By Russ Pankonin

The Imperial Republican

If a water-short year occurs without any remedy other than regulation, shutting down the least number of farmers seems to be the intent of the Upper Republican Natural Resources District (URNRD) board members.

However, they made it very clear at their regular meeting Tuesday, Dec. 1 in Imperial they want those farmers affected to be compensated for the hardship.

In late September, the Nebraska Department of Natural Resources (DNR) announced proposed regulatory measures to keep Nebraska in compliance with Kansas on Republican River flows in the event of a water-short year.

They presented a three-option scenario which included a permanent reduction in groundwater allocations, or the shutdown of wells in two distinct rapid response areas in the basin.

DNR wanted a direction this month from each of the three basin NRDs on what option they preferred. Choosing none was not an option.

The board directed Manager Jasper Fanning to send a letter to DNR indicating they will consider the option that shuts down the least amount of irrigators, known as Option 3.

The board also directed Fanning to tell DNR that other options, especially funding options, still need to be addressed versus just implementing regulatory options.

Option 3 would shut down all wells in an area defined by DNR as the 10%–2-Year (10-2) Rapid Response Area (RRA).

This would include all wells in a defined area where water pumped over a 2-year period would cause a 10 percent reduction to stream flow.

This would shut down 22,700 acres in the URNRD. In the entire basin, it would shut down 110,000 acres.

Fanning said adoption of a new integrated management plan (IMP) which includes Option 3 is still three to four months away.

Some Other Type of Funding

Chair Greg Pelster said the board proposed another option that would lower allocation but implement some type of voluntary plan to secure funds to compensate irrigators in the 10-2 area.

Pelster said DNR has indicated a willingness to work with NRDs so that it’s not just one option and that’s it.

Board member Tom Terryberry said the board has been looking at ways to compensate irrigators who could be shut down in a 10-2 water-short year option.

To ignore DNR’s time lines and say the NRD isn’t looking at least one of the options would be a mistake, he said.

The URNRD was the first of the three boards to meet in December and Fanning said Option 3

appeared to be the way the other boards were leaning, too.

“We all prefer none of the above,” Fanning said, referring to DNR’s three options.

However, he said to take no action would only delay the process further. The URNRD could help the process by setting some direction for the other boards to see.

Funding Paramount

Terryberry said it will be difficult to adopt Option 3 if there isn’t some type of funding mechanism to compensate farmers and aid compliance efforts.

Board members all appeared in agreement that finding some type of funding mechanism for compliance efforts, such as augmentation, and possible compensation is “paramount.”

Without some type of funding, DNR’s options are not really options at all, Fanning noted.

He said some of the leaders in the Legislature are beginning to realize the need for fixing the occupation tax as a funding source for the Republican Basin.

But senators also made it clear that there are no state funds available for water, or anything else.

Still, he said it’s encouraging to see they acknowledge there’s a problem and putting it off is not in anyone’s best interests.

The constitutionality of the occupation tax approved in LB 701 in 2007 is being challenged in Lancaster County District Court. Arguments on the case are set for Dec. 14-15.

The additional property tax levy in LB 701 has already been ruled unconstitutional, leaving NRDs with no real funding mechanisms.

Jeff Wallin, board member at-large, said he would like to see the funding issue resolved before adopting an IMP with the regulations included.

Doing so, he said, compromises any leverage the board has, if it has any now. At least holding off on the IMP could assist in getting the Legislature to take action on fixing the occupation tax.

One of the legislative remedies could be opening the occupation tax up to other NRDs in the state, or at least opening the class so it just didn't apply to the Republican Basin.

That was one of the elements that made the property tax unconstitutional. Another ruling said the tax was a local tax for a state purpose, making it unconstitutional.

The occupation tax is being challenged on this basis as well.

Legal Firm Hired on

Funding Issue

Board members voted to hire the law firm of Rembolt Ludkte, LLP of Lincoln to assist the NRD with the funding issues.

Fanning said the purpose of hiring counsel was to become proactive in finding solutions to the funding issues that face the basin.

The goal is to develop some type of funding mechanism under the present statutes that doesn't require a tax on everyone to implement.

By using legal authorities in the field, Fanning said they hope to minimize the litigation threat to any new mechanism developed.

Fanning added state senators have recently told him that hiring attorneys for anything but finding a positive solution would not be looked upon kindly.

The NRD will pay the firm $175 per hour for their services. Fanning said they interviewed three different firms with water exper-ience, noting the board couldn't miss with any of the three.