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Republican River Litigation Settlement

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Cornhusker Economics

Cooperative Extension

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

Republican River Litigation Settlement

Market Report	Yr Ago	4 Wks Ago	1/17/03
<u>Livestock and Products,</u>			
<u>Average Prices for Week Ending</u>			
Slaughter Steers, Ch. 204, 1100-1300 lb Omaha, cwt	\$ *	\$67.92	\$79.14
Feeder Steers, Med. Frame, 600-650 lb Dodge City, KS, cwt	86.00	85.00	85.06
Feeder Steers, Med. Frame 600-650 lb, Nebraska Auction Wght. Avg	*	92.98	87.71
Carcass Price, Ch. 1-3, 550-700 lb Cent. US, Equiv. Index Value, cwt	111.91	106.34	122.17
Hogs, US 1-2, 220-230 lb Sioux Falls, SD, cwt	29.50	41.00	35.00
Feeder Pigs, US 1-2, 40-45 lb Sioux Falls, SD, hd	*	*	*
Vacuum Packed Pork Loins, Wholesale, 13-19 lb, 1/4" Trim, Cent. US, cwt	*	107.70	92.36
Slaughter Lambs, Ch. & Pr., 115-125 lb Sioux Falls, SD, cwt	*	*	*
Carcass Lambs, Ch. & Pr., 1-4, 55-65 lb FOB Midwest, cwt	*	132.34	164.72
<u>Crops,</u>			
<u>Cash Truck Prices for Date Shown</u>			
Wheat, No. 1, H.W. Omaha, bu	4.07	3.13	3.68
Corn, No. 2, Yellow Omaha, bu	2.28	1.92	2.24
Soybeans, No. 1, Yellow Omaha, bu	5.49	4.20	5.46
Grain Sorghum, No. 2, Yellow Kansas City, cwt	4.62	3.67	4.46
Oats, No. 2, Heavy Minneapolis, MN, bu	2.23	2.20	2.33
<u>Hay,</u>			
<u>First Day of Week Pile Prices</u>			
Alfalfa, Sm. Square, RFV 150 or better Platte Valley, ton	140.00	*	150.00
Alfalfa, Lg. Round, Good Northeast Nebraska, ton	80.00	67.50	80.00
Prairie, Sm. Square, Good Northeast Nebraska, ton	117.50	105.00	115.00
* No market.			

On December 16, 2002 the Governors of Kansas and Nebraska announced that the states had settled their lawsuit over the 1943 Republican River compact. The settlement marked the end of the interstate lawsuit which originated in May 1998. The settlement represented a compromise between Kansas, Nebraska and Colorado, and was significantly good for Nebraska.

Kansas originally sued Nebraska because Kansas believed that pumping from Nebraska irrigation wells in the Republican River Basin were depleting streamflows into Kansas in violation of the compact. Kansas also alleged that Nebraska was using more than its share of the Republican River water. Nebraska argued that groundwater pumping was not part of the Republican River compact. But both the Special Master (a judge appointed by the Supreme Court to hear the case) and the U.S. Supreme Court ruled in 2000 that groundwater pumping was regulated under the compact when well pumping depleted Republican River streamflow.

Aside from the issue of whether groundwater is regulated by the compact, Nebraska won two significant and related legal issues: damages and how far back in time Kansas could go in attempting to prove that Nebraska wells pumped Kansas's water. Kansas wanted to go back decades in determining whether Nebraska wells were pumping Kansas water. But the Special Master ruled that because Kansas officials had approved the compact water use figures from 1959 to 1994, Kansas could only collect damages for any Nebraska water overuse occurring after 1994. This limited the total amount of damages that Kansas could have claimed, assuming Kansas could have proved that



Nebraska wells depleted Kansas' streamflow. Apparently Kansas felt that any damages it could prove occurring after 1994 were small enough that Kansas was willing to waive those damages in settling the case.

A major settlement component deals with future groundwater irrigation development in the Republican River Basin. Colorado and Kansas had banned new irrigation wells in the Republican Basin for some time. Nebraska agreed to place a moratorium or ban on new irrigation wells in the Republican River Basin upstream of Guide Rock (which is where streamflow is diverted into Kansas irrigation projects). A future state-federal groundwater model will determine whether additional irrigation wells can be developed in Nebraska in the future without depleting Republican River flows into Kansas. The irrigation well ban has been implemented by the Upper, Middle and Lower Republican Natural Resource Districts. This marks a major action by Nebraska, but one that was widely anticipated during the litigation.

The settlement also dealt with existing Nebraska surface and groundwater uses, including existing irrigation wells. In normal years, existing Republican River water uses will usually not be affected. In dry years, however, existing Nebraska irrigation uses, including groundwater irrigation well pumping, may need to be limited in order that Kansas gets its full share of water. How existing uses be reduced in dry years remains to be seen. One possibility is that the state of Nebraska may pay irrigators to reduce or stop their pumping. The state might also pay surface water irrigators to let their irrigation water go to Kansas. Water marketing (the buying and selling or leasing of water rights) will likely be a significant part of the solution. Water marketing legislation is expected to be considered by the Unicameral in 2004.

The settlement must be approved by the Special Master, the U.S. Supreme Court, and the U.S. Department of Justice. However, because all the states have approved the settlement, court and federal approval of the settlement is expected.

Overall, Nebraska did well in the Republican River lawsuit. The only major issue that Nebraska lost – whether ground water was covered by the compact – was an issue that Nebraska was destined to lose. The remaining important legal issues were all resolved in Nebraska's favor. So the Nebraska legal team did an excellent job, given the difficult circumstances they faced. In contrast, a Special Master in the Arkansas River lawsuit between Kansas and Colorado has recently ruled that Colorado must pay Kansas \$30 million in damages for Colorado's overuse. This \$30 million is in addition to reducing Colorado irrigation water use in the Arkansas River Basin. Compared to Colorado, Nebraska did very well.

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