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Water ruling hailed as win for Nebraska

BY DAVID HENDEE

Kansas' water czar has lost an initial claim that Nebraska must pay at least \$72 million for using more than its allotted share of Republican River water.

An arbitrator ruled in a preliminary decision that Kansas can only seek payment for damages it allegedly suffered, not payment for what Nebraska gained.

Nebraska Attorney General Jon Bruning hailed the decision as an initial victory in the fight with Kansas where millions of Nebraska taxpayer dollars are at stake.

"I am pleased the arbitrator's preliminary decision recognizes that Kansas' claims are limited to actual damages, if any can be shown," he said Monday.

Kansas water officials couldn't immediately be reached for comment.

The \$72 million figure included both damages to Kansas and benefits to Nebraska for using more than its share of water. David Barfield, the Kansas water czar, has pushed Nebraska and Colorado to comply with the agreement, saying compliance is not optional.

Arbitrator Karl Dreher, a former Idaho water czar, also decided that computer models currently used to determine how the river water should be shared among Colorado, Nebraska and Kansas should reflect actual conditions.

Nebraska has argued that the accounting procedure is flawed. For example, the model sometimes indicated creeks were dry when they carried water, or showed wet streams when they were dry.

Bruning said it is important for water accounting to reflect reality.

Dreher's decision, which Nebraska officials received Monday, narrows the scope of a March trial before him in Denver in which Kansas and Nebraska will lay out their cases in the heated interstate dispute. The decision takes Kansas' \$72 million claim off the

table.

Brain Dunnigan, Nebraska's water czar, has asked Kansas to provide information showing actual damages sustained by Kansas irrigators and others. None was provided.

If non-binding arbitration fails, the dispute's next step is a return to the U.S. Supreme Court.

Kansas sued Nebraska and Colorado in 1998, claiming that the two upstream states used more than their share of water in the Republican River, as established in a 1943 agreement. The case was settled in 2002.

The three states are in a new conflict over what has happened since 2002, particularly Nebraska's failure to comply with the water-sharing agreement in 2005 and 2006.

Bruning said the \$72-million damages question and the water accounting issues were two big issues for Nebraska's legal team.

"We're pleased, but this isn't the end of the line," he said. "The Supreme Court could be down the road, but we hope that Kansas and Nebraska can arrive at a settlement before we both incur the expense of a trial. We continue to engage Kansas in negotiations."