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## Water Management Funding Issues

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# CORNHUSKER ECONOMICS

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## Water Management Funding Issues

In 2007, the Nebraska Unicameral authorized Natural Resources Districts (NRDs) located in the Republican River Basin to impose two new taxes to pay for water management activities associated with Republican River Compact compliance. The taxes were intended to pay for NRD bonds to finance needed Republican River water management activities. One tax was a general property tax levy of up to ten cents, and the second an occupation tax of up to \$10/acre, levied only against irrigated land. This article reviews the lawsuits associated with these two NRD water management taxes.

**Background.** The 1943 Republican River Compact divides the water supply of the Republican River between Nebraska, Kansas and Colorado. In 1999 Kansas sued Nebraska, alleging that ground water pumping in Nebraska violated the compact. In 2002 the states negotiated a settlement, in which Nebraska agreed (among other things) to limit new high-capacity well installation within the Republican Basin. The settlement created a system for better tracking each state's annual compact compliance. Generally, in normal years Nebraska should be in compact compliance, but in dry years Nebraska could be out of compliance. An important issue has been the development of NRD "dry-year plans" to reduce irrigation in dry years in order to keep Nebraska in compact compliance. The 2007 legislation sought to provide NRDs with the financial option to, among other things, pay irrigators not to irrigate during dry years and to purchase and retire water rights.

The 2007 legislation authorized the two new NRD taxes, the ten cent general property tax levy and the

Market Report	Yr Ago	4 Wks Ago	2/3/12
<b><u>Livestock and Products,</u></b>			
<b><u>Weekly Average</u></b>			
Nebraska Slaughter Steers, 35-65% Choice, Live Weight. . . . .	\$105.50	\$121.23	\$123.95
Nebraska Feeder Steers, Med. & Large Frame, 550-600 lb. . . . .	149.05	180.07	184.46
Nebraska Feeder Steers, Med. & Large Frame 750-800 lb. . . . .	126.32	151.11	156.82
Choice Boxed Beef, 600-750 lb. Carcass. . . . .	172.40	192.34	183.34
Western Corn Belt Base Hog Price Carcass, Negotiated. . . . .	80.09	82.29	85.93
Pork Carcass Cutout, 185 lb. Carcass, 51-52% Lean. . . . .	88.95	84.77	84.88
Slaughter Lambs, Ch. & Pr., Heavy, Wooled, South Dakota, Direct. . . . .	*	152.50	148.25
National Carcass Lamb Cutout, FOB. . . . .	347.71	396.54	383.49
<b><u>Crops,</u></b>			
<b><u>Daily Spot Prices</u></b>			
Wheat, No. 1, H.W. Imperial, bu. . . . .	7.87	6.07	6.40
Corn, No. 2, Yellow Omaha, bu. . . . .	6.55	*	*
Soybeans, No. 1, Yellow Omaha, bu. . . . .	13.91	*	*
Grain Sorghum, No. 2, Yellow Dorchester, cwt. . . . .	10.95	10.88	10.98
Oats, No. 2, Heavy Minneapolis, MN, bu. . . . .	4.15	3.10	3.39
<b><u>Feed</u></b>			
Alfalfa, Large Square Bales, Good to Premium, RFV 160-185 Northeast Nebraska, ton. . . . .	140.00	155.00	250.00
Alfalfa, Large Rounds, Good Platte Valley, ton. . . . .	72.50	140.00	145.00
Grass Hay, Large Rounds, Good Nebraska, ton. . . . .	*	97.50	100.00
Dried Distillers Grains, 10% Moisture, Nebraska Average. . . . .	197.50	214.50	196.00
Wet Distillers Grains, 65-70% Moisture, Nebraska Average. . . . .	67.25	73.50	75.00
<b>*No Market</b>			



\$10/acre irrigation occupation tax. Both taxes were challenged in court. The Nebraska Supreme Court ruled in 2009 that the ten cent property tax was unconstitutional. *Gary v. Nebraska Department of Natural Resources*, 277 Neb. 149 (2009). The court ruled in 2011 that the \$10/acre irrigation occupation tax was constitutional. *Kiplinger v. Nebraska Department of Natural Resources*, 282 Neb. 237 (2011).

**2009 Ruling.** The first case dealt with the ten cent general property tax levy, which would have applied to all taxable property within the Republican River Basin if levied by the local NRD. The principal legal challenge was that the ten cent property tax was a state property tax which had been prohibited by a 1966 Nebraska constitutional amendment (adopted after the Nebraska state income tax and sales tax were adopted). The taxpayers argued that the ten cent property tax violated the 1966 constitutional amendment. The Nebraska Supreme Court agreed, concluding that because the ten cent property tax would be levied to pay for water management activities (e.g. paying irrigators not to irrigate during dry years) to keep Nebraska in compliance with the Republican River Compact, the property tax was being used for a state purpose, not a local purpose, and thus violated the 1966 constitutional amendment.

After the Supreme Court ruling, the ten cent general property tax provisions were legislatively removed from the Nebraska statutes. In addition, the authority to levy the \$10/acre irrigation occupation tax was extended from just the Republican River Basin NRDs to all Nebraska NRDs with an approved integrated water management plan.

**2011 Ruling.** Taxpayers later challenged the \$10/acre irrigation occupation tax. This tax could be imposed upon all irrigated acres located within an NRD up to the \$10/acre maximum if the NRD levied the tax. The tax is on the activity of irrigation (similar to a business occupation or licensing tax), instead of being a direct tax against the value of the irrigated land. The taxpayers challenging the occupation tax argued that it was an indirect property tax and therefore in violation of the 1966 constitutional amendment prohibiting state property taxes. The Nebraska Supreme Court, however, ruled that the occupation tax was not a property tax, in part because the tax would be up to ten dollars per irrigated acre within an NRD, regardless of the actual value of the irrigated land. For example, if land irrigated with a

center-pivot irrigation system was worth (for example) \$6000/acre, and gravity-irrigated land within the same NRD was worth (for example) \$4000/acre, each irrigated parcel would be subject to the same \$10/acre occupation tax. If the tax were a property tax, the tax on the pivot land would be proportionally higher than the tax on the gravity-irrigated land. The court noted that land would not be subject to the \$10/acre occupation tax if the landowner certified to the county assessor that the land would not be irrigated in the upcoming year. The court explained that the occupation tax is like a business licensing tax, a tax on the performance of an act (irrigation in this case, but typically the act of operating a business). Thus, the court ruled that the \$10/acre occupation tax on irrigated land was constitutional.

The 2007 statute authorizing expanded NRD taxes to fund water management activities represents a significant increase in NRD authorities. How best to pay for needed water management activities within, for example the Republican and Platte River Basins, will continue to be a challenging policy issue for years to come.

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