By Russ Pankonin
The Imperial Republican

Rand Levy's entire farming operation rests in the Champion Valley, not far from the Frenchman River.

If strict water-short year regulations proposed by the Department of Natural Resources (DNR) go into effect, all of Levy's eight irrigation wells could be shut down.

Needless to say, Levy's apprehensive about the direction DNR wants to take in water-short years.

That's why Levy joined about 300 other farmers and business owners at a presentation by DNR in Holdrege Thursday, Sept. 17.

"It cleared some things up," Levy said, "but so far, things are still up in the air."

Non-compliance Not an Option

One thing made perfectly clear by DNR Director Brian Dunnigan was that the state will remain in compliance with the 2002 Republican River Compact Settlement.

"One thing that I want to make really clear as we go forward, the State of Nebraska will be in compliance with the compact in the future," Dunnigan said.

"Non-compliance is not an option."

Jim Schneider, chief water modeler for DNR, said recent findings in arbitration between Kansas and Nebraska indicate that Nebraska doesn't have a solid plan to address water-short years. Water-short years occur when there is less than 119,000 acre-feet of deliverable irrigation water in Harlan County Reservoir.

When this occurs, consumption of irrigation water, both surface and groundwater, gets averaged over a two-year period when figuring compact compliance. In normal years, the average for five years is used to figure compliance.

Fortunately, Harlan County Reservoir stands at just two feet under capacity, so farmers are safe for 2009. However, DNR predicts water- short years will occur three out of every 10 years.

When water-short years occurred in 2006 and 2007, the state and basin natural resources districts (NRDs) purchased surface water from basin irrigation districts.

Funding Options in the Air

During a presentation on where things stand today, Jasper Fanning, manager of the Upper Republican NRD, said purchasing surface water remains questionable due to funding.

Initially, LB 701 provided the funding to compliance issues through a 10-cent property tax levy and a per-acre occupation tax on irrigated ground.

However, the property tax was ruled unconstitutional and the occupation tax is facing a similar challenge.

Without funding of some sort, DNR has looked to additional regulations to stay in compliance.

Schneider said his department realizes that water is the lifeblood of this state. However, the state must remain in compliance.

Without the ability to buy water, Schneider said they have to look at what could be done regulation-wise to stay in compliance.

Some Irrigation Could
Be Shut Down

DNR officials were asked whether wells and surface water could be shut down during future water-short year periods.

“As a last, worst-case scenario, the answer is yes,” Dunnigan told the crowd.

During a water-short year, Dunnigan said compliance restrictions on the state become even greater.

“The answer is yes. But, there are a lot of things we would consider together before we got there,” he said, trying to reassure the crowd.

One thing Dunnigan did promise to the crowd was that his department will not send one drop more of water to Kansas than their legal share.

Shutdown Area Undefined

Several years ago, when looking at wells that most impacted stream flows, DNR said wells within 2.5 miles of any river or stream created the most depletion to stream flow.

This area became known as the quick response area (QR).

Schneider said just because a well is within 2.5 miles of a river or stream doesn’t mean it will automatically be shut down.

He said they are completing model runs by the thousands to determine what QR areas and wells have the most impact on stream flows.

As a result, he could not define which areas would be subject to shutdown.

Dunnigan said they will continue to work on the modeling projections. He hopes to have all the information gathered in October.

Once DNR has a chance to review plans with the basin NRDs, Dunnigan said the information will be released to the public.

Their tight grip on information has created a concern that the public is not being informed as to what they are planning.

Dunnigan assured the crowd that would end when the data is collected and reviewed.

Funding a Political Football

Both Fanning and Senator Mark Christensen of Imperial appealed to the crowd to get involved in lobbying state legislators, the governor, farm groups, and other statewide organizations on the need for funding.

That could occur by passing legislation that extends the use of the occupation tax to other NRDs around the state.

Fanning said other NRDs have already indicated they could use it. Platte NRDs are already spending general funds to help stay in compliance with a state agreement with Wyoming over Platte water use.

Fanning said the attitude in the Legislature, which is dominated by eastern Nebraska senators, is that Republican Basin irrigators are just using too much water—just shut them down.

Still, senators learned that Republican irrigators were willing to fund the problem themselves, Fanning said.

However, that has been lost in the LB 702 challenges and senators don’t want to be creating a tax during an election year.

Fanning said the Republican Basin remains unique because it’s people realized there was a problem and they wanted to help pay for it, despite being a state obligation.

However, he’s not sure the government will allow the basin to solve their own problems.

“If you look for somebody else to solve this problem, you’re probably not going to like the solution they come up with,” Fanning said.