

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

[LB896 LB1074 CONFIRMATION]

The Committee on Natural Resources met at 1:30 p.m. on Thursday, February 6, 2014, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB896 and LB1074 and a gubernatorial appointment. Senators present: Tom Carlson, Chairperson; Lydia Brasch, Vice Chairperson; Annette Dubas; Ken Haar; Jerry Johnson; Rick Kolowski; Ken Schilz; and Jim Smith. Senators absent: None.

SENATOR CARLSON: Welcome to the Natural Resources Committee. And if everybody would take a seat, we'll start our hearing today. I am Tom Carlson, state senator from District 38, Chair of the Natural Resources Committee. And committee members: to my far left is Senator Rick Kolowski from Omaha, District 31. Next to him, Senator Ken Haar from Malcolm, District 21. And then coming in is Senator Jim Smith from Papillion, District 14. The next empty chair will be Senator Ken Schilz from Ogallala, District 47. To my immediate left is Laurie Lage, our legal counsel for the committee. And to my far right is Barb Koehlmoos, the committee clerk. Next to her, Senator Lydia Brasch from Bancroft, District 16; Senator Jerry Johnson from Wahoo, District 23; and Senator Annette Dubas from Fullerton, District 34. Our page today is Steven Schubert from Lincoln, a senior at UNL, here to help you as you need help. And I think before I go into the rules of the regular hearing, we'll move right into our appointment hearing with Rex Fisher. So, Rex, do you want to come up to the chair?

REX FISHER: Thank you, Mr. Chairman. [CONFIRMATION]

SENATOR CARLSON: And Rex is here in regard to an appointment to Game and Parks. So, Rex, as you start, and you've been here before, but state your name and spell it and then tell us what we...you think we should know. [CONFIRMATION]

REX FISHER: (Exhibit 1) Okay, thank you, Senator. It's Rex Fisher, F-i-s-h-e-r, 10925 Fairway Drive in Omaha, Nebraska. First of all, I want to thank the Governor for putting me back up for reappointment; and thank you for taking the time today for my consideration and requesting that I serve another term and I'll talk a little bit about that. In terms of a little bit I thought I'd talk about my background, what I think we've been able to do over the last five years and what I believe is important and why I would like another term. Fourth generation Nebraskan, originally a native of Norfolk; family farms up in that area. I have one up not too far from there myself now. I moved to Omaha when I was younger. I graduated from Benson High School. I graduated from the University of Nebraska. Started working for Northwestern Bell and spent 30 years in the telephone industry. Lived all over the country, so I got to see a lot of places, but I managed to get transferred back here three different times. Most recently as a state president back in 2003. And now I'm a senior vice president with HDR, one of the country's largest engineering and architecture firms, I'm their senior vice president of

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

corporate relations. We have about a thousand employees at our headquarters and 8,000 across the country. Certainly enjoy the outdoors: hunting, fishing, golfing, probably do it less as a commissioner, though, for some reason. So I'm hoping that I'll do it more someday when I'm not. So I don't know how that works. Been fortunate to serve on a lot of different community and nonprofit boards: the Omaha Chamber, the Nebraska Chamber, United Way, Ak-Sar-Ben, Salvation Army, Omaha by Design, University of Nebraska at Lincoln advisory board, Sister City in Nebraska diplomat. So been able to be involved in a lot of different things and I do think that that experience has probably served me well to understand all of Nebraska, particularly since I'm the at-large commissioner. Okay, so, I think it has matched up very well. In terms of what we've done of over the last five years, it's certainly not any one person. I'm just one person with a group of commissioners and a bunch of professionals and I think every one of the commissioners brings success in their field. And along with that, they care deeply about protecting and preserving our natural resources. And I'm proud of what we've been able to accomplish the last five years. I think we're going to have to continue to do a lot more. There's a lot of challenges ahead, but I think bringing some experience in areas like budgeting, marketing, public relations, communications, media relations, personnel is valuable. I also serve on two committees...three committees at the commission: budget-finance; I chair our legislative affairs committee; and also our endowment and foundation relations. In terms of over the last five years, I thought I'd mention a couple of things that we've done that I think show that we're doing a great job there, in my opinion. I think first of all, we were very fortunate in Nebraska to have a lot of stability in two directors; we had Gene Mahoney and Rex Amack, both served for 20 years. And I think it's something that we're proud of in the decision we made to have Jim Douglas as our new director. That's something that has happened over the last five years. Put a strategic plan in place three or four years ago called Focusing on the Future that's really guiding what we do. On budgeting, put together an administrative study committee and I think we've tried to lead at setting an example across the state of managing budget and personnel. We've reduced budget during the last five years in times when things weren't as good. And I think we've also been able to do a lot with public/private partnerships across the state with our parks, with community projects. We privatized the restaurant at Mahoney. We went from losing \$180,000 a year to now making over \$100,000 a year. We've done an arrangement publishing with our NEBRASKAland magazine. So I think in the whole budget arena, we pay a lot of attention to that. I think our funding model, as we've talked about, has transferred over the years from 25 years ago being 70 percent from the Legislature and 30 percent from fees and that's flipped now, it's 30-70 the other way. So, fortunately, the Legislature last year spent...put \$2 million towards Mahoney and McConaughy, and I think there's a lot of ways we have to work at those partnerships. Hunting, you know, it's something that in most areas we probably have more species in the big game than we've ever had. It really is a golden age in Nebraska if you look at deer and elk and all the larger species, turkey that we have. Certainly worked hard at pheasants. That's a bit more of a challenge, but it's certainly something that's close my heart, not just because I wore my

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

pheasant tie, but there are certain challenges on pheasants. But I think the focus in the last few years about looking at certain areas, six or seven areas of the state that we can really do a good job with, versus trying to do something everywhere has worked out. With youth, I think we're particularly proud there with what we've done with youth permits, more hunting permits, more programs. As somebody who was fortunate to spend a lot of time on the farm and the city, I think our urban access to lakes is critical. I think we've done a lot. We've renovated Carter Lake; we had 17 partners in that effort, \$5 million in aquatic habitat. We have our Carp-O-Rama which teaches kids how to fish. And for a kid who went to the lagoon at Benson Park on Saturdays to catch carp, I think that's really important. We're doing family fishing nights around the city with some of the golf courses. And the amazing thing is, when you leave that, mainly you see probably more women bringing their kids, mothers, and so we think that's been good; Angler Access at Lake Wanahoo, new shooting range at Sykes Park and Platte River State Park. So I think we're doing a lot in the urban lakes. I think also we haven't shied away from controversial decisions if we believe they were in the best interest of Nebraska. I think increasing or reducing bag limits on the seasons is always touchy, but I think it's worked well when you look at where we are and all the species we have. We allowed alcohol in the state parks three years ago. That was controversial, but, frankly, if you look at the law enforcement reports the year after versus the year before, there's really no difference. And it's also expanded and we have a lot more receptions and weddings and events now that occur there because of that available. Mountain lion decision, another one that's controversial. And privatizing Mahoney, privatizing anywhere can be controversial. So I think we've tried to do what we thought was best and what was going to move the state forward. Going forward for me, why I want to serve, I think we want to continue to make progress in a lot of the areas we talked about. We still want to lead the way in terms of what we're doing to run our budget. I think more of those partnerships is important. That sustainable funding model, this year we have two bills up, LB814 and LB841 on sales tax, as well as some one time...that's something that we're going to continue to focus on. I want us to do a lot more to get us on a solid footing, not just to address the deferred maintenance issues we have, but going forward on what we can do. On hunting, people might say you're crazy, but I think we can make more progress with pheasants and Commissioner Berggren keeps us focused on that all the time. I think with the youth permits, that's been great. The pricing...I got...I was fortunate to draw five of those at a Ducks Unlimited banquet last week in Sarpy County. And I don't know who was happier, the kids or the parents when we drew and presented them with a lifetime hunting permit. So, that's very special when you do that. And for me being an at-large commissioner, I do think we continue to stock our urban lakes and do more to get kids in the urban areas exposed to fishing opportunities. So, finally I'd say as a kid that was born here and raised in the outdoors, it's pretty hard for me to imagine a greater privilege and responsibility than serving at Nebraska Game and Parks. The dedicated professionals we have on the staff; and commissioners that are involved makes it very special for me. It's probably the thing I've done in my life that I value more than anything in terms of outside activities. So I ask for your serious consideration and

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

I'd open it up for questions. [CONFIRMATION]

SENATOR CARLSON: Okay, thank you, Rex, for your testimony. Questions of the committee? Senator Johnson. [CONFIRMATION]

SENATOR JOHNSON: Thank you, Senator Carlson. Thank you for coming in. You're involved on the finance side pretty heavily and appreciate that; and we know your concerns and I think privatizing some of these facilities is a great move. Do you see, hopefully, more opportunities to leverage your endowment or that within cities or counties, communities where we can do some of this maintenance work, or do you see that as having to be new money, just strictly new money? [CONFIRMATION]

REX FISHER: You mean in terms of finding money? [CONFIRMATION]

SENATOR JOHNSON: Um-hum. [CONFIRMATION]

REX FISHER: I don't know how much money per se is available to do that. I think you can accomplish that when you do the partnerships. And we had to close some of the...when we...some of the parks were closed down early, I think the community stepped up in a bigger way than we thought. When they step up with people and they step up with attention, that makes a difference. I think in terms of foundation money, if you're talking about that, that typically gets more on to specific projects. [CONFIRMATION]

SENATOR JOHNSON: Um-hum. [CONFIRMATION]

REX FISHER: So, you know, I think some of the issues that you mentioned or why we're really focused on getting a sustainable, predictable funding model, and I think that's where most of it has to come from. But at the end of the day, we're going to look for anything we can and I think there's been a lot of creativity in the last few years if you look at all these partnerships. So we'll look around for what we can do and I think that's going to be the future is figuring how do we get partners. We get a lot of help on the federal side and from a lot of our conservation groups who want to make sure our facilities and the properties we have are well kept. So, it's a complicated issue. I wish it was a real simple straight answer. [CONFIRMATION]

SENATOR JOHNSON: Thank you. [CONFIRMATION]

REX FISHER: You bet. [CONFIRMATION]

SENATOR CARLSON: Okay, Senator Brasch. [CONFIRMATION]

SENATOR BRASCH: Thank you, Mr. Chairman. And thank you, Mr. Fisher, for your

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

willingness to serve again on the board. And it sounds like you've just done excellent things. When we mention maintenance, I don't believe the public understands that it goes beyond the mowing, that we have many things we have not met with the Americans Disability Act, is that correct and your thoughts along that line?

[CONFIRMATION]

REX FISHER: Yeah, I mean, I think we have the second...we rank second in the state of Nebraska amongst any organization in terms of the number of buildings and facilities only behind the university. So it's not just mowing, you're right. It's keeping up facilities, keeping them safe, having enough of them for the public that wants to use them, not to mention expansion in places that come in. And you mentioned ADA which is something we...we have a number of projects and priorities there that we're looking at. And, you know, that's an issue when we look at a new property and we have to go in and make it ADA compatible and all that. So there's...the condition of our facilities that deferred maintenance has affected, it is actually the landscape itself in some ways because your landscape has to be healthy and the whole park, it's an ecosystem. And the ADA issue is a big one. And we were talking just recently about how we go about prioritizing where those...the most important projects are. That's exactly right. [CONFIRMATION]

SENATOR BRASCH: And thank you for your willingness to be reappointed and your work. [CONFIRMATION]

REX FISHER: Thank you. It's a privilege. [CONFIRMATION]

SENATOR CARLSON: Okay, thank you. Other questions? Yes, Senator Kolowski. [CONFIRMATION]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Mr. Fisher, again, thank you for your service and for your desire to continue with that service. One of the...I guess a comment more than anything else, having had eight years on the NRD board in the Omaha area, I always was really pleased to hear all the cooperative things we were able to do with Game and Parks over the years with the lakes in the Omaha area all the way up to South Sioux City. And that was a great collaboration and sharing of a lot of tasks at times and good relationships always at the forefront. That will serve us well as we continue to do that and I thank you for your help in that. [CONFIRMATION]

REX FISHER: Thank you. [CONFIRMATION]

SENATOR CARLSON: Okay. Other questions? When you first started your report and you talked about privatizing and I think...the first thing I think about is the restaurant at Mahoney. Was that the figure that...did you give a figure on that and the turnaround? [CONFIRMATION]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

REX FISHER: Yeah, when we first privatized, I think it goes back three years ago, we were running about \$170,000 deficit. And when we...and now with Parker's who runs it, I think our profit-sharing arrangement with them is generating over \$100,000 a year for us so I think it's a very successful model. You know, the restaurant business is tough. You want people who really know how to do it. So I think it's been a winner for Game and Parks, for the people who go and eat there, and I think it's a winner for the state too. So it's not always as easy...or as clean as that, and it wasn't easy to make that happen, that transition was difficult because there was a lot of considerations and people affected and all of that. But I think public/private partnerships in one fashion or another or privatization, if it works, if it makes sense, is something that's good and we're very proud of what's happened at Mahoney. [CONFIRMATION]

SENATOR CARLSON: I mean that's such a terrific turnaround and the public has accepted what's there now, I would assume, and there is satisfaction in it. [CONFIRMATION]

REX FISHER: Yeah, we get a lot of compliments on it. [CONFIRMATION]

SENATOR CARLSON: Good. [CONFIRMATION]

REX FISHER: People go more. So at the end of the day, that's what makes a restaurant work. [CONFIRMATION]

SENATOR CARLSON: All right, any other questions? Seeing none, thank you for your testimony. [CONFIRMATION]

REX FISHER: Thank you, Mr. Chairman, and thank you, Senators. [CONFIRMATION]

SENATOR CARLSON: All right. Is there anyone wishing to testify as a proponent? Anyone as an opponent? Or anyone in the neutral position? Seeing none, then we end the appointment hearing on Rex Fisher and thank you for coming. And we're just about ready to go to the next bill, but I'm going to go over rules a little bit before we get into that. If you're planning on testifying, make sure that you filled out a green form before you come up here and give that to Barb over here. Take your place at the table and you don't need to adjust the microphone because it will pick you up. It's picking me up back here and it will pick you up so you don't need to change that. Start by stating your name and spelling it so that we've got an accurate record on the transcript if you would. If you don't want to testify but you want your name entered into the official record, there's a white sheet back there that you can sign and that will work. You may submit comments in writing and have them read into the official record. Again, if you don't want to testify, but want to pass out material you can do that. I just heard something about 10 minutes ago and I forgot to say this, nobody on the committee uses any electronic machines during the testimony, and those of you who have cell phones, either please turn them

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

off or go on vibrate and we'd ask you to do that. There are no displays of support or opposition to a bill, so we don't want any of that. And let me get a count here, how many of you intend to testify today? Okay, I think that we will use the lights and when you come up and have given your name and spelled it, then the green light will come on and you have four minutes, the yellow light will come on and you have one minute. The red light comes on and if you don't stop, there's a trap door underneath the chair there and that will take care of it. So try and wrap it up when the red light comes on or we'll have to remind you to do that. So we appreciate that. Any questions before we proceed? Okay, Senator Brasch. [CONFIRMATION]

SENATOR BRASCH: Thank you. And welcome, Senator Carlson, Chairman. [LB896]

SENATOR CARLSON: Thank you, Senator Brasch and members of the committee. I'm introducing LB896 for this hearing today at the request of the Nebraska Association of Resource Districts. In 1986, the Legislature passed the Erosion and Sediment Control Act which required the state to create a comprehensive erosion and sediment control program designed to reduce soil erosion to tolerable levels. The act also required natural resource districts to adopt a plan to implement the state's program and provided them with the authority to receive soil erosion and sedimentation complaints by landowners. Since then, the conversion and development of marginal and highly erodible lands from conservation reserve programs lands, pastures and rangeland, and riparian lands to crop land raise the potential for increased erosion and sedimentation problems and led to greater frustrations for landowners whose lands were being damaged by storm runoff and sedimentation. And as a result, the NARD adopted a resolution last year to request changes to the Erosion and Sediment Control Act because the act as currently written provided a limited ability for the natural resources districts to effectively address the erosion and sedimentation problems that were causing them. And a representative from the natural resource districts will testify after me to explain the problems that they've faced with enforcing the act and to explain the specific changes to the act that will provide them with the authority they need to effectively handle the complaints. So I look forward to their testimony and explanation as to why LB896 is an appropriate bill. And I don't know that I can answer questions right now, but I'll certainly try. [LB896]

SENATOR BRASCH: Are there any questions from the committee? Seeing there are none, I would invite the first proponent to come forward. Please state and spell your name. [LB896]

MIKE ONNEN: (Exhibit 2) Senator Carlson and members of the Natural Resource Committee, I am Mike Onnen, spelled M-i-k-e O-n-n-e-n. I'm the manager of the Little Blue Natural Resource District in Davenport and I'm here today supporting LB896 on behalf of my district and also the Nebraska Association of Resource Districts. Senator Carlson's introduction, I think, was very appropriate, it talked about the initiation of this

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

act in 1986. We have conducted many investigations of soil sediment and erosion problems over the last 25, 26 years. And it seemed like as we've progressed through the process of these complaints, we found several problems that exist. We have worked with the Natural Resource Conservation Service since the beginning to identify soil loss limits, what are tolerable for soil loss, and also to address damage that occurs downstream to landowners. That's really the intent of the law is to protect downstream landowners. The bill that we've presented today tries to address some of the issues we felt were kind of loopholes or problems with the law. One specifically is the definition of excess erosion, so we've tried to explain that and also provide an opportunity for NRCS to more clearly define that in their own rules and regulations similar to the Groundwater Management Act and irrigation runoff rules. So it gives them a little bit of flexibility. The law also addresses what we call soil loss tolerance levels; they used to be called soil loss limits. That was the definition provided by the NRCS. So the definitions are a very important part of this bill. Just to give you a little bit of a sense for the type of erosion we're dealing with; and I have it attached to my testimony some photos that might help to explain some of the problems. And if you would turn to the third page, I'll try to explain what those are. Typically sheet erosion is that that is a very thin layer of soil that is lost from the surface of the ground. The top picture there shows some sheet erosion from soil that is blown from a bare field, basically in a field in a county road ditch. The one below that is called the rills that you see in the soil there are what is called the sheet and rill erosion. That is something that these...the law currently addresses sheet and rill erosion. But it doesn't go to the next level dealing with complaints based on larger or more predominant erosion problems. The next page also shows some rill erosion, but it shows some of the sedimentation at the bottom of the field that is occurring. The bottom of the second page of photos, basically starts to show some of the ephemeral and gully erosion problems. And these are the things that are developing primarily as a result of no till and conservation tillage. In visiting with the NRCS, they say their land treatment with residue typically will control most of the sheet and rill erosion, but no till has a tendency to focus water to those drains, natural drains which in many cases are cut out. And if you've see a lot of farms through the area that have been plowed shut, those areas plowed shut in the fall of the year, they're farmed through the next year, but any rain that comes, typically, will flush that soil out of those pockets again. Those are the kind of problems that we are...have been facing. The last page of photos simply shows some with sediment damage that is occurring across on neighbors' land. In some cases, the bottom picture, even in the county road right-of-way that's filled in as a result of sedimentation. The goal of the act is to...or the changes to the act are to include ephemeral and gully erosion so we have a broader base to work with when damage occurs to landowners downstream. Another clause of the bill provides that we have the opportunity, should there be an immediate need to terminate some kind of an activity, it may be a construction site or whatever, where erosion is occurring and improper or no conservation measures have been put in place. It gives us an opportunity to shut that operation down until conservation or erosion protection measures are in place at which time that cease and desist order would be lifted. And then the final provision of the bill is

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

one that's been a little bit of a problem because some landowners have refrained from getting assistance or they've encouraged their neighbors to file a complaint against them so they could get 90 percent cost-share to remedy the problem. As a matter of fact, I had a call on the way up here today of a situation just like that where one farmer was asking another to file a complaint. This would simply take away the...the recommendations are that the cost-share of 90 percent would be taken away. The cost-share would still be available based on the level provided by the districts for any other practice, but it would not prevent or keep the farmer from doing what work was necessary to prevent damage on his neighbor's property. So essentially the objectives of our program is to simply tighten the reins a little bit; give the NRDs a little bit more teeth to manage the soil conservation provisions that we have authority to do in the law. And I guess I would accept any questions you have at the present time. [LB896]

SENATOR BRASCH: Thank you, Mr. Onnen. Are there any questions from the committee? Yes, Senator Johnson. [LB896]

SENATOR JOHNSON: Thank you, Vice Chair. Thank you for coming here, Mr. Onnen. One of the...maybe you can help...the relationship between the commission and the local NRDs, I know there's a lot of differences in situations, types of soil, topography, and that type, how much control does the commission have in adopting these various policies and then again, the enforcement of them? [LB896]

MIKE ONNEN: The initial law in 1986 required the state to, basically, adopt a soil, a sediment erosion program for the state. And they did that, they conducted meetings around the state and developed a plan. Then they also reviewed each one of the districts' plans. We were required to submit a plan based on the guidelines of the statutes of how we would deal with erosion and sedimentation in our districts. And they, basically, reviewed those to make sure they were in compliance with the plan of the state. In looking at this program now and recognizing that there have been some changes that have taken place in NRCS's standard as well, they admit that they probably need to take a look at that. It's been 25 years since they've reviewed the document and need to make sure that they, again, are in conformance with NRCS standards for erosion and sedimentation problems. So we still do work with them. I guess we have not had a little...a very close working relationship with the commission per se because the plan is in place and we are all operating with our own individual rules and regulations. [LB896]

SENATOR JOHNSON: Does this new change allow for an individual that has a concern of runoff and erosion from another person's property to go to the commission or to go someplace else to resolve an issue? [LB896]

MIKE ONNEN: They are intended to go to the natural resource districts. We were given the authority with the law to do that. So instead of going to the commission, they would,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

typically, go to their local NRD. [LB896]

SENATOR JOHNSON: So that's as far as the person can go. That is the top versus the commission? [LB896]

MIKE ONNEN: Yes, well, if...if they are not satisfied, I guess, with the results they get with us, then they have to go to the court system for some assistance. And right now we've...you know, that's one of the walls we've run in to with only addressing sheet and rill erosion. As I said, if we can't help them, their only other alternative, if they have a problem with a neighbor, is to file a lawsuit. [LB896]

SENATOR JOHNSON: Okay, thank you. [LB896]

SENATOR BRASCH: Are there any other questions from the committee? I would have one question. I'm looking at your illustrations here and the different types of erosion that you've classified that affects land and, unless I'm missing it, what about flooding? We had flooding along the Missouri, is that...? [LB896]

MIKE ONNEN: Well, the NRDs have authority for flood control as well; that's one of our legislative authorities. This program is really addressing things that can be measured from a field level. So when the NRCS inspects a field, they have to be able to determine what are the boundaries of the watershed that are contributing and how many tons of soil loss are coming from that particular tract of land. It may be multiple tracts, it could be two or three, but when we get into a flooding situation... [LB896]

SENATOR BRASCH: That would be outside of this? [LB896]

MIKE ONNEN: Somewhat outside of that. And occasionally you'll have sedimentation damage that occurs from a catastrophic storm, which, you know, sometimes we simply have to tell the landowner that's not a typical situation. But when these kind of problems occur time after time, and the upstream landowner has not made an effort to try to control that erosion from their land, that's when they need some help. [LB896]

SENATOR BRASCH: Very good. Thank you. Seeing there are no other questions, will the next proponent please come up and testify. Please state and spell your name. [LB896]

DEAN EDSON: (Exhibits 3 and 4) Thank you, Senator Brasch, members of the committee. My name is Dean Edson, spelled D-e-a-n E-d-s-o-n and I'm the executive director for the Nebraska Association of Resources Districts. And I'm submitting some letters of testimony from the Middle Niobrara NRD and also the Nemaha NRD. They go through some of the examples of problems that they've had. I'm not going to read these verbatim based on the time frame we have here, but I want to summarize a couple of

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

things. A couple of key things to keep in mind here is one of the main problems is there's a 90 percent cost-share requirement that kicks in before we can force anyone to take corrective action. And so what we've seen repeatedly across the state is someone will file...ask a neighbor to file a complaint so that they can get 90 percent cost-share to fix the problem. We don't think that's fair that taxpayers ought to fix someone else's issue that they've created. What we want to do is try to put in some provisions in here that cost-share will be available, but not at 90 percent. But they need to fix the erosion problem that is occurring. The other thing I want to point out on the commission, the commission under this bill would set up the general rules and regulations. There would be four public hearings across the state, so that's the role of the commission is to help hold the hearings and set up the framework for this. And then each individual NRD then would adopt their own plans for enforcement. I was approached this morning that there was some concern that we are going to try to regulate surface water canals with this and dams, and that's not the case. This has absolutely nothing to do with the surface water irrigation district or a project or a reservoir. This deals solely with erosion control where it causes damage on someone else's property based upon a farming practice or building construction practice that someone upstream has. So I want to make that perfectly clear. If there's something in this bill that indicates otherwise, I'd be glad to work on some language to clarify that. The one thing I would like to point out though, from the Middle Niobrara NRD testimony, there was one situation dealing with a dam and it was an old mill dam that was...that is privately owned and it was filled with sediment. And the individual that owned it went and pulled the slush plug to drain that dam and get rid of all that sediment. What he ended up doing was destroying seven miles of trout stream in the Niobrara Basin. And there was a massive trout kill and fish kill with that. And when that occurred, it was a hundred degrees. It's going to take, probably, a decade or more to restore that trout stream based upon that individual's actions. And that's the only time we've ever had a situation that involves a dam on erosion and sediment control. But that again destroyed seven miles of trout stream and some adjoining property downstream for the next 10 miles. With that I'll end my testimony and try to answer any questions you might have. [LB896]

SENATOR BRASCH: Are there any questions from the committee? Seeing there are none, thank you, Mr. Edson. [LB896]

DEAN EDSON: Yep. [LB896]

SENATOR BRASCH: Are there any other proponents wanting to testify today? Seeing there are none, are there any opponents? Seeing there are none, is there anyone wanting to testify in the neutral? Please state and spell your name. [LB896]

BRIAN BARELS: (Exhibit 5) Thank you, Vice Chair Senator Brasch and members of the committee. My name is Brian Barels, B-r-i-a-n B-a-r-e-l-s. I'm the water resources manager for Nebraska Public Power District. NPPD operates electric power generating

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

facilities, transmission and distribution facilities, and irrigation facilities across the state. As a result, NPPD has land uses and uses it in a variety of ways. I'm here to testify in a neutral position on LB896, however, I request that the committee give consideration to modify a new paragraph 4 on page 11 of the proposed bill. As proposed, the new language lists three activities that are not covered. Those are tillage, seeding and cultivation of farmland which are not subject to this new paragraph related to cease and desist orders. NPPD believes the paragraph should state clearly what the other activities are that this paragraph is intended to cover. In that manner, citizens of the state of Nebraska would know how these statutes would be applicable to their land-management actions and could, hopefully, avoid getting in that situation. Thank you very much and I'd be glad to answer any questions you have. [LB896]

SENATOR BRASCH: Are there any questions from the committee? Seeing there are none, thank you for your testimony today. [LB896]

BRIAN BARELS: Thank you. [LB896]

SENATOR BRASCH: Is there anyone else wanting to testify in the neutral? Seeing there are none, would you like to close, Senator Carlson? [LB896]

SENATOR CARLSON: Thank you, Senator Brasch and committee. You see with two proponents and no one in opposition but Brian Barels indicating a concern, and certainly I will ask that Brian get together with Dean Edson and come out with a satisfactory wording and then I'll bring that back to the committee. [LB896]

SENATOR BRASCH: Are there any questions from the committee? Seeing there are none, that will close the hearing on LB896. Thank you. [LB896]

SENATOR CARLSON: And with that, we will open the hearing on LB1074. And, Senator Lathrop, the timing is perfect and you may open. [LB1074]

SENATOR LATHROP: (Exhibit 6) So is the bill, Mr. Chairman. (Laughter) A little humor. Mr. Chairman and members of the Natural Resources Committee, my name is Steve Lathrop, L-a-t-h-r-o-p. I'm the state senator from District 12 and I'm here to introduce LB1074. LB1074 would be an amendment to the Ground Water Management Act, and maybe I'll open in this fashion. The Ground Water Management Act, which I'm becoming more and more familiar with over the last year, basically tries to manage groundwater across the state in this fashion. They have three categories of appropriation statuses. Right. The first is not fully appropriated, which would be there's room to appropriate more water from the basin. Then there is fully appropriated, which would suggest that you are at a place, and it's defined in the statute, it would suggest you are at a place in a basin where you've used as much as you can and you're going to start depleting the resource over the years. Right. And then they have a third

Natural Resources Committee
February 06, 2014

category called overappropriated. And you'd expect that overappropriated would be defined like fully appropriated is by where you're at in terms of sustainability. And instead, we define it in statute by what river basin we want to tag with that definition. And I can...I was going to read part of it to you, but the point of overappropriated under the Ground Water Management Act right now is it's defined to be a particular basin. It doesn't have anything to do with whether we're using more water than we can sustain, nor does the current definition allow another river basin to be included. So essentially what we've done is we've singled out the Platte River, portions of the Platte River, labeled them overappropriated with a legal definition and not a hydrological definition, and we've said to the rest of the river basins you can never be overappropriated under the Ground Water Management Act because you're not the Platte River. And there may be river basins in the state that are overappropriated but can never have the advantage of the rest of what the act is intended to do, which is to create a goal of sustainability. It is that simple. LB1074 replaces the current definition of overappropriated with language that mirrors the definition for fully appropriated, except existing uses must have already caused water supplies to be insufficient as opposed to existing uses being equal to but not exceeding water supplies. The fully appropriated designation is based on science, specifically the Department of Natural Resources conducts an evaluation using the best scientific data information methodologies already available. LB1074 applies the same procedure for purposes of determining whether a basin is overappropriated. Redefining overappropriated is supported when one considers how groundwater withdrawals from the aquifer have led to significant levels of decline in parts of Nebraska since predevelopment. And that would be a comparison with about 1950 to where we're at today. This trend was recently highlighted by the 2012 drought. The drought especially impacted those areas where hydrological connection exists. Because recharge from the precipitation helps sustain sufficient groundwater levels, in drought conditions the aquifer does not benefit from recharge, creating an imbalance between discharge and recharge resulting in water level declines and storage depletions. The Nebraska Statewide Groundwater-Level Monitoring Report noted that drought caused some of the greatest recorded one-year levels of decline in Nebraska. The report also cautioned that limiting groundwater extraction to the rate equal to precipitation will not prevent groundwater depletion because groundwater mining is prone to occur in heavily pumped...in the heavily pumped aquifer. We can neither predict nor control the weather. LB1074 addresses what we can control, and that is sustainable management practices. For your review and consideration, I'm handing out copies of the Nebraska Statewide Groundwater-Level Monitoring Report, an article discussing the report, and maps indicating groundwater level declines and rises since predevelopment, again 1950 or so, to the spring of 2013, the severity of the 2012 drought, the area designated overappropriated, and the areas designated as fully appropriated. I ask for your support to advance LB1074 and I'm happy to answer any questions. [LB1074]

SENATOR CARLSON: Okay. Thank you, Senator Lathrop. Questions of the committee? Would you go back to your start and you talked about fully appropriated

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

and, you know, the condition where we aren't even fully...we used to call it underappropriated, I don't really have an actual terminology... [LB1074]

SENATOR LATHROP: Not yet fully appropriated. [LB1074]

SENATOR CARLSON: ...not yet fully appropriated. What did you say fully appropriated was? [LB1074]

SENATOR LATHROP: Fully appropriated, and if you look at the bill, Senator Carlson, I'll tell you where the definition is found, it's found in LB1074 on page 13. And you'll see (3), and basically when the department determines that the then-current uses of the hydrologically connected surface water and groundwater, in the river basin, subbasin, or reach cause or will in the reasonably foreseeable future cause the surface water supply to be insufficient--I'm paraphrasing now--to streamflow to be insufficient to sustain over the long term the beneficial uses from wells constructed in the aquifers dependent upon the recharge from the river or, (c) reductions in the flow of the river or stream sufficient to cause noncompliance by Nebraska with an interstate compact. And the definition that we would be inserting for overappropriated basically just says when that's actually happened, when the scientists can tell you that that's actually happened and it's taken place, then you know you're at overappropriated. And that would be a substitute for what we have now, which is a definition of the Platte River and no other river basin. [LB1074]

SENATOR CARLSON: Okay. On page 13, you've taken current statute and just put reevaluation in there, so what I ask about isn't new, that's been there, correct? [LB1074]

SENATOR LATHROP: That's true. [LB1074]

SENATOR CARLSON: Okay. And I won't ask you anymore on that. I may ask somebody else on fully appropriated there. But I appreciate that. Any other questions of the committee? Seeing none, will you be here to close? [LB1074]

SENATOR LATHROP: I will. [LB1074]

SENATOR CARLSON: Okay. [LB1074]

SENATOR LATHROP: I'm very interested in this. [LB1074]

SENATOR CARLSON: All right. Thank you. [LB1074]

SENATOR LATHROP: Thank you. [LB1074]

SENATOR CARLSON: And we're ready now to hear proponents. And let me ask how

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

many proponents do we have? Okay. We've got a number. So, again, we're going to use the five-minute clock and would ask you to maybe a couple of you could move forward and just get in an on-deck position so that we can move ahead well and be efficient on our time. Thank you, and welcome, Brad. [LB1074]

BRAD EDGERTON: (Exhibit 7) Thank you, Senator Carlson. My name is Brad Edgerton, B-r-a-d E-d-g-e-r-t-o-n. I'm the manager for Frenchman-Cambridge Irrigation District. September 20, 2010, the state of Nebraska Department of Natural Resources issued an order adopting the third generation integrated management plan. This plan contained the current groundwater and surface water controls. The order issued on this date stated: Any person with sufficient legal interest who has been or may be substantially affected by this order may request a hearing. The irrigation districts in the Republican River Basin requested a hearing. The United States Bureau of Reclamation petitioned DNR to intervene in this hearing process. The irrigation districts spent \$31,000 over two years and were never granted that hearing. We truly are grateful that we can walk in off the street here today and testify. This committee has an important role in the well-being of the state because this committee shapes water policy across the state. When the area is being mismanaged or the resources being abused, this committee usually hears about it first. I'm here today to tell you that the water policy for the Republican River Basin isn't working. I'm sure others will testify today saying it's just fine, lease us alone, we have things under control. Nebraska used to think the water supply in Nebraska was unlimited. We know now that the water supply does have limits. As you can see by the recently published groundwater maps included in your folder, we have areas in the state with very significant declines. These declines are a local policy that extend well beyond the boundaries of that jurisdiction. In this case, the pumped groundwater into...in this case, the Upper Republican NRD with the support of DNR has elected to go outside the boundary and pump groundwater into the stream and export it out of state with the N-CORPE project so the folks in the Upper Republican NRD can maintain their current policy of groundwater mining. State statute 46-703(2) says: Hydrologically connected groundwater and surface water may be needed to be managed differently from unconnected groundwater and surface water in order to permit equality among water users and to optimize the beneficial use of interrelated groundwater/surface water supplies. This law came through this committee. However, DNR has elected to ignore the statutes in the Republican River Basin. The board of directors for Frenchman-Cambridge Irrigation District met with Brian Dunnigan and his deputy and told us to our face that surface water projects were to be curtailed only as a last resort and wells would be regulated first to achieve compliance. The deputy indicated that surface water users would benefit from the wells being curtailed for several years after the regulation occurred. We know the real truth now that as we look at our second consecutive year of bypassing flows through federal reservoirs and project acres with no water and others with minuscule amounts of water. Most everyone with some knowledge of the Republican River Basin water issues would agree that the basin is overappropriated. The demand for the resource is greater than the supply. The

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

Republican River Basin has been declared fully appropriated by statutes, which means no scientific evaluation or analysis of the supply and demand was ever performed by DNR. The Legislature needs this information to help shape sound water policy. LB1074 would require the DNR to perform this evaluation and make a report with their results. If, in fact, DNR finds the basin to be overappropriated, then a basinwide plan can be developed with clear goals and objectives that would put the basin on course to achieve a balance and a sustainable water supply for every generation to follow. You can see clearly by the graph I furnished you today that depletions to the river from groundwater pumping continue to increase beyond the 1997 level of development. With the current plans, those depletions will continue until all the base flow has been lost. More and more water will be needed from outside the basin if this continues. Keep in mind that nearly 40,000 acres of CREP land will come back on line in about six years. The Rock Creek re-timing/dewatering project located in Dundy County operated all of 2013. The USGS observation well located near the headwaters of Rock Creek shows decline in the aquifer for 2013 is nearly as extreme as the previous 38 years combined. The 38-year average of decline is about .92 feet per year. As of November 4, 2013, the decline was 37.52 feet after just eight months of operation. This de-watering well will still pump today and are scheduled to pump all of 2014. This can't be sustained and puts a strain on the local aquifer and impacts users downstream for generations. On February 1, 2014, Nate Jenkins, the assistant manager of the Upper Republican, was quoted in the North Platte Bulletin to say N-CORPE project is scheduled to pump 60,000 acre-feet--enough water to cover 93 square miles with a foot of water. This is considerably more than the 24 square miles that was retired. How many years in a row can we de-water this area? If the Legislature doesn't direct the basin NRDs to develop a plan that sets a course on a sustainable water supply, N-CORPE will need to be pumped more and more until we can never shut those wells off. [LB1074]

SENATOR CARLSON: I'm going to stop you, Brad, because we can read that last paragraph. [LB1074]

BRAD EDGERTON: Okay. [LB1074]

SENATOR CARLSON: But appreciate that. Questions of the committee? And I may ask this later, do you know in Rock Creek how many wells were taken out of production so that Rock Creek could have water pumped into it? [LB1074]

BRAD EDGERTON: I don't know that. [LB1074]

SENATOR CARLSON: Okay. Any other questions of the committee? Okay, Brad, thank you for your testimony. [LB1074]

BRAD EDGERTON: Thank you. [LB1074]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

SENATOR CARLSON: Next proponent. Welcome. [LB1074]

MACE HACK: (Exhibit 8) Mr. Chairman, respected members of the Natural Resources Committee, my name is Mace Hack, M-a-c-e H-a-c-k. I am the state director for The Nature Conservancy in Nebraska, 1007 Leavenworth Street, Omaha, Nebraska. On behalf of the 4,500-member households of The Nature Conservancy of Nebraska, I would like to offer testimony in strong support of LB1074. The Nature Conservancy is the leading conservation organization working around the world to protect ecologically important lands and waters for nature and people. The sustainable use of our natural resources, especially water, forms a very strong focus of our work here in Nebraska. In terms of Nebraska's ground and surface water, an overappropriated basin is a formal term for really a simple concept. It's an area of our state where the consumption of water exceeds the supply. By definition, this is not a sustainable use of our natural resources, and The Nature Conservancy feels that we have a collective obligation to current and future generations to fix this problem. Our state's current Ground Water Management and Protection Act does a pretty good job laying out a process for fixing the problems of unsustainable water use in an overappropriated basin. However, it has one very significant flaw. It doesn't allow any other basin in the state except for the western portion of the Platte River as it existed in 1997 to ever be declared overappropriated. LB1074 corrects this flaw. LB1074 replaces the current definition based on political criteria with a definition based on scientific criteria. And it more realistically looks at a future where other basins in Nebraska could become overappropriated rather than pretending that an imbalance between water use and supply could only happen once in one restricted area of the state back in 1997. The Nature Conservancy strongly advocates for a science-based approach to our state's water management and, therefore, supports LB1074. Thank you. [LB1074]

SENATOR CARLSON: Okay. Thank you for your testimony. Questions of the committee? I just want to ask one. You're employed full time by Nature Conservancy. [LB1074]

MACE HACK: The Nature Conservancy, correct. [LB1074]

SENATOR CARLSON: And what's your position? Are you executive director? [LB1074]

MACE HACK: Yes, I'm the state director. [LB1074]

SENATOR CARLSON: Okay. I think you said that. Okay. Thank you. Any other questions? Hearing none, thank you for your testimony. [LB1074]

MACE HACK: Thank you. [LB1074]

SENATOR CARLSON: Next proponent. Okay. Welcome, James. [LB1074]

Natural Resources Committee
February 06, 2014

JAMES UERLING: (Exhibit 9) Thank you, Senator Carlson. My name is James Uerling, J-a-m-e-s U-e-r-l-i-n-g. Mr. Chairman and members of the Natural Resources Committee, my testimony is in support of Senator Lathrop's LB1074. I have included with my testimony attorney Katherine Vogel's July-August article...July-August 2010 article titled "Declaring a River Basin Overappropriated: The Need for Reevaluation of the Republican River Basin," and that includes all the technical and legal information about this question. I am a director of the Middle Republican NRD, but today I am testifying on my own behalf. I am a patron of the Frenchman-Cambridge Irrigation District and the H&RW Irrigation District. I'm sure that you're all aware of the fact that Nebraska overused its allocation according to the three-state compact in 2005 and 2006, prompting Kansas to sue Nebraska for damages. The commonly stated threat is that Kansas is seeking \$80 million in damages and the shutdown of 302,000 acres of Nebraska groundwater irrigation. Overlooked in this situation are the substantial losses southwest Nebraska surface water irrigators have experienced. The Frenchman Valley Irrigation District and the H&RW Irrigation District have a surface water contract on 21,000 acres. No storage water has been used on these acres since 2004 and 2002. The Frenchman-Cambridge Irrigation District, which has 24,000 acres in the Middle Republican, also didn't deliver water from 2003 to 2008. On April 2, 2013, Department of Natural Resources Director Brian Dunnigan issued an order bypassing all inflows through the Enders, Swanson, Hugh Butler, and Harry Strunk Reservoirs and the associated diversion dams, effectively closing surface water irrigation of 90,000 acres in the Republican River Basin. The reason Nebraska overused its allocation in 2005 and 2006 is because thousands of hydrologically-connected wells had so depleted streamflow that none of the basin's irrigation projects delivered water prior or during those years. Surface water deliveries generate return flows to the river and recharge to the aquifer. The surface water delivery system is the mechanism that keeps Nebraska in compliance with the compact. Nebraska's policy of abandoning the 90,000 irrigated project acres guarantees future noncompliance with the three-state compact. I'm going to skip that next area because it's...I'm probably underneath the time constraint here and let you senators read it. Kansas Governor Mark Parkinson in his November 12 letter to the Bureau of Reclamation states: The state of Kansas depends on the proper functioning of the federal water projects in the basin to receive waters allocated to Kansas under the Republican River Compact. The Bureau of Reclamation's Nebraska-Kansas area manager Aaron Thompson states: this draft IMP continues to allow for the unreasonable use of surface water supplies to make up for the deficits caused by years of groundwater overuse. Is the Republican River Basin overappropriated? The answer is yes, without a doubt. Please consider these points. The Nebraska Attorney General's Office has spent almost \$3.1 million on the legal fight with Kansas and is asking state legislators for another \$600,000. Special Master William Kayatta in his 188-page recommendation said Nebraska should pay \$5.5 million in actual damages to the state of Kansas. Nebraska has bypassed the water allocated to 90,000 acres irrigated by surface water with no compensation. 2013 and 2014 have

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

been declared water-short years, causing all surface water to be bypassed. Surface waters allocation is zero to up to two inches per acre. Allocations for groundwater irrigators in the basin are as follows: Upper Republican, 20.5 inches; Middle Republican, in 2015 we have a proposed 15 inches on our agenda; the Lower Republican, depending on type of...depending on pooling or not is 10.5 to 11.5 inches. The current DNR/NRD water policy is not sustainable or a long-term solution. Southwest Nebraska needs a solution that will provide water for all far into the future. The three-state compact was not only written to protect downstream states from upstream users, it was also written to protect the U.S. taxpayers' large investment in the construction of the federal reservoirs and its associated canal system. The United States Congress authorized construction of the southwest Nebraska reservoirs for flood control, irrigation, and recreation. Our federal reservoirs are not authorized to store water and then release it because upstream groundwater users have overused their allocation. Currently, the only water users enjoying or profiting from southwest Nebraska's water are groundwater irrigators. If you belong to an irrigation district or own a motorboat, there is no water for you. In my opinion, Senator Lathrop's LB1074 is the most important piece of legislation to be considered in 2014. I hope with my testimony I've clearly presented the desperate situation some water users are already in in southwest Nebraska while other irrigators and users are conducting business as usual. Please consider this bill that will pave the way to declare the Republican River Basin what it has been for over 25 years, and that is overappropriated. [LB1074]

SENATOR CARLSON: Okay. Thank you, James, for your testimony. Questions of the committee? What's the solution, James? [LB1074]

JAMES UERLING: We need to reduce consumptive use. [LB1074]

SENATOR CARLSON: If we can, do we also need to increase our supply? Do you think that's possible? [LB1074]

JAMES UERLING: No. I don't think...I think the supply is finite and although we do have recharge, it's pretty minimal compared to the amount of pumping and usage that we do have. I think we're mining water. And, Senator Carlson, I think augmentation projects can only accelerate the use of the water. Okay. [LB1074]

SENATOR CARLSON: Okay. And you don't believe there's a possibility that we can increase the supply with surface water from other basins or other states. [LB1074]

JAMES UERLING: That could be possible. [LB1074]

SENATOR CARLSON: Would that be worthwhile to pursue? [LB1074]

JAMES UERLING: Well, we're spending a lot of money on other issues, so I think

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

maybe possibly that that might be a better place for our money to go, yes. [LB1074]

SENATOR CARLSON: Okay. All right. Thank you. Senator Schilz. [LB1074]

SENATOR SCHILZ: Thank you, Senator Carlson. Thanks for coming in today. And you mentioned just a second ago that you're talking about the augmentation projects that are down there and the fact that those are pumping water at this point. Do you foresee or have you seen...what are the plans for those in the future? Do you know? Are they just purely going to pump or are they going to look to do some recharge operations in the future to put some of that water back in there when they have the opportunity? Do you know if that's a possibility? [LB1074]

JAMES UERLING: It looks...it appears to me as though they're going to continue to pump them and that we're in a perpetual compact call year. I mean, I know we're experiencing drought. And I left part of my testimony out, but, I mean, I hope you go ahead and read it. But, I mean, a popular misconception is that terraces and pasture dams have caused our stream depletions. [LB1074]

SENATOR SCHILZ: Okay. [LB1074]

JAMES UERLING: When actually it's groundwater pumping. [LB1074]

SENATOR SCHILZ: Right. And so if we cut off the augmentation right now, how does that affect the basin? [LB1074]

JAMES UERLING: Well, it's affecting the basin right now because... [LB1074]

SENATOR SCHILZ: No, no. If we would shut those off and not use those at all to pump water into the river, what then would happen, do you know? [LB1074]

JAMES UERLING: They're not being effective anyway. [LB1074]

SENATOR SCHILZ: No, no. The question... [LB1074]

JAMES UERLING: The augmentation water that came out of the Rock Creek project only made it 20 miles downstream before it soaked itself back into the ground. [LB1074]

SENATOR SCHILZ: Okay. Let me ask you this question then. Is that recognized as doing anything or is it just wasted water? [LB1074]

JAMES UERLING: In my opinion it's just wasted. I'm a director of the Middle Republican. It appears to me as though they pump the water out of the Rock Creek project. It made it way to the gauge at the Parks, Nebraska. The Upper Republican was

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

given credit for that extra water, and then it didn't make it to the Stratton gauge. And so the Middle Republican was charged for its disappearance. The Middle Republican is in trouble right now. [LB1074]

SENATOR SCHILZ: Let me ask you a question then. Okay. And this is a big point. If we do that and exactly what happened happens again and you're still overappropriated, won't the Middle Republican still get dinged even more because of that purpose? And I say this because I live in the Twin Platte Natural Resources District which butts right up against Colorado. North Platte butts up against Wyoming. If somebody upstream doesn't give me my water, right, that should be coming down, in the state of Nebraska guess who's going to be in trouble for that. And if you are...and as you look at this, and we need to be very careful about this because you may make a choice and a movement here that may cause just as much trouble as you're in right now. So we have to be very careful and work together on this to make sure we don't make those mistakes. [LB1074]

JAMES UERLING: Well, if that was a question, I'll go ahead and... [LB1074]

SENATOR SCHILZ: Go ahead. I'd love to hear your feedback. Yeah. [LB1074]

JAMES UERLING: Okay. I'm probably not going to like everything that comes. If this basin is found to be overappropriated, I'm probably not going to like everything that happens because of that because I know that it's going to incrementally...according to the final paragraph of Katherine Vogel's statement, it's going to incrementally lower the amount of water that I'm going to be able to pump. But I don't like the way things are going right now, and I foresee in the future...well, we're in big trouble right now. [LB1074]

SENATOR SCHILZ: Yeah. I'm not disputing that at all. I just want to make sure that we're thinking out here what we're doing because one of the things that I'm afraid of is we could go through all this and we could say, hey, you know, you can't pump those augmentation projects anymore. And I guess it comes down to the point if you think you can solve this problem in ten years or do you think it's going to take longer to do that because of how long it's taken us to get here? [LB1074]

JAMES UERLING: Yeah, I think it will. It took us about 40 years to get here. I think it's going to take us quite a while to dig our way out of it. But if we don't start now... [LB1074]

SENATOR SCHILZ: And I... [LB1074]

JAMES UERLING: And as far as augmentation goes, I should tell you that there are two...there are...I mean, I've been on the tail...I've been on the losing end of that vote. I voted no on the Lincoln County project from the first day we had a chance to vote, and

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

I've been voting no on all of it ever since. I am not a proponent of augmentation.
[LB1074]

SENATOR SCHILZ: Okay. So in your opinion, it's better to shut everybody off now and wait until that all fills back in naturally before we allow that to go again rather than to try to do some management things to help who we can now and move forward over time to make everything better. Is that what you're saying? [LB1074]

JAMES UERLING: I don't think we'll have to shut everybody off completely. I just think we need to reduce. I think we should have done it 20 years ago. We should have reduced pumping. [LB1074]

SENATOR SCHILZ: And what do you think the science will tell us? Because not only...if what you're saying is correct and if we follow what it says here in the law, right, then if it is doing that and it is mining the resource, which we can talk about that and whether it's there or not, but if the science says that, what then would be the remedy? Wouldn't you have to shut off all the groundwater until that comes back... [LB1074]

JAMES UERLING: I don't think so. [LB1074]

SENATOR SCHILZ: ...unless you have other projects to make up for that? [LB1074]

JAMES UERLING: I think...well, I think we could still irrigate. Let's say you're a big farmer and you have 16 pivots. What's wrong with irrigating 12 of them and planting 4 of them to wheat and rotating crops? I mean, there's other options out there besides just shutting wells off. You can rotate or you can reduce allocations. [LB1074]

SENATOR SCHILZ: But that's still shutting wells off. I mean, don't get me wrong. I understand what you're saying. [LB1074]

JAMES UERLING: It's happening anyway. [LB1074]

SENATOR SCHILZ: And I agree. [LB1074]

JAMES UERLING: People have been shut off. [LB1074]

SENATOR SCHILZ: Yeah. [LB1074]

JAMES UERLING: And the surface water irrigators have been unfairly treated in this whole... [LB1074]

SENATOR SCHILZ: And let me ask you a question on that then. What changes for the surface water users, if this goes into place in the next 10 to 15 to 20 years, if you

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

continue to have compact calls? [LB1074]

JAMES UERLING: Well, whatever little bit of water can make it to the dam will be used on project acres instead of running it down the river to offset someone else's pumping. [LB1074]

SENATOR SCHILZ: Not if there's a compact call. If there's a compact call and the surface water users are told they cannot take any water, it doesn't matter how many groundwater users you've shut off, correct? [LB1074]

JAMES UERLING: Possibly. Like I also irrigate at H&RW Irrigation District. It hasn't seen water for 14 years anyway. [LB1074]

SENATOR SCHILZ: Right. [LB1074]

JAMES UERLING: And now the wells in that area are going dry. I had a well go dry in August of last year and I lost that corn crop on that field. [LB1074]

SENATOR SCHILZ: Right. Yeah. And I'm not saying that... [LB1074]

JAMES UERLING: I mean, this is happening anyway whether we regulate it or not. We're losing wells. We're losing surface water. We're losing it anyway. [LB1074]

SENATOR SCHILZ: Okay. I understand what you're saying. I just want to make sure everybody is thinking about what we're doing here and thinking... [LB1074]

JAMES UERLING: I know it's going to hurt. [LB1074]

SENATOR SCHILZ: ...that we understand. Okay. [LB1074]

JAMES UERLING: Yeah. [LB1074]

SENATOR SCHILZ: That's what I'm...okay. Thank you. [LB1074]

SENATOR CARLSON: Any other...yeah, Senator Dubas. [LB1074]

SENATOR DUBAS: Thank you, Senator Carlson. Thank you, Mr. Uerling. I'm interested in one of the points that you made about the repair and the surface water bypass on Hugh Butler is below the conservation pool so you're jeopardizing the integrity. [LB1074]

JAMES UERLING: Yeah. [LB1074]

SENATOR DUBAS: Is that just on that one particular... [LB1074]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

JAMES UERLING: I'm not a scientist and I'm not an engineer. But the engineers that designed that dam have a conservation pool. Now they had to take it way below the conservation pool to repair it, and they did a major repair on that structure. They took the whole backside off of that dam and put in a gravel chimney so that any water that made it through the dam would filter its way through the gravel chimney and out the bottom. But just like a mud hole when it cracks, if you let...I mean, if you keep the dam physically low, I mean, will the face of the dam crack like a mud hole cracks when it dries out completely? I mean, that's just why I put that in there. I think that that reservoir should be allowed to get up to the conservation pool because the engineers that designed it put that conservation pool there for a reason, and I think it was to keep the soil--it's an earthen dam--to keep that soil moist and keep the integrity of that dam there. I'm not an engineer, I'm a farmer. I'm a cattle feeder. [LB1074]

SENATOR DUBAS: Is this the only...right, is this the only structure that is impacted in this way? [LB1074]

JAMES UERLING: No. All the reservoirs have been taken down to their conservation pool or close. You know, and if you own a Jet Ski or you want to go fishing, I mean, I called the owner of the Lighthouse Marina in McCook and they've been devastated by this low-water situation, or, excuse me, they're at the Hugh Butler dam. I called the lady that manages the North Shore Marina by Trenton, and she...it brought her to tears to talk about it. I mean, they've been devastated by these low-water levels because the visitors that go to our reservoirs go up and down with the level of the lake, and people just don't show up when there's no water in those reservoirs. Recreation is an important part of the economy of the area, too, and it's been devastated. [LB1074]

SENATOR DUBAS: And I know you've said that you're not a scientist or an engineer and I understand that, but you do have firsthand experience in what you've seen and what you experienced. And so in your opinion, by jeopardizing the integrity of these structures, what kind of costs are we looking at down the road if these structures are really undermined as much as it sounds like? [LB1074]

JAMES UERLING: Well, it could be as bad as a dam breaking, but I'm not going to be a doomsday person there. I mean, it costs...I mean, the Hugh Butler dam was very, very low during the last drought we had between 2002 and 2007. And that's...after that, they discovered the crack in the back of that dam. And I'm not an engineer. I can't blame it completely on that, but something caused that. And I just think that...you know, I just think they ought to let that reservoir get up to the conservation pool. [LB1074]

SENATOR DUBAS: But these are some... [LB1074]

JAMES UERLING: It's way below... [LB1074]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

SENATOR DUBAS: ...secondary consequences maybe that we haven't given as much attention to as they need to have. [LB1074]

JAMES UERLING: I'm sorry? [LB1074]

SENATOR DUBAS: These are maybe some...maybe secondary isn't the right word to use... [LB1074]

JAMES UERLING: Yeah. [LB1074]

SENATOR DUBAS: ...but these are some other consequences that maybe we haven't given as much attention to as we should have... [LB1074]

JAMES UERLING: Yeah. [LB1074]

SENATOR DUBAS: ...with the integrity of these structures? [LB1074]

JAMES UERLING: Yeah. I mean, whenever you do something that's new like this, there could be some unintended consequences that happen. And thank you. [LB1074]

SENATOR DUBAS: Thank you. [LB1074]

SENATOR CARLSON: Okay. Any other questions? I'll just ask one more. [LB1074]

JAMES UERLING: Okay. [LB1074]

SENATOR CARLSON: I would hope that we could get to a point that, well, I would say that we don't have to take any land out of production because it's difficult when we do. But it seems like if we're not going to do that, then we either have to cut back what we're using and hopefully still have enough that farmers who are very adept at adjusting can still raise a crop or we've got to increase our supply. Is there any other answer? [LB1074]

JAMES UERLING: Well, you're looking at someone who's farming less than half of their irrigated acres. I mean, they're either planted to wheat or they're in summer fallow, so. And I'm doing okay. I do feed cattle for a living, so I'm doing fine, so. I mean, you...farmers are resilient. They can make changes. And if we don't make changes, we're headed down a...we're heading down this slope where we're not going to be irrigating anyway. [LB1074]

SENATOR CARLSON: Okay. All right. Thank you. Any other questions? Okay, James, thank you for your testimony. [LB1074]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

JAMES UERLING: Thank you. [LB1074]

SENATOR CARLSON: Next. Welcome, Claude. I haven't seen you for a while. Welcome. [LB1074]

CLAUDE CAPPEL: (Exhibit 10 and 11) I haven't been around. I waited. My name is Claude Cappel, C-l-a-u-d-e C-a-p-p-e-l. I'm from McCook, Nebraska. Senator Carlson, senators of the committee, I appreciate this opportunity. I'm not a good reader, so have patience. I support LB1074 because I feel it might be a first step toward a solution at the present and future aquifer depletion toward the sustainable agriculture in the Republican Basin. I, my wife, and our family own and farm three tracts of land in the Frenchman Valley Irrigation District and have appropriated rights dating 16th day of May, 1890. We also have surface water rights under Hitchcock and Red Willow Irrigation District and Frenchman-Cambridge Irrigation District. Basically all of our land is located in various districts in the Middle Republican Natural Resources District. The depletion of groundwater from over-development of irrigation wells in the Upper Republican has depleted the surface water upstream of the storage and diversion dams. The year Enders went dry, we lost our crop in August, in early August. To supplement our declining supply of water, we drilled our first supplemental well in 1970. Since then, we have drilled several wells. However, because of the loss of surface water recharge and increased groundwater pumping, a number of these wells have now have no usable amount of water and are no longer useful. A number of household wells have gone dry. In addition, in the last few years, we have received from zero to only a few inches of water from irrigation districts. We can expect one and a half inches of irrigation water from next year for our 45 acres in Frenchman-Cambridge Irrigation District. In water-short compact call years, the state may tell us we cannot use some of our wells. The NRDs has a pumping...have...the NRDs have to pump groundwater, which is depleting the aquifer streams to keep the state in compliance with the Republican Basin compact. The state is now at a point where the wells, the compact agreement, cities, and other areas are running out of water. Yet this situation will continue to cause...this situation has and will continue to cause lawsuits. Yet in spite of receiving very little water by authority of the state statutes, water statutes, 46-553, 46-554, 46-555, 46-556, and 46-558, all surface water irrigators are required to pay the operation and maintenance for the canals and dams. Our land will be sold for that taxes if it is not paid. And in order to cover the cost of land purchase, installation and maintenance of the pump...maintenance to pump the water for the compact compliance, surface water irrigators are now having to pay an occupation tax to the NRDs. Again, we have to pay money for both our irrigation districts and the NRDs for the occupational tax. Irrigators on Frenchman...irrigation on the Frenchman Valley and Hitchcock and Red Willow canals and get zero inches of water. And in the Frenchman-Cambridge, we will receive one and a half inches per year this year, per acre this year. I believe we are being taxed twice for water that we never get. At this rate, I do not know how long my

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

family will be able to continue to irrigate our crops. The conditions in the Republican Basin today are not sustainable. The state is now at a point where the wells, the compact agreements, cities, and other areas are running out of water and will cause lawsuits. Thank you. [LB1074]

SENATOR CARLSON: Okay. Thank you, Claude, for your testimony. Questions of the committee? Senator Schilz. [LB1074]

SENATOR SCHILZ: Thank you. Claude, when you started out, what's the allocation that you were working under for your permit, for your appropriation? [LB1074]

CLAUDE CAPPEL: I think we got 18 inches and then they cut it back to begin with on the surface water. One thing I wanted to point out that James didn't say. Back in 2002, we had one year that the Harlan County was out of compliance, in 2...or back in '92, I'm sorry. In 2002, we had six or seven years out of compliance where we couldn't just water. And it's to the point now where I don't know whether we ought to be able to go back to surface water. If this depletion is not stopped, we will be totally out of water in the whole state. It's not just here. Everywhere you go you hear of people running out of water. [LB1074]

SENATOR SCHILZ: Yeah. And so that in the early '90s you were able to get the water that you needed or were you under stress then too? [LB1074]

CLAUDE CAPPEL: No. The only...well, we got water from Frenchman...or from H&RW. And basically in 1975, they passed a real good water law bill. We basically...but it took three years to get implemented in the Upper Republican, drilled about another 300 wells. But at the time that...1980, somewhere in there, the water bill was working so good because people was going sustainable. So the Legislature had hearings and all the irrigators and the farmers did not want the bill. All the suppliers, well drillers, the bankers and stuff wanted it. LB82 was brought to the floor and debated on the floor. And they passed it and it's caused problems because basically, it's just let the water be depleted. In 1970, like I say, we was all totally surface water, everything we had was in irrigation districts, and we lost our water in early August. It caused a lot of loss. We drilled our first well. We probably drilled 100 after that. Two-thirds of them are sitting out or a good half of them or more are sitting idle now. And we got four wells that haven't lost capacity. But last year the wells really went down bad. [LB1074]

SENATOR SCHILZ: And so what you're saying is that you are...and I get what you're coming from, you are okay with regulating your own wells to make up for that surface water over time, even if it would take 20 or 30 years to get there. [LB1074]

CLAUDE CAPPEL: Yeah. But now our wells are going dry. [LB1074]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

SENATOR SCHILZ: Sure. [LB1074]

CLAUDE CAPPEL: The hydrology of the area in the Republican, the Republican can get no water from the south or no water from the west till it gets down past east of Ogallala and then there you can start picking up water, but the hydrology there, we have about 60 feet of water. Then you go north and it drops down, the aquifer goes way deeper. Right north of the Willow Creek and starts back east somewhere, it goes all the way around up by Hayes Center, there's a sand reach through there. North of Willow Creek, that water table within three miles goes up about 60 to 70 feet. In the sand, you can't get a well. The other side you can get tremendously good wells, 200 or 300 feet of water, but the aquifer drops a bit down there. Where they're pumping this new deal in north on N-CORPE, there's about 400 feet or more of water underneath there. But once it gets down so far in the Platte...you know, you're just...you're mining the aquifer and you'll just stop flow to all of the rivers, not only there, at the Platte and everything else. [LB1074]

SENATOR SCHILZ: Okay. Thank you. [LB1074]

SENATOR CARLSON: All right. Other questions? Well, it's been quite a while since you and I talked about anything, but I always had the impression that you felt that you could get along with less water than what most others thought they could get along with. Are you still raising corn? [LB1074]

CLAUDE CAPPEL: Yes. And something I found out this year and it was real surprising to me. We have probably...we have a lot of drip tape, we probably put in about \$2 million, \$2.5 million worth of drip tape in the last few years. On the drip tape this year here, we used 10.2 inches of water on three fields, total separate fields. One is 110 acres, the others we got around pivots and stuff like that in the corners. Those pivots averaged over 200 bushels. On the flood, we use 13 inches and the corn made some of it down to 150, some was better, but we used 13 inches. On the drip tape, we prewatered for next year. We did not prewater in the pivots because we didn't have the water. Pivots with them shooting up in the air, that water loses a tremendous amount to evaporation. That drip tape is...it really surprised me. I was totally surprised, so. [LB1074]

SENATOR CARLSON: Well, tell me again what you used under the drip tape for the crop. [LB1074]

CLAUDE CAPPEL: Ten point two inches on three... [LB1074]

SENATOR CARLSON: How many? [LB1074]

CLAUDE CAPPEL: Ten point two inches on three total fields. I mean ten point three

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

inches per acre on three large fields. [LB1074]

SENATOR CARLSON: Okay. And I had thought that when I used to talk to you, you felt that you could grow corn on six inches. [LB1074]

CLAUDE CAPPEL: In normal years you could. With drip tape you could. I really believe that. [LB1074]

SENATOR CARLSON: So you think you feel like with drip tape on a normal year you could grow corn with six inches. [LB1074]

CLAUDE CAPPEL: Yes, I do. But, you know, when you don't have to spend the money and stuff, people won't do it. [LB1074]

SENATOR CARLSON: Okay. [LB1074]

CLAUDE CAPPEL: Basically there again, in somewhere I've got letters from the NRD saying any well drilled after '98 could be shut off. I know it's in the statutes any well drilled after 2001 could be treated different. [LB1074]

SENATOR CARLSON: Okay. [LB1074]

CLAUDE CAPPEL: So there is wells in...a lot of this money, they've allowed the water to be bought and sold out there for money, which is probably theoretically illegal. But I can show you a lot of people that traded a lot of money, a lot of big deals to just buy water out down there and take it up to Gordon and pump the water out. [LB1074]

SENATOR CARLSON: Okay. All right. Any other questions? Thank you for coming, Claude. [LB1074]

CLAUDE CAPPEL: Thank you. [LB1074]

SENATOR CARLSON: Welcome, Mike. [LB1074]

MIKE DELKA: (Exhibit 12) Honorable senators, my name is Mike Delka, M-i-k-e D-e-l-k-a, and I'm the manager of the Bostwick Irrigation District in Nebraska. The district desires to go on record in support of LB1074 and appreciates the efforts of Senator Lathrop. We feel LB1074 will help address many of the serious issues in Nebraska. It can be a great tool to establish equity among users and this will potentially avoid lawsuits driven by imbalance. It will also support the water sustainability of both groundwater and surface water. This type of management will give Nebraska a future for the primary uses of domestic, as well as uses of agriculture, industry, recreation, wildlife and vegetation. So often we forget about the uses other than irrigation in these

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

discussions. For example, in the Republican River Basin the Upper, Middle and Lower Republican Natural Resource Districts have a total of 11,650 irrigation wells, was the number I found at the DNR Web site. And the Harlan County Reservoir has between 500,000 to 600,000 visitor days annually as quoted from the Corps of Engineers. This number does not include High Butler, Enders, Swanson, or Harry Strunk Lakes. So why have the inflows into the Harlan County Reservoir been allowed to be depleted by over 80 percent? Now, as we are here today, my district is part of the 100,000 acres in the Republican Basin that will not be allowed to store or divert water this year. Even though no water has been used by anyone this year, the Department of Natural Resources is projecting a negative compact compliance balances for the Upper, Middle and Lower Republican NRDs. Two of these NRDs have announced higher pumping allocations. I do not consider these actions responsible management. A sign in front of our building proclaims "water is life." We believe this to be true. Everyone deserves an equal treatment today and in the future, regardless of use or the water source. All Nebraskans deserve to have a piece of "The Good Life." Thank you for this opportunity to comment and I'd be happy to answer any questions. [LB1074]

SENATOR CARLSON: Okay, thank you. Any questions of Mike? Okay, thank you...oh, excuse me, Senator Schilz. [LB1074]

SENATOR SCHILZ: Mike, thank you. I appreciate it. And we've worked on some water stuff for a lot of years now. This is a difficult one, it's tough. What...if you go down LB1074, which you've said you wanted to, and have to enter into new IMP negotiations, what do you see as some of the solutions out there to...let me ask you this, are there solutions out there to mitigate shutting off a bunch of acres or will it have to be that draconian to get us back to where we need to be? [LB1074]

MIKE DELKA: I don't think so. [LB1074]

SENATOR SCHILZ: Um-hum. [LB1074]

MIKE DELKA: I really don't. I think that one of the things that...in this legislation it talks about is basing things on science. If we wanted to have a balance...you know, you hear a lot of different numbers thrown around. If we want to go into augmentation or import water from other sources, there is a lot of potential out there. I really believe...and that's been demonstrated here already that the...if you give a farmer a number, I don't care what it is, they will maximize the benefit. Right now we're growing corn in an area that used to be ecofallow wheat...sorghum; maybe some of the other things. They will maximize the potential of the acreages that are out there. They're not going to quit farming; we're not going to quit irrigating, but we will share in the resource and do the best with that. And these are great managers or they wouldn't be here today. What we're trying to do is create a parody and I think that can be done. Right now, our only options are that, you know, if tears would fill reservoirs, I'd have a full supply, you know,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

so. I think that there are equitable opportunities out there. But I don't want to shut the door before we have an opportunity to at least test them. [LB1074]

SENATOR SCHILZ: Okay. Thank you. [LB1074]

SENATOR CARLSON: Okay. Other questions? Thank you, Mike. Next testifier. Welcome. [LB1074]

STEVE CAPPEL: (Exhibit 13) Chairman Carlson, members of the Natural Resources Committee, my name is Steve Cappel, S-t-e-v-e C-a-p-p-e-l. I am a member of the Middle Republican NRD Board, but this is my opinion and not the views of the board. My testimony is in support of LB1074. I believe this bill is a step in the right direction. Declaring the Republican River Basin as overappropriated will help preserve rivers and streams in Nebraska. I feel that it makes good common sense that we reevaluate our river basins on a regular basis to ensure that they don't become overappropriated, causing Nebraska to spend a lot of financial resources to remedy problems that could be foreseen. The Republican River has been overappropriated for many years and we now seen some of the financial problems caused by ignoring that fact. The declines in the aquifer of up to 90 feet are causing depletions to the streams to the point that they have dried up. We are beginning to see the financial consequences of leaving a basin overappropriated and the future of irrigated agriculture in the basin looks very bleak to nonexistent for a lot of irrigators. We have gotten to the point we are augmenting the river in an attempt to achieve compact compliance. The NRDs in the basin promise that their augmentation projects would not use any more water than what was used to irrigate the ground that was purchased and retired, but in the Rock Creek project they have used over three years' allocation in the first year of operation. Plans for N-CORPE are to use the equivalent of four years of water in just one year. The NRDs are in the process of increasing allocations on groundwater pumping during the 2014 growing season, while at the same time surface water users get little to no water, shouldering the burden of compact compliance and paying the occupation tax as if they were receiving a full allocation. I am very concerned about Nebraska's ability to comply with the compact in 2014. The Republican River Basin federal reservoirs were drained in 2013 in an attempt to satisfy Nebraska's obligations. The rivers and streams have been depleted to the point they have very little flow, yet we still have to supply Kansas with their share of water in 2014. Barring a virtual flood upstream in the Harlan County Reservoir, I cannot see how Nebraska will ever comply...meet compact requirements. Nebraska owes Kansas \$5.5 million for previous noncompliance. Just how much larger will...is that going to allow to get? I truly believe that the passage of LB1074 is necessary, not just an opinion. [LB1074]

SENATOR CARLSON: Okay, thank you, Steve. Any questions of the committee? Thank you for your testimony. Next proponent. Welcome, Steve. [LB1074]

Natural Resources Committee
February 06, 2014

STEVE HENRY: (Exhibits 14 and 15) Thanks, Senator Carlson. My name is Steve Henry, S-t-e-v-e H-e-n-r-y, a farmer and director of the Frenchman-Cambridge Irrigation District. Senator Carlson and members of the Natural Resources Committee, I'm a farmer in the Republican Basin utilizing irrigated farming practices. My operation encompasses land with quick response alluvial wells and deep upland wells, regulated by the Lower Republican NRD and Tri-Basin NRD. We also use surface water provided by Frenchman-Cambridge Irrigation District. Some of the land needs a combination of both water sources to provide adequate irrigation. For the record, the majority of my acres are irrigated with wells. The most profitable thing for me personally would be to have surface water go away, thus giving me a larger allocation of irrigation water from wells. This is the current water management plan of the three Republican Basin natural resource districts and the Nebraska Department of Natural Resources. However, having surface water go away is neither the right thing to do nor the best holistic water management practice to provide for irrigation sustainability in the Republican Basin. In 2013, surface water rights previously granted by the state of Nebraska have been taken by a state call on all streamflows in the Republican Basin to help satisfy the three-state interstate compact compliance agreement. This would be somewhat palatable if wells were also restricted. Instead, wells were actually allowed to increase their pumping over their five-year average in 2013 and permitted to have even more latitude this year in 2014. This means that well acres are able to pump in the 10 to 15 inch range, depending on the specific NRD, as compared to the 2 and 2.5 inches for Frenchman-Cambridge surface water in 2013 and 2014 respectively. It also appears as though no surface water will be available in 2015. This brings me to the point of difficulty in directing the future path of the Frenchman-Cambridge Irrigation District. We do not know year to year whether we will have two inches, the customary eight or any water at all. Not knowing whether our permits will ever be opened again does not allow our district to implement long-term and short-term efficiency improvements with any certainty. Budgeting, assurances to personnel, and planning with our patrons is nearly impossible. It is noted in the Bureau of Reclamation letter dated February 5, 2014, that's the second handout you received with my testimony, that one of the stated goals in the integrated management plans between DNR and the NRDs to be: Ensure that groundwater and surface water users within the NRDs assume their share, but only their share of the responsibility to keep Nebraska in compliance with the compact. The letter further documents that in 2013, surface water users who have approximately 100,000 acres of irrigation in the basin provided no less than 50,000 acre feet towards compact compliance. Conversely, groundwater users through the NRDs who have more than one million acres irrigated provided less than 13,600 acre feet. Additionally, augmentation wells are being utilized to further increase the pumping of wells to the detriment of surface water. The Rock Creek augmentation project is rapidly depleting one alluvium without any meaningful increases in surface water. In fact, surface water is damaged even further due to the complicated compliance formulas which subtracts the artificial flows until they actually cross compliance gauges downstream near the state line at Guide Rock. These formulas were designed to be compact compliance neutral,

Natural Resources Committee
February 06, 2014

recognizing that augmentation projects can only retime water delivery and not create water. Now, a second augmentation project is about to begin which will in effect transfer Platte River water to the state of Kansas. The only way these projects can function is to have a state call on surface water, further denying some of the oldest water rights in the state to the benefit of later-drilled wells. Rather than managing the water sources equitably as a single common resource, the state of Nebraska has chosen the expedient, but unjust method to comply with the compact. In addition to harming the owners of the oldest water rights, we are laying the groundwork for increasing pain by our continued increases in consumptive use embedded in the lag-effected compact formulas. Many times the problems of the Republican Basin are viewed as hopeless and portrayed as if we have somehow been taken advantage of by the state of Kansas. By portraying Kansas as the evil straw man demanding our water, we console ourselves into thinking that we as Nebraskans are the victims. The truth of the matter is that we as water managers are the problem. We have managed our resources as though we are in equilibrium or fully appropriated. If we would recognize that we have over utilized our water resources and attempt to manage all water sources equitably, we could then begin the difficult task of reducing the overuse of one of our most precious resources. Only by correcting past inaccurate water usage assumptions can we solve our water management problems in the Republican River Basin. The stakes are enormous to ensure economic viability, recreation, and minimize conflicts in the basin. I would encourage you to advance LB1074 as a priority bill. Its passage would be a big step in the right direction of making a sustainable water future for all citizens in the state of Nebraska. Thank you. [LB1074]

SENATOR CARLSON: Okay, thank you, Steve. Questions of the committee? Okay, seeing none, thank you for your testimony. How many more proponents do we have? Okay. All right, Ron, you want to come up forward and get on deck after Ann. Welcome, Jeff. [LB1074]

JEFF BUETTNER: Good afternoon. Senator Carlson and members of the committee, my name is Jeff Buettner and I represent Central Nebraska Public Power and Irrigation District and I forgot to spell my name, J-e-f B-u-e-t-t-n-e-r. We appreciate the fact that Senator Lathrop has introduced this bill because it's aimed at sustainability of water resources. And that's something that I think we can all agree would be good for the state of Nebraska. I'll briefly cite some improvements to the current statute that LB1074 would provide. LB962, passed a decade ago, identified that only those basins subject to an interstate cooperative agreement among three or more states as of July, 2004, could be classified as overappropriated. Hydrologically, it seems to me a basin is either overappropriated or it isn't and I think this point has been made before. There was a process that would allow the Department of Natural Resources to change the classification of other basins, but that process has not resulted in any changes. A new approach is needed that uses existing statutory criteria in all basins. LB1074 does that. The bill also provides further guidance on the process to return a basin to a fully

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

appropriated condition once it has been declared overappropriated. Section 46-715(5)(c) of the existing statute provides that a basin-wide plan must "identify the overall difference between current and fully appropriated levels of development." In 2009, when NRDs and DNR were preparing an integrated management plan for the Platte River Basin, one of the NRDs would not accept the initial estimate of that difference, and in the end that difference was not identified in the final basin-wide IMP. LB1074 adds a requirement that the difference in streamflow depletions should be included in the determination of the difference between current and fully appropriated levels and, hopefully, reinforces the fact that identifying the difference should be part of the IMP process. Another improvement of the bill is to include additional detail on the requirements to return to a fully appropriated condition. Under existing statute, there is no limit, no time limit for meeting that requirement. Arguably, the process could take a hundred years or a thousand years and still comply with Nebraska statutes. Senator Lathrop's bill would require completion within 30 years which still seems like a long time, but at least there's an end point and motivation to move toward sustainability. The bill also provides flexibility by including a waiver of the requirement to fully reduce that difference between current and fully appropriated levels upon consent of affected surface water appropriators. It's been about five years since integrated management plans were required to be implemented, but it appears that we're treading water in certain areas to achieve sustainability of water resources. Senator Carlson has introduced legislation with sustainability as a goal. But it would be helpful if improvements were made to existing statute that would further that objective. Senator Lathrop's bill does just that. Thank you. [LB1074]

SENATOR CARLSON: Okay, thank you. Questions of Jeff? Yes, Senator Haar. [LB1074]

SENATOR HAAR: Just a comment, could we have a copy of your remarks, please? [LB1074]

JEFF BUETTNER: I could get you some. [LB1074]

SENATOR HAAR: I would appreciate it, thank you. [LB1074]

JEFF BUETTNER: I would certainly... [LB1074]

SENATOR CARLSON: Okay, other questions? Thank you for your testimony. Welcome, Ron. [LB1074]

RON WOLF: Mr. Chairman, members of the committee, my name is Ron Wolf, R-o-n W-o-l-f. I'm the general manager of the Twin Loups Reclamation District, Scotia, Nebraska. You might think it odd that somebody from the Loups is down here on this bill. We do have a, hopefully, a safety switch on the Loups with a fully appropriated step

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

in between, but under the worst conditions including severe multiyear droughts, I see this bill as a good back step. The Republican River is acting like a canary in a coal mine, and folks, your canary died. I don't want to see our river basin in that position. And I strongly support this bill; it's a good backstop for other basins where that potential may arise. I'm kind of in an odd position, I'm the first one to gripe whenever any of you propose new laws and here I am supporting more laws, so bear with me, please. (Laughter) I don't have a prepared speech, but one of the things I'd like to touch on--recharge, Senator. There were some questions on some of that. You have the potential for some recharge that you're not utilizing down there. One of the best ways to recharge at least parts of the basin is put water in those canals. Every time you dump that water right straight down that river basin to Kansas you met today's needs and you build a bigger problem out there in the future, as Mr. Henry point out, you get wells going dry that are in surface water irrigation districts. That's not necessary; get some water in those canals. There's some recharge potential there, probably some of the cheapest already at hand recharge opportunities you're going to have down there. Supply from other basins: I think there's potential there. I'd fight the heck out of you if you're looking at the Loups. I think if you talk to anybody on the Platte, you'll find the same reaction. I don't know...engineeringly it's feasible, I just don't know how you're going to make it work. That's way beyond somebody like me as far as enhancement of supplies from outside the basin. I don't even have a concept of how that might work. I would also like to touch on some economics. I think you'll probably hear some opponents here that are going to plead that the state or that area cannot stand the economic damage of a total shutdown. I don't think anybody that understands the situation is looking for a total shutdown. There needs to be more control, as pointed out, again, by Mr. Henry and his...in the statement that is already in the IMPs--share the shortage, equal share, share equally. It's going to hurt. I personally use surface water from two old projects, one new project, I have wells. My son has creek pumps. But folks, I can't shoot myself in the left foot and make the right one go any faster. You've got to realize it's all coming out of the same bucket and you've got to replenish that bucket once in awhile or not take it out as fast and let Mother Nature help you out. I strongly, strongly hope all of you support this bill clear to the limit, clear to passage. I'd try to answer any questions that you might have. [LB1074]

SENATOR CARLSON: Okay, thank you. Any questions of Ron? Senator Dubas. [LB1074]

SENATOR DUBAS: Thank you, Senator Carlson. Thank you, Ron, for coming today. So I irrigate out of your irrigation district. Why...you kind of talked about this when you made your opening statements. Why should I care? I mean, I got cut back a little bit a few years ago during the drought but I still had plenty of water. And, you know, my understanding of the Loup, we're different than the Republican, the way that our river is fed, you know, we're in a different kind of situation than the Republican so why should I who irrigate out of the Loup or maybe some of the other surface irrigation districts that

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

aren't facing the same kinds of challenges that they are in Republican think this is a good idea? [LB1074]

RON WOLF: We have a stopgap in statute right now...right now the Loups is an open basin or it has not been declared fully appropriated yet. However, there are some pretty massive instream flows that have been granted to the fish and game downstream that have been putting calls on the river which tells me we're getting close. The surface water supply, there's not going to be much available there. We keep pumping the aquifer down, I could see us fading off into fully appropriated. We come very close three or four years ago before the 2012 drought. So the potential is there. If we get into some bad management techniques, some desperation, some hard economic times, I don't want to see that thing go to overappropriated where everybody or a portion of us are going totally without. And I think you should care because this is your final backstop in the Loups, Senator. I know I shut you off for a week, I let...I didn't tell you, I let the neighbors around you irrigate. (Laughter) [LB1074]

SENATOR DUBAS: I will remember that. [LB1074]

RON WOLF: I shut you off last year for a week. That was an artificial drought created by the Bureau of Reclamation which is another subject. But that didn't do your corn crop or my ego any good. And I don't want to get to where we're looking at something like Brad Edgerton, Mike Delka, these folks, the Frenchman-Cambridge, Nebraska Bostwick, I don't want to go there. This is a good last call backstop for the Loups. [LB1074]

SENATOR DUBAS: Do you think that people, the farmers that are irrigating out of the Twin Loup or some of the others, do you think we're kind of standing back and saying, that's their problem, not our problem, and so do we need to get involved? Do we need to do a better job of helping everybody understand what this means? [LB1074]

RON WOLF: I think to a point. However, I have heard, again back to the economic damage part, that, you know, it's going to be too big an economic knock if we cut too much water use in the Republican. This is one of the reasons other basins need to be paying attention because there is potential for any basin in the state almost to become, at the very minimum, fully appropriated. Hopefully development in this state won't stop, so that potential is out there. On the other hand, I've heard some talk that if such a huge total shutdown of some kind, which I can't envision why it would happen, then that should be a state responsibility to make the farmers whole. I would submit to you that the rest of the state needs to become involved in this because all I want to pay is what benefit I got out of those people overpumping. That's my share. [LB1074]

SENATOR DUBAS: Thank you. [LB1074]

SENATOR CARLSON: Okay. Thank you. Any other questions? All right, thank you,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

Ron, for your testimony. [LB1074]

RON WOLF: Thank you very much. [LB1074]

SENATOR CARLSON: Welcome, Ann. [LB1074]

ANN BLEED: Thank you, Senator. My name is Ann Bleed, that's A-n-n B-l-e-e-d and I'm here testifying as a private citizen because I believe if we really are serious about trying to sustain our water supplies so that we have water for future generations in Nebraska, we need to pass this bill. Nebraska has a lot of water, especially compared to some of the states out west...or west of us. But if you look at the water table change maps, which I believe you received earlier, and look at the map on the changes in water levels from predevelopment times to now, you'll notice there are some areas where, yes, the water...the area is blue meaning the water table has risen and that's primarily according to the report from Conservation Survey Division due to surface water irrigation use. Other areas of the state, and it's way more than just the Republican, show areas that are declining in water tables--they're yellow, orange, or red. These are areas where, according to the report, intense groundwater pumping has depleted the aquifer. As the report also states, when aquifers are depleted, streamflows are also depleted. The converse is also true; when aquifers have rising water table elevations, streamflows increase. Another thing I think is really important to understand is that when a well depletes an aquifer and eventually if it's a hydrologically connection...if there is a hydrologic connection between the aquifer and the stream, the depletions of the well will show up at the stream, but there's a lag effect, it takes time. That lag effect means that even if you did shut off all the wells, for example, in the Republican today, you would not see much of a change in streamflows for a short period of time because it takes time for that impact to be seen. Conversely, if you continue pumping wells, the streamflow depletions will continue to grow. So we have to be careful. Streamflow...or streams that are now flowing at a certain level, given a certain...the current level of development, could in the future, even if we do not add more development, continue to see their streamflows decline because of the lag effect of wells. And this is the...water legislation we have today which was passed about 10 years ago under LB962 is really, I think, a good set of legislation. It provides a good process to integratedly manage our surface water and groundwater supplies. And there have been a lot of basins that have made a lot of progress toward managing our water supplies in an integrated, holistic fashion. However, I believe we are fooling ourselves if we believe that the existing law provides any real assurance that we will maintain sustainability of our water supplies in the future. And this is why I support LB1074 which I believe would provide an important step moving forward to provide some assurance that our children and our grandchildren will continue to have water to maintain the good life in Nebraska. The bill does that primarily by looking at the definitions of what is a fully and an overappropriated basin. As you've heard, a fully appropriated basin is determined by the Department of Natural Resources based on hydrologic information and a scientific analysis of that information. In contrast,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

the criterion that establishes an overappropriated basin is that the basin had to be subject to a three-state agreement on July 16, 1997. There's only one basin in the state that has met that criterion or could ever meet that criterion as it has already been pointed out, and that's the western portion of the Platte basins. That means that no other basin will be officially designated as overappropriated. Yet it is very possible for other basins to already be overappropriated or to become overappropriated in the future and I believe that the first step in addressing a problem is to recognize that there actually is a problem. If you don't see the problem, you're not likely to find a solution. This bill also...if a basin is designated as overappropriated, the existing law does provide, I think, a good process to address the overappropriated status and return the basin to a sustainable, fully appropriated condition where the water supplies and water uses are in balance. But as has already been pointed out, one thing this bill would do is put a time limit on the amount of time that could be taken for that basin to achieve sustainability and the time limit in the bill is 30 years. So there wouldn't be a knee-jerk reaction to quickly require everybody to adapt to whatever new basin of plan they developed. But you could have some time to adapt. I do believe the existing statutes do provide a good process and one of the reasons I believe they provide a good process is because of local control and the ability to have local users actually help design the management actions to obtain sustainability. However, I don't believe the current law ensures sustainability and I do want very much for the future generations in this state to be...to have access to usable water. Thank you. [LB1074]

SENATOR CARLSON: Okay, thank you. Questions? Senator Haar. [LB1074]

SENATOR HAAR: Yes, thank you for being here. The July 16, 2004, was that sort of a political compromise, or it just seems sort of strange looking back. [LB1074]

ANN BLEED: Well, it does seem sort of strange and it's actually July 16, 1997, that was the date that had to be subject to a three-state agreement. And that relates to the three-state agreement between Colorado, Wyoming, and Nebraska to comply with the Endangered Species Act. We knew that basin would probably have to reduce existing uses in order to comply with the Endangered Species Act. So that was in part why the language was put in the statutes. [LB1074]

SENATOR HAAR: So, basically, currently, it just says: as of this point in time, if you are overappropriated, then you're overappropriated. Otherwise you can't be. [LB1074]

ANN BLEED: Otherwise you can't be officially designated as overappropriated. And there's no requirement in the statutes, then, that you have to reduce your uses or find additional water supplies to achieve a level of sustainability. And I believe that is possible if people work...in the basin, work together. I really do. [LB1074]

SENATOR HAAR: Thank you. [LB1074]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

SENATOR CARLSON: Senator Schilz. [LB1074]

SENATOR SCHILZ: Thank you. Ann, nice to see you again, how you doing? You talked about those areas of the state where there has been rises in the groundwater levels. And as I look at most of those areas, I see...you talk about the surface water irrigation. But as we look at that and we see those areas of increasing levels of groundwater, it shows me that management is possible to raise groundwater levels, to do the recharge that is there, if there's excess flows at some time in that river basin. [LB1074]

ANN BLEED: I absolutely agree with you, Senator Schilz. [LB1074]

SENATOR SCHILZ: And that's the key to what we're talking about on a lot of this stuff, isn't it? [LB1074]

ANN BLEED: I believe it is the key. And I believe what some of the things they've done in the Central Platte Natural Resources District to retime water supplies using surface water irrigation infrastructure to do that is critical. I truly believe that surface water irrigators are part of the solution and should be looked to to be part of the solution. It's much better to use the water, divert it for irrigation, grow a crop, have the recharge go back into the stream to recharge both the aquifer and the stream than simply to send the water down to Kansas for compliance with the compact. I am absolutely convinced if we sit down with the local people in a basin and work with them that there is good thinking out there, we can come up with innovative solutions to resolve a lot of these issues. It won't necessarily be easy, but I think it can be done. [LB1074]

SENATOR SCHILZ: Right. And I think you're right. One last question, and I don't know if you know this or not, but Mr. Wolf brought this up, do you know if under...and maybe somebody else will know that is coming up here, I see a few folks out there that might. But do you know if under the agreement that we have with Kansas right now under it, can you release that water into those canals to run them through, or do they have to go down the main stream of the river? [LB1074]

ANN BLEED: The compact...are you talking about compact compliance with Kansas? [LB1074]

SENATOR SCHILZ: Right. [LB1074]

ANN BLEED: Compact compliance with Kansas does not get into the details of how we manage water within the basin in Nebraska. [LB1074]

SENATOR SCHILZ: Just as long as it gets there. [LB1074]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

ANN BLEED: I was part of the negotiations that came up with the settlement with Kansas and that was one thing we were very concerned that we did not put into a stipulation because we did not want Kansas telling us how we should manage our water. [LB1074]

SENATOR SCHILZ: Okay. [LB1074]

ANN BLEED: So just as long as we meet the compact requirements, we can do whatever we want within the basin. [LB1074]

SENATOR SCHILZ: Okay, thank you. [LB1074]

SENATOR CARLSON: Okay. Any other questions? All right, thank you, Ann, for your testimony. [LB1074]

ANN BLEED: Thank you very much. [LB1074]

SENATOR CARLSON: (Exhibit 16) I think that takes care of the proponents. And we have a letter here from Steve Huggenberger of the city of Lincoln in support of LB1074. Now we're ready to hear opponents. How many opponents do we have? Okay. Welcome, Jasper. [LB1074]

JASPER FANNING: (Exhibit 17) Thank you, Mr. Chairman 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. And a lot of good comments have been made so far today. But I think this legislation maybe misses on one mark. There may be some disagreement on this, but everyone in Nebraska tries to manage water, gets involved in the business of managing water for the maximization of the social and economic welfare that we can get out of the water that we have to use. There is a reason that the overappropriated piece of LB962 only dealt with the Platte River Basin and that's because that section of statutes required basic compliance with the main provisions in the Platte River Recovery and Implementation Program. And so the 1997 date relates to the Platte River Recovery Program; the increment relates to the Platte River Recovery Program. There's a reason that those statutes were constructed in the way that they were. I wished they had chosen a different name than overappropriated. They should have just called it, you know, Class A and, you know, instead of overappropriated for the Platte. Class B could have been the Republican. We had to do integrated management planning. Those statutes required us to comply with the compact. Much of the frustration that you see in the basin is somewhat of a state responsibility. When those laws were passed without funding, quite honestly, everyone that was involved in the LB962 process knew that it was going to take projects and programs to do what we need to do in water management in the state. The funding didn't come. It was years after the passage of LB962 before we finally got an occupation

Natural Resources Committee
February 06, 2014

tax. Lawsuits held that up for years. When the state came out to negotiate IMPs in the Republican Basin the first time around after 2004, they used the "divide and conquer" method to get the three NRDs to do integrated management planning. They pointed fingers when talking with one NRD saying everything you've done is good, you're in pretty good shape; the problem is really over here. That division is just now being sort of overcome within the basin. It wasn't until we had the N-CORPE project that the three NRDs could sit down in a meeting and not have to worry about pointing fingers at who was really responsible for Nebraska's overuse. '05 and '06 Nebraska out of compliance, why? Because we took no significant action other than some leasing and some things of water, but we took no administrative action. And quite honestly, from the groundwater side, there wasn't any action we could take at that time that would have resulted in that. But we, knowingly, allowed surface water users to divert water that was entitled to Kansas. Kansas is a downstream senior water user. The inequities are there, but they can be dealt with. Had we been able to operate Rock Creek in 2012 and put that water into storage in 2012 so that it could have been released into 2013 for compact compliance, very little, if any, administration of surface water throughout the basin would have been necessary. Of course, we need to get cooperation by all parties and that takes us getting together at all levels: irrigation districts, NRDs, the people in the basin. I want to set the record straight on a few things in terms of how the IMPs work. Essentially, the department does a forecast of the amount of water that can be used in the basin which is Nebraska's supplier allocation. Based on the volume of water in the surface water reservoirs, they predict how much surface water use there will be in the year. And surface water is allowed to, essentially, use that volume. That was the construct of the IMPs. If there is a shortfall projected, the NRDs have to take actions to make that up. We have, basically, two options: we can shut off 100,000 acres right next to the stream, which just happens to be about half of those acres are probably owned by the surface water users as well which other people have testified to that they have both. So that isn't the greatest solution. Or we can do things like augmentation projects. We've retired some irrigation canals in the basin. There's probably more of that to be done. Consolidating, making it as efficient as we can using canals for recharge. All of which are part of a conjunctive management study that we're working on at the Department of Natural Resources and the irrigations districts to really look and see and point out what the best management options that we have moving forward are with what we already have in place. And so I think there are vast opportunities for us moving forward to work on conjunctive management and make things better. With respect to the 30-year time period and this taking this method where we define what overappropriated is, see what the balance is and then try and figure out how to work on it, they've tried to make this into an equation. As it is in today's statute, the decisionmakers, the elected officials sat down the information which is the evaluation and decide how to best manage water given that information. On page 37, that zero balance to me says, we're going to turn this decision-making process into an equation and if this equation doesn't work out to be zero or greater than zero, well then you have to, basically, shut off water. And while you've heard that there aren't draconian steps that need to be taken, consider

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

that an interstate river used to provide 50,000 to 60,000 acre feet more water to Swanson Reservoir than it does in today's world. And so water that used to flow from Kansas and Colorado, we can shut off all the groundwater pumping in Nebraska and we can maybe put 10,000 acre feet of water back into the stream. So if the surface water user who has a right out of Swanson Reservoir isn't whole, the balance isn't going to be zero, and you can shut off all groundwater use in Nebraska and not fix that problem. So I've heard comments and I'm glad to hear that people don't think that we need to make 4 percent of the users whole by shutting off 92 percent of the users. That's certainly not a workable solution either, but we can get together, I think, and figure out some more equitable solutions than what we've heard so far. [LB1074]

SENATOR CARLSON: Excellent timing. Did you even notice it? [LB1074]

JASPER FANNING: I did. [LB1074]

SENATOR CARLSON: Okay. All right. [LB1074]

SENATOR SCHILZ: Probably did it in front of a mirror. [LB1074]

SENATOR CARLSON: All right. [LB1074]

JASPER FANNING: I had to talk a little fast though, five minutes, you can't say a lot. [LB1074]

SENATOR CARLSON: Well, you did; you did fine, you did fine. All right, questions of Jasper? Senator Schilz. [LB1074]

SENATOR SCHILZ: Thank you. Jasper, thanks for coming in today. You talked about maybe being able to have stored some water from the Rock Creek project to be able to alleviate some of these problems. Can you go into that in a little more depth and explain where that water would have been stored and how that process would have worked if you could have gotten it put together? [LB1074]

JASPER FANNING: Well, I mean, there were a lot of timing issues. The lawsuit was lifted and we didn't have a lot of time to construct, but in the fall of 2011, Nate Jenkins and I went and approached an irrigation district manager about storing it in Swanson. And because of the hurdles that were there, it didn't look like we could do it. It could be stored in Swanson. It could alternatively go on downstream and be stored in Harlan County. There are advantages to both. Having water already in Harlan County at the beginning of a year, the water is already in the place where Kansas could use it. So there wouldn't be any additional steps in that year that the department might need to take to move that water downstream. Obviously, always hoping for rain, it's better to hold the water further upstream in a reservoir so that if a rain event does come, you

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

don't already have your downstream storage exacerbated. Again, we're not talking about huge volumes of water. The Rock Creek project capacity is about 20,000 acre feet and, you know, with that, you know, putting 20,000 acre feet in either one of those reservoirs isn't going to change the pool too drastically, but the water would have been there to be released for compact compliance. [LB1074]

SENATOR SCHILZ: Um-hum. And then what...and when you say...would that water just be stored there for...how long would that water be there and what...what would you have to do to be able to store that water there? Would there be fees to store it or anything like that? [LB1074]

JASPER FANNING: I think there would have to be some arrangements made with both the bureau and the irrigation district to, you know, with respect to the cost of operating the structure. There's going to have to be a contract with respect to having...if the storage pool needs to be separate. I mean, all pretty trivial details when you think about it. I mean some contracting things and that with the irrigation districts and with the Bureau of Reclamation. [LB1074]

SENATOR SCHILZ: Sure. And so if I understand it right, this wouldn't just be a one-shot deal. That opportunity will be there in the future as well, correct? [LB1074]

JASPER FANNING: It's a shame we missed out on the opportunity in 2012, but that opportunity will be there anytime that we hit a noncompact call year we will be able to operate those projects to create a small pool of stored water for compact compliance. And that's really what the design of those projects, in part, is to alleviate the amount of regulation necessary on surface water users for the state to maintain compliance. [LB1074]

SENATOR SCHILZ: Hopefully you can find ways to get that to work. And then one other question. We've heard a lot about the N-CORPE project and the Rock Creek project about the dewatering part of it. Can you give me an indication, is that the final provision of what that's going to be or what is the plan over the next 10, 15 years with those two projects? [LB1074]

JASPER FANNING: Well, both projects for the Republican Basin portion of N-CORPE and Rock Creek, we've retired enough acres that if we pump those at our expected capacity which on Rock Creek is 15,000 acre feet. That's kind...we can pump up to 20,000, but it's designed for 15,000 acre feet a third of the time. We've retired enough acres that if over the course of a number of years we pump it a third of the time that we'll pump no more than what we pump for irrigation. On the N-CORPE proposal, same thing; we retired roughly 16,000 irrigated acres, 12,000 of those go to the Republican. If we pump them a third of the time, we expect our average pumping to be around 35,000 acre feet. Now because of the accounting squabbles that we have with Kansas over the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

credit we should get, right now we're pumping on Rock Creek 44 percent more water than we should have to under the settlement agreement. On N-CORPE it's a little bit worse than that; it's almost twice as much. And so we're sending Kansas last year and this year tens of thousands of acre feet of water that they're not entitled to under the compact only because they refuse to approve the augmentation plans pursuant to the settlement agreement, both our two projects and Colorado's project. [LB1074]

SENATOR SCHILZ: Will there be any opportunity in the future to use those, not only as augmentation, but also as...to get some recharge there if that's possible? How would that work? Because if a...you know, what you're saying here is if we go one or two more years pumping that much, well, then everybody's...that's an issue, that's a huge issue. [LB1074]

JASPER FANNING: Well, yeah, definitely we don't want to go too long pumping at these levels, but I think the statements about what is happening to the aquifer that you've heard today have been overstated. I actually operate and farm the irrigation well that's closest to the Rock Creek project. Since we've begun operations and looked at what the impacts would be from the conversation, the water in my well has went up four feet. Now that's not typical. The surrounding wells around that project have averaged a decline of three to four feet which is the same as what the wells since it didn't rain in '12 or '13 in that area, around there and further away from the project have averaged. But out in the project area where there's an actual cone of depression from the pumping is where you see, the well that was cited, the USGS well that Mr. Edgerton cited, is about 20, maybe 30 feet from a pumping augmentation well, and so that's measuring the cone of depression. And so I'm glad to hear that's only down 37 feet because it's designed to be down about 47.5 feet when pumping just based on the cone of depression. So that's actually a good sign that the aquifer is yielding more water than what we've modeled. [LB1074]

SENATOR SCHILZ: Then my next question is: What does the model say about how long you can pump it 100 percent of the time before you start affecting those users around it? [LB1074]

JASPER FANNING: Well, when they modeled that out, they modeled it, essentially, to a steady state equilibrium. [LB1074]

SENATOR SCHILZ: Um-hum. [LB1074]

JASPER FANNING: And so when you reach that steady state, in other words you change...we've already probably reached steady state or very close to it. And so we've changed the gradient of the aquifer in that area. And so there's the cone of depression at the well and it goes out. And like I said, three to four feet on the other wells, so maybe one or two foot more draw down on the adjoining landowners' wells than what

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

there would have been without the project and that will continue. So if the water table is going to go down two feet out there, it's still going to go down two feet out there, we're drawing water from a very wide area in the...people often think that a well pumps most of its water from right there; and it does when you kick it on. And in big sands and gravels like that area takes about five minutes to get your draw down to about 40 feet. And when you reach a steady state or pretty close to it, when they pump test those within 24 hours, and so you're pulling a little, little bit of water from a very long ways away through flow as opposed to pumping the water just out from underneath it. And so for those reasons, you know, now I'm not saying that we can pump it 20 years in a row like that, but we, certainly, if we maintain roughly a third of the time, maybe even half the time. But because of the two-year averaging, the other thing we need to keep in mind is this year we're going in with a negative balance. So we have to make up the negative balance from last year as well as the negative balance forecasted this year which means we have a positive in 2014. Assuming that we do that and accomplish that as we did in 2013, when we get to 2015 we'll be entering with a positive balance. And so even if we forecast the same type of year for 2015 that we do for 2014, we won't have to pump nearly as hard to make that up. [LB1074]

SENATOR SCHILZ: So one last question and then I'll quit monopolizing your time. Is there anything that suggests that because you're using these augmentation projects over time that it will be...you will be able to...I mean it's mitigating for use,... [LB1074]

JASPER FANNING: Right. [LB1074]

SENATOR SCHILZ: ...but will you be able to over time show or be able to...I'm not quite sure what to say. I mean, obviously, it's about compliance right now. [LB1074]

JASPER FANNING: Right. [LB1074]

SENATOR SCHILZ: But in the future it's going to have to be about, basically, rehabbing the aquifer and the basin to get us back to where we don't have to do those kind of things, hopefully. I mean, is that the long-term goal or...tell me? [LB1074]

JASPER FANNING: I think the way to look at it from my perspective is even in the future we know there will be dry times and drought and times that we need to take action. And these tools will be there to take care of those short-term needs in the future indefinitely because we still have to take the long-term oriented management steps...our district began putting allocations on in 1979. We've had 80 percent less decline in our district than USGS predicted we had without adopting regulations. In our worst decline areas, the declines are half of what USGS projected they would be in the relevant time period that they looked at and we will continue to do that. I would almost argue...I will argue that because of the compact compliance focus we've had for the last several years, we've probably focused less on the district groundwater management portion

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

because of the importance of the compact compliance piece. And so once we get this compact compliance piece set up and these short-term tools set up, I see our district continuing to regulate groundwater for the long term. I mean, we all want our kids and grandkids to be able to use the aquifer just as our grandfathers and great-grandfathers and fathers have. [LB1074]

SENATOR SCHILZ: And I lied, one more question. Water projects aren't cheap. What's the price tag for each of those projects that are keeping Nebraska in compliance today? [LB1074]

JASPER FANNING: We spent \$24 million, maybe \$25 million on Rock Creek as a district for all included costs. N-CORPE is going to be about \$120 million. And that \$120 million includes the Platte portion piece of that; each of the three Republican NRDs is going to have, you know, \$80-some million and we're still working on that project of that project. We spent very large sums of local irrigators' money and bonded that out so that we could keep the state in compliance. That said, the irrigators know what they're getting for that, some stability and as we get down some road, eliminating some uncertainty. I think that that investment shows how committed we are to solving the state's water issues both in compact compliance and we've always been that way from a management perspective. But water...I guess I'm going to disagree if you were saying that water programs like that are expensive, because water...water programs are cheap. If you look at what it costs me to do the same thing through regulation, to start with, we could shut off all the groundwater wells in the Republican Basin for three years and not produce as much water as we're going to get out of N-CORPE this year. [LB1074]

SENATOR SCHILZ: Thank you. That's exactly what I was looking for. Appreciate it. [LB1074]

SENATOR CARLSON: Okay. Other questions? Senator Dubas. [LB1074]

SENATOR DUBAS: Thank you, Senator Carlson. I'm going to ask a question from a very oversimplified viewpoint and just see if I'm on the right track. So augmentation projects are intended to help increase streamflows in order to help us be in compliance with our compact. Am I going the right direction with that? [LB1074]

JASPER FANNING: That is correct. The augmentation projects are designed as they're being implemented this year, to make up most of what Nebraska forecasted we would owe Kansas if we took no action. They forecasted that we would use 42,000 acre feet more water than what we were entitled to. And we're simply, you know, since the water is already out of the stream, according to the accounting model, we're putting 42,000 acre feet of water into the stream to make up for that water. [LB1074]

SENATOR DUBAS: But then you stated earlier that this extra water that we're sending

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

to Kansas is not counting towards our compact compliance. [LB1074]

JASPER FANNING: Yes. [LB1074]

SENATOR DUBAS: Am I apples and oranges here? [LB1074]

JASPER FANNING: No, no, you're on the right track. What we're doing by putting the water in the stream is sending Kansas the water they're entitled to. Because the final settlement stipulation included augmentation projects and during the settlement of that Colorado represented to that special master into the court that it would be...if you had overused 1 acre foot of water and you put 1 acre foot of water in the stream through augmentation, that those would offset. Kansas has refused to approve the accounting for the augmentation projects, both the Rock Creek, which an arbitrary ruled they shouldn't have, but Nebraska was correct. And we're about to arbitrate the same thing for the N-CORPE project. Without those being approved on a one-to-one basis by the compact administration, there are accounting percentages for each tributary in the basin. And on Rock Creek we only get 69.3 percent credit for the water that passes the stream gauge which results in us having to pump 144 percent of the water that we need credit for. On N-CORPE we get credit for 53.5 percent on Medicine Creek. And so we have to pump just shy of two times the amount of water that we need to get credit for on Nebraska's balance in the accounting. [LB1074]

SENATOR DUBAS: But right now we're are not getting credit for that water that we're sending down. [LB1074]

JASPER FANNING: Right. Right now in N-CORPE we're getting 53.5 percent credit, and on Rock Creek 69.3 percent credit. [LB1074]

SENATOR DUBAS: We're not getting full credit then, okay. [LB1074]

JASPER FANNING: Yes. And the state is arbitrating those issues and we'll have to contemplate pursuing litigation over them to get 100 percent credit. [LB1074]

SENATOR DUBAS: But there is the potential that we could end up not...we could be sending water that we'll never get credit for. [LB1074]

JASPER FANNING: There is that possibility. [LB1074]

SENATOR DUBAS: Okay, thank you. [LB1074]

SENATOR CARLSON: Yes, Senator Brasch. [LB1074]

SENATOR BRASCH: Thank you, Chairman. And thank you. I see here you are Doctor

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

Fanning, correct? [LB1074]

JASPER FANNING: Yes. [LB1074]

SENATOR BRASCH: And may I ask if that in a field of hydrology or your... [LB1074]

JASPER FANNING: I have Ph.D. in agricultural economics. [LB1074]

SENATOR BRASCH: Agricultural economics, very good. As I'm seeing that you're in the Upper Republican NRD and positioned very well between Kansas and Colorado, when Colorado had their flooding event this past year... [LB1074]

JASPER FANNING: Yes. [LB1074]

SENATOR BRASCH: ...they called it what, a 5,000-year flood, or how many years did they... [LB1074]

JASPER FANNING: I don't recall the exact frequency. [LB1074]

SENATOR BRASCH: Okay. Does that water level...or when we have catastrophic water events, does it affect the water tables in the basins across the state or the aquifer...I was hoping your Ph.D. would tell me that it's a giant sponge or something like that. [LB1074]

JASPER FANNING: Well, there is a very big effect of that and that came down the South Platte and I actually live between the South Platte and North Platte Rivers near Ogallala. [LB1074]

SENATOR BRASCH: Okay. [LB1074]

JASPER FANNING: And when that came through...you know, it started out at Sterling and people were talking about it. By the time it got to Ogallala, it really stayed within the floodplain, kind of between the interstate and it really didn't get into town much. And the sandbags that people put up were wasted because that water was slowly going out into that floodplain, soaking in, and the wall of water, as people were referring to it as, it dwindled greatly as it moved east from Ogallala. That high flow or elevation in the river does push water out, but it moves fairly slowly. And so there would have been a huge impact in the South Platte Basin and in the Platte Basin on down the stream from that. And that will have a relatively large impact right next to the stream and the duration of that where it lasted for several months, I'm sure, you know, there's probably some recorder wells where they took water through the Central Nebraska Public Power and Irrigation District's system and increased recharge in that area. Some...I'm sure, some of their recorder wells in that area, again, because their canals took it there would show

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

a bump. But you're not going to see a huge impact from a short duration event. To put it in context, we had a 18-inch rain west of Champion, and I struggle, 2007 or 2008, wasn't real good on the crops, but we didn't really see a bump in our recorder wells in that area that year; it took about two years for the recharge to reach the aquifer. But we saw some big rises of a couple of feet in the area from that. So you might see a two-foot or a three-foot rise from something like that over a localized area once it all reaches equilibrium. [LB1074]

SENATOR BRASCH: Thank you. That just was something I was curious about. Thank you. [LB1074]

JASPER FANNING: Sure. [LB1074]

SENATOR CARLSON: Okay. Any other questions? I'm going to ask this because some of the previous testifiers have really indicated that on Rock Creek on the wells that you have, now how many wells did those that you drilled at Rock Creek replace? [LB1074]

JASPER FANNING: Well, technically, we drilled nine new wells and we repurposed one that had been drilled in, I believe, 2009, because most of those wells were drilled in '74 and '75 and the construction was suspect and it was 30 years old. So we retired, I believe, 33 or 34 irrigation wells total now; retired just over 5,000...about 5,200 certified irrigated acres. [LB1074]

SENATOR CARLSON: And how many new wells? Twelve? [LB1074]

JASPER FANNING: We drilled 10 wells. [LB1074]

SENATOR CARLSON: Ten. [LB1074]

JASPER FANNING: Well, we drilled 9 and modified one. [LB1074]

SENATOR CARLSON: Now...and previous testifiers and even in what they've handed us would indicate that in Rock Creek now, out of those 10 wells, you're pumping more water than what was previously pumped out of the 33 that you shut down. Is that true? [LB1074]

JASPER FANNING: Well, as I said, the project was designed to pump three times as much water as it would in a normal year in the years that we need to operate it. And so, yes, it's true that we pump more than what those wells...now, I would point out we didn't use them in 2012, so there was zero use in 2012. Had they been irrigated in 2012, I mean other people pumped two years worth of allocation in those years, so we may have pumped through 2013 as much water as would have been pumped in 2012 and 2013. [LB1074]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

SENATOR CARLSON: So you've been doing it three years. When did you start?
[LB1074]

JASPER FANNING: We purchased it in 2011. The land was retired for 2012. And we utilized it for augmentation in 2013. [LB1074]

SENATOR CARLSON: Okay. And then in order to get the credit that you want, I understand you got to pump more than what you were hoping you needed to pump. So it sounds to me like that's going to continue, that you're going to need to pump more water out of those wells than what was being pumped out of them when they were going on the field for crops. [LB1074]

JASPER FANNING: Well, no, because there will be roughly two-thirds of the years that we don't need to pump anything and so those years will be zero. Secondly, like if we...the only information we really have is historical information. The worst year of Nebraska's noncompliance, we were over by about 42,000 acre feet. Our share of that was like 10,000 acre feet. And so we thought we needed to set the project up for 10,000 acre feet. Once we went through the IMP process and understood their forecast, they have a 10,000 acre foot cushion and we're responsible for about 44 percent of that. So we have to make up an additional 4,400 acre feet in the forecast just as a cushion to ensure that Nebraska is in compliance. So we went out and purchased another, roughly, 2,000 acres to make sure we could make up that cushion. Now once that...as that cushion is realized from one year to the next, you know, in their forecast they'll say that we need to make up say 15,000 acre feet and we'll do that, but in reality we probably only needed 10,000 to have been in compliance. So we'll carry that positive balance forward. We were 4,200 acre feet better off at the beginning of 2014 than their 2013 forecast said we would be. [LB1074]

SENATOR CARLSON: Okay. Then we go to N-CORPE, and is the intent and the plan there...because the water that you pumped either is going to go back to the Platte or to the Republican out of those wells. Is the plan to pump just as much water out of all those wells as were being pumped out of them before when they were used for crops?
[LB1074]

JASPER FANNING: Over the course of time or the long term there will be years that we pump more, years that we pump nothing, but the intent is over the course of time that we won't have an increase in consumptive use on that project. [LB1074]

SENATOR CARLSON: But that's another way of saying we intend to pump just as much as had been pumped before, so... [LB1074]

JASPER FANNING: Or less. [LB1074]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

SENATOR CARLSON: ...we're not...but you didn't say that. And I'm getting after you a little bit. You didn't say that. You said that we wouldn't pump more. [LB1074]

JASPER FANNING: Well, that's the constraint. We...our intent is not to pump more. There's a good chance we'll pump less. [LB1074]

SENATOR CARLSON: Well, there's a...and there's a big difference there. If your plan is to pump less and you have an...better than an intent, but a determination that you're going to pump less then I would say that's adding to and helping in sustainability. If you're pumping the same, I don't see that it's doing a thing for sustainability, but it is doing something for compliance. [LB1074]

JASPER FANNING: Well, sustainability...the project is really focused on compliance. It can help a little bit towards sustainability. If you think about sustainability, that's over 1.2 million acres in the basin...or 1.3 million...in between there. Sixteen...you don't get sustainability on those 16,000 acres. You get a...through again...through our long-term management components in our IMPs which is the long-term pumping standards across all water users. [LB1074]

SENATOR CARLSON: To me, common sense would say, if we're going to pump just as much out those wells as historically had been pumped, then we're not contributing anything to sustainability, but we are contributing to compliance. [LB1074]

JASPER FANNING: If we were to pump no less water, it would have provided compact compliance and...as you indicated, not have done much for sustainability. [LB1074]

SENATOR CARLSON: Okay. [LB1074]

JASPER FANNING: Now when we pump less water, we'll have had an impact on both. [LB1074]

SENATOR CARLSON: Right, I understand that. Okay. Any other comments? Questions? Thank you. We asked you quite a few questions, Jasper. [LB1074]

JASPER FANNING: That's fine. [LB1074]

SENATOR CARLSON: Thank you for your testimony. [LB1074]

JASPER FANNING: Thank you. [LB1074]

SENATOR CARLSON: Welcome, Don. [LB1074]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

DON BLANKENAU: (Exhibits 18 and 19) Good afternoon, Mr. Chairman, members of the committee. My name is Don Blankenau; my last name is spelled B-l-a-n-k-e-n-a-u and I'm here today representing the Nebraska Association of Resources Districts. I'm a lawyer in Lincoln and I've been lucky enough to represent clients on water issues in places like Arizona, North Dakota, South Dakota, Tennessee, Alabama, Georgia, Florida, and even in D.C. courts and have learned a couple of things in that representation that are germane to your deliberations today. First, that it's always important to talk to original sources for information. Secondly, I think Nebraskans really beat themselves up over how they manage water. And I think that's a healthy exercise to go through. But I think if you look at the facts, Nebraska is light years ahead of its counterparts. And in support of both of those two propositions, I would ask you first with respect to the report from the Conservation and Survey Division that you received earlier to talk to the actual authors of that report. If you do that I think you'll learn two important things. Number one, that the declines that are illustrated in that report were fully predicable given the severity of the drought. They will also tell you that they don't believe that Nebraska's water situation is dire. And I would urge you to explore that with them before moving this bill out of committee. Secondly, and in support of that same proposition, I would refer you to a USGS report. This is kind of an expanded report of the conservation survey report that looks at the high plains aquifer over multiple states. And I'll leave this with you here as an exhibit, but it's available on-line. And if you look at this report, and this is a change in water levels from predevelopment to the year 2011, I think you'll see just how effective Nebraska's water management really is. This report indicates that the water levels in 2011 in Nebraska were .2 feet higher than predevelopment. Now contrast that with the other states listed: 13 feet declines in Colorado; 23 feet declines in Kansas; 39 feet declines in Texas. I think you need to bear in mind that we are really being quite successful in our water management when you look at it in a much more global perspective. The second point I wanted to address, and this is kind of a bit of history, the law that LB1074 ceases to alter was created by LB962 in 2004. And the genesis of LB962 was from a water policy task force created by Mike Johanns. And the politics of that task force were, as you can imagine, very delicate. And it took over a year to get those parties together and they were from all across Nebraska to come to agreement on the legislation that ultimately became law. And one of the key aspects of LB962 was the definition of what "overappropriated" would be. Many of those same people who were on that task force are still around today. And I think they would view LB1074 as really something of a betrayal of the give and take that they made back in 2004. So I would urge this committee to really carefully think about perhaps slowing the pace of this down, taking in a broader view and talking to a wider audience before making a change of this magnitude. The next point I'll make is that under existing law, under what LB962 authorized, NRDs can adopt IMPs that are much more aggressive at achieving the very goals and objectives of LB1074 if they so desire. But NRDs are made up of board members who are elected from all walks of life. You don't have to be a groundwater user, you can be a surface water user, you have a vote. You can live in a city, you've got the same vote. And all of that means that LB1074 seeks to impose a

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

certain management scheme that is likely contrary to the local will. And I think that will almost certainly meet with resistance as well. I'll jump ahead real quickly to some of the Rock Creek and N-CORPE issues. Rock Creek, as Dr. Fanning mentioned, have been the subject of nonbinding arbitration. And that arbitrator, Jeff Fereday from Idaho, looked at all the information from Kansas and Nebraska and concluded that Rock Creek, while it would have a depleted affect on streamflow, would have only a minor depletive effect and would provide much more wet water to Kansas than that depletion would occur. So the net benefit was significant and found in Nebraska's favor. We think we'll find the same thing with regard to N-CORPE, but our key information was modeling performed by the Department of Natural Resources which looked at the impact of those wells 60 years into the future. I would finally urge this committee to look at the Special Master's report in terms of Nebraska's compliance efforts on the compact. That's a publicly available report. He spent a great deal of time examining the efforts Nebraska made to attain compliance and concluded that Nebraska was well situation to be in compliance 60 years into the future. And with that I will close and entertain any questions you may have. [LB1074]

SENATOR BRASCH: Thank you, Mr. Blankenau, for your testimony. Are there any questions from the committee here? Yes, Senator. [LB1074]

SENATOR DUBAS: Thank you, Senator Brasch. Thank you, Mr. Blankenau. And I know you have a lot of experience in water issues and I appreciate you coming forward to share that and I know we've made great strides in compliance and should be proud as producers, as Nebraska that we've done that. But at times, and I mean listening to some of the testifiers that come forward that are surface irrigators, it's like we are in compliance...we've reached compliance on the backs of our surface water irrigators. And while they might not be a large number or a large acre, a large number of acres, they still are an important component in the ag economy and it's definitely impacting their ability to make a living. And so I guess I'm just looking for your response to what...the impact that we've made on the surface water irrigators. [LB1074]

DON BLANKENAU: Yeah, and I think that's partly the product of just historical development. No one understood exactly what the compact would require when all the well development was going in. So that was certainly a factor. As Mr. Uerling testified to earlier, it took about 40 years to get in this situation. But the compact, fundamentally, is one that divides up surface water. You can use as much groundwater as you want to the extent it depletes surface flows. And you can...and that's why you can use so much more groundwater because its impact to streamflows is so much less. If you divert an acre foot of water from the river and apply it to the land and consume that acre foot, that's an acre foot charged to the compact. If you divert an acre foot of groundwater and consume that, only a fraction of that gets charged to the compact. And that's why it certainly appears that you've got this disparity in that. I think you heard from Dr. Fanning their efforts to try to move the ship in a different direction. As Roger Patterson was fond

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

of saying: changing that hydrology over time is a big ship and it takes a long time to alter it. [LB1074]

SENATOR DUBAS: Going back to the questions that I asked Dr. Fanning about the augmentation and then sending that water that we aren't getting full credit for yet, with the hopes that we'll get full credit, I think I can relate to where the surface water irrigators are, like, okay, you're gambling with my water because you're giving my water to keep us in compliance and we're not sure if we're going to get credit for all of that water. I'm asking you for a professional opinion here, do you think we'll get full credit for all of that water? [LB1074]

DON BLANKENAU: I think so, and that's certainly what the arbitrator found. And even if we didn't have those augmentation projects in line, the surface water people would be even in a worse situation because they wouldn't even have the small amount of water they get available to them. And probably a more of a dramatic cut down in groundwater would follow. So I think the state as a whole would be in a much worse position without those augmentation projects. [LB1074]

SENATOR DUBAS: Okay, thank you. [LB1074]

SENATOR BRASCH: Are there any other questions from the committee? [LB1074]

SENATOR HAAR: Yes, thank you. [LB1074]

SENATOR BRASCH: Yes, Senator Haar. [LB1074]

SENATOR HAAR: You know, I'm still learning a lot about all this stuff, but the terminology I've come to appreciate and sort of understand is fully appropriated and overappropriated. And what concerns me is that a point in time was decided to say, you know, if you weren't overappropriated at this moment in time you can never be. That's what bothers me and that's why I find LB1074 to be appealing to me. [LB1074]

DON BLANKENAU: Well, if it was just a question of unappropriated, it may not be as big a problem. I think LB1074 mandates a certain streamflow depletion be determined and corrected and there are lots of factors that would go into that. And if you took it to its logical extreme, you'd be looking at closing down, perhaps, a hundred...hundreds of thousands of groundwater-irrigated acres. And what that shutdown would do would be to deprive those landowners immediately of the full economic value of their land... [LB1074]

SENATOR HAAR: But I'm talking about that point in time. How can you define something like fully appropriated versus overappropriated as a point in time, because science moves forward, our climate is changing, I believe, etcetera, etcetera? So it...

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

[LB1074]

DON BLANKENAU: That was not a scientific determination. At the time when LB962 was passed, it was understood that you could apply overappropriated in a much wider conceptual way, but that was a political compromise. [LB1074]

SENATOR HAAR: Right, I understand. Okay. [LB1074]

DON BLANKENAU: And to change that now, I think, really does create a large backlash. And I would say that what you would find is probably legal challenges to LB1074 aimed at special purpose legislation and probably a deprivation of property rights as well. And I think you could avert that if you took a more...a slower approach... [LB1074]

SENATOR HAAR: How long do you think that should take because all of...with term limits we just start to understand this stuff and then we're moved out, so I mean, you know, you can just keep pushing us ahead and ahead and ahead, nothing is ever going to come. [LB1074]

DON BLANKENAU: Well, LB962 took about a year and the legislation was introduced and because that political coalition was built, the bill passed that year. And I would think that that's probably a reasonable time frame to look at this issue. Of course, that doesn't guarantee you'll get the political consensus, but I think the reaction you get to it is a lot more agreeable than just quick movement on this bill. [LB1074]

SENATOR HAAR: I hope Senator Lathrop, at the end, will address the possibility of all kinds of lawsuits. He is shaking his head yes. So we'll hear about that. (Laughter) Okay, thank you. [LB1074]

SENATOR BRASCH: Thank you, Senator Haar. And we have another question from Senator Schilz. [LB1074]

SENATOR SCHILZ: Thank you, Senator Brasch. Don, thanks for coming in today. And Senator Haar was talking about that '97 date, you know, yeah that was an arbitrary date that was put in there. But I think for the record and for everybody to understand is that that is not the end of what we're talking about when it comes to the Platte River Recovery Program and LB962, which was the new depletions policy for that recovery program, basically, and then we happened to see the opportunity to stick the Republican in there as well to try to alleviate some of that. We still have two more increments to deal with on the Platte River Recovery Program. And people are, on one hand, scared to death of what that's going to mean. But on the other hand and what I've seen, and you can talk to this if you want, but on the other hand what I've seen is the coming together of folks to work together on this and finding out that even if '97 was the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

date that was in there, they now see the importance and the way forward to get us way beyond that date to actually answering the question of how do we get to sustainability, not just back to fully appropriated. And I think that's important here and how do we make sure that we can take those steps without jeopardizing the economy, without jeopardizing the tax revenue that's coming in, and maintaining people's ability to do what they do every day out there. [LB1074]

DON BLANKENAU: Yeah, I think that's exactly right, Senator. You know, it bears mentioning too that the Platte River Cooperative Agreement and the PRRIP Program are voluntary. Nebraska never had to enter those, they're not binding law. But yet we're regulating people to achieve those streamflows for what is really nothing more than a gubernatorial handshake. I think that tells you a lot about the willingness of Nebraskans to take extraordinary measures to manage water. [LB1074]

SENATOR SCHILZ: Thank you. [LB1074]

SENATOR BRASCH: Very good. I believe we have a couple more questions here. Senator Carlson, then Senator Johnson. [LB1074]

SENATOR CARLSON: Okay. Thank you, Senator Brasch. As you probably know, I'm more concerned about overall sustainability of our water policy in the state than I am about a year-by-year compliance issue. Maybe I shouldn't be, but I am. So this will sound like an elementary question but I think it fits here, because it seems to me like we just tend to put off, let's not make it right now and let's wait till next year, the year after that until we really get serious about it, and we're so concerned about somebody not being economically viable. But here's the question, and it's simple. If you have \$10,000 in your bank account and every year you put in \$12,000 and you take out \$14,000, how's that going to work? [LB1074]

DON BLANKENAU: And, Senator, I think you were out of the room when I referenced the USGS report which I think suggests that while some years you're taking out \$14,000 and putting in \$12,000, some years it's the exact opposite. This report indicates that at least in 2011, the water levels across Nebraska were .2 feet higher than predevelopment, and that's in part because this followed a wet cycle. And the groundwater levels go up and down, and that doesn't mean you don't manage them and be cognizant of those situations where you do get into a mining situation. But I think there's a lot more to look at than merely an annual decline. Furthermore, I would say that not all of groundwater declines are harmful to streamflow. There are isolated declines which don't impact streamflows at all. And then it I think really does become a local issue. How do those people wish to manage the water for the generations that will live there in the future? [LB1074]

SENATOR CARLSON: I don't think you're saying this, but it almost sounds like you're

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

saying that these USGS maps and what the School of Natural Resources puts out are not to be held up as true because obviously, we've got groundwater changes from predevelopment until today that are negative. They're not positive. If they were zero, like you say we get a groundwater increase in 2011, if they were even over those years it'd be wonderful, but they're not. And I just get the feeling that there's not enough people that say that's a problem and we need to tackle it. That's the whole idea of the Water Sustainability Task Force. We need to tackle that problem. Do you think we need to tackle that problem? [LB1074]

DON BLANKENAU: Yeah. I think that's a good problem to tackle, and I think again you were out when I said this, that I think Nebraskans beat themselves up all the time over water policy and I think that's a good and healthy thing to do because it keeps us always reexamining. But I think the picture is more complex than just a simple map. And to illustrate the point the School of Natural Resources, I would urge you again to talk to the authors because they'll tell that the picture is much more complex than what you're seeing. And this USGS report looks at not just Nebraska, but the whole region which I think gives you also a better feel for how Nebraska manages it and how sustainable we really are. [LB1074]

SENATOR CARLSON: Well, and I need to look at that, which I haven't. But then out of that, would you say it's not as bad as it might look? That's really what you're saying. The picture is not as bad as it appears to be on a map. [LB1074]

DON BLANKENAU: And I think there are areas of the state where it is a problem and there are other parts of the state where it is not a problem. But it makes it that much more difficult to paint with such a broad brush as LB1074 suggests. [LB1074]

SENATOR CARLSON: Well, then when you look at how we are compared to other states, I know we look pretty good. We look better than Texas. We look better than Oklahoma. We look better than Kansas. [LB1074]

DON BLANKENAU: Thank god you said Kansas. [LB1074]

SENATOR CARLSON: Well, there's no comparison I don't think. [LB1074]

DON BLANKENAU: No, there isn't. [LB1074]

SENATOR CARLSON: But the point of it is we don't want to get there. [LB1074]

DON BLANKENAU: That's right. [LB1074]

SENATOR CARLSON: And I think we're going to have to change our ways and we got to get serious about it and it's not going to be fun and...but we need to do that because

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

for generations into the future we want to be in the driver's seat, and we will be if we do something about it. And I don't think you're arguing with me on that. [LB1074]

DON BLANKENAU: I don't think I am, no. And I think if you read my written testimony, I will say that those IMPs are designed to be flexible and ever-changing to take on new information and data. And that's what we have to do. We have to be willing to accept that information and data and act accordingly. But I don't think it's a one-size-fits-all kind of a situation either. [LB1074]

SENATOR CARLSON: Okay. All right. Thank you. [LB1074]

SENATOR BRASCH: Thank you,... [LB1074]

SENATOR CARLSON: I guess I'm in charge now. (Laughter) Any other questions? [LB1074]

SENATOR BRASCH: Yes, there was. Senator... [LB1074]

SENATOR CARLSON: Yes, Senator Johnson. [LB1074]

SENATOR JOHNSON: Learned a lot about water and I know water has been studied and studied and studied over the years. But one of the responsibilities we have as a committee is to create good policy. And you've suggested that maybe we hold up on LB1074. Is it because it's wrong legislation or wrong policy or it's not going far enough? I agree with Senator Carlson that we can't keep kicking this down. And I've also been told if it's a bad bill, don't try and improve it by change. Do you say we ignore this or do we take this bill and make the changes suggested here and improve it somehow? [LB1074]

DON BLANKENAU: I think you might have that as an option. I think right now the way it's presently worded it's bad policy because it does force a certain management outcome that I think will meet very strong resistance and will cause economic consequences that are truly going to be dramatic. And I would urge reexamining the bill from top to bottom with a broader base, similar to what the senator did with the Water Sustainability Task Force. [LB1074]

SENATOR JOHNSON: Okay. Thank you. [LB1074]

SENATOR BRASCH: Chairman. [LB1074]

SENATOR CARLSON: Okay. I think Senator Kolowski. [LB1074]

SENATOR KOLOWSKI: Thank you. Thank you, Mr. Chair. Don, just wanted to thank

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

you for your many statements today. But I'm just trying to sort out all the things from the early speakers to right up to your testimony now. And there seems to be so many different opinions on this, but one of the major things driving some of my questions would be are we going to be able to meet the compacts with Kansas by doing the things that we're doing suggested in this bill or is that going to be all for nought and then we're back at the beginning of a process that has many years under its belt already? [LB1074]

DON BLANKENAU: Boy, I think the best source of information to answer that question, again, is the report of the Special Master. This is a person selected by the U.S. Supreme Court who now is on the First Circuit Federal Court of Appeals. He heard the entire suite of evidence from Kansas and Nebraska and Colorado. And Kansas focused very hard on Nebraska's ability to comply into the future, did complex modeling with a team of experts that at least they called world class, and projected out 60 years into the future to see when and if Nebraska would violate the compact. The Special Master concluded in his report to the U.S. Supreme Court that most of that was merely conjecture. And he took great pains to point out all of the steps that Nebraska had taken to attain compliance, and he concluded that there was no reason to believe that Nebraska would be out of compliance in the future. Now that's going to take continued efforts by Nebraska, but I certainly think the commitment is there. And if you haven't read that Special Master's report, I can certainly provide it. It's available on-line and it will be reviewed by the U.S. Supreme Court sometime in the next probably nine months. [LB1074]

SENATOR KOLOWSKI: I hear our Chair kind of between the lines of our Chair's comments, sometimes of the things we've talked about that might be done with the allocation that we're looking for to withhold and hold and release water over time if we have an abundance of it to give us opportunities to do that in whatever strange ball it might be throughout the state, if that will give us the same kind of bang for the buck to be able to release and do our...meet our obligations by law, wherever that might be because...and still be able to farm and do the things that we need to do to keep the economic viability there. So there...you know, we're coming from so many different pieces on this with the Water Task Force and with the charges on that particular group and trying to define this from the senator's bill to the final sustainability that we hope to gain from all of this. There's so many pieces to it. [LB1074]

DON BLANKENAU: Yeah, you know, and we tend to look at things with snapshots in time, and it really depends where you are hydrologically. For instance, when I first went to work for what was then the Department of Water Resources, there was a drought. This was about 1990. And Harlan County Reservoir was very low. The Bureau of Reclamation pronounced that it would never fill again. And in 1993, if you'll remember, there were enormous flood years and the reservoir was full for I believe six to eight consecutive years after that. So part of the challenge as a water manager is not just to look at how things are today, but to try to give it some historical perspective and

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

understand that there is variation in climate. And that has an effect on not just the flow of rivers today, but how aquifers react and how they store water. And I think looking at an ever-growing population, we have to have that big picture, long-term point of view in mind. [LB1074]

SENATOR KOLOWSKI: Well, I appreciate that and I'm trying to get someone to take all those snapshots and make a movie for me so I understand it better is the best thing I can say for an analogy. [LB1074]

DON BLANKENAU: You know, and one way I would urge you to do that, both the Conservation and Survey Division and USGS on their Web sites have a variety of snapshots. [LB1074]

SENATOR KOLOWSKI: Okay. [LB1074]

DON BLANKENAU: You can look at predevelopment to present or nearly present or year to year. They provide a lot of that information. But I would urge you to talk to those original researchers. You know, they're the sources of that information and I think they can give you a pretty objective point of view on this that you would find helpful. [LB1074]

SENATOR KOLOWSKI: Thank you. [LB1074]

SENATOR CARLSON: Senator Brasch. [LB1074]

SENATOR BRASCH: Thank you, Chairman. And thank you for your testimony here, and I did have a few questions, especially after Senator Johnson had asked his question. My understanding is that in the year 2004, there was a task force that took an entire year to look at these issues that are being raised in LB1074 today, that through a year of research and testimony and results from all the scientists and combined that LB962 was designed to protect the future. All right. Now when you're talking about the USGS report there, and that's a most current, is that... [LB1074]

DON BLANKENAU: This is one of their most current. I think they just released this in January and it looked at predevelopment to 2011, and they have these for a variety of years. Yeah. [LB1074]

SENATOR BRASCH: Twenty...okay. And so the research done in 2004 are meeting all of the projections up until the most recent report and you're saying...and others that we are not in eminent danger of depletion. [LB1074]

DON BLANKENAU: I think that's right. [LB1074]

SENATOR BRASCH: Okay. [LB1074]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

DON BLANKENAU: And I think, again, if you talk to the Conservation and Survey Division researchers who prepared that earlier report, that's precisely what they will tell you. And I don't want to speak for them, but... [LB1074]

SENATOR BRASCH: And that's what I think I'm hearing you say. [LB1074]

DON BLANKENAU: Yeah. [LB1074]

SENATOR BRASCH: Is that what your testimony is? [LB1074]

DON BLANKENAU: That is, yes. [LB1074]

SENATOR BRASCH: Okay. And then I also see a document. And when you're saying the early report or pre...would you repeat that, the pre... [LB1074]

DON BLANKENAU: The predevelopment. [LB1074]

SENATOR BRASCH: Predevelopment. Are you...there's a handout here that goes back to the Paleozoic, Mesozoic, and how far back are you...are we talking... [LB1074]

DON BLANKENAU: Yeah. Predevelopment for purposes of this is really before wide-scale irrigation begins, somewhere around 1950. Yeah. [LB1074]

SENATOR BRASCH: Okay. All right. I didn't know if we were going way back to Noah's ark or where? [LB1074]

DON BLANKENAU: Yeah. The technology was different then too. [LB1074]

SENATOR BRASCH: So no, I...it is good to hear the facts have been at one point addressed, that...and perhaps Nebraska is doing a great job with compared to other states because we have been great stewards of our agriculture and waters. And other than that I have no other questions. Thank you. [LB1074]

DON BLANKENAU: Thank you, Senator. [LB1074]

SENATOR CARLSON: Okay. Any other questions? All right. Thank you for your testimony. [LB1074]

DON BLANKENAU: Thank you, Mr. Chairman. Thank you. [LB1074]

SENATOR CARLSON: Next. Welcome, Dean. [LB1074]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

DEAN EDSON: (Exhibits 20, 21, and 22) Senator Carlson, members of the committee, my name is Dean Edson, spelled D-e-a-n E-d-s-o-n. I'm the executive director of the Nebraska Association of Resources Districts. I'm submitting some testimony in opposition on behalf of Twin Platte NRD, Middle Niobrara NRD, Upper Niobrara White NRD who couldn't be here today but requested that their comments be included in that. I'll try to summarize these real quick because I don't have time to go through all of them verbatim. But it gets down to the point that with the Twin Platte NRD, they're already overappropriated in some areas. They're concerned with the language in the bill because even if they got back to fully appropriated, they'd have to go back through overappropriated again because some junior surface water user would object. And the language used in this bill puts some pretty stringent caveats on that all these surface water users, especially the juniors have to sign off on these integrated management plans. The end result could be just zero groundwater irrigation in that district. The Middle Niobrara NRD, summarize their testimony. Their basin was declared fully appropriated a few years ago. And then subsequently it was reversed by the courts because the proper data was not used and it was determined that that district, that basin was not fully appropriated in review of the data. Their concern is now all of a sudden you're going take...go from not fully...or from fully appropriated to not fully appropriated and back to overappropriated. And so some of these processes that have been used by the department and the districts since we passed LB962, we're just getting comfortable with them now and finally getting them to the point where we're reaching workable agreements with the districts and DNR to get some...or implement some water management plans to address the situations in the local area. The Upper Niobrara White NRD also has the same concerns. They were part of that fully appropriated determination and now are back out of it. They do have a portion of their district that's fully appropriated. They've also gone beyond what was required in the fully appropriated determination. They've added a portion of their district that was not declared fully appropriated into their management so that their whole district can be managed uniformly and they can address some local problems. I bring that to your attention to point out that some of the things that are asked for in this bill can already be done. Districts can go beyond what the minimum requirements are and most of them do. To address these concerns about why is this term overappropriated in law, you got to go back to the Platte River Recovery Program and the agreement that got signed. The dates that are in that tie back to the dates that the Governor signed the Platte River Cooperative, the initial time he signed the agreement to enter Nebraska into that. That's why you have that 1997 date in there. Two-thousand two when the rest of the agreement was formalized, the initial date was incorporated into it, and that just tracked through and tracked into the statutes. The reason why it's overappropriated is because we have a recovery program for endangered species, which means you need to add more water to the river for those species. The only way to do that is to reduce your water usage or find other water out there. The big difference here is with the Republican River Basin, it's fully appropriated because we determine a number every year that we have to meet. That's your fully appropriated number. We try to stay under that number

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

to stay below our fully appropriated. And what we're finding out, the only way we can get there is through these augmentation programs that we've implemented. If we shut down all the groundwater irrigation in that basin, it will do nothing for compact compliance. We don't put water back in, enough water in the stream to deliver to Kansas, and the surface water users in the basin wouldn't get to use the water either. So you end up with a net zero, nobody gets anything. And you look at 1.1 million acres in that basin and shut it all down and don't get compliance out of it, then you look at the value of irrigated land at minimum \$6,000 an acre, take that \$6,000 times 1.1 million will give you your initial economic impact. If we get a...and then you can have somebody a lot smarter than me come in and do your economic impact based upon what happens to those dollars in your local economy. With that, I see my red light is on. I'll close and try to answer any questions you may have. [LB1074]

SENATOR CARLSON: All right. Thank you, Dean. Questions of Dean? I guess not. [LB1074]

DEAN EDSON: You're letting me off the hook? [LB1074]

SENATOR CARLSON: I guess so. Thank you. Welcome, Jay. [LB1074]

JAY REMPE: Thank you, Senator Carlson, members of the Natural Resources Committee. My name is Jay Rempe, that's J-a-y R-e-m-p-e. I am vice president of governmental relations for Nebraska Farm Bureau. I'm here today on behalf of Nebraska Farm Bureau in opposition to LB1074. Let me start by saying real quick that Nebraska Farm Bureau strongly supports the integrated management planning process that's part of LB962 which passed in 2004. Our policy recognizes the need for the integrated management of surface and groundwater in those hydrologically connected areas, and it seeks to try to provide for careful balancing of the rights of both surface water users and groundwater users because we have members in our organization that are both surface and groundwater members, so we always try to strive to get that balance. And it's not always easy all the time as you can tell by listening to the testimony today. Just real quick in response to a couple of questions, just a little bit of background on LB962. If I remember correctly, the task force that was created that eventually came up with the recommendations for LB962 was created in 2001, and then the legislation was introduced in 2004 and passed in 2004. And I think Senator Ken Schilz was on that group as well. There was 49 members that met over the course of those intervening years to come up with the LB962 process that is in place today. And I won't sit up here and argue that the process is perfect. It isn't. But I think when you step back and look out over the past ten years and the discussions, the planning, the research, the data that we've gathered, we've come a long ways in those ten years in trying to address some of these integrated management issues. And I don't want to lose sight of that, but there are issues and challenges out there that we...and we still need to address. Farm Bureau opposes this legislation for a couple of reasons. One is we're not

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

sure...it's obvious or it appears that part of this legislation is pointed towards the Republican Basin and some of the issues going there. We're not sure that by...if you snapped your fingers today and declared the Republican River Basin overappropriated that would get you any closer to resolving the issues that are down there. And I say that because, as has already elaborated in testimony, the overappropriated statutes and the incremental approach that is part of that integrated management planning process was crafted specifically for the Platte Basin or that situation. And so when you look at trying to apply that to other basins, in our opinion, it doesn't fit very well and it wouldn't get you any further down the road any quicker I think than they're already trying in our opinion on that. So that's one area. The other is LB1074 obviously would not only impact the Republican Basin, but the whole state in other basins as well too. And the way LB962 in my opinion was structured, it was to look at all the basins, and we have the process where the department declares basins fully appropriated. And the purpose of that fully appropriated was to launch a planning process to ever avoid getting into an overappropriated situation because no one wanted...somebody mentioned earlier about the Republican being the canary in the coal mine and that's very true. No one wants to get in that situation. And let me cite a couple parts of existing statute that I think gets at that and wouldn't allow or we wouldn't want to get into that overappropriated status. The first, and this is under integrated management plan, they have to have clear goals and objectives with the purpose of sustaining a balance between water users and water supplies so that the economic viability, social, environmental health, safety, and welfare of the river basin, subbasin, or reach can be achieved. So to me, that tells me that as part of that integrated management planning process, they can't let you get to that overappropriated part. You declare a basin fully appropriated. You launch the planning process. The purpose of that is to try to sustain that balance. So we're trying to get there. Secondly, and I'll try to finish this up real quick, as part of that integrated management planning process they have to gather and evaluate data information methodologies that could be used to implement the integrated management planning process and increase the understanding of the surface water and hydrologically connected groundwater system and test the validity of the conclusions and information upon which the integrated management plan is based. So my point in reading all that is these integrated management plans are dynamic pieces of paper. They're not set in stone. There's constant changing. There's talk looking at the varying conditions going out there. So I don't think this legislation is needed for the rest of the state. And so if there are some issues in the Republican Basin that this committee and the Legislature feels need to be addressed, I would...I guess I would leave the integrated management planning process alone and the overappropriated process alone and focus on those in a different way or a different manner and try to attack it at that way rather than getting everybody else wrapped up in this as well. So with that, the red light has gone off. I didn't intend to take that long and I apologize. I'd be happy to answer any questions. [LB1074]

SENATOR CARLSON: Okay. All right. Thank you, Jay. Questions? Okay. Thank you.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

[LB1074]

JAY REMPE: Thank you. [LB1074]

SENATOR CARLSON: Any other in opposition? Anyone testify in a neutral position? Welcome. [LB1074]

MATT JOECKEL: (Exhibits 23 and 24) Good afternoon, Mr. Chair, members of the committee. My name is Matt, M-a-t-t, Joeckel, J-o-e-c-k-e-l. I've a Ph.D. in geology from the University of Iowa and I'm a professor in the Conservation and Survey Division of the School of Natural Resources at UNL. I'd like to take this opportunity as I did earlier this week when I appeared before a similar committee to thank everyone in the room for paying my salary. I hope the result of that will be beneficial in some general way. Before I proceed with my prepared statement, I want to tell everyone that I do have additional copies of the water level report. It's been mentioned already. All of you senators should have received a copy. I would like to make you aware that you'll be receiving something else in the mail, and that would be a couple of sheets that serve as an addendum to this report. Those are being mailed out now as I speak. Since you all have these, I'll keep these here and if any of you in the audience would care to take one, please do. I have another document that is being circulated now to the members of the committee, and members of the general public could request a copy of this as a PDF and I could provide it to you. I didn't write it, just like I didn't write the Groundwater-Level Report. I did as...as an aside to that, I did participate in the 2010 report. But this paper entitled "Analysis of Aquifer Depletion Criteria with Implications for Groundwater Management" is a very good, clearly written document that may assist you all now and in the future in your deliberations. It does a thorough job of explaining the issues dealing with aquifer pumping, potential depletion of aquifers. And I'll draw your attention to some of the figures. There are several excellent figures here. Figure one may be of particular interest. Figures three and four may be of particular interest. This is a way homer, as I often tell my students. A way homer being something you really need to read and think about in order to understand. And that goes for me as much as it does anyone else. So this is a paper written by two other individuals, and I want to point out that both documents were largely, they were entirely produced by nontenured people at the university. Some staff people and university staff people deserve a lot of credit and one nontenured track faculty member. All of that said, I'll proceed with my written statement. Conservation and Survey Division, or CSD, is Nebraska State Geological Survey. And among other duties, it is charged with researching, monitoring, and archiving data relevant to Nebraska's groundwater. First, I want to commend overall the actions of Nebraska's Legislatures, all of its natural resources districts, its government agencies, its conservation organizations, and last but certainly not least, its individual citizens, many of whom have spoken today, for all of their efforts and support of the wise use of our water resources. I never fail to be amazed at the intelligence of my fellow Nebraskans, and that's been borne out today regardless of whether individuals spoke

Natural Resources Committee
February 06, 2014

on the pro side or the con side as it were. That's encouraging to me. I trust that we are all of the same mind in acknowledging an overriding concern about the precious natural resources of our great state. My reason for testifying today is certainly not to criticize any particular action, policy, or opinion. Rather, I am here to emphasize a few basic facts about groundwater that are universally applicable to any drainage basin or any plot of terrain under which groundwater exists in which you all might find highly relevant. Pardon me in advance if I insult your intelligence by being overly simplistic. (1) aquifers are complex and dynamic systems and we must account not only for the recharge and discharge of which we've spoken a great deal today, but also the amount of water in storage within them at any time. This paper, which I've circulated, illustrates that point. (2) surface water and groundwater are indeed intimately and inextricably linked, and the rate at which one of these entities responds to perturbations, such as our withdrawal of groundwater by pumping or by a natural perturbation such as drought. And the other is comparably rapid in shallow unconfined aquifers, like parts of the High Plains Aquifer. Deeper confined aquifers' response times may be much slower. Nebraskans rely on both kinds of aquifers. The natural state of an aquifer is constantly adjusting balance of recharge and discharge. By pumping aquifers, we are likely to disrupt the natural equilibrium between recharge and discharge. The depletions of aquifers and streamflows are unavoidable responses of pumping. Time lags exist in the responses of aquifers to these perturbations. Ultimately, such time lags exist because water moves much more slowly through porous media such as sand as opposed to open conduits, like pipes and streams. Pumping an aquifer now will affect our aquifers and streams long into the future. Please consult the Korus and Burbach paper. We're talking at least on decadal time scales, time scales of decades in general, perhaps beyond. Many natural factors must be considered when assessing aquifers and their potential depletion. These factors include aquifer and stream characteristics, pumping volumes and rates, geographic locations, present and future climates, and current and projected water demands. In this regard, a holistic and adaptive approach to water management is scientifically justifiable. Data repeatedly demonstrate that high densities of pumping irrigation wells, particularly high capacity ones, can produce significant draw downs of water levels within aquifers. And, finally, my last point. Given these points, it is an unavoidable conclusion that the actions we take now, including the truly systematic and science-based assessment of Nebraska's drainage basins, will determine our ability to meet water demands in the future. Thank you very much for your time. I'll be pleased to entertain questions. [LB1074]

SENATOR CARLSON: Okay. Thank you for your testimony. Pronounce your last name. [LB1074]

MATT JOECKEL: Joeckel. [LB1074]

SENATOR CARLSON: I didn't want to call you Dr. Jekyll. [LB1074]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

MATT JOECKEL: That's okay. It's happened before. [LB1074]

SENATOR CARLSON: All right. [LB1074]

MATT JOECKEL: Ask my wife. [LB1074]

SENATOR CARLSON: Questions? Senator Schilz. [LB1074]

SENATOR SCHILZ: Just one. Thank you, Dr. Joeckel, for coming in again. We had the pleasure of you in the Agriculture Committee as well. When you talked about it's scientifically okay to look at adaptive management of your issues that you have with water and things like that and the fact that it could take decades to solve those problems, I think that's crucial here in what we're talking about because I don't think there's anybody here, whether they were pro or con, that doesn't want to see science used. [LB1074]

MATT JOECKEL: Sure. [LB1074]

SENATOR SCHILZ: The problem is how long does it take us to get back to where we need to be and how long should we take? And I think it's different, and you can correct me if I'm wrong, please do, but I think it's different depending on where you are and how that...how your aquifers react with the surface water and what substrate it is that it's going into. [LB1074]

MATT JOECKEL: Senator, you're a very astute person. I know that already. I do want to point out that my statement was that it might take decades for stream and aquifer systems to respond to what we're doing to them now, one way or the other. I never offered a time scale on which we might solve all of this, and I suppose that's why I emphasized that the process needs to be adaptive. Our concepts, our ways of doing these things probably need to reflect the inputs of additional data and whatever potential, changes in climate, for example, or use that may come along. I don't know that I answered your question. [LB1074]

SENATOR SCHILZ: No, no, you did. Thank you. [LB1074]

MATT JOECKEL: All right. [LB1074]

SENATOR CARLSON: Okay. Other questions? [LB1074]

MATT JOECKEL: May I ask all of you a question? Is that permissible? [LB1074]

SENATOR CARLSON: No, it's not. It's not. That's not part of the deal. But if you have a... [LB1074]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

MATT JOECKEL: I just want to make the statement that there were some questions that circulated earlier with respect to things that CSD, Conservation and Survey Division, was doing, and I wondered whether I might be able to provide the service at answering some of those questions. I believe Senator Brasch may have had some questions. [LB1074]

SENATOR BRASCH: Please tell us what (laughter) you believe they have... [LB1074]

MATT JOECKEL: Well, as I recall, there was some issues about the maps, and the maps...my colleague here, Mr. Blankenau was very astute, I appreciate what he does. He's right in saying that we never intended to scare anyone with the maps. For example, our figure 12 in the Groundwater Report. All maps like this are summations of point data, and by that I mean data collected at points, in this case wells. We use point data all the time and apparently we're not afraid of them. Very few of the data we use in our day-to-day life are indeed collected continuously, so we need to contour those in some way. We need to make a larger representation because I can assure you that if we just showed you the points on the map, you wouldn't be able to read them. Now if you would care to see data such as these presented at a smaller scale of resolution, a finer scale of resolution, we can always get you the geographic information system GIS coverage, and you can zoom in however you want. But an issue with maps always since there have been maps has been the issue of scale and the representation of data at certain scales. And I will go as far as saying that in constructing maps in a public interest or otherwise, sooner or later one needs to defecate or get off the porcelain stool because the data do need to be disseminated. We can't wait around indefinitely for additional data to arrive. And, indeed, these are supposed to be yearly reports. I might make one other comment. Mr. Blankenau did make a comment that we appear to manage water effectively in Nebraska, and I would in general agree with that. As per my earlier statements, however, there may be a couple of geologic aspects about groundwater in Nebraska that may influence some of the summary statistics that he provided. That is, Nebraska is different in some ways geologically, appreciably so to a geologist like me, from the other states underlain by the High Plains Aquifer. First of all to start with, about 70 percent of the volume of the water in the High Plains Aquifer is right here in Nebraska. Second of all, if we look at the physical geography and the stratigraphy of rock and sediment layers under the surface, Nebraska is different as well. Chief among those would be the fact that we have the largest dune field in the western hemisphere, that being the Sandhills, and those other states with only 30 percent of the total volume of the High Plains Aquifer don't have that physiographic feature. [LB1074]

SENATOR CARLSON: Okay. Thank you. Any other questions? Thank you for your testimony. Appreciate it. [LB1074]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

MATT JOECKEL: Thank you all very much. [LB1074]

SENATOR CARLSON: (Exhibits 25, 26, and 27) Anyone else in a neutral position? We have two letters from Steve Smith, North Platte Valley Water Association, and John Berge from the North Platte Natural Resources District in a neutral position. Senator Lathrop. [LB1074]

SENATOR LATHROP: That was a good hearing. By my count we had ten people who were in favor of the bill and then a letter from the city of Lincoln, and then three people that came in opposition, the natural resources districts and their lawyer who said the situation is not dire. You know, I've spent a little time as a litigator and I've spent a little time as a legislator, and there's an important difference. And the difference is that we're trying to make policy here and not parse out which side was right. Right? We had some people come in and say it is huge problem. And most of the attention was directed to the Republican River Valley, but this isn't directed to the Republican River Valley. It's general policy we're trying to make. We had people come in and say it's a huge problem. Then we had some people that come in and said, you know what, you need to study more, you need to go back to the original sources for the information. You and I will be term limited before that process is over. We can't do it. We will be chasing the original sources of information. And ultimately here's the question: not whether one side was right or one side was wrong, it's why would you be afraid of an overappropriation evaluation. Right? Because this doesn't designate anybody overappropriated. It just says if the science says you're overappropriated, then something else needs to happen. You wear a different label and then we move to the next process. And, by the way, this bill doesn't invent a new process. This bill says use the process that's in place. So what would happen? I would say the fact that there are people concerned about this bill suggests that somebody is concerned they're going to be overappropriated if it passes and then something is going to have to happen. But understand something. It just means they do an IMP process. We don't turn this over to the Department of Natural Resources and we don't exclude local input under the Ground Water Management Act. So if we have a district that turns out to be or a basin that turns out to be overappropriated when this bill passes, the process is already in there and it's not a lot different than fully appropriated. In fact, it's no different except the goal is different. The goal's to bring them back to sustainable. Now, Senator Carlson and members of the committee, I'm not a geologist. I'm not a water lawyer. I don't know if there's an overappropriated district out there. Right. We do not have to decide that issue to make good policy. We don't have to decide whether the NRDs are right or the ten people that came in in support of the bill are correct. All we have to do is say let's put a standard in place, and if the standard is met and if somebody has a beef with the standard, you guys...we can bring in the experts and find out what that should like, but I can tell you there's one in place right now that somebody thought worked when they defined fully appropriated. And all this is saying is when all the stuff that you were worried about with fully appropriated actually happens, you're overappropriated. Sounds like a pretty good

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

standard to me. But if it's not the right standard, put the right one in there. And if somebody is overappropriated, then we'll send them back to the Department of Natural Resources with all the local input, and if you read the Ground Water Management Act, you don't do this without having hearings in the district. You've probably been through it. They have hearings. They send out notice. People get to come in and say, gosh, how about this and what about that, and then they're forced to collaborate on a solution. The DNR isn't going to take this over and no one is going to impose anything on people they don't agree to under the process. And that makes me get back to this point. Why would you oppose a process that would allow for that designation unless you're worried about it being tagged on your district? And I appreciate that there are challenges down on the Republican River Valley meeting the compact with Kansas, but that's no reason to turn our back on whether they are overappropriated. And I'm not here, members, I'm not here to sell or to speak for surface water guys. I'm not here for groundwater guys. And you might even wonder why an Omaha legislator is involved in this at all other than somebody educated me on it, and I looked at it and said, well, this is wrong. Let's put a simple standard in place. We already have a remedy available or a process to remedy the circumstance. Put it in place and let's go. Let science take over. Let the collaboration the IMP process was meant to bring people to, let it take place. Because you're exactly right, Senator Carlson. It's like the checkbook. And if you...if you put \$10 in it and you keep pulling out \$12, the fact that you only take \$9 out of it every once in a while doesn't mean you're managing your money well. And maybe you need to have some overdraft protection, and that's a good use of the aquifer. Right? If we continue with that metaphor, it's a checking account with overdraft protection. But if you are depleting it and you've been through your overdraft protection, then somebody needs to tell you to do something different. And the banker in our metaphor would be the IMP process. It doesn't get turned over to the Department of Natural Resources and the locals don't lose control if there is an overappropriation status. I look forward to working with the committee on this bill. I would make this last observation if I may. And that is, if we don't have a problem, then why would we spend any money on trying to fix one? I don't know...I haven't read all the bills that have been the result. I know that you went around...this group went around to 28 different meetings to listen to the problems we face. No one is going to know more about it than you do as legislators. You put the time in. You know what the right thing to do is. And for the life of me I'll have difficulty understanding how we could not do something with this bill and then try to get money to spend on water projects if we don't have a problem. And with that, I'd be happy to answer any questions. [LB1074]

SENATOR CARLSON: Okay. Thank you. Questions? Senator Haar. [LB1074]

SENATOR HAAR: Well, my wife keeps giving me that talk about money into the billfold and money out and the salary I get paid, so I appreciate that. Would you address...the question or the comment came up that there would be a lot of lawsuits and so on and so forth, would you address that, please, from your perspective? [LB1074]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

SENATOR LATHROP: I will say that that is not true. The bigger risk is getting to a point where there's no water left, and then we have lawsuits over whose is it. If this state regulates the resource, remember the constitution says this is the peoples' water. It doesn't belong to the guy whose property is on top of the water or whose property is next to the water going by in a stream. It belongs to the people. And that gives us all we need to regulate it in any thoughtful way that we feel is good policy. And I don't...we're not going to have lawsuits. [LB1074]

DON BLANKENAU: We'll see. [LB1074]

SENATOR HAAR: Thank you very much. [LB1074]

SENATOR BRASCH: I've been given the chair (laughter) again. Yes, Senator Kolowski. [LB1074]

SENATOR KOLOWSKI: Thank you, Madam Chair. Senator Lathrop, I've been cutting things out of magazines and newspapers since we've started this whole process in this committee and as far as the travels last summer and passing them on to Senator Carlson. And if we don't...maybe that's a good thing or a bad thing because you end up covering a lot of different material. But there is a world of hurt going on right now in California and Oregon and Washington and Texas and other locations where the groundwater is just not there. The water is drying up. And they're not getting the mountain snows that they need for the reservoirs, and we're going to be witnessing some very dire effects if there's not a wet spring in a number of those locations as far as water for any purpose. And what I appreciate is your willingness to bring all of this forward because we don't want that to happen here and it could happen here if we don't watch out what we do, how we're doing it, and take the precautions we need to take. So it's matching all of the things we've learned on our 30 meetings we had this last summer, and I think we need to act. We've got to do something. [LB1074]

SENATOR LATHROP: Yeah. I appreciate that. I think maybe the fellow that came from the Loup, Ron I think his name was, he said his last name and I didn't get it. [LB1074]

ANN BLEED: Wolf. [LB1074]

SENATOR LATHROP: Yeah. But the idea that somebody from a different basin could say, look, put this in place, it's the backstop, and it's not his district. He doesn't have a dog in the fight down on the Republican, but he does have the expertise, anyway. [LB1074]

SENATOR BRASCH: Are there any other questions from the committee? If not, Senator Lathrop, thank you very much for bringing this... [LB1074]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2014

SENATOR LATHROP: Yes, yes. It's been a long day for you I'm sure and I appreciate your attention. [LB1074]

SENATOR BRASCH: And the meeting is now adjourned. Thank you. (See also Exhibit 27.) [LB1074]