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## Special Master Decision in Republican River Lawsuit

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# Cornhusker Economics

## Cooperative Extension

Institute of Agriculture & Natural Resources  
Department of Agricultural Economics  
University of Nebraska – Lincoln

### Special Master Decision in Republican River Lawsuit

Market Report	Yr Ago	4 Wks Ago	2/18/00
<b><u>Livestock and Products,</u></b>			
<b><u>Average Prices for Week Ending</u></b>			
Slaughter Steers, Ch. 204, 1100-1300 lb Omaha, cwt. ....	*	67.89	68.08
Feeder Steers, Med. Frame, 600-650 lb Dodge City, KS, cwt. ....	79.52	91.45	91.96
Feeder Steers, Med. Frame 600-650 lb, Nebraska Auction Wght. Avg. ....	82.38	96.04	98.05
Carcass Price, Ch. 1-3, 550-700 lb Cent. US, Equiv. Index Value, cwt. ....	95.06	104.48	104.36
Hogs, US 1-2, 220-230 lb Sioux Falls, SD, cwt. ....	27.13	37.75	41.00
Feeder Pigs, US 1-2, 40-45 lb Sioux Falls, SD, hd. ....	*	49.50	58.50
Vacuum Packed Pork Loins, Wholesale, 13-19 lb, 1/4" Trim, Cent. US, cwt. ....	87.20	96.50	113.50
Slaughter Lambs, Ch. & Pr., 115-125 lb Sioux Falls, SD, cwt. ....	64.78	67.37	*
Carcass Lambs, Ch. & Pr., 1-4, 55-65 lb FOB Midwest, cwt. ....	150.00	151.00	168.00
<b><u>Crops,</u></b>			
<b><u>Cash Truck Prices for Date Shown</u></b>			
Wheat, No. 1, H.W. Omaha, bu. ....	2.82	2.95	2.99
Corn, No. 2, Yellow Omaha, bu. ....	1.96	1.92	1.97
Soybeans, No. 1, Yellow Omaha, bu. ....	4.49	4.69	4.84
Grain Sorghum, No. 2, Yellow Kansas City, cwt. ....	3.44	3.32	3.30
Oats, No. 2, Heavy Sioux City, IA, bu. ....	1.17	1.24	1.23
<b><u>Hay,</u></b>			
<b><u>First Day of Week Pile Prices</u></b>			
Alfalfa, Sm. Square, RFV 150 or better Platte Valley, ton. ....	102.50	82.50	82.50
Alfalfa, Lg. Round, Good Northeast Nebraska, ton. ....	40.00	32.50	85.00
Prairie, Sm. Square, Good Northeast Nebraska, ton. ....	65.00	*	*
* No market.			

On January 28, 2000 the Special Master issued his first ruling in the *Kansas v. Nebraska and Colorado* lawsuit on the Republican River Compact. The ruling establishes that groundwater pumping in Nebraska will be part of the lawsuit. While the ruling is a legal setback for Nebraska, it does not come as a surprise.

On July 1, 1998, Kansas filed a lawsuit against Nebraska in the U.S. Supreme Court, alleging that Nebraska was using more than its share of the Republican River. The Republican River Compact between Kansas, Colorado and Nebraska was approved by Congress in 1943. The Compact apportions the "virgin water supply," defined as "the water supply within the Basin undepleted by the activities of man." Colorado is allocated 11%, Kansas 40% and Nebraska 49%.

In its lawsuit Kansas alleges that Nebraska is using more than its authorized share of water under the compact. The water was allocated to Nebraska by surface water subbasins. When the compact was negotiated, the negotiators assumed that irrigation would be only from surface water reservoirs. As things turned out, the land is irrigated from both wells and reservoirs. Some subbasins have more irrigated land than was originally expected under the compact, and Kansas contends that irrigation of additional land from wells is not authorized by the Compact. Nebraska argued in opposition that irrigation from wells was not included in the compact, so the land irrigated from wells was irrelevant to determining whether Kansas was receiving its share of the water. The special master ruled against Nebraska on this issue.

When Kansas sued Nebraska, the U.S. Supreme Court agreed to hear the lawsuit and appointed the retired Maine Supreme Court Chief Justice to hear the case as special master. The special master will make periodic reports to



the Supreme Court, which then decides whether to accept or reject the special master's recommendations. The special master was asked by the Supreme Court to decide whether the Republican River Compact covers wells, or whether it just applies to stream withdrawals. The special master ruled that the compact applies to all wells that affect the Republican River's flow.

The special master's report will be considered by the U.S. Supreme Court. While we will have to await the Supreme Court's official verdict, the Supreme Court will probably accept the special master's ruling that ground water is included in the compact. Since 1959, Republican Compact officials (including Nebraska representatives) have agreed that "alluvial" wells drilled in the Republican River floodplain *do* affect streamflow. Compact officials also have agreed that "upland" wells drilled outside the Republican River floodplain may (or may not) affect streamflow, but how many upland wells affect streamflow and to what degree was not agreed to. Nebraska water officials have known for 40 years that the alluvial irrigation wells (at a minimum) do reduce Republican River streamflow, and they have never hidden that crucial fact. Many Nebraska groundwater irrigators have refused to accept this, however, which probably is a major reason why we are litigating with Kansas instead of negotiating.

This ruling represents the first legal round of the lawsuit. While Kansas was expected to win on this issue, the rest of the lawsuit will be more difficult for Kansas. In order to win, Kansas must: (1) prove which (if any) upland wells (i.e., wells outside the floodplain) in Nebraska are depleting Republican streamflows and if so, by how much; and (2) prove that Nebraska wells are keeping Kansas from getting its full share of Republican streamflow. Both of these will be difficult and expensive to prove, and Kansas may fail in its attempt. Kansas may prove that Nebraska wells are depleting Republican streamflow, but may be unable to prove that streamflow depletion from wells is depriving Kansas of its share of Republican water. Or, Kansas may attempt to prove that groundwater withdrawals will keep Kansas from receiving its share in the future, even though Kansas has gotten all or most of the water it was entitled to, to date.

Unless the case can be settled, Nebraska is in for another long and expensive water fight. Our cost for the North Platte River lawsuit against Wyoming has exceeded \$20 million and the case is yet to go to trial. The Republican lawsuit could be even more expensive because it deals with groundwater and the interrelationship between groundwater pumping and streamflow, something that was a smaller issue in the North Platte lawsuit. It is much less expensive to measure streamflow than groundwater movement and streamflow impacts. Nebraska and Kansas

could save money by developing a joint groundwater model, rather than each state developing its own (expensive) model. However, that level of cooperation might be difficult to achieve in the middle of a heated interstate lawsuit. The states could also attempt to negotiate their differences, if both states would be truly willing to compromise.

If Kansas ultimately fails to prove that Nebraska well pumping is now, or will in the future deprive Kansas of its share of Republican River flows, Nebraska will have won the lawsuit. If, however, Kansas can prove that Nebraska wells deprive Kansas of its share of the Republican River flow, then Nebraska groundwater users would either have to (1) compensate Kansas for their streamflow depletion effects, or else (2) stop pumping their wells. In Colorado, junior (later in time) groundwater pumpers must compensate senior (prior in time) surface appropriators under the priority rule of first in time is first in right. In Nebraska, Republican groundwater users with wells drilled after the 1943 Republican Compact would essentially be junior appropriators to Kansas if Kansas wins. This would mean that Nebraska groundwater users would have to get more water to Kansas. Possibilities include: (1) *bypass pumping*: pumping groundwater into the river, (2) *water storage*: releasing water impounded in Nebraska for Kansas, or (3) *water marketing*: buying Nebraska surface and/or ground water rights, retiring them and giving the water to Kansas. These options would be expensive, and would require significant changes to Nebraska water law to implement.

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