

Decisions favorable to URNRD, Nebraska.

By Russ Pankonin

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Arbitrator Jeffrey C. Fereday issued his decisions Monday in a dispute between Kansas and Nebraska on the Rock Creek augmentation project and Nebraska's water-short-year planning. The decisions favor the Upper Republican Natural Resources District and the State of Nebraska.

The URNRD and the state asked for non-binding arbitration after Kansas refused to accept plans for the Rock Creek augmentation project (RCAP) and Nebraska's plans for management of water supplies in water-short years.

The 2002 Compact Final Settlement Stipulation (FSS) between Kansas, Nebraska and Colorado lists augmentation as an approved method to reduce a state's water consumption for compact compliance.

Fereday ruled Nebraska demonstrated the RCAP did indeed fall within the methods outlined in the FSS for Nebraska to maintain compact compliance with Kansas.

He also ruled Nebraska's proposed method for calculating net depletions and new net depletions in water supplies and figuring credit for augmentation from Rock Creek also complied with the FSS.

Nebraska currently receives a compact compliance credit of 69 percent for the augmentation water delivered to the Republican River near Parks. The state is seeking 100 percent credit towards compact compliance.

While he didn't specify the credit Nebraska should receive, Fereday said Nebraska's calculation methods for figuring that credit complies with the FSS.

Historical Pumping Caps

The RCAP led to the retirement of irrigation on more than 3,500 acres in southwest Dundy County.

The water normally pumped for irrigation was re-purposed for augmentation pumping.

Kansas sought a cap on the amount of augmentation water withdrawn to no more than the historical consumptive use when the property was irrigated.

Fereday disagreed.

He said the FSS includes no stipulations on augmentation wells being limited to historical consumptive use pumping. However, he noted the FSS does place such a stipulation on replacement wells and transfer wells.

With no specific limits placed on augmentation wells in the FSS, he ruled the intent of the settlement was not to place a limit on those wells.

By placing augmentation wells further away from the stream to lower stream flow depletions, he observed pumping could exceed historical use without creating any new depletions to stream flow.

He also noted Nebraska testified the RCAP was built with a maximum capacity of 20,000 acre-feet annually. Thus, the project is limited to pumping no more than its capacity.

In calculating augmentation credits, he ruled Nebraska does not have to account for any transit losses in Rock Creek or the mainstem Republican River.

As for Nebraska's plans for water-short years, he ruled the state's efforts and plans comply with

the FSS.

He said Nebraska's water-short year plan calls for specific curtailment of groundwater use and restrictions on surface water use and augmentation to remain in compliance with the FSS.

Even though the compact administration has not approved the augmentation projects, the FSS does not prohibit the state from using them to meet compliance.

He did state that any augmentation project should be reviewed by the compact administration 20 years after implementation.

Other Efforts

Colorado has developed an augmentation project in northeast Colorado but has yet to operate it. They too are in arbitration with Kansas over the amount of credit they receive towards compact compliance.

In Nebraska, three Republican Basin NRDs and one Platte River Basin NRD have joined forces to build another augmentation project in Lincoln County.

This project will have a capacity to produce 60,000 acre-feet of water for compliance purposes.

Presently, any augmentation water pumped from that project will be credited at 54 percent towards compact compliance.

Nebraska has already filed for arbitration on the amount of compliance credit received for pumping on that project.

Arbitration Non-binding

Fereday noted his arbitration decisions are non-binding on the states. If Kansas does not approve of the decisions, they can file for review with the U.S. Supreme Court.

Fereday is scheduled as the arbitrator on the Lincoln County project, as well.