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Natural Resources Committee
October 06, 2009

[LR235]

The Committee on Natural Resources met at 9 a.m. on Tuesday, October 6, 2009, in the Lake McConaughy Room of the Lake McConaughy Visitors Center, Ogallala, Nebraska, for the purpose of conducting a public hearing on LR235. Senators present: Chris Langemeier, Chairperson; Annette Dubas, Vice Chairperson; Tom Carlson; Deb Fischer; Ken Haar; Beau McCoy; and Ken Schilz. Senators absent: Tanya Cook.

[LR235]

SENATOR LANGEMEIER: It is 9:00, so if I can have your attention, we're going to get started. I'd like to welcome everybody here today. My name is Chris Langemeier. I'm the Chairman of the Natural Resources Committee. I'd like to introduce those that are at the table with us. We're going to start to my far left, to your far right. We have Senator Tom Carlson from Holdrege, Nebraska; we have Senator Beau McCoy from Elkhorn, Nebraska; we have the Vice Chair of the committee, Senator Annette Dubas from Fullerton, Nebraska--I guess I don't have to say Nebraska. Legal counsel for the committee is Laurie Lage. To my right we have Senator Deb Fischer from Valentine, Nebraska--it's a habit--Senator Ken Schilz from Ogallala. And in a minute we'll have Senator Christensen come back up--and he'll sit right there--from Imperial, Nebraska. Ken Haar from Malcolm. And Senator Tom Hansen from North Platte. And I didn't forget you last week. So a couple other people we'd like to recognize in the crowd: We have the director of Nebraska DEQ, Mike Linder; he's standing in back; he's standing, like, close to the door, like he's... []

MIKE LINDER: It's habit. [LR235]

SENATOR LANGEMEIER: ...and Carla Felix from DEQ as well. And then we have from the EPA-Kansas City office, we have Sarah Hatch, that has made it out to participate in this. We want to welcome them. At this time, we'd ask you to turn your cell phones off so we don't interrupt the testifying that's going to happen before us today. There are in

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the back of the room, there are two sheets. First is a green sheet. If you're going to testify, we ask that you fill this out so we have your name and your information so we can make it part of the record. And when you come up, there's a basket that you'll see right in front there. Just put that in it when you come up to testify. If you're here and you want to be on the record as being here and having an opinion--but you don't want to testify--there's this sheet in the back. It's a white sheet with lots of little boxes on it. You can sign in, and then we'll put you of record so we know you were here. When you come up to testify, you'll see in front of you there's a light system in front of you. We'll turn the...it's five minutes, we'll turn the green light on; it'll run for four. Then you'll get the yellow, tells you you have a minute left, so start wrapping up. And then the red light will come on. And then if the committee has questions, we'd like to be able to ask you some questions. When you come up, we ask you to first, before you do anything else, state and spell your name, so we make sure we get it correct for the record. With that, we're ready to go. And Senator Christensen will open the hearing. Oh, before I do that--interim study hearings--we do not take testimony in proponent, then opponent, then neutral. If you've come to the Legislature and testified, we do it there. Interim studies, we just take you as you come up, so feel free. There's empty seats up front. If you're ready to testify, come on up and take a seat and get ready. And with that, now we'll start the hearing on LR235. And Senator Christensen is ready to give us his introduction. Welcome. [LR235]

SENATOR CHRISTENSEN: (Exhibits 1, 2, 3, 4, and 5) Thank you, Chairman Langemeier and fellow senators. I want to welcome and thank everyone here today and thank you for attending. I know its a very busy time for the farmers that are attending, but I especially want to thank you guys for taking the time. I believe that we need to look at all options and not close ourselves to one or two that may be popular. From the title here, "Interim Study to Examine Water Issues," it is very broad, but I'm going to propose eight or nine different options here that I believe may work into one or the other interim studies, which is state water plan as well as addressing issues on the Platte, getting back to the cooperative agreement 1997 acre levels, as well as Republican issues,

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hitting or looking at getting to compliance issues with Kansas and controlling the water usage or using various options to get there. But I think the first thing we've got to look at is: What are our allocations? What would our allocation be if we had no occupation tax and no other statement, what would it be if you wanted to look at whether you're hitting compliance or whether you're hitting sustainability to the aquifer? I think until them two numbers are given us, we're really spinning our wheels. How can you set policy when you can't get a straight answer? I've requested this from DNR in the past three years and only get a range and no real numbers. This would be where I would start with all my plans. I believe we need to...we operate under correlative rights on ground water, which means we share and share alike. I've taken many phone calls from people asking about the share-and-share-alike and what it would be. There is no constant...this is a constant no matter which NRD you live in or which people I'm talking to. People want to be treated fairly. The proposed plan that's being asked to be adopted by NRDs and the Republican--and I believe it's in quite a little of the language in the Platte--is not fair. When we treat people differently and operate under correlative rights, it is wrong. Regulation that is fair and equal to all--what is it? Government should not pick winners and losers, as in the current plan being presented. This is socialism. Hitler didn't kill everyone alone; it was the indifference of the people. We haven't got here overnight; we will not get out of this overnight. We have to make a choice to change what we're doing to balance the long term. If you choose to read the packets I've given you, it is clear the Legislature has known of the problem, and they chose to ignore it. I'm giving extra to the committee if they want more to read. I handed in some more--beyond what you have in front of you--if you want more reading on this subject that I have brought that I'm sure they'll share with you. We can turn our backs on the water problems or we can engineer a solution. We can shut down part and let the court settle the problem or we can work with different ideas to reach a balance. Option 1: Once you look beyond what I believe is the first step, which is looking at what is the actual allocation would have to be. Engineering a solution: There are many areas from the east and to the north that, in times of surplus, water could be transferred to areas of need. Remember, the state owns the water and should use it to the beneficial use of the state, as the law says. I

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had numbers back in 2006 that would have moved water from all areas of the Platte all the way from the east end of the state to all areas of the Platte and the Republican to achieve goal sustainability. There's only one way to sustain sustainability. That is to match the water use and the water usage from every area of the district. This was talked about in the 1970s and 1980s. This is in the handout I've given the committee but not in the individual packets. Consumption tax: This is one that takes users of water, and they pay for the need of offset compliance, whether it be in the Platte or in the Republican. This takes a consumptive use for irrigated corn or beans, wheat, dryland corn, dryland wheat, trees, terraces, alfalfa, pasture dams, no-till, and you pay accordingly to the reduction to the stream flow. Spreadsheets can be done on this for easy computing. I have one that I've created and am using at this time. Go back to the Bureau of Reclamation Web site and look at the ground around the dams before they were started. Virtually no trees, terraces, no-till farming, or irrigation existed. Yes, there was some irrigation; there were some trees. If your goal is to go back in the Republican for the 1943 compact or in the Platte for the 1997 cooperative agreement and sustainability and balance water usage to the stream, then look at all areas that affect the stream. Don't put the blame on the backs of irrigators when the majority of the change is due to several different areas. Option 3: Fix the occupation tax language that is being held as unconstitutional as a closed class. This could be done so it was...that...so they could apply to the areas of need. And I'll just read the language out of a bill that I've had written that just says that: Nebraska Ground Water Management and Protection Act, in addition to other powers authorized by law, the board of the district with jurisdiction that includes a river basin that has mandatory regulated metering may issue negotiable bonds and refunding bonds to the district. By taking that language that has mandatory regulated metering, any NRD could get themselves to the position that they could apply the occupation tax if it's needed, any NRD could keep themselves from getting in that position of having an occupation tax if it was done by the basis of mandatory regulated metering. Very few NRDs have regulated metering, maybe eight NRDs right now. And when you look at full river basins, you can adjust it however you'd like to see that. I'm open to adjustments to the language however the

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people see that it would be best. This still needs a use to balance the areas of depletion. You can use transfers--this can be a long-term...all others are short term, providing the transfer goes to areas of shortage to recharge ground water. Pumping water to meet compliance...then you better have a backup plan for the use of the reduction of ground water depletions occurring causing future problems. Buying surface water, if available, is a short-term solution, as it doesn't address long-term balance. This must be bought or it is wrong to shut off anyone, period. We can discuss this further if anyone desires. Option 4: Balanced farm approach: Assume that 90 percent of the water that lands on your land is for you to use. That would assume that 6 percent is runoff, 4 percent is recharge. That's why I say you could use 90 percent. Every crop, be it trees, corn, grass, wheat, alfalfa--irrigated or dry--gets a consumptive-use number. And you have to save enough water from the growing of different crops to earn credits to water or irrigate with. It seems difficult, but I have a spreadsheet in Excel for this also. For example, irrigated corn uses 29 inches of consumptive-use water. If the annual rainfall is 19, then you're short 10 inches per acre. This must be made up in terms of savings. Take dryland wheat; at 15 inches it saves 4 inches of water that you could use to apply to acres to irrigate. Thus, it takes 2.5 acres times more acres of dryland wheat than irrigated corn. Use dryland corn at 17 inches, you use 2 inches. For every acre it saves 2 inches--for every acre of dryland corn. I'm using these numbers based off of Perkins County. That's where I could get my information that had been done on a study; and I forgot to bring that particular study with me. I do have it on my computer. But each county and NRD would be different, because the annual rainfall is different. So the difference that would apply to each NRD would be different. But it is something that would be very easy to manage. It would give the farmers the flexibility to balance their acres to the rainfall that falls on their land. I'll give an example of trees. They talk of trees using 48 inches on a full canopy. Nobody wants to see trees destroyed. You take a 40 percent canopy, that would be 19 inches. Now you'd be water-neutral. And I think you can see after vegetation management on different rivers, the people that have done some tree management, of thinning them out and even removing them totally out of the river basin, has increased wildlife. We've had farmers that objected to having vegetation

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management done on their farms because of wildlife management have come back and said: Hey, I want it done on my land. When it is thinned, sunshine hits the ground, grows the grass; it provides a better area for wildlife, better management for animals. I can give you an example of a farmer you could call that took out about all the trees on his grassland next to the river except along riverbank, where he just thinned it. And he'll tell you he almost doubled the amount of livestock he could run down there, because he was getting under that full canopy scenario. And it wasn't good for anything. You know, it's like I've said before: If you've got corn growing in soybean field, it's a weed. A tree growing in a river is a weed. Same thing if anything is overdone. If you overdevelop, if you overallow trees to grow, it becomes a detriment. I'm just trying to present a lot of different options here for people to think about. You may think this seems to be difficult, but I think I can demonstrate in the future an example how this, really, you can plug the number of acres of your irrigated and dry into a spreadsheet, which I'm about done with, for your farm, and it'd give you a number over here if you're plus or minus consumption. And if you would take that on a revolving three-year average, you would add a little more flexibility for farmers to be able, you know, if they need to plant a little extra corn this year, they could do that, make it up by planting irrigated beans, which has a lower consumption, or irrigated wheat or something this way in another year, and that they just have to be on a...maintain that three-year revolving average. Shortly, I hope to be able to show you these spreadsheets. They're not quite all finalized even though they're very close. Option 5: A per-inch charge. If you'll flip into your packet, I'll give you an example of the way I'm talking a per-inch charge. For example, let's say 6 inches was the fair compliance to keep you out of a water-short year. Then--it should be in the stapled part with the bill and the balls on top of this picture I'll get to. So if 6 is the amount that everybody could share and share alike--I don't have any good numbers; I've got some research here that goes by different river basins. In the Republican, it'd say, due to the development on there, what they would have to have per-acre allocations to be neutral. But I'm having trouble backing up and getting any further information. But on this charge, (sic)[?] if 6 inches was your number that is sustainable, if you want to use...you need another inch, and it's going to cost you 7 bucks an acre,

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because you're going to have to provide offsets. The 8th inch is going to cost you 8 bucks an acre. Now you're at a total of \$15. Ninth inch would be \$24. This is where the lower would end, because they have a 9-inch allocation. Tenth inch, 10 bucks, gets you to \$34. Eleventh inch to \$11 gets you to \$45. Twelve inches gets you to 57 bucks. This is where the middle would max out in their current allocation. Thirteen inches, 13 bucks, would be 70 bucks an acre. This is the level where the upper would max out.

Advantages: It encourages conservation of natural resources. Those who save don't pay; those who use pay. You pay only for the use over your sustainable irrigated level. It allows a farmer to manage...have management flexibility to hit their goals. It's a simple once-a-year read if it's metered, and you pay what you owe. Disadvantages: There's no predetermined cash flow for buying compliance for the NRDs, because they're going to have to take this money to do their offsets, whether it's augmentation system, whether it's buying surface water, whether it's retiring acres, whatever it may be. Another disadvantage: It's an added cost of production to farmers if they live in an area that they need more water. It's going to make them have to manage very close. I know I've hit a chord; it's got very quiet. But, you know, I'm trying to provide seven, eight different options here, and maybe two or three of them can be put together. I'm not telling you I have the answer; what I'm telling you is: This is a difficult problem that needs to be addressed. Disadvantages to this: You've still got...need that compliance solution that I said was the first one that the NRDs would have to address yet. And they don't have that steady revenue, not knowing till the year's over what's going to be used. Option 6: Drain the lakes; get rid of evaporation, as Bonny Reservoir in Colorado. We hit compliance--not pushing it. Like I said, when I close--I'll tell you, I don't like all these options. I'm just saying that is something that's there. I don't like that one; I'll be very bold to say I don't like that one. But that's something somebody else is doing. So I thought, I'll bring it forward--not promoting, just telling you. I went to a meeting with the senators from Colorado and the vegetation management groups from the joint states over in Colorado on their plan to drain Bonny Reservoir. There's no doubt them senators plan on doing it. I'm not promoting it, but they're planning on doing it. I talked to every one of them personally afterwards. They said: We will have it drained in a year.

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Option 7: Cover the lakes to get rid of evaporation; see your top sheet there. People have laughed when they said if you would put in...cover your lakes with ping-pong balls, you literally could go out and ski on it. You could still fish on it. You could stop a lot of evaporation. People have laughed at me for three years. I'm showing you, this is in California, and I forget...I've got the reservoir somewhere that that's on and the Web site. And I suppose I left that lying on my desk this morning. But I may have it in my bag over there, but there... []

SENATOR LANGEMEIER: It's on the bottom of it. [LR235]

SENATOR CHRISTENSEN: Is it? [LR235]

SENATOR LANGEMEIER: You could get back to it on there. [LR235]

SENATOR CHRISTENSEN: But anyway, this is a lake that's covered with black balls to stop sunlight from a lake to stop algae growing, because that was damaging the drinking water. And that comes from Ivanhoe Reservoir in Los Angeles, California. This is only a 10-acre lake with 3 million balls on it. They got a video; you can watch them dumping it out onto the lake and covering it. It's kind of interesting. Option 8: UNL research: A product to reduce evaporation from the lake. Example I've given before: If you've got two water holes out in your cornfield...I've done this for 20 years; I'll go out and put soap in the one water hole. That water...that soap will break the adhesion; that water will soak in the ground. The water hole I do nothing to drowns the corn out, and it's done for the year. I've went back and flip-flopped them, done the opposite holes the following year. The one I soaked the first year drowned it; the one I soaked the second year made it. I know it works. I've asked our land-grant university to research this, and they won't do it unless you provide them money for a grant. All I'm telling you: I believe there's other solutions than shutoff. I don't think shutting off surface or shutting off ground water, quick response, is the answer. I think there's a lot of things that could be done if we want to look at real solutions. If we want to find a long-term solution--we've

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got technology coming to reduce the amount of water corn uses. Why can't we reduce the amount of evaporation on a lake? I think that's one of the most practical. It's a given in the state of Nebraska, if we got rid of evaporation, we'd be in compliance in both rivers--Platte River, Republican River. We'd be in compliance. We may not be sustainable, but we'd be in compliance. Again, I'm not saying that any one of these options is the right answer. I'm not saying I like them all. What I'm saying is I think every option should be on the table and it shouldn't be dictated just one way who's going to win and who's going to lose. I think it ought to be an open process, as this is here today. And I hope that there's a lot of discussion on this. And I would gladly entertain questions if I can answer them. [LR235]

SENATOR LANGEMEIER: Thank you. Are there any questions for Senator Christensen? Senator Carlson. [LR235]

SENATOR CARLSON: I don't want to be first; I'll give somebody else the chance. [LR235]

SENATOR LANGEMEIER: You're first. [LR235]

SENATOR CARLSON: Thanks. Senator Langemeier, Senator Christensen, as you were going through this, just a couple of thoughts in my mind. Yesterday we had a tour out here and a pretty meaningful presentation that talked about even the effect of a half-inch rain on the state of Nebraska, and I had done this calculation before. But we talk about Nebraska as a million acre-feet coming in and 8 million acre-feet going out. So we've got plenty of water if we could figure out a way to manage it so that it gets to the places it needs to get. Well, by what we discussed yesterday, it cemented, I guess, my thoughts. But 1 inch of rain on the entire state of Nebraska deposits 4 million acre-feet of water--one 1-inch rain on the state of Nebraska. So it's not a problem of water quantity; it's a problem of somehow figuring out a way to manage what we have available and getting it to the right spot. And I would imagine I'm going to be interested

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as people come up to testify, but anybody that's not in this category I'd ask you to just really think this through as you listen to comments that are made today. If you're not in a basin, it's really got your back to the wall right now. Try and think, how long might it be before we're there? And not if you get there but when you get there, hopefully, your thought process will be: The very last thing that we want to do is shut the door on somebody's business. That's a serious matter. It's not fair; it's not American; it's not Nebraskan. We've got to figure out a way to solve our problems without closing people's doors. And so I just would ask you to think along those lines as you listen to others testify today, and, hopefully, we come up with some solutions and some alternatives that can work without putting people out of business. So not much of a question, Senator Christensen, but thank you for your testimony. [LR235]

SENATOR LANGEMEIER: Are there...? Senator Schilz. [LR235]

SENATOR SCHILZ: Thank you, Senator Langemeier. Good morning, Mark. How are you? [LR235]

SENATOR CHRISTENSEN: Pretty good. [LR235]

SENATOR SCHILZ: I guess I look at this--I have to agree with you. I'm not sure if any of these are the right solutions or not, but I do commend you for trying to show everyone that, you know, it's not just going to be one thing that gets us there. And I don't disagree with you there. I think that we need to look at all the things on the table, and we need to be open minded, because we may see stuff coming forward. I guess I really don't have a question either, except for that I just wanted to say that I do think that the problem is very complex, and it's going to take more than just one or two things. And I agree with Senator Carlson as well that the last thing we want to do is shut people down. There's...there needs to be other avenues taken before that. Thank you--not a question either, I guess. [LR235]

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SENATOR LANGEMEIER: Any other questions from the committee? [LR235]

SENATOR HANSEN: I have a question. [LR235]

SENATOR LANGEMEIER: Senator Hansen. [LR235]

SENATOR HANSEN: Senator Haar and I sit here and look out that window. I was just wondering how many ping-pong balls that would take. (Laughter) [LR235]

_____ : A lot. [LR235]

_____ : And what color? [LR235]

SENATOR SCHILZ: And what happens when the wind starts blowing them over the dam? [LR235]

SENATOR LANGEMEIER: The white caps. [LR235]

SENATOR FISCHER: Yeah, with white caps today. [LR235]

_____ : Yes. [LR235]

SENATOR LANGEMEIER: Any other questions? [LR235]

SENATOR SCHILZ: It'd be a good pile-up [LR235]

SENATOR FISCHER: Yeah. [LR235]

SENATOR HANSEN: Do you want an answer to that? [LR235]

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_____ : You wanted hard questions. [LR235]

SENATOR SCHILZ: Oh, you'd have to string them all together. [LR235]

SENATOR CHRISTENSEN: It may create a new sport out on the water. [LR235]

SENATOR LANGEMEIER: Seeing none, thank you very much for your testimony.
[LR235]

SENATOR CHRISTENSEN: Well, that's the easiest stuff I ever got off. [LR235]

SENATOR LANGEMEIER: Yeah. At this time, I'd like to thank Tim Anderson and Central Irrigation and Public Power for the use of this facility. It's starting off very well. We thank you for that and the tour yesterday. We greatly appreciate it. Now we'll open up. Just for...just a rough estimate--I won't hold you to it--but how many plan to testify? Would you hold your hands? Okay, a good group. We're ready for further comments; come on up; don't be shy. Welcome. [LR235]

RORIC PAULMAN: (Exhibit 6) Thank you for the opportunity. Roric Paulman, R-o-r-i-c P-a-u-l-m-a-n. I'm a producer from Sutherland, a former NRD board member, a stakeholder on the Twin Platte NRD IMP process, also a stakeholder on the overappropriated basin process as well, too--IMP, and also part of the subcommittee that tried to forward some of the ideas and processes to get to this point that we're trying to work towards today. A couple things. Senator Christensen referenced a study that was done in Perkins County, and, actually, we did that. We did that study, and I'm going to actually enter in to a document--I apologize I didn't make more copies. But there's a proposal here for water resources management using water budgets. And this process came as a result of...I was on a subcommittee with the OA basin. And Ann Bleed at the time was the director of the DNR, and we were working through some pretty serious issues. And...excuse me. But Ann...I brought this proposal initially--it was

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just an idea. There's a group of us that represent a little over a hundred thousand acres--West Central Water Coalition--irrigated acres and taxpayers. And she told me at the time, when I introduced this, that we didn't have time for a water budget, that we had more pressing issues. But it was necessary that ultimately there would have to be a water budget for the state of Nebraska. And this has been over two and a half years ago. So with that theme in mind, I've continued on, and our group has tried to forward that idea and that process. And several of the people that are in this room have been part of that. UNL Extension people have been part of it. So we actually commissioned a former employee of NPPD who works now for Brown and Caldwell, Matt Lindburg, and a water engineer out of Colorado, to do a lot of this work. He had a good familiarization with the surface water process and also the ground water process in Nebraska. So by doing that and moving it to Perkins County, we tried to eliminate as much of the surface water component as we could, just to see if it worked, if it gave us a rough idea of how this concept would work. And it did. And we forwarded it on to the Twin Platte NRD, who...we did a kind of a big-picture, a high-level shot at what it would look like on the Twin Platte. And so with that, I would like to offer those two documents, the initial research that we did in Perkins County and then also the document that went through the Twin Platte NRD. But two things along with this concept. I truly believe in it. And being a part of the last three-plus years of the IMP process...the thing that we've been lacking is I don't think that we do anything in the Legislature without a budget. And this process--Jim Snyder's (phonetic) seen it; I think that Mr. Dunnigan (phonetic) as well has seen it. I forwarded it as well out of my initial comments and testimony at the Twin Platte hearing on the IMP process. So it has gotten further and it is recognizable by some of the features that are in it. And so with that being said, not only was I a stakeholder in that process but I'm a stakeholder in Nebraska, and I appreciate your comments, Senator Carlson. I have a large operation. I have wells in the Upper and the Middle Republican and also in the Twin Platte and over 50 irrigation wells on my operation. And, you know...there's a quote from a research extension educator not very long ago that said, you know: If it wasn't for no-till, we'd be in worse shape than we are today. Flat...I mean we're doing it, I mean we're doing a lot of things in spite of the

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issues economically that are driving us on the outside. You're talking about \$70-an-acre water, we're already paying \$70-plus in, just in energy costs and electricity and diesel fuel and maintenance. That's what those costs are today in western Nebraska. When we have to provide supplemental water to our area...but along with your terms of letting the farmer balance it, putting it in the hands of the producer--that's our cheapest resource. We don't have to tax them; we don't have to make them pay for it. If you set a set of parameters that are out there and allow them to balance their farm, they'll do it for nothing, because there's an incentive out there to do that. You don't have to put numbers out there. We're doing it on our own now; we have to. We're watering with--you know, you can quote me, I suppose--we're watering with less than 9 inches. But it's a result of a lot of other things. It's capital investments in our community and in equipment and technology. And we're willing to do that, but it's ours. We're not sending it someplace and having it dictated to us about what the results should be or what they should look like. It just makes sense; it makes it way easier. Now, are there producers out there that pooh-pooh it or want to stand off? Sure, there are always going to be. Is there going to be somebody trying to figure out how to get around it? A water meter has never saved me a gallon of water, not one. I'm sorry. You know, if you want to spend the money and put those meters out there, just ask them what it'd cost to take care of them. It gives you an awareness. Now, I've participated; I have water meters. I've done it through EQIP, and it gives me an idea what I'm doing. But ET, consumptive use are a better indicator of what kind of crop, what you're doing on your farm than it is with a water meter that just sits out there and runs and then has to have maintenance, has to hire six more bodies and spend another \$1 million to take care of. It just doesn't make sense. So with that being said, I am, as you can tell, I'm rather fervent about this. I'm a stakeholder in Nebraska. And I adapt; I try to do what I can. And I appreciate the opportunity today to do this. And I have one last thing. Whatever the decision is, I think that if you put your faith in the producers, which--they have done and done well--they will respond. Thank you. [LR235]

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

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[LR235]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Mr. Paulman, for coming today. [LR235]

RORIC PAULMAN: Sure. [LR235]

SENATOR DUBAS: I really appreciate your input, and I think you're a great example of...yeah, I mean, just give producers a challenge, and they're going to rise to it. Could you kind of go into a little bit more detail about some of the other things that you've done on your farm to help either conserve water--have you changed your cropping? What are some of the things that you've done? [LR235]

RORIC PAULMAN: Strip till was a major...this will be the sixth year. I participate with the NRCS in several modeling aspects of what our water consumption is, what our residue management is, what our ET levels are; taking advantage of EQIP as far as what we can do as far as documentation and keeping track of those. Rotation is a big one. I'm very willing to move out into different...I grow at any one time up to seven different crops. They're not organic; they're not specialty. They're...it's a willingness to be a somewhat play-on-the-edge marketer, as opposed to real traditional corn, beans, wheat. We're pushing irrigated wheat yields--and also consumptive use--up. But, you know, to grow 50-bushel wheat under irrigation is not even economic. It's not even feasible. Dry beans, sugar beets--but all in a very structured rotation. That's probably the biggest thing. But GPS, off-season ET management. I'm sure there's some livestock producers in here, but we're probably going to get out of the cow business on cornstalk grazing. We're trying to keep that ground covered. That's my bank; that piece of real estate out there is my bank. And the better I can take care of that bank, the more in-season potential that I have. Now, the water-holding capacity is only so much. I mean, I have from Valentine sand to good clay sand type of soils, so that in itself is another layer of management. But the biggest thing is years of records. I use an

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accounting system that is through a manufacturer, that kind of keeps track of my rotations and what we're doing. So more and more, water-use tools, moisture blocks, those types of things. [LR235]

SENATOR DUBAS: So you're going to be able...through your documentation, you're going to be able to show exactly what you've been able to conserve through water, what you've been able to do as a producer. I'm a farmer myself; we just want to farm. We just want to grow something, then we want to get a price for it. [LR235]

RORIC PAULMAN: Sure. [LR235]

SENATOR DUBAS: So, you know...what agencies are you working with on these different...? [LR235]

RORIC PAULMAN: Well, primarily, right now, Monsanto with their water technology lab, looking at some things there; John Deere Water Technologies--they've got some neat things; I didn't know that John Deere was in the water business. But they have some interesting equipment that remotely monitors, gives you some ideas. I've done several things with infrared; I run infrared flights--a lot of things. I mean, I could take hours to talk about it. But it's been a slow process. I mean, it costs a lot of money. I've mostly shouldered the responsibility myself but relied on outside people to help, as far as comments and ideas conceptually. But you experiment. Each one of us is different; that's the hard part of overlying a water policy that fits everybody. And yet we're the ones that, ultimately, have to deal with it and administrate it. We really do. And if we can do it at a less cost and especially to the state, it just makes sense. Now, getting out of our normal raising a crop and collecting a price is probably the toughest, is one of the toughest hurdles to get over. It really is. [LR235]

SENATOR DUBAS: Are there more producers that are moving towards your way of thinking and doing things? [LR235]

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RORIC PAULMAN: Yes. Absolutely, absolutely. The equipment as it handles the residue better, I mean, those kinds of things just continue to grow. Husker Harvest Days was a prime example this year. There's more and more of that kind of technology, that kind of recordkeeping that has some potential. Now, whether it's all going to work, I don't know. But there is...every time you have a trip, you open up that ground, you release, the less residue you have on top, you don't get a chance to capture that inch of precip. We've forwarded that all along, that there's a huge amount of rain falls on another state and runs into us, or our supply is the rain that falls on us. And it's either in recharge or runoff. So that is our supply; that is a water budget. That's the concept. And it's been difficult to get around because of, legislatively, some of the compacts and agreements that we've gotten ourselves into. I was--I'll be real honest with you, and I'll...I was appalled at how little we knew three years ago. And then we get into COHYST, and we hang our hat on COHYST. And when COHYST didn't come up with all the numbers that, in particular, surface water people were referencing or thought that it was going to turn out, that--and that's my personal opinion; I'm not...I just...then we start going every which direction trying to grasp a number that works for us. And why all alone? Why aren't we trying to work together on a cooperative type of document or process that is best for us as Nebraskans? [LR235]

SENATOR DUBAS: Thank you very much. I appreciate your information. [LR235]

SENATOR LANGEMEIER: Further questions? Senator Schilz. [LR235]

SENATOR SCHILZ: Thank you, Senator Langemeier. Thanks, Roric, for coming in. [LR235]

RORIC PAULMAN: Sure. [LR235]

SENATOR SCHILZ: Great testimony. I really appreciate it. You know, what's kind of

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striking is that whether everybody realizes it or not, at some level they're on a water budget. I mean, have they find-tuned it as much as you have or looked into it as much? Probably not. But, I mean, so I think...I guess my question to you is: What is the goal of a water budget? I mean, we talk about what we need to do and everything. What is the goal of a water budget? [LR235]

RORIC PAULMAN: I've asked that question for three years, and here's my best answer, because this is what it always ultimately comes to is that real water isn't modeled water. And, you know, my goal is real water. You know, in every agreement, every conversation we've ever had as a stakeholder, as a producer, it's always been: Is it modeled water, or is it real water? And it's okay if we create modeled water, but they keep coming back and asking us for more, because it's not real water. And so, ultimately, my...I guess what I would perceive that to be is that it is real water, and it does get to the stream, or it does get back to the aquifer. [LR235]

SENATOR LANGEMEIER: Senator Hansen. Were you done? [LR235]

SENATOR SCHILZ: Oh, I was... [LR235]

SENATOR LANGEMEIER: I'm sorry. [LR235]

SENATOR SCHILZ: I'm sorry. [LR235]

SENATOR LANGEMEIER: I'm sorry. [LR235]

SENATOR SCHILZ: Sorry. [LR235]

SENATOR HANSEN: Go ahead; hurry up. [LR235]

SENATOR LANGEMEIER: No, go ahead. (Laughter) Senator... [LR235]

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SENATOR SCHILZ: Hurry up. (Laugh) You want me to give you a second to write it down? Okay. Sorry, Roric. What information are we still lacking? I mean, what do we need to have, in your opinion, to... [LR235]

RORIC PAULMAN: The information is there. We go back--and I can reference a whole bunch of--but we go back into the '60s and '70s, and it's university data. It's researchers and educators that put together, all the way back to there up through today. I'm sure that Central is doing things different than they were nine years ago on managing the resources of Lake McConaughy and their in-stream flows. I mean, it...the data is out there; it's just a willingness to be partners instead of opposed. So I think that the data is there. [LR235]

SENATOR SCHILZ: Um-hum. Okay. Then... [LR235]

RORIC PAULMAN: I have a bunch listed, Ken. [LR235]

SENATOR SCHILZ: ..do you--yeah, sure--and do you believe that a water budget, as you have it, can define sustainability? [LR235]

RORIC PAULMAN: Yes, I do; yes, I do. [LR235]

SENATOR SCHILZ: Okay. And then what kind of time frame do you think you have to have to get to that point, where you've realized that? And I know I'm asking pretty technical questions. [LR235]

RORIC PAULMAN: From the 30,000-foot level, I think you could do it very shortly, because to get a group that would meld it...you know, get the ideas conceptually...a lot of it's done in COHYST. A lot of that data is already...it is put together. It's missing some components that we've all gone out somewhat on our own to grasp and try and pull

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in--but, you know, funding at that level and the willingness of the participants to use it, you know, for the better good of the state. [LR235]

SENATOR SCHILZ: Sure. Okay. Thanks, Roric. [LR235]

SENATOR LANGEMEIER: Senator Hansen. [LR235]

SENATOR HANSEN: Thank you. I'm a nonmember of the committee, so I get to ask questions last. You talked a lot about your operation, other people's operation, but how do we get the education to the masses of producers? Because you talked about Monsanto, you talked about John Deere, you talked about Husker Harvest Days. You didn't mention UNL. So UNL as a land-grant college should be taking some of that information out to the producers. Do you think that that is happening? Or should we just stop relying on the university and go to private enterprise on that too? [LR235]

RORIC PAULMAN: Well, first, I owe the university an apology, because they're a major player in this. Jim Goeke, as far as I'm concerned, is as knowledgeable as there is in the water--and at some point we're going to have to replace him. I don't know if Jim's in the crowd, but (laugh) I apologize. In that I was a little remiss, because a lot of their data--a lot of their work--it comes out of UNL. But to specifically answer your question, of course, they're a vehicle. There is absolutely no doubt that the work that's being done...specifically North Platte and to the Panhandle, we rely the most on supplemental irrigation. If you want to call it from the 100th meridian or whatever you want to call it. But we rely the most on supplemental water, which is ground water, surface water in addition to the precip. So they're placed. I mean, they are there. Now, whether they have the funding and the continuing ability to step out there and take this kind of a project on, I don't know. I can't answer that, Senator. [LR235]

SENATOR HANSEN: Okay. Thank you. [LR235]

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SENATOR LANGEMEIER: Senator Christensen. [LR235]

SENATOR CHRISTENSEN: Thank you, Rick. (sic) You guys have done your study, and I've read it. You have...you think it'd take how much time to get implemented in your NRD? [LR235]

RORIC PAULMAN: In our NRD? [LR235]

SENATOR CHRISTENSEN: Yeah. Since your study is done, you've got facts there, how long would it take you to get this implemented? [LR235]

RORIC PAULMAN: If you stopped everything else, there'd be a chance. But (laugh) I think they've got their plate full with additions. They have a modeler of their own on board. They have some, conceptually, some of the ideas. And they've already done, again, a high-level shot at their NRD. I would say 12 months. [LR235]

SENATOR CHRISTENSEN: Now, knowing the time you have put in on this, say this was an option the state chose to pursue. How much time is it going to take to set up a state water balance per operation, you know? [LR235]

RORIC PAULMAN: Honestly, you're going to have a list of crops that are a part of each area--I mean, the traditional. And you can quickly add...I mean, again, that data is out there on consumptive use--you stated: 29 inches with corn. I mean, it's out there--soybeans, dry beans--those numbers are out there; they're available. And precip numbers are there. I mean, the rain gauge--Nebraska supports the...I think the university supports the rain gauge system. ET is posted in I don't know how many different newspapers and radios. I mean, there's a whole myriad of tools out there in the toolbox that just having the time...I mean, we've obligated ourselves to so many other things that I question how to pull that together without almost a separate effort. [LR235]

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SENATOR CHRISTENSEN: If we put in this water budget, would it basically eliminate the IMPs? It would become your plan, wouldn't it? [LR235]

RORIC PAULMAN: I don't think...I still think you need an overall concept, an overall guidance, an overall goal, and so you become a part of that goal. And each one of us, you know...the differentiation of us as how much water we have to supplement as opposed to somebody that lives in York, Nebraska--I mean, we're going to have to work harder at it in a different way to get those results or get to that kind of a point that the plan is fully appropriated. Or you know, there's...when we put Perkins County--that's in a kind of a consolidated aquifer. I mean, each and every part of our basins are all different. They all have a different part to them. And that's what I like about the way that the NRDs are split up now, is they really kind of fit all the pieces of how the system goes together. So the IMP is designed, in my participation of it, to be rather responsive and a tool that we can have input in on a yearly or bi-yearly or whatever--I mean, that's a changing, flexing process. And so as much effort that's been put into it and...I mean, there were 60 people, no less, at an OA basin meeting. There was no less than 15 to 20 at a Twin Platte IMP. I mean, those are the stakeholders; those were the brains that were behind that. And so I guess I wouldn't disrespect that those are some of the ideas and some of the concepts of what needs to happen in those basins or those NRDs. [LR235]

SENATOR CHRISTENSEN: One more, if I could. Being a farmer myself, I've sat and thought about this. I have a number of friends that have become 100 percent-irrigated producers. Other than maybe some pivot corners, virtually you'd say they're 100 percent irrigated. If you go to a water-balance approach, that's going to make them change their operation to include dryland things, too, won't it? [LR235]

RORIC PAULMAN: Absolutely. I am a proponent of WHIP. I'm in continuous CRP. I've taken all my pivot corners, for the most part, that I personally own and put them into some type of a conservation program. I've increased my consumptive use over what the

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existing use of that ground was by taking it out of a dryland rotation, because of your recharge. I've got grass out there and trees that are a higher consumptive use than if that would have remained a dryland. You know, I have forwarded, going back into CRP and stripping it up and decreasing the consumptive use as part of offsets for...I mean, that's a crazy idea. And I'm sure there are people in this room that would just raise the hair on the back of their neck. But we've all impacted that, whether--you stated--dams, diversions. I mean, we've all done something that has a piece of it. That's why when we try to put the responsibility of our water troubles or water issues on the backs of ground water, we don't have the ability. You see some work coming out above Lake McConaughy that if you shut them all off, we don't get enough water. Now...and I'm sure that it's probably the same in the Republican; I probably haven't paid close enough attention. But it does; it changes. Would I go out and tear it up? No. I think I'd figure out something different to offset it with or some other process. I don't know. It just...it starts the old creative juices going is what it does. It incents you to make good, sound decisions about the stewardship of your own farm and ranch. You can't exclude rangeland. That's the largest sponge we have. [LR235]

SENATOR CHRISTENSEN: Thank you. [LR235]

SENATOR LANGEMEIER: Senator Fischer. No? [LR235]

SENATOR FISCHER: No questions. [LR235]

SENATOR LANGEMEIER: Senator Carlson. [LR235]

SENATOR CARLSON: Thank you, Senator Langemeier. And Mr. Paulman, thanks for your testimony today. I'm going to disagree with you on one of your statements. [LR235]

RORIC PAULMAN: Okay. [LR235]

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SENATOR CARLSON: And then agree with you on most of what you said. About metering and measuring, that you're not in favor of metering, but you did say it made you aware. And Tim Anderson over here, I've heard him say many times: How can you manage something if you don't know what you're using? So I think it's real important to understand and know what you are using. Now, that's my statement. Now here's the question. In the process of you using the concept of water budget, you may pretty well know over that period of time on an annual basis how much water you've saved. Can you give us an idea? [LR235]

RORIC PAULMAN: On the total farm? [LR235]

SENATOR CARLSON: Um-hum, your total operation. [LR235]

RORIC PAULMAN: Well, I guess I'd have to take it back, Senator, to how much precip I had each year, and I really don't...I guess I've never totaled that up. But on average, if I compare it to my Middle and Upper Republican, it's generally about 3 inches per acre per year, somewhere in that neighborhood. [LR235]

SENATOR CARLSON: So as a general statement, you would believe that the concept of water budgeting that doesn't really involve tax dollars could affect 3 inches an acre a year. [LR235]

RORIC PAULMAN: I can't verify that sitting here today, Senator, I guess. If you give me some time, I think I could get those numbers for you. [LR235]

SENATOR CARLSON: Well, that would be helpful. [LR235]

RORIC PAULMAN: Okay. [LR235]

SENATOR CARLSON: But the point is you know there's a difference. [LR235]

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RORIC PAULMAN: Absolutely. [LR235]

SENATOR CARLSON: And that difference is important. [LR235]

RORIC PAULMAN: Yes, it is. [LR235]

SENATOR CARLSON: It's important if we multiply that by the number of acres farmed across the state, it's hugely important. [LR235]

RORIC PAULMAN: It's a big number. [LR235]

SENATOR CARLSON: Yeah. Thank you. [LR235]

SENATOR LANGEMEIER: Are there...? Senator Haar. [LR235]

SENATOR HAAR: Thank you. I'm a new senator--older man, new senator. (Laughter)
And I've been around for one year, and I'm learning water issues. So some of my questions...what is an ET? [LR235]

SENATOR CHRISTENSEN: I have a hard time spitting this word out. [LR235]

_____ : [LR235]

RORIC PAULMAN: Evapotranspiration. And that's the water that's used by the plant. [LR235]

_____ : The plant's breathing. [LR235]

SENATOR HAAR: Okay. Good, good. Now, in water budgeting, how do you account in

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for drought years? Because you don't know in advance when a drought is coming.
[LR235]

RORIC PAULMAN: Well, there's several ways to approach that. And I think, again, that'll have to go by district. But averages--you'd have to go on a long-term average of your supply and base that on...you're going to have some idea of what you're going to have going into it, and so you may set that at lower, and a precip comes, you can flex that, to a point that they have some flexibility. But, for the most part, averaging is going to play a major part in that. [LR235]

SENATOR HAAR: Thank you. [LR235]

SENATOR LANGEMEIER: Senator Schilz. [LR235]

SENATOR SCHILZ: Thank you. Roric, another thing if you're thinking more...bigger picture than that, if you're using sort of a water balance, water budget on the larger area, you may also have other opportunities in water that's been saved someplace else and may be possible to be used and mitigated for on your property, correct? [LR235]

RORIC PAULMAN: Absolutely. Absolutely. [LR235]

SENATOR SCHILZ: Yeah, whereas if maybe you've got...maybe you've had an opportunity to store some water somewhere in wet years and be able to use that during the dry years would be...I would hope you'd be able to do that. [LR235]

RORIC PAULMAN: (Laugh) I think that's...we're all trying to do that. [LR235]

SENATOR SCHILZ: Thank you. [LR235]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much. [LR235]

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RORIC PAULMAN: Absolutely. [LR235]

SENATOR LANGEMEIER: And if you leave that report with Barb, we'll make sure everybody gets it. [LR235]

RORIC PAULMAN: Okay. [LR235]

SENATOR LANGEMEIER: ...a copy of it. Thank you. [LR235]

RORIC PAULMAN: Thank you. [LR235]

SENATOR LANGEMEIER: Very good. Further testimony on LR235? Don't be shy; come on up. Welcome. [LR235]

JOHN TURNBULL: (Exhibits 7 and 8) Senator Langemeier and members of the Natural Resources Committee, I'm John Turnbull, J-o-h-n T-u-r-n-b-u-l-l. I'm the general manager of the Upper Big Blue Natural Resources District, and I'm also a member of the Water Policy Task Force. Just a quick story: I started work with Natural Resources Districts in 1975 as the manager of Tri-Basin out of Holdrege. And I'd been there about six weeks, and Russ Edeal, who was the chairman, came into my office and laid a copy of LB577 on my desk, which was the original Ground Water Management and Protection Act. And he said: John, you might want to read this, and you probably will be working with it for a while. Well, I'm still working with it. Russ has since retired from that work and gone on. Anyway, today I want to share some information with you in the handouts coming around. The first thing is the status of our ground water regulations and ground water levels in the Upper Big Blue, which is at York, which the prior testifier just mentioned. And I'm just going to highlight just a few things here. First off, we have 1,150,000 irrigated acres in our district. The ground water levels have dropped a half a foot since 1961. And I'll go over those changes in a little bit. In 2008 the irrigators in our

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district pumped 413,000 acre-feet of water on a million acres. That's 4.3 inches average per acre. Our rainfall that year was above normal, so the water pumping was below normal. About 80 percent of our irrigated land is now covered by center pivots. There's been a lot of conversion in the last 10-15 years. There's also been a lot of conversion from conventional tillage to minimum till and no-till, and I think that's having a big impact on water usage. So what's this got to do, then, with Platte River issues that you're talking about today? Well, we have part of Hamilton County in our NRD, and that...we have a small portion of Hamilton County that is fully appropriated in the upper Platte Basin designation. That area will also be affected by the cooperative agreement between the three states and the Department of the Interior. So our board is concerned about what's going on and so on. If you take the first page, which has the map of the NRD on the front, and just flip it over on the back, you'll see a chart at the bottom. What we did there was took a look at the water levels that have been recorded since spring of 1961. And these are based on some 500 observation wells and irrigation wells that we measure annually. And we tracked the water level changes from '61 until the current time, and that's the blue line on the chart. And you can see that that decreased or declined from about '61 until about 1981. And the average rate of decline, then, was about a half a foot a year. Then we saw an increase in ground water levels till about 1986, then a drop again till about 1990, then an increase till about the year 2000, then a pretty steep drop to 2006, and now it's come back up. To try to understand what was going on as our irrigated acres increased that whole time period, we took a look at rainfall changes. Average rainfall at York is 28 inches a year, which is quite a bit higher than out here. We looked at five rain gauges stations--Aurora, Geneva, Osceola, York, and Seward--and averaged those to come up with these changes. So we tracked the rain: If it was less than 28 inches, the red line went down; if it was greater, the red line went up. So we tried to compare the change in rainfall to the change in ground water just to see what happened. And you can see that one pretty well mirrors the other one. And that's across nine counties, so it's a pretty good-sized geographic area that we looked at. We're convinced that rainfall really drives the ground-water-level situation in our district. I use that as an example because I think the same thing happens with rivers

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in Nebraska, at least most of the rivers. And that is in dry years, the river flows are down, lake storages are down; in the wet years, the river flows are up and the lake storages are up. Precip has much bigger impact on the rivers and lake storage than ground water pumping. That's just something to keep in mind as we talk about all these possibilities that have been laid out for you today. The other chart I want to go over is the one with a lot of red on it. That happens to be a chart that I put together a couple of months ago. I got curious as to the rate of development of surface water irrigation and ground water irrigation across the state. So this does not look at a particular river basin but the state as a whole. Now, the first surface water right, according to Department of Natural Resources records, was one that was started in 1876 near Kimball. And the first recorded irrigation well was 1895, and that was near Lexington. The red on the chart shows the number of permits for appropriations for surface water granted from 1876 to 2008. That's not the number of acres, but it's the number of permits. And that's along...the numbers are on the left side of the chart. Then, ground water development is on the right side of the chart, and that's the number of wells drilled, not acres but number of wells. And that's the blue line that just goes through the chart. And what I found interesting is the rate of development is about the same for each. And the time period is about the same for each. That's not what I expected when I started to put this together. But I thought you might find that interesting. Now that doesn't say the size of an irrigation district that might have started in 1910 or whenever, like the Pathfinder or Central here that you're visiting today. But it's rather the number of permits that were issued by the department. This is based on the data from the data bank from the Department of Natural Resources. The other thing is I think in LB962 it really restricts economic development in fully appropriated or overappropriated areas. We had long discussions in the task force, and I know you did at the Legislature when you adopted LB962. Basically, in a fully appropriated area, you can't develop any more water use. You have to shift the water use around, maybe from some irrigated land to other irrigated land or from irrigation use to industrial or commercial or municipal. But it doesn't really allow us to increase water use. And I think that's a tough thing we're having to get our arms around in this state is how we're going to have to deal with this.

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Some has been said about moving water from one river basin to another. We had an attempt that went to the Nebraska Supreme Court in 1990; we lost that. It's politically very difficult to move water from one river basin to another. It's not something that should be ignored or not something that should be studied, but it's just going to be very difficult to achieve politically. That's all I have to present to you today. I'd be glad to answer your questions. [LR235]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Turnbull?
Senator Hansen. [LR235]

SENATOR HANSEN: Do the wells that are on the page with all the red on it... [LR235]

JOHN TURNBULL: Um-hum. [LR235]

SENATOR HANSEN: Do those include municipal wells, feedlot wells, any specific size--50 gallons or more? [LR235]

JOHN TURNBULL: No. These are just irrigation wells. [LR235]

SENATOR HANSEN: Just strictly irrigation. [LR235]

JOHN TURNBULL: Right. I just sorted it out to (inaudible). Strictly irrigation. And on the surface water permits, what I looked at was storage or irrigation rights--natural flow rights. [LR235]

SENATOR HANSEN: What's the population of the Upper Big Blue? [LR235]

JOHN TURNBULL: 55,000. [LR235]

SENATOR HANSEN: Thank you. []

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SENATOR LANGEMEIER: Any other questions? Senator Carlson. [LR235]

SENATOR CARLSON: Senator Langemeier. John, on this chart... [LR235]

JOHN TURNBULL: Yes. [LR235]

SENATOR CARLSON: And I don't really expect you to know the answer to this. Maybe you do. But 1961--we talk about a 50-year precipitation average... [LR235]

JOHN TURNBULL: Um-hum. [LR235]

SENATOR CARLSON: ...so in 1961 that would have gone back to 1911. Do you have any idea what the average 50-year precipitation would have been in 1961 as compared to 2009? [LR235]

JOHN TURNBULL: No, I didn't look at that. [LR235]

SENATOR CARLSON: I suppose that's available. [LR235]

JOHN TURNBULL: Yes. [LR235]

SENATOR CARLSON: But in this whole concept, that would be an interesting fact. [LR235]

JOHN TURNBULL: Yes. [LR235]

SENATOR CARLSON: I don't know what that is either. [LR235]

JOHN TURNBULL: I don't have the answer for you. I did look at a ground water study

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that was written by Vince Dreesen, who was with conservation security division for years and years. And that was Hamilton County ground water, and I think that was written in the late '50s or early '60s. And he did a similar thing that what I'm showing you, but it was just for a very small geographic area, and it had about the same kinds of results. [LR235]

SENATOR CARLSON: Well, there'd be a lot of different implications. [LR235]

JOHN TURNBULL: Yes. [LR235]

SENATOR CARLSON: It's possible that average rainfall has decreased slightly over this period of time, since 1961. [LR235]

JOHN TURNBULL: Yeah. [LR235]

SENATOR CARLSON: And yet the ground water level is virtually unchanged. [LR235]

JOHN TURNBULL: Right. [LR235]

SENATOR CARLSON: But it would be interesting. [LR235]

JOHN TURNBULL: Sure. [LR235]

SENATOR CARLSON: You know how to access that easier than I do. Would you do it? [LR235]

JOHN TURNBULL: When I get some time, I'll dig into that. [LR235]

SENATOR CARLSON: Okay. All right. Thanks. [LR235]

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JOHN TURNBULL: Yeah. And I think the important thing to us on our board that this chart that we were just talking about tells us is that we need to manage ground water and surface water in dry years the best we can, and then we count on the wet years to recharge or refill the system. The ground water aquifer is just like Lake McConaughy; it's a reservoir. We have to be able to draw it down in dry years, and, hopefully, we can get it to recharge in wet conditions. And we need to, as producers and as water managers, we need to manage the best we can during dry years to try to keep things as even as we can. Our goal in our district is sustainability. It's been that way for a number of years. And that's what we're trying to go to; that's where we're trying to keep it. [LR235]

SENATOR LANGEMEIER: Senator Fischer. [LR235]

SENATOR FISCHER: Thank you, Chairman Langemeier. What's your definition of sustainability, John? [LR235]

JOHN TURNBULL: This chart--if I can keep the ground water levels near where they were in '61. [LR235]

SENATOR FISCHER: How...you said you'd manage in dry years. How are you going to manage in dry years? What's your plan for that? [LR235]

JOHN TURNBULL: Well, our regulations are in place. And that regulation requires that if the ground water level drops to a certain point, then we require meters on all wells and allocation. [LR235]

SENATOR FISCHER: What would your allocation be? Do you know? [LR235]

JOHN TURNBULL: Yes. It's currently set. It's currently set at 16 inches a year. That was established in 1979, and the board has talked about revisiting that issue based on this

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current water data that we have and see what's reasonable for today's system. [LR235]

SENATOR FISCHER: So if you're going to adjust to that, you don't know what it would be adjusted to at this point? Do you have a plan in place for that if you see the use drop below the precipitation? [LR235]

JOHN TURNBULL: Yeah, well, these usages that I cited earlier when I started--the 4.3 inches--that's based on water user reports required from every water user in our district. That reporting requirement has been in place...we're now in the third year of that. So that's a pretty good estimate of our actual use. What we found in prior years with some limited reporting in some geographic areas is the average water use was in the range of 8-10 inches. We had a wet year, so it's down around 4.3. So that's got to be something the board has to take into account when we set an allocation: What's the current water use? What do they think it's going to take to sustain the ground water levels over a long period of time? It's going to be a difficult decision. It's a matter of changing the existing regulation; it's not a matter of adopting brand-new. [LR235]

SENATOR FISCHER: When you say "changing the existing regulation," do you mean at the local level with your NRD or...? [LR235]

JOHN TURNBULL: Yes. [LR235]

SENATOR FISCHER: Okay. Okay. The previous testifier said that water meters don't make sense. Do you meter now? [LR235]

JOHN TURNBULL: We require meters on any replacement wells and any new wells. And that regulation has been in effect since 2004. We also... [LR235]

SENATOR FISCHER: Do they make sense? [LR235]

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JOHN TURNBULL: Yes, they do make sense, because... [LR235]

SENATOR FISCHER: What's the maintenance on them? I think the previous testifier was alluding to the fact that it requires a lot of maintenance, time, personnel to go around. [LR235]

JOHN TURNBULL: Um-hum. [LR235]

SENATOR FISCHER: Is that...have you found that to be the case in your district? [LR235]

JOHN TURNBULL: Well, in our district the board's position is it's up to the operator to maintain them and to sustain that expense. So I don't have records on what those maintenance costs are. We have about a fourth of our wells that are now metered. We have 12,000 wells, so there's roughly 3,000 that have meters on them. I don't have good numbers for what those costs are. But I think that, as Senator Carlson said earlier, it really raises an awareness with the producer how much water they're pumping. And what a lot of folks tell us is they're surprised at what those quantities are. And they go: Jeez, I didn't know I was pumping that much. Can I get by with less? And we say: We're convinced you can. And we're doing some demonstration farm plots with gravity and drip systems to try to show them that they can keep very reasonable yields and reduce the amount of application of water. The bottom line is what's important--the net income not the total bushels produced. [LR235]

SENATOR FISCHER: So you said you realize that; I assume that you meant your board realizes that. So are you going to be revisiting, then, the allocation soon in the future if you do realize that? [LR235]

JOHN TURNBULL: I think so. [LR235]

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SENATOR FISCHER: Why did you give us this? [LR235]

JOHN TURNBULL: Well, I think... [LR235]

SENATOR FISCHER: Just a minute. (Laughter) First of all...now, calm down. What did you expect to find? [LR235]

JOHN TURNBULL: Well, my initial thoughts were that the majority of surface water was developed earlier than the majority of ground water. [LR235]

SENATOR FISCHER: Um-hum. [LR235]

JOHN TURNBULL: And so I wanted to check that out. [LR235]

SENATOR FISCHER: Um-hum. [LR235]

JOHN TURNBULL: And what I found was where the total number of permits--not acres but permit-wise--they're about the same. [LR235]

SENATOR FISCHER: Do you know how many acres are involved with each one? [LR235]

JOHN TURNBULL: I don't have... [LR235]

SENATOR FISCHER: This is number of wells. Correct? [LR235]

JOHN TURNBULL: That's correct. [LR235]

SENATOR FISCHER: Do you know the number of acres in your district that are under ground water compared to surface water? And I believe you said 80 percent of your

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land is covered by pivots. [LR235]

JOHN TURNBULL: Right. [LR235]

SENATOR FISCHER: So how many acres? Do you have any idea? [LR235]

JOHN TURNBULL: Well, the total certified irrigated acres that we have in our Natural Resources District is 1,150,000. [LR235]

SENATOR FISCHER: That would be ground water? [LR235]

JOHN TURNBULL: That's ground water. [LR235]

SENATOR FISCHER: Do you have any idea on the surface? [LR235]

JOHN TURNBULL: Surface water appropriations in our district are about 52,000 acres. There's some of that that is watered with both surface water and ground water. We think that there are about 12,000 to 20,000 acres that have active surface water permits. The rest...we have requested the department to adjudicate the basin to find out what really is out there in surface water permits. [LR235]

SENATOR FISCHER: Do you find it a challenge in trying to get that information? I know there are other basins that have been declared fully or overappropriated. And when they get into the process of developing their IMPs, they discover that a lot of those surface water permits are not in active use. Obviously that's been your experience, then, too? [LR235]

JOHN TURNBULL: Yes. [LR235]

SENATOR FISCHER: Do you think that then affects whether the determination should

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be revisited? [LR235]

JOHN TURNBULL: It could. In our district surface water is such a small percentage of the total that I don't think it's going to make a great deal of difference. In other basins it might. But it's something I think we need, over time, to get a handle on and get straightened out. We've gone through the ground water records. And now we think it's time to do the same with the surface water. We based our certification on county assessors' records for irrigated land. [LR235]

SENATOR FISCHER: Have you gone out and checked all the wells, then, to make sure that it still is irrigated land or just through the courthouse? [LR235]

JOHN TURNBULL: We've done it both. [LR235]

SENATOR FISCHER: Both. [LR235]

JOHN TURNBULL: Yeah. Yeah. [LR235]

SENATOR FISCHER: Okay. []

JOHN TURNBULL: It's a long process, but, yes. And we update it monthly on the certification. As land changes hands...it's a continuous process; it's never done. []

SENATOR FISCHER: Okay. Thank you. [LR235]

SENATOR LANGEMEIER: Very good. Further questions? Senator Haar. [LR235]

SENATOR HAAR: Thank you. Are you implying--I guess, trying to understand the various graphs--that you don't believe the number of wells makes much difference; it's the rainfall? [LR235]

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JOHN TURNBULL: I think rainfall is really...in our district the rainfall is really determining what's going on with our ground water level. [LR235]

SENATOR HAAR: Okay. But that may be different for other districts. [LR235]

JOHN TURNBULL: It depends on the geology in a particular area, I think. I still think the rainfall has a lot of effect across the state, but it's going to vary in its impact. [LR235]

SENATOR HAAR: So then, what for you...what will be...what will set the limit on the number of wells drilled? [LR235]

JOHN TURNBULL: Well, we're under the correlative rights system, and the board's view is that's share-and-share-alike. And if more wells go in, those that are there are just going to have less water in times of allocation. And we don't...we're not going to base allocation on number of wells but on the number of acres irrigated. If an individual has a quarter section of land and has one well, or if he has 10 wells, it doesn't make any difference. He's still irrigating a quarter section. Some areas of our district the aquifer is thin and very fine sand, so it doesn't produce water very well, so they make take three or four wells to drive a center pivot. Other places, one well is plenty adequate. So restricting the number of wells isn't going to help us; it's the total number of acres we have to manage. [LR235]

SENATOR HAAR: Okay, and that's what sets the limit. [LR235]

JOHN TURNBULL: Right. Yeah. And the board at this point has said there is no limit on development. We have almost all the cropland is developed for irrigation. There's very little left that's not. There's a bit in Polk County that's under restrictions for growth because of LB483 that you passed last year. That's a small area of about 17 square miles or so, about 6,000 irrigated acres and that. So it's fairly limited. What's left there

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that is not developed for irrigation is rough land, and also it doesn't have ground water under it. So we're not going to see a great deal of change there. [LR235]

SENATOR HAAR: Okay. Thank you. [LR235]

JOHN TURNBULL: Um-hum. [LR235]

SENATOR LANGEMEIER: Other questions? Senator Carlson. [LR235]

SENATOR CARLSON: Senator Langemeier. John, just a comment. I think in listening to your testimony--you didn't state it, but looking at what's happened in your district over these...since 1961, with very nominal change in ground water levels, you've got room for additional development. And that's okay. I think we need to be careful in this state that--and probably I'm guilty, too--adopting an attitude that we've got all the wells we can stand in this state, and we can't have another one. And that attitude is no different than saying we've got all the factories we can stand in this state, and let's not recruit one more to come across our border. That's not good economic sense. So where ground water levels are stable, along with an increase in the number of wells, apparently there's still room for development. Would you agree? [LR235]

JOHN TURNBULL: I agree. But we've got to stay on top of it... [LR235]

SENATOR CARLSON: Right. [LR235]

JOHN TURNBULL: ...and not let it get out of hand, try to stay ahead of it. We've had active regulations in our district since 1979. This is not something we just thought of in the last five years. Been real active in this field for a long time. And it's a combination thing. It's a carrot-and-stick approach in our district. We have the regulations say this is what will happen, or this is what regulations we do enforce today. But here's the education side to help you grow crops with less water. Here's cash incentives to convert

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from gravity to pivot systems. So we're using a whole combination of things, working with many folks, including the university and extension and other private concerns to get these points across and help folks out. [LR235]

SENATOR CARLSON: Good. Thank you. [LR235]

SENATOR LANGEMEIER: Any other questions? Senator Haar. [LR235]

SENATOR HAAR: Yeah, one other question. Yesterday in Valentine, asking some of the young people involved in the NRDs what their greatest fear was, and it's that someday we'll be exporting water from Nebraska. How do you feel about that? Shipping water out. [LR235]

JOHN TURNBULL: I suspect there are people who are thinking about that today.
(Laugh) [LR235]

SENATOR HAAR: How do you feel about that? [LR235]

JOHN TURNBULL: Well, we have to be very careful about that, because of the interstate commerce clause and those kinds of federal requirements. But I think the toughest thing for a board to understand in any kind of regulation is you have to regulate everybody fairly; you can't just regulate the guy out of state. We have to regulate our own folks too. I'm sure there's going to be demand to ship water out. I went to high school in Southern California; it wasn't my choice, but parents vote, kids don't. It was in the high desert--Mojave Desert on the east side of the Sierra Nevada mountains near the Owens Valley, which is the headwaters for the L.A. aqueduct system. And started thinking about water conservation and water use then. Spent a lot of time on a farm in Fairbury as a kid in dryland farm and thought about it there. So I think...and then I spent some time in Denver for a couple years working before I started coming to the Natural Resources Districts. And, of course, the Denver metro area is a tremendous demand on

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water. If you look at the South Platte River valley down toward Julesburg now, a lot of those rights have been bought out for metropolitan use. You go in the Arkansas River Basin, La Junta, Colorado, through there, those ag rights are almost gone; it's all been converted to municipal use upstream. There's going to be a tremendous demand from that Front Range on Nebraska's water. I think it's a ways off, but I think it's coming. And we'll just have to deal with it very carefully when it comes. [LR235]

SENATOR HAAR: Thank you. [LR235]

JOHN TURNBULL: And we need to take care of our own people as best we can first. [LR235]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much, Mr. Turnbull. [LR235]

JOHN TURNBULL: Thank you. [LR235]

SENATOR LANGEMEIER: Very good. Further testimony? Welcome. [LR235]

KENT MILLER: (Exhibit 9) Thank you. Senator Langemeier, members of the committee, Senators, thank you for coming to the Twin Platte Natural Resources District. It's nice to have you in our district. I'm Kent Miller, K-e-n-t M-i-l-l-e-r. I'm general manager of the Twin Platte Natural Resources District, and I appreciate the opportunity to be able to testify today. Roric Paulman talked to you earlier about the water budget, and the Twin Platte NRD is very supportive of the concept of a water budget. It's something that we need: We need in our district, and we need in the Platte basin. As Roric said, it's something I would like to spend more time on and work on, because I think there's a lot of opportunities. But unfortunately I've got a ticking clock, and that ticking clock is our Integrated Management Plan, and that Integrated Management Plan went into effect on September 15 of this year. And my ticking clock--I've got three years, we've got three

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years, our board has got three years to find 5,900 acre-feet to put back into the river to stay out of regulations. And in that first 10-year increment, to get back to '97, we've got 7,700 acre-feet that we've got to get back into the system. And, you know, when you look out the window, as Tom mentioned earlier, and look at that lake and...there's a lot of water out there. And some folks have asked me--I talked to a water law class here recently, and they said: What's the big deal about 5,900 acre-feet? And that's what I would like to focus on just for a few minutes with you today, because when there's no new water, and our options are limited, it gets very expensive, and it becomes a big deal real fast. Because in the Twin Platte board--the Twin Platte's board's first priority is to prevent regulations. Regulations are expensive for districts to carry out. Regulations are very expensive for the producer. And if we can stay out of regulations, that's the preferred of the Twin Platte board. Our board's lowest priority in finding offsets is retiring irrigated acres. It's not the most efficient way to manage water. It affects the economy. But it may be a necessary [see comment]. But what I wanted to share with you this morning is funding options that's available for the Twin Platte NRD. And I do want to state on record that our board has not taken a position on an occupation tax. Our board would probably support it being permissive or enabling for NRDs that need it, but we have not taken that position. But I did want to talk to you about funding options and concerns that we have. I wanted to go through some examples of costs for offsets so that you have an understanding of what we're dealing with in trying to find that 5,900 acre-feet in the next three years. And then finally I wanted to share with you other options that we're considering in finding those offsets. Now what I passed around to you, and it's...the front side is this side--I'm not sure which side was up--but I wanted to go through with you what we--the situation in the Twin Platte NRD. From 1997 to 2004, there were 53,000 new acres developed in our district. Now of those is approximately 35,000 were in the overappropriated area. In 2004, there was a moratorium put in place in our district on new irrigated acres, and so that has not increased. Any transfers that have occurred have been based on no new depletions. As I stated, we have ten years to get 7,700 acre-feet in the river and we have three years to get 5,900 acre-feet in the river to stay out of regulations. Available funding: And if you look on the left over there,

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NRDs have available, and this is based on cents per \$100 valuation. For all programs we have 4.5 cents available; for groundwater management we have 1 cent; and then for NRDs that are in overappropriated and fully appropriated, we have 3 cents available. And I wanted to point out that that availability of that funding source sunsets in two or three years and that's a real big concern of our district, but I think that that's something that I hope you're considering as you're looking at funding issues. If you go over there to the right and if you look at the Twin Platte NRD board, in the current fiscal year we're levying 6.9 cents. If you look onto the right on that small chart, as recently as 2006 our levy was 1.5 cent. And for years prior to that we had one of the lowest levies in the state, and I think we accomplished...had a lot of worthwhile programs. But our board understands the necessity of dealing with finding offset water to implement our IMP and its data regulations. And essentially that 6.9 cents is the maximum that we can levy. We can't get to the 4.5 cents because of lids. That was as far as we could go on the 4.5 cent provisions, which you can see we maxed out on the 1 cent and the 3 cent. Okay. What does that generate in the Twin Platte NRD that we can use for offset water? For offset water, that generates in our current budget \$1.6 million of Twin Platte NRD dollars, of property tax dollars. We can leverage that with \$600,000 of state money that's available in the Platte Basin, I believe, this year and next year. We can leverage that with another \$300,000 of an Environmental Trust Grant that we have. So in the Twin Platte NRD, we have \$2.5 million available on an annual basis, and over my ticking clock of three years, that's \$7.5 million. Now, what can we do with that \$7.5 million? And I want to end my testimony with a list of...a laundry list of options, but I want to focus on...because it's the best indicators I have right now of what it costs to buy...you know, what it may cost to buy, what kind of dollars we have to retire irrigated acres, again, emphasizing that that's not our priority but it's the best benchmark I have to try to share with you what costs for water may be. That \$7.5 million for 5,900 acre-feet equals \$1,270 per acre-foot. Okay. What does that mean? You turn the sheet over. I took two examples and these are for our district. I took the \$1,270 per acre-foot or acre-foot, and the example I used was a 100-acre plot. There's a stream depletion factor of point nine, so that means it's essentially next to the river because that's the

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impact on the river. The recharge difference of going from irrigated corn to dryland corn, it's 6.5 inches minus .3, so it's 6.2 inches that we have to subtract from the consumptive irrigation requirement which is the 12 inches. So in that particular example in our NRD, that would generate on that 100 acres 43.5 acre-feet. That equates to \$550 per acre. I don't think there's a producer in our current Platte NRD that's going to retire irrigated acre land for \$550. I mean, that's just not reality when you've got irrigated land. And Ken can probably tell you better than I can in Keith County, but irrigated land probably sells for \$3,350 an acre; dryland, \$1,000, you know, at the most. That's not \$500, we're talking \$2,500 difference per acre. So I bump that up in my example to \$2,500 per acre-foot. That's what the Central Platte NRD has been doing in retiring irrigated acres. They've had some success with that, but they're further east than we are. They can...when they compared to dryland, there's more opportunity for dryland crops than there are as you get further west. But I ran through that example--the same number of acres, the same STF, the same recharge, the same consumptive use irrigation requirement, the same acre-feet. And that would equate to a little over \$1,000 per acre. Again, I don't think we can get there by retiring irrigated acres to come up with that 5,900 acre-feet. If you look down on the three years, if we were to spend \$2,500 for acre-foot, that would require in the Twin Platte NRD in three years to get that 5,900 acre-feet over \$14 million, you know, twice what we have available. And that would take out of production 13,500 acres. That's an impact to the economy. Over the ten-year period, that total cost would be almost \$20 million, and that would take out over 17,000 acres out of production. So you can see why that is the lowest priority for the Twin Platte board to find offset water. It may have to be part of the puzzle, it may have to be a part of it. But you can see why that's the lowest priority when you start putting dollars to it. I know the red light is on, but I'd like to go through my options if I could, and then I am just about done. Options that we've got on our list that our board is looking at: The first one is retiring irrigated acres, groundwater irrigated acres which I've indicated as the lowest priority. A second one is potentially retiring surface water acres working with individuals who have surface water rights. We can almost double the amount of acre-feet available per dollar through the calculations because we don't have that

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recharge factor and so we can almost double, and so we think that that's a viable option. We've identified slightly over 5,000 acres in the Twin Platte NRD that have individual surface water rights. So that's going to be a priority for us to look at. Another option would be to look at, in our district there are seven surface water irrigation districts. Most of the irrigators under those irrigation districts have supplemental groundwater wells. There may be opportunities to work with those irrigation districts. We want to explore those. That's probably an opportunity that is not going to work in our three-year window to get to '97, mainly because we have the COHYST model, which has been talked about. It's a very good groundwater model. It's probably, you know, state of the art, but it doesn't have that surface water component. We need a surface water component in the model. The NRDs in the basin are working towards getting to that. We have interlocal cooperation agreements in place, but we're probably a year away from having that capability to find out what that delta really is. Another area that we're looking at is changes for high water table land. If you've ever been north of the city of North Platte, well, there's a large area--Tom knows that very well--high water table land. There are other areas like that also. There may be, and I emphasize may, there may be an opportunity to change the use of that land because that land has high water table. Some of the landowners out there, that's the way they want it, that's what works in their operation better, some they may not. There may be other ways that they would rather use that. And there might be a way to, if you will, lower that water table, change that vegetation, save the consumptive irrigation requirement from a subirrigated grass to a dryland type grass or some other vegetative cover. A lot of issues in that regard, though, because you've got to have landowners that that works with them, that is, because it would have to be a willing participant. You're also going to have environmental issues on dealing with that, but it's something that we want to look at. Conservation. Roric talked about strip-till. That was a lot of producers in our NRD that are using strip-till; they're saving water. The university has a research plot near Brule, Nebraska, which is about 12 miles west of Ogallala. They're showing that there could be as high as four inches of savings on a piece of land and different conservation types of savings. Now, is that four inches of savings to the river? Probably not, but there will

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probably be some savings to the river. So those are things that we want to look at. We need to spend time with university folks in looking at that. We want to look at farming practices that producers are currently using. You know, Roric explained that very well. One of the...a producer on our board, a large producer east of North Platte down in the Brady area has...he does farm plans, you know, much like Roric talks about, and he has different crop rotations and different uses of his land. And he brought in his plan for the next three years. And we're analyzing that as to what water savings there might be based on what he's already going to be doing. And if we can see some water savings, real water savings to the river and he's close to the river, then maybe there's a way to take advantage of what folks are already doing. Maybe we can take advantage of it for no cost or maybe we can incent them for minimal dollars. And then finally, and this is more of a long term, but we're looking very carefully, we're working with a coalition of NRDs in the Platte Basin with the irrigation districts as to..in the South Platte River Compact. Nebraska entered into a compact with Colorado in the 1920s that has a winter provision in it that provides up to 500 cfs if the water is in the river for five and a half months. Nebraska has never taken advantage of that winter provision. I think there's an amount of water there that Nebraska could benefit from. We need that water now. We need to take advantage of it. Twenty years ago, and I've talked to Jen (phonetic) about this for years, and 20 years I'd talk about South Platte River Compact, people laughed at me. Today, they're taking it serious because we need that water. You know, there's all kinds of issues and what's it going to take to avail ourselves of that water? How much water in the Lower South Platte is trans-mountain water that Colorado is going to be using to extinction some day in that front range? You talked about municipal development. North Colorado Water Conservancy District, probably 70 percent of their water rights are municipality. So there's a lot of issues we're dealing with. It's not a short-term solution to my three-year ticking clock. It may not even be the solution to '97, but we think there's a high probability it's a solution to get us back to fully appropriated, so we're looking at that. And then one more comment about...Roric talked about the water budget. Again, that's an area that I think we need to better understand all the water resources in this state. Are there ways, when we have wet periods, that we

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can store that excess precipitation underground and make it available in dry years? You get rid of your evaporation, you don't have to think about ping-pong balls, but there should be ways (laugh) that maybe we can store excess water in wet years, so. I'm sorry. I know that red light has been on quite a while, but I really wanted to get through all that and I thank you for that opportunity. [LR235]

SENATOR LANGEMEIER: Are there any questions? Senator Carlson. [LR235]

SENATOR CARLSON: Senator Langemeier. Kent, I want to ask a question and then I'm going to wait awhile. You indicated in the ten-year period you've got to put 7,700 acre-feet back in the river. [LR235]

KENT MILLER: That's right. [LR235]

SENATOR CARLSON: Currently, how many acre-feet are you using? What can we compare that to? [LR235]

KENT MILLER: In the Twin Platte NRD, we have 317,000 irrigated acres. [LR235]

SENATOR CARLSON: No, but how about acre-feet? [LR235]

KENT MILLER: I haven't tried to compare that, but it would be a huge number. [LR235]

SENATOR CARLSON: Well, let's look at it another way. [LR235]

KENT MILLER: It would be a huge number. [LR235]

SENATOR CARLSON: Three hundred and seventeen thousand irrigated acres, if you reduced it by 53,000, would that get you where you need to be because you've got 53,000 new acres since 1997? [LR235]

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KENT MILLER: Yeah. If we reduce the 53,000 acres that were developed since '97, that gets us to '97 because that's what we're having to reduce against. [LR235]

SENATOR CARLSON: Tell me again, 300-and-what? [LR235]

KENT MILLER: 317,000. [LR235]

SENATOR CARLSON: Okay. Thank you. [LR235]

SENATOR LANGEMEIER: Senator... [LR235]

KENT MILLER: You know, can I just expound there for a minute? There was some discussion that, well, if you only have to do 5,900 acre-feet back to the river and you've got over 300,000 irrigated acres, why don't you just reduce the consumptive use of everybody by 2 percent or 3 percent? The problem is, and that's what Senator Carlson pointed out, is that 5,900 acre-feet is the calculation through the COHYST modeling process that came from developing 53,000 acres. If you attempt to reduce the consumptive use over our entire district, then you've got to compare the 53,000 acres to the 300,000 acres and not that 5,900 acre-feet. And all of a sudden that percentage of reducing consumptive use goes up tremendously because a large part of our irrigated acres are a distance from the river that you're not going to get an immediate response. [LR235]

SENATOR LANGEMEIER: Senator Fischer. [LR235]

SENATOR FISCHER: Hi, Kent. You gave a number of options that you're looking at because you said you can't get there just by retiring acres. [LR235]

KENT MILLER: We can't get there and it's not the most efficient, best way to do it.

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You're right, yes. [LR235]

SENATOR FISCHER: What do you think you're going to do? Do you have any idea?
[LR235]

KENT MILLER: I think it will be...I wish I could give you a better answer, but I think it will be a combination of retiring individual surface irrigated acres, a combination of finding some places where we may have some high water table land, but it's not going to be large amounts initially. And I think that we can find a delta on conservation, conservation practice that have been in place. And I think that's where the focus is probably going to be. Worst-case scenario, we may try to work with some surface irrigation districts on temporary, if you will, buying of their water. [LR235]

SENATOR FISCHER: How many surface irrigation districts did you say are in your NRD again? [LR235]

KENT MILLER: There's seven in our district, probably about 60,000 to 70,000 acres.
[LR235]

SENATOR FISCHER: Are they required to look at any way to cut back on consumption to meet requirements? [LR235]

KENT MILLER: No. I think most of them, they rarely...all of the irrigation districts in the Twin Platte NRD, none of them have their own storage. Some of them west of North Platte have some annual agreements with Central Nebraska Public Power to store water that's available that they've been able to bring down from Glendo, but they're a direct diversion so they don't have...so most of them rarely get the amount of water they have available for a full crop. And the guy that's sitting right next to you could almost answer better than I can because he irrigates one of them. [LR235]

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SENATOR FISCHER: Well, I'm not going to ask him now. (Laughter) [LR235]

SENATOR SCHILZ: I'll set her straight later. [LR235]

SENATOR FISCHER: Out of the irrigation districts, do any of them pump directly from the North Platte River or all diversion through canals? [LR235]

KENT MILLER: The irrigation districts themselves are diversions. They're diversion structures and running through canals and laterals. [LR235]

SENATOR FISCHER: If there is extra water, you said there's never been extra water with the irrigation districts? [LR235]

KENT MILLER: Well, there will be years... [LR235]

SENATOR FISCHER: What's their allocation right now? Do you want me to ask another question before you answer again? No, but what's (laughter) their allocation right now? [LR235]

KENT MILLER: Their...you know, surface water is based on they have so much cfs diversion that they can divert, and I guess that would be their allocation. They don't have an allocation. Yeah, they could...basically, it's based on one cfs per 70 acres is what they can have. Like several years ago they had to go, in the 1980s, through here, all those irrigation districts were adjudicated. And so a lot of them lost diversion rights because they weren't irrigating enough acres for the diversion right they had. Now, fortunately we were able to convert, working with them, almost all of them to incidental groundwater recharge rights. But I'm not really answering your question, but it's kind of hard to because it's apples and oranges. [LR235]

SENATOR FISCHER: No. Okay. As you're struggling to get that 5,900 acre-feet as your

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clock is ticking to get that back into the river, right? [LR235]

KENT MILLER: Yes. [LR235]

SENATOR FISCHER: You're struggling with that. If you...and hopefully you will be able to meet that, if you meet that, water goes in the river, is there any guarantee that it stays in the river or downstream is some other district able to pull it out? [LR235]

KENT MILLER: We're implementing LB962. We're not implementing the Platte River Cooperative Agreement or the Platte River program. The purpose of LB962 is for if the groundwater user is using more than their share, we're putting that water back into the river for the next diverter to divert. [LR235]

SENATOR FISCHER: So you're saying... [LR235]

KENT MILLER: The reality is, is, you know, it will probably all be diverted by Central and NPPD and used by them because that's who we're doing this for is for surface water users. [LR235]

SENATOR FISCHER: Right, right. So you're struggling and, obviously, every taxpayer in your NRD is paying for this to meet a requirement to put water in the river that will later be diverted out of the river. [LR235]

KENT MILLER: Yes. That's right. [LR235]

SENATOR FISCHER: Thank you. [LR235]

SENATOR LANGEMEIER: Further questions? Senator Christensen. [LR235]

SENATOR CHRISTENSEN: Thank you, Kent. Thank you, Chairman Langemeier. Is

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shut off the best policy or is there technology uses--drip tape, LEPA systems, operation water bounce, strip-till, no-till--things that could be used that would reduce your number to hit compliance? What would the number be if you decide to lower your allocation to hit that 5,900 acre-feet? Is it possible? [LR235]

KENT MILLER: DNR did an analysis on how accurate it is. I don't know. But within an area back from the river, and I can't tell you whether it's two miles, three miles, four miles, but they essentially indicated in the overappropriated area that it would take a reduction of 1.5 inches off of a CIR of 12.5 inches to get to 5,900 acre-feet. So in other words, reducing from a 12.5 inch to an 11 inch. And that was the analysis they did, but that was only to get to '97 levels. Our huge fear...I mean, we fear regulations, period, because they're costly even at 1.5 inches off of 12.5 inches, but to start down the road of regulations, where does it stop? I mean, we've seen initial figures to go from overappropriated to fully appropriated that could be as high as over 75,000 acre-feet in our district. I mean, we can't regulate that to get there. Now, it would be much better if we could find ways to use technology to, you know, save water on the land and have that be real water into the river. Absolutely, that's the best way. Retiring irrigated acres is the least effective and the worst way to go. My biggest fear is that...you know, we've got a three-year window, a three-year ticking clock. If we can get that and stay out of regulations, then we've got some time, if you will, got to keep whiling away to get to our 7,700 acre-feet. But then we got some time to work on water budgets that I wish I had now, to develop that concept. But if we don't...I think, if we don't prove ourselves to you guys and if we don't prove ourselves to the other folks in the state and to the Governor and state agencies that we can get to our 5,900 acre-feet and stay out of the river, we don't prove ourselves, we're not going to have near the credibility that if we prove ourselves that we can move forward and try to deal with the bigger issues. [LR235]

SENATOR CHRISTENSEN: I guess the reason I say that is I'm a firm believer drought-tolerant corn, different technologies are going to come along that I hate to see acres retired when if we could use strip-till, no-till, LEPA systems, drip tape and save

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that inch and a half and keep our economy strong, keep the farmers going. I know you hate the regulations, but I guess I would encourage you...at least the phone calls I get from people in the Republican, farmers that are calling now which seem to be abundant would rather take a little less and share and share alike hit compliance than they would to see certain ones shut off or retired, and I guess that's why I make that statement. You know, I'm not going to drive a dead horse, but there was a comment made, transfers are politically unpopular and unlikely to be done, but they are done every year in this state from a river basin, one river basin to another. I got that on the record, the first thing I done when I got elected in 2007. I'll just correct a statement made early: It may be unpopular but it's done every year. You said you'd like to see the property tax extended for the overappropriated 3 cent level. [LR235]

KENT MILLER: The 3 cent, the...right. [LR235]

SENATOR CHRISTENSEN: I know that's very unpopular. I know maybe it can be done, but I'm anxious to know if you've been visiting with your senators about this and what their opinions are because that's probably the most unpopular tax I know of. [LR235]

KENT MILLER: Well, two of the three...all three of the senators that represent the Twin Platte NRD are sitting at your table. [LR235]

SENATOR CHRISTENSEN: I know that (laughter) and that's the reason I said that because of a meeting we had earlier in your office. It doesn't seem to be overly popular, but. [LR235]

KENT MILLER: Can I share with you? [LR235]

SENATOR CHRISTENSEN: Sure. [LR235]

KENT MILLER: This week, late last week I was invited up to Arthur County, just sit

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down with the Arthur County commissioners because they saw where we had doubled our tax request from last year to this year and they'd saw where we had significant increases from three or four years ago. And they asked me to come up and sit down and visit with them, so I did. I wasn't looking forward to sitting down with (laughter) the Arthur County commissioners to talk about this tax increase, but I went up and sat down and visited with them. It's kind of neat in a county that's got probably 600 people total that you go up there and you sit down with the county commissioners and you sit at the table with them and you visit with them, and they're in no hurry for you to leave and you have a chance to explain things. As I was able to explain some of the things that I just explained to you earlier, they said...essentially they said is, none of us like taxes, but we support what you're doing for the reasons that you're doing it. And this county has 12,500 acres out of our 317,000. They said, we support what you're doing. They said not only that, we support that we need to keep the 23 NRDs, we need to keep that local control. I think the key that...and we talked about when some of you were in my office here a couple of weeks ago, the more opportunities that we have to sit down with individuals and can talk about what we're trying to do, I think that there can be developed a support for property tax, there can be developed a support for an occupation tax. But it takes sitting down with people and having them understanding it and not just a headline showing up in a newspaper. [LR235]

SENATOR CHRISTENSEN: I agree totally with you and you know my situation. I sponsored some property tax and the occupation tax and...but I would say most people, when explained to them, understand and are willing to step up and meet it if they can see some long-term gain from it. One more statement I'll make to you just because that meeting I was at, at Colorado and I went strictly just observing and listening. And they made that comment on the South Platte that too much water is coming down the river that they don't own in Nebraska right now and they plan on stopping that. And, you know, I don't know if that's good or bad, if it's their right to do so. I believe they will. [LR235]

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KENT MILLER: Well, they've been cheating Western Irrigation District for years. And part of the process we're working on on the South Platte Compact is to take Colorado to task for that and, secondly, is that winter provision. But I don't blame Colorado folks for saying that Nebraska is never going to use it because the compact has been in place for over 80 years. What have we done for that winter provision? We haven't done anything with it, so. [LR235]

SENATOR CHRISTENSEN: Well, I'm a firm believer we need to use the water. I think Colorado is a prime example of using every bit of water that comes into their state and let nothing leave if they can use it. Nebraska likes to throw it away. [LR235]

KENT MILLER: Ten years from now when I go to the mountains, I'll probably have to go through Cheyenne. (Laughter) [LR235]

SENATOR CHRISTENSEN: Thank you, Kent. [LR235]

SENATOR LANGEMEIER: Senator Fischer. [LR235]

SENATOR FISCHER: Thank you, Chairman Langemeier. Kent, a quick question. Who's requiring you to put that water back in? Is that from LB962? [LR235]

KENT MILLER: LB962. You know, it was essentially the Water Policy Task Force, you folks, although most of you weren't there, but. [LR235]

SENATOR LANGEMEIER: None of us. [LR235]

SENATOR FISCHER: None of us were there. [LR235]

KENT MILLER: (Laughter) But it's legislation. [LR235]

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SENATOR FISCHER: Do you think there needs to be changes to LB962, the current water law that we have? If so, if you would like to get those to me I'd be interested in see them. (Laugh) Thank you. [LR235]

SENATOR LANGEMEIER: Senator Hansen. [LR235]

SENATOR HANSEN: Kent, in the realm of consumptive use, what does the municipality town the size of North Platte use in consumptive use? [LR235]

KENT MILLER: You know, I can't tell you the figures. One time I did and it was years ago, but I just did an analysis that...I looked at how much the consumptive use for North Platte was on that particular year on an annual basis, and then I just said, well, if you just lift North Platte away, they just go away and we just put it all with irrigated corn (laugh). And that irrigated corn was...you know, has about, what, 70 days of pumping I suppose. It was about a trade off. And so that's the best I can tell you right now. Percentwise, municipalities use probably, you know, 2 or 3 percent. [LR235]

SENATOR HANSEN: But there is a meter on every house in the town of North Platte. [LR235]

KENT MILLER: That's correct. [LR235]

SENATOR HANSEN: The water department goes and checks them... [LR235]

KENT MILLER: That's correct. [LR235]

SENATOR HANSEN: ...and charges them for the use of the water. [LR235]

KENT MILLER: That's correct. [LR235]

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SENATOR HANSEN: It seems like lawns get way more water than a corn crop. And I've heard you and others in the Twin Platte say that a town, a municipality has zero consumptive use compared to a cornfield. [LR235]

KENT MILLER: No, it's not zero but it's real low. Yeah. [LR235]

SENATOR HANSEN: Very low. I don't know. If we get to looking at water use, you know, some of those measures that they use down in Arizona may become in effect for the Platte Valley even though we get a lot of rain, too, and the rain, the runoff from the streets and the parking lots, all go back to the river. No zero consumptive use on those at all, but. [LR235]

KENT MILLER: Yeah. The Twin Platte board...municipalities have to have their share. If there's going to be reductions, if there's going to be issues on conservation, it's got to be on the municipalities, too, no matter what the percent is, no matter how small the percent is. They've got to do their share, there's no question about that. Central Platte NRD a number of years ago actually did an analysis of comparing bluegrass lawns and how much water was used, and I don't know the results of that but that information could be available and I'll see if I can find that for you. [LR235]

SENATOR HANSEN: It's the irrigating I do is on lawns. [LR235]

KENT MILLER: Oh, I do too. [LR235]

SENATOR HANSEN: I don't get to irrigate my hay meadow because I can't drill a well, so. (Laughter) And my taxes have not gone down. That's just a side note. Thank you. [LR235]

SENATOR LANGEMEIER: Senator Carlson. [LR235]

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KENT MILLER: Not doing too well with that state senator in my district, but. (Laughter)
[LR235]

SENATOR CARLSON: Thank you, Senator Langemeier. Kent, I'm going to give a little bit of an example here. That's why I asked you the question earlier. And then I'm going to make a statement and I don't want anybody around this table to let me get away with something if I'm not accurate. And don't be bashful to correct me here because I can take it. (Laugh) [LR235]

KENT MILLER: I can just sit here and watch? [LR235]

SENATOR CARLSON: No. Would you agree that under current statutes with no further action on the part of the Legislature that DNR has the authority to implement regulations on Twin Platte or any other NRD making decisions that they believe would satisfy LB962 or satisfy compliance to Kansas? [LR235]

KENT MILLER: Well, to satisfy LB962, only if we are not successful in carrying out our integrated management plan. They have that authority if we don't do... [LR235]

SENATOR CARLSON: Okay. The answer is yes. [LR235]

KENT MILLER: Qualified yes. [LR235]

SENATOR CARLSON: Well, you've said earlier, you know, we can't afford to do nothing because that's irresponsible and then we're just opening the gates, but it is a choice to do nothing. [LR235]

KENT MILLER: That's right. In that regard, you're correct. [LR235]

SENATOR CARLSON: Now, let me use an example here. You have 317,000 acres of

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irrigated land in your district and you need...if you reduce that by 53,000 it might get you to where you need to be with LB962. So let's equate that, let's say that everyone...it represents farmers that each irrigate 1,000 acres. So we got 317 farmers. And we need to reduce that by 53,000 acres, that's 53 farmers. Now, you can work hard and you can try and get there, but I think the fact is that if you don't, DNR has the authority to shut off 53 of those farmers with no compensation. Now, you don't want to do that and none of your board wants to do that and no board on any NRD in the state should want to do that. Why don't you want to do that? [LR235]

KENT MILLER: Because that's 53 operations that that's their livelihood, that's their life, that's their land, you know, that's their work. [LR235]

SENATOR CARLSON: Right. And... [LR235]

KENT MILLER: So on an individual basis, they have nothing then. [LR235]

SENATOR CARLSON: Right. So would you agree that, too, that is not fair? [LR235]

KENT MILLER: Yes. [LR235]

SENATOR CARLSON: To do that is un-American? [LR235]

KENT MILLER: Yes. [LR235]

SENATOR CARLSON: And it's certainly not Nebraska's way of doing things. [LR235]

KENT MILLER: Right. [LR235]

SENATOR CARLSON: And so I'd just bring up that as an illustration. If you don't agree with me, correct me. But, see, we're facing potential, serious consequences that could

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happen and I don't think we want to stand by and let it happen. [LR235]

KENT MILLER: That's right. [LR235]

SENATOR CARLSON: Thank you. [LR235]

KENT MILLER: And that was basically what I was trying to say earlier, but you're right. [LR235]

SENATOR LANGEMEIER: Seeing no other questions... [LR235]

SENATOR HAAR: I have a question. [LR235]

SENATOR LANGEMEIER: Oh, Senator Haar. [LR235]

SENATOR HAAR: Again, education for a newbie here. Staying out of regulations. What does that mean? What do regulations mean? [LR235]

KENT MILLER: Regulations mean that...you know, if we have to go to regulations, we want to do it based on consumptive use and not meters, and it can be done that way in our district, some districts it doesn't work that way. But it's also a way to understand that, that...we'll take Roric's farm. If he has to reduce his consumptive use by 10 percent, then that's going to reduce by 10 percent potentially what he can produce on that farm. [LR235]

SENATOR HAAR: Um-hum. [LR235]

KENT MILLER: If it's 20 percent, reduces it by 20 percent. [LR235]

SENATOR HAAR: Sure. [LR235]

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KENT MILLER: At some point that gets into the profit margin where they can no longer be profitable. So that's...you know, we believe it's much better to stay out of regulations if at all possible. Those are the costs to the individual let alone the cost to the district to carry them out. [LR235]

SENATOR HAAR: But you have the authority to do regulations if... [LR235]

KENT MILLER: Yes. [LR235]

SENATOR HAAR: Okay. [LR235]

KENT MILLER: And our IMP has a whole list of regulations that we would have to do and we would have to implement after year three if we're not successful. [LR235]

SENATOR HAAR: Gotcha. Thank you. [LR235]

KENT MILLER: You know, it's interesting. We were talking earlier. You know, ten years ago, the big hammer we had for managing groundwater, if we would have saw declines, was a moratorium. You know, even prior to LB962 being initiated, moratoriums were put in place. I mean, that was the big hammer then. That's where this started. [LR235]

SENATOR LANGEMEIER: Seeing no other questions, now thank you very much for your testimony. [LR235]

KENT MILLER: Thank you. [LR235]

SENATOR LANGEMEIER: Further testimony on LR235? Welcome. [LR235]

JOHN DeTURK: Good morning, Senator Langemeier. My name is John DeTurk. I live in

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Ogallala, that's spelled D-e-T-u-r-k. I'm retired. I have no agricultural interest or derive any financial benefit from any agricultural interests. I'd like to switch subjects slightly, and that's I'd like to address stakeholder study groups on water issues. I think that history will show there's been very poor, fair...very poor representation for recreational and wildlife interests on any of the study groups concerning water issues that the Legislature has created. I think that's unfair. I think it causes the population to have....or the citizens to have a lack of trust in the process and I think you should be correcting that. I've served on several groups for recreational interests. I feel recreational interests have been put on these groups many times just as a token to show that...to give the perception of fairness. I think the agricultural interests, whether they're surface or groundwater, have always dominated these groups. There's very little emphasis on anything but agricultural interests, and I think the public generally feels excluded from the process. I don't think that bodes well for this state. And I think in the future on any study groups that you might implement for studying water issues that you should consider much greater representation for both wildlife and recreational groups and interests. That's about my comments. [LR235]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Christensen. [LR235]

SENATOR CHRISTENSEN: Thank you, John. I agree that the public is not involved enough. I will make one statement where I disagree with you on water issues. If we're talking recreation and fishing, things this way, I think you've got to look at, if the dam was built for flood control and recreation, I mean, flood control and irrigation, then I believe they should be the largest stakeholders because they were the reason it was built. The benefits beyond that come to the recreation and the other. And I'll gladly listen to your comments. [LR235]

JOHN DeTURK: Okay. I would consider that argument if you could show me that those interest groups provided the funds to build those structures, but that's never been the

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case. It's always been General Funds that have built any of these dams or flood control structures. Federal government did most of it. State government has done very little of it. Why those, you know, structures and things that were built with the General Funds generated by taxes from groups other than agriculture, why you should give disproportionate control of those, you know, facilities to agriculture? I don't think that's fair. [LR235]

SENATOR CHRISTENSEN: I'll address a little bit there, and that is the fact that when you're making policy, the intent and the reason for it holds high value. And when it is built for flood control and irrigation, I believe that needs to be protected because that was intent, that was the reason that the people agreed to do it whether it was the people elected by the people or whether it was another group. Thank you. [LR235]

SENATOR LANGEMEIER: Any other questions? Senator Carlson. [LR235]

SENATOR CARLSON: Senator Langemeier. Are you aware of anything that the state has done in the last few years that would address concerns of recreational and wildlife and environmental groups? [LR235]

JOHN DeTURK: From water issues? [LR235]

SENATOR CARLSON: Yes. [LR235]

JOHN DeTURK: No. I don't believe there's been any. I don't believe there's been any real gains or any recreational interests that have really been addressed. As I say, I have served on several of the...or I served on the Platte River Advisory Council for relicensing on Kingsley, you know, the recreational interests. Essentially it was a token position. From my perception, all it was there for was to give the perception of legitimacy. Now, that doesn't bode very well for the intent. [LR235]

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SENATOR CARLSON: Are you aware of the efforts made in removing vegetation from the streambeds of the Platte and the Republican? [LR235]

JOHN DeTURK: Yes. [LR235]

SENATOR CARLSON: Is that not good? [LR235]

JOHN DeTURK: Oh, I find it good, but I don't see where it is directly...was done to represent recreational interests. I mean, the main reason for that was an attempt to try and reduce consumptive use so agricultural doesn't bear any greater brunt. Now, a large percentage of those funds were probably generated from general revenues, and the majority of that money was paid by Omaha and Lincoln; they derive no benefit from it. [LR235]

SENATOR CARLSON: Did you hear the testimony on the floor of the Legislature in LB701 when we talked about the reasons for doing this? [LR235]

JOHN DeTURK: No. [LR235]

SENATOR CARLSON: Okay. I didn't think you probably did. And I would say that that's an effort made in the past two years regardless of the motive. It's something that's been done that's been of great value. And I have not talked to a single environmental, fish and wildlife, Game and Parks, Sierra Club, any group that has an interest in what happens on the rivers of our state that would say that that was poor work. I would say it's almost 100 percent support, and I'm simply bringing it up... [LR235]

JOHN DeTURK: Yeah. [LR235]

SENATOR CARLSON: ...because there have been some things that have been done. And I don't know that the reason for something being done is as important as what's the

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result, and if the result is it's beneficial to recreation and it's beneficial to fish and wildlife and others, it's been a good thing. It has been a good thing. [LR235]

JOHN DeTURK: Well, I think from our perspective out here, we would rather see another 40 feet of water on Lake McConaughy. Now, I haven't seen the Legislature do much to address that issue. And the only attempts by the Legislature to address that from my perspective is just to forgo or forestall doing anything effective when you can pass all the bills you want and just push to a later date the final reckoning date. That's not productive. You know, North Platte NRD irrigators have probably intercepted about 100,000 acre-feet a year from flows into McConaughy. That's five to six feet a year. Over this last drought, we'd be at full pool if the Legislature had done something to require NRDs to effect and put into effect controls on groundwater use. They haven't. The only thing that's been is study groups that benefit none of us recreational users. We sure can't, you know, water ski on 50 feet of water that isn't there. We can't fish on it. It doesn't support wild fowl or waterfowl downstream. When the Platte is dry for five or six years due to groundwater pumping, that sure doesn't help it. You know, if you want to talk about spraying, the reason for those weeds phragmites is because there's been insufficient flows, probably in a large portion due to agricultural pumping. [LR235]

SENATOR CARLSON: Well, we could have a discussion on what causes the interruption in those flows. Now, let me say this: We've done something good in the past couple of years and I'm pretty sensitive to that. And when we do something good, I think that we deserve some credit for it. However, I appreciate you being here and testifying because in the legislative process where we have a Unicameral, you are part of the second house and you have every right to come here and express your views. And even though I don't sound like I'm appreciating it, I do appreciate your testimony. And thank you for coming. [LR235]

JOHN DeTURK: All right. Thank you. [LR235]

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SENATOR LANGEMEIER: Very good. Thank you very much. Further testimony on LR235. Ready when you are, Jasper. [LR235]

JASPER FANNING: Thank you, Senator Langemeier and committee members. As you know, my name is Jasper Fanning, J-a-s-p-e-r Fanning, F-a-n-n-i-n-g. I live here in Ogallala. And this may not be a popular view but I'll tell you right now, I appreciate the value of recreation with this lake. When folks come here from Colorado and the lake is down, they can spread out on the white-sand beaches and have a lot of fun. Now, I also think that in the future should we ever see a low lake again, we won't have as big of a downturn in the recreational industry because since we don't get the World-Herald out this way anymore, (laughter) people won't read all the negative headlines of the lake being low and they'll still come out here and have a great time. It's still a huge lake. It's still a very valuable resource. It's underutilized during a drought. And the folks from Colorado, you know, just this year, the lake being up what it was, you took however many hundreds of miles of white-sand beaches and we shrunk it up into vans and it was actually kind of crowded getting in and out of there on the south side this year. I welcome you all out, drought or not. Now, to my more important comments, I think, Senator Christensen, you know, in this interim study wanted to get some issues out there. And as an economist, I see where we're going with LB962. And I think Brian Barels said it best yesterday. Had the water policy task force known that we weren't going to have adequate funding in this state for our water issues, the task force probably wouldn't have recommended LB962 in its...in the form that it was recommended to the Legislature. And having heard him say that, I can't agree more. And the reasons for that is, albeit may be contrary to our current national policy, prosperity in this state will not be created through the destruction of wealth. And as we figure out what to do moving forward, we have to look at all of the wealth that is out there across greater Nebraska--over 8 million acres of irrigated land. If you start talking about our only option, as we are right now, is shutting off uses of water...we have compacts and agreements that we have to comply with, there's no way around that, but those are simply constraints. They're not necessarily roadblocks. We have to keep in

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mind what it takes to comply with those and, you know, we got to look at the big picture as well. You know, when we talk about funding...I know the Governor has talked to us in the Republican a few times, and we talk about we need funding. And he tells us time and time again that, you know, he doesn't hear anyone across the state saying, you know, that they would like new taxes or higher taxes. I wouldn't say that we want higher taxes, some have a positive benefit though. But I would ask if he's heard people saying, please shut me down, shut my business down. I don't think he's probably heard people ask him that either. But that's what we're failing to talk about. And all the additional options that we have to regulation require funding of some sort. You know, Roric Paulman, he's out there on the forefront in terms of thinking about water balance. But in terms of what he's doing as a farmer, he's not that much in front of most farmers in this area. We put regulations on back in 1978 and Roric says that while he may be...those regulations haven't saved a drop of water, in some areas of our district it has. Meters and allocations have had just as large of an impact on reducing potential groundwater contamination from nitrate fertilizer as they have on saving water. There's always two things: quality and quantity. The educational component involved with metering is huge in terms of making people aware of what they use, as well as when you begin to manage an input at a very high level, it becomes second nature to manage all inputs at a high level--the whole systems of farming, what you use for equipment. He talked about the strip-till. That was actually invented by a guy in our district. Strip-till saves three to four inches of evaporation, takes evaporation, turns it into transpiration. It's a good change for everyone. It's those types of technological advances that have come along. The Groff trash wheels that are sold on almost every planter, sold in Nebraska and other states now, was developed by a guy in our district. That allowed going from conventional tillage to conservation tillage in irrigated continuous corn production even. And now we have the strip-till. What we find is farmers are very adaptive, and what...we still have to give them a little bit of time because it takes time for new technologies to come along. Monsanto and DuPont are obviously talking about drought-tolerant corn. That's coming in in phases. I'll be the first to say that it's all good, but some of their first steps in that have actually been bad for us as water managers. Corn that grows deeper

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roots is able to capture more water; it can have higher ET than maybe the corn of 30 or 40 years ago certainly could. So corn is able to use more water today than it used to be able to. That doesn't necessarily make it easier finding that balance, but it's certainly been a good thing for everyone. Those types of advances are why in western Nebraska we continue to be very productive. But since we don't have adequate funding, the issue that I want to visit with the committee about just a little bit is how is LB962 working, both in the Republican and in the Platte? We're shutting off uses. Those are the options that we essentially have available to us: Which uses are being shut off? Economics dictates that you take what your goal is, which is putting water in the river, whether it be to get back to fully appropriated to provide it to the surface water appropriators or, if it's instream flow, for fish or wildlife. It doesn't really matter. You're looking at putting water back in the river. We're identifying the uses that, if we shut off, put the most water in the river per dollar of cost for retiring those uses. If you look at some of the things that have happened in the state: On the Niobrara, irrigators under our preference statutes have taken water from NPPD. They're shutting down hydropower on the Niobrara to leave water in the river for irrigation. On the Central Platte, we have the Central Platte NRD operating a water bank, retiring surface water irrigation districts. Kent Miller talked about retiring surface water irrigation districts where they leave more water in the river than it would retiring the same number of acres of groundwater. We're finding those inefficient uses. Recently just before these hearings started, there was a quote in the Omaha World-Herald . Believe it or not you can still read those things out here, albeit a day late. But we talk about on the North Platte system, Central is talking about I believe 123,000 acre-feet that didn't reach Lake McConaughy and their system because of groundwater pumping up stream. That was their number, I won't argue with that at this time. And they pointed out that that cost about \$1.5 million in hydropower production for Central. So there are serious consequences of managing water in this state. But if I would have had 123,000 acre-feet of water available to my farm, I would have paid you \$21 million just to use it and still made money. So economics is going to drive the train here if we have to limit our water use. And we have areas of our state...I manage one that has a...you know, has had a significant problem, it's one of the main reasons the original

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groundwater management act was put into place, we're ratcheting down water use trying to bring things into balance and...you know, into balance with supply and uses. We've been a part of U.S. Bureau of Reclamation study on the Frenchman Valley project. Essentially, Enders Reservoir was built, irrigated about 40,000 acres at its max. Now, say there's the Culbertson Extension Canal that never has really received all the water that they would like. And so there haven't really...there was never so much water even after the construction of Enders that have made it through even the extensions was a lot of return flow to the Republican River. And base flows, because of the geology and such, at Palisade have stayed about the same. So my point here is even with just surface water development in the Frenchman drainage basin, which is a significant tributary to the Republican, all of the water has essentially always been used; all of the water that could be used has always been used. Now, that shifted over time with groundwater development starting in the forties, fifties, sixties, and culminating in the seventies when we passed the Ground Water Management Protection Act. My district put on well spacing requirements that were a quasi-moratorium. You couldn't adopt a moratorium unless all the other controls hadn't worked. But you know if you tell people you can't drill a well within a mile of an irrigation well, there aren't very many places you can drill one. So our board was fairly creative. Some of those guys in the early days, you know, had a lot of tough decision to make but they knew that if you're seeing groundwater declines, another well doesn't help you. And so they did all they could to try and restrict those wells out there where we...especially in areas where the declines were evident. But to get back to it, the U.S. Bureau of Reclamation is doing basically a study of the Frenchman Valley project and looking at it: What can we do with it in the future? What's that project's most beneficial use? Is it a recharge project? And to put everything on the table, the state assisted them with groundwater modelling using the Republican River Compact model. And how do we restore irrigation to that project? There's roughly 400,000-and-some irrigated acres upstream of those irrigation districts, and how do we set the baseline? Well, let's see what happens if you shut off all 400,000 acres upstream to that. In about 40 years, they would have enough water to irrigate half of their district, 20,000. And so maybe 80 years from now they would be able to irrigate

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40,000 acres. So some of the realities that are out there in terms of what's best for the overall local economy, you have a handful of acres over here who have obviously had a shortage of water supply. Now, I'll also tell you that a majority of those acres upwards maybe even 80 percent of those acres that were originally irrigated by those surface water projects have access to groundwater wells for those same acres. So while they had some costs in drilling wells, many of the users in this example and quite frankly across the state...I know Marcia Trompke with Central Public Power and Irrigation District is involved in our Republican Basin meetings that we have between the surface water irrigation districts and the NRDs. And she talks about somewhere in the neighborhood of two-thirds to 70 percent of their acres are also irrigatable by groundwater wells. And so as we move forward, if we're talking about retiring uses given the fact that we have so many acres that are commingled, we have to make sure that in the state we don't spend our resources on paying people for something they're not truly giving up. In other words, if I'm a farmer and I have an acre that I can irrigate from surface water and groundwater, should I be able to be paid for my surface water right if I can continue to irrigate that acre of land? And in LB701, you know, when we were working on that, that was one of the things that came up in the Legislature and there were restrictions put in place that if we leased water from an irrigation district the second year, because we were kind of working under dire circumstances the first year, that they would not be able to continue to groundwater. And I don't know if that policy needs some flexibility, it may, but that's certainly one of the things that the Legislature has already contemplated, particularly in our case in the Republican, but I think statewide that's still an issue. When we're talking about a limited resource, we need to look at that commingling of groundwater and surface water uses and conjunctively manage these because we can't spend what little resources we do have on retiring uses that don't really put real water in the stream, and that's what this is all about is real water. If you look at, you know, in the Republican the NRDs in the state lease surface water because that was the least efficient, that was the most efficient use of our resources to put water in the stream. We have to differentiate between sustainability and surface flow requirements. I think, you know, to be real clear if uses must be retired,

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the state has to eliminate the least beneficial uses because we want the value of our water to be put to the most beneficial uses, whatever that is. And I'll tell you right now as an irrigated farmer, I farm some ground that will be the first to go because it never should have been developed. But I rent that, I still make money on it. But when you're looking at limited resources, you know, there's some ground out there that's better in rangeland than it would be irrigated production, albeit it's profitable and it was legal for them to develop it. But when we're looking at how we go forward, knowing that in our district we'll have to use less and less water. You know, farmers are already identifying which acre do I shut off so that I can take that water and use it on other acres and be the most efficient that I can be to with what I have to use? And some of those acres will get retired if we have access to less water. Now, that's a certainty in some parts of the state, you know, barring any interstate or interbasin transfers that provide water to southwest Nebraska. But in other areas of the state not too far from us, sustainability is not so much the issue in terms of sustainability of groundwater supplies. Now, there are some surface water/groundwater interactions, obviously, in LB962 requirements that require more water in the stream. But, again, one thing that we have to make the forefront of our policy is that we don't create prosperity by destroying wealth. Shutting off uses should be the last thing that we look at. There are far too many other alternatives for better managing our projects that we have. People have looked out the window and talked about the lake. You know, there's three feet on 30,000 acres when the lakes hold 90,000 acre-feet of evaporation. Is there a way to put that underground? They do some of that through their irrigation project, but is there a way to do that intentionally because that evaporation alone would irrigate three times as many acres as they actually irrigate with the project itself considering that 70 percent of their acres have access to groundwater as it is. If we conjunctively manage the water that we have, we don't have to talk about shutting off nearly as much economic development as we are, and I think that needs to be the focus moving forward. And with that, I'll answer any question. [LR235]

SENATOR LANGEMEIER: You're not looking forward to skiing in ping-pong balls yet,

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huh? (Laugh) Don't answer that. Senator Christensen. [LR235]

SENATOR CHRISTENSEN: I knew that would be a joke. Are you insinuating, I've heard people refer to on commingled acres, that if we would make them use their surface water only in years that there's surface water available and wells when it's not we would be essentially transferring water underground? Because there are people right now that pay for their surface water, don't use it, and pump water underground which leaves it in the lake for future use, evaporation, things this way. Is that the thought you're going on or what was your thought with the comment? [LR235]

JASPER FANNING: Well, that is one possibility that you could look at in managing those commingled areas there conjunctively. Now, I'll say that I think we'll probably go beyond that. We were looking in the Republican. There are a number of areas, even around McCook, that are excellent injection sites. I know engineering firms looking at water supplies for the city of McCook looked at an area where there's essentially an empty aquifer, if you will, naturally that you could inject water into and store it. So, you know, it may be as simple as irrigating when it's there and letting the recharge of the canals do the recharge. But in many other areas of the country, you look at intentional injection sites where you can take high capacities out of a reservoir in whatever capacity that you can, run them down a canal to an injection site, stick them in the ground where you can essentially store them. Now, of course there is some...potentially some...depending on the geology, some natural return flow that's going to come to the river and maybe you're not able to hold it all there forever, but it certainly buys you some time. So I think we need to look beyond just using existing infrastructure and, for that matter, existing rivers. Those aren't the only options for moving water around. They...you know, pipe is still an excellent way to convey water. You have to look at everything. I think everything is on the table, and there's no reason that we should say, you know, we're not going to look at something because it requires additional infrastructure. [LR235]

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SENATOR CHRISTENSEN: To follow up on that. How do you address the problem of...like trying to inject there in McCook, Swanson Reservoir don't fill every year. They've watered one out of the last six years. So how do we justify taking that water, injecting it in the ground when the surface water people aren't getting their water now? I'm all behind you it's a better place to store it, but we have rights of people that deserve that water. How do we handle this? [LR235]

JASPER FANNING: You know, money and water are interchangeable in economics. And everyone has their own view on what the right thing to do is, whether, you know...I've heard people say we shut off all the wells until surface water flows. But as I laid out in the Frenchman Basin, which is even less drastic than probably the area that Mark is talking about, looking at it from an aggregate level of the local economy, that's maybe not the best thing to do. And while it would potentially benefit an individual or a handful of individuals in years down the road, maybe there's a way that we can use cash instead of water, too, because I think what we're trying to do is find solutions that keep everyone as whole as we can. I don't think...it'll be very difficult to find a solution when you consider whether it's funded by the state or locally where you can say we're going to keep everyone whole as they are today because that's going to mean everybody gets what they have today and they don't have to pay anymore to keep it. But I think we can find solutions that come close to that where you don't have to pay a whole lot and you get to keep pretty much everything you've got. And in those instances I think when you look at Swanson Reservoir, some things...what Mark is talking about, Swanson Reservoir is on the main stem of the Republican River near Trenton. And it basically is the upstream flood control structure for the north fork and south fork Republican River, catches the Arikaree and several of the base-flow fed creeks out of Dundy County, but it's very empty. And why is that? And I've done a little bit of mathematical analysis behind that. And we really don't have that many irrigated acres in my district upstream of that in that along the main stem. So even in dry years when you're, you know, there are impacts from the upland wells over the long term and that shows in reduction of base flow like Buffalo Creek and some of those creeks. But when

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you look at the south fork that comes out of Kansas, starts over in Colorado from Bonny Reservoir, the south fork drives inflows, is a huge part of inflows into Swanson Reservoir. And so we have essentially zero flow and have had since the drought started on the south fork. Same thing on the Arikaree. My father-in-law sold that right before it dried up. I think there was about 20 feet left. Now the only flow in the Arikaree is return flows from the Haigler Canal and the main stem Republican. Another example of how the more inefficient uses get shut off. In Colorado, a little bit different water right system, they just passed a bond over in Yuma County, and I can't remember the exact number that they paid for those water rights. I want to say that it's somewhere between \$15 million and \$20 million, they retired 1,200 acres. A little bit different water right system where in Colorado it's a property right; it does have a value in itself. In Nebraska, it's only got value if you put it to beneficial use. Different...and I think we're in a good place because of that because all of the groundwater folks got together over there in Colorado and retired what's almost an miniscule amount of water use just because they were afraid of the consequences of going through water court in Colorado. And had they not settled for the \$15 million to \$20 million, and that went on through water court, they were looking to having all their wells shut off, and who knows what they would have asked for that surface water had they won in water court, the price could have went up exponentially. So while we've got it bad, we maybe don't have it as bad as we could have. [LR235]

SENATOR LANGEMEIER: Other questions? Seeing none, thank you very much, Jasper. [LR235]

JASPER FANNING: Thank you. [LR235]

SENATOR LANGEMEIER: Very good. Further testimony. [LR235]

DON ADAMS: Good afternoon. My name is Don Adams. I'm executive director of Nebraskans First, a statewide groundwater irrigators coalition. I've amended my

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comments way, way down. I should beat... [LR235]

SENATOR LANGEMEIER: Don, I got to back you up. I need you to spell. [LR235]

DON ADAMS: A-d-a-m-s. [LR235]

SENATOR LANGEMEIER: There you go. [LR235]

DON ADAMS: D-o-n. (Laughter) Remember, once you had Tom Osborne come out and testified before this committee (laugh) and you weren't the chairman then, and Tom Osborne sits down, he starts talking. They said, you know, you've got to tell us your name and (laugh) how to spell it, and he did. (Laughter) [LR235]

SENATOR LANGEMEIER: I had a guy yesterday... [LR235]

DON ADAMS: So you guys are pretty strict on that rule. [LR235]

SENATOR LANGEMEIER: We do. I had a guy yesterday say he couldn't spell it and I said he couldn't testify. (Laughter) It's part of the deal. [LR235]

DON ADAMS: Okay. Thank you. I should beat the red light. First of all, I'd like to respond to Mr. DeTurk. The Water Policy Task Force did have adequate representation from...does have adequate representation from environmental, recreational, Central Public Power which is part of that as well I believe. And David Sand was a strong spokesman for environmental interests and so was the recreational spokesperson, so those interests are represented. And we all know that the levels in Lake McConaughy are determined in the Routt and Medicine Bow National Forests in Colorado and Wyoming snowpack. We can't control that. That's how McConaughy is filled. Groundwater, irrigation head of McConaughy does not impact the levels in McConaughy 3 percent. The COHYST study has proven that. A recent study by a Dr.

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Charles Lamphear showed that irrigation compared to dryland in this state generates over \$5 billion annually. I think that's probably higher now than the higher-valued corn. We do not have a fall-back economy in Nebraska. We don't have mountains, beaches, oil, coal, retirement communities. Irrigation drives the state's economy. It is the end-all, be-all. It's what we do better than anybody else in the world. We produce food. There's no more important pursuit in life or advocacy in life or business in life than that. We once proudly called ourselves the "beef state, the "Cornhusker state." It seems like we're getting away from that. Production is good; enhanced production is better. It generates wealth for the entire state and sustains the high quality of life we enjoy. Land that is irrigated and productive keeps property values high and this benefits our schools and our infrastructure. Back in 1980, a noted University of Nebraska water law specialist and his name is David Aiken--we've all heard a lot of comments from him lately, but this was back in 1980--he wrote a law review, article and he addressed groundwater and surface water conflicts. And he stated specifically that groundwater irrigator's rights would remain protected so long as there was strong rural representation in the Unicameral. And he went on to predict that if rural representation in the Legislature weakened that environmentalists, municipal interests, and surface water users would align themselves against groundwater irrigators, and this is precisely what is happening and I think is moving us down a dangerous road. LB962, I believe, weakened local control by our NRDs and threatens our economy going forward. And the Platte River Cooperative Agreement, which LB962 facilitated, poses an even more serious threat to our economy. The Central Platte NRD had a study done by HDR Engineering a couple of years ago before the Governor signed the cooperative agreement, this was to encourage him not to. The subsequent increments of the cooperative agreement, the Platte River Endangered Species Recovery Act, whatever you want to call it, after phase one will result in the retirement of an additional 340,000 groundwater irrigated acres. And the impact, as HDR said, is 296 million, maybe up to 467 million to that economy, and that is just the Central Platte NRD not the entire Platte system. The bottom-line reality--and Senator Carlson always stresses this and it's important--is we allow...we let 2 million acre-feet flow into our state every year, 90 million acre-feet falls

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on the state every year, 8 million flows out into the Gulf of Mexico turning into salt water. We don't have a water shortage problem in this state. And I believe that the bottom-line reality going forward with a twenty-first century water policy is to keep some percentage of that 8 million acre-feet in this state through two, three strategically placed reservoirs. The policy now, as I've seen it evolve over 15 years, is if we have drought or a water short year, what we do is we run around, we just look at shutting down irrigation, shutting down...what we do better than anybody else, shutting down our number one industry and our number one business. That is not a good water policy. So that two in, eight up has got to be the bedrock of the policy going forward. Finally, the U.S.G.S. every two years does a study on the Ogallala Aquifer. Their most recent study, and this is for the period predevelopment which was 1952 or '53 before there was virtually any groundwater irrigation in the state, zero, to 2007 shows that in Nebraska there has been statistically no change. I think it's .06 percent of a drop, and that includes seven years of severe, severe drought. When they do it again after we have '08 and '09 in the range, we're getting, we're probably going to be up, the Ogallala Aquifer, in our state from predevelopment, no irrigation to now. Yet, if you read the World-Herald which I believe is now the biggest threat to production agriculture in this state, you would think that just like the global warming thing that we are in deep trouble. It simply isn't true. The facts are the facts. DNR wanted to shut down the Lower Platte Basin last year; their facts were terrible. The NRDs there got together, ponied up a bunch of money, got a competent study done, the Peer Review, and blew the DNR out of the water. DNR reversed the decision. The fact that the DNR comes before this committee and says they want this, that, and the other thing, we are state government, we know better than the locals, is wrong. It's false. Nobody knows better how to manage this water than the NRDs in this state. And you've heard from three or four managers today, and if you haven't learned that they don't know what they're talking about, they do. These people are experts. John Turnbull...if we need a water czar, John Turnbull needs to be that water czar, and we need to appropriate however much money it takes to get him to be the water czar. (Laughter) He could solve the problems in this state. We could get everybody working together, and we could go forward in a positive frame of mind

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instead of this paranoia that irrigation is drying up McConaughy, threatening plovers, terns, sturgeons, whooping cranes. It isn't the truth. Do not believe the World-Herald. Do not let the World-Herald sway you in your decision making. They are aligned with the environmentalists and I think Game and Parks. If we weaken NRD's control, we keep tightening up restrictions on groundwater irrigation, Game and Parks will have more power, environmental groups will have more power, and the Omaha World-Herald will run water policy in this state. Thank you. [LR235]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Fischer.
[LR235]

SENATOR FISCHER: Thank you, Chairman Langemeier. Thank you, Mr. Adams. I really appreciated your comments. [LR235]

DON ADAMS: But... [LR235]

SENATOR FISCHER: No. (Laughter) You know, I get worried sometimes that my reputation precedes me, so I'm trying to be loving and caring, you know. (Laughter) No, I agree with your statements and I think that was reinforced to this committee over the past two days that what we need to look at as policy makers are the facts. You held up the report there that comes out every two years. That's what we need to look at. We don't need to read comments in whatever paper that streams are drying up. I saw on TV, and we get the North Platte station in Valentine, and I saw on the TV they were showing McConaughy, yes, it's down, but also there are plovers out there now. If the levels go up, you're going to wipe out hundreds of nesting... [LR235]

DON ADAMS: You can't win with the plovers. (Laughter) Either way they've got you.
[LR235]

SENATOR FISCHER: You know, bless their hearts. But, yeah, we can't win with them.

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We try to save... [LR235]

DON ADAMS: Too much water, too little. Yeah. [LR235]

SENATOR FISCHER: Exactly. But we need the facts, and I commend Senator Langemeier, I commend Senator McCoy and Senator Christensen for introducing the resolutions that we are studying over the interim because it's important that...I believe that it's vital that this committee gets the facts and understands them so that we then can communicate with our colleagues because that is the most important thing in determining water policy. It is not emotion. We are not here to deal with emotions. We are here to base policy on scientific facts. So thank you. [LR235]

DON ADAMS: Precisely. [LR235]

SENATOR LANGEMEIER: Senator Dubas. [LR235]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Mr. Adams. I think in your opening comments you gave us some financial statistics about the ag economy. Could you repeat those? Did you give those or maybe it was somebody else? [LR235]

DON ADAMS: Yes. Well, I can get you a copy of the study. It was done by Charles Lamphear. He was the former head of the Bureau of Business and Research at the University of Nebraska. I think Farm Bureau, in large part, funded the study. It was a study I think 2004-2005 when corn prices were much lower than they are now. The bottom-line impact of irrigation, not agriculture... [LR235]

SENATOR DUBAS: Just irrigated. [LR235]

DON ADAMS: ...that irrigation versus dryland was 4.5. I said 5, but with the prices of corn it's probably more than that. And I can get you a copy of that. [LR235]

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SENATOR DUBAS: Well, we received a copy of that yesterday but I was thinking that you had made...and that was dealing with the irrigated agriculture statistics. And I think that piece of information is very timely right now. I mean, we're looking at our revenue forecasts are down. I've stated always that our ag economy is the foundation of our state's economy. And as we're looking at declining revenue in the ag economy, we're looking at the impact on the state's budget and we're having to come in...probably going to have to make some very difficult decisions in our next session. So I don't think we can underestimate what the ag economy does for our state's economy. [LR235]

DON ADAMS: No, ma'am. What Charles Lamphear also said is that once you start tinkering with irrigation, you start weakening it and striping it. It can become a vicious cycle and you have no fall back. There's no fall-back economy once that starts happening. So bottom line is the experts in this state are the NRDs. You've heard from their managers. The board members have a tougher job than being on a school board. Ten years ago I would have said school boards are tougher, and Senator Langemeier knows this, NRD board members have a tough, tough job. They've stepped up to the plate time after time after time. The decisions they make are just gut-wrenching, but they've made them. We are in compliance in the Republican and we need to have a Nebraska solution not a Kansas solution, and I think we're heading towards the Kansas solution and I don't think Senator Carlson and Senator Christensen will let that happen, I'm confident. The red bucks thing is not going to happen. [LR235]

SENATOR DUBAS: I appreciate your comments. Thank you very much. [LR235]

SENATOR LANGEMEIER: Don, we did get that. [LR235]

DON ADAMS: Okay. That's it. [LR235]

SENATOR LANGEMEIER: We got the report handed out yesterday and that's the one

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you're referencing. [LR235]

DON ADAMS: Oh, yeah. [LR235]

SENATOR LANGEMEIER: So everyone got that yesterday. I think Senator Carlson has a question yet or maybe not. [LR235]

SENATOR CARLSON: Well, Senator Dubas kind of handled that a little bit, but thank you, Senator Langemeier. Don, appreciate your testimony. I'm going to disagree with you on one thing and then just clarify what Senator Dubas asked. You said earlier that I think the highest calling and the most important decision that we can make is to create food, develop food. And I would say the most important decision you and I can make is where we're going to spend the time after the good life is over. But other than that... [LR235]

DON ADAMS: I try not to think about that. [LR235]

SENATOR CARLSON: Okay. All right. (Laugh) But to clarify, that's a pretty important figure that even though it's 2004 that the \$5 billion is additional revenue over the way that land would be used as a result of irrigation, that's a lot of additional revenue. And as people make statements about the drag that western Nebraska is on the rest of the state, really meaning rural Nebraska on the rest of the state, the income figures from agriculture are huge and we can never forget that. Thank you. [LR235]

DON ADAMS: Yeah. Senator Carlson, I have a bunch of fraternity friends in Lincoln that don't really pay attention to this stuff but they do read the World-Herald and the Lincoln Journal Star, and they get on me all the time like, what are you going to do? You got to stop your guys from irrigation. You know, you're killing the plovers, the terns. You're drying up McConaughy. You're ruining the state. They only know what they read in those two newspapers. Those two newspapers are doing a great disservice to this

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state. The World-Herald ten years ago, when Harold Andersen was running it, was never like this. Something is going on there and it's detrimental, it's going to be devastating to the state, and it's controlling the way people think about production agriculture in this state. It's frightening because people actually believe it. [LR235]

SENATOR CARLSON: Well, thank you for those comments and we're fortunate Nate Jenkins is here today to (laughter) put things straight. [LR235]

DON ADAMS: I think Nate is AP, he's not World-Herald. One last appeal. Senator Langemeier, Senator Fischer, don't run for State Treasurer. (Laughter) Okay? Stay with us, stay with us. [LR235]

SENATOR LANGEMEIER: I'm getting a lot of that feedback. You got one more question here. [LR235]

SENATOR HANSEN: I've got one more token. Thank you, Mr. Chairman. Don, you've mention the license plates in the past (inaudible) the "Cornhuskers" and the "beef state." The livestock industry, and I was just (inaudible) but what will rest in \$11 billion to the state of Nebraska too. I think it's high time...I don't know what your opinion, but I think it's high time that we put the "beef state" back on the license plate because either you raise them or you got... (laughter) [LR235]

DON ADAMS: Okay. [LR235]

SENATOR LANGEMEIER: That might be a good place to stop. [LR235]

SENATOR FISCHER: I have more comments if you want me to keep going. [LR235]

SENATOR LANGEMEIER: Thank you very much. [LR235]

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DON ADAMS: Thank you. [LR235]

SENATOR LANGEMEIER: We're not letting that go anywhere else. Further testifiers. Just a reference point, how many more testifiers are thinking they're going to testify, would like to? One more? Two more? Three more? Okay. It doesn't matter, just curious. Go ahead. [LR235]

DEAN EDSON: (Exhibit 10) Senator Langemeier and members of the committee and other senators joining the committee today, my name is Dean Edson, that's spelled D-e-a-n E-d-s-o-n, and I'm the executive director for the Nebraska Association of Resources Districts. I'd like to thank you all for coming out here today and listening about some of the water issues and listening about what we as NRDs are trying to do to address a lot of the concerns that have been raised and try to resolve some of these water issues. What I want to go over with you today rather quickly is what we talked about at our annual meeting last September, and several of you senators attended our conference, but I just wanted to share with you the resolutions that got adopted. [LR235]

SENATOR CARLSON: Last week, not last September. [LR235]

DEAN EDSON: Yeah. [LR235]

SENATOR CARLSON: So it doesn't sound (inaudible) like a year ago. [LR235]

DEAN EDSON: No, just last week which was September of 2009. I'm going to go over these quick and they're not in order of a priority. They're just sequential in number here, so I want to make sure you're clear on that. An underlying current in all of this is what we're trying to find here is we need to figure out a way to assist producers to make a living and find some kind of balance between regulation and voluntary conservation programs and try to meet these water demands. But the first one, 2009-1, is to take a look at allowing NRDs not in fully appropriated areas to voluntary develop and

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implement integrated management plans on a proactive basis so we don't get in a situation we're in now with some of these other river basins. The second one, 2009-2, deals with the Department of Natural Resources. And yesterday and then today you've heard a lot about, you know, maybe doing some more planning on water planning. And we've had several NRDs work with Nebraska Public Power and Irrigation Districts and some other interested parties on trying to figure out, is there a better way to do what we're doing rather than having DNR try to be a planning agency and a regulatory agency? And what this resolution asks for is a separation of the commission off of...out of DNR and allow it to function as a water planning agency. And so this is something we'd like to try to explore with the committee. The next one, 2009-3, deal with water banking. And that tries to focus in on allowing districts that are not fully appropriated, to allow them to develop and implement water banking programs, so they start proactively looking at water management activities for future...and allow for future uses. The next one, 2009-4, starts at the bottom of page 2 and it is dealing with compact decrees, agreements, and financing water programs. And we need to figure out a way if we're going to continue down this path of trying to figure out how to retire acres and how to try to do it with some type of compensation, and try to do it with voluntary-type programs. We need to provide the districts some financing authority to finance some of those programs. And what we're asking for in here is to look at the occupation tax, try to get that figure out and allow that occupation tax to be used both in the Republican and the Platte districts where you're fully appropriated or overappropriated, to finance some of the water programs. We need to try to encourage the state of Nebraska and to work with the NRDs and all the interested parties to obtain permanent water supply contracts with surface water users where those are appropriate to meet the water demands. Moving on, is to take a look at the levy authorities granted to the NRDs that are set to expire in 2011-2012. We're going to need some financing in the future and need ways for districts to finance these projects, whether they're fully appropriated or not. Those levy authorities need to be extended. The last thing included in that resolution is to take a look at a bill we worked with Senator Christensen and others on last year, and that's to look at a revolving fund. And maybe we could set aside some money in a water

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resources revolving fund to allow the districts to borrow money against that or capital expenditures that they need up front and then pay it back over time and pay it back into a fund. And so you'd always have some kind of monies coming in and going out to help all over the state to implement some of these water programs. The last one there, 2009-6 is just one that's dealing with our association only and trying to work with municipalities and all the NRDs on these municipal offsets in fully appropriated areas. We need to do some more work with the municipalities on some of the water usage and requirements of them when a basin is declared fully appropriated, and so we're going to be working closely with the municipalities and the local NRDs on that. With that, I'll close and answer any questions you might have. [LR235]

SENATOR LANGEMEIER: Are there any questions for Mr. Edson? Seeing none, thank you very much for your testimony. [LR235]

DEAN EDSON: Thank you. [LR235]

SENATOR LANGEMEIER: Very good. Further testimony offered on LR235? Welcome. [LR235]

RON CACEK: Senator Langemeier and members of the committee, I'm Ron Cacek. That's spelled R-o-n and the last name is C-a-c-e-k. I am the general manager of the North Platte Natural Resources District located in Scottsbluff. I'd like to especially thank the committee for coming to western Nebraska, to Ogallala. We really appreciate that. The North Platte Natural Resources District covers the North Platte River Valley through the Panhandle of Nebraska. Agriculture, as we've talked about this morning, is certainly the predominant industry within our district, with livestock facilities being second. Within the district there are approximately 330,000 acres irrigated with surface water. There's approximately 120,000 acres that are irrigated with both surface water and ground water. We generally refer to that as commingled. And then there are 110,000 acres that are irrigated strictly with ground water only. All of the land irrigated for ground water

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then is approximately 230,000 acres, and that's all been certified by the NRD. The NRD has adopted a joint integrated management plan, an IMP, with the Department of Natural Resources, which just became effective on September 14 of this year. In addition, the NRD and the DNR, along with the other four overappropriated Platte Basin NRDs, has adopted a basinwide plan which became effective on September 11 of this year. All of the NRDs within the overappropriated Platte Basin are required by statute to return to fully appropriated status in an incremental manner while maintaining the social economic viability of the area. With the first increment, lasting ten years, with the requirement to address the impacts of stream flow depletions due to water uses began after 1997. In order to meet this first increment goal of the IMP, the accretions to the stream from the temporary cessation of irrigation on acres currently enrolled in CREP and EQIP programs, USDA programs have been counted for as a credit against our return to 1997 levels. The IMP further includes a commitment that was just adopted to implement a 56-inch groundwater allocation over a four-year period, and that calculates out to a base allocation of 14 inches per year, and this will be starting with the 2010 irrigation season. Currently, the NRD has a 12-inch allocation in the Pumpkin Creek area and an 18-inch allocation within the overappropriated portions of our NRD. In order to implement allocations within the NRD, flow meters have been installed in the entirety of the overappropriated area, and that includes Pumpkin Creek. In addition to helping meet the goals of the IMP, the data obtained from the flow meters is very important for current and future modeling efforts and studies that the NRD will be involved in. The NRD, along with the overappropriated basin NRDs, will be implementing the Platte Basin Habitat Enhancement Program, and that's the program Kent Miller made some reference to for the retirement of irrigated acres and providing the incentive to do that. This will help us in meeting our goals under the IMP. For us, that will be a substantial budget item within our budget, and this year we have budgeted \$670,000 for this purpose and that doesn't include administrative costs. That's just money going to the effort itself. Further studies and modeling efforts are necessary to ensure that the best science is being used to make management decisions. So we're involved in several studies to come up with the best science that we can in making these decisions. These

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efforts are ongoing. Some are required by statute to be a part of the IMP process. In partnership with DNR, the NRD is moving forward with a number of these studies and modeling efforts that will improve our knowledge of the integrated surface water and groundwater system that we have within our NRD, and it's very extensive within ours. In order to maintain the social economic viability of the NRD, we must make certain that the management decisions that are being made are being based on the best science available. These studies and modeling efforts take a considerable amount of money each year. So when it comes to water management, the NRD has an obligation by statute, but we also have an obligation to our constituents to make the best decisions that we can. The NRD is committed to effective management of our water resources, using this best of science available while maintaining the social economic viability of the district. To meet the goals of the IMP and our statutory obligations and the Platte River Recovery Implementation Program, a variety of programs are going to be necessary. And these programs, of course, take money. That's going to take additional funds and corresponding statutory authority for the NRDs to be able to deal with these kinds of issues. So some of our authorities go away which has already been mentioned, of sunset in 2012, and so that's going to be an issue and we're going to want to work with you to deal with that as time progresses. Again, I thank you for the opportunity and I thank you for coming to western Nebraska. [LR235]

SENATOR LANGEMEIER: Very good. Are there any questions for Ron? Seeing none, thank you very much. [LR235]

RON CACEK: Thank you. [LR235]

SENATOR LANGEMEIER: You did a good job. Further testimony. Mr. Barels, welcome. [LR235]

BRIAN BARELS: Good morning...or afternoon. [LR235]

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SENATOR CHRISTENSEN: You're done. (Laughter) [LR235]

BRIAN BARELS: Thank you. [LR235]

SENATOR LANGEMEIER: And, luckily, he's not in charge. (Laughter) [LR235]

BRIAN BARELS: (Exhibit 11) Chairman Langemeier, members of the committee and other senators that are present, welcome and good afternoon. My name is Brian Barels, B-r-i-a-n B-a-r-e-l-s. I'm the water resources manager with Nebraska Public Power District and I did address you yesterday regarding the state water planning process. I have some prepared testimony that will be handed out. I'm not going to go through that directly, but I'd like to tie some of the pieces together if I could. Yesterday, in my testimony, I talked about finding the water supplies in a water basin in this planning process, and the water uses, the water consumption. That is the water budget that Roric Paulman is talking about. Those water supplies are precipitation, their natural flow and the streams coming into the state. They're the ground water in the aquifer and the movement of that groundwater aquifer. Those are the supplies that we have within the basins of the state. The water consumption is evaporation, evapotranspiration from crops, all vegetation evaporates. It is the surface water evaporation from the reservoirs. There's many different types of consumptions. And the only point I would make is it's different in all parts of this state, and unfortunately one size doesn't fit all. That's why it's important, when you look at a river basin, a subbasin, or a region, you understand the water budget. And unfortunately, as you're all finding out, water is not easy and it's not simple. One size doesn't fit all. Water conservation related to ground water leaves the ground water in the aquifer, maintains the elevation of the aquifer, and allows stream flows to occur. Water conservation on surface water may not have the same result. Unfortunately, there was a fire at this facility and you're not able to see the exhibit in there, but it talks about how water originating in the mountains gets used and reused. I mentioned that briefly yesterday. If you look at the Platte River system and the water that starts at Lake McConaughy or even started at the Wyoming border, all the different

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uses it gets used for, whether it's recreation, fishing, wildlife, hydropower, cooling power plants, irrigation, Endangered Species Act compliance, those are all uses from the water. So while some water is tied to irrigation, surface water is tied to many different uses. Unfortunately, in surface water, one man's waste is the next man's supply. And the system has developed that way over a number of decades, almost over a century and a half now. And we've got to be careful when we start tweaking with it, that we know what the results of that tweaking will be. Again, a water budget process is very important. I wanted to make a quick point when I read LR235. It indicates that the Platte River Program requires irrigated acres to be retired. I don't believe that's truly a correct statement. The Platte River Program requires that the impacts of the level of development on the river of 1997 be maintained. The options we're talking about in water planning that you've heard about this morning, I talked about conjunctive management. Other ways of achieving that are what was anticipated, as well as the opportunity for those that are willing to retire irrigated acres. The Platte River Program is only a willing participant program when it comes to land or water related to endangered species. And unfortunately, on the surface water side, we've got to deal with endangered species. You may remember in a far distant past, relicensing of Lake McConaughy and the Sutherland project and the millions of dollars that went into that related to endangered species. So it also is a very costly thing. We can agree, Don Adams and I, that I'm not sure you can ever win with endangered species. It's a federal mandate. It's a state mandate. And it's part of this equation we're all trying to figure out and it's very important that we take that into consideration. The next item I would touch on briefly is the role of surface water and how I believe we need to be careful when we look to buy out surface water to solve all these problems. The example I'm going to use is the Platte River system. From data from engineers and data from the university and a court decision of the Nebraska Supreme Court in the 1930s, pointed out that the Platte River was a losing river from North Platte downstream, and that if you wanted to get 1 acre-foot of water to Grand Island, Nebraska, you put 3 acre-feet in the river at North Platte, Nebraska, because basically the surface water stream was lost and recharged the aquifer in the area of the stream. That changed. In the 1930s, Platte Valley Public

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Power built the Sutherland project and started providing supplemental irrigation to some of the surface water irrigation canals in the Central Platte. In the late '30s, Lake McConaughy was built and started delivering water south of the Platte River and built a groundwater mound that benefits both the Platte River and the Republican River. Today, the Platte River from North Platte down to the Kearney area, except for the irrigation season, is a gaining river. It's a gaining river because over the years surface water has supplemented the aquifer, the precipitation the aquifer gets, and created a gaining river. When you take that surface water away, it--depending on the use again and how it gets supplied--you may see decreases in that aquifer in the area. And the potential exists--and I only say a potential--that the impacts of the wells in that area will be even greater to the stream than they were with the aquifer being maintained by surface water. Conjunctive management opportunities exist out there. How can we use our surface water and ground water together? Those are the types of things I think we need to be looking for as we move forward. The water budget component and understanding how you can save water, where you can save water and get it to where you need it, whether it's for a surface water user or whether it's a recharge of ground water for groundwater irrigators, or meeting compacts, decrees, and agreements, it is all very important. I guess I would just end maybe with one last thing, and that is, of course, the money. Senator Christensen pointed that out very effectively this morning. But this water is important to all of us. It's our domestic water supply in a lot of cities. Irrigation, as you've heard over and over, is very important. Water for power is very important in this state, and we need to look and consider that. We'd all be very disappointed in the morning if we didn't have the opportunity to turn on the lights, to do the washing and all those other things that we need to do. I won't take anymore time. I wanted to kind of try to tie a bow around yesterday and some of the things you've heard today. They all fit together. Don't we wish water was easy? I wish the engineer that designed the aquifer in Nebraska would have hooked the rivers to the bottom of the aquifer instead of the top. You know, measuring groundwater level is real important and maintaining groundwater level is real important. But every well takes a little bit of water out of that, and if it hadn't come out, would the aquifer be higher? Would the river in that

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area have more water in it? Those are very site-specific decisions based on the geology that's in that area, the groundwater flow, and a lot of different things. But sometimes increasing groundwater elevation creates wetlands, it creates stream flow. So it's a very important piece of data and we've got to take that into consideration. Senator Carlson, you asked an interesting question and I'm going to relate back to my participation in the Water Policy Task Force. You asked if the DNR can shut down wells. LB962, as I recall, doesn't provide that unilateral opportunity. There may be some other statute that I'm not aware of, but in LB962, as I recall it, when you do an integrated management plan, the DNR and the NRDs must agree. And if they don't agree, there was an off-ramp put in that took that to an Interrelated Water Review Board or something like that, and that board would then weigh the facts on both sides. And ultimately, if I remember--and this might good if you have your legal counsel review this--I think the decision of the Interrelated Water Review Board is the decision that goes forward. So that may be a small clarification, but I thought I wanted to touch on it based on my recollection of the Water Policy Task Force. So with that I'd be glad to end and answer any questions you may have. [LR235]

SENATOR LANGEMEIER: Questions? Senator Fischer. [LR235]

SENATOR FISCHER: Thank you, Chairman Langemeier. Thank you, Mr. Barel, for your testimony. You raised a question in my mind. You made the comment about ground water and every time you pump it takes it out. I was glad that you did qualify that by saying it's site specific. [LR235]

BRIAN BARELS: Very much so. [LR235]

SENATOR FISCHER: Because there are many areas in this state, including in many of the NRDs that I represent, where groundwater levels are increasing, even though they happen to be fully appropriated basins. I just wanted to clarify that after Mr. Adams' comments, and make sure that the reporters present had that clarification. Also, in your

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written testimony you talk about that there is...monies are tight. I would say to you that there are no monies. There are no monies available at the state level. And yesterday you made the comment which Dr. Fanning referred to today, that LB962 should not have been passed unless there was money available to fund it. There has not been money available to fund it in the past. I would propose to you that there will be no money available to fund it in the foreseeable future. So what changes would you recommend to our current water law? [LR235]

BRIAN BARELS: Very good questions. The point I would make is, if we don't have the money to develop the information on the water budget and look for these other alternatives, look for conjunctive management, look for ways to recharge the ground water and achieve these goals, we're left with the unacceptable solution that we've been talking about this morning, and that's retiring our irrigated acres. And what's the economic impact of doing that? Maybe we need to spend a little money to save the economy, the big picture economy of what's going forward. And the longer we wait in getting the resources, the longer we're going to fight this battle of looking to what's at hand and something people can get their hands around, and that's retiring the irrigated agriculture. So what we need to do is spend the money and get the engineering and get the data so that we can make the right decisions and minimize the economic effects of achieving these goals and objectives. I would add one thing. I think Mr. Fanning summarized what I said. I said I wouldn't have supported LB962 if the only option was the retirement of irrigated acres. It was supported because the knowledge and understanding that these other solutions are out there but we've got to spend the time to understand the water budgets, get them engineered, whether it's transporting water, recharge projects, and that's what's not occurred. We've not done the necessary planning, whether it's a fully or overappropriated basin, or even those basins hopefully that will start their planning as has been suggested so they don't get themselves in this situation. [LR235]

SENATOR FISCHER: I would ask you and anyone else present, if you have ideas on

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how LB962 should be amended, to please let me know. And I will reiterate that it is my opinion there will be no money for anything. I think as a state we are looking at cuts, if you read the paper this morning. Another comment you made about endangered species raised a question in my mind. Do you know how our state laws line up with federal laws and regulations when it comes to endangered species? I have been told that at the state level we recognize perhaps more species than is required by the federal government. Do you know if that is correct? [LR235]

BRIAN BARELS: I can't answer it with regard to the number of species. I know that some species on endangered and threatened lists at the federal and state level are similar. There's also some species that are unique to Nebraska that may be on the Nebraska's list that from a nationwide perspective aren't on the list. But whether there's more there, I can't answer that question, Senator. I'd have to look it up. [LR235]

SENATOR FISCHER: Do you have an opinion on if the species is not listed on the federal endangered species list, should it be listed on Nebraska's? [LR235]

BRIAN BARELS: Again, it's kind of like water. It's kind of site specific and species specific, and I think you have to look at all those factors. In some cases, yes. In others, there's subspecies and different things that go on, and maybe they shouldn't be listed on both. But I think both agencies are following their implementing statutes in determining what species belong on each list. And, yes, there's similarities, but there's also differences because of local. [LR235]

SENATOR FISCHER: Okay. Thank you very much. [LR235]

SENATOR LANGEMEIER: Senator Schilz. [LR235]

SENATOR SCHILZ: Brian, good afternoon, and welcome again. We've all been talking about LB962 here and how that works, but any of us that have been involved in this for

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any amount of time understands that the picture is much bigger than that. And as we're looking down the road to ESA compliance and things like that, can you give us just a little bit of what you believe is facing us down the road as far as the first phase of the cooperative agreement or the recovery plan or whatever, and how that moves forward? And what it means to... [LR235]

BRIAN BARELS: The first phase, I guess the goals of the Platte River Recovery Program is to provide somewhere in the neighborhood of 130,000 to 150,000 acre-feet that would benefit the three endangered species in the Central Platte River: the whooping crane, least terns, and piping plover. There is a water action plan component with that. With that, they're looking at many of the same things we're talking about here. What kind of changes can be made? What kind of water can be found? What kind of projects can be implemented? Whether they're reservoirs, whether they're conjunctive management projects. They're looking at two of the irrigation canals that we operate to see whether you can put water in there through the winter to recharge the aquifer and benefit the Platte River. Conjunctive management-type projects. So in a way, the Platte River Program and the water action plan may be further ahead than the state of Nebraska in identifying potential water projects to solve some of these problems, because they're looking at the same water supplies, unfortunately. I know that was some of Mr. Bishop's concerns in starting his process when he did, was he knew that there are competing uses and needs for the water out there. And again I would just point out that in this water action plan process with the Platte River Program, it's voluntary. Is retiring irrigated acreage going to be part of that package, that tool box? Yes, it's on the list also. But maybe more important to the Platte River Program is identifying where there may be areas that can be pumped from the ground water. Can you use conjunctive management to put water in the ground and then pump it to the river at the time of need? The same type of things we're talking about here are the same type of things that it's looking at. But again it is a voluntary program. Whether it can achieve its goals with the funding it has and the voluntary requirements is yet to be seen. And we'll check in, in another ten years or so, and we'll know whether those goals

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could be achieved and how it relates to the Endangered Species Act on the federal level. On the land side, as you may be familiar, the goal is to get...I need to back up. I forgot one important point. The 130,000 to 150,000 acre-feet in the first increment, there's 80,000 of that acre-feet in three projects. The big one is the environmental account out here in Lake McConaughy that the Fish and Wildlife Service manages. There's also additional work being done to store more water in the Wyoming reservoirs and bring it down later in the fall to retime it, to hold it in McConaughy and release it as part of the environmental account. There's also a project in Colorado on the South Platte River to retime excess flows as may be measured at Grand Island, Nebraska, through conjunctive management. Take it out of the South Platte River when there's excess flows at Grand Island, put it into aquifer recharge so that it comes back at a time that there's a benefit to the endangered species at Grand Island. So again, a conjunctive management-type project. That's about 80,000 of that 130,000 in those three first projects that are already being implemented or in place. On the land side, the goal is to provide habitat in the neighborhood of 10,000 acres. There's about 2,750 acres in a ranch NPPD owns called Cottonwood Ranch near Lexington, Nebraska. The state of Wyoming also had, as part of one of their potential water projects, a piece of ground near Kearney that's also now part of the program. And the program is moving forward again in a voluntary manner, working with landowners in the Platte River Valley to identify parcels they'd be willing to sell. The Platte River Program goes through an appraisal process like most everybody does, and then makes a fair market offer for that piece of property, with the goal to utilize that land for habitat for least terns, piping plovers, and whooping cranes during their migration. The Platte River Program does pay taxes, so the impact to the local economy from changing a piece of ground, if it happened to have been irrigated, it will still pay taxes into the local community. The Platte River Program has a good neighbor policy to make sure that the actions that the program does on land that it manages for the endangered species does not have negative effects on the neighbors in some kind of manner. So it has a lot of things that Nebraskans require to look at ways to recover or benefit the endangered species here in Nebraska. And I think it's moving forward. It has its challenges just like the challenges

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you folks are dealing with, and we're trying to balance all those things and find a way that we can have a win-win situation. [LR235]

SENATOR SCHILZ: Thank you. [LR235]

SENATOR LANGEMEIER: Any other questions? Seeing none, thank you very much. [LR235]

BRIAN BARELS: Thank you. [LR235]

SENATOR LANGEMEIER: Thank you for your testimony. Welcome back. [LR235]

RON WOLF: Thank you, sir. Mr. Chairman, Senators, my name is Ron, R-o-n, Wolf, W-o-l-f. I don't know who I'm representing today. (Laughter) I spoke to Senator Christensen regarding his intent. (Inaudible) I could read, I told him if I shot this animal in the dark I wouldn't know if I wanted to skin it and eat it, or not. I wasn't real clear on where this was going. He mentioned socialism so I left it there. I did want, Senator Fischer you mentioned facts, unique facts. And there were some facts presented today that I would not dispute their accuracy, but there's...facts can represent part of the story. There was a statement there of Mr. Turnbull about the almost equality of groundwater permits versus surface water applications. This may be true. I can't dispute it. It probably is if John says it. It doesn't tell you the whole story. The last I am aware of that I can document, in February '09, the Department of Natural Resources--and these are rounded figures--is approximately 1.4 million acres in the state of Nebraska that irrigate with surface water. The last I know of on wells that I can point to where the statistics come from...or irrigated acres in Nebraska total, is 8.5 million acres. That's total irrigated acres, and those come from a 2007 USGS census of irrigated acres in Nebraska. So you're looking at 1.4 and 7.1. Now keep in mind, please, that it is unknown how many surface water acres are not used in any given year for whatever reason. Senator Dubas and her family farm in a district I operate. Until I get her toll check, I don't deliver water

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to her. If there's some money trouble...we've had, sometimes, estates, these types of things. There may be acres in my district that do not receive water in a given year, even if it's needed. It's also unknown how many well water certified acres, even certified by the NRDs, are not utilized every year. I know some of the NRDs' regulations, you can certify those acres as irrigated acres if they have a history of irrigation and are in a program such as CRP. They are classified irrigable acres. And, of course, you're not going to buy fuel to run a pivot to irrigate CRP. It does not increase your payments. So that's unknown also. These are, quote, irrigated acres. Or irrigable--let's call it--acres. Not necessarily irrigated. I don't know as anyone has a handle statewide on how many acres at one time or another--may be during the same season--receive water from both sources. My son is a farmer. I piddle with it. But between the two of us, we have three surface water contracts with an old Public Works Administration district. I have natural gas wells and propane wells. He owns land in a bought-out bureau project and he rents land in the newest federal project that was ever built in the state of Nebraska. We also pump from creeks. We are they. You are us. We can't shoot ourself in one foot and help the other. But there are places where we utilize both well and surface water. If the irrigation is under a ration and I'm behind, I do have it certified so that I may shift water from the well over to those acres to catch me up. There's...I don't report it to anybody. I certified it that was with the NRD and it's allowed. I haven't done it for two years. There were several years before that, that it was done every year. So these are facts. They're all true. I don't know as any of them give you the real picture. That's the problem with data today. And, of course, my paranoia with government also lops over into studies. I'm almost to the point anymore, if you tell me who commissioned the study I can just about tell you what the results are going to be. And that's not good. That's not good science.

[LR235]

SENATOR CHRISTENSEN: I agree. [LR235]

RON WOLF: Another fact is that if you look at surface water permits or surface water rights, most storage rights are supplemental. In other words, if you have an acre here

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that has supplemental direct flow rights, a lot of districts, if they have access to storage, will also apply for two other rights: a storage right to put water in a reservoir, and the state then requires a storage water use right to take it out and put it on that acre. So again I wouldn't dispute John because I've found his integrity to be pretty good over the years. Maybe there's the same number of permits but there's many cases where one acre might have three or more water rights on that same acre. In my district, Senator Dubas' land, I think I've got five on the land she farms. Even though we're only talking X acres. I need a surface water...well, it would be six. I need a surface water storage...excuse me. You need a strobe light on that thing. (Laughter) You need a storage right from Calamus Reservoir; a storage right from Davis Creek Reservoir, because I may be using both or a combination thereof, or either one at any time. Direct flow from the Calamus River, direct flow from the North Loup River, because again I may be using a combination of all four. Plus I need two rights to put storage water in those dams in the first place. So for every acre she's got, I've got six water rights. It's mandated by state law. So again, these are facts. I don't know if they help to clarify things. And there was a comment about John being the water czar. And like I say, I've found his integrity to be very good. I don't know how good a water czar he would make. He's a friend of mine and we...the only time we've ever disagreed, that I can remember, was when he was wrong. (Laughter) Senator Fischer, you discussed a point that--if I may continue, sir? If NRDs utilize tax money to enhance stream flow, that a water right appropriator may remove it? That is true under state law today because...and I've heard the phrase today. I heard it the other day. I hear it continually. Keep in mind, there is no such thing as a well water right. That is not an animal that exists in Nebraska. You have a permit to install apparatus with which you may remove some of the state's water for beneficial use. You have a well water permit. Surface water rights, the Nebraska Supreme Court has found that there are property rights associated with those rights. Surface water rights are not share and share alike. If I am five hours senior in my application to Senator Christensen and I'm short of water, we don't share the shortage. He gets shut off totally until I get mine. If we both have wells, it doesn't matter if mine went in, in 1958, and his went in last spring--and we're short--we share the shortage. So

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there's some substantial differences in the state...by Nebraska state statute, you're almost dealing with two legally different chemicals yet, even though we've went a long ways toward tying these together. So were I Frenchman Valley and H&RW, I would have little sympathy with people with wells above me getting a 9- to 12-inch allotment when for six years I get 2 inches, 2 inches, zero, zero, and 2 inches that I didn't get. And I have a right. I have a well water right. So there's no answers. I am just trying to give you facts. The other thing is, keep in mind too, I think Brian touched on it, I don't know of anybody that's applied for a well water permit that has to go under review by the Nebraska Game and Parks Commission to meet the Endangered Species Act. Every one that we apply for must meet that requirement, even though we can show beneficial use. So there's a lot of different requirements. Brian covered that. Let's see...there was a comment made, we need more input from environmental and recreation interests. I choke on that a little bit because in our district, in my irrigation and reclamation districts, our farmers are obligated to pay for 40 years for the construction of those dams and canals. I don't want to depress you. I won't be here, you might, when it's finished, Senator Dubas. But there are super recreation and stuff there. And, yes, as far as I know, they're contributing no monetary funds to these expenses. But I know all of you are aware that doesn't change the fact we're probably going...if we're going to find a solution, we're going to have to involve environmental and recreation issues. The recreation kicks money toward the state too. I don't know as they should be an overriding interest. I'd like to see those that pay the bills say where the bus gets to go, I guess is the ultimate thing I'd like to see. Again, if you decide to make John the water czar, give me a call please. (Laughter) There's several stories here that I could tell you. I thank you folks for your patience with us, and if there's question I can answer, I'd sure try to. [LR235]

SENATOR LANGEMEIER: Okay. Are there any questions for Mr. Wolf? [LR235]

SENATOR CHRISTENSEN: Just one, if nobody does. On the lighter side of things, Ron, since you talked that we're a little closer to conjunctive use of the two waters, if I

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dive into Lake McConaughy and hit the bottom, will I be in ground water? (Laugh)
[LR235]

RON WOLF: No, sir. Actually no. You'd be in a deep doo-doo. (Laughter) Ground water is a chimera. The way I believe the law is interpreted is if I can see it running by me, it's either diffuse runoff or it's surface water. If I can't see it, it's underground--it's ground water. That's the only way I can interpret present Nebraska law. Even though I think everybody is aware, in cases, they are both the same. The Platte River losing stream, as Brian explained, you had surface water just become ground water. I pump it out of my well. What goes off the field goes back in the river and now it's surface water again, and away we go. Tough animal to catch. [LR235]

SENATOR CHRISTENSEN: Thank you. [LR235]

SENATOR LANGEMEIER: Senator Fischer. [LR235]

SENATOR FISCHER: Thank you, Chairman Langemeier. You just raised an interesting point. I represent, in my district, a lot of folks that have subirrigated meadows, so you have water come up in the meadows in April. We have a lot of lakes then. Some years, most years it goes down and then--not this year--but then it comes back up in the middle of September. Is that ground water or surface water? [LR235]

RON WOLF: Okay. [LR235]

SENATOR FISCHER: Because I'm...and it's not a joke. I mean, seriously, it's a concern for a number of people in my area and how that is classified and what the ramifications are with wetlands and other issues. [LR235]

RON WOLF: I'm familiar with some of your area. I've got cousins strung up through Bassett, Ainsworth area. [LR235]

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SENATOR FISCHER: Um-hum. [LR235]

RON WOLF: And worked with Harlin Welch and Rod Imm for years. I personally would classify it surface water because most of those lakes up there are the top of the Ogallala Aquifer sticking out of the ground. Or ground water...I'm sorry. I would classify it ground water because when you see it, it is the aquifer sticking out of a low spot of the ground. Legally, I don't know as that holds. [LR235]

SENATOR FISCHER: And then it retreats. So, yeah, most people consider it ground water. [LR235]

RON WOLF: But I would still consider it ground water in my mind. However, I've never seen a lawyer gets his shoes muddy. So I would say when...bring a lawyer, walk up to the pond. When he stops you'll know where the surface water starts. (Laughter) [LR235]

SENATOR FISCHER: I may have to use that. Your comment on my comment about paying folks not to pump water and then the water goes downstream and it's used. I question that process--and I think I have a basic understanding of water rights and water law--but I question that process from a commonsense viewpoint. Why are we asking taxpayers to pay to retire acres that use groundwater pumping, that use wells, for the benefit of other people who happen to live downstream? In my view, it's...you're almost giving these taxpayers upstream a double whammy. Everybody could possibly be taxed in an NRD in order to retire those acres to meet...especially to meet compliance. I mean, I just...I really think that's ludicrous that we allow this to happen, especially when it deals with the compact. So why do we allow that to happen? Does it go back to your philosophy that surface water right is a property right and should be valued above all else? [LR235]

RON WOLF: Not totally. If, as in your example...and I'll use the older districts

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downstream in the Republican...Senators, I'm sure you've view that area. You're familiar with it. If you shut off a well in Dr. Fanning's NRD and that water shows up in the Middle Republican, okay, that tells me that my surface water has been shorted all these years because somebody was pumping already what I had a right to or it wouldn't have shown back up in the first place. If you shut a well off and no water comes back: no harm, no foul. But if you shut a well off and that water starts going by my diversion gate, evidently you were taking my water previously or it wouldn't be there, because you shut the well off. [LR235]

SENATOR FISCHER: But isn't the water you use, the state's water? Is it truly your water? Or is it the state's water, just as ground water is the state's water? [LR235]

RON WOLF: I think you'll find all waters, domestic, it doesn't matter. Surface, ground,... [LR235]

SENATOR FISCHER: Right. [LR235]

RON WOLF: ...diffused. All waters are the state's waters. A well has a permit to use those. A surface water appropriator has an appropriation that has property rights in the amount of the flow and in the seniority. We do have one...a surface water use has one advantage over a guy that puts a well in. When you apply, you already...you will know that day where your status is, you know. I can go down and look before I apply for a surface water right. What's your administrative actions been on that stream? Is this worth me spending development money for, to put in a diversion or a pump on the river, whatever, so I can use this water? Or am I going to get shut off 40 percent of the time? But that's my decision. If there's water available, they'll issue it. With a well...don't quote me, and Senator Haar, I'll try to get you some of the information that we discussed before. [LR235]

SENATOR FISCHER: You're on the record here, now, Mr. Wolf. So you will be quoted.

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[LR235]

RON WOLF: Take my figures with some dubious outlook then. [LR235]

SENATOR FISCHER: Okay. [LR235]

RON WOLF: I think it's 1963 it was about the first time there was a well water law written in the state, and I think all that did was say you couldn't put one within 50 feet of a river. And then we sat around, I think until '71, '73. Started talking some well water spacing permits in areas. This...so knowing, as a surface water appropriator, where I am in the status, helps me to make a decision to invest my funds or not. To put in a well under a correlative right, where I can't see the future, 30 years, 40 years down the road, there's a lot more risk there because we didn't have the knowledge, the technology. And, of course, these laws both evolved...or the surface water laws evolved before the technology was there to allow the well withdrawals that we do today. [LR235]

SENATOR FISCHER: And you did just... [LR235]

RON WOLF: So I don't see a Machiavellian intent or evilness here on anybody's part. [LR235]

SENATOR FISCHER: You did just call it a right, by the way. [LR235]

RON WOLF: Again, I make mistakes. A lot of them, Senator. [LR235]

SENATOR FISCHER: (Laugh) But what I think is important is that it doesn't matter if you're a groundwater user or a surface water user. I think as a stakeholder, everybody in this state needs to get together or every water user is going to, I guess you could say, be punished. So hopefully all interests will get together on this and find a solution that's workable. And I would...hopefully, would agree on that. [LR235]

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RON WOLF: I think we have to. I do disagree with you on one point. [LR235]

SENATOR FISCHER: Oh, we can stop now. I'm done. Thank you. Thank you very much. (Laugh) [LR235]

RON WOLF: You're welcome. [LR235]

SENATOR LANGEMEIER: Seeing no other questions, Mr. Wolf, thank you very much for your testimony. Very good. [LR235]

RON WOLF: Thank you, folks. [LR235]

SENATOR LANGEMEIER: With that, that concludes...do you want to close? [LR235]

SENATOR CHRISTENSEN: I can. [LR235]

SENATOR LANGEMEIER: No. No, he doesn't want to close. That concludes our hearing on LR235. And again we want to thank Central Irrigation and Power District for the use of their room, and thank you all for attending. Thank you very much. [LR235]