

bur Holloway, one of the tournament coordinators. "Obviously the fish in this lake are doing very well and not lack-

namment was 0.02 pounds an average of over 4.5 pounds per fish. Ten teams won monetary awards for placing in the

man's Corner.

Second lawsuit considered over occupational tax portion of LB701

Attorneys Rodney Confer and Jeanelle Lust from the Knudsen Law Firm in Lincoln were at the Alma Johnson Center Monday night to discuss their hope to file a second lawsuit against LB701, this time challenging the constitutionality of the occupation tax portion of the bill. In *Garey v. Department of Natural Resources*, commonly known as the "Friends of the River" lawsuit, the Knudsen Law Firm successfully challenged the constitutionality of the property tax portion of LB701.

The decision in that case, handed down by Lancaster District Judge Merritt on May 19, found that the property tax imposed on landowners in the Republican River Basin was unconstitutional on the grounds that LB701 amounts to "special legislation." This refers to a section of the Nebraska Constitution which prohibits legislators from giving special privileges to special groups of people, such as their friends and cronies. In this case the Knudsen Law Firm

argued that LB701 gave a special privilege only to NRD's "that are involved in a compact with three or more states that also have irrigation districts--in other words only the Upper, Middle, and Lower NRD's," explained Confer. Judge Merritt in his ruling agreed that LB701 had made a closed class of these three NRD's and was therefore unconstitutional. The State Attorney General's office has appealed Judge Merritt's decision to the Nebraska Supreme Court.

In the meantime, attorneys Confer and Lust say the occupational tax portion of LB701 suffers from the same problem of being "special legislation" as does the property tax portion of the bill, in that it created a closed class of NRD's instead of giving the same taxing authority to all NRD's. They say the next logical step is to file a lawsuit challenging the occupational tax portion of LB701, and they were in our area Monday to offer landowners impacted by the legislation an opportunity to join the lawsuit. They do acknowledge that the Nebraska Legislature could "fix" this particular constitutionality problem, for both the property and occupational tax portions of LB701, by passing legislation that gives all the NRD's in the state the same taxing privilege, but the attorneys said they do not believe this is likely. They pointed out that in the debate leading to passage of LB701, it was clear that the Legislature did not want the whole state taxed to meet Nebraska's obligation to Kansas under the water compact, but rather that they specifically wanted to place the burden solely on the Republican River Basin.

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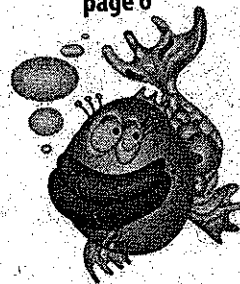
Attorneys Rodney Confer and Jeanelle Lust from the Knudsen Law Firm in Lincoln.

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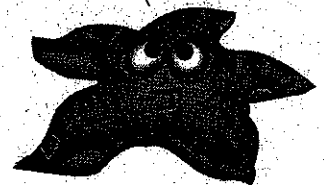
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In addition, Confer and Lust say they are planning to cross-appeal Merritt's decision where he ruled against two of their arguments in the *Garey* lawsuit, and stated they also plan to challenge the occupational tax portion of LB701 based on the same three constitutional principals they challenged in the original lawsuit. The first of these was the "special legislation" issue, on which they won. The second challenge was that LB701 amounted to the imposition of a property tax for a state purpose, which is not allowed by Nebraska's constitution, since the state can only tax income while the privilege of taxing property is reserved to small government entities. They say Judge Merritt even acknowledged in his ruling that complying with the water compact is a state obligation, but that he then erred in ruling there was a "predominant local benefit" to the Republican River Basin in LB701. The attorneys plan to argue that taxation should be proportional to benefit, but that under LB701, the Republican River Basin would be paying 100 percent of the tax while not receiving 100 percent of the benefit.

Attorney Lust pointed out that in challenging the occupational tax portion of LB701 on these same grounds, the argument will be more difficult for the attorneys to make than it was in the property tax lawsuit, because they would first have to prove that although called an "occupational tax," this tax is also a property tax because it is based on a per acre assessment on irrigated land. They would also have to prove that there was a predominant State purpose—that is, meeting Nebraska's requirements under the compact with Kansas—rather than a predominant local purpose, in the imposition of this tax.

The third constitutional challenge in the original lawsuit, which would be used again in the second lawsuit, was a point of law called "commutation," which Attorney Lust explained "is a fancy way of saying the state can't tax one group of people for the benefit of another group." Although Judge Merritt ruled against that argument in the original lawsuit, the Knudsen attorneys say he also erred on this point in finding a "predominant local purpose," meaning that Judge Merritt ruled the tax was predominantly for the benefit of irrigators in the Republican River Basin when it was, according to the attorneys, clearly for the benefit of the whole state.

Finally, the attorneys also explained that in terms of receiving refunds on taxes paid if ruled unconstitutional, there are differences in the procedures related to property taxes and occupational taxes. They pointed out that for property taxes, the only way to receive a refund would be for the taxpayer to file a written protest and request a refund from the County Treasurer within 30 days of paying the tax. If a protest was not filed, State law would consider that the taxpayer had paid the tax "voluntarily" and there would be no way to receive a refund even if the tax was ruled unconstitutional. They say their lawsuits unfortunately cannot fix this problem within the tax law, but that their purpose is to stop the collection of any more of the taxes. In the meantime they recommended taxpayers file protests on taxes already paid if they are within the time limit, and that any further taxes paid be accompanied by a written protest and request for refund.

However, regarding occupational taxes, the attorneys explained that even this method of attempting to receive a

refund is not allowed, and that the only way to potentially obtain a refund on these taxes would be through the filing of a lawsuit, which must be done within one year of paying the tax. For this and other reasons, Confer and Lust say they will be filing the lawsuit very soon and are inviting anyone who wishes to be a part of the lawsuit to join timely.

Confer and Lust also indicated they will be attempting to file the second lawsuit directly with the Nebraska Supreme Court, and that although the Supreme Court refused this method on the property tax lawsuit, the attorneys believe they have a valid argument in pointing out that the Supreme Court is now in the position of having to decide on the property tax issue anyway, and therefore might as well take up both issues at the same time.

In the discussion period following the Knudsen Law Firm's presentation, Mike Clements with the Lower Republican NRD acknowledged to attendees that he also personally believes compliance with the three-state water compact is a state obligation, but says he is deeply concerned that if these lawsuits are successful, the next likely result will be the State or the U.S. Supreme Court mandating lower water allocations, which could ultimately spell the demise of agriculture in our area. The Knudsen attorneys responded that they alternatively believe that these lawsuits have forced and will continue to force the State to focus on other "fixes," such as the potential for piping water to Kansas, and that their success in *Garey v. Department of Natural Resources* has provided a legitimate forum for emphasizing that compliance with the compact is a State rather than a local obligation.

Southern Valley swim team finishes second at Cambridge

by Dawn Sladky

The Southern Valley Swim Team travelled to Cambridge on Saturday, May 31, 2008, for our first regular swim meet of the season. Southern Valley placed

11&12 Boys Butterfly - Christian Lewis - 2nd - 74.91; 13&14 Girls Butterfly - Jennifer Sladky - 1st - 38.6; 18&U Girls Butterfly - Cassie Brooks - 2nd - 40.32; Jessica Murdoch - 4th - 40.57; 8&U Girls

Quinn - 8th - 35.37; Molly Lambert - 11th - 42.48; Savannah Ellis - 12th - 62.7; 8&U Boys Freestyle - Brayden Becker - 2nd - 28.55; 9&10 Girls Freestyle - Kaitlyn Ford - 8th - 25.54; 9&10 Boys Freestyle