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The Kansas River Lawsuit: Unfortunate and Very Costly

The threat has been carried out. Kansas and Nebraska have embarked on a legal journey that potentially could cost each state millions of dollars. It could also settle, once and for all, key questions about the ownership and use of underground water by irrigators.

Kansas filed suit against Nebraska Tuesday in the U.S. Supreme Court, charging that for many years Nebraska has illegally withheld Republican River water. Carla Stovall, the Kansas attorney general, alleged in her legal filing that Nebraska is shorting Kansas about 10 billion gallons of water a year.

A 1943 compact signed by the three states in which the Republican flows — Kansas, Colorado and Nebraska — governs the amount of water that is supposed to be left in the river where it crosses from one state to another. More than 10 years of negotiations between Kansas and Nebraska have not resulted in any corrective action by Nebraska, Kansas alleges.

One point of contention is the amount of groundwater being extracted from the Republican River basin through virtually unregulated irrigation wells in Nebraska. In its filing with the Supreme Court, Kansas noted that in 1949, several hundred wells produced the water to irrigate 90,352 acres in Nebraska. By 1995, more than a million acres were being irrigated from more than 10,000 wells.

Kansas officials said that the flow of water into the Harlan County Reservoir in south-central Nebraska in the years 1936 to 1950 averaged 534,900 acre-feet a year. Even though precipitation remained constant, Kansas claimed, in the years 1980 to 1993, that figure was only 160,400 acre-feet a year.

The drilling of irrigation wells is not regulated by state law, though some natural resources districts do set limits or require water meters. Kansas authorities charged that the resources districts in the lower and middle Republican basin "have refused to restrict groundwater use within their districts for the benefit of surface flows" even though ground-

water use substantially reduces the flow of nearby streams.

The proliferation of irrigation wells in the river basin worries Kansas officials, who charged that irrigators are escalating well-drilling in anticipation of a crackdown on new wells, hoping that wells already drilled will be permitted to continue pumping.

Nebraska Attorney General Don Stenberg, in turn, contends that groundwater is not regulated by the interstate compact. And, he charged, Kansas was not putting to good use the water it was already getting from Nebraska. He said his office will argue that the Supreme Court should not even consider the case.

Groundwater and surface water are interconnected. Recent Nebraska legislation acknowledged that connection, as has legislation in other states. Hydrological studies have established the interrelationship.

However, the question remains open on whether pumping from the wells in the Republican River valley depletes the river's flow and how much that depletion might be. The continuing lack of control over well-drilling in parts of the Republican basin and the lack of water metering don't make it easier to know.

Stenberg should be sure to seek the advice of J. Michael Jess, director of the Nebraska Department of Water Resources, as the case continues. Jess and his department's experts know the water issue about as well as anyone around. Their knowledge could strengthen the state's defense against the suit.

The suit is unfortunate. It will probably be time-consuming and expensive. If Nebraska should lose — and, despite Stenberg's assurances, a loss should not be ruled out — Nebraska could be liable for millions of dollars, perhaps hundreds of millions of dollars, in damages. That would be a heavy price to pay for the answers to questions that should have been resolved by governors and legislatures, armed with scientific facts and a determination to be good neighbors.