

Kansas rejects decision on N-CORPE arbitration

Written by Wauneta Breeze
Thursday, 03 July 2014 15:43 -

Nebraska seeking

100 percent credit for

augmentation pumping

By Russ Pankonin

The Imperial Republican

It came as no surprise when Kansas officially rejected an arbiter's findings on the N-CORPE augmentation project in Lincoln County.

In May, Arbitrator Jeffrey C. Fereday issued his decision on whether Nebraska should receive full credit for pumping of the Lincoln County project.

Just as he ruled in the arbitration over the Rock Creek augmentation project in Dundy County, Fereday said Nebraska should receive full credit for the augmentation pumping in Lincoln County.

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The Lincoln County project was developed as a joint venture of four natural resource districts (NRD), that formed a joint public agency often referred to as N-CORPE. That stands for Nebraska Cooperative Republican Platte Enhancement Project.

The NRDs include the Upper, Middle and Lower in the Republican Basin and the Twin Platte in the Platte Basin.

Full credit heart of the issue

Nebraska and N-CORPE sought full credit for the augmentation pumping on the project. The water flows from the well field into Medicine Creek and then into Harry Strunk Lake northwest of Cambridge.

Presently, the state only receives 53.5 percent credit towards compact compliance with Kansas.

Jasper Fanning, manager of the Upper Republican NRD, said if Nebraska was getting 100 percent credit for the pumping on both the Rock Creek and Lincoln County projects, compact compliance would have already been met for 2014.

However, since Kansas has rejected the arbiter's decision in both instances, Fanning said they have to operate the projects as if they only receive the current credits. Credit for the Rock Creek project is 69.3 percent.

That means they must pump 20,000 acre feet of water from the Rock Creek project and 42,000 acre feet (AF) from the Lincoln County project to meet the necessary 36,000 AF to stay in compliance with Kansas.

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With 100 percent credit, Fanning said only 15,000 AF of water would have to be pumped from Rock Creek and 21,000 AF from Lincoln County.

Two options available

Colorado and Kansas also went to arbitration over Colorado's augmentation project in northeast Colorado.

After the arbitration, Kansas did agree to let Colorado pump the project at 10 percent credit for one year only.

Fanning said that since Kansas has rejected the crediting of the augmentation projects, only two options remain at this point.

One would be for the three states to come to some out-of-court settlement based on the arbiters' rulings.

The other would be for Nebraska and Colorado to bring an original action against Kansas in U.S. Supreme Court. That would mean the appointment of another special water master and two to three years of continued litigation.

High court to hear arguments on water master rulings

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There's still pending action before the U.S. Supreme Court over the ruling by the special water master dealing with a lawsuit Kansas filed against Nebraska in 2010.

In November, 2013 Special Master William Kayatta, Jr. ruled that Kansas was only entitled to \$5 million in damages versus the \$80 million they sought from Nebraska for non-compliance.

In addition, he said the compact accounting did not account for imported water that comes into the Republican River Basin as seepage from Platte River irrigation canals.

He also ruled that Kansas was responsible for all of the evaporation of water stored for their use in Harlan County Dam near Alma.

He also ruled that Kansas' demand for Nebraska to permanently shut down 302,000 irrigated acres should be rejected.

The U.S. Supreme Court just began its summer recess. Fanning said it's likely the arguments by the three states before the high court will take place sometime this fall.

He doesn't expect any ruling by the high court until sometime in 2015.

The imported water calculations could result in Nebraska getting credit for somewhere between 6,000 and 8,000 AF annually.

The evaporation calculations could provide up to another 8,000 AF annually. These amounts of water would be counted towards Nebraska's compliance if the Supreme Court rejects Kansas' arguments.