

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Natural Resources Committee February 13, 2019

**HUGHES:** OK. According to my phone it is 1:30, so we will convene the Natural Resource Committee. Welcome to the Natural Resource Committee. I am Senator Dan Hughes. I am from Venango, Nebraska, and I represent the 44th Legislative District. I serve as Chair of the committee. The committee will take up the conferees and bills in the order that they are posted. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on the proposed legislation before us today. The committee members may come and go during the hearing. This is just part of the process, as we have bills to introduce in other committees. I have asked-- I would ask you that you abide by the following procedures to better facilitate today's proceedings. Introducers will make initial statements followed by proponents, opponents, and neutral testimony. Closing remarks are reserved for the introducing senator only. If you are planning to testify, please pick up a green sign-in sheet that is on the table at the back of the room. Please fill out the green sign-in sheet before you testify. Please print, and it is important to complete the form in its entirety. When it is your turn to testify, give the green sign-in sheet to a page or the committee clerk. This will help us make a more accurate public record. If you do not wish to testify today but would like to record your name as being present at the hearing, there is a separate white sheet on the tables that you can sign in for that purpose. This would be part of the official record of the hearing. If you have handouts, please make sure you have 12 copies and give them to the page when you come up to testify, and they will be distributed to the committee members. When you come up to testify, please speak clearly into the microphone. Tell us your name, and please, spell your first and last name to ensure we get an accurate record. I don't think we need to be using the lights today. No displays of support or opposition to a bill, vocal or otherwise, is allowed in the public hearing. The committee members with us today will introduce themselves, beginning to my left. Senator Moser, would you like to introduce yourself?

**MOSER:** Good morning. Mike Moser, District 22. You had me confused here. I had to think. Platte County, a little bit of Colfax, and most of Stanton County.

**HALLORAN:** Good afternoon. Steve Halloran, District 33--

**MOSER:** At least he knows who he is.

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**HALLORAN:** --which is Adams County and parts of Hall County.

**QUICK:** Dan Quick, District 35, Grand Island.

**GEIST:** Suzanne Geist, District 25, which is the east side of Lancaster County which is the east side of Lincoln, Walton, and Waverly.

**HUGHES:** And on my far right.

**GRAGERT:** Tim Gragert, District 40, northeast Nebraska, Cedar, Dixon, Knox, Holt, Boyd, and Rock.

**ALBRECHT:** Joni Albrecht, District 17, Wayne, Thurston, and Dakota Counties in northeast Nebraska.

**HUGHES:** To my immediate left is committee clerk, Laurie Lage, and to my far right is the-- committee counsel, Laurie Lage, and to my far right is the committee clerk, Mandy Mizerski. Our pages for the committee today are Noah Boger, he is a freshman from UNL with a double major in political science and French, and Hunter Tesarek. He's a sophomore at UNL with a double major in history and political science. With that, we will open up our hearing. We have appointments today, confirmations. First up is Bradley Bird seeking reappointment to the Nebraska Ethanol Board. So, Mr. Bird, if you'd like to come up and have a seat, give us a little background on yourself and why you would like to be reappointed to the Nebraska Ethanol Board. Welcome.

**BRAD BIRD:** Absolutely. Thanks for having me today. I'm Brad Bird. I'm the business manager for Steamfitters and Plumbers Local 464 based out of Omaha, Nebraska.

**HUGHES:** Could you spell your name, please?

**BRAD BIRD:** Brad Bird, B-r-a-d B-i-r-d, so business manager for Steamfitters and Plumbers. We represent about 1,100 members throughout the state of Nebraska and a little part of Iowa. I've had the pleasure of serving on the ethanol board for about a year and a half now. I filled out the remainder of my predecessor's term. Learned a lot. It's been nice. Ethanol is a huge part of our industry and what our workers do. And it's been a pleasure helping promote it, and promote, you know, more gainful employment for our employees, also. What questions can I answer for you?

**HUGHES:** OK. Are there questions for Mr. Bird? Senator Albrecht.

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**ALBRECHT:** Thank you, Chairman Hughes. So how often do you meet on this board?

**BRAD BIRD:** Quarterly.

**ALBRECHT:** Quarterly. And what would you say in the short time that you have been on it, what are some of the hot topics that you guys discuss?

**BRAD BIRD:** Well, the number one thing we've discussed, since I've been on there, is a new administrator, with Todd Sneller retired and Sarah coming on. So that's been a big bulk of what we've done on my time on there.

**ALBRECHT:** Um-hum. Um-hum

**BRAD BIRD:** And then the E15 legislation we've worked a lot with the E15, helped promoting things, that kind of stuff. But, yeah, the main thing's been finding a replacement for Todd.

**ALBRECHT:** And where do you guys meet?

**BRAD BIRD:** The last time-- hotels down in Lincoln is where it is. I know our next meeting's Grand-- in Grand Island.

**ALBRECHT:** OK. So you go--

**BRAD BIRD:** Yeah. It rotates.

**ALBRECHT:** OK. Thanks you for your time.

**HUGHES:** OK. Additional questions for Mr. Bird? Senator Moser.

**MOSER:** Do you still do pipe fitting and that sort of thing, or is your labor job a full-time job?

**BRAD BIRD:** My labor job's a full-time job. I spent 17 years before going in to union hall working for the Waldinger Corporation where I was out working in a number of ethanol plants and in the industry and that kind of stuff. But no, I do not any longer.

**MOSER:** Yeah. Did you ever do any work at ADM in Columbus?

**BRAD BIRD:** Very little. Very little. A lot more at the Cargill plant in Blair is where I was at a lot more.

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**MOSER:** Yeah. Thank you.

**BRAD BIRD:** Yep.

**HUGHES:** OK. Additional questions? How-- you know, originally, when the ethanol board was set up, there were certain segments of industry that were needed to be represented and that's how the steam fitters came into play. How much of a-- how much demand is there for steam fitters in today's ethanol industry in the state of Nebraska?

**BRAD BIRD:** You know, a fair amount. There's not a lot of new plants being built anymore like there was previously, but there's a lot of shut-down work, a lot of remodel. They're always retrofitting things, growing, changing the industry, so there's a fair amount.

**HUGHES:** So how-- how do-- an ethanol plant, if they have a-- a remodel project, we'll call it, then once it goes to the architect and the contracts are bid out, how-- how do you know whether a steam fitter union member is-- is part of that project?

**BRAD BIRD:** It depends on the contractor that it's awarded to. If it's one of the contractors that we partner with, then we'll dispatch the labor to them. One-- one of the big ones is-- Ryan and Associates is one of our contractors, and they do a lot of the Green Plains work because they have an in-house maintenance contract with them. So we have people there all year long with Ryan and Associates, but the other projects, just as they come and go. It depends on the contractor it's awarded to.

**HUGHES:** OK. Very good. Any additional questions? Senator Halloran.

**HALLORAN:** Thank you, Chairman. Did you-- did you play football?

**BRAD BIRD:** I did not.

**HALLORAN:** OK.

**BRAD BIRD:** I was too little. [LAUGHTER]

**HUGHES:** I would come to question what the germaneness of that might be. Is that your only question?

**HALLORAN:** Certainly, that's my only question.

**HUGHES:** Thank you, Mr. Bird.

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**BRAD BIRD:** OK. Thank you so much for having me.

**HUGHES:** I appreciate you coming and your willingness to serve the state of Nebraska. Thank you very much.

**BRAD BIRD:** Thank you.

**HUGHES:** OK. Are there any proponents of Mr. Bird? Are there any opponents wishing to testify? Is there anyone wishing to testify in the neutral capacity on the appointment of Mr. Bird? Seeing none, that will close our hearing on the reappointment of Bradley Bird to the Nebraska Ethanol Board. We did have Michael Thede scheduled, but he was unable to come today or participate so he will be rescheduled. So that will bring up Dennis Strauch with the Natural Resources Commission. Mr. Strauch, welcome.

**DENNIS STRAUCH:** Thank you. Thank you, Sen-- Chairman Hughes and members of the Natural Resource Committee. My name is Dennis Strauch, spelled D-e-n-n-i-s, last name is S-t-r-a-u-c-h. I have just completed my first term on the Natural Resource Commission. I'm a native of western Nebraska, having spent my entire life in Scotts Bluff County. Live in that area. Went to school there. Spent most of my time since then as a general manager for the Pathfinder Irrigation District. Pathfinder Irrigation District is one of the largest irrigation districts in the state of Nebraska. On the commission, that's my responsibility, representing irrigation districts on the commission. I've been very involved in water policy in the state having served on the Water Policy Task Force and the Water Funding Task Force for the state. I've also been involved in the Platte River Recovery Implementation Program. I represent the water users in my area on the governance committee, a position I've held since 1997. I just finished my first term, as I mentioned, on the commission and I have just served the last two years as the chair for the commission. Kind of the goals for my service on the commission, having just completed my first four-year term, I now have a better understand of the role I play as a commission member. The commission is responsible for overseeing several funds including the "Water Quality Fund", the Natural Resource Development Fund, the Soil and Water Conservation Fund, the "Water Well Decommissioning Cash Fund", the "Small Watershed Fund", and probably the most important, the Water Sustainability Fund. A lot of the commission's work over the past four years has centered around developing the application process and rules and regulations for the Water Sustainability Fund. I will tell you this is a work in progress. The commission continues to listen to projects' sponsors and others as

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have-- as to how the commission can better improve the process. In fact, the commission is currently in the process of its second round of rules and regulations. My goal in serving on the commission is to help ensure Nebraska moves forward with the wise management of its natural resources, with water being one of the most important. While Nebraska is blessed with an abundance of water, it's important that we remember it is a finite resource that needs to be managed, developed, and protected, to ensure future generations have the water resources they need to grow in Nebraska. As a commission member, my goal is to invest the time necessary to ensure the financial resources given to the commission by the Legislature are invested wisely. Over the past four years, the commission has demonstrated fiscal restraint and only funded the very best water projects that move Nebraska forward in developing and prudently managing its water resources. If confirmed by the committee, I promise to continue to commit the time necessary to conduct the duties and responsibilities assigned to me as a commission member. Thank you for your consideration.

**HUGHES:** Thank you, Mr. Strauch. Are there questions? Senator Geist.

**GEIST:** Yes, Mr. Strauch, thank you for your service. And I'm curious what you see, should you be reconfirmed and going into another term, what do you see as the biggest obstacle that your-- your commission's going to face?

**DENNIS STRAUCH:** Well, I think we continue to look at opportunities to develop water resources in the state. We know we have an abundance, but a lot of times they're not in the right places. So we need to look at projects, I think, that move us in the right direction, that we invest wisely in, and produce the best benefits. And I think that's the charge the commission has, is to thoroughly evaluate each proposal that comes before us and make sure it meets the goals that we have in mind which is to develop and protect our resources.

**GEIST:** Um-hum. Do you have any issues with-- I know you get a lot of people who present their ideas for the Water Sustainability Fund. Are you finding those to be more varied than they used to be when you first began or are you seeing a consistent theme?

**DENNIS STRAUCH:** We-- we get a lot of different types of projects brought to the-- to the commission for the Water Sustainability Fund. We've had, I don't remember the number. I think last year we had 16. We-- we have an established scoring committee that spends hours going through those applications and-- and, you know, really look at what

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the benefits are, what the costs are, how they can improve water supplies for the-- the people in their area. So we spend a lot of time. I've served on the scoring committee the first two years that the Water Sustainability Fund was in place, and the last two years, I kind of bowed out as the chair and let other people step up and do that. But once they make their recommendation on scoring and funding levels, then the commission spends pretty much a whole day going through those scores, poring through those scores, and questioning any of the-- the proponents-- not necessarily the proponents but the benefits of those projects. So it's a real thorough process that we go through to make sure we-- we invest wisely.

**GEIST:** Thank you. That's helpful to know. Thank you.

**HUGHES:** Senator Gragert.

**GRAGERT:** Thank you, Chairman Hughes. Thank you for your testimony. I just-- you've been concentrating mainly on water quality-- quantity. How about, could you give me anything on water quality, what you'd been?

**DENNIS STRAUCH:** We do water quality projects as well, through the Water Sustainability Fund. In fact, we-- one of the first projects we did, a very good project, was with the city of Hastings and helped fund a water quality improvement project for their water supply. They have a very difficult issue with water quality. And they were one of the first applications to the-- to the fund. So we do fund water quality projects as well as water quantity projects through water sustainability because high quality water is just as important as the quantity.

**GRAGERT:** Sure. So that project, if you don't mind, can you be a little more specific with me as far as-- here, let me give you one. We've got a osmosis plant in Craig, Nebraska, where we, you know, reverse osmosis nitrates or we, you know, the pollution-- the solution to the pollution is dilution. Do you-- do you cost-share on-- on-- on stuff like that?

**DENNIS STRAUCH:** I'm trying to remember. I think the Hastings plant actually did work with wells and injection wells to improve the water quality around their well-- well sites to have-- part of that was dilution, too, as to import higher quality water into their system, their well system, to improve their ground water quality.

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**GRAGERT:** OK. Thank you.

**DENNIS STRAUCH:** You're welcome.

**HUGHES:** Any additional questions? Senator Halloran.

**HALLORAN:** Thank you, Chairman Hughes. So for all of our knowledge here, how does the sustainability fund sustain? How does it receive its funds?

**DENNIS STRAUCH:** It's an appropriation by the Legislature, through the Natural Resources--

**HALLORAN:** So it's a specific appropriation.

**DENNIS STRAUCH:** Yeah. Yeah. And we fight every year to make sure we try to keep this intact if we can. Work a lot with senators there on that.

**HALLORAN:** Thank you.

**HUGHES:** OK. Any-- just a couple of questions. How do you feel about transbasin transfers?

**DENNIS STRAUCH:** I think transbasin transfers make sense, especially-- I don't know if you're referring to the one from the Platte to the Republican, but there is-- there was a proposal that came before the Water Sustainability Fund for a transfer from the Platte River to the Republican River. There's a lot of issues with doing transbasin diversions. But also, when you look at high flows coming down the Platte that are leaving this state with no beneficial use, I think there's an opportunity there where we can take some of those flows and benefit another basin. And it's all in how it's permitted, I think. I know there's a lot of concerns about future needs in the Platte. There's always a future need in the Platte with endangered species or whatever need it might be. But I think there's room to make transbasin diversions part of our proposals that go forward.

**HUGHES:** OK. The other part, you said you were the rep-- the surface water representative on the Natural Resource Commission. Is it like the Ethanol Board where there are certain segments of water that are-- have criteria to met [SIC] in order to hold that seat?



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**DENNIS STRAUCH:** Yeah, there's 27 commission members. I was selected to represent irrigation districts but.

**HUGHES:** OK. Very good. Any additional questions? The only-- the only possible hitch I could see is the-- one of the guys that you had as a reference. We may need to do some investigation into that guy. Other than that, I think-- I think you'll be fine. Thank you for your willingness to serve.

**DENNIS STRAUCH:** Thank you.

**HUGHES:** We appreciate that. Let the record reflect that is Senator John Stinner with the reference we're concerned-- [LAUGHTER] a little-- a little concerned about. All right. Is there anyone wishing to testify as a proponent for Mr. Strauch? Anyone wishing to testify in-- as an opponent of Mr. Strauch? Anyone wishing to testify in a neutral capacity for Mr. Strauch? Seeing none, that will close the confirmation of Mr. Strauch, Mr. Dennis Strauch for the Natural Resource Commission and we will open up the appointment for John Heaston with the Natural Resource Commission. Welcome. Just give us a little background on why you'd like to be on the Natural Resource Commission.

**JOHN HEASTON:** Well, first of all, thank you for having me here this afternoon, Senators. My name is John J-o-h-n, T, middle initial, Heaston, H-e-a-s-t-o-n. You can just scratch out Dennis's name on what he handed out and put mine on there. OK. I am from Elm Creek, Nebraska, originally, a lifelong Nebraska resident, very passionate about Nebraska water and how we manage it. I've been appointed by the Governor to be the ag industry interest representative for the Natural Resource Commission. I grew up in ag business, electrical contracting on mostly irrigation equipment in central Nebraska, and family business. I spent 16 years working for The Nature Conservancy on the Platte River. I was also a member of the "Platte River Recovery Program" governance committee, served on several of the subcommittees. I was on the LB517 Water Funding Task Force with Dennis that helped create the Water Sustainability Fund legislation. I've been very involved. I was-- I helped put together the first easement, conservation easement, to protect irrigated land in the state of Nebraska and Hall County back in 2006. And my everyday job is to work with landowners and water managers to figure out how we balance the individual's need of water with the watershed's need for sustainability. And so I do a lot of performance irrigation management, water quality programs, and just trying to get people to

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talk better to each other about what they need to do. And so my vision for being on-- on this commission is to try to figure out how we can take our limited resources in the state and apply them to the highest best use to protect our investment in water for this generation and those to come.

**HUGHES:** OK. Thank you, Mr. Heaston. Are there questions? I just have a couple. Can-- the same as I asked the predecessor, your opinion on transbasin diversion?

**JOHN HEASTON:** I'm-- I think any option should be on the table and thoroughly vetted. And I think all participants should know what they're getting in trade for what the action they're taking. You know, transbasin transfers are a perfectly viable option if you've got a willing set of participants in the constitution and the financing to do it, but understanding that it may also, you know, limit your opportunities in other arenas. So I-- I, and this has got me kicked out of the tree-huggers union more than once, I think you have to entertain all options when it comes to water even if it doesn't sound right. You know, transbasin transfers, as Dennis mentioned, if you have excess flows, it makes all the sense in the world to try to heal up some old wounds rather than let it flow out of the state. But at the same time, you have to make sure that what you're doing is actually reducing the problem and not just shifting the obligation. So I'd say, in general, I'm for them.

**HUGHES:** OK, thank you. You brought up the tree-huggers union. I've never been invited. Is there a secret handshake or do you pay dues?

**JOHN HEASTON:** You're going to have to grow your hair out about four more inches.

**HUGHES:** It may be too late for that. Any other questions? Seeing none, I would point out that his list of references are impeccable as compared to the previous gentleman. I think we're fine.

**JOHN HEASTON:** I paid \$5 for those.

**HUGHES:** Thank you-- thank you for your service to the state of Nebraska.

**JOHN HEASTON:** Thank-- thank you for having me.

**HUGHES:** And we appreciate you coming in to see us today. Are there any proponents of Mr. Heaston wishing to testify? Anyone in opposition to

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his reappointment to the Natural Resource Commission? Anyone wishing to testify in the neutral position? Seeing none, that will close the hearing on the reappointment of Mr. John Heaston to the Natural Resource Commission, and we will open on LB48. Senator Stinner, welcome to your Natural Resource Committee.

**STINNER:** Thank you very much. Good afternoon, Chairman Hughes and members of the Natural Resource Committee. For the record, my name is John, J-o-h-n, Stinner, S-t-i-n-n-e-r, and I represent all of Scotts Bluff County which is District 48. Before I even get started, I should have probably gotten up as a proponent of Dennis Strauch. He's my go-to guy for water. I've known him for a long period of time. The only thing that I thought he missed was, he didn't invite you all to his water tour. And from time to time, I think it's either annually or every other year, if you want to see where water comes from, where the Platte River water comes from, take time to do that. It's a-- it's a couple days but well-spent couple of days. But Dennis is one of the best as far as understanding the history of the law, where it came from. And like I said, he's my go-to guy, and he will be testifying on this. The intent of LB48 is simply allow contracts under any crop reserve program to be extended to 30 years by providing for sufficient cause for a nonuse of water rights. Currently, contracts under the crop reserve program are allowed a nonuse of water rights up to 15 years. I've got Dennis Strauch from Pathfinder Irrigation District here to give you a little bit more background into this legislation. But first, I'd like to give you an idea of the issues experienced in the Platte and Republican basins here in Nebraska and some of the benefits behind the bill. The state of Nebraska and the United States Department of Agriculture first entered into an agreement in 2005 to initiate the Nebraska Platte-Republican Resource Area Conservation Reserve Enhancement Program, or CREP, for the improvement of water quality and water quantity and the enhancement of wildlife habitat-- of the wildlife habitat in designated areas of the Platte and Republican River basins. The overall goal of the Platte-Republican CREP are to significantly reduce the amount of irrigation consumptive water use as well as the presence of agricultural chemicals and sediment entering the waters of the state from agricultural lands and transportation corridors. In 2016, the state of Nebraska and the USDA signed a new memorandum of agreement, or MOA, which took the place of the original MOA signed in 2005 and allowed for the re-enrollment of existing contracts. You should have the table that I've handed out showing the CREP acres under contract as of 2018. And looking at the handout, you can see that there is 3,358.41 surface water acres above,

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and that's surface water acres, above Lake McConaughy currently under contract with CREP. Many of these contracts will expire in 2020. Many of the owners of these lands have expressed an interest in staying with the program and renewing their contract. By allowing for the enrollment of these contracts under the Platte-Republican CREP, the state will ensure a few of the benefits. Number one, these highly erodible lands will not be placed back into production. Two, water quantity savings and water quality benefits are extended. Terrestrial-- three, terrestrial and aquatic wildlife benefits are maintained. Four, water credits to the stream that these contracts provide for the North Platte NRD in meeting its integrated management plan will continue, avoiding the need to further regulate ground water uses or invest dollars in other incentive-based retirement options. Five, bring federal dollars to help Nebraska address its water issues in the Platte and the Republican River. While the surface water lands previously mentioned were in the CREP program for 15 years, their water right was protected from cancellation due to nonuse of water rights under the current state statutes. However, if they were re-- to re-enroll in the program, their water rights could be in jeopardy for nonuse, since the current statutes only protect them up to 15 new years while they are in a crop reserve program. I would appreciate your consideration of LB48 so the-- so that these surface water lands may continue to maintain their water rights while benefiting the state through nonuse. I would be happy to answer any questions you may have.

**HUGHES:** Thank you, Senator Stinner. Are there questions? Senator Moser.

**MOSER:** Did you play football?

**STINNER:** I'm afraid I did a long time ago.

**HUGHES:** Any relevant questions?

**MOSER:** I have one.

**HUGHES:** Yes, Senator Moser.

**MOSER:** I was curious. What kind of payments-- or what's-- what is a typical payment per acre for someone to-- to give up their rights under this agreement?

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**STINNER:** You know, I have-- I have a chart somewhere back in this that shows the rental agreements, and it's depending on the type of acres. And--

**MOSER:** Well, just a rough estimate.

**STINNER:** --I can't put my hand on it right now. It goes from a couple hundred dollars an acre-- or up to a couple hundred dollars an acre.

**GRAGERT:** They're all different throughout the state, though.

**STINNER:** They're different throughout the state, the type of ground, etcetera, so.

**MOSER:** What the value of it is. Is it enough to pay the tax?

**GRAGERT:** Oh, yeah.

**STINNER:** Oh, yeah.

**MOSER:** Are they still taxed at the same rate as ever?

**STINNER:** Yes, valuation does not go down, I don't believe. I got to find that schedule. In fact, if I can't find it, I'll try to get it to you.

**MOSER:** I'll ask you another one, so you can do two things at once. So and then, they're limited what they can do on it. They can't pump water. I mean, and if it's hay, can they still mow it for hay or?

**STINNER:** On the surface water side of things, actually, the water that they normally would have delivered to the place is delivered back to the river. So that-- then this is a surface water situation. And if I'm wrong, Dennis will correct me. But that's-- the ones that I know of, the projects that I know of, are a diversion back to the-- back to the river for that amount of water.

**MOSER:** Surface water they were irrigating out of a surface water lake?

**STINNER:** Out of a canal, yes.

**MOSER:** Like the Loup Canal or--

**STINNER:** Yes.

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**MOSER:** --something like that.

**STINNER:** Now, you have ground water as well which are the ones to drill the-- the irrigation wells so.

**MOSER:** Yeah. Thank you.

**STINNER:** I will try to-- try to find that one schedule.

**HUGHES:** Any additional questions for Senator Stinner? Senator Geist.

**GEIST:** This is kind of a new concept to me, so I'm just learning through this bill. So bear with me, but you mentioned something about federal funds. Are-- are there federal funds that flow to this payment as well?

**STINNER:** Yes, that program is a federally funded USDA program.

**GEIST:** OK. OK. So these aren't state funds that are going [INAUDIBLE].

**STINNER:** Is there a mixture? I'm not sure, but I don't believe that I've seen anything in my budget that would go that way.

**GEIST:** You would know that so.

**STINNER:** I'm looking at Dan. Dan's familiar with the program as well.

**GEIST:** OK.

**STINNER:** But maybe Dennis can--

**GEIST:** OK.

**STINNER:** --can answer that question.

**GEIST:** OK. Thank you.

**HUGHES:** Additional questions? Seeing none, you'll stay to close? Will you stay around to close?

**STINNER:** Yes, I'll stay around and maybe waive or close.

**HUGHES:** OK, very good. So with that, we'll open it up to proponents, those wishing to speak in favor of LB48. Welcome back, Mr. Strauch.

**DENNIS STRAUCH:** Thank you. Again, my name is Dennis Strauch, spelled D-e-n-n-i-s, last name, S-t-r-a-u-c-h. And I'm here on behalf of the

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Pathfinder Irrigation District and "Platte Valley Irrigators Association" in support of LB48. Pathfinder Irrigation District is a very large irrigation district located in the Panhandle. We serve about 100,000 acres in Scotts Bluff, Sioux and Morrill County. The "North Platte Valley Irrigators Association" is made up of 16 irrigation districts and canal companies above Lake McConaughy on North Platte River. They irrigate about 300,000 acres together. With the passage of LB962 in 2004, Nebraska started to move forward with the management of its integrated service and ground water resources. As integrated management plans have developed, the NRDs and the Department of Natural Resources has utilized many different regulations and incentive-based programs to move forward with managing for sustainability. Excuse me. Many of the incentive-based tools utilized today in the integrated management plans involve voluntary programs that temporarily or permanently reduce the use of water for crop production. These programs offer payments to irrigators to not irrigate their lands. For certified ground water irrigated lands, the landowner can place lands into these types of programs for as many years as they want to and do not have to fear that their right to irrigate these lands in the future could be taken away. But for surface water irrigated lands, if the landowner places their lands into these types of programs, they need to be sure to not exceed 15 consecutive years to avoid the possibility of their water rights being cancelled for nonuse. This 15-year excuse for nonuseable water right is found in 46-229.04(4)(d). This statute provides a 15-year excuse for not irrigating if the lands are enrolled in a federal or state acreage reserve program. One federal program that Nebraska has utilized to reduce the consumptive use of water for irrigation in the Platte and Republican River basins is the Conservation Reserve Enhancement Program, or CREP. This program offers a payment per acre to the landowner to not irrigate lands they're willing to place into the program, thereby reducing the consumptive use of water in the basin. Nebraska and USDA entered into an agreement, originally in 2005, to initiate the program. In 2016, as Senator Stinner mentioned, they signed a new MOA which would allow for re-enrollment of these lands. But for surface water lands, in order for them to renew and protect their water right, they would need to tear up the grass cover already established on the CREP acres and place the land back into production and irrigate it for at least one year before they could resign. This makes little sense, especially in western Nebraska where, due to limited rainfall, it is difficult to establish a grass cover crop. This requirement may also discourage landowners from resigning in the program, thus losing the reduced consumptive use benefits

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Nebraska and NRDs need for meeting their integrated management plans, compact compliance with Kansas, and obligations to the "Platte River Implementation Program". The CREP program provides thousands of federal dollars to help Nebraska meet its obligations. In my district alone, there are over 2,000 acres in the CREP program. Many of the owners of these lands have expressed to me their desire to resign with CREP, but they are fearful of losing their water rights. LB48 will adjust this problem by allowing their lands to be protected up to 30 years if they choose to re-enroll on CREP. LB48 would also help any NRD incentive-based programs involving surface water leases should they choose to pursue-- pursue longer-term agreements with landowners. In closing, I want to thank the committee for this opportunity to testify and encourage the committee to advance LB48 and seek its passage. I'll be glad to answer any questions.

**HUGHES:** Thank you, Mr. Strauch. Are there questions? Seeing none, I guess the question prior was the CREP program is totally funded by federal dollars. There are no state dollars involved.

**DENNIS STRAUCH:** There is-- I know the state, and Director Fassett can probably answer that if he testifies, but I know the state gets credit for all the conservation efforts they use in the basin. Our district has a water conservation program and all the dollars we commit to that program count towards matching federal dollars so all the water used in the basin contribute to help match those dollars. And like I said, Director Fassett maybe hasn't asked how much the state puts into the program, but there are a significant amount of federal dollars come to manage that program.

**HUGHES:** OK. Very good. Senator Moser.

**MOSER:** I was just going to ask the same question I asked Senator Stinner. So the landowner can still use the land but he just can't irrigate?

**DENNIS STRAUCH:** He can't irrigate it. I don't believe he can even graze it or-- or cut the grass.

**MOSER:** Oh, really.

**DENNIS STRAUCH:** It has to be left in a native state.

**MOSER:** It just has to be left for native habitat.



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**DENNIS STRAUCH:** Right.

**MOSER:** Hmm. That's-- what's the purpose for-- I can see the reason for not using the water. But why waste the-- the hay?

**DENNIS STRAUCH:** Well, if you cut the grass hay, it's going to use probably more natural water that's available to it to regrow. So that's probably one of the reasons they don't allow use of the grass off the-- off the land.

**MOSER:** It would spur the grass to draw more water.

**DENNIS STRAUCH:** Probably, yes.

**MOSER:** Thank you.

**HUGHES:** Any additional questions? Seeing none, thank you, Mr. Strauch.

**DENNIS STRAUCH:** Thank you.

**HUGHES:** Next proponent of LB48. Director Fassett, welcome.

**JEFF FASSETT:** Thank you, Mr. Chairman. I'm Jeff Fassett, J-e-f-f, Fassett, F-a-s-s-e-t-t. I'm the director of the Department of Natural Resources and pleased to be with you here today. As you all know, the Department of Natural Resources is the agency of state government that has jurisdiction responsibilities over the beneficial use and management of all the surface waters in the state of Nebraska. And I am here today just to testify in support of LB48. One part of the department's duties in the administration of surface water rights appropriation system involves our periodic review of the authorized beneficial uses of water and the adjudication of any nonuse under the terms of the actual water right that surface water right holders have. To protect their water rights from possible cancellation, appropriators must be very diligent and active in beneficially using the water for which-- the purposes for which it was originally authorized. The law in general is-- and there's some details we probably don't need to spend a lot of time on, but it's generally a five-year criteria, five years of nonuse when water was available. If you go more than five years without using, you clearly-- or it doesn't happen automatically, but you are susceptible to cancellation. So you can understand where a program like these set-aside programs that's been described today, where they really run the risk. Any time after five years of nonuse, they could be subject to losing water rights. And that's a surface water only aspect of our Nebraska state water

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laws. But the state law also provides criteria and various timelines, that you're hearing about today, for defined excuses for that nonuse. And we've got several categories that you'll see in this bill. Some are for 15 years and some are for 30 years, depending on the situation. Over a number of years, we've been contacted by individuals, like Mr. Strauch and many others in the Upper Platte and the Republican River Basins, with concerns over the aspects of our water law that currently limit this excused nonuse criteria to 15 years. And again, these are voluntary relationships that the landowner is entering into for the CREP program or other types of set-aside programs which help meet state and local NRD district goals and obligations. And so this is a great incentive-based program to get landowners to voluntarily accept a payment in exchange for not using water. This LB48 proposes to amend a very specific section, Section 48-229.04 [SIC] by deleting language that's in section (4) (g) and then just simply taking the language that is currently in the 15-year set of criteria and simply moving it to a new section (2) (g) [SIC] of the same exact language. So we're not introducing any new concept here about protecting for set-aside programs. LB48 is simply requesting the change out of the section dealing with 15 years and moving it into the section of existing law that talks about 30 years of protection for nonuse. So there's really no-- the idea of protecting water rights that are in these programs has been in law for quite some time. In my view, there's just really strong policy arguments for making this change. You've heard from me in the past where I'm not a big proponent of tinkering with Nebraska's water laws because there is a lot of potential of ricocheting and unintended consequences that often happen. But this is a really, in my opinion, a very straightforward change. The state, through my department, works very closely with natural resource districts in both the Republican and Upper Platte in the fully and overappropriated areas. And we are working actively to implement long-term, integrated, water management planning that was authorized, as others have testified, under LB962 back in 2004. And those obligations are a continuing obligation. So the idea to reduce consumption in these fully and overappropriated areas is really a significant state goal, not only for the integrated management planning purposes but, as has been noted already, for compact compliance in the Republican River Basin and to help the state's obligations on the Platte dealing with the endangered species program both. So these kinds of certain-- of certain voluntary and incentive-based programs, we think are exactly the kind of programs that can really help us motivate landowners to voluntarily evaluate whether this kind of a program is best for them. And we have

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programs-- while we've talked a lot today about the federal CREP program, there are state programs and also local programs that do the similar thing. They're looking to take payments to have people voluntarily not use water in these programs. And the language in the bill covers all of the federal-, state-, and local-based programs that accomplish that set-aside objective. And we think the CREP, of course, has been most active and the most benefit to the state and local entities is because it's federal dollars, brings a lot of federal dollars in to make those payments. There is a cost-share by the state. And then, like I said, there's other state and local programs that are also making payments to landowners that are deserving of protection. So we think these are really good programs. We think it's a-- it's a great way to voluntarily provide incentives for the kind of change of water management that we want to see. And we can access dollars from outside the state to help pay for that. Almost all of the federal conservation agreements that have been entered into were for either 10 or 15 years. So we're coming up against the deadlines of the original contracts. And with the reauthorization of the farm bill recently and this MOA that was talked about in 2016, there are opportunities where people can sign up, as both Senator Stinner and Dennis Strauch mentioned. And that's where this question is coming from. People are willing to sign up, but they don't want to put their water rights at risk. We see no reason, no policy reason, why somebody in a volunteer program should put their own water rights at risk because they're helping us meet local and state goals for these programs. So while those landowners obviously received some financial incentive to join the program, we just simply don't think they should be put at risk of losing their underlying water right that ultimately has long-term value to them, to their family operations, or whatever their circumstances may be. So we really think LB48 is a really good change. We think that'll help support these programs. And again, would ask for your support for this bill. Happy to answer any questions, Mr. Chairman.

**HUGHES:** Thank you, Mr. Fassett. Any questions for Director Fassett? Senator Albrecht.

**ALBRECHT:** Thank you. When you were just talking, did you say in this bill it was 30 years, OK, because I see 5 years, 5 consecutive years in the new language?

**JEFF FASSETT:** Not in the-- not in the new language. Five years is the-- is the opportunity for nonuse.

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**ALBRECHT:** For nonuse, so where--

**JEFF FASSETT:** That-- that could particularly, yeah.

**ALBRECHT:** --where were you talking about up to 30 years in this bill?

**JEFF FASSETT:** If you look at page-- if you look at on page 2, line 17, you could see subsection 2 starts off with language.

**ALBRECHT:** Up to 30 consecutive years.

**JEFF FASSETT:** Up to 30 consecutive years--

**ALBRECHT:** OK. Very good. I thought you said the new language said 30 instead of 5.

**JEFF FASSETT:** --so we're inserting-- yeah, we're taking language out of section four and moving it into two.

**ALBRECHT:** OK. Thank you.

**JEFF FASSETT:** Yeah.

**HUGHES:** OK. Senator Moser.

**MOSER:** How long would these agreements be? They-- are they necessarily 10 or 15 years again as a renewal, or can they go in 5-year increments or?

**JEFF FASSETT:** Most-- Mr. Chairman, Senator Moser, most of the contracts under the federal program have been for either 10 or 15 years, and they are renewing them. Like I said, this law provides for other, similar, setting aside of irrigation use programs. And those are all an individual-- they could be one-year, they could be five-years, they could be seven-years kinds of things. So the 10 or 15 are really driven by the federal program itself.

**MOSER:** There are still other programs that set ground aside from production that are not in this watershed thing? Because I think there are some-- some conservation areas in my district that wouldn't be in this-- this basin, so there must be some other federal programs for those?

**JEFF FASSETT:** There are, but most of the ones that we're involved with, where state dollars are being spent, are in the areas where we're in the fully and overappropriated status. That's where everybody

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is incentivized to begin to use less water to meet the-- either the interstate or the local, integrated, water management planning obligations.

**MOSER:** Great. Thank you.

**HUGHES:** Senator Halloran.

**HALLORAN:** Thank you, Chairman Hughes. How-- how do you measure-- I'm always interested in how you measure the success of a program, right? So how do you measure the success of CREP?

**JEFF FASSETT:** Well, what we do, Mr. Chairman, excuse me, Senator Halloran, in our case, it is both surface water and ground water acres that are being set aside. And what we have is, we have some very sophisticated modeling of these river basins that look at the-- the flows in the rivers. They look at the monitor of the aquifers. They look at diversions. They look at the crops being grown, the soil types. All of that is all in modeling work that we do within the department together with natural resource districts. And so what we will do is, we will see this land use change. We will see that there are less acres being irrigated. And that will get factored in to the fact that there'll be less water diverted, there may be less water pumped, less water consumed by the corn or the crops that were grown before. And we can actually calculate less water being used. And that ultimately results in a benefit to the river basins.

**HALLORAN:** I can understand how you can measure how much less is used. That-- that would be a fairly mathematically-- not-- even-- even I, being mathematically challenged, could probably figure that out on how much less water is being used. I guess my question is, though, the net result should be measurable in some fashion, right? I mean, we have in the Little Blue NRD for years have been, as every natural resource district has, have been measuring the water table's variation from year to year, taking into account variation in rainfall and so forth. But in the Little Blue NRD, it's-- it's remained rather static and yet-- though we're in the process of limiting or rationing water. And I guess what I'm looking for is, is there empirical data, not anecdotal, data that can do this? And I understand models. We have models that say the world's going to end in 12 years. You understand why I'm saying it's--

**JEFF FASSETT:** Sure.

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**HALLORAN:** --some of it is hypothetical, right?

**JEFF FASSETT:** Some is planning, excuse me, Mr. Chairman, Senator, no, no, we actually have hard data. We have physical measurements of rivers and diversions and of the aquifers. We have constant long-term monitoring of the aquifer levels--

**HALLORAN:** Um-hum.

**JEFF FASSETT:** --very similar to the Little Blue situation.

**HALLORAN:** Right.

**JEFF FASSETT:** We have those in every one of the natural resource districts. So these are long-term changes that we are trying to-- to, through conservation efforts, we're trying to undo something that took many, many years of active expansion and use of water. We're trying to now turn that around and go the other way.

**HALLORAN:** And I'm not trying to be argumentative, but you've got--

**JEFF FASSETT:** No, no. But we look for-- we look for these long-term trends in the ground water levels.

**HALLORAN:** So you've got data from the beginning of this program until current and you can graph improvements in all of those areas.

**JEFF FASSETT:** That's correct.

**HALLORAN:** OK. Thank you.

**HUGHES:** Additional questions? Seeing none, thank you, Director Fassett.

**JEFF FASSETT:** If I could have one follow up, Mr. Chairman, I just-- in relation to the funding, when you go way back to the-- when the CREP program was first established, that was in 2005. There actually was a state appropriation for a state cost-share with the federal dollars. We got a \$5 million appropriation back in 2005, and we're still hanging on to it. We have not yet spent the state cost-share that's required under this program. And we continue to come to the Appropriations Committee and the Legislature every two years and simply ask for that money to be reappropriated. So we're spending some money for the state's portion of this program, but we've spent it at a much slower rate than was originally anticipated. So we've gone since

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2005 until now, and we still have over almost \$2 million left that we're still spending. In fact, we-- we had to give back some of those dollars to help deal with the budget shortfalls in the past couple of years. So there has been a state cost-share. And that money goes to the reseeded of the lands. And one of the reasons you can't crop it under the federal program is that they're trying to create habitat. You're taking land out of production and reseeding it into the natural vegetations that would create habitat for a variety of species. And that's why they're-- now that, I understand, may be changing in the new farm bill. There actually may be authorization. While you can get paid to dry up irrigating, they may let you do dry-land cropping in the future. But when this program got started back in 2005, it was the conversion of cropland into native grasses and that's why they were not harvested or were managed actively in any other manner at that time. I suspect Senator Gragert may correct me if I've got that history wrong. So anyway, thank you. I wanted to just follow up on a couple of the questions.

**HUGHES:** Any additional questions or comments? Seeing none, thank you for your testimony.

**JEFF FASSETT:** Thank you, Mr. Chairman.

**HUGHES:** Additional proponents to LB48? Mr. McCoy, welcome.

**TIMOTHY McCOY:** Thank you, Chairman Hughes, members of the committee. My name's Timothy McCoy, T-i-m-o-t-h-y M-c-C-o-y. I'm the deputy director of the Nebraska Game and Parks Commission, here to support this bill. We were one of many partners that were engaged in helping develop this CREP when it was put into place and helping with the implementation of it. We support this because it really allows these landowners if they're interested in re-enrolling, it's a totally voluntary conservation program, to have that opportunity and to-- to continue their, you know, their stewardship as they see it through this program and the soil, water, and wildlife resources. I'd be pleased-- be glad to answer any questions you might have. I think many of those were put into place. I will point out that, depending on what conservation practice they establish using CRP, they may be eligible for managing and grazing. I know some of these lands have been released previously under emergency provisions. With managed haying and grazing, one of the challenges for these landowners is they normally-- the way the Conservation Reserve Program works, and CREP is part of the CRP, they're normally required to take a reduction of about 25 percent of their rental payments in order to utilize that.

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And with these folks that are getting an irrigated rental payment, I just don't think it's been very conducive to that. There may be some folks that have utilized it, especially in the emergency provisions because normally they waive that. So it's been used, I think-- saw some use as sort of a forage reserve in those opportunities. But in terms of working through the regular CRP program rules, it's a challenge. And one of those reasons is those CRP program rules are set nationally, primarily based on dry-land rental rates. We went through a long period of getting this CREP into place, of having to work pretty intensively with the Department of Natural Resources and the Department of Agriculture and Congressman Osborne, at the time, to get a program that could actually provide a irrigated rental rate.

**HUGHES:** OK. Any questions for Mr. McCoy? Seeing none, thank you for your testimony. Anyone else wishing to testify in favor of LB48? Anyone wishing to testify in opposition of LB48? Anyone wishing to testify in the neutral position on LB48? Senator Stinner, you're welcome to close.

**STINNER:** I just wanted to bring a map on the rental rates. [INAUDIBLE]

**MOSER:** We've got it.

**STINNER:** OK. You've got it. You can see the map. It kind of goes through the-- this-- that part of the state that's eligible for this program-- under this program, and it gives you different rental rates depending on if it's gravity or if it's surface water so. I wanted to get back on that. I had forgotten about that one-time appropriation. It sits in a cash fund. Our NRD out west participates in this CREP program so that's what I was thinking of. But so I kind of stumbled on that. And we did offset some money out of the-- like our budget work so. But anyhow, thank you for your time, and any questions?

**HUGHES:** OK. Any follow-up questions for Senator Stinner? Seeing none, thank you for bringing the bill. With that, we will close our hearing today. We do have--