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Nebraska Republican River Policy Choices

Market Report	Yr Ago	4 Wks Ago	8/14/09
Livestock and Products, Weekly Average			
Nebraska Slaughter Steers, 35-65% Choice, Live Weight	$99.63	$83.20	$81.00
Nebraska Feeder Steers, Med. & Large Frame, 550-600 lb.	*	111.76	114.63
Nebraska Feeder Steers, Med. & Large Frame 750-800 lb.	116.36	105.52	105.99
Choice Boxed Beef, 600-750 lb. Carcass	164.26	137.39	141.22
Western Corn Belt Base Hog Price Carcass, Negotiated	85.98	57.41	46.51
Feeder Pigs, National Direct 50 lbs, FOB	50.49	35.45	*
Pork Carcass Cutout, 185 lb. Carcass, 51-52% Lean	93.75	62.46	54.27
Slaughter Lambs, Ch. & Pr., Heavy, Wooled, South Dakota, Direct	102.87	*	91.25
National Carcass Lamb Cutout, FOB	278.57	254.37	248.72
Crops, Daily Spot Prices			
Wheat, No. 1, H.W. Imperial, bu.	7.70	4.66	4.08
Corn, No. 2, Yellow Omaha, bu.	5.10	3.02	3.03
Soybeans, No. 1, Yellow Omaha, bu.	12.07	10.19	10.71
Grain Sorghum, No. 2, Yellow Dorchester, cwt.	7.71	5.04	5.07
Oats, No. 2, Heavy Minneapolis, MN , bu.	*	2.18	2.08
Feed			
Alfalfa, Large Square Bales, Good to Premium, RFV 160-185 Northeast Nebraska, ton.	190.00	*	*
Alfalfa, Large Rounds, Good Platte Valley, ton.	77.50	*	*
Grass Hay, Large Rounds, Premium Nebraska, ton.	85.00	*	*
Dried Distillers Grains, 10% Moisture, Nebraska Average.	170.00	85.00	83.00
Wet Distillers Grains, 65-70% Moisture, Nebraska Average.	57.00	35.50	34.00

*No Market

On June 30, 2009 an arbitrator recommended that Nebraska be required to pay Kansas $10,000 for violating the Republican River Settlement, after Kansas had originally requested $72 million in damages. The August 5, 2009 Cornhusker Economics explored the significance of the arbitrator's decision. This newsletter explores the choices facing the Governor, Unicameral and Republican Basin Natural Resources Districts (NRDs).

Briefly, what is the main implication of the arbitrator's decision for Nebraska? Significantly, the arbitrator said the Natural Resource District (NRD) ground water plans in the Republican Basin were inadequate to assure Nebraska's compliance with the settlement agreement during dry years. The arbitrator recommended that a court order be issued preventing Nebraska from violating the compact in the future.

What are the current NRD plans? Basically, the NRDs have banned new irrigation wells and limit the pumping from current irrigation wells. The ground water allocations are 13.5 inches per irrigated acre in the Upper Republican NRD, 13 inches in the Middle Republican and 12/11 inches in the Lower Republican (depending on whether you are in the eastern or western half of the NRD). The Lower Republican has proposed reducing its ground water allocation to 10 inches per acre.

And these plans won't keep Nebraska in compact compliance during dry years? The arbitrator concluded no, as has the Nebraska Department of Natural Resources (DNR). In a 2007 study, the DNR concluded that NRD ground water allocations would need to be significantly reduced in order to comply with the RRC settlement in the long-term, as Republican River flows decline over time. The DNR recommended that NRD ground water allocations be reduced 37 to 41 percent from current levels in normal years. In dry years, NRD ground water allocations would need to be reduced 62 to 68 percent from

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current levels. While the 2007 DNR proposal was not evaluated by the arbitrator, it provides a good indication of what types of irrigation pumping reductions might be needed to achieve RRC settlement compliance.

2007 NRD & DNR Recommended Ground Water Allocations*

	URNRD	MRNRD	LRNRD
2007 NRD	13.5	13.0	12/11
DNR Average Year	8.5	8.0	6.5
DNR Dry Year	5.5	5.0	3.5

*acre inches per irrigated acre

How could the NRD plans be changed? Under current law, ground water allocations are established by NRDs. If NRDs agree to reduce ground water allocations sufficiently to stay within settlement limits, that would be wonderful. Then Nebraska would take the proposed NRD reductions to Kansas and the states would attempt to negotiate a long-term solution to this issue.

What happens if the NRDs don't change the dry-year ground water allocations? Without any other change, Nebraska would very likely be out of compliance during the next dry weather cycle and would likely be subject to punitive damages for its overuse, more along the line of the $72 million originally requested by Kansas for Nebraska's current non-compliance.

How does current law deal with this? Nebraska ground water statutes do have a provision that addresses this type of impasse, where the NRDs want to go one way and the DNR another. If the NRDs are unwilling to reduce their allocations, and the DNR believes that the NRD dry-year allocations would not comply with interstate agreements, the DNR can invoke a "tie-breaker" process under state law, where a committee appointed by the Governor decides whether to implement the NRD allocations or the DNR allocations. That process has never been implemented but could be implemented now, if the Governor so desired.

What happens if the DNR (or Governor) does not go for the tie-breaker provision? That is kind of where we are right now, although no one knows what type of behind-the-scene negotiations are currently occurring between the Republican NRDs and the DNR. If the Governor did not invoke the tie-breaker process, than the next step would be up to the Unicameral to change the ground water statutes.

What kind of statutory change would be needed? If the Governor does not invoke the tie-breaker option, then it will be up to the Governor and the 2010 Unicameral to determine how best to proceed. The DNR could, for example, be given the authority to impose ground water allocations over NRD objections when necessary to comply with interstate agreements. This would require a change in state law.

This would be pretty tough on ground water irrigators! Yes - and one important unresolved issue is whether ground water irrigators should be paid to cut their pumping so much. While lawyers can debate whether such payments are needed, politically, payments to ground water irrigators would make drastic cuts in irrigator ground water pumping easier to swallow. But as the July 9, 2008 Cornhusker Economics suggests, the costs could be hundreds of millions of dollars. That could be paid for by Nebraska taxpayers in general (sales and income taxes), or by Republican Basin residents through new NRD property and excise taxes. The approach of special Republican Basin NRD taxes has been invalidated by the Nebarska Supreme Court. However, those taxes would be constitutional if they applied to NRDs, for example. Who pays for a Republican River bailout could be a major issue in the 2010 legislative session.

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