expects a decision by the arbiter in the next four to five weeks.

Fanning said Nebraska's attorneys maintained a narrow focus in their arguments.

Nebraska is seeking full credit for the augmentation water pumped into the Republican River at Parks. Presently, the NRD and state gets 69 percent credit towards compliance for every acre-foot pumped.

N-CORPE, the five-member NRD group formed to develop a 19,000-acre augmentation project in Lincoln County, is also seeking 100 percent compliance credit for that project.

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Compliance credit for that project will be 54 percent for each acre-foot pumped.

Kansas has already denied that request so that issue will also go to arbitration.

While both states agreed on the arbiter for the Rock Creek issue, the arbitration is non-binding. That means if either state doesn't like the arbiter's decision, it can be appealed.

In that case, a special water master will be appointed by the U.S. Supreme Court to review briefs and hear arguments from both states. That could take up to 24 months, after which time the special master issues an order for the Supreme Court to review and rule on.

One issue between Nebraska and Kansas is already under consideration by a special master.

The scope of the water master's decision has been narrowed to whether or not Nebraska is entitled to additional water credits for 2005-06.

Nebraska has argued that the underground mound of water that builds up in the eastern end of the basin should be credited to Nebraska. This would result in a credit of about 8,000 acre feet towards compliance.

Fanning told the board the special master's ruling on the issue is expected in late September or early October. That ruling will be forwarded to the Supreme Court for oral arguments sometime next spring.

The Supreme Court takes all cases when states sue each other.

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Dundy County taxes

When the URNRD bought and developed nearly 4,000 acres in southwest Dundy County for an augmentation project, the issue of property taxes hadn't been settled.

According to Dundy County Assessor Joanna Niblack, taxes on the property amount to \$58,537 for 2012 and \$54,426 for 2013.

The Dundy County Board of Equalization determined the land was taxable, even though it was owned by the URNRD, a governmental subdivision.

The URNRD has appealed that decision to the Nebraska Tax Equalization and Review Commission (TERC).

Fanning said the URNRD believes the land is being used for a public purpose, since the augmentation benefits the entire district. If that's the case, it's not taxable.

Dundy County commissioners have met with the board and some of its committees on the issue.

However, nothing can be done while the appeal is awaiting action by TERC, Niblack said.

During last week's meeting, both Fanning and board member Tom Terryberry reiterated it's not the NRD's goal to stiff Dundy County.

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Terryberry said the desire of the board is to work with Dundy County “to keep them from holding the bag and to make them whole.”

Terryberry said there’s all kinds of rumors that the NRD is trying to get out of paying Dundy County. That’s just not true, he said.

Right now, state statute does not allow a government entity to pay property taxes.

Fanning said they hope to work with Dundy County to pay the tax money or do some kind of in-lieu of tax payment. However, that is not authorized by statute at this time either.

A TERC hearing on the issues is scheduled for Nov. 13.