By Russ Pankonin
The Imperial Republican

Irrigators in the Upper Republican Natural Resources District (URNRD) heard first hand last week the regulation options the Department of Natural Resources (DNR) will impose in water-short years.

More than 100 people attended the NRD's October meeting last Thursday, Oct. 22, at the CCS auditorium. The meeting was moved there to accommodate the expected crowd, who were attending to hear DNR's presentation.

Brian Dunnigan, director of DNR, and Jim Schneider, chief water modeler for DNR, led the presentation.

Both Dunnigan and Schneider explained Nebraska doesn't have the regulations in place to keep Nebraska in compliance with Kansas in water-short years.

Nebraska and Colorado settled a Republican River compact disagreement with Kansas in 2002. The settlement stipulates Nebraska insures Kansas gets its fair share of Republican River basin water.

Kansas went to non-binding arbitration, asking that Nebraska shut down irrigation on more than 515,000 acres in the basin.

The arbitrater did not agree with Kansas but did say that Nebraska had no firm plans to comply with the settlement in water-short years.

As a result, DNR has proposed three regulatory options to keep the state in compliance in a water-short year.

A water-short year occurs when the irrigation supply in Harlan County Reservoir falls below 119,000 acre feet. That has already occurred twice.

Dunnigan said the state must be prepared to prove to Kansas that they have plans in place to comply in a water-short year.

By going to arbitration, Schneider said this was the first step Kansas had to take if they wanted to file suit again against Nebraska in the U.S. Supreme court.

Regulatory options

Schneider outlined the three compliance options they are seeking from the basin NRDs. He noted each NRD could choose their own option.

The first option would permanently cut groundwater allocations by 60 percent.

Under such a scenario, irrigators in the URNRD would receive a permanent allocation of 5.9 inches per acre.

The Middle Republican Natural Resources District (MRNRD) irrigators would get 4.8 inches per acre and Lower Republican Natural Resources District (LRNRD) would get 3.6 inches per acre.

The second option would shut down all wells in an area defined by DNR as the 10%/5-Year Rapid Response Area (RRA).

This would include all wells in a defined area where water pumped by these wells over a 5-year period would cause a 10 percent reduction to stream flow.

Under this option, 44,500 acres of ground in this designation would be shut down in the URNRD alone. In the entire basin, it would amount to 190,100 acres.

This option would shut down the largest number of acres because it includes all the acres affected in Option 3.

Option 3 would shut down all wells in a somewhat smaller area defined by DNR as the

10%–2-Year Rapid Response Area (RRA).

This would include all wells in a defined area where water pumped over a 2-year period would cause a 10 percent reduction to stream flow.

This would shut down 22,700 acres in the URNRD. In the entire basin, it would shut down 110,000 acres.

Surface water could also be curtailed in any of the options to ensure compliance in water-short years.

No compensation

Under Option 2 or 3, the landowner would receive no compensation for shutting down wells, Schneider responded when asked.

Shad Stamm of Benkelman said anyone farming in the RRA is “going to take it in the shorts” if option 2 or 3 is implemented.

“We’re not allowed to make a living as other people are,” he added.

Mike Bauerle of Champion said he farms completely in the RRA and one of the problems he has is the late determination (January) of a water-short year.

He said that time line gives the farmer no time to plan, noting this affects about 50 farms in the RRA four out of every 10 years.

He noted the machinery company doesn’t care whether the farmer is able to raise crop or not, they want their annual payments for equipment regardless.

Jason Kunkel of Champion asked whether the governor has any alternatives for funding other than the property tax ruled unconstitutional or the occupation tax that could also be found unconstitutional.

Dunnigan responded, “I am not aware of any.”

“Great leadership,” Kunkel said.

Dave Mollendor of Lamar said DNR’s plan could well be “the destruction of the community as we know it.”

Senator Mark Christensen hammered on the fact that the model doesn’t take conservation into account.

As a result, he contends that the loss of water supply from conservation activities gets unfairly assessed against groundwater pumping.

Option 4?

Schneider emphasized DNR’s plan is only a solution of last resort, if augmentation or other compliance projects can’t be undertaken.

Funding for such projects, such as the occupation tax, remains in jeopardy.

One of the wildcards in the discussion is the creation of “Option 4.”

Right now, URNRD Manager Jasper Fanning said such an option remains on the drawing board but it includes implementing a voluntary payment to provide funding for compliance projects.

After last week’s meeting, Fanning discussed the idea more.

He said the NRD could adopt a standard allocation, such as 6 inches, across the district with no payments involved.

Then, if a farmer wanted to pump more than the 6-inch allocation, they would pay into the voluntary fund for water up to the current allocation, which is 13 inches.

The more one pumps, the more one will pay, Fanning said. It also provides an incentive for less consumption, which would aid compliance efforts.

Funds collected could be used for compliance projects to offset the additional pumping over six

inches.

Fanning said they are taking input from irrigators on the feasibility of such a plan.

Legislation would have to be passed to allow such a program.

The NRD is still seeking support for legislation to allow other NRDs to be able to use the occupation tax.

However, until a court decision comes down, Fanning said he expects little action by the legislature.

The governor has also gone on record against such a move.