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The Nebraska Supreme Court heard arguments Wednesday, March 2 on whether the Department of Natural Resources (DNR) can declare part of a river basin over-appropriated. DNR has already ruled they don't have the statutory right to declare only a portion of the basin over-appropriated.

The issue arose in 2009 when the Frenchman Cambridge Irrigation district petitioned DNR to re-evaluate the river's appropriation upstream from their diversion dam east of Cambridge.

DNR denied the petition and the irrigation district asked for a formal hearing. Again, DNR ruled they didn't have authority to make a partial determination.

Frenchman Cambridge appealed DNR's decision to the Supreme Court, with the argument being heard this week.

Jasper Fanning, manager of the Upper Republican Natural Resources District (URNRD), said the district is not involved in the issue.

However, he described it as yet another attempt to shut down or at least curtail the use of groundwater wells in the Upper and Middle Republican NRD to provide more surface water to the project.

The Nebraska Attorney General's office is defending DNR in the action.

LB 962 Creates Appropriations

River basin appropriation status was created in LB 962, a comprehensive water bill developed by a statewide water task force.

At the time, the Platte River west of Elm Creek was declared over-appropriated as a result of a cooperative agreement reached between Nebraska, Wyoming and Colorado.

That same bill made the Republican River basin fully appropriated.

In their ruling, DNR contends it doesn't have the authority to upgrade the basin's appropriation status after passage of LB 962.

In filings with the Supreme Court, DNR said, "While DNR certainly has broad authority over water rights in the state, the authority to determine the appropriation status of rivers has been limited in this case by the water act."

Under LB 962, the over-appropriation status must have been conferred on or before the date in July 2004 that the changes went into effect and could not be used on rivers governed by interstate compacts, according to the department's court filing.

But the irrigation district said in its appeal that the department misinterpreted the law and, regardless of that law, the department is vested with authority over all water issues pertaining to irrigation.

"Under this authority, the DNR can re-evaluate the Republican River Basin," the irrigation district said.

(Staff and Associated Press reports were used to compile this story.)