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Natural Resources Committee
February 26, 2009

[LB651]

The Committee on Natural Resources met at 1:30 p.m. on Thursday, February 26, 2009, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB651. Senators present: Chris Langemeier, Chairperson; Annette Dubas, Vice Chairperson; Tom Carlson; Tanya Cook; Deb Fischer; Ken Haar; Beau McCoy; and Ken Schilz. Senators absent: None. [LB651]

SENATOR LANGEMEIER: Good afternoon and welcome to the Natural Resources Committee. I'd like to welcome everybody that's here in the crowd to watch the hearing and participate in the hearing. And I'd also like welcome those that are watching it on closed caption television and those that are watching on our new live Internet feed as we continue to make our committee hearings more accessible to the state of Nebraska and constituents. My name is Chris Langemeier. I'm the Chairman of the Natural Resources Committee. I'd like to introduce to you the members sitting at the table with us, for your information, as we go around. And we're going to start off to my far right or your far left, we have Barb Koehlmoos who is the committee clerk; we have Senator...I want to make sure I say this right, Tanya Cook, I apologize, I mispronounced last week, from Omaha, or yesterday rather, District 13; we have Senator Tom Carlson from Holdrege, Nebraska, District 38. Then we have Senator Deb Fischer from Valentine, District 43. Going to my far left or your far right we have Senator Beau McCoy from Omaha, District 39; we have Senator Ken Haar from north Lincoln and southern Saunders County, excuse me, District 21; we have Senator Ken Schilz from Ogallala, District 47; and we have the Vice Chair of the Committee Senator Annette Dubas from Fullerton, District 34. Then we have Laurie Lage who is the legal counsel, who's wandering around right here. We have two pages that help throughout the process. As you have things to hand out, if you hold that up...them up, they will come up and get them. We have Malinda Frevert from Omaha and we also have Justin Escamilla from Scottsbluff, Nebraska. If you do have handouts, we ask that you have ten copies for the committee. We also advise to the people handing them out is if you do give us something to look at, we're going to keep it for the record. So if it's something that you want to show up but you don't want us to take from you, just hold it up from the table, otherwise we will keep it. We'd ask at this time that you turn your cell phones off so we show respect for those testifying at the testifiers table. Those wishing to testify today, in the corners of the room there are these green sheets. We would ask that you fill them out in their entirety so we have a clear record of who testified and their stance today. If you're here in the audience and you'd like to...and choose not to come up and testify but you want to be on the record as being an opponent or proponent to a bill, there's also another sign-up sheet in the corner of the room that you can put your name and address on and fill that out and we'll make that part of the record that you were here but chose not to testify. With that, we ask that you come up front. You state your name clearly and spell it, first and last name no matter how simple it is. It helps the transcribers make sure we have it right so we don't have to call you later and verify it. If

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you would spell and say your first name before you start. With that, we'll open the hearing today on LB651. And, Senator Christensen, welcome back to the Natural Resources Committee, and you're recognized to open. [LB651]

SENATOR CHRISTENSEN: (Exhibits 1 and 2) Thank Chairman Langemeier and fellow senators. I am Senator Mark Christensen, M-a-r-k C-h-r-i-s-t-e-n-s-e-n. I represent the 44th Legislative District and here to introduce LB651. LB651 would adopt the Water Resources Revolving Loan Act. This bill recognizes that because water is an important and valuable natural resource in the state that there is public interest to develop tools to implement water enhancement programs. Given the impact of an extended drought on a certain area of the state, assistance in the form of the Water Resource revolving loan fund in LB651 is one of these necessary tools to lessen the negative impacts of regulation, management, protection, and conservation of limited water resources. LB651 establishes the state fund for the natural resources districts to use as a financing mechanism for local water resource projects to assist with water management. The concept is similar to the Drinking Water Revolving Fund, except that there would be...would not be an annual appropriation to continue building the fund. LB651 would receive its funds from the \$9 million owed by the NRDs to the Water Contingency Cash Fund. When these funds are repaid, according to LB1094 from 2008, into the Water Contingency Cash Fund, this bill would transfer these funds to the Water Resource revolving loan fund to be loaned to NRDs for other local projects. These funds would then be used and repaid on a continual basis without the ongoing need for more appropriations. The Natural Resource Commissions would have oversight of the fund and would make interest and interest-free loans to districts to match other funding sources. The repayment could go back into the fund so that the principle base would continue to grow. In addition, LB651 would remove the requirement that water resources project listed in Section 2-3226.04 use bond authority to finance such projects instead would allow NRDs to choose to use bonding or not to use bonding to implement certain projects. I do have some amendments for the committee to consider and would like to explain them to you. AM430 opens the current statute in the bill, Section 2-3226.01, which allows bonding for certain NRDs for river flow enhancement projects. It strikes the current language describing which NRDs are eligible to bond for water resource projects in Section 2-3226.04, and inserts new language allowing NRDs with jurisdiction that include a river basin that has been determined or designated fully or over appropriated. The Supreme Court recently struck down taxing provisions and this amendment would clean up the enforceable sections in the statute. The rest of AM430 harmonizes other current statutes in regard to the removal of the property tax authority in subsection 1(d) of Section 2-3225. AM431 puts a requirement in Nebraska law that any property tax determined by a judge or final order by the Nebraska Supreme Court to be unconstitutional to be refunded without the filing of a claim. The amount of refund would be confined to the year in which the decision was made and the prior years beginning in the year when the suit was commenced. The refund would follow the current procedures laid out in Section 77-1736.06. This refund would allow to make any

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judgment or final orders of the Nebraska Supreme Court entered on or after January 1, 2009. I believe strongly that a refund of all property tax where the courts have determined the tax unconstitutional is the honorable thing for the Legislature to do. Again, these amendments are for your consideration as the Legislature evaluates the outcome of the recent lawsuits and how it wants to proceed into the future. In the spirit of full disclosure, I'd also like to make it clear that I am an irrigator. I have filed a conflict of interest statement with Nebraska Accountability and Disclosure Commission. I'd encourage advancement of LB651 to General File, and thank you for your consideration and be glad to answer any questions you have. [LB651]

SENATOR LANGEMEIER: Thank you, Senator Christensen. Are there any questions? Seeing none, you're off the hook. Further testimony? You've heard the opening on LB651. Now we'll go to proponents or supporters of the bill. Come on up. Now you will get...now that we get into the next stage here, you will get the lights today. You'll get the green light for four minutes and you'll get the yellow light for one minute, then you'll get the red light. Then we'll ask you questions. So as that starts...go ahead. Welcome. [LB651]

DAN SMITH: (Exhibit 3) Very good. Senator Langemeier, members of the Natural Resources Committee, my name is Dan Smith, D-a-n S-m-i-t-h. I'm a manager of the Middle Republican Natural Resources District. I'm offering testimony today in support of LB651 on behalf of the Middle Republican Natural Resources District and the Nebraska Association of Resources Districts. I'm circulating my testimony. I'm not going to sit here and read all of it. Senator Christensen did an excellent job on opening and describing, I guess, what's out there. What we're looking at with this revolving loan fund, as you're well aware, district...more districts are being declared fully appropriated. There are a number of districts that have had that designation for a while. With the revolving loan fund, it gives those districts the opportunity to access those tools that currently exist in the Middle Republican NRD or in the Republican Basin NRDs to use as they move forward with their integrated management plans. More often than not, if a district is just designated, there may be needs for studies. There may be a variety of different things that need to be within that district to make their integrated management plan work and work for them. The difficulty may exist in that if you have a relatively large scale project, if you're doing modeling, if you need to get extensive groundwater data for your district, your only choice right now is to go to existing programs and make cuts deep enough in there that you can afford to do that work. With the revolving loan fund it would give those districts the opportunity to come in, borrow money and then look at a longer term payback. For instance, if you needed \$100,000 to do your project, you could come in and borrow that from the fund. Instead of making a \$100,000 cut in your current budget to be able to do this work, you can make a modest \$10,000 cut in existing programs. You may have some funding authority that you can go ahead with. But you can cut that impact down on your overall budget and pay it back over a number of years and put that work together. Because the funds are paid back, they will be available for districts on

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and on. With the designations, a number of us districts have been in here looking for funding. You don't enjoy it, I know we don't enjoy it. The revolving loan fund would give us the opportunity to establish this fund, make it available to districts that are fully or over appropriated, that have that designation so that they can move ahead with the projects they want to do. In a district that has their plan adopted, they've been fully appropriated for a couple of years, they're working ahead to balance out things in their district, the revolving loan fund then could give them an opportunity to look at maybe surface water leases, maybe groundwater buyouts so that they can develop a program where you can still have new uses with the offsets that are needed. You could look at industrial growth with the offsets that you could purchase through this fund using the dollars from the revolving loan fund. So we feel there are many good benefits to this program. We looked at what we needed to repay to the state. We thought that this was an excellent opportunity to establish this fund and make it work for NRDs in general. And with that, I think I'll stop. If there are questions I'll certainly try and answer some. [LB651]

SENATOR LANGEMEIER: Thank you very much. Are there questions? Senator Haar. [LB651]

SENATOR HAAR: Yes, thank you. Give me again an example of, and a little more detail of the kind of projects that would be funded through these revolving loans. [LB651]

DAN SMITH: Well, take a district that's just been designated. That designation does very little for you, if you will, with regard to information. The fully appropriated designation says, okay, there should be no more new uses. If you haven't done a fair amount of study, and most districts have, but maybe it's out of date, you need to look at groundwater supplies, in general, in the district. You need to get a good handle for recharge across your entire district. So there's a number of things that you need to know about the groundwater system in your district and how it works, and maybe the only way that can be done is with a new study. And they can be fairly expensive, depending on what scale you want to go to, depending on what you had to start with. Without...in my example of \$100,000, if you have to fund a \$100,000 study, the only way you're going to do it is to make cuts in your existing programs. And most of us probably have got some slack, but you know, on a scalewise it's going to be tough to do. With the revolving loan fund you can go in and borrow that money. You've got a payback over a number of years. You can cut that impact to your budget so that you're not bouncing up, you're not dropping down, you're not going up again another. You can cut that impact down to your budget to a workable level to where you're going to have to make some minor adjustments. Studies, background information is what a newly designated district is going to need. A district that's had a designation for two or three years, they've got their IMP developed, now they're moving ahead. They need to find, if you're ever going to have any new development, any new uses, you're going to have to offset those uses. Now the studies may find things that can adjust the way the accounting is done. But in

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general, you're going to need to retire some use to come up with an offset for a new use. The IMP requires that we NRDs make adjustments for new municipal uses for the first 25 years. And then we can come back in then after that and start working with the municipalities. And the offsets they get we can take credit for then as time goes on. But initially, if you're going to have that new development you've got to offset it some way. And without a vehicle where you can come in and retire some programs, whether they be surface water uses or groundwater uses, or if there's some other process that can be used, augmentations, there are a variety of things that can be used. But without a program to go in and fund it, it's tough to do. We'd be down here asking you guys for funding for a particular project for a particular program every year. And it's going to be every NRD that's fully appropriated. With the revolving loan fund we can take the edge off of that. That should be enough funds to keep a lot of these short-term needed projects going and moving along. [LB651]

SENATOR HAAR: Okay. [LB651]

SENATOR LANGEMEIER: Other questions? Senator Haar. [LB651]

SENATOR HAAR: How does the refund of property tax...does that come out of this fund then or... [LB651]

DAN SMITH: The \$9 million that was set up through LB1094, I guess, the three Republican NRDs used about \$8.5 million of that. Right now the statutes say that we're to repay that back to the Water Cash Contingency Fund, I believe it is. And then it would go back into General Fund dollars. The property tax dollars that we have collected, and it's going to vary between the three districts, but I'm going to say 85, 90 percent of these funds have been collected. We're holding them in separate accounts knowing that we can't use them. So we've got those dollars. The property tax repayment is something that will have to be addressed as soon as any challenges to the Supreme Court's decision are done. And once that format is going to be established then we'll make repayment. We've got those dollars there, whether they go back to the counties or however that process is established, we'll work to make sure that gets done correctly. Occupational tax funds are still there. There is a challenge to those. Whether that's upheld or not is going to be decided in the courts. But there would still be funds available to go into this revolving loan fund should the districts prevail in that challenge. [LB651]

SENATOR HAAR: Do you know how much property tax is being held in those funds right now? [LB651]

DAN SMITH: Generally, once again it was a little bit different between each district. But generally, about 25 percent of the funds were property tax, and the other 75 percent were occupation tax. So at the \$8.5 million we're talking probably \$2 million, \$2.5 million

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of property tax and the rest would be occupation. [LB651]

SENATOR LANGEMEIER: Other questions? Seeing none, thank you very much for your testimony. [LB651]

DAN SMITH: Thank you, sir. [LB651]

SENATOR LANGEMEIER: Thank you. Further testimony in support or proponents. Good afternoon. [LB651]

JASPER FANNING: Senator Langemeier, my name is Jasper Fanning, J-a-s-p-e-r F-a-n-n-i-n-g. I'm the general manager of the Upper Republican Natural Resources District. Mr. Chairman and members of the committee, I'll keep my testimony fairly brief because I think this bill is very simple in nature and it addresses a complex problem but maybe a simple component of it. Throughout the state because of LB962 and the following designations of fully appropriated and over appropriated, natural resources districts are going to have ongoing challenges in managing our water resources. And Mr. Smith mentioned several types of projects that we're going to have to take on. And we've been doing some of these things in the Republican Basin. And some NRDs have been using their existing property tax funding authorities in the Platte Basin. I don't think this bill was ever intended to be anything related to LB701. However, in light of recent court rulings, I think that brings to the forefront some considerations that need to be made. We need a funding source that will allow us to take on projects. And this applies again to more than the Republican Basin. This is a funding source that we could borrow from like NRDs in the eastern part of the state primarily do for the Resource Development Fund, the Water Drinking Fund, those things, where we use that money to get projects up and going, we pay that back, and that money is then available for the next district and the next project. That part of it is pretty simple. But some of the things that maybe this bill doesn't do in its present form that in light of the LB701 ruling, the NRDs on the Platte are going to have to be dealing with the Cooperative Agreement. They already are. Many of those districts are planning on using property tax funds to fund some of those projects and programs. To me, the LB701 ruling says NRDs can't use property tax dollars to assist with a state purpose. And to me, the Cooperative Agreement probably gives the Platte districts more of a challenge in terms of how do we deal with that since our only funding mechanism is property tax. Then it does in the Republican Basin where at least for the time being, we still have the occupation tax. I think the biggest challenge in my mind to the occupation tax in the court system, and I'm not an attorney, is the closed class argument that the district court ruled on, on the challenge to the property tax. If that occupation tax were opened up to all fully and over appropriated districts...full and over appropriated NRDs, we would have a funding mechanism that would allow us to continue certainly with the projects that we're working on, but would also be a tool available for the Platte NRDs to be able to deal with the Cooperative Agreement. But I think this revolving fund idea is a way that we can put

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some money aside to deal with these ongoing water projects and not have to worry, if you will, so much about whether or not we're going to be able to secure funding for a project on an annual basis. And as we move through time, these multiyear projects then, you know, that way we don't see multiyear projects being held up because we've got years one or two done, and then all of a sudden we don't have funding and we have to wait to secure funding before we can continue on with those projects. I think the revolving fund idea again is going to fit what we need there. And I'd encourage the committee to give this some serious consideration. And with that, I'll take questions. Thank you. [LB651]

SENATOR LANGEMEIER: Thank you very much. Senator Haar. [LB651]

SENATOR HAAR: Thank you. This bill has nothing to do with new bonding authorities or anything, right? It's just strictly the revolving fund. [LB651]

JASPER FANNING: That's right. It's my understanding that this bill is just going to create the revolving fund. I have seen some amendments that would make, if you will, some changes to the bonding authorities that we have with respect to our occupation tax. It really doesn't really impact the bonding authorities. But our occupation tax, historically, with LB701 we could only use that to repay bonds. That was fine when we could use property taxes for what was deemed to be a state purpose. But to the extent those projects have ongoing annual operating expenses, we're going to be able to need to use those occupation tax dollars that were originally only to be used to pay bonds. We're going to need to be able to need to use those for the ongoing operating expenses of these projects that are related to compact compliance because we can't use our property tax dollars for that, according to the court ruling. So to that end we need to see that piece of this bill move forward because we're going to be able to need to use those occupation tax dollars for more than paying off bonds. [LB651]

SENATOR HAAR: Okay. When I was on the city council I was aware of the occupation taxes in terms of like phone bills and such. What are the occupation taxes that you're talking about? What are those levied against? [LB651]

JASPER FANNING: They're levied against irrigated acres. To the extent someone has an acre that's irrigated, it's charged an occupation tax. It's not based on value, like property taxes. It's either irrigated or not. And it's assessed on a per irrigated acre basis where property tax is assessed on value and assessed to all property. [LB651]

SENATOR HAAR: Okay. [LB651]

SENATOR LANGEMEIER: Senator Schilz. [LB651]

SENATOR SCHILZ: Thank you, Senator Langemeier. Mr. Fanning, Jasper, how you

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doing? Welcome to Lincoln. [LB651]

JASPER FANNING: Thanks again. [LB651]

SENATOR SCHILZ: Let's just as a hypothetical in your opinion, if we don't get a revolving loan situation like we have here in LB651, what happens? I mean, where are you at then? [LB651]

JASPER FANNING: Well, again if we don't have a revolving fund type of system set up then we're back to where we're spending more time trying to secure funding than maybe what is efficient. [LB651]

SENATOR SCHILZ: Or trying to fit it in, like Dan said. [LB651]

JASPER FANNING: Or trying to fit it into existing funding. We're back...LB962 was set up, and LB962, as I'm sure you're fully aware, but members of the task force said, this will not work without adequate funding. That was made, I thought, made crystal clear. And this is one way of providing at least part adequate funding to see that LB962 can be implemented and be successfully utilized by the districts. [LB651]

SENATOR SCHILZ: Okay, thank you. [LB651]

JASPER FANNING: Thanks. [LB651]

SENATOR LANGEMEIER: Any other questions? Senator Fischer. [LB651]

SENATOR FISCHER: Thank you, Senator Langemeier. Thank you, Dr. Fanning. You're looking at \$9 million in this revolving fund. Is that right? [LB651]

JASPER FANNING: That is what's being proposed, yes. [LB651]

SENATOR FISCHER: How much money...give me an example of a project that your NRD would use this revolving fund for and how much would it cost. [LB651]

JASPER FANNING: Well, there have been proposals thrown out in the Republican Basin, which we would only be paying a part of it, our district, in terms of augmentation type projects so that we could manage the flows and depletions to the Republican Basin to stay in compliance with the compact and still allow for ample irrigation in the basin with price tags in excess of \$100 million of infrastructure costs. [LB651]

SENATOR FISCHER: So is this...this doesn't look like it's going... [LB651]

JASPER FANNING: This would fit smaller projects. [LB651]

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SENATOR FISCHER: ...to help with that, right. [LB651]

JASPER FANNING: Well, we would still have to use the bonding mechanism to take on those very large projects. This does not circumvent that. [LB651]

SENATOR FISCHER: So what are you going to use this money for? Give me a specific project. [LB651]

JASPER FANNING: A specific project that this might be used for? [LB651]

SENATOR FISCHER: Yeah. It's \$9 million. [LB651]

JASPER FANNING: Okay. If you wanted to give an example of non-hydrologically connected water in the state of Nebraska, the Republic Basin would be a prime example. And I know that sounds crazy because the Kansas lawsuit and litigation is all over hydrologically connected water. But the alluvial aquifer in the Republic Basin, the main stem, is connected only to the Ogallala aquifer in general through the tributary streams. There are places where the Ogallala shale, over large areas where the Ogallala shale comes over out at the surface of the ground well above the alluvial aquifer of the main stem. To the extent that these disconnects happen, we have very little information on those areas and those types of formations. Okay. We have to live by the compact model, so it kind of doesn't matter what reality is in our basin. But if we weren't dealing with the compact and I was dealing with a fully appropriated designation in my district, our district would have to undergo some very expensive studies to try and figure out the extent to which the water is hydrologically connected so we could figure out how to best manage it. And some of these...some pilot projects that some NRDs in the eastern part of the state where they have some non-connected sources of groundwater have underwent with the imaging and flying the helicopter with the sensor all that stuff which is very, very expensive to do, you know, if you were going to do our entire district, you'd be looking at probably about \$4 or \$5 million to do that. A project like that would fit this bill, where we couldn't afford to pay \$5 million to get a study done, you know, and maybe even scale it back, you know, just to be efficient with resources anyway. But say you had a regional study that was \$4 or \$5 million with several NRDs cooperating, those types of projects. [LB651]

SENATOR FISCHER: Okay. So you have a \$5 million study, how are you going to pay that money back then? [LB651]

JASPER FANNING: That money could be paid back through our existing authorities in terms of property tax or, you know, potentially you could use occupation tax for that. In terms of... [LB651]

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SENATOR FISCHER: Would you have...I'm just trying to speed it up a little. [LB651]

JASPER FANNING: Yes, ma'am. [LB651]

SENATOR FISCHER: Would you have to write a contract in order to get this loan and so you pay it back over a series of years then with an interest rate negotiated or how's that? [LB651]

JASPER FANNING: The Natural Resources Commission would administer this revolving fund and we would have a...you know, they would set up the procedures and you would ultimately have a contract with them. There would be an application process, a contract for repayment, all those types of things with the commission. The thing here is in terms of... [LB651]

SENATOR FISCHER: So you feel...basically you feel you need more money up front than you're able to tax for now, but you would be able to use your power to tax in order pay off a loan. [LB651]

JASPER FANNING: Yes. [LB651]

SENATOR FISCHER: Thank you. [LB651]

JASPER FANNING: And one other thing, if I might. [LB651]

SENATOR FISCHER: No. (Laughter) Go ahead. [LB651]

JASPER FANNING: In terms of borrowing money there are...you know, we always want to do things in a cost-effect manner, and there are certain projects that bonding makes sense for. Bonding is not cheap to go through the process to issue bonds. But in this...if you will, in these smaller projects, you know, we're not necessarily talking about \$9 million projects or even...these hundreds-of-thousands-of-dollars-type projects or may \$1 million or \$2 million at the top end, we're bonding, it doesn't make sense to bond for that kind of...it would be more efficient to use a funding source like this than bonding. That's where this fits in. [LB651]

SENATOR FISCHER: Okay. Thank you. [LB651]

SENATOR LANGEMEIER: Senator Dubas. [LB651]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Dr. Fanning. Are there any other loans that you have access to to do any...I mean, do you use loans outside of bonding in the course of your business? [LB651]

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JASPER FANNING: Typically not. There are districts that have used loan funds through programs for...that are designed for like rural water projects, that kind of thing. So yes there are, but not fit for this purpose, if you will. Those other programs that I'm aware of that districts have used are for drinking water type projects or the Resources Development Fund for flood control projects. There isn't anything that I'm aware of that's available for there water management type issues. [LB651]

SENATOR DUBAS: You bring up the Resource Development Fund. These types of projects that you would want to use this money for would be different than the types of projects from the Resource Development Fund? [LB651]

JASPER FANNING: Completely differently, yes. [LB651]

SENATOR DUBAS: So if you're borrowing the money, you're going to have to build that into future budgets, correct? [LB651]

JASPER FANNING: Absolutely. [LB651]

SENATOR DUBAS: Is that going to cause a problem with lids or budget constraints that you have to operate under? [LB651]

JASPER FANNING: I'm not aware of any problems that that would cause at this time. [LB651]

SENATOR DUBAS: Thank you. [LB651]

SENATOR LANGEMEIER: I don't see others. I have a question. Dr. Fanning, it's a question I get asked everyday. As a matter of fact, I got asked twice this morning. We've already loaned you \$9 million. How are you going to pay that back? And then when you do pay it back, you want to borrow it again with this bill. That's the question I get asked everyday. Can you answer that? [LB651]

JASPER FANNING: We are going to pay that \$9 million back. How are we going to do that? Hopefully with a constitutionally valid taxing authority. Obviously, we can't use property taxes for a state purpose. There are questions that...again, I'm not with the Attorney General's Office. I think we need to get some advice from some of the legal folks as to exactly how that's going to work our legally. As far as I'm concerned, the occupation tax is still viable and valid. That is what we will use to pay back the \$9 million. We intend to pay that back and we're not wavering in that. And I'm not here to ask to borrow that back for the Republican Basin which was its original intent. We're about something totally different. This is a policy question. Should we take \$9 million that have already been appropriated that we were going to see coming back in and rather than have those come back into the General Fund, leave them out there in a

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revolving loan fund. And that's really the question before today. I'm certainly not here, and neither is Mr. Smith, shirking, if you will, our requirement to repaying those funds or trying to get out of that. It's our full intent to pay those back to the state of Nebraska. We would like to see those funds left out there for water resources management issues rather than going back into the General Fund. That's our preference. That's your decision, though. [LB651]

SENATOR LANGEMEIER: Sure. Seeing no other questions, thank you very much for your testimony. Very good. [LB651]

JASPER FANNING: Thank you. [LB651]

SENATOR LANGEMEIER: Further testimony in support or a proponent to LB651. [LB651]

DEAN EDSON: Senator Langemeier and members of the committee, my name is Dean Edson, D-e-a-n E-d-s-o-n, and I'm the executive director for the Nebraska Association of Resources Districts. I just want to, again, echo our support for this bill. Dan Smith had provided some testimony earlier, but I want to reiterate some points and maybe answer some additional questions you may have. As Jasper Fanning had spoken, LB962, when that got set up, it was very clear that there was inadequate funding for our water programs that we need to implement in these fully and overappropriated basins. What we're trying to do with this is a one time setup with some money that we can, all the districts can utilize to try to develop programs and projects to augment streamflows all across the state of Nebraska. Rather than putting us in a situation like we were last year with LB1094, having to come and say we need \$9 million in a loan, we'll pay you back because of this one situation in the Republican River Basin, we're trying to figure out can we some way set this up where you have \$9 million when most projects come due and you have projects on line, we can borrow the money and pay it back. We did some initial analysis with some bonding people on just using the \$9 million on up front monies, on say you had a project that might take ten years to pay off, but you only used this financing for the first three years, and then found other financing maybe for projects in the Republican River Basin on bonding. We could leverage this \$9 million to do \$158 million worth projects in the state. Well, that's a significant amount of money and a significant amount of achievement so we undertake statewide. Let's look at some projects that are kind of on the drawing board right now. Platte River Cooperative Agreement, we're looking at project now in the Wood River area to try to capture some tail water off of an irrigation district to store and then release in the river for compliance with the Platte River Cooperative Agreement and meet endangered species needs. That project is going to cost somewhere in the neighborhood of \$12 to \$15 million. And that's the kind of...and they're right now applying with the Resources Development Fund and trying to get in line there to get some of that money. The problem there is that the Resources Development Fund only has \$3.5 million annually to give out. There's over

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\$10 million demand on that \$3 million annually. We're already short \$7 million just to do the other development projects. So we got to start thinking out of the box and start thinking of other ways to finance things, other ways to build these projects so that we make sure that we've got clean water out there for environmental purposes, for municipal purposes, domestic, agriculture, manufacturing and industry. And that's why we're trying to introduce this bill...why we introduced the bill and why we're trying to figure out a different way to finance that. With that, I'll try to answer any other questions you have. [LB651]

SENATOR LANGEMEIER: Thank you. Are there any questions? Senator Haar. [LB651]

SENATOR HAAR: This is sort of a follow up on Senator Langemeier's. How long is it going to take to build this fund up, you know, to pay the money back so it...any idea? [LB651]

DEAN EDSON: Well, it depends on how we can get the funds put into that. I mean, right now part of the issue here is it's complicated, this is the Supreme Court case on the repayment. So if you put, like I say, if you put \$9 million in it or you put \$7 million, it magnifies, and there's some safeguards put in this bill that no one project can take more than 40 percent out of this fund, so you make sure and you divvy it out. If the put it...the other provision in there is that there's a lower interest rate on short-term notes. So it's an incentive to try to only use the money for three years and then find some other financing mechanism. You loan \$3 million out for one project and they were able to secure some other funding sources to pay that back, two years or three years out you could put \$3 million back in in three years and make it available for the next project. [LB651]

SENATOR HAAR: But it's going to be some time before you even have money in this fund, right? [LB651]

DEAN EDSON: It'll be some time before we even get any money in it now, but we need to start thinking ahead. We've got to start doing some forward thinking and progressive thinking and start looking at all the projects statewide that you need to do. There are some in the Republican Basin. There's going to be some in the Platte River Basin. The Niobrara Basin will probably need something somewhere down the line. If the Lower Platte River would be declared fully appropriated, there's obviously going to be a demand there at some point in time. And so you need to have something put in place where there's some access to some funds to do your projects that may be needed to make sure that everybody has the water they need. [LB651]

SENATOR HAAR: Or we could probably all put our salaries into that, but it wouldn't make any difference (Laughter) [LB651]

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DEAN EDSON: That's right. [LB651]

SENATOR HAAR: Either way. [LB651]

DEAN EDSON: Either way. [LB651]

SENATOR HAAR: Thank you. [LB651]

SENATOR LANGEMEIER: The evaporation rate on that bucket would (laughter) overdue that. [LB651]

DEAN EDSON: If the bucket is open, you lose about 30 inches a year, so. [LB651]

SENATOR LANGEMEIER: Well, that would handle it. Are there any other questions? Seeing none, thank you very much for your testimony. [LB651]

DEAN EDSON: Thank you. [LB651]

SENATOR LANGEMEIER: Further testimony in support or proponents of LB651? Seeing none, now we're going to move to opponents and I'm going to have one go first here. [LB651]

CRAIG BREUNIG: Claude Cappel, C-l-a-u-d-e C-a-p-p-e-l. [LB651]

SENATOR LANGEMEIER: Claude Cappel has asked for some assistance to stay within the timelines, so my LA is going to read his testimony in and then he'll move over and stand for questions, so. Go ahead. [LB651]

CRAIG BREUNIG: (Exhibit 4) Senator Chris Langemeier, members of the Natural Resources Committee, I'm testifying against LB651. In the Republican River Basin, the purchasing of surface water is predominately being used to allow some groundwater irrigators to continue to deplete the aquifer. This practice has and is over time depleting river flow, surface water irrigation, and drying up irrigation wells predominately in the southern area of the Republican River Basin. Over the last four years, our farming operation has accumulated over a years' allotment, which is 4,900 acre-feet of carryover water. Our neighbors buy water. Why? It is easier. We have above average yields and accomplish this by rotation and management and spending a lot of money to become efficient in water use. We are presently installing drip systems, which is expensive. Since our land is either under an irrigation district or was opted out because of sufficient well capacity at the time, I feel we have a property right. Under our NRD rules, we could transfer this water to a willing buyer. The fact is that the water we didn't use went down the river to Kansas because if we had pumped it, the river flow would have been less. A water broker recently approached me twice and offered up to \$6 an acre-inch for it. That

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figures over \$350,000. If I don't sell it, any additional carryover will probably be forfeited. If I have to sell it, it will be like digging my own grave. If I sell it, it will go to an area that most likely has a declining water table and cause it to decline more. This in turn lowers the amount of water that percolates into the stream and the amount of water that flows from west to southeast underground. A study done in 1976 showed that 70,000 acre-feet of water flowed from Colorado to the URNRD underground and 80,000 acre-feet flow from the URNRD to the MRNRD. For the wells that are not very deep to water, it is cheaper to pump water then spend money to become efficient on water use and saves them labor cost, and management costs. Most of the transferred water is going to farmers who know it is cheaper to let a pivot run then to hire the required labor to manage the use of water or to irrigate land that requires more water because of soil or slope. Another cause of needing overallotment water use is the amount of increase in water use for the last 10 percent to 15 percent of corn yield can take four to six inches of additional water. Selling surface water to allow more pumping is also in direct contrast for meeting compact compliance. There are irrigators who have spent hundreds of thousands of dollars over the years to get efficient in order to conserve water, especially in the surface water areas. It penalizes anyone trying to use less water. Allowing the upland area to pump more then what is sustainable is taking quick response irrigators' ability to irrigate away. In 1975, the Legislature passed LB577 for managing groundwater. I've been told by some of the original board members that it took too long to implement it because of reviews and revisions by the Department of Water Resources' approval of a moratorium. In July of 1976, an open file report, 76-498, was done on changes in the water supply in the Upper Republican Natural Resources District done by the United States Department of Interior Geological Survey in cooperation with the Conservation and Survey Division, University of Nebraska on the changes in the water supply in the URNRD from 1952 to 1975. It predicted the results that have turned out to be relatively accurate. In June of 1978, a final report, Water Resources Investigation 78-38, was completed showing the predicted results. Parts of this are not in the handout book because they are formulas, etcetera. In 1982, the Legislature passed LB375 which allowed an individual NRD to deplete the aquifer even though it would deplete river flows in the river basin and aquifers in adjoining NRDs. In reading the hearings and floor debate, I feel it was for economic gain. I have the complete bill hearings and debate if someone wants to read it. Governors Nelson and Johanns' Republican River Advisory Board under was formed around 1997 and went through the settlement. About 30 people were on it consisting of bankers, irrigators, NRDs, and senators. The first couple years was education of the board. We were a sounding board for what was going on, pluses and minuses. A statute was put in that said an NRD may treat wells drilled after January 1, 2001 different. My feeling was almost everyone, if not everyone, felt it was a good settlement. Roger felt the basin would have to cut back 10 percent from the 1998-2002 level of pumping and in water short years, another 5 percent. Everyone on the board that was allowed in the meetings in 2002 had to sign a paper sworn to confidentiality. It was known there would be a settlement in early summer. The MRNRD put on a moratorium in the later part of the

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year. The settlement was signed December 16, 2002. The NRDs allowed expansion of irrigation after the settlement. The letter to the LRNRD shows that in April of 2003, Roger Patterson was concerned about the NRD expanding their irrigation. Roger was blindsided by what had happened by the amount of satellite pivots in the URNRD, with the MRNRD expansion from existing wells, and the LRNRD allowing wells to be drilled and probably acre expansion. The public didn't like the outcome of the settlement and any member of that Governor's advisory board got voted off or quit, including the NRD board and managers. In looking at the enclosed document, Provisional Information Under Review, given out by Ann Bleed at an open meeting at Cambridge after LB701 that it appears assuming the average baseline volume acres that were what was watered in years '98 to '02, then according to this, the MRNRD added over 37,000 acres to wells already drilled; the LRNRD added over 68,000 new acres; the URNRD allowed over 57,000 additional irrigated starting in the late nineties called satellite pivots called noncertified acres. If there is ever an occupational tax, if used, it should be on the amount of water pumped and on all irrigation in the state, not on the acres irrigated. The cost would balance out because the western area that is water short pumps a considerable more water than the eastern area. It would encourage less pumping and conserving water. The occupational tax is being administered unjustly upon the surface irrigation districts in the Republican River Basin and their patrons. A large number of irrigators who have not received irrigation water since 2002 are being taxed the occupational tax by the NRD. These surface water irrigators are also having to pay the mandated construction, operational, and maintenance assessment or the land will be sold for that tax by state law. These surface water irrigators also will have a recorded water appropriation subject to the first in time, first in right. The NRD says to give up your right and we won't tax you. The still have to pay the irrigation district construction, operational, and maintenance assessment or have our land sold for taxes. Another problem is within an irrigation district some irrigators in the same irrigation district got money from the buyout and others did not but still have to pay the O&M to the district. Letting the natural resource district control the water use in a district where it affects entities like cities and surface water users, areas of varying aquifers within the natural resources districts areas, and areas outside of the district that have state agreements, surface water irrigation districts, and state compacts does not work and will not work without definite mandating statutes. The way it is now operated would be like and would have the same effect as letting county commissioners and assessors determine the valuations in that county on various categories of property. They would, in most cases, determine the tax levies as to how it benefited them personally the most. The reason is Nebraska state statute 46-739 management area controls authorized procedure. A statute requires almost nothing and let the NRDs determine what they want to do in each district. The mandate is, shall by order adopt one or more of the following controls for the management area, and almost all the following controls predominantly use the word "may." Signed Claude L. Cappel, 71795 Road 383, McCook, Nebraska 69001. [LB651]

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SENATOR LANGEMEIER: Are there any questions for Mr. Cappel? Senator Carlson. [LB651]

SENATOR CARLSON: Senator Langemeier. Claude, on page 3 of your letter in that paragraph that's third one down, "If there is ever an occupational tax, it should be on the amount of water pumped and on all irrigation in the state, and not on the acres irrigated. And the cost would balance out." Help me understand that because if it's not paid for by the area that really needs the occupation tax and paid for by everyone, how does that encourage less pumping? [LB651]

CLAUDE CAPPEL: Basically, if it was on the whole state...and I know the whole state is starting to get either fully developed or overappropriated. In the eastern part of the state there's probably areas use three to four inches of water, middle part of the state, maybe five, six inches, in the western part it gets up into the teens or higher. I think there's some NRDs maybe even still up in the twenties. If you had a set amount throughout the whole state, the eastern part wouldn't be paying much, the western part is. The western part is where...has the water problems, that's where the money would go. It's just not the problem on the Republican, it's the problem on the Platte probably in the Upper Niobrara, etcetera. And according to the Supreme Court ruling, the compact and I suppose agreements and etcetera, are a state obligation and not the local people. We had nothing to do with the compact and there, again, the Legislature back in 1982 passed a bill that allowed this to happen. And I feel it's a state responsibility and the state should be paying, you know, if we have to have a tax or something like that. Another thing, if they're going to put a tax on, it ought to be burdened by the people that are taxing. A lot of people do not want these things. I think in certain districts, maybe two of the three in the Republican probably would not vote for this, maybe even the third one if it was, you know, on a ballot. [LB651]

SENATOR CARLSON: In the overall challenge in the Republican Basin, what's your biggest concern? [LB651]

CLAUDE CAPPEL: The fact that we aren't going sustainable, and when we don't go sustainable, then it's just going to keep depleting. Somewhere down the line there's going to be a tremendous push to shut down the quick response. Years ago it used to be a little bit. Now it's a quick response and Kansas has got a further definition of quick response. That's where I live. That's probably the most productive. That was the first part that was irrigated. We have surface water rights dating back into the 1890s. There will probably be a lot of lawsuits if that happens, but it seemed like the quick response is it, plus the fact if you keep depleting the water, there will be no water in the southern part of the county just by the deal. In the packet there I have that study and stuff. It really is a very good study, and all the stuff I put in there is documented in what I say in here, so. [LB651]

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SENATOR CARLSON: Okay. I'm asking you some questions for the benefit of some of the members of the committee that haven't been through this kind of testimony before. Define "sustainable." [LB651]

CLAUDE CAPPEL: Sustainable is basically no more out than goes in. You know, I realize there's areas that are pumped down, but somewhere we've got to get where we don't keep taking the water out. We keep taking the water out and looking at the cross section. Over by the Republican there it used to be the ridge to the mound to water or the water...I call it a mound, but the water in the Upper Republican was come up out of the river, as it goes up down back into the Frenchman, up and down, back in the stinking water. These have leveled off to the point that they're down low and no more water flows in the Republican. Colorado goes to pump in that water up there, you know, yeah, they'll pump in the Republican, it'll probably disappear. You got to get to the point where we don't take out any more than what goes in. And that's really what the compact, to a large degree, says. Jasper was talking about getting disconnected. Yeah, you pump it out, you get disconnected, but somebody is going to lose this process and they still have the compact to...a court is going to come in and do something there. You're taking the water and just taking it from one and giving it to another. [LB651]

SENATOR CARLSON: Okay. I'm going to ask you one more question, then I'm going to make a comment. [LB651]

CLAUDE CAPPEL: Okay. [LB651]

SENATOR CARLSON: And I'd appreciate your response here. Help us out with for some, what are quick response wells? [LB651]

CLAUDE CAPPEL: Quick response...initially back when we was on the Governor's advisory board, it was alluvial which was just basically meaning the valley. Quick response now is went out to somewhere between three and a half or up to four miles from the river, depending on whether it's Nebraska. Kansas and their quick response or wanting to shut off them wells is clear up to seven to eight miles. Plus Kansas goes up a lot of dry tributaries and stuff that were wet at one time. Kansas would...Kansas is, you know, just about take I'd say probably 80 percent to 90 percent of the water out of the southern counties of Nebraska. And quick response there in our area it'd take out probably 60 percent. [LB651]

SENATOR CARLSON: Thank you for answering these questions and for being here to testify. You made the statement that Kansas is trying to redefine quick response and I agree with you. They have no business trying to define quick response for Nebraska. They have a right to tell us that we need to get into compliance and help us be serious about doing it. They have no right to tell us how to get there. And I want to state that for the record in this hearing. But that's all I have. Thank you. [LB651]

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CLAUDE CAPPEL: One of them handouts in there was a deal that Ann put out and it's kind of put different scenarios which would be combined and stuff. In looking at it, probably the upper would be somewhere around four and a half to five inches if they went sustainable and worked it right, middle would probably be around seven, lower could be higher. You could probably take some of the lower and put it up there and be equal. So there is other ways beside...and that would be sustainable. So there is other ways to do this besides throw money at it because I think throwing money at it has got us nowhere to this point and probably never will. [LB651]

SENATOR CARLSON: Okay. Thank you. [LB651]

SENATOR LANGEMEIER: Senator Fischer. [LB651]

SENATOR FISCHER: Thank you, Senator Langemeier. Thank you, Mr. Cappel, for being here. I appreciate your testimony and your views and I appreciate the packets of materials you've provided us with in the past. But you're up here today in opposition to this bill. Can you tell me specifically what you don't like about the bill that we have before us at today's hearing? [LB651]

CLAUDE CAPPEL: Basically, and I know the Upper Republican has been negotiating with Frenchman Valley to buy water. That's probably the biggest thing I don't like is using that money to buy water to keep irrigators pumping where it's already in a decline. In the Middle Republican at the last meeting they did allow some water was in, I think, a two and a half foot decline, be moved up to an area that was a 20-some foot decline. I know that there's irrigators up there, large farmers, I've heard somewhere between 150 and 180 pivots up there. He's got three people take care of it. He can't get around to take care of it and stuff, so he just lets the pivots run. It's cheaper to buy the water. [LB651]

SENATOR FISCHER: So your opposition to the bill is based on the fact that you wouldn't want any loans from this fund to go for buying water by an NRD, is that it? [LB651]

CLAUDE CAPPEL: Maybe if they go sustainable, the NRDs go sustainable, I would not have a problem with buying river water to meet the compact in water, in drought years or water short years, as long as it went sustainable. [LB651]

SENATOR FISCHER: Aren't there different definitions of what "sustainability" is? [LB651]

CLAUDE CAPPEL: Well, basically when the... [LB651]

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SENATOR FISCHER: When I visit with a number of people, every single one of them has a different definition of what "sustainability" is. [LB651]

CLAUDE CAPPEL: DNR has what would be sustainable, would probably be sustainable, I mean they put it out. You have economic sustainability which is totally different than water sustainability. [LB651]

SENATOR FISCHER: But there's even discussions on what is sustainable when discussing water issues, I have learned over the last several years. [LB651]

CLAUDE CAPPEL: Yeah. One problem is the further we let this go, the deeper the hole gets. So it's going to take more... [LB651]

SENATOR FISCHER: Now, are you a surface water irrigator, a groundwater irrigator, or both? [LB651]

CLAUDE CAPPEL: I'm actually...I was predominately surface water, now we're predominately groundwater. Well, we're all groundwater because we haven't had any water since 2002. We have a little bit in...up at two inches or less in the western part which we can't even use because we're on the end of the ditch. So we're all groundwater. [LB651]

SENATOR FISCHER: Okay. Thank you very much. [LB651]

SENATOR LANGEMEIER: Were there any other questions? Senator Schilz. [LB651]

SENATOR SCHILZ: Mr. Cappel, thank you for coming in today. As you said before, you have concerns as far as getting your districts to sustainability as you've defined it. And I can't disagree that that's the direction that we all need to go. But looking at this, obviously you've got some concerns on how a loan would be used going forward. But wouldn't this loan also give you the ability to do some pilot projects to find out some management scenarios or something to help move toward that sustainability? And let me preface it this way. You say that you're predominately...you used to be predominately surface water, correct? [LB651]

CLAUDE CAPPEL: Yes. [LB651]

SENATOR SCHILZ: And now you have groundwater wells on that same ground? [LB651]

CLAUDE CAPPEL: Yes. [LB651]

SENATOR SCHILZ: Which in the past used...would have called them a supplemental

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well, but since there's no surface water, they're your mainstay now. [LB651]

CLAUDE CAPPEL: They're still called supplemental wells, but they're primary. [LB651]

SENATOR SCHILZ: But in reality they're your...that's how you're sustaining what you're doing. There we go again. So the question that I have is couldn't you use this money as a loan to look at how if there were times of excess to come up with recharge projects to help get you where you're trying to go? [LB651]

CLAUDE CAPPEL: You know, this has been looked at since way...in fact, when that bill was passed in 1982 this was part of the deal. They was going to transfer water from one basin to another and all this. In irrigation... [LB651]

SENATOR SCHILZ: But that's not what I'm talking about here. [LB651]

CLAUDE CAPPEL: Yeah. But that's recharge. [LB651]

SENATOR SCHILZ: No. [LB651]

CLAUDE CAPPEL: Okay. [LB651]

SENATOR SCHILZ: No. Recharge, what I'm talking about is water that you have excess in the stream at times, devoting that water and then using it to put into the groundwater. Because there are times of excess. We know that. [LB651]

CLAUDE CAPPEL: Okay. To answer that, I think DNR has a good share, a lot of this information...DNR and the NRDs haven't gotten along very good in the past, but...I kind of lost my train of thought. But there's...I just don't know whether there's anything to do. I mean, I think... [LB651]

SENATOR SCHILZ: Well, I hope, I really do hope there's something we can do because if there's not... [LB651]

CLAUDE CAPPEL: Really if you look at the river, I guess... [LB651]

SENATOR SCHILZ: Mr. Cappel, if there's not anything we can do, then we might as well close up shop right now and go home. [LB651]

CLAUDE CAPPEL: Well, I mean if they get more water in the river. We, in the irrigation districts, if there's not enough water to meet the irrigation districts' supplies, so that water is all basically appropriated at this point, unless I'm misunderstanding what you're saying. [LB651]

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SENATOR SCHILZ: Right. Do you ever have streamflow? [LB651]

CLAUDE CAPPEL: Yeah. [LB651]

SENATOR SCHILZ: You do have streamflow. [LB651]

CLAUDE CAPPEL: Well, we live out where the Frenchman comes into the Republican. Back in 2002, it went totally dry; 2003 it went dry again. [LB651]

SENATOR SCHILZ: Sure. [LB651]

CLAUDE CAPPEL: When it hit the...Frenchman went dry and then it comes down. Well, when it got to the Republican ironically I'd go down there and look at it. It goes through our places. It would move about 18 feet a day. [LB651]

SENATOR SCHILZ: Um-hum. [LB651]

CLAUDE CAPPEL: And you get from here to the end of the Capitol you have a nice stream and it'd just go into the ground and it has to fill that whole recharge... [LB651]

SENATOR SCHILZ: And that's called recharge. Yeah. And so what I'm saying is that you're right. And it may take time, like we've all said before. It's taken us many, many years to get where we are. It's probably going to take us quite a few years to get back where we want to be which is that sustainability portion that you talk about. And as Dean said before, I believe we need to think outside the box. [LB651]

CLAUDE CAPPEL: I guess on sustainability in my case here, if they said eight inches, we'd live within it, we'd learn how to do it. [LB651]

SENATOR SCHILZ: Sure. [LB651]

CLAUDE CAPPEL: If they said six inches, we'd learn how to do it. But when they give you 12 or 13 or 14, you're going to use...a lot of people are going to use that and buy more because... [LB651]

SENATOR SCHILZ: Okay. Do you know what's sustainable now as far as your farm is? [LB651]

CLAUDE CAPPEL: I would guess in the Middle Republican it's probably around seven to eight inches. [LB651]

SENATOR SCHILZ: Are you doing that yourself? [LB651]

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CLAUDE CAPPEL: We're just a little above it, a little above it. [LB651]

SENATOR SCHILZ: Okay. So you're working towards that which is commendable. That's great. [LB651]

CLAUDE CAPPEL: We could by rotation stuff, we could be within it, if that's where it took to be. [LB651]

SENATOR SCHILZ: Sure, sure. And I think that's very commendable, and those are the types of management scenarios that we need to start looking at. But now if through...and this is...I mean, I'm trying to do that, thinking outside the box. Hypothetically speaking, if you could find excess flows at times, say...and I don't know how long your contract is on your canal to divert water. I mean, I don't know...like on the canal that I'm on, we can divert water clear into October, November, December if there's excess water. So if you could do that and then use that water to recharge the groundwater, then all of a sudden maybe we could get back to where you're talking about without having to slow people down. [LB651]

CLAUDE CAPPEL: Okay. Now I know what you're getting at. In the Frenchman district at one time there was a thought of taking the water and putting it in irrigation just because it'll all just soak away. [LB651]

SENATOR SCHILZ: Right. [LB651]

CLAUDE CAPPEL: I don't know whatever happened to that study or what they did. I don't know whether there was something wrong or illegal or what, but there has been talk about that. [LB651]

SENATOR SCHILZ: And those are the types of programs that I see a fund like this helping. [LB651]

CLAUDE CAPPEL: One thing, you know, a lot of people say terraces and stuff like that and pasture pits are a detriment, you know, they lose water. In our area this last year, we could take six inches of rain and go out two days later and you wouldn't see a drop of water in those terraces. It's going to the water table. [LB651]

SENATOR SCHILZ: Sure, sure. So it looks to me like you've got some areas there that you can filtrate through pretty quickly to get to the aquifer so you're not losing a lot of evaporation, and what I'm saying is that I think that there's some ways here that we need to look at using that. And the problem is is that if we find out that everything we're doing is unconstitutional, where are we going to be? [LB651]

CLAUDE CAPPEL: Well, on that occupational tax I am kind of involved here. [LB651]

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SENATOR SCHILZ: I understand. Yeah, I understand. But I'm just hypothetically speaking if we go down that road and we end up with that, what are we going to do because I don't want to shut down the whole Republican. I don't want McCook to dry up and blow away as I'm sure you don't either. And that's...I appreciate that. Thank you very much. [LB651]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much for your testimony. [LB651]

CLAUDE CAPPEL: Thank you. [LB651]

SENATOR LANGEMEIER: Further testimony in opposition of LB651? [LB651]

JAMES UERLING: Thank you, Senator Langemeier and members of the Natural Resources Committee. My name is James Uerling, it's James, J-a-m-e-s and Uerling is spelled U-e-r-l-i-n-g. I'm from Red Willow County. I am a director of the Middle Republican NRD, but today I'm speaking as an individual and not as a representative of the Middle Republican NRD. Now, my problem with LB651 is the occupation tax. Okay. I agree with what some of the others have said, but in order to keep this brief. My problem is with LB651 is the occupation tax. Now, on the surface an occupation tax sounds logical. You tax the irrigator to pay for an irrigation issue. Here's the problem. The county assessor doesn't distinguish between groundwater and surface water. And most of the 66,900 acres of surface water in southwest Nebraska has been dry for six years, okay, some for more. Now, these irrigators have senior water rights. They receive no water. So what happens is taxpayers who receive no water are taxed to pay irrigators who have water. Okay. And we are also enabling the groundwater irrigators responsible for our dry riverbeds and lakes to continue their abuse of the aquifer. Okay. And that's all I have today. Any more questions? [LB651]

SENATOR LANGEMEIER: Thank you. Are there any questions? Senator Carlson. [LB651]

SENATOR CARLSON: Senator Langemeier. In your operation then, are you surface water? [LB651]

JAMES UERLING: Yes, and... [LB651]

SENATOR CARLSON: You don't have any groundwater. [LB651]

JAMES UERLING: Both. I'm both. [LB651]

SENATOR CARLSON: You have both. [LB651]

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JAMES UERLING: Um-hum. [LB651]

SENATOR CARLSON: Okay. So you find yourself uncomfortable sometimes on the board? [LB651]

JAMES UERLING: Yes. [LB651]

SENATOR CARLSON: Okay. What's the answer? [LB651]

JAMES UERLING: Well, I think reduced allocations. I think we have a law in front of us that hasn't been used where you stop any improvements that were done after January 31, 2000. And that's a good start. [LB651]

SENATOR CARLSON: Say that again. You stop improvement. [LB651]

JAMES UERLING: Any irrigation practices that were started after the year 2000 when Kansas filed the lawsuit, those irrigations wells probably shouldn't be pumping, is what I'm saying. That's a very unpopular, I understand, but it's a...I forget the name of the law, but it's something that's in front of us. [LB651]

SENATOR CARLSON: Now, when those wells were drilled, did they drill them within the law? [LB651]

JAMES UERLING: Yes they did. [LB651]

SENATOR CARLSON: Yes. Did they make quite an investment? [LB651]

JAMES UERLING: Yes they did. [LB651]

SENATOR CARLSON: And my understanding of state water law is that it's share and share alike on groundwater. [LB651]

JAMES UERLING: Yeah, but there's also first in time, first in right. [LB651]

SENATOR CARLSON: That's on surface water. [LB651]

JAMES UERLING: The surface water...many of the surface water acres are receiving no water, although they have first in time, first in right. You see, many of my acres...I don't have access to an irrigation well so they're just dry. And I've paid the occupation tax anyway. [LB651]

SENATOR CARLSON: Yeah, I understand, I understand. [LB651]

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JAMES UERLING: And me and a lot of my neighbors. [LB651]

SENATOR CARLSON: Okay. Thank you. [LB651]

JAMES UERLING: You're welcome. [LB651]

SENATOR LANGEMEIER: Senator Fischer. [LB651]

SENATOR FISCHER: Thank you, Senator Langemeier. You have surface water rights and wells also, correct? [LB651]

JAMES UERLING: Yes. [LB651]

SENATOR FISCHER: Did I hear you correctly when you said your surface water acres are no longer being irrigated? So you are not pumping any well water onto those acres. [LB651]

JAMES UERLING: I have a couple of wells that we call supplemental wells, but they don't cover the whole area that...they don't cover all the acres that the canal district did, that the irrigation district did. [LB651]

SENATOR FISCHER: How many inches...when there was water there, how many inches of surface water would you put on those acres? [LB651]

JAMES UERLING: Twelve. We were flight irrigating them and we'd use 12 inches. [LB651]

SENATOR FISCHER: And how many inches do you put on with your wells? [LB651]

JAMES UERLING: I just got my paperwork a week or two ago and it was 7.5 is what I'm using. [LB651]

SENATOR FISCHER: Are they low pressure systems that you have? [LB651]

JAMES UERLING: Yes. No end guns, pivots. [LB651]

SENATOR FISCHER: So that's probably conserving a lot of water besides the five inches difference that you're... [LB651]

JAMES UERLING: Yes. Pivots are extremely efficient way to irrigating. [LB651]

SENATOR FISCHER: ...that you used to do with the flood irrigation, right? [LB651]

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JAMES UERLING: Right. [LB651]

SENATOR FISCHER: On your idea to stop any improvements after 2000, are those improvements on surface water irrigators as well as groundwater irrigators? [LB651]

JAMES UERLING: Well, as far as I know there haven't been any new surface water since... [LB651]

SENATOR FISCHER: Okay. So... [LB651]

JAMES UERLING: I mean, they built the dams in 1949, you know, and Hugh Butler was built in '60, '61. [LB651]

SENATOR FISCHER: But has anybody gotten any surface water rights since the year 2000, do you know? [LB651]

JAMES UERLING: I think there's been some that have been changed around and there's been some transfers. [LB651]

SENATOR FISCHER: So should those be stopped then too? [LB651]

JAMES UERLING: No. They have senior water rights. [LB651]

SENATOR FISCHER: So the surface water irrigators after 2000 could still continue to irrigate, but you don't want any groundwater irrigators after the year 2000 to irrigate? [LB651]

JAMES UERLING: I didn't write the law, but I mean there is a law in front of us, I think Senator Carlson knows about it, that would allow us to treat those wells differently. [LB651]

SENATOR FISCHER: But I'm just asking, is that...you would like to see that happen? [LB651]

JAMES UERLING: Not necessarily. It would be very unpopular. Not necessarily. I would like us to keep irrigating and use our full allotment. I mean, I wish it could just go on forever like it is, but I'm afraid it can't. [LB651]

SENATOR FISCHER: Do you have any wells that were put in after the year 2000? [LB651]

JAMES UERLING: No. [LB651]

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SENATOR FISCHER: I've heard that if all the wells in the Republican Basin were shut off, that solves nothing. Do you agree with that statement? [LB651]

JAMES UERLING: No, I don't agree with that. [LB651]

SENATOR FISCHER: And do you believe that...you made a statement earlier that it was...I took it that you said the groundwater pumping caused the river to go dry. Did I hear that right? [LB651]

JAMES UERLING: Yeah. I said we are also enabling the groundwater irrigators responsible for our dry riverbeds and lakes to continue their abuse of the aquifer. [LB651]

SENATOR FISCHER: Do you have any science to back that up? [LB651]

JAMES UERLING: I've read a lot, I've read a lot, yeah of studies that were done by the Bureau of Reclamation. I believe that Claude Cappel gave you a lot of information that has a lot of that in there. [LB651]

SENATOR FISCHER: Okay. Thank you very much. [LB651]

JAMES UERLING: You're welcome. [LB651]

SENATOR LANGEMEIER: Any other questions? Seeing none, thank you very much. Very good job. Further testimony in opposition to LB651? Welcome. [LB651]

BUCK HAAG: Thank you, Senator Langemeier, members of the committee. My name is Buck Haag, B-u-c-k H-a-a-g. I'm a farmer/landowner/rancher from southwest Nebraska, Red Willow County. I'm also a director on the Middle Republican NRD, serving a term there. Several things I wanted to talk to you today about the bill. First off, starting with the...how the revolving loan is going to be funded. And as we look, you know, it's supposed to come from this money that's going to get repaid from our district. And one of the things that strikes me, as much as we wish and as much as want to pay it back, at some point we got to have a legal way to do so. Now, they've struck the property tax provision of LB701, and if that's unconstitutional, I don't see how we could take property taxes out of our General Fund to do the same thing. The occupation tax is currently being challenged by the Supreme Court, as I'm sure you all know. If that gets ruled on unconstitutional, there's essentially no funding to repay the state. So, you know, as much as we wish or want to, it may not happen. And one of the things that concerns me is we're adding another level of bureaucracy, we're adding another...you know, taxing a...not necessarily taxing authority, but the revolving loan fund, just a whole nother level to an already complicated situation. And right now we don't even know if there will be

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the money there to do it. As you look at it, it's also kind of a replacement for LB701. Instead of using directly, as LB701 had, the property tax authority and occupation tax authority, you go through and basically use the state as your bonding agent and they loan you the money, and then you still levee taxes against the people, repay it to the state. So I guess there's several problems there. I didn't like LB701 for a lot of these same reasons. And you really got to question whether we need to keep adding more taxes, more bureaucracy to something that when it boils right down to it, we got to find a way to reduce our consumption. We're using too much water, we have to find a way to use less and/or make the water we have go farther as far as compact compliance. And, as was talked about earlier, I think you got to get beyond compact compliance and start looking at sustainability. And however you want to define it or term it, sustainability means that 100 years, 150, 200 years from now there is still water there that can be pumped and irrigated for beneficial use, which means you cannot use more than what is going into the system. You cannot use more than what the overlying ground is recharging. To me, that would be the simple way of looking at it, and I think that's where we really need to end up, as painful as it's going to be getting there. It's one of these deals if you set the rules, you set the allocations, people will adapt. They always have and as loud as they cry and as much as they complain, they will adapt and they will move on or they won't and somebody else will farm the ground and they will adapt. And that's how the system moves forward. So I guess that's all I have for you today. I'd be happy to answer any questions, so thank you. [LB651]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Dubas. [LB651]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Mr. Haag. Are people adapting in your region right now? [LB651]

BUCK HAAG: Yes. [LB651]

SENATOR DUBAS: What are the types of things they're doing to adapt? [LB651]

BUCK HAAG: You know, when this first started, the lawsuit Kansas had against the state, everybody just screamed and hollered, and this was before anybody had meters on the wells. They couldn't get by with less than 18 inches. There's no way they could get less than 18 inches. The last few years I...granted we've had some good rainfall, you know. In the lower and southern counties seven to eight, nine inches, and even in the Hayes and Lincoln Counties, 11 to 12 inches is what they're getting by on. They're managing their pivots better. There's been a lot of studies done on limited irrigation, no-till practices, keeping more cover on the ground, reduce evaporation in the crops, watering only when you need it. You don't need to turn the pivot as soon as the corn comes up and leave it on all year. Water is like anything else when it comes to growing a crop. There's...the more you put into it, the less you're actually getting out of it. So the

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last, I believe they said, the last 15 percent of that acreage bump that you're expecting in the corn crop might cost you four to five inches. You get the most beneficial use out of the first one, two, three, or four inches you put on the crop. That's where your most gain comes from. And people are realizing that and they're doing a better job of managing what they have and making use of it. [LB651]

SENATOR DUBAS: You said that you're a director on the NRD, correct? [LB651]

BUCK HAAG: Correct. [LB651]

SENATOR DUBAS: Wouldn't this type of a revolving loan fund be a benefit for you as a director in helping your NRD operate? [LB651]

BUCK HAAG: That all depends on how it's used, and we're still sorting through things a board. I was recently elected this last November, on the large part my opposition to LB701. I think if this bill was implemented now and we were in a water short year, it would be used to lease water to buy a one year's water supply from irrigation districts much like LB701 did to get us by for that year, these stopgap solutions. You essentially solve nothing as far as the problem is concerned. It just allows you to keep going the way things are. I'm afraid until the layout, the makeup of the directors of the NRD changes a little more, that's how it would be used yet today. Two years from now, I guess we might have a different answer. So I guess that's how I'd approach that. [LB651]

SENATOR DUBAS: So you would see that there are some thing that maybe this type of a loan would be good for, but if you're using it to replace water or buy water, that wouldn't be an effective use of... [LB651]

BUCK HAAG: Correct. At the very least I would urge you, if this does go through, if you could amend it so that there is not leasing of water in there, there's not short-term solutions, make them at least focus on a long-term solution, a long-term fix of this problem. At the very least I think that's what needs to be done. [LB651]

SENATOR DUBAS: Thank you. [LB651]

SENATOR LANGEMEIER: Senator Schilz. [LB651]

SENATOR SCHILZ: Thank you, Senator Langemeier. Mr. Haag, thank you for coming in today. I guess just for a little background, you know, obviously it is about how you use the money. And, you know, as somebody that likes local control, I like to allow the local NRDs to decide how that money is used. I don't think that's...that should be a state prerogative as long as it's being used for beneficial purposes. And I don't think...so you would be in favor of taking a tool out of the toolbox and saying, hey, if we're...and let me

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back up, let's take a little history here. If...when was LB701 passed, two years ago? Is that right? Two years ago? Okay. Before LB701 was there, I mean, we were about...and I'm sure you know, maybe that far away from Kansas telling the Special Master shut it all off. And when LB701 was put into place it gave us breathing room. Was it the correct and right thing to do? I guess we're finding that out now, but it did give us breathing room. And I can tell you this, if we'd have been shut off, we wouldn't be sitting here talking about this because it wouldn't matter. You say people would come in and buy, but yeah, they'd turn around and buy on dryland rates and you know that's the case because you'd always have that hammer of the Special Master hanging over your head. So I think you'll want to be really careful about saying that you want to throw the short-term solutions out, because sometimes those short-term solutions are exactly what it takes to get to where you need to be for long-term success. And I just want to pose the question to you too. Do you see some utility in having a revolving loan fund, or no utility at all? [LB651]

BUCK HAAG: Okay. First, I guess I'd like to respond to your comment. I think short-term solutions can be, if they're used as a step in a long-term plan, but I think what we have now is we're hopping... [LB651]

SENATOR SCHILZ: Okay. And I agree with you, I agree with you. Yeah. [LB651]

BUCK HAAG: ...from short-term to short-term to short-term and never really addressing the problem. [LB651]

SENATOR SCHILZ: Okay. [LB651]

BUCK HAAG: Does a revolving loan have some benefit? In certain cases maybe, and that would be a definite...when you start allowing people access to more and more money, especially when you get the smaller subdivisions of government, they're going to look for ways to use that money. [LB651]

SENATOR SCHILZ: Um-hum. [LB651]

BUCK HAAG: You know, in normal instances they might have had a project where it maybe had some merit, they didn't really know, but funding was going to be an issue. And so if it didn't really have merit, it didn't progress. Well, now, you know, it might have a little bit of merit, but, hey, we got this easy loan from the state, let's just go ahead and try it and find out. Well, you're not really being conservative in the amount of money that you're restricting it to. You're kind of...finding funding for projects was kind of weeding out some of the weaker projects, some of the things that probably didn't need to be done. [LB651]

SENATOR SCHILZ: Sure. Do you know how many irrigated acres there are in the

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Republican Valley? [LB651]

BUCK HAAG: Off hand, not to my knowledge. [LB651]

SENATOR SCHILZ: But it's a bunch. [LB651]

BUCK HAAG: Yeah, yeah. [LB651]

SENATOR SCHILZ: And we all know that we're under a lawsuit there, that we have basically lost, right? [LB651]

BUCK HAAG: Yeah. [LB651]

SENATOR SCHILZ: I can't think of a better reason for the state to step up and say, hey, this should be a priority, and this should be...and I hope that on the local level, and I'm banking on it, that those folks have the intelligence, you folks have the intelligence and the wherewithal to understand what's worthwhile and what's not. [LB651]

BUCK HAAG: Right. And that goes back to are you short term hopping or are you using short-term solutions for a long-term plan? Now, I think at some point we'd better have a realistic long-term plan to reduce consumption, buy out acres, reduce allocations, we got to do something to get us in compliance long term. The one bill I really liked until it got pulled was, and I'm sure there's lots of opposition against it, was taking the school land ground out there that was irrigated and make it dryland farm ground. [LB651]

SENATOR SCHILZ: Um-hum. [LB651]

BUCK HAAG: I mean, the state, there is a large amount of school land out there that's irrigated. They are as much a problem as any of the irrigators that have overdeveloped the ground. [LB651]

SENATOR SCHILZ: Now, is that surface water or groundwater? [LB651]

BUCK HAAG: Well, see, that's why they ended up pulling it is because there was some that was both and you cannot retire surface water acres. There's a government, a federal government lien on it so they can't do away with that, but definitely the groundwater acres they could do away with. [LB651]

SENATOR SCHILZ: I'm guessing there's probably...and not necessarily on the school ground, I'm guessing there's probably a lot of liens on a lot of that groundwater irrigated ground too. [LB651]

BUCK HAAG: Well, they can't hold a lien on...a private individual cannot hold a lien on

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school ground. [LB651]

SENATOR SCHILZ: Right. I understand. And I'm saying on a lot of that private ground I'm sure there's quite a few... [LB651]

BUCK HAAG: Right. [LB651]

SENATOR SCHILZ: ...folks that own banks and stuff that are saying, whoa, wait a minute here, what are we going to do if we're shut off. And I think...and we've been to that point a couple of times here, so. I appreciate your sentences. Thank you. [LB651]

SENATOR LANGEMEIER: Senator Carlson. [LB651]

SENATOR CARLSON: Senator Langemeier. First of all, Mr. Haag, I'm going to make a statement that says I'm in full agreement with you and Claude and James. We've got to get to a point of sustainability. I fully agree with that. Now, I don't think that Dan and Jasper are against it. And I think that we don't have to go back very many years, in the Republican Basin and all over the state, there were no limits. We thought that there was enough water here forever. And in terms of reaching that point where sustainability, where we get to sustainability to go from no restrictions to pretty severe ones, it's not easy. I'm not disagreeing with you that we got to take some steps to get there, but I think there have been some steps taken in the last several years that are significant. They're not as far as you want to go and they're not as far as Claude wants to go, but they're in the right direction and we've made progress. And I commend the NRDs for what they've done in that regard. Now, I'm going to give you a little test. You haven't been on the board that long. What are the current tools for getting into compliance? [LB651]

BUCK HAAG: Well, as the NRD board, you control the allocation of your district. How much water your district consumes, you can set that basically to the wishes of the directors. We also have certain...within our general fund and property tax levees we do have money to use for studies and funds. There's been grants for the river clearing, the vegetation removal. There's a lot of grant money and state money--thank you all for that--that have went to that. And that has been a big help probably as much as anything else that we're doing is getting the river to flow better and channelize the stream. Those are probably the main tools that we have at this point, but when you look at it, that's also the biggest tool. When you control how much water is being pumped, that is necessarily the end game of what we're trying to achieve. [LB651]

SENATOR CARLSON: Okay. And buying surface water is another tool. I don't like buying surface water a whole lot either. It's a band-aid approach. It's buying it one year and you got to do it again the next. But when we're facing a water short year, it's nice to be able to buy some surface water if we need to. Had that not been done in 2007, we'd

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have been in trouble. As it turned out in 2008, we didn't need to buy any, but we only bought 1,000 acre-feet of surface water anyway. And the point in the year when that decision has to be made whether to buy it or not is early and you don't know until about eight months later whether or not in fact you were okay or a water-short year. So I think it's still a useful tool. And so we don't want to take all those kinds of things away. But appreciate your testimony, appreciate your boldness in terms of stating what you think. And certainly as a state, we've got to get to the point where we consistently be in compliance and hopefully beyond that, consistently sustainable. So thank you for your testimony. [LB651]

SENATOR LANGEMEIER: Senator Schilz. [LB651]

SENATOR SCHILZ: One more, please, and I don't mean to...apologize if I'm taking up a lot of times, guys. But it just...Senator Carlson made me think of one more thing. As far as this...and when he says buying, we're leasing water, we're leasing water, right? [LB651]

BUCK HAAG: Yeah. [LB651]

SENATOR SCHILZ: Yeah. The question that I have is that, you know, everybody in the state of Nebraska looks at surface water rights as a property right, correct? And those folks that are selling that...leasing that surface water, they're doing that willingly, voluntarily, stepping up and saying, hey, I'm willing to do this. [LB651]

BUCK HAAG: Correct. [LB651]

SENATOR SCHILZ: Do you know, can you tell me whether or not...how many acres of those surface water acres also have supplemental wells on them? [LB651]

BUCK HAAG: I can't tell you how many acres. I can tell you the last time we leased water they were allowed to continue to pump their well water up to the maximum NRD allocation. [LB651]

SENATOR SCHILZ: Up to the allocation. Which we're... [LB651]

BUCK HAAG: Correct. There was... [LB651]

SENATOR SCHILZ: And I think that needs to remain the same because we're in two different management scenarios, two different laws for surface and ground. So that... [LB651]

BUCK HAAG: Correct. There was a lot of things about the whole issue that didn't really look right and wasn't right, but... [LB651]

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SENATOR SCHILZ: Okay. Who...and I don't want to take you away because I'm thinking of something. Who makes that decision on which water to lease? Is there a priority... [LB651]

BUCK HAAG: Well, I believe the LB701 was a DNR set up deal. They decided... [LB651]

SENATOR SCHILZ: Was that the state? [LB651]

BUCK HAAG: They decided the price and it was handed...the bill was basically handed to us. They set the whole thing up. [LB651]

SENATOR SCHILZ: Okay. But... [LB651]

BUCK HAAG: Is how I understand the surface water buyout on... [LB651]

SENATOR SCHILZ: Maybe somebody else with the... [LB651]

SENATOR LANGEMEIER: We'll get you that information. [LB651]

SENATOR SCHILZ: All right. Thank you very much. That's it. Thank you so much. [LB651]

BUCK HAAG: The one thing, while we have a minute here, all of the acres that had supplemental wells that the water was leased from through LB701, they still got to use their supplemental wells. There's many of those people that received the full buyout and then still raised a full irrigated crop. I mean, not only was they getting a huge cash handout, they was getting paid for basically the top management, the maximum that they could grow out of the surface water, they got to raise their groundwater crop on top of that on the same ground. [LB651]

SENATOR SCHILZ: Sure. I understand. But as a property right, you wouldn't want to take that away from somebody, would you? [LB651]

BUCK HAAG: I don't think you legally can. [LB651]

SENATOR SCHILZ: Okay. Thank you. [LB651]

BUCK HAAG: Whereas the groundwater is a state-owned resource. [LB651]

SENATOR SCHILZ: Right. Thank you. [LB651]

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SENATOR LANGEMEIER: Any other questions? Very good. Very good testimony. Thank you very much. Thanks for coming down. [LB651]

BUCK HAAG: Thank you. [LB651]

SENATOR LANGEMEIER: Further testimony in opposition? Come on up. Welcome. [LB651]

BRAD EDGERTON: (Exhibit 5) Thank you. Senator Langemeier and members of the Natural Resources Committee, my name is Brad Edgerton, B-r-a-d E-d-g-e-r-t-o-n. I'm the manager of Frenchman-Cambridge Irrigation District located in the Republican River Basin. Frenchman-Cambridge irrigates 46,600 acres from Trenton to Alma, Nebraska, using four different canal systems with over 156 miles of primary canal. We hold 41 direct flow permits and can legally divert 531 second-feet from the river. One word used six different times in LB651 scares the heck out of me. That word is "protect" or "protection." I just recently started this job and the second day on the job I called Jasper Fanning and asked if I could come up and speak to his board about retiring irrigated acres above Swanson Reservoir. And his comment to me was that he didn't think his board would be interested in retiring acres until they had the opportunity to protect that water once they've cut back their groundwater diversions. So that's why that word scares me because anything they do above our diversion dams to cut back, they're going to want to protect that from the surface water irrigators. And we've been with a limited supply now for the last six years with people on Meeker Driftwood Canal, which diverts out of Swanson, not having water those six years. Many years ago, a group of people in the Republican River Basin got together and created a river flow enhancement project or projects. They borrowed money from the federal government to build these projects and are still repaying the government for these river flow enhancement dollars. Five reservoirs were build so that during droughts the river flow could be enhanced. This offered some insurance to the 89,000 project acres in the basin during times of short water supply. These five reservoirs have permit to store 595,000 acre-feet. That's a lot of river flow enhancement. Frenchman-Cambridge would like to be partners with the Republican River NRD. We don't have to reinvent the wheel. Let's use the river flow enhancement projects we have. It saves taxpayers some money and manage the valuable resources, one, for the good of the entire basin and state. We should not pass legislation that plots groundwater against surface water. I think LB651 does just that. We're willing to meet with anyone at any time to present and discuss our solution to the water problems in the Republican River Basin. Thank you for the opportunity to testify, and I can answer any question if you have any. [LB651]

SENATOR LANGEMEIER: Thank you very much. Are there any questions? Senator Fischer. [LB651]

SENATOR FISCHER: Thank you, Senator Langemeier. Thank you for being here and

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your testimony on this, I have a question on the river flow enhancements. Can you give me just a short example of how that works? Is it water that's stored in a reservoir? Would that be correct? [LB651]

BRAD EDGERTON: Right. Every acre of land under the irrigation district has two water rights. They have the right to divert natural flow out of the channel and apply it to that ground. When we're short water, we have the opportunity to use supplemental water from the reservoirs, and that's the storage use permit that allows us to do that. [LB651]

SENATOR FISCHER: So I guess I hadn't heard the term before, river flow enhancements. [LB651]

BRAD EDGERTON: Well, the reservoirs were constructed to store water when there was excess and then use it during periods of drought. And for the most part, they've... [LB651]

SENATOR FISCHER: So that would be the enhancement. It would allow...basically it would allow surface water irrigators to be able to irrigate of the river from the release of the water from the reservoir. [LB651]

BRAD EDGERTON: Right. [LB651]

SENATOR FISCHER: So that's the enhancement to the flow of the river. [LB651]

BRAD EDGERTON: Correct. [LB651]

SENATOR FISCHER: Okay. Okay. You said the word "protection" scared you. In the way...I guess what I heard you say on that was if the NRD would lease water from your irrigation district and send that water downstream, you feel that the water...the surface water users downstream should be able to irrigate with that water. [LB651]

BRAD EDGERTON: That's not what I said or intended to say. [LB651]

SENATOR FISCHER: Oh, okay. If you could clarify that for me then, please. [LB651]

BRAD EDGERTON: To be in compliance we're going to have to curtail our use, either through surface water curtailment or groundwater curtailment. What scares me is when they curtail groundwater use above our diversion dam, I've heard many of them say that that water needs to be protected clear to Kansas, and I disagree with that. The groundwater model determines what the depletions are to the stream from groundwater pumping. When they reduce their pumping, they get credit with the groundwater model on how much less depletions they are causing to the stream. Granted, surface water is probably going to increase the consumption a little bit, but... [LB651]

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SENATOR FISCHER: A previous gentleman that was up said that well pumping dried up the river, so I would assume if the wells weren't pumping there's going to be more flow in the river through that process of thinking. So shouldn't that water be allowed to flow down that stream all the way to Kansas to help with compliance and not be pulled out by surface water users? [LB651]

BRAD EDGERTON: The state of Nebraska granted these appropriations. We have one dated back to 1890. [LB651]

SENATOR FISCHER: Correct. [LB651]

BRAD EDGERTON: And we're being short. So up until the point that we're getting our full allocation, that water ought to be allowed to be diverted. Once we have our... [LB651]

SENATOR FISCHER: Even...go ahead. [LB651]

BRAD EDGERTON: I say, once we have our full allocation, then the remaining water would go downstream. [LB651]

SENATOR FISCHER: Even if groundwater users are not pumping in order to try and help in meeting the compliance? [LB651]

BRAD EDGERTON: If they curtailed their pumping, the model would tell them what credit they get for that curtailment. There would be less depletions to the stream that come out of the model that would be entered into the accounting, and that's where they get their credit, from not pumping that water. [LB651]

SENATOR FISCHER: Do have a board of directors on the Frenchman-Cambridge Irrigation District? [LB651]

BRAD EDGERTON: Yes I do. [LB651]

SENATOR FISCHER: Are some of your members also on NRD boards? [LB651]

BRAD EDGERTON: No. [LB651]

SENATOR FISCHER: Okay. Thank you very much. [LB651]

SENATOR LANGEMEIER: Senator Schilz. [LB651]

SENATOR SCHILZ: Thank you. Thanks for coming in today. The compact was signed...

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[LB651]

BRAD EDGERTON: Nineteen forty-two. [LB651]

SENATOR SCHILZ: Nineteen forty-two. How many groundwater wells were there then? [LB651]

BRAD EDGERTON: A handful. [LB651]

SENATOR SCHILZ: Okay. The compact was basically a surface water... [LB651]

BRAD EDGERTON: Yes it is a surface water, delivery compact. [LB651]

SENATOR SCHILZ: And so I would tend to agree with you that the only vested rights on the river are surface water rights. The only real power that...or the only real power that you have is the ability to use those surface water rights for what you want. [LB651]

BRAD EDGERTON: Right. [LB651]

SENATOR SCHILZ: Basically what you're saying is that if there's water not getting to those, there's a takings going on right now without being compensated for it is what you're saying. [LB651]

BRAD EDGERTON: Yes. [LB651]

SENATOR SCHILZ: And if there was water back in the river, like you said, up until your allotment is fully realized, then anyone that has priority should be able to take that water. [LB651]

BRAD EDGERTON: Right. [LB651]

SENATOR SCHILZ: Or be compensated for it, is that... [LB651]

BRAD EDGERTON: We'd just as soon have the water. [LB651]

SENATOR SCHILZ: I understand. Yeah. But, but, I mean, obviously, if you don't have the water you want something for it. [LB651]

BRAD EDGERTON: Right. [LB651]

SENATOR SCHILZ: I understand. Thank you very much. [LB651]

SENATOR LANGEMEIER: Senator Carlson. [LB651]

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SENATOR CARLSON: Senator Langemeier. Brad, this shifts a little bit, but you talked to me one time about the value of flow in the river, every gallon is worth two. I thought I understood it and now I've forgotten it and maybe that would be beneficial here. [LB651]

BRAD EDGERTON: Well, there's areas in the Republican River Basin where you could cut back your pumping a small amount and increase the streamflow a lot. And the area I'm talking about is above Swanson Reservoir. There's water up there, there's a lot of water up there. The problem is it doesn't make it to Swanson Reservoir or, you know, in dry times only about 49 percent of it does. And what I was trying to illustrate when I talked to you that other time was, when you mix all this water together it has a better chance to make it there. We need Colorado to come into compliance because that's harming us. It's also harming the state's ability to be in compliance. We've stored water in Swanson Reservoir for the last six years. All the water above Swanson was not counted in the compact accounting because it was in storage or it never even reached the reservoir. So what I'm saying is if we have the water freed up above Swanson Reservoir where Frenchman-Cambridge could make deliveries every year, our return flows are a river enhancement downstream. About 50 percent of what we divert returns to the stream and keeps the stream flowing and eventually helps Harlan County Lake. So, you know, we talk about reducing our consumptive use, but if we do it in the right way in the right place and also hold Colorado to the fire as far as getting them in compliance, then Nebraska is in a whole lot better shape. [LB651]

SENATOR CARLSON: Okay. Thank you. [LB651]

SENATOR LANGEMEIER: Any other questions? Seeing none, thank you very much for your testimony, Mr. Edgerton. [LB651]

BRAD EDGERTON: Thank you. [LB651]

SENATOR LANGEMEIER: (See also Exhibits 6, 7) Further testimony in opposition to LB651? Seeing no one coming forward, I do have two letters. One is from Earl McNutt from McCook, and Tom Kiplinger from McCook have submitted two letters for the record in opposition. Are there anyone wishing to testify in a neutral position? Seeing none, Senator Christensen, you're recognized to close on LB651. [LB651]

SENATOR CHRISTENSEN: Thank you. As you can see, there's a lot of fights yet amongst farmers between irrigated groundwater versus surface, irrigators versus dryland, and quite often we see it pinpointed to the groundwater irrigator. But I want to briefly hit on what all has impacted the Republican River flow. I'll encourage everyone of you to go to Bureau of Reclamation site, look up Swanson Reservoir, and look at the pictures. You'll look more than a mile to find a single tree. We found out through vegetation management that we're bringing water back to the surface the first day of

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removal. So every one of these trees along the river is a water pump. I'll go back, take in a little more history. Back in the seventies they used to go out and disc the ditches shut so we could drill wheat. Now we've went to no-till dryland farming, no wells in the area, and the dams have dried up. Why? Water don't run off the field no more. Conservation has done an excellent job. We've done our job. There's no groundwater. I can take you out there and show you the place. You can't even get a stock well. Dams have dried up. There's no irrigation. There's no pumping. They dried up also. This is a very complex problem. I'm a drylander. I'm a surface irrigator. I'm a groundwater irrigator. And I'm going to tell you and I believe it because I've seen it happen, my dryland farming no-tilling has caused more damage to that river than any other thing but maybe trees. I don't know. I think the jury is still out there, but I know vegetation is a factor. Has groundwater pumping affected it? Yes. We can prove that. I can go talk to a lot of old guys. We can follow up the streams. I don't think there's any doubt. Can we prove that it's all groundwater? No. There's vegetation there, there's dryland, there's conservation. Major complex problem. We need tools. And we also need to get everybody working together. That's why I started this closing with you see we still have surface fighting groundwater, we got irrigator fighting drylander, and farmers are killing themselves. And it's a sad tale, but I don't know how to change it. But I do know that I can bring forth some tools to help us work together. I'm more than glad to sit down. If Brad feels like there is protection problems in this bill, I'll gladly sit down and visit with him. I don't think there is. And I do, I irrigate underneath Brad. Think the world of the man, very smart. But I want to work with all parties. I sat down and visited with almost all the opposition that's been here before the meeting today, had a great conversation. There are some things that we can do to make it better. I don't disagree with James that says if he's not getting his surface water, he shouldn't pay the occupation tax. I can relate to him. I told him I agreed with him, that I'd try to work on. I don't disagree with that. I think there's a lot of areas here that we can work together on. I just want to provide tools. I'm going to tell you unfortunately it was farmers that sued LB701 is taking away the tools that could have allowed retirement of acres, augmentation, additional vegetation. But, again, it is farmers fighting farmers, the worst, sad state that we can be in, when we're fighting it in court instead of working together. I'm trying to see what other notes I maybe want to bring up here yet, but you know, I'll just close here a little bit saying, you know, I hope all sides will talk to me after this. Then we can make continue to work on issues. I've been back to this committee I don't know how many times working on this and I'll have to continue. And I appreciate all the support of the committee. This committee has been a great help, and I continue to look forward to working with you as we provide tools, as LB98 on the vegetation, keep it moving, as we look at a tool here of a revolving loan, as we look at maybe taking care of those that maybe aren't getting any water and still paying a tax. I think there's a number of things we can do. We can make this better. And I just ask for the opportunity to work with the committee to get the bill in shape that everybody believes it needs to be, that we can further address the needs of local control statewide issues, because this one is definitely worked statewide, and move forward. Thank you. [LB651]

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SENATOR LANGEMEIER: Thank you, Senator Christensen. Any questions? I have one, two. Senator Haar. [LB651]

SENATOR HAAR: Yes, thanks. What is the occupation, do you know, per acre for an irrigated acre? [LB651]

SENATOR CHRISTENSEN: Is allowed up to \$10 an acre. Each district set it different. In 2007, it was set about \$9.70 in the upper, around \$7.40 or so in the middle, and down around \$5.50 in the lower. And I'm not getting these right, I just know it was a little different. [LB651]

SENATOR HAAR: Um-hum. But that's about right. If the Supreme Court says occupation tax doesn't work either, is this bill just dead? I mean, because then you can't... [LB651]

SENATOR CHRISTENSEN: Well, I guess it comes back to...and thank goodness I'll say something ahead of time. If the occupation tax is unconstitutional, as long as it falls under other tax we have a year to apply for it back from the judgment. That's a good thing. We don't have to address that one. But I've got another tool that I'm already working on with Dan, my legislative aide, to get written. There's one more attempt we can do without severe economically shutting off the area. I agree with Senator Carlson and the number of people who have testified. We got to move to sustainability. [LB651]

SENATOR HAAR: Right. [LB651]

SENATOR CHRISTENSEN: But if you go from pumping what we used to, 18 inches has been talked about, I know people did, I did it myself, down to whatever it is. I don't have any numbers from DNR that says what it is. Say it's four, say it's six, say it's eight, that's up for debate. But if you go too fast we're liable to kill ourselves. We got Monsanto. This group went over and seen the tour on what's happening with drought tolerance genes. Very good tool for us. When we get that, we need to ratchet things down. You know, I think we have that opportunity to work together, take technology. I remember when I burnt 36 inches of surface water a year per acre. I had an 80, watered four directions. Now it's covered with a pivot. Still groundwater. You know, we've gotten efficient. Farmers are adaptable. You've heard that. But so far, adaptability has been progressive. I don't know of anybody that's went from 36 inches down to 12 or 36 down to 6. It's been a natural progression. Anybody that went from surface irrigation or tubes or ditches like I did to a pivot seen a major cut. You've heard about T-tape or underground water will save a bunch more. Expensive, I've priced it, but very effective. If we had a very strong fiscal budget right now, I'd love to have a fund like the ethanol was that allows people to get help doing T-tape, underground surface irrigation. But the fact is we're fighting tough times right now, everybody is. So did I hit your question?

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[LB651]

SENATOR HAAR: You did. Thank you. [LB651]

SENATOR CHRISTENSEN: All right. [LB651]

SENATOR LANGEMEIER: I think you hit the question and every point there between, so. (Laughter) [LB651]

SENATOR CHRISTENSEN: That's my job. [LB651]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much for your testimony. [LB651]

SENATOR CHRISTENSEN: Thank you. [LB651]

SENATOR LANGEMEIER: With that, that concludes the hearing on LB651. I'd like to thank everybody that took the time to participate. (See also Exhibit 8) [LB651]

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Disposition of Bills:

LB651 - Held in committee.

Chairperson

Committee Clerk