

## Irrigators sue over Republican River plan

DECEMBER 31, 2012 5:00 PM • BY KEVIN O'HANLON / LINCOLN JOURNAL STAR

Two groups of irrigators have filed a lawsuit against the state of Nebraska and federal officials over a plan to pump groundwater from the Republican River Basin into streams to comply with an agreement to supply Kansas water under a 1943 compact.

The lawsuit was filed in U.S. District Court by the Frenchman Cambridge Irrigation District, the Bostwick Irrigation District and three individual irrigators against Gov. Dave Heineman, the Nebraska Department of Natural Resources, the Upper Republican Natural Resources District and the U.S. Department of Interior, among others.

The Republican River, formed by the confluence of three smaller streams that originate in the high plains of northeast Colorado, flows generally eastward from Colorado into and along the southern border of Nebraska, into Kansas. There, the Republican River joins the Smoky Hill River and forms the Kansas River.

Who gets to use the Republican River's water is spelled out in a three-state compact involving Colorado, Nebraska and Kansas. The 1943 agreement allocates 49 percent of the river's water to Nebraska, 40 percent to Kansas and 11 percent to Colorado.

Kansas has long accused Nebraska of violating the compact by allowing farmers to divert more than their legal share of the river's water for private use. Kansas has said Nebraska has allowed the proliferation and use of thousands of wells hydraulically connected to the Republican River and its tributaries, thus depleting the flow of the Republican River.

That has led to two lawsuits involving Kansas and Nebraska, including one that is pending before the U.S. Supreme Court.

Nebraska recently said groundwater would be pumped into the Republican to increase its flow into Kansas. The plan also would take some Nebraska farmland out of irrigation.

The irrigators' lawsuit filed by Omaha attorney [David Domina](#) says: "Defendants threaten to disrupt groundwater supplies and natural movement to surface streams, and to cause groundwater to bypass streams with which it naturally interconnects."

"By doing so ... defendants threaten to disrupt and diminish inflows from naturally occurring groundwater ... to streams, and from streams to federal reservoirs and lakes in Nebraska, and thereby reduce, disrupt, and intermittently eliminate the availability of surface waters to flow into the irrigation canals and ditches of (the irrigation districts), which hold prior and superior

water use rights and superior natural flowage easements. These rights predate pertinent water regulations."

Shannon Kingery, spokeswoman for Nebraska Attorney General Jon Bruning, and Dan DuBray, spokesman for the Interior Department's Bureau of Reclamation, declined to comment Monday on the suit.

The Frenchman Irrigation District delivers water to more than 45,600 acres of southwest Nebraska farmland via four canal systems. The lawsuit says Frenchman holds direct flow water permits that were granted between 1890 and 1987.

The Bostwick Irrigation District delivers water to approximately 22,455 acres of south central Nebraska farmland via five canals. Its permits were granted between 1946 and 1982, some of which had their genesis in earlier agreements, according to the lawsuit.

In 2003, Special Master Vincent L. McKusick, who had been appointed by the U.S. Supreme Court to oversee the dispute, said: "Nebraska's assertion that the compact does not restrict groundwater pumping because it never mentions groundwater misses a critical fact: Although the compact never uses the word 'groundwater,' stream flow, which the compact fully allocates, comes from both surface runoff and groundwater discharge. Interception of either of those stream flow sources can cause a state to receive more than its compact allocation and violate the compact. Thus, the comprehensive definition of virgin water supply, even without use of the express term 'groundwater,' requires a conclusion that, as a matter of law, a state can violate the compact through excessive pumping of groundwater hydraulically connected to the Republican River and its tributaries."

McKusick found that the surface and groundwaters of the Republican River Basin are hydrologically interconnected and that groundwater is included in "waters of the Republican River," according to the lawsuit.

Filed this week, the suit says the compact and an earlier settlement between Kansas and Nebraska "regulate the virgin water supply of the basin. It does not permit the virgin water supply to be augmented from nonbasin sources or otherwise, and it does not permit water to be ... accelerated into the basin by pumping it out of the groundwater supply and transporting it by pipeline, thereby accelerating its movement from the groundwater supply where it slowly travels, constantly, to the river. Yet, this is what the state defendants propose to do."