

Irrigation districts file suit over NRDs' plans

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LINCOLN, Nebraska -- Two Nebraska Irrigation Districts placed the state's water law policy at issue in filings made late Friday in the U.S. District Court. They seek a comprehensive decision on the right to waters in the Republican River Basin within Nebraska.

"The case is not the same as the Kansas lawsuit against Nebraska," said [David Domina](#), a Nebraska lawyer for the districts.

"Kansas is suing about the entire River Basin from Colorado to Kansas. The irrigation districts are focused on what happens within one state -- Nebraska."

Frenchman Cambridge Irrigation District, headquartered at Cambridge, and Bostwick Irrigation District in Nebraska, headquartered at Red Cloud, sued two Nebraska state officials, a Natural Resources District, and an entity formed by several NRDs. The suit also name the U.S. Department of Interior and U.S. Bureau of Reclamation.

The Irrigation Districts' 63-page Complaint asserts that plans approved by the State Department of Natural Resources would use an artificial "augmentation" process to achieve short-term compliance with Nebraska's obligations under the Republican River Compact. The districts claim the plan will deprive streams, rivers and federal lakes of water inflows to which they are entitled, and reduce future stream flow by pumping water from the aquifer.

"The districts believe we cannot solve the problem of too much groundwater pumping with more groundwater pumping," Domina said.

The suit attacks plans to spend \$83 million to acquire 19,000 acres in Lincoln County, take the land out of production, and pump water from under it at least 8 miles, to be dumped into the Republican system. From there, about half the water is expected to evaporate and about half will flow out of Nebraska to Kansas.

The case also focuses on a pumping and piping project in the Upper Republican NRD area near Rock Creek.

"There are many problems with the augmentation plans," Domina said. First, the Lincoln County pumping site is located east of the greatest overuse of groundwater in Southwest Nebraska." Piping pumped water to increase main river flow will bypass federal lakes and surface user canals.

Recharge happens from these spots, not from piping water into the main stem of the river. At the same time, overpumping will continue."

Second, excessive groundwater pumping in the driest area will continue. "The solution is less pumping in the driest areas where the most water is used for the least benefit. Groundwater overpumping cannot be cured with more pumping, just like you can't borrow your way out of debt."

Third, Domina said "Mother Nature cannot be fooled. There is no such thing as paper water. Nebraska is in litigation with Kansas, and running into itself, because its officials believe in paper water. Paper water does not quench thirst."

In late October, the Nebraska DNR and four NRDs announced an \$83 million Lincoln County land purchase from a Delaware investment group. Under the plan, the farm will be taken out of production and returned to pasture. New wells will be drilled. The new wells would pump water at least 8 miles to a Republican River tributary.

It will bypass the irrigation districts and the federal lakes in the Basin.

Federal Issues

In a prepared statement, the Districts' lawyer continued, "federal agencies and officials are sued to force the United States to meet its contractual obligations. The Districts have paid their bills, often by assessing their water patrons, even though there is no water to deliver."

Domina explained "The Irrigation Districts have contracts with the federal government. They have met their contracts. In turn, the Government agreed to supply water. Parts of the Irrigation Districts have been dry for several years, other parts have a trickle."

The United States is a signing party to the Republican River Compact along with the States of Kansas, Nebraska and Colorado. Disputes over Nebraska's groundwater pumping led to a lawsuit by Kansas against the State; it is pending in the United States Supreme Court. The Irrigation Districts are not able to be involved in that case.

The Nebraska State Constitution provides that the surface and groundwaters of Nebraska are to be used for Nebraskans. The priorities of use are (1) domestic users or humans, (2) agricultural users, and (3) industrial uses.

Domina concluded "The Irrigation Districts contend that Nebraska can use its share of waters in the Republican River Basin as those waters naturally occur. But, Nebraska cannot convert long-term groundwater to short-term surface water at the expense of its downstream citizens."

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