

Legal action considered against Corps

By **LINDA WUEBBEN**

Monday, June 06, 2011

NIOBRARA — The talk here still centers on flood water but like moving water, the focus has shifted.

A Saturday afternoon meeting facilitated by the **Domina Law Group** of Omaha gave Niobrara area residents an idea what could happen should they take legal action against the U.S. Army Corps of Engineers.

“There may be tools available to an organized group to take action against the Corps,” said **David Domina** of the **Domina Law Group**. “But first you need to realize the U.S. Army of Corps of Engineers is no different than the U.S. government and it’s hard to sue the government.”

The situation of the Niobrara flood victims is a little different than normal cases, **Domina** said. If they can prove they are being affected by the pooling of the water that comes from the east rather than being affected by the normal flow of the river and its current, it will be a definite advantage.

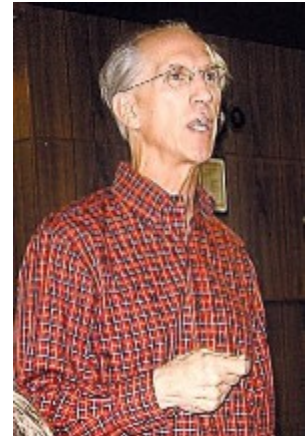
Domina said he believes pooling water versus passing water is the situation in Niobrara. The area is also unusual because the residents’ land is between two dams, which makes it different than flooding situations like those down river from Gavins Point Dam.

“Proving it was a man-made flood will be the main fight,” **Domina** said. “If you can prove there was a long-term policy to create forced relocation, give me that evidence.”

There are laws that protect individual citizens’ rights against forced occupation of their property by the government, **Domina** said.

A big tool will be the Fifth Amendment, which prohibits the taking of private property temporarily or permanently by the federal government without notification.

A lawsuit or tort case about the flooding of private property in the Niobrara area will not work, **Domina** said.



Linda Wuebben/
Correspondent

DAVID DOMINA, an Omaha attorney, discusses what would be necessary if residents around the Niobrara area would bring a lawsuit against the U.S. Army Corps of Engineers.

But, if it can be proved the Corps violated rules and regulations when working with the Missouri River, a takings claim can be made by those individuals who have lost property or revenue because of the releases at the major dams along the Missouri River.

The Missouri River Mainstem System annual operating plan, which was filed in December of 2010, will be an important document for the Knox County residents and attorneys if they chose to take legal action.

The document talks about the management of the river and the plan for 2011.

Pool elevation data for the Missouri River in the document will be considered carefully. It includes a river plan for situations like wet weather, dry weather, irrigation use and navigation downstream.

It also includes habitat management of the piping plover, least tern and the pallid sturgeon. **Domina** said what the Corps thought at the start of the year has certainly changed dramatically in the last few weeks.

There will be three things to remember as the process starts. **Domina** told residents assume no one will come to apologize. Then, he said don't necessarily believe anyone who does come to apologize because, finally, there will be scams, up and down the river, and they should be reported.

One person at Saturday's meeting told his story of moving 50 truckloads of ground onto property he purchased last year to elevate his home. He had to have it surveyed for elevation because of the Flood Control Act.

His home was placed one foot above flood stage and last week, he had two feet of water in his home and the river had not hit flood stage.

Domina said this man had a good chance for a claim. He reminded the property owners to have a legal description of property, lease agreements if any, elevation, and information about whether the property still there or down the river.

Residents need to begin immediately to build a case with evidence like the value of what was in the house.

Domina said to start taking photos immediately if possible and if not possible, scour family photos that will show what was in the house.

If owners had conversations with an employee of the Corps, write down what was said. Start by dating the document and identifying where the conversation took place.

Domina said the meeting that took place May 27 in Niobrara with the Corps officials is a good reference point.

Domina told the Niobrara residents, which included Lazy River Acres and Sunshine Bottom, there is power in numbers. The survival of this case will be more successful if property owners join together.

“There is a reasonable chance of recovering losses, but be aggressive,” **Domina** said. “Begin writing down those records.”

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