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Natural Resources Committee
February 03, 2010

[LB764 LB862 LB932]

The Committee on Natural Resources met at 1:30 p.m. on Wednesday, February 3, 2010, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB764, LB862, and LB932. Senators present: Chris Langemeier, Chairperson; Annette Dubas, Vice Chairperson; Tom Carlson; Tanya Cook; Deb Fischer; Ken Haar; and Ken Schilz. Senators absent: Beau McCoy. []

SENATOR LANGEMEIER: Good afternoon and welcome to the Natural Resources Committee. My name is Chris Langemeier, I'm the Chairman of the committee. I'd like to introduce the committee before we get started. We're going to start to my far right or your far left. Barb Koehlmoos is the committee clerk. Next to her is Senator Tanya Cook from Omaha and Senator Tom Carlson from Holdrege; and then Senator Deb Fischer from Valentine. And to my left, or to your right would be Laurie Lage, the legal counsel for the committee. Then we have Vice Chairman of the committee, Senator Annette Dubas from Fullerton. Then we have Senator Ken Schilz from Ogallala. Then we have Senator Ken Haar from Malcolm, Nebraska. And Senator Beau McCoy will be joining us shortly and sits in the end seat. I'd like to introduce...we have a number of...two pages that are helping with the committee this year. We have Tony Pastrana from Colorado and is a freshman at Union College; and then we have Kiana Mathew from Omaha who is a sophomore at UNL. They'll be helping us pass things out today if you have handouts. If you're here to testify, we ask that in the corners of the room you'll see this green sheet; we ask that you fill it out in its entirety and when you come up to testify if you'd give it to the committee clerk before you start so we can help in aiding of a good transcription. We also have this form in the back of the room; looks like a little spreadsheet. If you'd like to voice your opinion, or I should say show that you had an opinion here today on one of the bills but you're not planning to testify, but you want to be in the record as being here, you can put your name and address and put whether you oppose or support a bill, the likewise. You don't have to both, but you can do that if you don't care to testify. At this time we'd ask that you turn your cell phones off in respect to the testifier. When you come up to the table to testify, we ask that you spell your name; say it and spell it for us, no matter how simple it is. It helps us keep an accurate transcription of this record. We also ask that if you have something to hand out, we've already gotten a number of handouts that have come around, we ask that you provide us twelve copies. If you don't have twelve copies right now and you know you need some more, raise your hand and one of the pages will come help you with that. We also ask that if you do hand something out for us to look at, we are going to keep it. So if it's something you want back, we ask that you just hand...show it to us at the table and then if one of the particular senators or members of the committee would like to look at it after the hearing, they'll approach you about that. But again, if you want to keep it, keep it in your hands. At this time the microphone is...we ask that you don't move it; it's there for to record it for the record, not so much...it doesn't amplify. So with that said, we will start the hearing and Senator Fischer, we're going to have the bills in

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the order they were posted, LB764, then LB862 and then LB932 and Senator Fischer has the first one and welcome and you're recognized to open. Oh, before I do that, you'll see the lights are on in front of Senator Fischer there. In the Natural Resources Committee you get five minutes to testify. You'll get the green light; after four minutes it will go to a yellow light; and then after that the red light, as you see it on now in the red form, we ask that you stop, then open yourself up to the committee for questions. And with that, Senator Fischer, welcome and you're recognized to open on LB764. []

SENATOR FISCHER: (Exhibit 1) Thank you, Chairman Langemeier and members of the Natural Resources Committee. For the record my name is Deb Fischer, F-i-s-c-h-e-r and I am the senator representing the 43rd District here in the Nebraska Unicameral. I appear before you today to present LB764. This bill amends the Nebraska Ground Water Management and Protection Act to allow a natural resources district in a river basin that has not been designated as overappropriated or has not been determined to be fully appropriated to develop an integrated management plan jointly with the Department of Natural Resources. In my years of serving on the Natural Resources Committee I've listened to hours of testimony on how LB962 isn't working, how current water management statute only provides regulation and moratoriums on new uses and how the law does not foster proactive management. Last year I introduced LB54 that provided a process for NRDs as they build out their IMPs. Even after the passage of LB54 I continued to think about methods to manage our water resources while still allowing our communities to foster economic development. This interim I worked with various groups, including the Nebraska Association of Resources Districts, to craft LB764. I believe this legislation will provide the planning and management piece that is missing in LB962. If passed, this legislation will allow NRDs to proactively begin building plans to manage their water resources. Building individual and unique IMPs is the best method for addressing our state's water challenges. It will provide the information necessary for planning, for conservation, development, management, protection, and for the use of our water resources. IMPs should be holistic plans that maximize the economic and environmental benefits of our ground and surface water resources factoring in water quality and quantity, recreation, wildlife, and economic development. When building each plan, NRDs should thoroughly examine all options and how these options will affect the economy of their areas before implementing a plan. Ensuring that water is available for future power plants, irrigated agriculture and municipal uses are just some of the economic factors that NRDs need to consider. I realize that several groups had some concerns with two sections of the bill. On page 2, beginning on line 23, it states: the objective of an integrated management plan under this subdivision is to maintain such river basin, subbasin or reach in the status of not fully appropriated. Several parties disagreed with this sentence because the status of "not fully appropriated" is not defined in statute. Also, the purpose of the IMP is to be proactive, not just avoid the status of fully appropriated. The amendment I'm submitting today, which you have a copy of now, and which has been approved by all who had concerns and contacted us, provides the following language: "the objective of an integrated

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management plan under this subdivision is to manage such river basin, subbasin, or reach to achieve and sustain a balance between water uses and water supplies for the long term." The amendment also strikes the requirement for NRDs to notify the department of their intention to create an IMP by October 1. We came to the decision that a date is not needed and I believe that all parties also agree to this decision. As you can see, I believe this bill is important. I'm serious about working with all the parties to ensure its success. It's important that we work together to build comprehensive IMPs that are unique to each basin in this state to ensure that we fully develop our water resources and that we also protect them for future generations. Thank you, Mr. Chairman. [LB764]

SENATOR LANGEMEIER: Very good. Are there any questions for Senator Fischer? Seeing none, thank you. [LB764]

SENATOR FISCHER: Thank you. [LB764]

SENATOR LANGEMEIER: You have heard the opening on LB764. We will now take proponents, testimony in support of LB764. Welcome. [LB764]

GLENN JOHNSON: (Exhibit 2) Thank you. Good afternoon. Senator Langemeier, members of the Natural Resources Committee, my name is Glenn Johnson, G-l-e-n-n J-o-h-n-s-o-n. I'm the general manager of the Lower Platte South Natural Resources District with its office here in Lincoln. And I'm presenting testimony in support of LB764 today wearing several different hats and on several...on behalf of several different parties; the Lower Platte South Natural Resources District. I'm also submitting testimony in support on behalf of the Nebraska Association of Resources Districts, the Nebraska Water Resources Association, and the Nebraska State Irrigation Association. All of these entities have come together and on this particular bill and support not only this bill, but we support the amendment that was described to you by Senator Fischer and we appreciate her offering that amendment. Lower Platte South Natural Resources District has never been noted for its activity in groundwater, it's just basically gone on without a lot of notice. It's not really something that jumps out of the newspapers, but our board of directors has been very proactive all the way along in...once we started adopting groundwater management plans and doing monitoring, the board has been very proactive in setting triggers for both quality and quantity in their groundwater management plans. Even though not required to under any statutes, we are moving forward with requiring certification of irrigated acres; requiring meters on all wells more than 50 gallons per minute. We're working with all of the community water systems in the district which is one of the major uses of water, particularly for urban and domestic in this particular district. We've designated eight areas within the district as either phase 2 or phase 3 for groundwater quality. We're working on surface water issues and related to the Lower Platte Basin and endangered species and in...various stages of consultation of that. So there's a lot ground and surface water issues. We have very

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little area that's hydrologically connected, but we are developing a model for that particular area. In our master plan several years ago, the board of directors inserted a goal to develop an integrated management plan as part of the proactive approach. Earlier in 2009, we began discussions with the Department of Natural Resources about cooperating on a voluntary integrated plan for the district and the department staff we visited with said it's not really clear in the statute whether or not they can cooperate or whether or not we can have a groundwater management plan. So we prepared a resolution to secure this as a certainty that there would be participation by the Department of Natural Resources if we were to move forward. That resolution went to the Nebraska Association of Resources Districts which was adopted in September and then this brought forward into this legislation. We think it's very important to have that collaborative effort to make it a more holistic approach to proactively working on ground and surface water. With that, thank you. [LB764]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Dubas. [LB764]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Mr. Johnson. So if I'm understanding this correctly, your NRD, as well as probably many other NRDs, you're already doing a lot of things to kind of be proactive in dealing with water issues. The problem was, if you wanted it to be a cooperative effort with DNR and the NRDs we just weren't quite clear if that was allowed or how it's allowed... [LB764]

GLENN JOHNSON: Yes. [LB764]

SENATOR DUBAS: ...and that's what we're trying to address through this bill. [LB764]

GLENN JOHNSON: Yes, that's correct. That was the deficiency that we saw. We can certainly prepare, essentially, all of the integrated management plan or do all of the tool...we have those tools today, but we...it was uncertain whether or not the department could collaborate with us as we would like them to. [LB764]

SENATOR DUBAS: And the information that you'd need from the department would...it would help you address all of the water issues in your district, not just the ones the NRD is dealing with. [LB764]

GLENN JOHNSON: Yes, that's correct. [LB764]

SENATOR DUBAS: And so the kinds of programs that your NRD is implementing now, those are things that you're hoping will keep you from being fully or overappropriated or you're just trying to be in a more conservation minded... [LB764]

GLENN JOHNSON: That would be a...I guess, that would be a distant goal, but that's

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not really our primary goal in doing that. We've got to really put ourselves in a position where the communities that are in our district that rely on groundwater supplies continue to have an adequate both, quantity and quality, supply. That's going to be one of our primary focuses. Part of that involves, you know, the industry and flow in particularly for the Lincoln water system and so surface water does become part of that mix of planning that we need to be looking at. [LB764]

SENATOR DUBAS: Thank you very much. [LB764]

SENATOR LANGEMEIER: Are there any other questions? Senator Carlson. [LB764]

SENATOR CARLSON: Thank you, Senator Langemeier. Mr. Johnson, on the meters on the wells, what kind of response reaction are you getting from those that have wells? [LB764]

GLENN JOHNSON: Actually, at this point we've started the program; it's gone very well. We're really just in the first stages. Our date for completion for that is essentially a year from now, the end of January of 2011. And we're offering a cost-share and we've had very good reception from those. We've got to go out now and really promote it and sell it and make it more known and we've...as a matter of fact, today we're sending out a mass mailing of postcards reminding folks that we have the program available and what the requirements are. [LB764]

SENATOR CARLSON: What is the cost-share? [LB764]

GLENN JOHNSON: The cost-share is 75 percent of the cost of the meter. I can't remember what the maximum goes up to, but it... [LB764]

SENATOR CARLSON: Okay. Thank you. [LB764]

GLENN JOHNSON: Um-hum. [LB764]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much for your testimony. [LB764]

GLENN JOHNSON: Thank you. [LB764]

SENATOR LANGEMEIER: Further testimony in support of LB764? Good afternoon and welcome. [LB764]

JAY REMPE: Thank you, Senator Langemeier. My name is Jay Rempe, J-a-y R-e-m-p-e. I'm vice president of governmental relations for Nebraska Farm Bureau here today on behalf of Nebraska Farm Bureau in support of LB764 and first of all, I'd like to

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thank Senator Fischer for introducing the legislation. I think it's very forward thinking and proactive and it's one of those that when we first started visiting about it last fall, it was like, duh, why didn't we think of this earlier when we were putting together some of the integrated management planning processes and procedures with LB962. As already has been stated, I think it gives the NRDs in basins that are not declared fully appropriated the opportunity to be proactive, to look forward to think about the decisions that they can make today and the impacts that they'll have in the future. And I think that was all part of the intent with LB962 and integrated management planning and they can work cooperatively and jointly with DNR with this endeavor. And I think one of the benefits that have come out of the integrated management planning process is it's a very data research intensive process that the NRDs and DNR go through and it can be very enlightening, my understanding is, to the resources that we have available and the understanding of our resources and I think that's a valuable process to go through. I just might add on the bill, the process that these NRDs will go through that are not in fully appropriated basins would be just the exact same process that the NRDs that are in fully appropriated and overappropriated basins have gone through. So nothing changes there. It just tries to bring them in and give them an avenue of opportunity. And the bill also changes some language just to make sure and be clear that the NRDs have to consult with other stakeholders in the basins and get them involved in the development of these plans which is also consistent with LB962. So they have to reach out and consult with the municipalities, the recreational interests, and the irrigation districts and that, so, which is just like what we have in LB962 in the integrated management planning process. So with that, I'll...we support the bill; we support the amendment that was offered and be happy to answer any questions that you have. [LB764]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Rempe? Seeing none, thank you very much for your testimony. Further testimony in support of LB764? Welcome. [LB764]

DUANE GANGWISH: Good afternoon, Chairman Langemeier, members of the committee, my name is Duane Gangwish, D-u-a-n-e G-a-n-g-w-i-s-h here testifying in support of the bill and the amendment on behalf of the Nebraska Cattlemen. Our board of directors looked at this and we've had some detailed conversation and we think this makes just good common sense. So that's it, I'd be happy to answer any questions. [LB764]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Gangwish? Seeing none, thank you very much. [LB764]

DUANE GANGWISH: Thank you. [LB764]

SENATOR LANGEMEIER: (Exhibit 3 and Exhibit 4) Further testimony in support of LB764? Seeing...I have a couple of letters in support: John Winkler from the

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Papio-Missouri River NRD, and Duane Filsinger with the Lower Elkhorn...or Niobrara NRD, excuse me, in support of LB764. Now we'll move over, are there any testifiers in opposition to LB764? Seeing none and I have no letters. Is there anyone wishing to testify in a neutral capacity? Welcome, Director Dunnigan. [LB764]

BRIAN DUNNIGAN: Thank you, Chairman Langemeier. Good afternoon, my name is Brian Dunnigan, B-r-i-a-n D-u-n-n-i-g-a-n and I'm the director of the Department of Natural Resources. Thank you for the opportunity to testify on LB764. In consideration of AM1751 provided to me this morning by Senator Fischer, the department is testifying in a neutral capacity on LB764. Most of my comments, however, will necessarily refer to the bill as introduced. The bill modifies the Ground Water Management and Protection Act by allowing natural resources districts in basins that are not fully or overappropriated to voluntarily enter into integrated management plan with the department. As introduced, LB764 requires the department to participate. Otherwise, under the act IMPs are developed jointly between a district and the DNR with a cooperative expectation. Beginning development of an IMP typically includes a temporary stay on new development and reorganization of control measures by both district and DNR for meeting the objective of maintaining balances of resources and uses for the sake of sustainability, but avoiding harm to either surface or groundwater users in the process. An IMP must also address economic development impacts for any future development. The intent of LB764, as introduced, is for any individual district to avoid being declared fully appropriated. However, this is flawed because the evaluation and criteria for fully appropriated designation is basinwide. As a practical matter, the actions of any voluntary IMP participating district do not relate to actions of any other nonparticipating district in a basin to influence the factors that will trigger a basin's fully appropriated designation. Such a situation lacks the element of coordination inherent in the current IMP process. To achieve the intent of LB764, every district in the affected basin would have to enter into an IMP. The context of integrated management planning under the current law is to keep the level of development in balance. Balance requires relatively whole hydrologic system as a basis. The fully appropriated designation means that current use levels have triggered the necessity of a coordinated planning approach to balancing uses and supplies of both surface and groundwater resources. In a basin that has not reached that point, such as the areas eligible for a voluntary IMP, development objectives generally are undifferentiated growth of uses, but only until the point they are satisfied by, but do not exceed supplies. Such a target moves with climatic conditions in the short term. For surface water, the appropriation system is self regulating with a system of calls. For groundwater, integrated management may be distinguished from the normal management duties of districts that are unrelated to integrated surface water related concerns as expected by an IMP. But to the extent these normal management activities of a district are effective, the provisions of a voluntary IMP appear to be unnecessary for meeting that portion of the act's objectives. Amendment by the proposed AM1751 appears to recognize both the inevitability of development and the synergy of management activities. The department supports the proposed amendment.

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The department has and will continue providing technical assistance and working with all NRDs to ensure that the state of Nebraska's water resources are managed effectively. This concludes my testimony and I'd be glad to answer any questions. [LB764]

SENATOR LANGEMEIER: Thank you very much. Are there any questions for the director? Senator Carlson. [LB764]

SENATOR CARLSON: Thank you, Senator Langemeier. Early in your statement, I thought I heard you say something to the affect that the current system doesn't allow for good cooperation or...it was early in your statement, could you repeat that? [LB764]

BRIAN DUNNIGAN: Sure. I think the portion of that was that the under...fully appropriated basin designation that would trigger today an IMP process, that is a joint effort. LB764 would allow an NRD to voluntarily come in and have the department work with them cooperatively. [LB764]

SENATOR CARLSON: And that doesn't exist without this bill? [LB764]

BRIAN DUNNIGAN: Um, perhaps it doesn't; it doesn't mean that the department wouldn't work with a natural resources district. It may be not clearly understood what the outcome of working through an integrated management planning process would be, though, without this bill. [LB764]

SENATOR CARLSON: Thank you. [LB764]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much, Director. [LB764]

BRIAN DUNNIGAN: Thank you. [LB764]

SENATOR LANGEMEIER: Further testimony in a neutral capacity? [LB764]

KEN WINSTON: (Exhibit 5) Good afternoon, Senator Langemeier, members of the Natural Resources Committee. My name is Ken Winston, K-e-n W-i-n-s-t-o-n and this afternoon I'm wearing a different hat. I'm appearing on behalf of the Wachiska Audubon Society in a neutral position on LB764. I wanted to open my testimony by indicating and I hope my notes are correct, but I wanted to indicate that we would be in support of the statement that Senator Fischer made in her opening comments indicating that she...that all interests should be included in the IMP process and that's basically the reason that we're neutral on this bill. We'd like to see some...we'd like to see that spelled out in legislation. We support the general concept of the bill. We believe that engaging in the integrated management planning process is a good idea and that taking steps

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proactively to avoid depletions of either groundwater or surface water is a positive step. And we'd just like to have a couple of things added to the stakeholder list and I've got some suggestions that I've added to the...that I've suggested; but I won't claim that this would be the ultimate list of people that should be included. I guess part of it is just the fact that there...as I recall, Senator Fischer...as my notes indicate, Senator Fischer's initial comments indicated that environmental, ag, and recreational interests should be included and Mr. Rempe also indicated that recreational interests should also be included, but I don't believe the statute references that and we'd just like to see some statutory references to recreational and conservation interests as well. [LB764]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, thank you very much for your testimony. [LB764]

KEN WINSTON: And the Nebraska Sierra Club is also neutral on the bill. [LB764]

SENATOR LANGEMEIER: Thank you. [LB764]

KEN WINSTON: Thank you. [LB764]

SENATOR LANGEMEIER: Are there any other testifiers in a neutral capacity? Seeing none. Senator Fischer, would you like to close? I think she does. [LB764]

SENATOR FISCHER: Thank you, Chairman Langemeier and members of the committee, I'd like to thank you for your kind attention to this matter. As we had hearings this past year in our interim studies that we had this summer and fall, you all heard me ask, you know, how can we change LB962 and I was happy with Ron Bishop at a water conference in Kearney this fall came up with this idea and some other folks had approached me with it also. I do believe it's a good bill. I think the amendment is needed, and I think it's a great amendment and I hope you will give it your thoughtful consideration in passing it to the floor. Thank you. [LB764]

SENATOR LANGEMEIER: Very good. Are there any other questions? Seeing none, thank you. [LB764]

SENATOR FISCHER: Thank you. [LB764]

SENATOR LANGEMEIER: That concludes the hearing LB764. We'll now move on to LB862. Senator Christensen. He was here once. There he is. Senator Christensen, welcome. You're recognized to open on LB862 when you're ready. [LB764]

SENATOR CHRISTENSEN: Thank you, Mr. Chairman and members of the Natural Resources Committee. I'm Senator Mark Christensen C-h-r-i-s-t-e-n-s-e-n. I represent the 44th Legislative District and here today to introduce LB862. LB862 would amend

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Sections 2-3226.01 and 2-3226.05 which authorizes river-flow enhancement bonds and occupation tax on activities of irrigated lands. These sections were enacted in 2007 with the passage of LB701. LB862 would amend similar language in Section 2-3226.01 that the district court asserted was closed class language during the litigation of LB701 property tax. The new language would allow any natural resources districts in a river basin where the majority of the NRDs use well metering in accordance with subdivision(1)(d) of Section 46-739, the current authorization to issue river-flow enhancement bonds that could be paid back with proceeds from the current occupation tax. Mandatory metering device, well metering, are essential to accurately managing water within a district that is facing greater demands for water use. When a majority of the NRDs in a river basin require well metering, it is necessary for the state to provide eligible NRDs with appropriate funding tools to address water needs within the basin. In addition, the bill would not only allow the proceeds of the occupation tax in section 2-3226.05 to pay for river-flow enhancement bonds and for the repayment of state financial assistance in section 2-3226.07, but also for part of the qualifying projects in section 2-3226.04. This allows flexibility for the NRDs when doing smaller qualified projects that can choose to bond or not to bond to pay for a project. LB862 also clarifies the eligible NRDs which have...has multiple river basins within jurisdiction as defined in section 2-1504 can confine the occupation tax levy to the relevant river basin. Finally, the bill clarifies the procedure in subsection (2) of section 2-3226.05 declaring that nonirrigated status of acres and removing them temporarily or permanently from paying the occupation tax. Clarifies that an application must be filled out by the record owner or irrigation district to change the status of acres from irrigated to nonirrigated. Having no groundwater and no surface water available because of lack of supply or regulatory curtailment, is the basis for an annual change to nonirrigated statutes. I would like to change gears and speak to some of the difference of opinions between surface water irrigators and groundwater irrigators. I sought to draft a bill that would provide the necessary funding mechanisms for those NRDs who are facing extraordinary water use issues in river basins they have jurisdiction over, and have taken costly steps to accurately manage water use in their district with mandatory metering. I do not want to pit surface water against groundwater, but I want to find a workable solution that address concerns brought to me regarding our current funding mechanism, the occupation tax, and the treatment of all water users fairly. I believe there are some testifiers from groups today that want to exempt all surface water acres from the current occupation tax on irrigated agricultural land. If this is done, I believe you have to agree that groundwater has caused all the problems to reduce streamflow. I believe that statement is totally false. Here are four reasons why I believe there is...that is a false statement. First, government policies and incentives have encouraged terraces to stop erosion of dirt and stop stream contamination. Guess what; it worked. We've reduced contamination and streamflow. Second, we built dams in pastures and fields. Why do dams...what do dams do but supplement the stream or stop streamflow? Dams stop streamflow and store water for livestock use and evaporation. I've used this example before, holding 400 acres of water in a 320 acre pasture. This is more than the amount

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of water used on most irrigated land per acre. Third, vegetation removal has been shown without a doubt to add water to streams. Therefore, the overgrowth of invasive species and other vegetation has used water and affected streamflow. Fourth, no-till farming is another big contributor to decrease streamflow. I no-till farm. The reason is to hold water on the land so it doesn't run off and hit the stream, to increase my yields and reduce labor and labor costs. One concern brought to my attention by surface water groups is that they may not get compensated if they're shut off by regulation, even though they're forced to pay the occupation tax. They are concerned that any groundwater acre shutoff would be compensated and they may not be. I agree that this should be addressed to ensure fair treatment if regulatory curtailment occurs. If revenue from the occupational tax is used for compensation, then both surface and groundwater should be treated the same. Thank you for your consideration of LB862. I'd urge its advancement to General File. I'd be glad to answer questions. I would state that you guys probably have a sheet from Director Dunnigan saying how many NRDs this would affect as currently written. In visiting with him, we can make one minor change and we can reduce the amount of NRDs at the present time. And that is NRDs that require metering on every well. He explained the letter that I assume he handed out, yes, that you have in front of you there, because a lot of NRDs put in the language on all new wells require metering, but they don't in the whole district. So we need to use the language, make a little adjustment here, it says, when all wells are metered by an NRD in a river basin would allow substantially less. And I can address that more in-depth, if you choose, but I think that language right there needs to be adjusted here if we don't want to have a large expansion of the current use. Now, it would still take the vote of the NRD to do it, even if you left it as written. It's still that local control, local decision, but you can considerably narrow that down by using my language and still leave it open because NRDs can move in and out of it by choosing to have every well metered. I'd gladly address any questions. [LB862]

SENATOR LANGEMEIER: Are there any questions for Senator Christensen? Senator Schilz. [LB862]

SENATOR SCHILZ: Thank you. Senator Christensen, good afternoon, thanks for coming in. Can you explain to me just what some of the types of projects that these sorts of funds could be used for? I know that you mentioned that you refer to a siphon... [LB862]

SENATOR CHRISTENSEN: Basically, it's for four things that the bonding was approved for in LB701 and would qualify in this section and that is, for buying the surface water, used to stop pumping the surface water on acres or retirement of those acres, vegetation removal and, let me see if I've got the fourth one. Okay. Section 2-3226.01 says, acquisition by purchase of lease water rights in accordance with Chapter 46, article 6, pertained to groundwater and Chapter 46, article 2 pertaining to surface water including storage rights and respect to river and any of its tributaries to that acquisition

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purchase or lease or administration and management pursuant to mutual agreements of canals and other works, including reservoirs, construction of irrigation from river or any tributaries, three, vegetation management, including, but not limited to removal of invasive species in or near rivers and its tributaries, and four, the augmentation of river flow consistent with the authority granted under Chapter, article 32, so. [LB862]

SENATOR SCHILZ: Okay. Great. Thank you. And so as you're looking at this and I know you've got it in here that you want to make it available just for folks that have meters, what would happen if you had somebody say, downstream, that was looking upstream at a different NRD and wants to take some of their money to use it up there to create a augmentation project to move water down through to a different place? Let's just say that that district there doesn't necessarily have metering. [LB862]

SENATOR CHRISTENSEN: They're not going to qualify for the bonding or the occupation tax if they don't have... [LB862]

SENATOR SCHILZ: But what I'm saying is the district that wants to spend the money does. Because remember, you need the water coming downstream to take advantage of it. [LB862]

SENATOR CHRISTENSEN: Correct. [LB862]

SENATOR SCHILZ: And what I want I...what I would like to see happen is much more augmentation projects than shutting people off. And so I want to make sure that we're using this as broadly as possible to make sure that where the opportunities are, we can take advantage of that. [LB862]

SENATOR CHRISTENSEN: Well, I understand. I think I know where you're...what you're speaking to and I typically say instead of augmentation upstream, we need groundwater recharge upstream, you know. [LB862]

SENATOR SCHILZ: Sure. Well, I mean we can call it whatever you want... [LB862]

SENATOR CHRISTENSEN: Which is transfer upstream also, but basic...if I'm understanding you right, are you doing the innerbasin transfer? [LB862]

SENATOR SCHILZ: No. I'm just... [LB862]

SENATOR CHRISTENSEN: You're going...trying to go within a same river basin, but two different NRDs? [LB862]

SENATOR SCHILZ: Sure, that's the question I'm asking right now. [LB862]

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SENATOR CHRISTENSEN: That, I believe, could be done with this, yes, move water from, say, the Lower Republican to the Upper Republican. [LB862]

SENATOR SCHILZ: No, actually... [LB862]

SENATOR CHRISTENSEN: Or the other direction? [LB862]

SENATOR SCHILZ: Actually, here is what would happen. Somebody in the Lower Republican would contract, and then...probably the Upper Republican isn't a good example to use there, just because of the opportunities for recharge, but that's okay. Yeah, and they would go to the Upper Republican and say, hey, look, you have a side that works great for an augmentation project, right? [LB862]

SENATOR CHRISTENSEN: Um-hum. [LB862]

SENATOR SCHILZ: And if you guys will build that augmentation project, right, we will take monies and make it available to you, but we want some of that; we want to be able to take advantage of some of that downstream. [LB862]

SENATOR CHRISTENSEN: Well I'm sure if the NRDs agreed with that transfer between them, that would be legal with this. [LB862]

SENATOR SCHILZ: Sure. Okay. [LB862]

SENATOR CHRISTENSEN: But you're still going to have to have the agreement within the different NRDs. [LB862]

SENATOR SCHILZ: Sure, oh absolutely. And then my next question is, can you give me, and I know we've had some of these conversations, and its been so long and so hard, can you tell me why we would want to tighten down further on language about well metering? Or should we expand that further to make it so that all districts if they see the need, would have this opportunity? [LB862]

SENATOR CHRISTENSEN: Well, I don't have a problem if you expand this or leave it in the current language form that I have it. It all comes down to the politicalness of it, probably, of what you believe is palatable within the body. And I guess my objective was to make sure the closed class line is gone, that it's easily to move into and out of by the choice of the NRDs and at that point in time, the narrower you can make it, the better, with the ability to move into it by hitting the requirements of the bill. And I guess that was my objective in this. [LB862]

SENATOR SCHILZ: Okay. [LB862]

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SENATOR CHRISTENSEN: And that's why I offered new language that if people don't want it broad, like that's one reason why I've tried fully and overappropriated before and couldn't get it through, that I offered some metering language to try and narrow it from the standpoint...when people go to metering, they are addressing concerns they have of managing water. They're getting on top of the situation and trying to control depletions to a stream, or to a basin, and at that point in time, I believe, the state needs to provide additional tools so they can best manage it so that we don't abuse a natural resource. [LB862]

SENATOR SCHILZ: Okay. Thank you. [LB862]

SENATOR LANGEMEIER: Other questions? Senator Christensen, I have a question. You talked about there may be somebody that says, hey, let's exempt out surface irrigation from the occupation taxes you propose in here. What happens, currently our surface irrigation, we have probably 60 percent of those have groundwater supplemental wells. And in years in past, when the department has come in and bought out those rights, they've irrigated with their supple...I'm going to call them supplement wells. There's probably a better terminology for it. Does that put them back under needing an occupation tax? If they were exempted on the surface, they don't get their surface... [LB862]

SENATOR CHRISTENSEN: Yeah. [LB862]

SENATOR LANGEMEIER: ...for any variety of reasons, and now they're using their groundwater wells to irrigate, and if so, how do we monitor that so an assessor can figure out who to tax, who not to tax, and... [LB862]

SENATOR CHRISTENSEN: Well they have maps now that...the irrigation districts have furnished maps to the NRDs and the NRDs have their maps where wells are, as well as the surface project, so they can overlay and see who is commingled and who would be affected. I called a couple of the managers yesterday on surface water projects and said, well, where is it, your percentage that...with your understand, that is commingled? And it ranged from as high as 90 percent in a couple of the smaller districts that haven't been getting water to as low as 20, 30 percent in some of them that have been having consistent water. And I said, can you give me an average percentage? And he said, I couldn't give you, probably couldn't give you a good answer to that; you need to talk to the NRDs because they have the maps. I didn't get the NRDs asked that question, but the manager I was talking to said he would guess it's only about 30 percent, if he was averaging the whole basin. But again, he says, don't...he said don't quote me or take this as legit, because he doesn't have both sets of maps to overlay. That would be just an opinion. [LB862]

SENATOR LANGEMEIER: I'm not so worried about the percentage, I think that's

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irrelevant to the discussion. My concern is, is if...if we were to choose to advance this, if we choose to take an amendment that would exclude out surface water, and I'm an individual that has surface water and I have groundwater, and for some reason I don't get my surface water this year, so then I say, hey, you can't charge the occupation tax. I didn't get surface. [LB862]

SENATOR CHRISTENSEN: Well, if you have the well... [LB862]

SENATOR LANGEMEIER: A ground well... [LB862]

SENATOR CHRISTENSEN: ...you would automatically qualify for the occupation tax. Anybody with the groundwater right... [LB862]

SENATOR LANGEMEIER: So everybody that would have a well... [LB862]

SENATOR CHRISTENSEN: Yes. Correct. [LB862]

SENATOR LANGEMEIER: ...would not be exempt, in your mind, if you actually exempted surface. [LB862]

SENATOR CHRISTENSEN: That's the way I would read it, yes. [LB862]

SENATOR LANGEMEIER: Okay. It hasn't been written, so understand it, maybe. [LB862]

SENATOR CHRISTENSEN: Correct. Understand it, yes. [LB862]

SENATOR LANGEMEIER: Any other questions? Seeing none. Thank you very much. Very good. You've heard the opening on LB862. We'll now move on to proponents of LB862. Mr. Fanning, welcome. [LB862]

JASPER FANNING: (Exhibit 6) Thank you, Chairman, Langemeier and committee members. My name is Jasper Fanning, J-a-s-p-e-r F-a-n-n-i-n-g. I'm the general manager of the Upper Republican Natural Resources District; also here representing the Nebraska Association of Resource Districts. I'm having the page pass out some written testimony provided by John Thorburn, manager of Tri-Basin Natural Resources District. He was unable to be here today and asked me to provide that to you. Essentially, Senator Christensen's legislation addresses three primary issues, some of which we've experienced just through the implementation of the existing occupation tax, others that were created by some court challenges in Supreme Court decisions ruling part of the original LB701 unconstitutional. First, the unconstitutionality of the property tax portion of LB701 created some challenges. Originally, we were planning on using our, essentially, our property tax authorities, both those in our general levy and the

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special levy to pay operating costs of some projects that would have...you know, we put in place with the occupation and special levy of the property tax through bonding put projects on the ground. But they were going to have some annual operating costs. We thought we'd be using our general levy to pay those annual operating costs. Since we can't use property taxes for those state purposes, we need to be able to use the occupation tax to pay those annual operating costs. Therefore, we need to remove the bonding requirement associated with the occupation tax so that we can use those funds in that manner. Also, we've seen that some surface water leases may be an intermittent thing and it may not make sense to bond for a one year lease. This is just additional expense paid by the irrigators and the taxpayers that we don't necessarily need to have. Second, the issue with how the occupation tax is levied. Some questions came about that earlier. The current proposed legislation that Senator Christensen has before the committee would provide some flexibility. Now particularly with respect to the surface water acres or groundwater acres that may not have a supply, it doesn't make sense to tax those, even though they may be still shown on the assessor's records as irrigated, whether they're enrolled already in an irrigation retirement program. There are many instances in which it makes sense to have an exception. For instance, a natural resources district that has multiple river basins. If it's something for compact compliance in the Republican, it doesn't make sense for them to levy that tax on the Platte portion of their basin at this time. So there's some things like that. The third issue is the criteria in current statute that restricts the use of the tax to a natural resources district that's part of a three-state compact and has an irrigation district. In the past it made a lot of sense, so to speak, because, you know, to me the wishes of the body at that time were to narrowly restrict where the authority of the occupation tax was granted. However, some conditions have changed. Additional groundwater modeling is out. Nebraska, through arbitration, we have some new needs in terms of regulation and how we do that legally has identified about 9,000 acres in Tri-Basin Natural Resources District that could be curtailed in dry years, shut off in dry years to cause compliance with the Republican River Compact. Tri-Basin, before, the thought was maybe they didn't have the need for it. Now it's apparent that they do also have a need for it. They're a little bit more like us now, and sort of fully in the game, so to speak. So it makes sense to reevaluate those criteria and find a criteria that works given today's situation. And so opening that up so the Tri-Basin certainly could be involved in...and as Senator Schilz said earlier, why restrict it? You know, to be honest, the association support...has supported in the past all fully and overappropriated districts having it. Any time that you're in a river basin where you've got to either cut back on uses or eliminate a use to allow for a new use, there are some efficiencies of using a funding mechanism and the occupation tax certainly would accomplish that. One other final comment is, the primary purpose of the occupation tax is not to compensate those water users who are shut off through regulation to cause compact compliance. The purpose that I believe all three natural resources districts or all four natural resources districts have is to put programs on the ground that allow voluntary retirement, target retirements, and to do augmentation programs that prevent that type of regulation, or certainly minimize the probability of its

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occurrence. It's not to compensate those who get shut off. And thank you for your time. [LB862]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Carlson. [LB862]

SENATOR CARLSON: Thank you, Senator Langemeier. Just the last statements you made, Jasper, I fully agree with you that the purpose of the use of the occupation tax is to avoid the water short year and I think that you've...you mentioned those things that...several of them that you felt like the occupation tax could be used for and without some form of funding, I think you'll agree with me, I think that the entire Republican Basin is on thin ice. [LB862]

JASPER FANNING: I agree with that. [LB862]

SENATOR CARLSON: It's a matter of when the hole is going to occur. What do you see is the biggest challenges in the Republican Basin? [LB862]

JASPER FANNING: Senator, I truly see this funding issue as the biggest challenge. We've been fighting the funding issue to deal with compact compliance and put programs in place since I was hired as manager six years ago. We're still trying to get a viable funding mechanism. You know, I guess, maybe I'm a perpetual optimist, but in, you know, but I don't think I'm unrealistic. If we had a funding mechanism, we continue to talk about the things that we can do. And in the surface water, groundwater conflict that Senator Christensen talked about, if you look at the complex hydrogeology that we have to deal with in this river basin, and look at what a prudent, you know, policy is, in some instances, shutting one water user off to provide water to another water user is not going to be the optimal solution. But if we have a funding mechanism, we can put things in place that protect the existing users that have a good supply, potentially compensate those who don't have a good supply and save what supply they do have for compact compliance. Integrated management really is conjunctive management. And we've made the step through regulation where we manage groundwater for surface water. And we've taken a long-term look at things and we know it is an incremental approach, in that we'll have to do more as we move forward to keep our impacts from groundwater increasingly reducing the supply, or continuing to reduce the supply of surface water. That was phase one. And we know that lag effects are out there and we'll have to deal with those things. But certainly having a funding mechanism, so we can do targeted retirement and approach that in an incremental fashion gives our local economy time to adjust and technology time to help us. [LB862]

SENATOR CARLSON: Now you and I both know that we have citizens in the basin that believe that this is a state problem and a state obligation and therefore let the state pay for it. How do you respond to that? [LB862]

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JASPER FANNING: You know, I think generally people of the basin agree with that and I can't say that I disagree with that. But I also understand the economics and the state budget enough to know that until we pay in about \$1 billion in additional taxes over the next couple years, the state's probably not going to have enough money to send it back out to us. So from that perspective, I understand the state's budget limitations. I think most irrigators, once you present them with state budget limitations and point out that there are stormwater problems in the east that the last I heard was about a \$2.5 billion problem, the state hasn't written them a big check either to deal with those issues. They have granted some local authorities for those natural resources districts to deal with one component of that. But, you know, I think, you know, everybody looks for the state to pick up the tab and we certainly think that it is a state obligation; the state has a role. The state should provide some of the solution. But when you sit back and look at things and present that, a lot of irrigators out there will be the first to tell you that, yeah, the state's probably not going to pay for it. And if they're not going to pay for it all, we're better off to pay for the solutions ourselves. And part of that comes back to local control. I think people understand that, you know, the people who pay for it, get to...have a bigger part in deciding in what they pay for and finding solutions that work for the local area. [LB862]

SENATOR CARLSON: Thank you. [LB862]

SENATOR LANGEMEIER: Any other questions? Senator Fischer. [LB862]

SENATOR FISCHER: Thank you, Chairman Langemeier. Thank you, Dr. Fanning, for being here. When you were talking about the purpose of the occupation tax, if you were granted that authority, you mentioned augmentation projects. Could you give us some examples of that on what specifically your NRD would do? And if other NRDs are going to come forward, I will probably ask that same question of them since it's my understanding that this occupation tax could be used in a number of natural resources districts, correct? [LB862]

JASPER FANNING: That's right. Thank you, Senator Fischer. I think it's good for the committee to have a good understanding of some of the types of things that could be implemented with it. And for the record, I have the authority to levy the occupation tax and my district has done that for three years now. What I don't have the authority to do, is issue the bonds to get the projects on the ground because of the lawsuit. But that aside, the primary examples that...of what...proper, excuse me, the occupation tax can be used for, streamflow enhancement. Now that's...augmentation is essentially the retiming of flows, surface water or groundwater. And essentially what we're, you know, even the surface water and groundwater leases that are authorized are augmentation. You're essentially taking some water use or flow and retiming that. And I see several things happening. I would like to think that, the first thing...piece of the puzzle would be

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to retire some targeted groundwater acres in certain areas, because...for the compact, we know we're close enough, we need to cut back use at some level a little bit, to provide some additional flow into some upstream surface water projects. Enter into interruptible supply contracts with those irrigation districts to where in good times they have more water available because of our groundwater actions; in leaner times they basically lease their water to us for compact compliance. We know that that will do a lot of it. However, we're also in the process of studying...and this gets to what most folks are talking about when they talk about augmentation. And in this instance, it's groundwater augmentation. The three natural resources districts, the Upper, Middle and Lower, are part of a study that's funded, in part, by the Interrelated Water Management Plan Program Fund, looking at groundwater augmentation. And essentially, what we're doing is tapping into the groundwater reserves in parts of the basin. We've identified a couple different areas and at least one of those areas is highly influenced by the mound. Nebraska gets a credit for the mound credit, water seeping from the Platte to the Republican, and taking that and retiming that when it's real dry and we need to be in compliance, essentially pumping. And we're looking about a 10,000 acre feet per year. In the grand scheme of things, in other areas of the country where they do augmentation that's a pretty small augmentation project, although it sounds like a lot of water. And essentially providing that to the Republican River in times that flows are short so that Kansas can't claim that they're actually damaged by a shortage of flows, enough to offset Nebraska's other uses that, you know, the problem is groundwater uses have such a long horizon of impact that regulating groundwater for a year or two, you don't see those benefits right then. So you need some way of retiming those flows and augmentation is that answer. [LB862]

SENATOR FISCHER: I don't know if you can answer this or not; outside of the Republican NRDs, what purposes do you see this bill enabling other NRDs to accomplish? [LB862]

JASPER FANNING: I...that could better be answered by one of the districts outside of the Republican, but for purposes of the Cooperative Agreement, the Central Platte Natural Resources District is operating a water bank. And I would argue that, and I hate to do this now, but I guess I don't see a large difference between the Republican River Compact being a state purpose and the Cooperative Agreement being a state purpose. You know, I think that the Platte natural resources districts, to be quite honest, have a larger challenge than what we have in the Republican. The timing just...we're a little bit earlier in our game, so to speak. And particularly, the more upstream natural resources districts, they're in a little bit more situation like the Republican districts are. A lot of water use in irrigated areas, so to speak, and not a lot of large communities which means that we have a lot of responsibility under LB962, but not a lot of property valuation from which, you know, our levy in our district generates about \$115,000 per one cent of levy. There are districts out there that probably generate over a million dollars with that same one cent of authority. So if...even the special levy that's

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unconstitutional of ten cents, you know, that only generates about \$1.1 million, whereas, an occupation tax in my district generates about just under \$4.5 million. [LB862]

SENATOR FISCHER: What's your levy right now? [LB862]

JASPER FANNING: This is the first year in, well, since I've been there, that we haven't been maxed out. So I think we dropped it down to...I shouldn't...that's a good question. It's about eight cents. [LB862]

SENATOR FISCHER: It brings in how much for a penny, a hundred and what? [LB862]

JASPER FANNING: About 115,000. [LB862]

SENATOR FISCHER: Okay. Thank you. [LB862]

JASPER FANNING: You're welcome. [LB862]

SENATOR LANGEMEIER: Other questions? Dr. Fanning, I want to ask one... [LB862]

JASPER FANNING: Sure. [LB862]

SENATOR LANGEMEIER: ...and mainly for clarification, as Senator Carlson talked about a state purpose. I think it's important to point out with LB862 that if the Republican Compact is a state purpose, DNR has chosen, as a state purpose, to turn water wells, either lower the allocation or shut them off, as their response to this being a state issue. And LB...and nobody really likes that, but that's the state's department, DNR is in charge of that, that's DNR's response to this being a state issue. Now, LB862 is a tool to the local NRDs and the local individuals within the district to try and prevent getting to that result of what the state has said is going to be our reaction to a state issue; would that not be a fair statement? [LB862]

JASPER FANNING: That's pretty fair, but I do want to point out that in our discussions with the department in looking at these options, they see what they've proposed, essentially, as the solution if funding isn't available. It's kind of the...the...as they termed it, the last resort. And it's what the state would have to do, and what the state has to be able to demonstrate to the state of Kansas that they will do, if we haven't been able to implement these other programs. So...but other...I mean...generally, yes, it's a fair statement. [LB862]

SENATOR LANGEMEIER: With that said, and you said no funding, have they made any effort to try and secure funding for these, to your knowledge? [LB862]

JASPER FANNING: To my knowledge, the state, other than the Legislature, has made

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no effort to secure funding for these issues. [LB862]

SENATOR LANGEMEIER: That was my...thank you. Any other questions? Senator Fischer. [LB862]

SENATOR FISCHER: Thank you, Chairman Langemeier. So if you don't get funding, and other NRDs are not able to tap into funding that may have other challenges that are different from your area, but challenges nonetheless, what's going to happen? [LB862]

JASPER FANNING: To them or to us? [LB862]

SENATOR FISCHER: Let's start with you. [LB862]

JASPER FANNING: If we don't get funding, we're pretty certain that we're going to have a water short year or a dry year that would require regulations somewhere around 25 percent of the time to as high as a third of the time. In those years, with the plans that are on the table and being prepared for adoption, essentially there would be about 60,000 acres of surface water that typically have a supply where their supply would be regulated away from them. They would not be able to irrigate those 60,000 acres, and somewhere between 100,000 and 110,000 acres of groundwater that is typically irrigated that would not be allowed to irrigate in those years, during those dry years. And, you know, based on the history, just looking back, 2002 through about 2007, you know, if we have a severe drought, you could impact operations. And unfortunately, what we see is that it's not a farmer, you know, it's not every farmer has one well or one field if it's surface water, out of ten. It's two or three farmers that everything that they farm is in that area. And then a few that have...you know, and everything in between. And so it's one of those things that, you know, locally on the local level, the economic consequences to some, essentially, randomly chosen individuals and then the widespread economic damage to the communities is apparent. [LB862]

SENATOR FISCHER: I had the opportunity to visit with some of your constituents, and the message I received from them was give us the tools so we can take care of our communities so we can take care of our schools and if need be, we'll pay higher taxes in order that our portion of rural Nebraska can survive. Do you hear that? [LB862]

JASPER FANNING: I hear that all the time. Earlier those were the irrigators that I talked about. If the state is not going to pay for it, they're willing to. [LB862]

SENATOR FISCHER: Do you think that I realize and my colleagues here in the Legislature realize the impact to the state if...and the state revenues if...for example, your school districts in your area of Nebraska become poorer in the terms we use when we discuss school finance that you no longer have the resources to provide for the needs of your districts? Do you think we realize what it's going to cost the state of

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Nebraska just in state aid to schools to your area? [LB862]

JASPER FANNING: Senator Fischer, I think that you realize that, because of your involvement in education... [LB862]

SENATOR FISCHER: Well obviously, Jasper, I asked the question. [LB862]

JASPER FANNING: But I think that those senators who aren't familiar with the...as you're referring to state aid in the formula school districts, they don't realize that. But when they do, the next bill that will likely be introduced will be one to readjust the state aid formula, the equalization formula so that that money doesn't go to western Nebraska and stays in the east. [LB862]

SENATOR FISCHER: Do you think...one more question, okay. Do you think this bill that's being proposed by Senator Christensen, as it's being proposed, is what's needed or do we need to work on this a little more? And if we have to work on it a little more, can you wait another year? Can you wait another two years, three years? [LB862]

JASPER FANNING: Therein lies the problem, Senator Fischer. I think that this is a good solution given the circumstances and the likelihood that the state's not going to provide significant funding. And quite honestly, I don't feel that my district or the other districts in the basin have the luxury of another year to wait. That's my feeling. However, I think there could be other, better funding mechanisms out there. That's my personal opinion. [LB862]

SENATOR FISCHER: Okay. Thank you very much. [LB862]

SENATOR LANGEMEIER: Are there any other questions? Senator Carlson. [LB862]

SENATOR CARLSON: Senator Langemeier. But these things that have come up, this is an opportunity to speak out and don't even have this opportunity in Executive Session. But we talk about, and you brought it up pretty clearly, that there may not be funding from the state level, and there may not be a funding source from the local level. But in a water short year, there is a cost; we're talking about...what is that cost? According to my figures, just on the people who can't irrigate, just on the 166,000 acres that can't be irrigated, on those people the cost is \$32 million. So there is a heavy cost whether there's money paid or not. But instead of the cost being spread out amongst either the irrigators in the basin or citizens of the state, the drastic thing about a water short year and no funds is it falls on a few people. But it is still there. And that \$32 million is not the end of it. That's just the farmers involved. It doesn't account for all the money lost amongst those associated businesses that support the farming operation. So it multiplies and multiplies. And the \$32 million is a small portion, but it is falling on a few people. And to me, that's the seriousness of it, and we have to do things so that can't

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happen. Do you agree with me? [LB862]

JASPER FANNING: I agree completely with that, Senator. [LB862]

SENATOR CARLSON: Okay. Thank you. [LB862]

SENATOR LANGEMEIER: Are there any questions? Seeing none. Thank you very much. Very good. [LB862]

JASPER FANNING: Thank you. [LB862]

SENATOR LANGEMEIER: Further testimony in support of LB862. [LB862]

DAN SMITH: (Exhibit 7) Thank you, Senator Langemeier and members of the Natural Resources Committee. My name is Dan Smith D-a-n S-m-i-t-h. And I'm the manager of the Middle Republican Natural Resources District and I offer this testimony in support of LB862. A couple of years ago, LB701 was passed and that was needed legislation. These revisions that we're looking at to the bonding authority in that bill are a good improvement to that existing authority. I am circulating some written testimony. I'm not going to go through all that. Most of what I would have said, you have either heard from Mr. Fanning or heard in his responses. But I do want to emphasize a couple of those points in that legislation. It's important to remove that bonding requirement. Bonding is still needed, it's going to be an important component of some of the future things that we do, but the ability to use, whether they be operational costs, as Mr. Fanning indicated, or smaller scale pilot programs, if you will, that one year ability to use those funds is needed. The changes in reference to metering is important. It opens this up to the Tri-Basin. The Tri-Basin has taken some significant steps over the years. They've never been...their portion of the Republican has never been declared fully appropriated. Yet they've gone in with the metering; they've gone in with some...a number of groundwater monitoring wells so they can keep track of where they're at. They've put allocations in a portion of their district that had some declines. And they have taken a number of steps that have moved along with us and have that need for that funding and will benefit from projects that the other districts might start up. So that opening, that revision to who is eligible to use it is significant also. The reference that was added with regard to certifying nonirrigation is also a good change. We struggled with that the first year of the occupation tax. The statute requires that to be applied to irrigated acres. It didn't say groundwater; it didn't say surface water. We decided, the Middle Republican decided not to apply that tax to those CRP acres that were signed up and we were a little bit concerned about that action whether that could be perceived as not applying that out there. But having the opportunity to identify an acre as nonirrigated for purpose of the occupation tax is an important component. The NRDs are the ones that identifies those acres to the assessor. We're provided with a listing; we enter our certified acres from the NRDs and flag that number, decide on what that number will be used and provide

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that information then back to the assessor and down through the treasurer. The occupation tax is sort of like a paving tax or a sidewalk tax that a city may do in that the entity that is receiving that tax identify those people that it applies to. So it's not purely an assessor function. But we have a reservoir in our district, a bureau structure that's the...may have some significant problems. It pulled the water and there is an irrigation canal served by that reservoir that's not going to get water. Not next year. It may be three or four years, potentially it may be never. Those acres are irrigated under that district; they're irrigated in the assessor's office, but those would be appropriate acres should we have an occupation tax next year to not tax. Senator Langemeier, you asked about the commingled acres. Once again, we identify those acres, so we would know where those groundwater acres would still apply. The compact compliance is a state issue. Maintaining a healthy economic irrigated agriculture within the district is an NRD issue and that's what we need to be able to keep strong, balanced, level as we can, minimize the impacts. LB962 required that and we take that charge seriously. That's all I had. I'd certainly try to answer any questions if there are any more. [LB862]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Smith? Seeing none, thank you very much. [LB862]

DAN SMITH: Thank you, sir. [LB862]

SENATOR LANGEMEIER: You did a great job. Further testimony in support? One at a time, that's okay. Welcome [LB862]

MIKE CLEMENTS: Yes, Senator Langemeier. I'm Mike Clements, C-l-e-m-e-n-t-s. I'm the general manager of the Lower Republican NRD in Alma. And I'm here to testify in support of LB862. I guess I would like to thank Senator Christensen for introducing the legislation. I would have to say that I agree a lot with what Jasper had to say, so I'm not going to get into repeating some of his testimony. I have not talked to a single irrigator...groundwater irrigator in our district that would be opposed to paying a \$5, \$10 per acre fee if he could continue to irrigate. And I get phone calls every day. You know, they look at it as though it's a cost of doing business, if you will. And we feel that we want to do some things with this tax to help us to keep from getting to that red box. We don't want to wait until we're there and then pay irrigators because they were shut off. That's not our purpose. I know that that was mentioned earlier. We're more interested, as Jasper had mentioned, in augmentation, some type of surface water leasing projects, voluntary incentive programs to convert from irrigated to dryland. Those are the types of things that we feel that are important and that we need this money for. Our district will be hit extremely hard if we get into a water-short year and we don't have these other measures in place because I'm going to have, even in the least restrictive option that the state is proposed, which was option number 3; I'll have nearly 47,000 acres just in the Lower Republic NRD that would be shut off. So it's important to all of us, it's extremely important to the Lower that we have the ability to fund some of these things

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that we have in the works. You know, you hear a lot of talk about augmentation, but we've been working on augmentation projects for...the planning process, the engineering process for the last couple of years. So it's not, you know, it's not new. There is one thing that would...we would be interested in the Lower of having the option of either a per acre fee or per inch fee. I know that the bill as it's drafted is just so much per acre. But I really think as an incentive to promote conservation, if we could use it...a fee per inch, it would really help to reduce some of the water usage, because I've heard it from irrigators before that they said, okay, well if I'm going to pay \$10 an acre, I'm going to make sure that I pump my full allocation. Now I think there's other costs of doing business that's going to make that...they might say that, but that's not exactly what's going to happen. But I would rather see the guy that's pumping four inches pay for the four inches as opposed to if you're paying for it per acre, the guy that's conserving and pumping four inches is paying the same price as the guy that was pumping eight or ten inches. So, I think it would be...could be a very useful tool, at least for us in the Lower. Actually, that's really all that I think I wanted to say. I would be more than happy to answer any questions. [LB862]

SENATOR LANGEMEIER: Are there any questions? Senator Fischer. [LB862]

SENATOR FISCHER: Thank you, Chairman Langemeier. Thank you, Mr. Clements. Could you tell me, are all of your irrigated acres in your NRD certified? [LB862]

MIKE CLEMENTS: Yes, they are. [LB862]

SENATOR FISCHER: How would answer someone who says they are not certified? [LB862]

MIKE CLEMENTS: I would say I would like to know where they're getting information, because we had a certification process in place. It took nearly a year to do. We sat down with every producer in our district, owners, operators, and went through acre by acre. We had a process. [LB862]

SENATOR FISCHER: How do you know there's not some farmer out there who's put in a well that you don't know about and who is irrigating? [LB862]

MIKE CLEMENTS: I don't want to say that it would be impossible, but I will tell you one thing, that as soon as a well rig shows up anywhere in our district, my phone starts ringing. And it's usually because they're drilling a stock well or something to that effect, but. [LB862]

SENATOR FISCHER: What about in the last ten years, could somebody put in a well and you don't know about it? [LB862]

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MIKE CLEMENTS: Again, I don't want to say that it couldn't have happened, but I would be very, very surprised that it would, would have happened. [LB862]

SENATOR FISCHER: Do you think that's true of the majority or all of the NRDs here in Nebraska, that they know or some of them, I know, are currently working on certifying acres. But the ones who say they know which acres are irrigated and they've certified them, do you think they're being honest about it? [LB862]

MIKE CLEMENTS: I think, you know, it would apply to anybody that has a certification process or not, actually. [LB862]

SENATOR FISCHER: Do you have, like, satellite photos? Seriously, I hear this every now and then and I've...I happen to believe that when you say all of your acres are certified, I believe that. But I'm just thinking of responses to people who come and tell me that you folks are hiding all sorts of things or you don't know. Do you look at satellite photos? [LB862]

MIKE CLEMENTS: We use photos from NRCS and FSA. [LB862]

SENATOR FISCHER: Okay. Thank you. [LB862]

MIKE CLEMENTS: We do. [LB862]

SENATOR LANGEMEIER: Any other...Senator Schilz. [LB862]

SENATOR SCHILZ: Thank you, Senator Langemeier. Mr. Clements, thanks for coming in today. Just one thing that kind of struck me there. I can't disagree with you on the incentive, by charging by the inch, the only question that I have then is, what happens with surface water? If I'm applying more than my consumptive of use is, then do I get paid back because it's now an augmentation project, or how do we do that? [LB862]

MIKE CLEMENTS: Well I think that you...I guess... [LB862]

SENATOR SCHILZ: Because remember, it makes sense for us to use all that allocation of the surface water we can, because that's adding...that's...I mean, it's somebody's right and do we want to start restricting that. I'm not sure we do, do we? [LB862]

MIKE CLEMENTS: Well, and I think that you'll see that a lot of the surface water districts, I'm not sure about Frenchman-Cambridge, but I know that Bostwick Irrigation District, they charge by the inch too. So, and again, it's a conservation measure that they've implemented because they...before, if they had a 12 inch allocation, you paid a flat fee... [LB862]

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SENATOR SCHILZ: Everybody used it. [LB862]

MIKE CLEMENTS: Yeah, you either...use it all, or, you know, the mentality is is if I'm paying for 12 inches, I'm going to use it. [LB862]

SENATOR SCHILZ: Right. [LB862]

MIKE CLEMENTS: And we would rather see somebody pay for what they use. [LB862]

SENATOR SCHILZ: Right, understandable, understand, I guess what I think about is there's going to be times when there's possibly excess water running down the river that you may want to pull out. And I guess that can be defined as per the project, but if you pull out a whole bunch of inches to use...we'd have to work that out so that if you're not...to make sure that you're not getting charged for consumptive use when you're actually doing a retiming project or something. [LB862]

MIKE CLEMENTS: I understand. And I think that those types of things could be worked out. [LB862]

SENATOR SCHILZ: Sure. I do too now that you mention that. Thank you very much. [LB862]

SENATOR LANGEMEIER: Senator Carlson. [LB862]

SENATOR CARLSON: Senator Langemeier. Mike, what kind of complaints do you get from any of the constituents that you serve in regard to regulations or taxing or anything? [LB862]

MIKE CLEMENTS: That's a good question. Going from having no groundwater regulation as far as inches per acre back before our first integrated management plan in 2005, that was a big hurdle. That plan was in place for three years and then we come back and we reduced the allocations by 25 percent. And I got...we caught some flak for that. It's kind of like, okay, you held the carrot out in front of us and you got us to agree to this and now three years later you come back and you're cutting us back some more. Now as some of the previous testifiers had mentioned, with...we have some arbitration issues to deal with and we've got some other issues going forward with our integrated management plans that we have to deal with. But for the most part, the producers have been very, very understanding and they've been very good to work with. And I guess the biggest question that I get is, where's it going to end? You know, is there an end in sight? What's next? What's going to happen three years down the road, you know those types of things. [LB862]

SENATOR CARLSON: Okay. Thanks. [LB862]

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SENATOR LANGEMEIER: Mr. Clements, I have a couple of questions. And the first one, you talked about the Frenchman-Cambridge charging per inch, but that fee that they're charging per inch is, basically, maintenance of a dike, maintenance of retaining water somewhere in a facility, the delivery costs, the billing costs, all that stuff is how they come up with their fee per inch, is that correct... [LB862]

MIKE CLEMENTS: Yes, It's part... [LB862]

SENATOR LANGEMEIER: ...to your understanding? [LB862]

MIKE CLEMENTS: Yeah, it's part of the overall operating costs to cover their operating expenses. [LB862]

SENATOR LANGEMEIER: My fear with taking this type of a occupation tax per inch is, is you have an occupation tax and it's exactly that, an occupation tax of irrigating. If we take it to the level that you suggested to per inch basis, is it not become a water tax per inch of water? And I'm fearful that that is within our correlative rights and within our system, a tax on water is taking this in a total different...I understand where you're going and I understand how you morphed over there, but I think it takes the intent of an occupation tax to a per inch water tax, which I think totally changes where we're going on that. That's just my rough opinion since I've just heard it. [LB862]

MIKE CLEMENTS: Okay, well, and don't get me wrong, I mean, we strongly support the up to \$10 per acre on the occupation tax. This was just a suggestion that our board felt that would be helpful to us and I think it would be...promote conservation. So, but don't get me wrong, we... [LB862]

SENATOR LANGEMEIER: And I would be supportive of that, but I'm fearful that we're changing the definition by going to a per inch versus an occupation tax. [LB862]

MIKE CLEMENTS: I understand. [LB862]

SENATOR LANGEMEIER: I think Senator Schilz has a question. [LB862]

SENATOR SCHILZ: Thank you, Senator Langemeier, You maybe think something...I think you're exactly right and in so...so wouldn't what you're talking about possibly be one of the programs that you could set up using the occupational tax dollars to help incent people to use less water, somehow to do that within the framework? [LB862]

MIKE CLEMENTS: That's...you hit the nail right on the head, you know. [LB862]

SENATOR SCHILZ: Yeah, and so we don't have to change the definition. [LB862]

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MIKE CLEMENTS: Those are the kinds of things that we want use it for. [LB862]

SENATOR SCHILZ: Absolutely, then just one other question and I'll get back to the well metering. I guess to me, I see that this has benefits where there's meters, where there's not meters, all over. I just hate that we...I just hope that we don't preclude some things from happening. Every district, every basin is different and within the framework of LB962, and if those differences were recognized, and those differences are meant to be not just maintained, but also utilized for the best opportunities for each district, so I guess my question is, do you think that there's utility for this idea beyond just places where meters are involved. [LB862]

MIKE CLEMENTS: Absolutely, I do. I think Senator Christensen was just concerned with trying to get this thing passed. But I think there's a lot of...there's a lot of possibilities out there. [LB862]

SENATOR SCHILZ: And don't get me wrong, I understand exactly where the sensitivities are, but I just want to get that on the record. [LB862]

MIKE CLEMENTS: I understand. [LB862]

SENATOR SCHILZ: That this is not a bad deal for anybody. [LB862]

MIKE CLEMENTS: No. I don't think so. [LB862]

SENATOR SCHILZ: Thank you. [LB862]

SENATOR LANGEMEIER: Seeing no other questions, Mr. Clements, thank you very much for your testimony. [LB862]

MIKE CLEMENTS: Thank you for your time. [LB862]

SENATOR LANGEMEIER: Further testimony in support of LB862. [LB862]

KRISTEN GOTTSCHALK: Senator Langemeier and members of the Natural Resources Committee, my name is Kristen Gottschalk, K-r-i-s-t-e-n G-o-t-t-s-c-h-a-l-k. I'm the government relations director and registered lobbyist for the Nebraska Rural Electric Association. I'm here to testify in support of LB862. NREA has taken a position to support legislation and positions that will develop local funding methods for NRDs and river basins that do require additional dollars to fund various methods to augment streamflows in order to meet compliance with river basin compacts, degrees, or other designations affecting a basin, subbasin, or reach. And we do support these methods to help avoid reducing the number of irrigated acres and/or reduce water pumping

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allocations which will have a significant negative economic impact on the region and state. Senator Carlson made a comment that there was a \$32 million cost which doesn't include some of the extras out there. And one of those extras would be the investment that your local rural electric systems have in serving some of these irrigation wells. And the concern is that if we're not proactive in our efforts to augment streamflows to prevent, as Mr. Clements says, getting to that red box in the shutdown of wells, we could have significant economic impacts beyond that \$32 million. If you have the stranded investment of the electric utilities, then the remaining consumers have to bear some additional costs, which again adds to a negative economic impact in those areas. So we do feel that this proactive effort allowing for these types of efforts by NRDs will have a greater benefit than going with the state mandated shutdown of wells if we reach water short years. With that, I do conclude my testimony and be happy to answer any questions. [LB862]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Fischer. [LB862]

SENATOR FISCHER: Thank you, Chairman Langemeier. Thank you, Ms. Gottschalk. When you talk about the investment that an REA makes to these irrigators and the miles of line that are put out to reach an irrigation well, do you have any examples of any specifics? You know, I think of Custer Public Power, which is a huge district, as you know. Do you know how many miles of line are out there that serve as an investment for those local... [LB862]

KRISTEN GOTTSCHALK: Specifically for... [LB862]

SENATOR FISCHER: Yes. [LB862]

KRISTEN GOTTSCHALK: ...irrigation wells? I do not have that number but I would be happy to get that number. The miles are significant because when you look at distribution systems especially in the southeast corner of the state these systems have... [LB862]

SENATOR FISCHER: Southeast or southwest corner? [LB862]

KRISTEN GOTTSCHALK: Southwest, I'm sorry, southwest corner of the state, they have significant numbers of miles of line for the number of consumers out there. And we're talking anywhere from about 1.6 consumers or meters per mile is what I should say, not consumers per mile but meters per mile to about two meters per mile. And within that, a significant number of those miles are irrigation wells. And we're seeing a continued request for additional extension of lines in this area of the state to serve irrigation wells, not to serve new wells but to serve existing wells because farmers are looking for ways to offset their costs. And at least at this point in time, electric service to

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those wells is significantly less expensive than other methods to power the wells.
[LB862]

SENATOR FISCHER: Do you know what percentage of a local REA's portfolio is dependent upon irrigation for income? [LB862]

KRISTEN GOTTSCHALK: Well, it's going to depend on different systems, but in this area of the state we could estimate that a majority of them are in the 50 to 60 percent of their load is irrigation. [LB862]

SENATOR FISCHER: And do you have any idea if that was stopped, if it was closed down as some are suggesting, the impact that would have on the other customers and clients of a local REA? [LB862]

KRISTEN GOTTSCHALK: We don't have those numbers right now although each of those affected utilities are in the process of putting those numbers together so that we can give you a financial impact. But we're in the process now. [LB862]

SENATOR FISCHER: Okay, thank you very much. [LB862]

KRISTEN GOTTSCHALK: But it is significant. It would more than double your \$32 million I think in the long run. [LB862]

SENATOR FISCHER: Thank you. [LB862]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much for your testimony. [LB862]

KRISTEN GOTTSCHALK: Thank you. [LB862]

SENATOR LANGEMEIER: Further testimony in support of LB862. [LB862]

STEVE NELSON: Good afternoon, Senator Langemeier. I'm Steve Nelson. I farm near Axtell, which is in the Tri-Basin NRD. Most of what we farm is in the Tri-Basin NRD, although I do farm land in Franklin County, which is in the Lower Republican NRD, and we irrigate almost all of the land that we farm. Today I'm here on behalf of Nebraska Farm Bureau. I'm the first vice president of Nebraska Farm Bureau. The issue of the occupation tax on irrigated land and the legal questions surrounding its use was thoroughly discussed by our members during our policy development meetings this fall. Our members adopted the position stating that NRDs in fully or overappropriated basins should be provided the authority to raise local tax dollars through means that best fit their districts to fund specific projects or programs determined by the NRD board as necessary to meet the goals of integrated management plans. The policy also states

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protections should be in place to ensure additional revenues are not used for general operations of the NRD. While our members are never thrilled with the possibility of new taxes, in this instance they are willing to provide NRDs in fully or overappropriated basins access to the occupation tax, because without a state or local funding source, viable solutions to our water challenges may not be able to be explored or developed. The only other recourse then would be severe regulation on irrigation. For irrigators, further regulation would be far more disruptive and costly than the occupation tax. Providing a funding source would give NRDs the flexibility to explore alternative solutions. The occupation tax could also serve as a funding source to provide compensation to irrigators who may be completely shut off or whose water is severely curtailed. Again, Nebraska Farm Bureau is in support of LB862, and I'd be happy to try to answer any of your questions. [LB862]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Fischer. [LB862]

SENATOR FISCHER: Thank you, Chairman Langemeier. Thank you, Mr. Nelson, for being here today. Would you say that your support, your organization's support on this bill is a major policy shift from your members from their past stance on new taxes, that dirty word we use, taxes? [LB862]

STEVE NELSON: It is a change because our members had a lot of concern about how the occupation tax could proliferate throughout the state. And there was a desire to limit how it could be used or where it could be used. And it's our thought that with the provisions that are in Senator Christensen's bill that that is addressed and yet still meets the...would meet the requirements of the constitution so it can be put into place. [LB862]

SENATOR FISCHER: In my conversations with a couple of your members, they told me they were willing to make this shift. And one of the reasons was because it's a locally elected board that would impose such a tax. Did you hear that in your discussions that it would, you know, be a local NRD board that would impose the tax or what were the reasons you heard? [LB862]

STEVE NELSON: Well, I think that's right. Certainly we've always supported local control and understand that if those local officials, you know, that they do represent us locally and would see, hopefully see our best interests there. I think the other, you know, and may be an overriding thought and it's been shared by others ahead of me are, you know, just the...I guess the overwhelming negative consequences if we don't have some sort of funding source to address the needs in the basin. And it's been described well by others that have testified before about some of the specifics and the things that can be done that can keep us from a situation where the state ends up providing very severe regulation in order to have compliance. And so I think that would be, in my mind at least, the overriding reason that our members were willing to accept an additional tax. [LB862]

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SENATOR FISCHER: Last year this committee passed a bill out of committee and it was passed on the floor, LB160 I believe was the number of it, that authorized bonding or granted to specifically the Papio NRD bonding authority. And their board chose not to bond. And sitting through three years of testimony on that issue, the fear from people who lived in that district was that bonding was going to take place and their taxes would go up. Did that...did you hear specifically about, you know, the fear that if these NRDs in over or fully appropriated basins would have the authority to levy an occupation tax that they'd do it no matter what in order to get revenue? Or do you think the understanding is out there that, you know, these are local boards and hopefully they listen to their constituents? [LB862]

STEVE NELSON: Well, I think the understanding is there and I think some of the provisions that are in the bill that seem to try to limit that to a certain extent and yet to allow NRDs the ability to develop an...or to use the occupation tax when they need it, I think that understanding is there. Certainly there's always a concern about what could happen or, you know, how a tax may, you know, be expanded beyond what our initial thinking is. But we feel comfortable that this bill is a good one in that respect. [LB862]

SENATOR FISCHER: Thank you very much. [LB862]

SENATOR LANGEMEIER: Very good. Any other questions? Seeing none, thank you, Mr. Nelson, for your testimony. [LB862]

STEVE NELSON: Thank you. [LB862]

SENATOR LANGEMEIER: Further testifiers in support of LB862. Seeing no one coming up, I had a letter but they brought it up already so that's taken care of. Is there any testimony in opposition? I'll let Mr. Cappel do his introduction. Tell us your name and spell it. [LB862]

CLAUDE CAPPEL: My name is Claude Cappel, C-l-a-u-d-e C-a-p-p-e-l. [LB862]

SENATOR LANGEMEIER: Thank you very much. And to keep his whole letter in the time strains, he's asked and we're going to read that in for him. Go ahead. [LB862]

CRAIG BREUNIG: (Exhibits 8, 9, 10) I am in opposition of LB862 as written. I'm sure you want a reasonable solution for the water problems. The primary focus for the state needs to be meeting agreements and compacts. Also because of shortages that vary from year to year, treat each irrigator equal and fair while maximizing the use of that limited amount of irrigation water available each year. I'm offering what might be a solution below. I believe there is already an equitable avenue in statutes that could be used as a model for collecting revenue for retiring irrigated acres and purchasing

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surface water that has been tried, corrected, and proven over time that could be patterned after. It is called operation and maintenances for irrigation districts for delivering water to a user. There is a charge on every acre foot delivered to the irrigator. There could be a charge for every acre foot pumped for groundwater. For surface water, it is called an irrigation district. For groundwater, it would be called basin. Surface water gives a specific appropriation to every specific legal described tract. groundwater would give a specific allotment to a certified irrigated acre tract. All certified acres in the basin would receive the same allotment per acre. The allotment should be for only the original certified acres, which are the way surface water is governed as of a specific date and no allowances for adjusting additional acres for end guns, side rolls, etcetera. Water use in the basin would be controlled on a per year basis depending on the amount available after meeting state requirements. This is a preliminary foundation for discussion. The Legislature or a government entity initially establishes an overall allotment for the basin. Prior to October 1 of the following year, DNR would give the estimated maximum amount that could be pumped for the next year based upon the water supply available for meeting the necessary commitments of that basin. DNR would set the allotment the first week of January. DNR would adjust that estimated allotment of the water available for the next year and update the estimated amount of the allotment for the next year each month through August of the following year. After January 1, DNR could only increase the allotments prior to or during the irrigation season and not reduce it. Every certified acre in the basin gets an equal amount of water that year. In doing this, the pumping amount would be set January 1 of each year with preliminary notice October 1 in the prior year when it is determined there is not enough water to meet the state's needs and an estimate of the estimated allotment for the next year. The allotted amount pumped could be increased prior to or during the irrigated season due to rainfall events or other conditions that would allow more water to be available. If abundant rainfall comes later in a year or after a short water year, the farmer should have an opportunity to refill the soil profile. The following should apply to groundwater irrigators similar to the way irrigation districts have. Allow a farmer to use the water on any acre before they farm in the general locality and not limit it to a specific tract. By allowing the farmer to pool the acres he farms in a reasonable geographic area would allow the use of the limited water in water short years by irrigation their efficient or best land. If carryover is allowed, do not allow the carryover allotments to be used in a water short year. It could be considered to allow transfers, basically ending up selling of water, within a general locality, but not to a greater in feet locality of a decline than where it is being transferred from. By not allowing carryover in water short years, you are dealing with a specific amount of water in order to meet compact requirements. This could be statewide by basins and done in relation to the water available which would be constitutional. It would be fair, equal, and nondiscriminatory. This would give the state control of a specific amount pumped and allow full use of water in years of abundant rainfall and water is available to meet state requirements. A suggestion would be for a groundwater board. It could consist of three irrigators from each NRD within the basin. If the board determined a fee was appropriate for (1) purchasing surface water, (2) buying out irrigated acres

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permanently within the basin, or (3) augmentation, they would determine the amount per acre foot charge. Each basin could determine if they need a fund or not. Having a board and expenditures beyond an approved budget would put forth the various 1, 2, or 3 items above to be voted upon by the irrigators in the basin. It would allow that basin to set the amount collected. It would be limited to only use the money for buying out certified irrigated acres, purchasing surface water, or specific augmentation. Surface water irrigators would not have to pay both the groundwater O&M and surface watered O&M acres. An irrigator could only receive the maximum of one or the other set allotment delivered that year. The decision would have to be made in January which allotment would be used and could not be changed during the year. This could allow the limited supply of surface water to be used more appropriately. Details would need to be determined on the administration of the responsibilities. NRDs would be required to police, read, and monitor meters. I believe Mr. Cappel will answer questions. [LB862]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Cappel? Senator Carlson. [LB862]

SENATOR CARLSON: Thank you, Senator Langemeier. Claude, your...tell us in location approximately where your operation is from McCook. [LB862]

CLAUDE CAPPEL: Actually, my operation is basically some east of McCook and we go up in the Frenchman area. We're in three irrigation districts. In that period of time we have received water one year, this year, on 40 acres. We did receive payment on the Frenchman Valley one year, but the water is so limited that we don't use the water up there. So we're kind of in a unique area there. We're in the Middle Republican NRD so. [LB862]

SENATOR CARLSON: In a normal year, what crops would you raise? [LB862]

CLAUDE CAPPEL: Alfalfa, corn, some wheat on dryland, and soybeans. [LB862]

SENATOR CARLSON: Now this is...you don't have to answer if you don't want to, but on a normal year where we don't have hail and we don't have a wind problem, what would be a typical yield for you on corn? [LB862]

CLAUDE CAPPEL: Irrigated probably, oh, 200, 220, 230, somewhere in there. Dryland, 95. This was not a normal year so. [LB862]

SENATOR CARLSON: All right. In that...on irrigated yield, again on a year where there wasn't hail and there wasn't wind damage, how much water would you need to raise that 220 bushels? [LB862]

CLAUDE CAPPEL: We, over the past time that we've got the deal, I think we're a little

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over eight inches of water; we actually have about 6,200 acre feet of carryover. And now at this point on that same deal, you know, they're talking about shutting off option three maybe or using option three. We...most of our farm operation could be, depending on just where the line is, two-thirds of it could be in that area of that...and right now the irrigated in that area, what we've leased is 165 an acre, dryland is 55. We could not pay our insurance, taxes, O&M and electric standby off of the money we would get on the dryland if they cut that back. I mean it would... [LB862]

SENATOR CARLSON: We both agree that that situation is a disaster. [LB862]

CLAUDE CAPPEL: Yeah, yes. [LB862]

SENATOR CARLSON: But I'm driving at something else here because I appreciate you sharing that 220 is perhaps a typical yield if you get the water. And you said on a normal year then you might need eight inches. [LB862]

CLAUDE CAPPEL: Our average is eight inches. There are years you go a little above eight inches. There's years you go below eight inches. [LB862]

SENATOR CARLSON: Now I think in conversation in the past you've indicated that maybe you could tolerate five inches. [LB862]

CLAUDE CAPPEL: I could tolerate five inches a lot better than I could tolerate nothing. [LB862]

SENATOR CARLSON: Okay. I agree (laugh), I agree with you there. But I was hoping you might say you could raise 220 bushel corn on five inches, but you're not saying that. [LB862]

CLAUDE CAPPEL: In normal years I think on five inches we could probably...I think over a period of time we'd average about 175, maybe more. Genetics should come in awful fast; 2002 was a very bad year. I don't know just where we would have been. But the rest of the years I think we'd be 175, possibly more. We had 176 bushel dryland this year on continuous corn. [LB862]

SENATOR CARLSON: Good. One other question. Five years ago did you ever think there could come a day where through state regulation there could be zero surface water and zero groundwater on your land allowed? [LB862]

CLAUDE CAPPEL: Yes. [LB862]

SENATOR CARLSON: You felt that... [LB862]

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CLAUDE CAPPEL: I've been afraid of it for a long time. I've been fighting this for a long time. Also I handed out a brown envelope. It has the charts of the depletion and stuff. If we don't do something to sustain our aquifer, this state is going to be in some real problems coming up. [LB862]

SENATOR CARLSON: Okay. Thank you. [LB862]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much. We appreciate it. Further testimony in opposition to LB862. Welcome. [LB862]

RUSSELL NIELSEN: Thank you, Senator Langemeier and committee. My name is Russell Nielsen, R-u-s-s-e-l-l N-i-e-l-s-e-n. I farm and ranch near Potter, Nebraska, which is 40 miles straight east of the Wyoming-Nebraska border. And stating the obvious, irrigation is vital to growing anything in western Nebraska where I live because of our extremely low annual precipitation. And I cannot raise dryland corn there. It is also a major source of revenue for electric utility systems. My local electric cooperative, for example, High West Energy, depends on this revenue as it represents one-third of their entire load. And I happen to be president of that board so I fully understand the concerns of allocations. Yesterday the Nebraska Rural Electric Association board voted to support LB862. But as a member of that board, I personally have difficulty supporting the bill. I would like to address the other side of the equation or as you say, wear a different hat. As a landowner and a farmer/rancher in western Nebraska, I am already burdened with high property taxes, which I believe are totally unfair from the standpoint that I am being asked to support education and county expenditures at a higher level than nonrural residents. I am not opposed to funding these programs, but request fairness. Again, I am not against funding for education for the school districts, but they account a large portion of my tax bill and brings reference to the fairness issue. I am also asked to support services of the county at a higher level because of exaggerated valuations placed on land value. Actually to be fair, property taxes should be based or collected on residences only, but for now I would settle for a 50 percent rollback on ag valuation, or at least an income-based assessment. There is a strong correlation between property taxes and the proposed occupation tax. I am now being asked to repay river flow enhancement through an occupation tax when water issues affect the entire state. Therefore, funding should come from the entire state. Realizing that now is not a good time to do that with the budget shortfalls within the state, but I ask what about my operation when a budget shortfall occurs? Having said that, I cannot support an additional tax to further burdensome my operation, especially when the NRD already collects money from property tax assessment. In my opinion, the occupation tax falls under the category of additional taxation. I reference the unfairness of property taxes for ag producers because we are being asked to financially support nonrural things as well. So in summation, everyone in the state should be a part of the provisions related to issuance and repayment of river flow enhancement bonds because anyone in the state that eat or drink should be part of the solution as well. It is pretty easy to be in favor of

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this bill if you have someone else or tell someone else to pay the bill. And once you impose a tax, it is usually here to stay. I urge you and the committee to oppose this bill. [LB862]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Nielsen?
Senator Fischer. [LB862]

SENATOR FISCHER: Thank you, Chairman Langemeier. Thank you, Mr. Nielsen, for coming today. I sympathize with you on your views on property taxes. I'm from Valentine, Cherry County in the 43rd District, and I represent 13 counties which I refer to as grass counties because that's what we raise is grass. And we don't have big population centers there, but we all, including me, complain about property taxes. I would have to respectfully disagree with you, though, when you say that your property taxes support nonrural things. The majority of my property taxes go for my local school district. They go for the county. They go for the fire district. They go for the NRD, the ESU. I'm not pleased that they go to community colleges, but that's another battle that I'm fighting. But those are local responsibilities that we have and I think they're rural. How would you answer me on that? [LB862]

RUSSELL NIELSEN: Okay. I also pay toward a community college, and I do not call that rural. And then the cemetery, of course... [LB862]

SENATOR FISCHER: That's the one where we'll fight the fight together. [LB862]

RUSSELL NIELSEN: ...is shared by rural and urban. Okay. And there's a lot of things. Of course, the fire department is a volunteer fire department and they fight in town, out of town. The cemetery is in town, out of town also. And the NRD is basically in and out also. But my point is like on education, take a person that would make \$100,000 that lives in town and has seven kids, whereas I might make \$10,000 and have one kid, should I be paying ten times as much for the school district? I don't think so. So that's just an example. I'm just saying that I pay way more than my share, and I don't mind paying my share. [LB862]

SENATOR FISCHER: Are you opposed to this bill because it adds another...it could add another tax on you as it could on me too? I live in a fully appropriated basin. So are you opposed to this bill for that reason or are you opposed to the bill because you believe that what you think the bill is addressing here is a state obligation? [LB862]

RUSSELL NIELSEN: No, I...well, both. I really feel it is a state obligation. However, I do not agree with an increase in any property tax, and I call this an additional property tax because it is a tax on my land. [LB862]

SENATOR FISCHER: Do you believe...which NRD do you live in? [LB862]

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RUSSELL NIELSEN: South Platte. [LB862]

SENATOR FISCHER: Do you believe that your NRD would authorize an occupation tax? [LB862]

RUSSELL NIELSEN: Yes, I do. [LB862]

SENATOR FISCHER: How many members sit on your NRD board? [LB862]

RUSSELL NIELSEN: There's seven. [LB862]

SENATOR FISCHER: Seven? Do you think that those members would be reelected if they did impose an occupation tax and the majority of people were against it? [LB862]

RUSSELL NIELSEN: It's funny you should say that because two of the members of the NRD board are actually dryland farmers and they get elected every year. Actually, one is chairman. [LB862]

SENATOR FISCHER: So would they... [LB862]

RUSSELL NIELSEN: I think they would get reelected, yes. [LB862]

SENATOR FISCHER: Then that...don't you think that's a local concern there if your local...I always figure if I'm not doing the job down here I can't get reelected. And I was on a school board for 20-some years, and I always thought if I wasn't doing the job there I wasn't going to get reelected. That's why I think if the NRD board members aren't representing their constituents you guys, you have a vote. I have a vote. You don't reelect people that you don't believe are representing you. [LB862]

RUSSELL NIELSEN: It's funny you should say that because I argue with them and I still vote for them too. [LB862]

SENATOR FISCHER: Oh, well, hey. (Laughter) You need to move to my district then. You're the kind of constituent I want, yeah. [LB862]

RUSSELL NIELSEN: I keep hoping they'll change their mind someday. [LB862]

SENATOR SCHILZ: He's mine, Fischer. [LB862]

SENATOR FISCHER: Thank you very much. [LB862]

SENATOR LANGEMEIER: Senator Carlson. [LB862]

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SENATOR CARLSON: Thank you, Senator Langemeier. Mr. Nielsen, I want to ask you about one of your earlier...you made a statement that it's something to the effect it's easy to vote for a tax when it's somebody else's money. But I think that every one of our testifiers thus far are people that by and large are going to pay the same tax that they are recommending. [LB862]

RUSSELL NIELSEN: Well, I bring reference to that because we had a board meeting yesterday for NREA and, of course, the managers are not going to pay this tax. And naturally they were in favor of it from the standpoint that it might hurt the revenues from the utilities. So that's what I was referencing. [LB862]

SENATOR CARLSON: Okay, and you've got a point there. If the board members want the tax, how long is the manager going to last if he doesn't support it? [LB862]

RUSSELL NIELSEN: I don't think that would be an issue really because he's looking out for the company, you see, rather than the farmer/rancher or whoever, so he's looking out for the company. He, too, has to probably wear two hats, but he's going to look out for the company first. [LB862]

SENATOR CARLSON: In your view, if...how could an occupation tax be palatable if it were determined or voted on some other way? If it's not the board of the NRD, what would be a more palatable way to say yes or no to an occupation tax? [LB862]

RUSSELL NIELSEN: Well from that standpoint, I just wish the state would step in and take control of that issue. [LB862]

SENATOR CARLSON: Tell me what you mean by take control. [LB862]

RUSSELL NIELSEN: Actually paying for the river flows. [LB862]

SENATOR CARLSON: And you and I are in agreement on that. And you tell me how we'll get it done and we'll try and get it done. [LB862]

RUSSELL NIELSEN: See, it's the same issue. And like I was saying, if I have a budget shortfall, I mean, there's nothing I can do. Somebody might take and try to get the money from me. But if they have a budget shortfall, they go out and get more money. It's that easy for them. [LB862]

SENATOR CARLSON: Okay, thank you. [LB862]

SENATOR LANGEMEIER: Further questions? Seeing none, thank you very much for your testimony, appreciate it. [LB862]

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RUSSELL NIELSEN: Okay, thank you. [LB862]

SENATOR LANGEMEIER: (Exhibits 11, 12, 13, 14) Further testimony in opposition to LB862? Seeing no other testifiers, I do have two letters. I have one from Brad Edgerton from Frenchman-Cambridge Irrigation District in opposition; and from Tom Kiplinger from McCook for his personal in opposition to LB862. Is there anyone that wishes to testify in a neutral capacity? Seeing none, I do have one letter received from Brian Dunnigan, director of the Department of Natural Resources testifying in a neutral...or a letter in a neutral capacity. Seeing no other testifiers, Senator Christensen, you are recognized to close on LB862. [LB862]

SENATOR CHRISTENSEN: Thank you, Chairman and colleagues of Natural Resources. I want to thank you for your time in hearing this bill. And first of all, want to apologize for a late change that I threw on you when I first walked in here, but unfortunately I had less than a five-minute notice of an evaluation made by DNR, which unfortunately I wish they give you 24 hours' notice on something like that. But anyway, with...I will take what I said would be acceptable language as understand in talking to the director. Go get his interpretation again and bring it back to you because basically if you went to page 2, line 10, after "adopted" and put "mandatory"; then after "controls" put "for all wells," he felt like it would accomplish what I wanted. Again, that is "mandatory" ahead of "controls" and "for all wells" after "controls." But I will get a second interpretation when he has a little more time so it's not a fast evaluation and bring that back to you with his response. But I also want to go back to the quick review. If we don't pass this bill, we will move the districts either to 3.6 inches in the Lower, 4.8 inches in the Middle, 5.9 in the Upper for allocations; or worse yet, we could have where we shut off everybody within 1.5 miles or 2.5 miles of the river. And with no funding process, uncompensated, we would have the state choosing winners and losers and saying we don't care about you. You're off. That's how sad the backdrop as you heard it described, DNR says it's a last stop. But if there's no funding, it is the only stop. You either take very small allocations or you just say, you know what, we don't care about anybody that lives within 1.5 miles or 2.5 to the river. You're off. And again, you heard about the consequences to property taxes, to our schools. And we'll redo that state aid formula because it naturally adjusts itself and we're going to throw a lot of money west. But I'm asking you if we need to make an adjustment to this bill, make it, let's send it to the floor. Let's get the full debate on the floor so we have local solutions to make sure we can stay out of this backdrop system. I can assure you there's one job I don't want if we don't pass this bill and that is the job that has to force them farmers to shut off their well within 2.5 miles of the river or a mile and a half, whichever option is chosen. If you want to be a target to be shot at, I would say that would be a good job to volunteer for. Because when you're going to take somebody's livelihood away from them, especially young guys, you'll force bankruptcy. It's a very critical situation. I don't say that lightly because I do believe it would take some people out if that is the option that is chose.

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We have the opportunity to either provide state dollars or to provide local solutions. And I'm just trying to present a tool for them to use. Also was shared with me that Southwest Public Power said they'd have to take a 6 percent increase in electric rates just to maintain base service if you're going to shut off all these wells that they serve along the rivers and streams. And it's probably not hard to believe when you heard it could be as high as 40 percent of their business or load comes off irrigation. And it's not just that load. When it comes time to dry grain or run fence to keep the grain fresh, there's another hit. So I just ask the committee to look at this bill very closely, work with me if there's some changes we need to make. I'll be glad to work with you. I'd like to get some local solutions presented to the NRDs so we can address this problem. Thank you.
[LB862]

SENATOR LANGEMEIER: Very good. Are there any questions for Senator Christensen? Senator Haar. [LB862]

SENATOR HAAR: In the summaries and so on that have been prepared for us by our legal counsel, it suggests that this may be unconstitutional. Do you have any viewpoint on that? Have you... [LB862]

SENATOR CHRISTENSEN: I guess I do not have a...if they're talking about this has been challenged in court, the original LB701, and there's some closed-class language determined by the district court, which was never ruled on by the Supreme Court, if they're addressing that, I agree. If you look at the language that I have given or even my offered amendment here, I don't see how you could rule it closed class because I'll give you an example. Any NRD that wanted to, if the majority of them would put in mandatory metering, they would now qualify. That's not closed. You can also get out of it. If Jasper, Dan, and Mike that you've heard from would...their boards would vote to take off the mandatory metering, they wouldn't qualify for this. So I do not believe if you're looking at closed-class language there's any way you could rule this as closed class. Now if there's another issue they're looking at, I'm not aware of it and can't speak to it. [LB862]

SENATOR HAAR: Okay. And then it also in this said that the administration was against it. Is that taken care of by your amendment or what... [LB862]

SENATOR CHRISTENSEN: The administration, are you speaking of the Governor?
[LB862]

SENATOR HAAR: I don't know. It says administration is not in favor of the bill. This is just, again, kind of a summary from legal counsel and so on. And I was just wondering if you could get me any more detail on that or. [LB862]

SENATOR CHRISTENSEN: I don't know if I can give you a lot more detail where the

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Governor, I assume, is what they're referring to in this situation is at. But I know he voted for original LB701, and at that point in time it applied only to the Republican. And I haven't been told if it applied to the Republican only that he wouldn't support it. But I also know that a year ago when I was looking at using fully and overappropriate he opposed it because it added new areas. And that's why when you had your report from Brian Dunnigan showing the expanded area and their interpretation of this section I come back immediately and offered you an amendment... [LB862]

SENATOR HAAR: Okay. [LB862]

SENATOR CHRISTENSEN: ...that would allow it to start slow but still be open class. And so I would hope at that point in time the administration or Governor would still support it. But I have not asked, I can't speak for him, but I would hope there would be the consistency from LB701 to LB862 if it doesn't change the rules. [LB862]

SENATOR HAAR: Okay, thank you. [LB862]

SENATOR LANGEMEIER: Thank you, Senator Christensen. That concludes the hearing on LB862. And while you're here, you're recognized to open on LB932. [LB862]

SENATOR CHRISTENSEN: Thank you, Chairman Langemeier and members of the Natural Resources Committee. Again, my name is Mark Christensen, C-h-r-i-s-t-e-n-s-e-n. And this bill would remove the natural resources districts' obligation to repay the state for financial assistance received from the state pursuant to LB1094 in 2008 if certain sources of revenue for such NRDs become unavailable. This forgiveness only happens if the NRD's source of revenue authorized in Section 2-3225(1)(d) and Section 2-3226.05 or the NRD's ability to use proceeds from such revenue sources become unavailable. In such situations, there remains no more obligation to pay. Basically, what I've done here is when LB701 passed, the NRDs used occupation tax and the property tax, which was found unconstitutional, to buy surface water which bailed the state out. The state also bought water out of Bostwick that year, but without it, the state would not have come into compliance in the five-year average, they would not have balanced 2007, we would have had additional shortages with compliance in the three-state compact with Colorado, Kansas, and Nebraska, and we would have probably seen a different ruling from the court because we would not have hit our five-year average. We would not have hit compliance in '07. And this state would have been on the line. If you think about this was local decisions taking care of a state-signed compact. And that's why you've seen the backdrop that has been placed in or has been asked of the NRDs to place in that will allow us to meet compliance in the three-state compact that the arbitrator said that we have no guarantee that we can accomplish. And when you look at that ruling and what has occurred here, we, thank goodness, in 2008 the Legislature stepped up and paid back the farmers that give up their rights to irrigate the lands and the use of their water or again, the state would have been out of

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compliance. So for that I have been after for two years using the fully and overappropriated language trying to accomplish a way to pay this back. And each year I've been turned down. So I'm now here asking to forgive this debt because the Legislature has not chose to give the NRDs ability. And this is due by 2012. And for that reason, I thought I better step up and ask that this debt be cancelled. The state has already paid for it. Just cancel the debt of the NRDs because they do not have a way to pay for it at the present time. Thank you. [LB932]

SENATOR LANGEMEIER: Very good. Are there any questions for Senator Christensen? Seeing none, thank you very much for your introduction. Testifiers in...we'll now move to testifiers in support of LB932. [LB932]

DAN SMITH: (Exhibit 15) Thank you, Senator Langemeier, members of the committee. My name is Dan Smith, D-a-n S-m-i-t-h. I'm the manager of the Middle Republican Natural Resources District and offer this testimony in support of LB932. I've been also asked to have you note for the record that the Nebraska Association of Resource Districts also supports this bill. Senator Christensen touched on the basics here pretty quick. The Republican River NRDs benefited from the loan from the state of Nebraska. We were able to fulfill that lease agreement we'd made for surface water that did keep Nebraska from getting deeper in the hole with regard to compact compliance. We have agreed to repay those funds, and we recognize our responsibility with that agreement. Now that agreement was conditioned...that agreement with the Department of Natural Resources was conditioned upon settlement of the lawsuits associated with those funds, and essentially those are still in the courts. While the property tax portion of that has been resolved, we are still in the court with that issue trying to figure out how we get those dollars back to each and every taxpayer, not just the select few. So we're still working on that issue. The occupational tax challenge is in Lancaster County District Court here. While we didn't ask for this legislation, we'd be grateful for its passage. There's an interesting dilemma that comes up with this in that we've agreed that we'll pay back these funds to the state. That legislation said if we don't have the ability to do that, the Legislature would come up with another methodology to do that. But the challenge that was decided through the Supreme Court on the property tax issue was that those dollars were being used for...levied for a state purpose. Wouldn't paying back a loan that was used for that same purpose almost meet that challenge again? It hasn't arisen. We don't know if it will. But we once again, we recognize our responsibility with regard to that loan. We'd certainly take this; we're not fools. But we do have the provisions with the current occupation tax surviving to repay those loans. Without that, without a favorable ruling in the courts, we really have no method to do that other than...we have no method to do it. The Legislature would have to come back and restructure that repayment provision that was identified with that legislation. I'd certainly try to answer any questions if there are any. [LB932]

SENATOR LANGEMEIER: Are there any questions? Seeing none, thank you very

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much for your testimony. [LB932]

DAN SMITH: Thanks to the committee. [LB932]

SENATOR LANGEMEIER: (Exhibits 16, 17) Further testimony in support of LB932. Seeing none, any...oops, wait a minute. I have a letter from Lee Orton with the Nebraska State Irrigation Association and I have a letter in support from DeMaris Johnson from the Nebraska Water Resources Association. Is there anyone wishing to testify in opposition to LB932? Seeing none, is there anyone wishing to testify in a neutral capacity on LB932? I do have a letter again from Brian Dunnigan, Director of the Department of Natural Resources in a neutral capacity. Is there anyone else wishing to testify in a neutral capacity? Seeing none, Senator Christensen, do you care to close? Senator Christensen waives closing. The question...(laughter). I've been presiding too long today. It will be a quick Exec Session. With that, we close the hearing on LB932. And I would like to thank everybody for coming to testify and being part of the process. It's an important process. [LB932]