

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

**HUGHES:** According to my phone it is 1:30. Welcome to the Natural Resources Committee. I'm Senator Dan Hughes, I am from Venango, Nebraska, and represent the 44th Legislative District. I serve as Chair of this committee. The committee will take up the bills in the order posted. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on 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 ask that you abide by the following procedures to better facilitate today's proceedings. Please silence or turn off your cell phones. 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 sign-in sheet to the page or to the committee clerk. 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 for that purpose. This will 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. They will be distributed to the committee. When you come up to testify, please speak clearly into the microphone. Tell us your name. Please spell your first and last name to ensure we get an accurate record. We will be using the light system today for all testifiers. You will have five minutes to make your initial remarks to the committee. When you see the yellow light come on that means you have one minute remaining. And when the red light comes on that indicates your time has ended and we would like you to wrap it up. Questions from the committee may follow. No displays of support or opposition to a bill, vocal or otherwise, is allowed at a public hearing. The committee members with us today will introduce themselves starting on my left.

**MOSER:** Mike Moser, District 22, Platte County, Stanton County and a little bit of Colfax County.

**HALLORAN:** Steve Halloran, District 33, Adams and part of Hall County.

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

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

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

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

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

**BOSTELMAN:** Bruce Bostelman, District 23, Saunders, Butler, majority of Colfax Counties.

**HUGHES:** To my left is committee legal counsel, Laurie Lage, and to my far right is committee clerk, Mandy Mizerski. Our page for today is Noah Boger, he is a freshman at UNL with a double major in political science and French. With that, we will begin. We've got a couple of confirmations first up this morning for the Game and Parks Commission so the reappointment of Mr. Robert Allen. If you'd like to have a seat, Mr. Allen, give us a little background on yourself and why you would like to be reappointed to the Game and Parks Commission. Welcome.

**ROBERT ALLEN:** Thank you. Robert Allen, R-o-b-e-r-t A-l-l-e-n. Having completed four-- a four-year term on the Game and Parks board it's amazing how little you know when you first start. I mean, it-- you get a lot of things thrown at you that I never expected to even see in Game and Parks, such as uranium mining in the state of Nebraska. You know, that you didn't think that, that would ever come into play as a Game and Parks deal and just the wind farms and lots of things. And of course lots of them would end up in natural resource district issues, such as the Niobrara River Scenic Valley deal and the purchase of the Norton Dam or Spencer Dam or whichever way you want to refer to and that project is still one that's not completed with-- all of the legal agreements have been done but the funding hasn't been done. But I think that's a real important one. I think that's a treasure for the state of Nebraska that needs to be completed. And my personal beliefs are-- is I sure would rather see us controlling it than the federal government controlling it because I think if it gets into those hands, I don't know where we'll end up at. But at this point in time I don't think it will get there. And so I think if Game and Parks had the in-stream flow rights to that or were associated with that dam and so forth, that'll be a major investment for the state of Nebraska. There

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have been so many surprising water issues, you know, the-- even some of the transfer of water in the Turkey Creek, which we've opposed from the standpoint of invasive species that are being transferred to the Republican River Valley. The unintended consequence is sometimes that those type of events are more drastic than, than most people give credit to. I also was a little bit surprised how many testimony or how many people have tried to influence us on wind farms, which we don't have any regulation over wind farms. But Game and Parks is a way to try to control where wind farms go in the Sandhills or not. I don't think it has very much to do with us, but it's interesting that you get an awful lot of people talking about it. And so that's-- so that's an interesting twist on things. And then, Senator Hughes, it was one of the issues out in your area that will have to be resolved at some point in time. I think there's a renewable lease on those southwest reservoirs with the cabin owners on those southwest reservoirs. And that's-- I'm not sure how that will end up at. When you're dealing with-- the federal government is going to stick with their exclusive use clauses on those cabins and how that will be dealt with and that type of thing. But having had four years' worth of experience with that, I, I think I would love to have another four years to try to work out some more of those. And the only other thing I'd probably say--it didn't have anything to do with natural resources--but the Venture Park project that we've been underway for couple, two-- well, they actually were started before I came on four years ago, but mostly in the fundraising side of it and now starting to come through the construction side of it and so forth. If any of you haven't-- if you get a chance to visit any of those state parks where there's Venture Parks are going into that has really changed the personality and the layout of those parks and they're gonna be fun parks to visit for a lot of people. And I think we've turned those into a Nebraska treasure that I think a lot of people will enjoy using those state parks. I mean, when you got things like zip lines and treetop experiences and rock climbing walls and toboggan, sleigh rides and snowmaking machines and floating playgrounds and clamping cabins and you know it just goes on and on and on. And, of course, the great citizens of Nebraska donated-- that's all donated money and so it isn't taxpayers paying for it. And that is a major accomplishment to have citizens that would donate that \$35 million it took to redo those parks. But if you travel around the country, you-- I don't think you'll find many state agencies that have state parks like those parks.

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

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**GEIST:** Yes. Thank you for being here and thank you for your four years' experience already. And drawing from that, have you found a particular issue that is the closest to your heart?

**ROBERT ALLEN:** You know, it always-- the water issues having-- I mean, I'm a western Nebraska boy and, and always dabble with the water issues from the standpoint-- and it's funny we talk about it today because we're in massive flooding situations going outside. It seems like we typically have been water shortage-type thing in controlling the water. You know, we've dealt so much this in this and on the area I represent, the southwest. Well, you know, that whole Republican River Valley deal and that even though there's been some transitions when they've taken away some watering rights and it has changed some land down that way that probably made it more favorable for hunting from the standpoint that it's not so intensively farmed as it was before and probably has helped the upland game birds in that area. It's a-- it's a huge problem for the community to deal with. Those are transitions that are tough to take. So--I, I-- you guys at the Unicameral deal with them a lot more than we have to. But those are a challenge, so.

**GEIST:** Thank you. And thank you for your service.

**ROBERT ALLEN:** Thank you.

**HUGHES:** Additional questions. Senator Bostelman.

**BOSTELMAN:** Thank you, Chairman Hughes. Thank you, Mr. Allen, for being here from Eustis, Nebraska. Thank you for traveling down for the [INAUDIBLE].

**ROBERT ALLEN:** Well, I've traveled from Florida, actually.

**BOSTELMAN:** Florida? Oh, well, I don't know now if we're going to--

**ROBERT ALLEN:** Well, yesterday afternoon when my plane was circling the airport for a half-hour waiting for the fog to clear away, I was thinking, you know, I wonder if this plane is gonna go back to Florida and I'll have to turn around and come back again.

**BOSTELMAN:** But all this--

**ROBERT ALLEN:** But anyway, I do live in Eustis, though.

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**BOSTELMAN:** So, this, this just may end up being a four-hour confirmation hearing after that. Could you just explain a little bit more to me the relationship and the working relationship like with Pheasants Forever, Quails Forever? On here, part of it, you talk about the Berggren Pheasant Management Plan and then the eight zones. Could you just talk about that a little bit more, the habitat improvement, how that works-- how you work together with that?

**ROBERT ALLEN:** Well, the Berggren Plan was-- was a plan that came up with for-- they divided the state into various zones of-- for pheasant population which each one of them have their own unique characteristics. So the southwest area we deal with differently. Let's say in southwest there are going to be more of the tall wheat stubble projects that you could do in that area. That if you go to the northeast, where you guys are from, tall wheat stubble wouldn't be a factor, you know. So, so the management of pheasants we've looked at over the whole project is basically trying to figure out what works in each area and cooperating with the people that are available to work with in those areas to make those work. Well, Pheasants Forever is obviously available in all those areas. But the area around Broken Bow, as an example, partnered very tightly with the One Box Pheasant Hunt in Broken Bow because they were doing a lot of habitat work and created some environments there and some community work that we could work with there that we couldn't work with other communities because an organization like that didn't exist. But Pheasants Forever and Quail Forever are our partner in almost every one of those. The other unique one that I always found kind of interesting that they designed was a little strip on the Platte River. If you look at one of the areas there's a little strip on the Platte River and you go, well, wait a minute, that's not pheasant country. I mean, you know, that's not--it's more duck and--but as they created crane habitat they wanted grassland-type things. Well, when you create grasslands for the cranes to be on, it invariably created grass nesting habitat for pheasants and pheasants have returned to that area. And there's areas in that where the crane management has actually done pretty well with the pheasant population, so. So it's a unique plan with eight different management areas, like they're marked out in the book as to where all the areas are at and so forth. But what you do in the Panhandle doesn't work in southeast Nebraska. What you do in southwest Nebraska doesn't work in northeast Nebraska.

**BOSTELMAN:** OK. Thank you.

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**HUGHES:** Additional questions. I've just got a couple. How did you get appointed to the Game and Parks Commission originally? What's was the-- what's the process for-- what do you do, just--

**ROBERT ALLEN:** Fill out an application to the Governor's Office and the Governor makes the appointment.

**HUGHES:** OK. Were you the only one that applied or do you know?

**ROBERT ALLEN:** I don't know.

**HUGHES:** OK.

**ROBERT ALLEN:** I don't know the first time and I don't know this time either, so.

**HUGHES:** OK. I'm sure you're aware we've had some issues in this committee. We had a couple of deer hunting bills. I think you and I talked on the phone about the challenges of landowners, the damage the wildlife is doing. They're feeding all of that wildlife and basically outside of maybe saving 20 bucks on a hunting license, it's compensation for millions of dollars. Do you see anything that the Game and Parks may be doing or thinking about to address that issue?

**ROBERT ALLEN:** Well, with about I guess roughly--you probably know the number better me--but roughly 95 percent of the land in the state of Nebraska being under private ownership, I think it's you know there's a little bit of federal land and there's a little bit of state land but it's a very small percentage. You know, landowners are obviously residing all the wildlife, I mean, because most of it's on private ground. And so if there's any things that you can work out with landowners to make a better cooperation between either enhancing the livestock-- wildlife population or making the experience better for people that are on those properties, because obviously anytime there is private land you've got all the issues with trespassing and management, leasing hunter rights. I mean, this has all changed over the last few decades where for landowners probably rarely leased ground for hunting. Now it's almost a common practice, I mean, particularly the waterfowl-type issues. I think the Platte River, if you checked on that you'd probably find out that an awful lot of that is probably leased hunting rights, you know. And so there's things that we can do to work with landowners more. I think the landowner permits-- I think there's some-- we could get some things worked out there. I don't know what the exact answer is either. The other side to

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that is, you know, we've made very extensive efforts to try to make the Game and Parks a self-funded agency, basically. And some of that's been dictated by the Unicameral, because we've gone from-- I don't know what the percentages were at the high, but probably something in the 20s to make around 13 percent of our budget now coming from the Unicameral. And everybody understands cuts from the-- from the state government agencies and so forth and so we've become somewhat of a user fee organization. I mean, those that use the hunting and those that use the parks are the ones that are paying for a park permit or paying for a hunting license, paying for that. And that is the source of our income. And if you want good parks and you want good hunting and you want all that kind of stuff, then we have to keep that funding coming in because it isn't coming in from the taxpayer. And I don't think I want that, so I'm not saying that I would want to go back to a more tax-based incentive-type thing, but I think we can manage user type deals and so forth. And I do appreciate the fact that you guys have upped some of our fee areas that, you know, because we regulate the fees but you regulate the-- how high it can be. And I think, what, a year or so ago you raised some of those so we could get a little more revenue. And, of course everything's got more expensive over the time periods. I mean, you know, you can't do with five bucks what, you know, this year as what you could ten years ago, you know. So it just goes more and more, so. So, yeah, those are pretty much-- I think there can be some things that can be done and I think we just have to sit down with landowners and-- you get a-- I've talked to the same people you talk to, you know, on and you get some landowners-- there isn't a lot of reactions to the bill. You know, when I talk to people when that bill first came out, you know, everybody was like, oh, I-- as a landowner I like it, you know. And then when you told them you had to open up half your ground to public hunting, it immediately went from a, "I don't like it" to "I hate it." So some of those things have to be worked out. But it probably, over time-- I mean, a bill can process through between agencies and trade-- and trade things out to make it palatable to everybody.

**HUGHES:** So as to a state agency that's benefiting from all this wildlife that's being produced on private property, do you think there should be some-- you would be open to some sort of compensation some way to the landowner that's producing all this game that you're selling all the licenses for?

**ROBERT ALLEN:** There's probably some possibilities. It's a little hard to see it is the way we've done things in the past, but that doesn't

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mean the way we've done things in the past is the way we'll do things in the future either, so. So, you know, as land-- as you're well aware of, land has probably gone from a average-- what 400 acres of-- per farm to what is it now, 2,000 or 3,000 probably and the size of the landowners have gone up drastically. Well, if your land-- if you've got that big land holding that's a primary deer range, well, you could end up with an awful lot of deer on that particular piece of property, you know, where maybe before with a lot more landowners they could spread it out a lot more, you know. But now, just because of the nature of how big farms have got if-- particularly mule deer, which you've got a lot of them in your area. I mean, when they congregate in the wintertime you'll see herds of several hundred without much difficulty at all. And, yeah, you-- usually one person ends up with all those deer it seems like, for whatever reason. We, we don't regulate where they go to, but for whatever reason-- well, if you're feeding distillers grain you'll find them on your place because they love it.

**HUGHES:** So you had mentioned the Venture Park. Do you see any conflict with the state agency going head to head for entertainment dollars from other amusement park areas, especially in the Omaha-Lincoln metropolitan area?

**ROBERT ALLEN:** I don't know that we've-- you know, I know there's other rock climbing walls in the Omaha area. I'm not a rock-climbing expert, but I've been told that there are other rock climbing walls. But I think it's a matter of when people are there, that's something for them to do. I don't think it's something that they would just go there to be a rock climber. They would go there when-- they're there at the park they're going to want to experience rock climbing. I guess there's other zip lines in the state of Nebraska, too. But I would say as a rule it probably stays about the same there. I don't think everybody's gonna have unlimited dollars that they're gonna spend on zip lines and we're gonna compete for those dollars. It's the people that are at that park and the ability to have fun at the park and a variety of activities to do. I haven't personally heard any complaints from that standpoint that our parks are competing with private enterprise people. I don't think that was ever our intent. But we try to price them in a range that make it an experience for a family-type pricing, so.



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**HUGHES:** OK. Any additional questions? Seeing none, thank you, Mr. Allen. We appreciate your coming and your willingness to serve the state of Nebraska.

**ROBERT ALLEN:** Thank you.

**HUGHES:** Anyone wishing to talk as a proponent of the reappointment of Mr. Allen to the Game of Parks Commission? Sure, come on up. Welcome.

**HENRY BRANDT:** Thank you. Henry Rick Brandt, H-e-n-r-y R-i-c-k B-r-a-n-d-t. I'm a commissioner, a colleague of Mr. Allen. Good leader. I guess I just have to say how I feel and, and be honest. I am so honored to be able to be with the commission that we have now, guys. I mean, it's just-- it's everybody has their strengths. Everybody has a strength and the respect that each one gives to everybody is-- you know, like Bob is the pheasant man all the way around. I mean, listening to him talk today I wish-- I wish I could say all those things if you'd asked me those questions about pheasants. I've got a lot to learn yet and I'm going to learn from him, hopefully. Enough said.

**HUGHES:** Any questions for Mr. Brandt? Seeing none, thank you for your testimony. Any additional proponents? Welcome.

**DAN KREITMAN:** Thank you, Senators, for the opportunity to represent Bob, Bob Allen. My name is Dan Kreitman, D-a-n K-r-e-i-t-m-a-n, and I'm a commissioner for District 1, southeast Nebraska. I've work-- I came on after Bob, a year after Bob, but Bob and I have had a lot of time to spend together. We've been to Canada. We've been hunting, we've been fishing, we've-- we keep in contact. The one thing about Bob is-- Bob is extremely passionate about Nebraska's resources. One thing that he didn't mention is his background in, in farming and the agricultural implement business. He's been around it almost-- I think most of his life. So with that-- with that background, it brings him front and center to a lot of issues that were-- that come in front of us. With the pheasants, I'm just going to repeat what Commissioner Brandt said. Bob is very passionate about that. Bob keeps well connected with all the other commissioners. I mean, it just seems like he's one of those people that you don't have to call him, he's calling you and discussing things. And we real-- really appreciate it and we really respect him and I hope you take his appointment into consideration. Thank you.

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**HUGHES:** OK. Thank you, Mr. Kreitman. Are there questions? I guess I have one. So you mentioned that you and he had been fishing and hunting together. Is that kind of a normal activity of the commission members or, I mean, where all have you been?

**DAN KREITMAN:** We've been to Canada up duck hunting and with the Ducks Unlimited and gone through their wetlands and, and a lot of their-- the DU process. We, we've been pheasant hunting together, we've been to the One Box Hunt. And as commissioners go, I think once we get to know each other we all have the same passion for the outdoors, whether it's hunting, fishing, hiking. It just everybody has a different interest. And I think it-- we-- those interests are drawn out and we all enjoy spending time with each other.

**HUGHES:** OK. Thank you. Any additional questions? Seeing none, thank you, Mr. Kreitman.

**DAN KREITMAN:** Thank you.

**HUGHES:** Any additional proponents of Mr. Allen's reappointment? Seeing none, anyone wishing to speak in opposition to that reappointment? Seeing none, anyone wishing to speak in a neutral testimony? Seeing none, that will close our reappointment hearing of Mr. Robert Allen to the Nebraska Game and Parks Commission and we will open up the appointment of John Hoggatt to the Nebraska Game and Parks Commission. Welcome, Mr. Hoggatt. So just a little background about yourself.

**JOHN HOGGATT:** My name's John Hoggatt, J-o-h-n H-o-g-g-a-t-t. I'll try to give you an elevator speech. Born and raised in Nebraska. Family is from Hastings. Grew up and Holdrege. Served my professional career in Kearney, Nebraska. Moved to Lincoln for a few years. Lived in Grand Island for 22 years. Moved back to Kearney in 2017. Been a banker most of my life, all my life really, since, since my sophomore year in college. I've also had some interest in some ag-related fields. Helped with some family issues and then partnered in small wholesale irrigation business and I'm proud to say that. I have a lot of interest in the Game and Parks, had since I was a kid. I now have four grandkids, one on the way. That's probably where my passion lies, is to see the natural resources of the great state of Nebraska to be preserved, enjoyed, maintained as best as possible. I've found-- I've got some exposure for the Game and Parks. I attended a few meetings and the previous testimony today reflected the culture of the Game and Parks Commission. I was extremely impressed and so I elected to apply. As you mentioned earlier-- the question was earlier was how do you

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apply? I applied and I was honored to be someone appointed or recommended to be appointed by the Governor. So that is where I-- that's where I started and that's where I'm at today is, is before you guys asking for a recommendation.

**HUGHES:** Thank you, Mr. Hoggatt. Are there questions? Senator Bostelman.

**BOSTELMAN:** Thank you, Mr. Chairman. Thank you for being here today, Mr. Hoggatt. Could you-- I guess I'd like a little bit more background information of what your--why-- I know you mentioned and you have an interest with grandkids. Would you go into that a little bit deeper why-- what your interest is, what's your motivation is for wanting to be a commissioner?

**JOHN HOGGATT:** Yeah.

**BOSTELMAN:** I mean, are there other areas in your life that you--

**JOHN HOGGATT:** Hunting and fishing has been a big part of my life and in that enjoyment I've been able to travel the state and enjoy the state of Nebraska and see all the aspects of what we have to offer. And as far as giving back to the-- giving back to the citizens, kind of a way to give, give back without being an elected official, is probably my motive, one of my motivations. I didn't go through the election process, but this process I'm able to give back and serve the community. It's probably one of my main motivations. I have a passion for outdoors. I know-- if you have my application, I have a passion for outdoor recreation and hunting dogs. I compete in the AKC field trials. I'm an organizer for Central Nebraska Retriever Club. We do that as a, as a, you know, as a high-- a little hobby. Excuse me. So anything that has to do with the outdoors, hunting, fishing, outdoor recreation. Game and Parks, I'm impressed what we have going on in this and just want to add to that.

**BOSTELMAN:** So my-- the most important question I guess right now for me is, what type of dogs?

**JOHN HOGGATT:** Labradors.

**BOSTELMAN:** OK.

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**JOHN HOGGATT:** I started out with pointers when I was a kid and my dad stayed with them. And then I moved to Labradors. We have that friendly competition, what's better the Labrador or the pointer?

**BOSTELMAN:** Well, I like the pointers myself.

**JOHN HOGGATT:** I'll bring my dad out here.

**BOSTELMAN:** I'll hold the Labradors against you. There goes your vote. I used to compete in AKC with vizslas, both on horseback and on foot. So that's interesting. So thank you for, for coming out today.

**JOHN HOGGATT:** Thank you.

**HUGHES:** Additional questions? I guess mine will be the same. You know, do you have feelings about the Game and Parks benefiting from all of this wildlife that the landowners are producing and not really giving them hardly any compensation for that?

**JOHN HOGGATT:** You know, I won't retread water that Bob mentioned. But I would say that I think somewhere in there lies a compromise and, and negotiation discussions of what's the benefit of the state, what's the benefit of the landowners. I think there has to be some type of consideration on both sides. I think there is someplace in the middle to meet. And I think we need to have a good, good open discussion and be respectful for each other's opinions. And I, I, I had mentioned--I met a guy-- I talked to a gentleman that had an issue with that and I think it's just a matter of sitting down and fully explaining what the pros and cons of both sides are. There's something there.

**HUGHES:** So you said you've already attended a couple of commissioner meetings?

**JOHN HOGGATT:** Yeah. Just as a public, public meeting. Yeah.

**HUGHES:** And so during those meetings do you get the sense that the, the commission is in charge or are they just taking directions from the administration?

**JOHN HOGGATT:** Well, I think it's a pretty good mutual-- yeah, I think the commissioner-- commissioners are in charge. I think that-- I think the administration is well, well prepared and have-- answers questions on both sides, what I've seen early on. But I've got a lot to learn and-- but I've, I've seen good questions presented to the, to the administration and really good answers back. And there's always-- it's

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amazing, there's always two sides to the story. And what's, what's good for one is not good for the other and what's the consideration and somewhere in the middle is usually the truth.

**HUGHES:** OK. Very good. Any additional questions?. Seeing none, thank you for your willingness to serve. So is there anyone who wishes to speak in favor of the appointment of John Hoggatt to the Game and Parks Commission? Welcome back.

**HENRY BRANDT:** Let's see if I can remember my name. I know how that-- I know my name, it's just spelling it again. H-e-- Henry Rick Brandt, H-e-n-r-y R-i-c-k B-r-a-n-d-t. He-- if he only knew what was ahead of him right now. This is, it's, it's overwhelming our first year. And I think, I think my goal more than anything else and his interest in, in the animal and the parks to make it work. He's not-- he has no personal goals to attain other than do right for the park and the people. And that's-- I think that's probably the thing that's impressed me most about him. And now we have to, as the, as the existing commissioners did for Dan and I, to teach him everything that we know so that he can grow more. I mean, he's, he's going to be good at what he does. Enough said.

**HUGHES:** Okay. Thank you. Are there questions for Mr. Brandt? Senator Albrecht.

**ALBRECHT:** Thank you, Chairman Hughes. And thank you for being here, Mr. Brandt. How often do you guys meet, just once a month or--

**HENRY BRANDT:** No. Six times a year.

**ALBRECHT:** Six times a year.

**HENRY BRANDT:** Yeah.

**ALBRECHT:** OK. And where did you-- where did you drive in from today?

**HENRY BRANDT:** Lincoln, Nebraska. Oh, I forgot to say I represent the Lancaster County, District 8.

**ALBRECHT:** Thank you. Thank you for telling me that. But it's, it's nice to have people come and talk about those that are being appointed because even though they send their, their application into the Governor, it's kind of nice to see other board members come to talk.

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**HENRY BRANDT:** I would have come to Scottsbluff if I needed to, to say something about him.

**ALBRECHT:** But do you personally know Mr. Hoggatt?

**HENRY BRANDT:** Not until about three months ago. I'd never met him in my life.

**ALBRECHT:** OK. Very good. Thank you.

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

**DAN KREITMAN:** Thank you, Senators, once again for allowing me to speak on behalf of John Hoggatt. My name is Dan Kreitman, D-a-n K-r-e-i-t-m-a-n, Wahoo, Nebraska. I'm a commissioner for District 1, southeast Nebraska. I've, I've only known John for a little less than a year, but John was highly recommended to me and introduced to me by our former commissioner, Norris Marshall. And Norris spoke very highly of him and Norris talked to me quite a bit about him. And he said, Dan, I really would like you to recommend him. And after we'd discussed it and I met John, we sat in the duck blind for quite a few hours one day and sitting in a duck blind you really get to know somebody. You find out a lot about them, whether you like them or not. But John expressed a lot of interest in, in his passion for wildlife and the goals that we all are striving for to attain in Nebraska. John also brings another avenue to the-- to our table, his banking. As a, as a banker and in the banking industry his financial background is helpful for us also. We also have a mutual interest. Mr. Allen and Mr. Hoggatt and myself all have dogs from the same, the same trainer. So we all have an interest in that also. That's it.

**HUGHES:** Very good. Thank you, Mr. Kreitman. Are there questions? Seeing none, thank you for your testimony.

**DAN KREITMAN:** Thank you.

**HUGHES:** Any additional proponents of Mr. Hoggatt? Any opponents of the appointment of Mr. Hoggatt to the Game and Parks Commission? Anyone wishing to talk in the neutral capacity for Mr. Hoggatt's confirmation? Seeing none, that will close our appointment on Mr. John Hoggatt for the Nebraska Game and Parks Commission. With that, we will open our hearing on LB606. Senator Groene, welcome to the Natural Resource Committee.

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**GROENE:** Thank you. Mike Groene, M-i-k-e G-r-o-e-n-e. My opening is lengthy but you need to hear facts and truth, not hearsay. You may hear a lot about common law today. But it's clear that the enacting of a bill such as LB606 by the Legislature takes precedent over case law. I'm going to quote from well-known state Supreme Court water law cases. Sorensen v. Lower Niobrara in 1985, the court said: Subject to constitutional limitations and the consent of Nebraska citizens, the Legislature has the right and power to determine state policy on groundwater. Chadd v. Lower Platte South NRD, 2001. Nebraska's common law does not allow water to be transferred off overlying land. However, we have made it clear that the Legislature may provide exceptions to this common law rule. Olson v. Wahoo and Meng v. Coffee, Commissioner-- this is 1933 [SIC]. Commissioner Pound, in a very long Opinion, held that the common law rules as to the rights and duties of riparian owners are enforced in this state except as modified by statute. And finally, recent N-CORPE cases, augmentation cases. Estermann v. Bose, 2017. We have previously stated that Nebraska's common law does not allow water to be transferred off overlying land. However, we have made it clear that the Legislature may provide exceptions to this common law rule. Upper Republican v.-- NRD v. Dundy County, 2018, just last year. But only the Legislature is empowered to determine whether current law is adequate or whether the law should be changed to balance the competing public interests differently. The lawyers in my office have taught me that this is how law works. Common law is the weakest, case law is the second weakest, legislative actions is the second strongest, and state Supreme Court rules all. I brought you a bill to settle the argument on N-CORPE and land ownership that will trump common law and case law. In Lincoln County we have a situation of competing public interests, as Judge Cassel said in the Republican NRD, Dundy County case. In 2012, 19,500 agriculture use acres were taken out of private ownership and transferred by government purchase to natural resource district ownership through an interlocal agreement formed by four area NRDs, Lower, Middle, and Upper Republican and the Twin Platte. Only two of those NRDs, the Middle Republican in the Twin Platte is one acre of ground involved in N-CORPE in their jurisdiction. The purpose of the N-CORPE was to access the groundwater allocated by the Middle Republican NRD and Twin Platte NRD for 16,500 irrigated acres. Access to the allocated groundwater was necessary to offset groundwater needed for a planned augmentation project adding water to the Republican River flows and in, in, in the interest of settling a lawsuit with Kansas. The Twin Platte joined the NRD joined the interlocal to access the groundwater to augment river flow

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requirements in the Platte River. Let me cover some facts.

Augmentation: The authority to augment streamflows are granted by the Legislature as recent as 2009-- 9 by Senator Fischer, LB54. As I said, we create statutes. By section-- in Section 46-715(3)(e). The courts have since helped define augmentation in the Estermann and Dundy County cases. LB606 will further define and protect augmentation projects. That is my goal, to protect the augmentation project; one of my goals. Water Transfer: Estermann claimed that the augmentation was a water transfer and therefore required to conduit water permit from the Nebraska Department of Natural Resources. The court ruled that although the N-CORPE project adds quantities of water to the streams, it does not require a conduit transfer water permit. This is because N-CORPE is not attempting to guarantee that a certain quantity of water is used for a beneficial use or reaches a certain point downstream for a particular use. Rather, the purpose of N-CORPE project is simply to add water to the Republican River Basin in order to offset water depletion. There you have it. The court defined augmentation. Western Nebraska farmers are told that if N-CORPE doesn't own the land it will open the door for Denver or Lincoln to use Nebraska's water transfer law to come in and take our groundwater. This is a boogeyman scare. It is totally false. The Nebraska Supreme Court clearly ruled augmentation is not a transfer of water. Land ownership: Proponents of NRDs owning large areas of land for augmentation projects would quote the recent Upper Republican NRD v. Dundy County case. The court said: We find no reason to treat underground uses in this case the use of the aquifer wells and pipeline system differently from any other use of property. As the NRD points out, use of the groundwater is a derivative right immediately depending on ownership of the surface over it. We have thus held in other contexts that the groundwater is part of the property at issue under the exemption statutes. The right to use the groundwater does not float in a vacuum of extraction but it exists only in reference to and results from ownership of the overlying land. We have thus said it is clear that the right to use groundwater is an attribute of owning fee simple title to the land overlying the source of groundwater and is inseparable from the land to which it applies. They're probably sitting there going, Groene, go home, pack your books, the court said they got to own the land. Sounds like a mandate to own the land, doesn't it? But let's look closer. The court took those words from a 1985 Sorensen case, in which the Lower Niobrara NRD used their eminent domain power granted them in 1963 when the Legislature enacted the Municipal and Rural Domestic Groundwater Transfer Permit Act. The Lower Niobrara NRD took two one-half acre tracts from a quarter



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section owned by Mr. and Mrs. Sorensen for the purpose of placing wells to supply residents of the West Knox Rural Water District. In the Sorensen case the court made it clear that the Legislature enactment of the Municipal and Rural Domestic Groundwater Transfer Permit Act has removed use on overlying land as an index for the reasonable and beneficial use required by common law. They clarified it by stating: Where NRDs restricted retention and use of 864,000 gallons pumped daily on its tract, each of the proposed one-half acre well sites would be transfer-- fer- formed into a veritable Atlantis. In other words, they would be completely engulfed underwater. Let me now make it clear, the court said the NRD needed only to own the land over the wellhead, one-half acre being sufficient. And the court applied the same requirement to Upper Republican NRD v. Dundy County by quoting the Sorensen case. Any claim that by-- for a public purpose an NRD must own 19,500 acres in reference to N-CORPE or 7,280 acres as in the Upper Republican NRD v. Dundy County case, to secure the necessary groundwater rights for a public purpose is blatantly false. The court agreed with the Upper Republican NRD's claim that they had the ability to own the entire 7,200 acres when it said, we agree with the TERC that the property was used for the public purpose of water management--there's not a period there--and the development and maintenance of the prairie, another public purpose, not just the necessity to own the well sites was referenced in that statement. The court further stated: But that-- but that is not the only public use of the property. We further consider in our predominant use analysis the fact that the NRD implemented a plan on the property for a large-scale reseeding of the sandsage prairie area. This is also encompassed by the duties and responsibilities conferred by law upon the NRD, described in Section 2-3229. It is the NDR's purpose to develop and execute programs of soil erosion prevention and control, soil conservation, development and management of fish and wildlife habitat and range manament-- management. The court did not say they had to own the 7,280 acres, only that they had the ability to own those acres. Now that you have a background info on why LB606 is needed to codify existing case law, here's what LB606 accomplishes. Section 1: It defines in law the ability of NRDs to establish an augmentation project as mentioned in 46-715(3)(e) and protects the NRD's ability to acquire real property for augmentation projects by establishing in law what has already been done by the NRD when creating the Rock Creek and N-CORPE augmentation projects. Section 2: Reaffirms the groundwater use authority the NRD has over the amount of groundwater extracted for the project. The host NRD, which is the Middle Republican and in the Twin Platte in my district, must be able

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to incorporate groundwater extracted-- extracted by the augmentation project into their integrated management plan. Therefore, they must set an allocation. It's our groundwater law and it is controlled by those NRDs. Allocations are not new in groundwater law. Statute 46-740 applies allocation requirements to municipal, industrial, commercial, and irrigation groundwater use as a water management tool. These are in use presently and will man-- and are mandated by 2026 in the new integrated management plans, if you read the statute. Section 3: Clarifies what all of the court cases have inferred. You need to only own the land above the wellhead. No more, no less. This section gives the same powers to NRDs for augmentation projects that currently exist in the Municipal and Rural Domestic Groundwater Transfer Permit Act. Remember, I said augmentation is as new as 2009. There isn't a lot of statutes surrounding, defining it. And all I'm doing is taking the municipal water law, NRD abilities and moving it over to augmentation. No more, no less. This section gives the same powers, as I said. Using free license to paraphrase Nebraska's Supreme Court's Opinion in the Sorensen case, NRDs are not bound the same as private landowners are to observe common law in pumping water from their sites. An NRD, as will be clearly permitted under LB606, is entitled to use groundwater in a manner not otherwise accorded to a landowner under common law. As a result of passage of LB606, an NRD operating an augmentation project will become a peculiar type of landowner, granted very special status with statutory rights contravening common law. The common law argument is out. It's only for the farmer and the individual citizen, it is not for municipalities and government entities. What will the passage of LB606 mean to the agriculture producers, taxpayers, and citizens in Lincoln County and southwest Nebraska? It would give a clear guidance to the board members of the affected NRDs that they can sell the land without jeopardizing the augmentation project. It quiets the ill-informed naysayers' argument that selling land will put the augmentation project in jeopardy. It actually puts in statute words, actually, finally protected from the beneficial use argument. Selling the-- number two: Selling land could bring up to \$20 million in revenue along with another \$15 million in debt service costs. Presently, the total cost of the bond payment of the \$86 million in principal is \$142 million through 2039. Selling the land could drop the cost down to \$107 million over time until that-- until the 2039 final payment date. The mortgage says if they sell the land it would have to be used for the-- to retired bond-- bonds or replace it with like property. But, of course, we would say retire the bonds. Selling the land would eliminate nearly \$1.2 million in annual operating costs, including \$266,000 in property tax payments. Another \$24

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million could be deducted from occupation taxes on irrigated land over the next 20 years. We could cut the tax burden to those irrigated farmers in southwest Nebraska. Number four: The groundwater versus river low crisis is far from over. The Twin Platte NRD-- my major NRD--was recently told they need to come up with another 20,000 acre-feet of annual Platte River flows by 2027. We encourage the NRDs to sell the land, thus reducing their bond debt now and making the occupation tax available for future needs. We will not only help the citizens of southwest Nebraska but also the entire state. This groundwater thing isn't anything close to over, folks. Why spend those tax dollars for something we did in the past when we can do it for future answers? Number five: Putting the land back in production would give southwest Nebraska an economic boost by lowering tax burden on economically hurting farmers and putting 19,500 acres of farmland back into private hands, who will buy agriculture inputs and pay property taxes. LB606 is good, common sense, fiscally conservative government. Thank you. I will address the property tax thing about actually paying property taxes in my closing. Due to the weather, of course, in western Nebraska, many of the testifiers who planned to be here, hardworking ranchers and farmers and a couple of county commissioners be here today were not able to attend. I do believe you have received many last minute letters of support. Some individuals braved the weather and came down and have sons or somebody watching the calves and the cattle yards and-- and the, the floods. I just got a text that my cabin's under water on the South Loup River or water up against it, so we have fun out west. But-- so I want you to make a decision on facts, folks, not on hearsay, not on fear. It's like one of my-- I had a discussion with one of my Middle Republican NRD board members and he said, Mike, I'm tired of this fear. I'm tired of being told-- he said, I'm not motivated by fear. He says, I'm a farmer. I'm no longer going to be motivated that we'll lose the augmentation, we'll lose 300,000 acres. It's beneficial use. He said, I-- you have convinced me. I went through all of this with them, I went through with a lot of my board members on facts. Facts, sunlight usually overrules hearsay and maybes. This body needs to help my county. We need to clarify this augmentation thing. We have helped the farmers of the Upper Republican and the Lower Republican by using our groundwater. We bailed them out. Can't they at least let us sell land and put it back into production? Wouldn't that be just a simple little trade? We'll let them use it their water, because we need it, too. But anyway, I will close when we're done here.

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

**GROENE:** Senator Geist.

**HUGHES:** Senator Geist.

**GEIST:** Thank you and thank you for your testimony. I just have a question. If the land is sold and a farmer buys a portion of that land, can that farmer use the water on the land in your scenario?

**GROENE:** In-- NRDs are king when water-- they control it completely. The reason they bought this land was to retire the irrigation rights. Senator Hughes knows this. Every farmer out there knows that you might have one quarter of ground you owned in 1970 or '80, '90s, I guess, that you put a pivot on. You own another quarter right next to it. You can never irrigate this land over here. The acres are limited. So if they sold it, the NRD could easily put an easement on it, a restriction on it, a reservation on it. They could even put a reservation on-- cities do it when they put city wells in, that you can't put a domestic well within a half mile or a mile of a city well. Cities don't own 20,000 acres when they-- because they don't have to because in this water law and I'm doing that with augmentation. So when they sell the land they could just put an easement that says you can't put a domestic well or a livestock well within a half mile or something on the wellfield. They own 20,000 acres now. Guess what. They lowered 13-- they mitigated it and lowered 13 wells in the area already. I'll give them credit, they didn't take it to court. But on-- when you go to the court and you've lowered a neighbor's domestic well because of the Supreme Court you can't stand there and say, oh, I own 20,000 acres, therefore I'm not guilty. You are guilty. What they can do is they put those reservations in there, sell the land, and or that they have first rights to the water and they can allow them to put a domestic well in, but, but lawyers can figure that out. Remember, this bill says, may sell the land. They could decide to keep 20 percent of it around the wells. It says may. It clarifies what they already can do and in my closing I'll tell you some comments that have come out of the N-CORPE meetings. I'll tell you why this bill needs to be passed, because of the misinformation out there between board members.

**GEIST:** Thank you.

**HUGHES:** Senator Gragert.

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**GRAGERT:** Thank you, Senator Hughes-- Chairman Hughes. Just a quick question then a follow-up on the water in the wells. You're saying a half a mile-- they probably have to stay a half mile away [INAUDIBLE].

**GROENE:** They could do that. That's up to them when they-- when they sell the land and what they put as a reservation or an easement in the deed.

**GRAGERT:** But they need to keep those augmentation wells for the purpose that they were put there.

**GROENE:** Yeah. We're not taking that away.

**GRAGERT:** So will there ever be the possibility of putting a high capacity well even further away from those wells?

**GROENE:** They could do that. You mean, a farmer or a-- no.

**GRAGERT:** Right.

**GROENE:** Because the NRD will say, no. Even if you-- in an overappropriated or fully appropriated NRD, if you want to put a cattle yard in, you have to-- the Olsons, I know did, who are here or not here, they wanted to be here. The NRD said, no, you have to offset your cattle use, your water use. So they bought two pivots-- two farms and retired the water off of it. It is strictly regulated in overappropriated and fully appropriated districts how water is used. NRDs are king when it comes to water and especially in the overappropriated and fully appropriated. We gave-- this body gave them more powers than even the rest of the NRDs have when it comes to groundwater.

**GRAGERT:** One last question then. If this ground is going to be used as pasture animal range they will get, of course, enough well capacity to water their cattle with?

**GROENE:** Upwards of 50 gallons a minute.

**GRAGERT:** Well, even less than that.

**GROENE:** Yeah, a little less. And when you ask a farmer if you go out in our country they might have one windmill up every-- every five square miles, a little half-inch pipe in the ground pumping from a windmill, now they use solar. But they could put that in the reservation that says, we will allow you to put-- with the exception

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that we trump your water rights. Or they could say, you can't have water-- a well on this land on a, on a mineral reservation. They do it already. They sold three quarters early on, the N-CORPE did in the-- to the Lowe [PHONETIC] LLC and they put a reservation in it that they kept the water rights. It happens all the time. There's one over here at Seward a long time ago there was a farmer who sold an 80 and kept the water rights and pumped it over to the other quarter. NRDs are king when it comes to water. But right now they've had to do-- because of people across the fence further down, they've lowered wells, but that doesn't shut down the project. The court cases have said you've got to mitigate it. So if the NRD goes in and says, well, we'll pay the well driller to lower your well. The farmer will say, that's fine for your domestic well, but there isn't that any homes out here, if you've ever been there. It's going to be cattle.

**GRAGERT:** Thank you.

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

**HALLORAN:** Thank you, Chairman Hughes. So just for clarity sake, the augmentation project which was to increase the flow in the Republican Basin--

**GROENE:** And the Platte.

**HALLORAN:** -- and the Platte to primarily to offset the suit with Kansas. Right?

**GROENE:** The big one. They pump 98,000 acre-feet into the Republican and the Twin Platte hasn't pumped one gallon yet. They got their pipe replaced.

**HALLORAN:** Having said that, this bill codifies that that augmentation still continues.

**GROENE:** Yes.

**HALLORAN:** OK. Thank you.

**GROENE:** It makes it-- let's say into the future it says you don't have to own all the land so they need more or they want to go to the neighbor and land is selling out within a mile or so, they can go and buy the water right. Let him keep the dryland, not have the burden of the land and add that water retirement of those irrigation acres to the--to the-- to-- and that's in statute, too. It's right beside--

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it's in the same section as augmentation. You can retire water rights to offset use instead of-- but now in the mindset is-- the farmer mindset, which is what they're playing on and farmers believe you've got to own land to control water. Not when you're an NRD.

**HALLORAN:** Thank you.

**HUGHES:** Senator Moser.

**MOSER:** Senator, your bill would allow N-CORPE to sell that property?

**GROENE:** They can actually do it now. But-- but it would codify it. Codify or whatever.

**MOSER:** Well, it would give them more defense if they did.

**GROENE:** Yeah, legal.

**MOSER:** Yeah. What makes you think that they would want to sell it even if you said they could.

**GROENE:** The majority of board members on the Middle Republican and the Twin Platte want to sell it. I made the effort this year to meet with the management of all four NRDs and some of their board members, the Attorney General, DNR. And the first thing out everybody's mouth, mouth is, it's stupid to own that land. I wish we could sell it. We should be able to sell that land. But then the second thing is the fear of losing the augmentation project. Nobody can defend owning that land. It sits there. We haven't pumped for two years, and got four employees-- three or four employees, \$1.5 million budget-- operating budget and they haven't pumped a drop in two years. Let some rancher take care of the fence and let some rancher keep the weeds down. He will quickly, a lot quicker than government will. But they want to sell it. The majority want to sell it. The minority throws the fear factor at them. You know, [INAUDIBLE].

**MOSER:** Do you fear-- do you have any fears of creating a test case for some new Supreme Court ruling?

**GROENE:** No. We've already had two big lawsuits on this thing. The court would look-- anybody can sue. But it eliminates-- any lawyer in their right mind would tell an individual, hey, don't bring me a commonwealth lawsuit. LB606 said it has been trumped. It gives the ability of an NRD to operate a augmentation project unrelated to land ownership. All these court cases have been on-- on the common law. And

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you hear this word common law like it was written in-- written in the bible. It is the weakest of all laws. The minute we pass-- this body passes legislation that trumps it, all of those court case-- past court cases on it are out the window.

**MOSER:** You're not concerned about upsetting the balance of competing interests that have kind of reached an equilibrium with the way things are working now and that this may stir up--

**GROENE:** No, it codifies it. What, what the, what I've heard and I won't mention names, what they do not want to happen is a panic situation where they just start pumping-- well, the Tri-Basin did it and probably illegally. But this might help the Tri-Basin cover their rear end, too, what they did. They don't want an NRD suddenly just punching a hole in the ground and starting to pump in the creek. They want some pretty good barrier there to, to climb. And the statute says, no, you got to buy the land first. And after you buy the land you create your augmentation project. It's codified. It boxes it in. And then after you create your augmentation project you can sell the land. It, it actually protects the state and it actually protects the NRD and it protects the local landowners, too.

**MOSER:** Thank you.

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

**BOSTELMAN:** Thank you, Chairman Hughes. Just a thought or a question of what you just said there. So in this case they bought irrigated ground plus the dryland. Now they're going to have to, I mean, part of it, all or part of it.

**GROENE:** Sixteen thousand five hundred acres.

**BOSTELMAN:** And then if it's sold, it has to be sold as dryland.

**GROENE:** Yeah.

**BOSTELMAN:** So there's going to be a significant loss.

**GROENE:** Yes.

**BOSTELMAN:** And then there would be that debt at the state would owe. So in that sense, that's something I think that--



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**GROENE:** Would you-- the way I look at it you can buy a bank box. Would you take \$1,000 and stick it in a bank box and pay \$4.50 a month for that bank box? That's what they're doing with this land. They're paying-- their paying management fees on \$20 million dollars of land. Let's call it \$20 million, that's close to what it would bring. It's not going to gain any value with the f-- with the ranch economy. But they're paying \$1.5 million half negative interest on it to manage the land. If they sold the land and bought down the bonds they are gaining 4 percent a year that they're not paying interest on those bonds. Right now, every year they own it, it costs them. And in 20 years they're going to be dead even because they had-- they could have sold it for \$20 million and they spent a million-- well, more than that. They're going to be negative, because over 20 years they're going to pay the management of \$20.2 million too. So that's \$24 million, they're already in a hole. They're going to pay the 4 percent interest on the \$20 million dollars of bonds which is another, what, \$8 million. In business you cut your losses. That land would bring around \$20 million because we have some farmers in that area who want it, and that's good. One of the complaints is from one of the board members--which I couldn't believe--was, this is just a land grab by some local farmers. Well, I think-- I would hope, Senator Hughes-- I hope-- Mike Groene you can't afford it, your cabin flooded. I would hope the room is full of bidders and they bid that up so high that the more money we get for it the more we pay the bonds down. Cut your losses, 'cause right now that, that money, that land ownership is a detriment, not an attribute. And if you want to go in-- if somebody wants to ask me about the mortgage, I can go into that, too.

**BOSTELMAN:** Understood-- I hear what you're saying, but I guess the part of it that I was just wanting to, to, you know, to identi-- or talk about was just the fact that you're gonna buy it at one-- at an irrigator price, you're gonna sell it at a loss, right? And so, what that [INAUDIBLE]--

**GROENE:** You're going to get-- they paid \$86 million, they're going to get maybe \$20. Yeah, \$20. And so now you've cut your-- it's never going to-- it's never going to get better than \$20 million ever.

**BOSTELMAN:** Well, not with that [INAUDIBLE] future projects. So we-- an NRD would be going in knowing they're going to take a loss at the beginning.

**GROENE:** Oh, yeah. They bought the water, Senator Bostelman. What they paid for was the water. They really-- some of the-- I can get you some

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of the old minutes from the meetings they didn't want the land. They wanted to water, because we're, we're overappropriating, fully appropriated. They wanted to 16,500 acre-feet to retire that so they could use that in an integrated management plan and pump it in the river instead. They bought the water right.

**BOSTELMAN:** Sure, I understand that. And my comment was only the point that in the future if they're gonna do this, if someone would do this, if this bill will go through, would be they're buying land knowing that they're gonna try and sell it at a loss so that could create a financial problem for them in getting a loan, getting funding for it to buy that land, but who's going to come in and loan them the money to purchase that land when they know they're gonna immediately take a loss? So I understand [INAUDIBLE]--

**GROENE:** We want to send the message that Senator Bostelman don't do that. Come with some management plans-- some-- I wish Roric Paulman would have been here today, he couldn't come in--because he's very insightful in water management--that we start accepting the reality that we need to come up with better water management for the next 20 years so we don't have to come up with 20,000 acre-feet or lose irrigated land. Send a message that this was a panic. They kicked the can down the road. Nobody thought this day would ever come and it came. And we hope no more temptation to do augmentation plans are out there, but they can do them if they want to. They're just going to pay the price.

**BOSTELMAN:** OK. Thank you.

**HUGHES:** Senator Gragert.

**GRAGERT:** Again, thank you, Senator Hughes, Chairman Hughes. So with the bill then you have to buy the land, you drill the wells, but then you can sell the land for future-- for future-- why isn't it the NRD doesn't even have to own the land just the land that the pumps would sit on.

**GROENE:** Like I said, some people--

**GRAGERT:** Why are you taking a loss on the land?

**GROENE:** I'm not gonna mention because I said I wouldn't mention. We are defining what they already did.

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**GRAGERT:** In this case, but I'm talking it-- will this, will this-- for future, where the NRD wouldn't have to purchase the land--

**GROENE:** They could. They could buy a quarter of ground and put the well in and say-- but they still got to make up the water if they're fully appropriated or, or they could go out and buy water rights from-- buy back irriga-- allocations and then put the system in and they can sell the quarter off and keep a half, half an acre. But they've got to somehow-- the present thinking is, we have no more extra water to pump because it has to fit into the other agreements with the Republican River and the Platte. So it's either buy the land to get the water rights or buy the water rights. They can do that. They could do that because if you read the statute-- it ended up-- where it says augmentation-- I can tell you if you want to have patience with me. But it says-- where's the statutes at? In that section of law, (3)(e): Identify to the extent feasible potential water available to mitigate new uses including--any new use would be augmentation--including but not limited to water rights leases--they could lease the water, which the Tri-Basin did. No, they didn't. They should lease it. They should change their agreement to a lease, not an easement; interference agreement; augmentation projects--this is the first time it's in law. It doesn't define it. That's all it says is augmentation project; conductive use management; and use retirement. So they could retire use by buying allocations and create an augmentation project. It's a lot cheaper than buying the land and having to manage the land. But it's in statute already. I-- all I'm trying to do is codify what they already did to protect them because they already did it. They already bought the land and we can always make another statute to protect them from lawsuits

**HUGHES:** Senator Halloran.

**HALLORAN:** Thank you, Chairman Hughes. Quick last question. Everybody here probably understands it, but I don't. So they bought irrigated land for this augmentation project. Where's the revenue flow to pay for what they bought?

**GROENE:** Thank you, Senator Halloran. They don't need to own the land for the mortgage. They don't. They have the ability to tax the irrigated farmer \$10 an acre occupation tax. They-- originally when Senator Christensen came with his bill in 2010 or '11, I don't know what it was, but they had a 3 cent tax-- property tax. They could do an augmentation-- do these projects for mitigate the Republican River Basin and the Platte River. Well, a rancher down in McCook area sued

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and said, wait a minute. You're charging me 3 cent property taxes for a problem I didn't create. The Supreme Court agreed with him and said, no, the state cannot do a property tax for a state purpose, which it is. The agreements with Kansas is a state surface water agreement. And so then the Legislature created legislation, like we're trying to do here, and said you could do a \$10 occupation tax, because our constitution doesn't restrict them from occupation tax on irrigated ground. So all the irrigators are paying for this. It creates-- 14 that's 14 million acres-- 1.4 million acres in the area, creates \$14 million dollars of revenue, that 10 bucks. The bond payments are \$7. The bank knows that, the mortgage company knows that. The reason the mortgage company put the mortgage on the land is because of what we're doing here. The fear that if they didn't own the land somebody would sue and they would take-- shut down the augmentation project, which would then eliminate the 10 bucks an acre. All the bank cares about is that 10 bucks an acre. I didn't get into that but by putting into statute they can sell the land without-- and still do the augmentation relieves the mortgage company's fear that if they sell the land it would harm the augmentation project. We're putting into statute the same thing that's in municipal water, rural water, domestic water law. Same thing. What the NRD can do there, they can now do in augmentation. Nothing new. And there's been a test case, the Sorensen case on the, on the-- in 1985 about all they had to own was a quarter acre, a half acre. They had to own the land above the wellhead. I can understand a court case. And I think you guys--I've given a lot of you the information and if you want it, I can get it to you.

**HUGHES:** Senator Moser.

**MOSER:** Does the N-CORPE have regulations or policies on selling this land to ensure that it sells for the highest price and it has an open process?

**GROENE:** Thank you for that question. They do it. They just sold eight quarters. There was eight irrigated quarters that was remote from the main body of land and they sold eight of them. Well, they swapped-- the farmer owned four irrigated quarters next to them. They swapped those for four for four of the irrigated quarters and then the farmer paid for the other four. And they've got \$2.7 million sitting in the bank, which I think by the mortgage they ought to be paying down the bonds. But they were looking-- because of this fear they're out looking to buy more land, foolishly waste that money on-- if this bill passes they could, they could sell the rest of it, too.

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**MOSER:** But there-- you don't have concerns about how the land would be sold or who it would be sold to or--

**GROENE:** I do trust elected boards to be smart enough to put it up for bid and to get the highest bidder, because I know at least four farmers around that area that would be bidding on it. They're well-run operations, they're established farm operations and fits into their-- they wouldn't want it as irrigated anyway. They're ranchers mostly. And it fits into their ranching operations. That's four and you never know, another insurance company comes in and buys it because that's who owned it prior and put the pivots on it. Well a farmer before that out of Texas. Then he sold it to an insurance company.

**MOSER:** Thank you.

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

**ALBRECHT:** Thank you, Chairman Hughes. Just two quick questions. Do you happen to know what the amount of bonded indebtedness "Newcorp" has on that--

**GROENE:** N-CORPE.

**ALBRECHT:** N-CORPE. I'm sorry. I say "Newcorp" all the time. N-CORPE. How much [INAUDIBLE].

**GROENE:** It originally was \$86 million was the principal. You run the bonds through 2039, it's \$142-and some million. That's why I, like any smart fiscal conservative, tries to pay off the principal early and that's what I'm trying to help them do by selling the land.

**ALBRECHT:** And for the land that would be available to purchase, do you think the land is conditioned at this point to either put--

**GROENE:** Yeah. They're starting to rent it out now. They did reseed it as, as, and they've, and they're leasing it out and I think they leased most of it out. They got like \$200,000 and some revenue from leasing it out. But that's-- doesn't come close to offsetting the \$1.2 million operating cost. So they-- it's ready to be sold. And the ranchers-- it's not going to be discounted. Most of those ranchers can do a lot better job of seeding and they'll have that seeded. In fact, I took a pickup drive with somebody and he showed me what N-CORPE had seeded and it was full of weeds and this was two years ago. And then he took me over to a field he seeded six months earlier and it was

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established and he was going to start raising-- grazing cattle. That's a difference between free enterprise and government.

**ALBRECHT:** Thank you.

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

**MOSER:** My third time and that's it?

**HUGHES:** Yeah.

**MOSER:** How about suggesting to the NRDs that when they lease out this land they put a requirement on the leaser, well, the person leasing it that they maintain it and not have to hire employees of their own? I mean, if they, if they let the landowners around there use this land for free and they got out at \$1.2 million--

**GROENE:** Uh-huh. I don't know why they want to own it. Why not just let the free enterprise own it and then go walk away and collect the taxes on it?

**MOSER:** Well, I was just splitting hairs. Thank you.

**HUGHES:** Any other questions? Seeing none, you'll stay for closing?

**GROENE:** Yeah.

**HUGHES:** OK. Very good. With--

**GROENE:** You had Groene day today with this bill.

**HUGHES:** It is Groene day today. First proponent of LB606. Welcome.

**RILEY WIPF:** Good afternoon, Senators. My name is Riley Wipf, R-i-l-e-y W-i-p-f, and I'm testifying on behalf of Andy Olson, who could not attend this hearing. I have a letter from him and it reads as follows. Dear Senators. My name is Andy Olson and I'm in support of Senator Groene's LB606. Last year in the Natural Resource Committee hearing for LB1123 on February 7, 2018, we learned from Dan Blankenau, who had previously worked for the Department of Water Resources was providing testimony on behalf of the Nebraska Association of Resource Districts or NARD that quote N-CORPE has existing authority to sell the land. There is no obligation upon them to retain it so they can sell tomorrow if they so choose to do so. Past spring in the statement by Blankenau out of the weeds, I would like to reiterate my position on

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the occupation, occupation tax. Again, I would like to state that I'm not against occupation tax. That part I'm against and the part that has always bothered us, is the rate at which the NRDs are collecting the occupation tax and the rate at which they are paying off the bond. In the last four or five years the NRDs have collected \$7 million on occupation tax and have paid \$7 million on the bond. It has become clear that there is no intention to pay the bond off before 2039. Each year we are paying somewhere between \$300,000 to \$350,000 on tax that we had absolutely no vote in having, outside of being an irrigator, which I am. We are not complaining about paying a tax that helps our neighbors keep their irrigated farmland. We are annoyed that the NRDs are keeping \$6, \$8 or \$10 million in their checking accounts just for a slush fund. I think when they collect occupation tax, that the tax ought to go towards the bond. That is how it is supported, but just to hoard this money they have \$30 million stuck around in different NRDs. When I asked them why they have this much money in their checking accounts the response I received is, and I quote, you never know when you'll need some money. End quote. I asked Senator-- I ask you, Senators, that is the sole responsibility of the irrigated farmers in these four NRD districts to fund these government agencies with our hard-earned money to use in any way they want without hesitation? I think one of the main projects would be to pay down the damn bond. Sincerely, Andy Olson.

**HUGHES:** Thank you. Are there any questions for Mr. Wipf, Wipf? Seeing none, thank you for your testimony.

**RILEY WIPF:** Thank you.

**HUGHES:** Next proponent. Welcome.

**KEN ANDERSON:** Good afternoon, everyone. I'm Ken Anderson, that's K-e-n A-n-d-e-r-s-o-n, I'm a resident and taxpayer of Lincoln County. I want to express my support for Senator Groene's LB606. LB606 seems to be a very simple and clear resolution of allowing an owner of an augmentation project after developing, the ability to sell a real property and continue operation. For us in Lincoln County, the N-CORPE water argumentation has caused a severe reduction in tax dollars along with a huge revenue loss from crop production to the county and era-- area, excuse me. If the N-CORPE property was still an active 19,500 acre property raising crops, the current taxes would be in the area of approximately \$700,000. And after much discussion and urging the N-CORPE recently decided to make a cash in lieu of payment in the amount of \$167,000 to the county for one year of taxes, which they can

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make at their discretion the way we understand, so. The shortage of tax, real estate taxes basically is what I'm coming about. I have been watching the N-CORPE project closely for the past six years and find it completely unexplainable why this interlocal agency should have accumulated losses, according to their financial statements in excess of \$25 million. It was first organized that the argumentation project would be paid by an occupation tax of \$10 an acre, which was \$14 million and we still have a loss. This particular augmentation problem has moved from a Republican River Basin Compact issue to a huge tax problem for Lincoln County, while the other 14 to 15 counties which make up N-CORPE received no loss of property taxes due to all the land being in my home county of Lincoln County. LB606 would be a great way for Lincoln County to receive new and additional revenue by allowing the unneeded acres of N-CORPE to be sold and the new owners paying the taxes instead so the existing taxpayers providing the funds, which is the current situation. And along with lowering the occupation tax that the farmer pays out separate. The taxpayer doesn't. Any questions?

**HUGHES:** Thank you. Are there any questions? Senator Albrecht.

**ALBRECHT:** Thank you, Chairman Hughes. Mr. Anderson, since you've been following this for six years, how is this still affecting your schools?

**KEN ANDERSON:** We're short money-- everyone is coming up short money so the existing taxpayers pick up the shortage. That's why I say we need new or additional taxpayers to pick up the shortage, rather than the existing taxpayers.

**ALBRECHT:** Thank you.

**HUGHES:** Senator Moser.

**MOSER:** What's the levy rate in your county? What's the property tax levy in your county?

**KEN ANDERSON:** I believe \$1.07 is the total. [INAUDIBLE].

**MOSER:** That includes schools and NRDs and fire districts and the county levy and all those things?

**KEN ANDERSON:** I'm probably not a good one to ask on that, because I don't follow the assessment values that much. I just look at the total



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numbers. Somebody else testifying might have that number better. After I said \$1.07 that sounds low.

**MOSER:** It does sound low to me, too, but I don't know. Thank you.

**KEN ANDERSON:** I'm not sure what that is.

**HUGHES:** Senator Halloran.

**HALLORAN:** Thank you, Chairman Hughes. So this occupation tax, does this apply to those 14, 15 counties that you mentioned as well? It does?

**KEN ANDERSON:** It's to every irrigated acre within the four NRDs.

**HALLORAN:** OK.

**KEN ANDERSON:** Now a couple of the NRDs have lowered those occupation taxes to \$6 or \$6.50, but it started at \$10 back in 2012 or 2013.

**HALLORAN:** Thank you.

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

**KEN ANDERSON:** Yep.

**HUGHES:** Next proponent. Welcome.

**MARVIN KNOLL:** Thank you. I'm Marvin Knoll, M-a-r-v-i-n, Knoll, K-n-o-l-l, and I'm here to support LB606. [INAUDIBLE] land and keep the augmentation project because I want to keep the project because we irrigate right beside it. And we also grow cattle and grass, so it would be to our advantage to put this back in private ownership and create a local economy and the private owner pay the property tax rather than paying the property tax with occupation tax money so we're, in a sense, us irrigators are paying the property tax both ways. And with private ownership we wouldn't be. And it would also allow for over a million dollars of operating expense to be eliminated. Another positive of elimination is that there's 19,000 acres 500 total acres which about 15,000 of it is right by us and this leaves rough-- and there's 2,500 acres of it open for hunting, walk-on hunting. That leaves about 12,000 acres for our deer breeding ground. And with private corn and soybeans and rye cover crop on four sides-- and Senate Hughes introduced two bills this year, LB126 and LB127,

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which I'm in favor of because we've got way too many deer in southwest Nebraska. Well, why would it be fine to leave a deer sanctuary when we see groups of 50 or 100 deer on our rye cover crop in the wintertime and we know where they're coming from because five years ago we'd see ten-- five or ten deer. Thank you.

**HUGHES:** OK. Thank you, Mr. Knoll. Are there questions? Senator Albrecht.

**ALBRECHT:** Thank you, Chairman Hughes. So, Mr. Knoll, they just let people walk on that property to hunt?

**MARVIN KNOLL:** They do on-- I know for sure that there's two, there's two 1,200 acre tracts on one-- the east side and on the west side of the road. But there are like 12,000 acre out in the middle that they do not allow.

**ALBRECHT:** Is this all fenced in, this N-CORPE?

**MARVIN KNOLL:** Yeah. Well, maybe--

**ALBRECHT:** So it's all fenced in, so they allow people to go and--

**MARVIN KNOLL:** Find that-- but they've got parking. There's one on Somerset Road, which is south of North Platte. There's a two-section deal there, which they've got a parking spot for and there's one over Hershey-Dickens [PHONETIC] Road, which is on the west side of it, which they allow people to walk in on two sections. But the rest of it they didn't allow no hunting on it.

**ALBRECHT:** Thank you.

**HUGHES:** OK. Seeing no more questions, thank you, Mr. Knoll. Appreciate it. Next proponent. Welcome.

**DAN ESTERMANN:** My name is Dan Estermann, D-a-n E-s-t-e-r-m-a-n-n, I'm a rancher in southern Lincoln County. I am recently elected to the board of the Middle Republican NRD, but I'm only representing myself today. When I ran for the NRD I made selling the N-CORPE land at public auction by parcel and looking for ways to lower the occupation tax two of my advertised goals. I am a proponent of LB606. This bill would allow that the NRDs could sell the land that is incidental to the augmentation project. What the NRDs were interested in was the right to the water. The state Supreme Court's interpretation of common law is that they have to own the land above the wellhead in the

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court's 1985 Sorensen case, which was again reaffirmed in the Dundy County case just last year. It was as little as a half an acre was enough for the water right. LB606 clarifies that fact and makes clear to NRD board members that they can sell the land and still maintain their river enhancement augmentation project. N-CORPE has already sold some land when they sold two quarters of land that they removed the certified irrigated acres from and resold it as dryland. It would also provide some relief to farmers now when they need it by lowering the outstanding bond and the stream of interest payments that, that incurred. N-CORPE owning and managing the land has had an average cost of \$1.2 million annually. Of that, \$272,000 was payroll for N-CORPE employees taking care of the land. Additionally, N-CORPE paid \$266,000 in property taxes and \$57,000 property and liability insurance. The mortgage company has said that N-CORPE can sell the land if they used the proceeds to buy back bonds and the sale does not jeopardize the project. Passage of LB606 will assure the mortgage company the augmentation project is safe from lawsuit. Mortgage-backed bonds have a higher risk associated with them than U.S. government agency bonds 20-plus years, as reported in The Wall Street Journal. I have to wonder if N-CORPE bonds aren't a more secure bond than U.S. agency bonds. What is the federal debt now, \$20 trillion or something? By comparison, N-CORPE's bonds look very safe. Farmers pay the occupation tax along with their real estate tax. If they are late they pay a 14 percent penalty. If they don't pay, then the land is eventually sold and the taxes are paid from the proceeds. Most farmers will likely pay real estate taxes first out of crop proceeds. To pay other expenses and then come up short on funds to pay the taxes would essentially forfeit all other payments. The value of N-CORPE is no longer associated with the land. The certified irrigated acres have been removed. The value is transferred to every occupation taxpayer who is still irrigating in southwest Nebraska. It is like purchasing a fully stocked warehouse, moving the product to other warehouses, then selling the empty warehouse. Private businesses do that all the time and mergers and acquisitions. Understanding that the state does not levy property taxes. This is an excellent opportunity for the Legislature to give some property tax relief to a portion of Nebraska's farmers without impact to unrelated state revenues. I'd encourage you to support LB606.

**HUGHES:** Thank you, Mr. Estermann. Are there any questions? Senator Bostelman.

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**BOSTELMAN:** Thank you, Chairman Hughes. Thank you, Mr.-- or now Board Commissioner Estermann, for coming here. I'm kind of curious and part of the discussions we've had is-- and play a little devil's advocate. Not that I don't-- you know, I can understand what you're saying here. So what would happen or have you thought about--and you may or may not have, so the, the legislation goes through, it's passed, they sell the land. We come into a drought year. We can't provide enough water to Kansas, Kansas now sues Nebraska. We're back into that litigation again. And then we find out that there's a problem with how we-- that we couldn't do this in the courts. The court says this wasn't appropriate. How have you-- you may or may not have. Have you kind of thought through that process a little bit how we might address that, because the NRDs are going to be playing a part of that in the future if that would happen to come about.

**DAN ESTERMANN:** Yes.

**BOSTELMAN:** I'm not saying it is-- I'm not-- I'm just curious if you [INAUDIBLE] and you thought through that.

**DAN ESTERMANN:** Well, they have the right to pump the augmentation water if we need to pump it into the stream.

**BOSTELMAN:** Right.

**DAN ESTERMANN:** Right. You're saying if some of that was--

**BOSTELMAN:** If the court comes back and says you, you have to own the land over the, over the water saying that this, in fact, isn't suffice so that so we kind of go back where we started at. And so now we need to have that ability and, and we've sold the land. I'm just kind of curious.

**DAN ESTERMANN:** Actually, the Middle Republican has been taking other management actions that they feel like they can reach that goal largely without N-CORPE possibly in, in, in the future going forward.

**BOSTELMAN:** And that would be by what means?

**DAN ESTERMANN:** Well, they purchased some surface water irrigation deal. There's some management activities involving the meters. And there's another one.

**BOSTELMAN:** That's fine. That's fine. I'm just-- I mean, you've obviously, you know, have put a lot of thought and effort into this.

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And this is one outcome potentially. There's multiple outcomes that could come from this legislation. That would be one. So and, you know, down-- you know, so many years down the line we don't find ourself right back on the spot we were before. Now what do we do?

**DAN ESTERMANN:** Yes.

**BOSTELMAN:** OK. Thank you.

**HUGHES:** Senator Albrecht.

**ALBRECHT:** Thank you, Chairman Hughes. So have you-- the goals that you had, you said were-- they would sell some of the land and they have. But what other ways have you-- has you're NRD lowered [INAUDIBLE]?

**DAN ESTERMANN:** We have not, no.

**ALBRECHT:** And why not? And also, how, how is it that some can and some haven't?

**DAN ESTERMANN:** Well, I'm not as familiar with-- the Twin Platte lowered theirs and I'm not as familiar with that side of it. I'm more familiar with the Republican River side. But we use occupation tax for some other things, some groundwater management things within the NRD that are not directly related to N-CORPE.

**ALBRECHT:** And do you know much about when they did sell? It sounds like they were trading land with somebody and then they had purchased four other parcels.

**DAN ESTERMANN:** Yeah.

**ALBRECHT:** Did they put that up for auction and do they have a board that decides who's going to be able to purchase and who isn't? Do you know?

**DAN ESTERMANN:** The original two quarters they sold I think was appraised and then listed with a real estate agent. The last eight that they sold they got four in turn. N-CORPE was pretty motivated to deal with that farmer because those four pivots were right alongside. And some of the wells around the property had been impacted by pumping the first two years. So he might have had a little bit of advantage there, because he had ground that they really wanted. But as far as my

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view, I would like to see it come up for public auction and everybody get a chance.

**ALBRECHT:** Thank you.

**HUGHES:** Senator Gragert.

**GRAGERT:** I just want to-- thank you, Chairman Hughes. I would just like to clarify, did you just say that occupation tax-- you're using an occupation tax for something else other than the argumentation?

**DAN ESTERMANN:** Occupation tax can be used for groundwater management. I can't tell you just--

**GRAGERT:** But other than-- but other than augmentation?

**DAN ESTERMANN:** Yeah, there's some other things that the occupation tax can be used for, but they're specific.

**GRAGERT:** OK. Thank you.

**DAN ESTERMANN:** The occupation tax funds are kept separate from regular tax levy funds and within the NRD.

**GRAGERT:** Thank you.

**HUGHES:** OK. Any additional questions? Senator Geist.

**GEIST:** Yes, and thank you. Thank you. So I'm sorry if this is a ignorant question, but I'll ask anyway. So if this land was sold would that necessarily lower or eliminate the occupation tax?

**DAN ESTERMANN:** It wouldn't-- I don't-- it wouldn't eliminate it because it wouldn't be that big of a percentage of the entire debt. But it would probably make it easier to lower the occupation tax, yes.

**GEIST:** OK. Any guess? I mean--

**DAN ESTERMANN:** Any guess how much?

**GEIST:** Right.

**DAN ESTERMANN:** Senator Groene could tell you that.

**GEIST:** OK. Thank you.

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**HUGHES:** Any additional questions? Seeing none, thank you, Mr. Estermann. Next proponent. Welcome.

**LAZETTE KNOLL:** I'm L-a-z-e-t-t-e K-n-o-l-l, Lazette Knoll. Due to the weather conditions back home, many friends and neighbors were not able to make the trip down. So I have been asked to read this letter from Ricky Quinn [PHONETIC]. Dear Senators. The passage of LB606 is very important to Lincoln County, Nebraska. As a reminder, the state of Nebraska entered into the Republican River Compact with Colorado and Kansas in 1943. But in recent years the burden of staying compliant with this compact was put onto the shoulders of the local NRDs. Their answer to the issue is the current N-CORPE project. We were not-- we are not arguing the augmentation project as farmers and ranchers in this area. We know the importance in staying in compliance with the Republican River Compact in order to keep thousand of other acres irrigated. However, we must remember that water is the needed source of the project, not the surface land. Lincoln County has taken the majority of the economic loss on this project. LB606 is an opportunity to fix some big problems. Looking at the N-CORPE project we are witnessing huge amounts of wasted tax dollars and poor management of the land. The amount of money being spent to manage the property is astonishing. According to the final report of economics and property tax impact of the N-CORPE augmentation, augmentation project in the Republican Basin and Twin Platte Natural Resource District dated January 10, 2018, prepared for N-CORPE by Twin-- excuse me, by Twin Platte Natural Resource District, the Bureau of Business Resource, Department of Economics at UNL under the direction of Dr. Eric Thompson, other operating cost based on the 2018 N-CORPE budget, including the demand and usage charges for wells and other well cost is \$1.39 million per year. That means considering 19,500 acres, their operating costs are \$71.28 per acre. That's incredible. LB606 would assure that the local NRDs could sell the surface land while maintaining the water to meet compact compliance. This results in: paying down the bond; stopping interest; good management practices; stopping large operating budgets; saving local tax dollars. Lincoln County will always have the burden of lost irrigated tax value and the lost economic stimulus of taking those acres out of irrigated production. Lincoln County will also be the source of water. Our most precious national natural resource which is used to keep Nebraska in compliance. It seems to me that we should, as a state, be thrilled to have LB606 to utilize or help lessen the burden on the local area that has given so much. Thank you for your assistance in passing LB606.

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**HUGHES:** Thank you, Ms. Knoll. Are there any questions? Seeing none, thank you for your testimony. Additional proponents to LB606. Any additional proponents? Seeing none, we'll open up for opponents of LB606. Welcome.

**JASPER FANNING:** Thank you, Chairman Hughes and members of the Natural Resources Committee. 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 NRD and we're here in opposition to LB606 for a couple of reasons. First, I don't think everyone's got a good picture of some of the reasons that maybe we're not real excited about trying to sell the land right now. Second, LB606 as it's drafted-- I believe you all have a letter from one of our legal counsel, Mr. Don Blankenau, and it highlights some of the shortcomings of LB606. Senator Groene characterized this as codifying-- protecting us through codifying what we've already done. Well, the Supreme Court's already heard all the challenges to what we've already done and said we were good within the existing law. So introducing legislation would actually introduced-- it would introduce new legal risk for us as opposed to protecting us, in our eyes, certainly, the way that LB606 goes about it. He's compared it to the Municipal Water Transfer Permit Act, which has been around since about I think the mid-'60s, early '60s, developed at a time when Nebraska water law was very simple and enacted then. Today's water law is much more complex and more difficult to navigate and certainly the complexities that were in the Municipal Water Transfer Act in the '60s are much more detailed than what's in LB606. Even though that our current status is much more complicated the Municipal Water Transfer Permit Act deals with liability, explicitly, for both existing uses and new uses that would be developed after that. It-- even it doesn't deal with the liability of existing water users and how-- if you would impact them how that would be dealt with. The courts are still there for injunctions on pumping, again related to things like how much water use have you retired in the area? Are you pumping more than your share? That sort of thing. Existing water users have harmed still have a remedy through court, even under the Municipal Transfer Permit Act, which-- so I think it's a little bit erroneous to compare LB606 with that Transfer Permit Act for those and other reasons. And I think Mr. Blankenau highlights that as well. We heard a little bit about these huge operating budgets. I think last year if you would have taken our actual operating expenses and taken out our legal fees because of the challenges that we were facing, it was, was something right around a half a million dollars that were spent. Spent a little time this morning at the Rural Water District meetings or the rural water supply



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folk's conference talking about N-CORPE. And turns out we have more miles of pipe than most small towns and rural water projects have in the ground. So there's a lot of infrastructure out there and I don't think that people generally understand the, the complexity and all the moving parts that are involved in those and how many valves. You know, there's over 100 valves that need to be exercised periodically and how long it takes to do that sort of thing. You know we did form an interlocal agency amongst three districts. You know it's a pretty big project. So we have a little bit of administrative overlap and it's a little bit too much we found out for one NRD to just take on. So we have a staff person that's primarily an administrative or seismic project manager. Then we have one guy that, that manages the wellfield primarily and another guy that we hired when we were in discussions with Game and Parks because Game and Parks had approached us about opening up-- you know, Nebraska's criticized for not having much public hunting land, open areas. Since we were receiving all this Game and Parks wanted us to work with them and open up. After those discussions kind of fell to the wayside, we, we basically figured out that with a half an employee we could open up a few thousand acres for public hunting at a much lower cost than trying to work through other channels to do the same thing. And we didn't really need to spend a lot of money to do that and didn't have to. You see the bigger picture that I mentioned earlier that the folks maybe don't understand and I think is important to highlight. We're currently in discussions with people about revenue sources for this project based on our ownership of the land that could make the entire bond payment for us and potentially pay our operating expenses. There's other things going on in the world than just the augmentation project here. As I mentioned, our other authorities were doing other things with the land. As Mr. Estermann mentioned, they're working on alternatives to N-CORPE. So even in the last four years we went from litigation to cooperation with Kansas, agreements with them that reduced our water management obligations to Kansas. That's been changing and will continue to change. If we don't need N-CORPE-- we don't need N-CORPE to be of a size that it is, the only way that we can recoup our investment is to sell irrigated ground. For instance, if the Middle Republican would replace their need for N-CORPE with these other activities, we could sell 25 percent of the irrigated ground if the other NRDs didn't need the water at N-CORPE. This is--this is all new enough and not enough time has really passed for us to be able to, to deal with that. Another use of the land is we have recharge capabilities to divert-- the system is designed to divert flood flows from the Platte to be able to do that up the pipeline and recharge in that area. Now have we

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done that yet? No. These are all things that are in the future. But holding onto that land for some of those other opportunities is things that don't get talked about a lot because again there are future opportunities and possibilities and we're in no urgent need to sell the land at this time. Thank you.

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

**GEIST:** Thank you, Chairman Hughes. In relation to-- I, I, I'm wanting to know about this irrigated acre, \$10 an irrigated acre occupation tax. And if you did venture into these other opportunities, would there be the opportunity or the desire by the NRDs to lower that occupation tax?

**JASPER FANNING:** I think you've seen-- what we've seen historically is the NRDs-- I mean, the boards are mostly farmers who pay that tax. They want it to be as low as it can possibly be, but we--they understand that we still need to meet our obligations. So I haven't seen anything other than the desire to lower it. Now why is ours still at \$10? Well, we have not just N-CORPE, but the Rock Creek project that we're paying for. And then the comment earlier about why do we have \$6 or \$8 million in cash. Well, it's because the Legislature in indirect or fat-- or Director Fassett require us to provide 40 percent match on the roughly \$30 million dollars in projects that we have coming up in the next few years. So that's why we're sitting on, in our district as a prime example, a pretty good mountain of cash is that represents not even all of what our 40 percent match requirement will be for our ongoing grant projects that we have under the-- both the Water Sustainability Fund and the Water Cash Fund, as well as our federal grants with the Bureau of Reclamation.

**GEIST:** Thank you.

**HUGHES:** OK. Senator Moser.

**MOSER:** So if the-- if N-CORPE sold this property, they're still going to have expenses?

**JASPER FANNING:** Yeah, absolutely. We'll-- I mean, if you think about like it-- you know, we don't have all the flow meters like a house does in town. But we still have 30 miles of pipeline to maintain and 30 wells that require someone checking on them, running the SCADA system. All those things will need to continue to go on. And so, yeah, it takes, it takes staff to do that. There's, there's no way that you

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can get away from-- you know, we, we've heard people say, you know, farmers can start their pivots remotely. Yeah, and they also-- that tells you when they break down so you can get right there to fix it. It still takes staff to identify what the problems are or the ongoing maintenance issues of a system like this. And so there's, there's no way to eliminate all the staff and all the expenses associated with that. There's just not.

**MOSER:** And, and what are some of your ideas to generate more income off of this roughly 20,000 acres?

**JASPER FANNING:** Well, I, I shouldn't say too much, but I can say I think we have, we have an offer and are in discussions with, with entities that are in the renewable energy field and currently have offered us or suggested offers that are in excess for this land of what it would rent for in irrigated status. And so to put that in perspective, pasture might rent for \$25 to \$35 an acre. And irrigated farm ground might rent for over \$200 or so an acre, so.

**MOSER:** So that might be a 20 percent return on the value of it. If you're looking at it having \$20 million in value as unirrigated ground. If you could get 200 bucks an acre you'd be--

**JASPER FANNING:** Yeah. If-- I mean-- you, you-- I have pasture on the market right now for 800 and some dollars an acre and can't get an offer on it. And so to think that it's gonna bring \$20 million, I think, is a little bit-- a little bit high in its current state because we're still rehabbing it. And there's, you know, part of the property that's in really good shape. Part of the property that's, you know, not in very good shape. If it brought \$10 million or, or more it might be more in line with what, what the property would actually sell for rather than \$20.

**MOSER:** Thanks a lot.

**HUGHES:** Senator Halloran.

**HALLORAN:** Thank you, Chairman Hughes. Some of these other opportunities you're talking about, it's not real clear to me. Renewable energy, you're talking wind generators?

**JASPER FANNING:** Not necessarily just wind, there's also solar.

**HALLORAN:** But you are talking about wind generators?

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**JASPER FANNING:** No. There's also solar.

**HALLORAN:** I understand there's also solar, but are you talking wind generators?

**JASPER FANNING:** I, I'm not talking specifics about what the offers that we have are, but that I, I just wanted to highlight to the committee that we, we are receiving offers from renewable-energy-type companies to, to utilize part of this project and some of the folks that want us to sell the land may be privy to some of that information as well.

**HALLORAN:** Another quick question. You talk about the maintenance on-- most of-- it's underground pipe, right--

**JASPER FANNING:** Right.

**HALLORAN:** -- that comes from the wells.

**JASPER FANNING:** Yeah.

**HALLORAN:** Just a personal observation, I've had miles and miles of underground pipe as an irrigator. And you just don't have problems with underground pipe.

**JASPER FANNING:** It's not the pipe. It's the-- it's the hundred valves. On a 40-- on a 42-inch butterfly valve you use mechanical operators to open and close those. And if you look at the wellfield schematics, I mean it's, it's a lot of feeder pipes that run into the mainline and then the mainline runs into two pressure sustaining valves which we have to have. And those are pretty complex, electronically operated valves that need to build pressure to be able to push the water over the hill to the Platte when we need to send water to the Platte and let some volume--whatever we set it at--to the Republican. So it's, it's far more complex than, you know, an eight- or 10-inch butterfly valve on my irrigation systems. Pretty simple to operate also. But when you're talking about a 42-inch or 36-inch valve, that's a whole other can of worms.

**HALLORAN:** OK. You mentioned that you had to keep in a certain-- a certain percentage of your funds for future projects. Now, first we're talking opportunities. I'm talking about what are some of those projects that you're [INAUDIBLE]?

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**JASPER FANNING:** We're, we're, we're doing a lot with remote telemetry sensing trying to help irrigators use less water to reduce our pumping districtwide. We're implementing telemetry systems to automatically read our flow meters to try and cut down on our staff expenses of manually reading those meters each fall. We've actually got a big program and one that takes a lot of money is actually an irrigation retirement program. And we have about 10,000 acres that are currently enrolled in a temporary program called CRP, which is CRP for irrigated lands and we need to retire either those 10,000 acres or 10,000 acres, those and others, some combination of, to keep our consumptive use down. So to, to retire, you know, the market, if you will, for irrigation in our district when, when people are willing to stop irrigating 100 acres to allow someone else to irrigate 100 acres, the market prices that we've seen on that are in the neighborhood of \$2,500 to \$2,800 an acre. So to, to get 10,000 acres it's going to take us a lot more than what we have sitting in the bank right now. And, and to be able to retire those, those 10,000 acres, you know, it's going to take us obviously some time to do that. And we, we do have a significant contribution from the Water Resources Cash Fund. And we're just, just now rolling out a project where we're going to be taking bids from people in our district to try and retire the first big chunk of that, that 10,000 acres.

**HUGHES:** Just a point of clarification between you two. Mr. Fanning, you're talking about the amount of money that the Upper Republican NRD district has for these water projects within the district. You're not talking about N-CORPE [INAUDIBLE] amount of money.

**JASPER FANNING:** Correct, that, that's just, that's just my district.

**HUGHES:** I just wanted to make sure that I was clear. OK. Senator Gragert.

**GRAGERT:** Thank you, Chairman Hughes. I'd just like to clarify a couple of things then, too. All this augmentation tax came about because of-- was that the right term, "argumentation tax?"

**JASPER FANNING:** Well, it's, it's a occupation tax.

**GRAGERT:** Thank you. Occupation tax came about because of the augmentation system, right?

**JASPER FANNING:** Well, we in, in-- I, I started at the NRD in 2004. And Nebraska had just entered a settlement agreement and was finalizing

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that with Kansas and Colorado at that time. And we were--we were just studying options for compliance. OK? And in the state was looking at how much, you know, doing modeling to determine how much we would have to reduce irrigation by. And it took some time to get through that and probably about 2005 and '06 we kind of-- we said, here's some other options, augmentation, we want to look at those. We actually-- I don't remember the year that the occupation tax was passed. It seems like that was about '06 or '07, but I don't, don't recall now. And then that was immediately challenged in court. But we were studying augmentation while we were also working very hard with the Legislature to get a funding mechanism, whether we did augmentation or whether we bought out acres and retired them or whatever, we knew it was going to take money to solve the problem other than regulation. And in our integrated management plans, OK, the current version, the most accurate version, if we don't do things like augmentation or, or retire about, you know, three times more acres than what we have, our option A is a 40 percent reduction in irrigation across the board. So we, we would have to-- we would have to reduce our irrigation by, you know, roughly half, you know, in our, in our entire basin of 1.1, roughly a million irrigated acres to be able to comply without these projects. So the idea-- of the idea of the projects in the knowledge that we needed a funding source to be able to do augmentation and-or retirement is, is when the tax was created. We-- the-- we purchased the-- now you're testing my memory. We purchased the Rock Creek property in the fall of 2010, allowed that to be irrigated in 2011, constructed the project in 2012 and '13, and began operating it for the first time in 2013, ahead of schedule. And we utilized the Rock Creek project only in 2014. We purchased the N-CORPE property in 2012, late 2012, constructed that in-- well, it was held up due to litigation--the financing of it--constructed it into 2014 and got it operational in 2014 just in time so that it could provide all the water that the Middle and Lower Republican needed in 2014.

**GRAGERT:** So the occupation tax did not come about to pay the taxes on the 20,000 acres you now own?

**JASPER FANNING:** It-- no. It came about to fund-- the occupation tax is authorized for all streamflow enhancement projects. So we can use the occupation tax dollars to fund any kind of project that will benefit streamflow essentially for whether it be on the Platte for the cooperative agreement and their IMP needs or in the Republican for the Compact and our IMP needs. Pretty much any, you know, the department has to sign off essentially on the need for those types of projects

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within the integrated management plan and that authorizes us to charge it. So, so that-- so really I think of the tax as it was authorized for all of those purposes. Now our primary use of it is obviously for those augmentation projects, but we also use it for land retirement and other projects.

**GRAGERT:** Let me ask this, then, to kind of follow up with what you're saying, you know, the potential value of that land and how it may go up because of this or because of that. How far in do you think that the NRD should get in, in this kind of maneuvering to get back the monies you, you, you know, you've paid into. I mean at that time-- I guess where I'm going with this is if, if that, if those options are available that land is a lot more valuable than, than the \$20 million. Why can't you sell it to those people for that and get out of that business and let the private, you know, industry take over?

**JASPER FANNING:** Right.

**GRAGERT:** You know, you, you're primarily groundwater right now.

**JASPER FANNING:** And I wasn't implying that our primary focus is on that opportunity. I just think it's important for people to be aware that those opportunities are out there. My primary focus was, which was in my, my written letter or testimony, is actually about how new augmentation is in compliance with Kansas. And I'm, I'm intimately involved as an NRD manager with, you know, the director and the Department of Natural Resources and the AG's Office. But, you know, we've been intimately involved in the compliance issues, sitting at the same table as the, as the state folks in these negotiations, a lot of them. And our relationship with Kansas-- I can't-- I just-- there isn't enough time here to describe it all, but it's went from adversarial, you know, shooting daggers at each other in the Supreme Court to sitting around a table and saying, what's best for our irrigators in Kansas and Nebraska? How can we work together to make this work? And an example of that is, you know, we have a forecasting process set up in our IMP where, you know, I don't remember the number off the top of my head, but we forecasted that we were going to be short, you know, tens of thousands of acre-feet of water. In the past we would have flipped the switch on the pump and sent 30,000 or 40,000 thousand acre-feet of water to Kansas this year. Under these new agreements Kansas said, you know, things look pretty good here. We have more water than we had last year. We didn't use it all last year, it looks kind of wet. So how about you just send us nothing. And that's where I'm-- that's where I'm coming from in terms of the

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unknowns. And if we continue down that path and they continue to install more center pivots in Kansas and they don't expand their uses in Kansas, which I don't know what those would be but they're work-- you know, they say they're working on things. But five years down the road we may find that, you know, we don't need 16,000 acres retired at N-CORPE, maybe we only need 10. You know, the things that the Middle Republican mentioned also. And the only way that, that we as an NRD can get the value that we paid for that out of it is, not if we sell the dryland now, it's if we sell an irri-- you know, a quarter that they had the ability to irrigate.

**GRAGERT:** Right. But that still remains your option when the sale-- it's a "may." You "may" sell it. It isn't mandating anything on sale.

**JASPER FANNING:** Yeah. And we do-- obviously, we do like the, you know, the optional component. We just we're not sure that there's a real need to mess with the law right now. But if, you know, if this committee and the Legislature would decide that, no, it's something we need to deal with, we obviously want to be, be part of that process. And the things that I brought up and Mr. Blankenau brought up in his letter is, you know, LB606 says, you know, you can sell the land. And the complexity of LB606 I think is contained in the phrase, "and you can pump water as before." That's about as complex as or as detailed as LB606 gets into the issue. And the, the Transfer Act that, that Senator Groene was comparing it to has a lot more sections that, that deal with the liability and actually a process within NDR to evaluate and said-- you know, he just says the NRD can set the allocation. But there's-- for liability reasons and litigation reasons, I think it needs to have a more thoughtful, detailed look at it than what LB606 gives the issue.

**GRAGERT:** One last question. Kansas is probably not asking for water right now, huh?

**JASPER FANNING:** Probably not right now. I'll let Director Fassett answer that because there's, you know, I think last week they were still looking at ways that maybe they could get more.

**GRAGERT:** OK. Well, thank you.

**HUGHES:** Senator Bostelman.

**BOSTELMAN:** Thank you. Thank you, Mr. Fanning, for being here. A couple of questions. A testifier earlier made a comment to this. Last



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biennium, I believe, we passed legislation where in lieu of tax could be paid--

**JASPER FANNING:** Yes.

**BOSTELMAN:** -- because there was a TERC or whatever it was just proposed one on there. So could you explain in lieu of tax versus what a property tax would be paid if it was a private landowner and then also where would that, that in lieu of tax money come from?

**JASPER FANNING:** Sure. That legislation, you know, we've basically been utilizing that. And to my-- to my knowledge, there's, there's a little complexity with that because we're waiting on Dundy County to take a step. But for all taxes that, that would have been, you know, levied, essentially, the way that it works is the county-- the county tells us how much they would charge in taxes if it were owned by a private landowner. And we are allowed to pay up to that amount. N-CORPE has adopted a policy in it. To date we have, you know, we're paying that full amount. That is the same amount that would have been property taxes; instead, it's in lieu of taxes. So, so Lincoln County has received the same amount of revenue that they would have received had it been in private hands. Dundy County is going to be in the same boat once, once they-- our issue there is our TERC case didn't cover one of the years. So we just need them to determine that, that year should have been tax exempt so that we are authorized to make an in lieu of payment and it's a technicality.

**BOSTELMAN:** And then the testifier I think stated something to the effect that, that's probably our occupation tax measure; the taxes we're paying to pay you to pay the tax. So really, you know-- how does that-- where does that money come from?

**JASPER FANNING:** I can also-- I could also-- I mean, it could be. I could also make the argument that on the portion of the property that we rent out that that's the rent income to pay the taxes, so.

**BOSTELMAN:** OK. So you mentioned that you've opened an area up for hunting, but then you also said that you had to hire someone to manage that. Why is that?

**JASPER FANNING:** Well, we, we were, we were looking at hiring someone, a range specialist to evaluate our, our reseeding and to, to oversee the reseeding of the 16,000 acres. And so that person we decided could handle both of--both of those functions. We were originally in

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discussions with Game and Parks. I mean, again, this, this was an opportunity that was created because we did the augmentation project. Our other authorities as natural resources districts in developing wildlife habitat and in doing things of that nature, because we already had this, this property and for a very minimal additional expense could, could embrace some of those other authorities and chose to do so. We, we were originally discussing a shared position with Game and Parks and ultimately just decided that instead of sharing a position with them we would be better served to have an additional full-time person there working on both the land management with the reseeding as well as the wildlife habitat issues.

**BOSTELMAN:** So now since the reseeding is completed, do you need that position anymore?

**JASPER FANNING:** Well--

**BOSTELMAN:** My question is-- comes through-- I own land.

**JASPER FANNING:** Sure.

**BOSTELMAN:** And I don't have to have an employee manage my land for hunting. So I'm not understanding why you have to have someone hired to allow people to hunt on there, because you should post it, it should be open, it should be notified. And if there's anybody that trespasses where they're not, that's where your current employees should be able call the Game Warden, the sheriff, whatever and have them respond. You shouldn't have to have someone out there watching that land. I'm just trying to get some understanding.

**JASPER FANNING:** As a private landowner I would agree. On an area that, that size and-- I don't know that Game in Parks has the staff to patrol that.

**BOSTELMAN:** But why would they need to? They don't patrol every other place, so why would they need to?

**JASPER FANNING:** Well--

**BOSTELMAN:** Every other state ground the Game and Parks own, they don't patrol that.

**JASPER FANNING:** Well, we've had numerous issues. But, I guess, first, let me address part of your question there, which was the grass has been reseeded. I mean, we're still in that process. We had-- we have

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about a thousand acres that we're reseeding this spring, because of, you know, the field grass stand, it hasn't done as well on a thousand of the 14 or 15 but-- so he's still working on, on those issues as well as other things. But yet, when you open up a large public hunting area like that, what we've-- our experience has been that there's a little bit more policing of that necessary than what a private, posted field might take.

**BOSTELMAN:** Well, I appreciate what you're saying. I guess I disagree, because we have a lot of public land out there that the Game and Parks or the state or in other states that's BLM, federal, state owned. And we don't have employees specifically for that piece of ground. So I appreciate what you're saying and I don't want to be-- I just, I'm in just a little bit of "disagreeance" that we have game wardens, we have sheriffs, we have individuals out there that if we have those problems, you do what we do, is you call them up. They come out and they set up whatever they need to, to take care of the problem and once we catch one or two people and the word gets out, it kind of stops. But I appreciate, appreciate your comments. Thank you.

**HUGHES:** Senator Gragert.

**GRAGERT:** Thank you, Senator Hughes. One last question from me. Twenty-five hundred acres right now, correct, in hunting rights? You said 12 on one side and 12 on the other, or somebody said it.

**JASPER FANNING:** That was-- somebody else said that. I don't know the exact acres. It's-- there's, there's, there's, really there's, three sites. There's those two and then there's another farm that's, that's south of Highway 23 that's opened up as well.

**GRAGERT:** So do you envision any more of that coming open for, for hunting?

**JASPER FANNING:** That, that seems to be enough area to meet the demand. I mean, those areas are heavily hunted, but they seem to be-- what, what we're a little bit hesitant of is the central part of the property where our well infrastructure is at. You know, we have the, the large air-conditioned cabinets that run the SCADA system set up at each well and we want to keep people kind of away from that central part of the property where that stuff's located. That's, that's the driver there.

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**GRAGERT:** I understand. Thank you.

**HUGHES:** OK. Senator Albrecht.

**ALBRECHT:** All right. Thank you, Chairman Hughes. You said, Mr. Flynn-- Fanning, that you've been there since 2009?

**JASPER FANNING:** About 2004.

**ALBRECHT:** Two thousand four. So can you, because there's a lot of new people that are on our-- in our committee today, but how much was-- how much land was purchased for N-CORPE and how much was paid-- how much did they pay for that land?

**JASPER FANNING:** We-- you're testing my memory. We purchased roughly 19,500 acres and purchased it, I believe, for \$83 million.

**ALBRECHT:** Eighty-three million. And what is the bonded indebtedness right now for that property and the--

**JASPER FANNING:** I don't have that number in front of me,--

**ALBRECHT:** Would somebody--

**JASPER FANNING:** --but I will provide that to you.

**ALBRECHT:** OK, or someone behind would know?

**JASPER FANNING:** I would like to think so, but I can't guarantee that.

**ALBRECHT:** OK. OK. Thank you.

**HUGHES:** Additional questions? Senator Halloran.

**HALLORAN:** Thank you, Chairman Hughes. Let's get back to the core issue of the bill and just a simple question. If we can pass legislation to protect the augmentation, which is required, right?

**JASPER FANNING:** Yeah.

**HALLORAN:** Why would you own the land? If it does not affect the augmentation, that, that will continue. If you're authorized in this bill-- and I would take a little bit of issue--not to be argumentative--but I'm more skeptical of complex bills than simple ones. I've never seen one more direct than this one. But that aside,

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if you can continue with augmentation project, why would you own the land?

**JASPER FANNING:** I think, you know, again, some of the things that I highlighted. We may want to not continue with as much augmentation with some of the things that the other testifiers have highlighted. Because if Kansas doesn't need as much in the future the Middle Republican finds other alternatives, the ability to sell that landed at an irrigated value is better than at a dryland value. And I'm not saying we need to hold it forever to make those decisions but just now is pretty early. But secondly, the, the, you know, the piece in my mind is the infrastructure was designed to allow for, for recharge also for the pipeline to work both ways from the Platte. And while that might seem like it'll never happen, in today's environment I'm not sure we know that yet. We have another pilot project with the Tri-Basin and Lower Republican to try and grab some Platte flood flows and utilize those in the Republican. That pipeline, when they're in flood stage they don't need water in the Platte. If we could recharge that wellfield, that would allow us another source of water where we also wouldn't need as much irrigated land retired and would give us the ability to sell some of that off. All, all opportunities-- and I'm not saying we need to hold on to it forever to evaluate whether or not those are going to come into play. But certainly we don't need to make a decision today as to whether or not those things are possible or not.

**HALLORAN:** So quick question. The system that's in place now, the wells and the, and the network of pipe--

**JASPER FANNING:** Right.

**HALLORAN:** --would they not satisfy all those concerns you just expressed? Are those future use of N-CORPE?

**JASPER FANNING:** Of the ones that I mentioned. The other thing that I haven't mentioned is the design of the wellfield, given the time period in which we needed to put it in, we, we, we made it in the smallest area that we could.

**HALLORAN:** OK.

**JASPER FANNING:** But as we continue to manage this wellfield and in years like the last two are great because it allows the wellfield to recover. But for, for water resource management in the area and

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impacting neighbors or not impacting them, the wellfield is designed to be expanded. In other words, we might stop using or not use as heavily some of the wells that we currently tap. But the wellfield is designed to be expanded to the west to spread that cone of depression out more and not make it as concentrated. And for that reason, we, you know, we would be pretty hesitant to sell that area to the west, which is the main block of land just, just until we've had time to evaluate whether or not that's a prudent decision or not in the future.

**HALLORAN:** I imagine you can amend the bill so that it would protect that future use of that land that you have for expansion, right, for just putting down wells and pipe.

**JASPER FANNING:** Well, I think the, you know, the bill being voluntary protects us for that as long as long as it, as long as it, you know, stays a "may" and not a "shall."

**HALLORAN:** OK. Thank you.

**HUGHES:** Just a couple of questions. I want to drill down a little bit more on the operating costs of N-CORPE, the million and a half that we've heard a lot about. You know, you, you indicated that was probably closer to a half million.

**JASPER FANNING:** Yeah.

**HUGHES:** Expand-- walk me through that again.

**JASPER FANNING:** So, so, so over time, you know, we had some expenses early on in, in transitioning where we were spending a lot of money-- pulling equipment out of the ground, taking, you know, pivots, wells out of the ground. Ultimately, we, we sold that in the construction phase. But, you know, we had reseeding and other maintenance activities going on. We were, we were working on a lot of crossings downstream and doing some things that we needed to, to, to allow people's roads to be, you know, not inundated when, when it rained and we were operating, some of those expenses. So we had, yeah, we had some pretty high operating expenses, but some of those were, were probably more in line with, you know, we could have capitalized construction costs on a lot of that maintenance work that we were doing on Medicine Creek downstream. As times went along, there's been less and less of that. You know, we've-- again, our legal bills, you know. So we, had we had-- I think last year we probably spent just a little over \$100,000 on, on legal bills, as N-CORPE, which is better

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than each of us spending our own \$100,000 doing it individually. But that's rolled into there as well. There are things that we budget for as contingencies, like if you have that volume of acres and you want to spray weeds on it, I mean, just do the math. Thirty bucks times 19,000 acres, it's a-- adds up in a hurry and that gives you about a six-week window when you kill the weeds, so you might have to do it twice. Or mowing it at \$10 or \$15 an acre. All of those things that we might have to do to control thistles. You know, we have contingency plans to be able to handle for that if the situation arises. But, you know, if things go well and, and our grazing timing works and controls, controls the weeds that are out there while this grass is getting established and we don't have to do that, we don't, you know, we don't spend nearly what we budget.

**HUGHES:** So what, what, what would you say today moving forward, what-- just a guess of what your operating budget would be?

**JASPER FANNING:** Well, we're just about to start that process for the, for the upcoming year. But I would anticipate operating expenses more in the line of, of \$400,000 or so on an annual basis, of actual expenses year in, year out.

**HUGHES:** And a portion of that is someone to maintain the wellfield and the valves and all that stuff, not necessarily the surface-- the grass and the fences and that thing,--

**JASPER FANNING:** Correct.

**HUGHES:** --that part of it.

**JASPER FANNING:** Yeah.

**HUGHES:** OK. Very good. Any additional questions? Seeing none, thank you for your testimony.

**JASPER FANNING:** Thank you.

**HUGHES:** Next opponent. Welcome.

**JAY REMPE:** Thank you, Senator Hughes. Members of the Natural Resources Committee my name is Jay Rempe, J-a-y R-e-m-p-e, I'm here on behalf of Nebraska Farm Bureau Federation and as well as the Nebraska Corn Growers Association in opposition to the bill. You might ask why-- I'm an economist now for the Nebraska Farm Bureau Organization. You may ask why is an economist getting up here talking on a water issue, but

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in a prior life I spent a lot of time lobbying for Nebraska Farm Bureau on water issues and helped craft some of the integrated management planning law and also helped craft the LB54 that Senator Fischer had passed a few years back that Senator Groene mentioned in his opening comments. So I've been around the water law game for a long time. And I want to thank, first, Senator Groene. He's reached out to us several times. We had several discussions about this bill. And I appreciate those efforts, but we're going to disagree I guess with the nature and the way that he's approaching trying to address this issue and that's the reason for our opposition. First, I, I want to say that we certainly agree with Senator Groene when he says it's in the Legislature's prerogative to, to define an augmentation project, to try to put parameters around on what an augmentation project is, and try to set the law in terms of where we go forward on augmentation projects. That is-- that is certainly very true that that's within the Legislature's prerogative. But I would remind this committee that when you pass law and make law, it not only applies to in this case the N-CORPE project, which you've heard a lot, a lot of testimony about, but it applies all across the street-- state to every situation. And if one thing I've learned over the years in working with, with water law there are a lot of nuances and particularities with water law. And you have the surface water interests and groundwater interests and it takes a lot of work and effort and due diligence to try to pull that together to make sure that, that you're stepping forward correctly. And I'm not sure that we're there yet with LB606. A couple examples I know, Tri-Basin NRD was mentioned. They have some augmentation projects already in place. It's unclear how this language would apply to that project. I know I was at a meeting in January up in the Loup Basin where one of the Loup NRDs are considering a project. This is a reservoir project, but they're going to put-- they're thinking about putting wells near the Loup River so when there's extra flows in the Loup River to pump and that would draw through the ground that water, pump it to a reservoir, and then release it back to the Loup River when there's a shortage of flows. So my question is, does that-- does this law apply to that? And I don't know, because it's streamflow augmentation project or augmentation for streamflow is not defined here. It's just stated that the NRD shall have that authority. It's not defined. So by-- I guess my point is, the reference that Senator Groene made to the Municipal Transfer Act, it says-- Jasper Fanning said earlier, it's an extensive act, there's an extensive permitting process. You go to DNR, DNR makes a determination of whether or not it's in the public's interest and the beneficial use and all of that. So that's quite an extensive-- that's



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a little different than what Senator Groene is proposing here. Secondly, I think Senator Groene identified the key question is, how much land does an augmentation project need to have to, to pump the water for its purposes? Common law has already-- always defined that you can use the water on the overlying land as long it's put to a reasonable and beneficial use. The Legislature has carved some exception to that. I'm not sure that this, this bill addresses that. And instead, it says the NRDs can set allocations. It says they can pump as if before. But nowhere does it say that, that is defined as a reasonable and beneficial use for purposes of an augmentation project. I don't know if it necessarily clarifies what Senator Groene is trying to do. And I'll, I'll note that he did mention the Ground Water Act and the Sorensen case. And he's correct in saying that they, they found that, that was OK. That, that was a reasonable beneficial use, the court did. It said: In permitting transfer and I quote: In permitting a transfer groundwater from the site of its extraction, the act has removed the use on overlying land as an index for reasonable and beneficial use required by common law. But it goes on to say: Whether overlying land remains a factor in formulating a reasonable proportion for sharing groundwater during shortages is a question not required to be answered in this present case. So there's-- and I think Jasper Fanning mentioned that and that's probably mentioned in the Blankenau letter to you. I haven't seen it. So there are some questions around this and I think to the extent that those questions still exist, the land's not going to be sold because they want to make sure that they have that project N-CORPE in place for Republican compliance matters. And we want to make sure for the irrigators in the Republican Basin that, that remains in place and is there for them as a tool. And that's why we have concerns with this. So, in summary, I, I, I think what Senator Groene wants to try to do is perfectly the Legislature can do that. I think some more time and effort needs to be put into how you might go about trying to do that if you want to try to do it, because it applies to everybody. Thank you, Senator.

**HUGHES:** Thank you, Mr. Rempe. Are there questions? Senator Bostelman.

**BOSTELMAN:** Thank you, Chairman Hughes. And thank you, Mr. Rempe, for being here. I'm-- as you were talking and I was going through Mr. Blood--Blankenau's comments that he provided and something jumped out at me. And since you mentioned you've kind of been around water issues over the years and that in here it talks about Tri-Basin. And on this second page you don't have it, but I'll summarize basically it's a short bit. For the Tri-Basin it says: Under common law Tri-Basin is

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leasing land from the landowner and then the landowners then letting them pump the water. So then under common law they can do it. So then if there would be a landowner that would own the, the however many acres and there would be an agreement with the N-CORPE to pump the water and that would be a lease, then the landowner would own it and they would lease the ground and they could pump it, seems to me that might be a common law. I don't know if that fits into that case or not. And I don't know what your thoughts are.

**JAY REMPE:** Yeah. That's, that's a good question. My, my first thought in terms of, as long as under that situation with Tri-Basin-- and I'm not an attorney, so don't--

**BOSTELMAN:** Right.

**JAY REMPE:** -- but my understanding would be is under common law today, as long as the landowner and the pumping the Tri-Basin does, does not exceed what that general use would be on the overlying land, there wouldn't be any issues. Now if, if they were to exceed that pumping and then someone challenges that, a neighbor or somebody else, then that could be different.

**BOSTELMAN:** Well, I would agree. And I think they, they find-- I think they're face that challenge now as well, I think, even as they sit now, if they over-- if they pump too much water, if a neighbor is drawn down they still have that recourse. But as you were talking there I was just going back through this again, I thought that was just interesting. Maybe someone else is going to testify would want to talk to that. I appreciate it. Thank you.

**HUGHES:** Additional questions? Seeing none, thank you, Mr. Rempe. Addit-- additional opponents.

**TODD SIEL:** Chairman Hughes, Members of the Natural Resources Committee, my name is Todd Siel, T-o-d-d S-i-e-l, I'm the general manager of the Lower Republican Natural Resources District based in Alma, Nebraska. I'm here today testifying in opposition to LB606 on behalf of the Lower Republican NRD and the Nebraska Association of Resources Districts. The Lower Republican NRD is one of the four NRDs comprising the interlocal agreement known as N-CORPE. And these four NRDs, Twin Platte, Upper, Middle, and Lower Republican, as you've heard, came together in 2012 to begin development with what now is called the N-CORPE project. This 19,500 acre block of land previously operated as an irrigated corn and potato farm before we began the

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process of restoring it to native rangeland. This restoration is believed to be the largest grassland reclamation project in Nebraska history. And the operation of this augmentation project prevented an irrigation shutdown of an estimated 300,000 to 500,000 acres and immediate reduction in groundwater allocations throughout the Republican Basin. The economic impact from such a shutdown would have been devastating to thousands of Nebraskans, hundreds of our state communities. The success of this project has proven to be invaluable for the state of Nebraska in our continuing efforts to meet the requirements set forth by the Republican River Compact. The N-CORPE board of directors and the Lower Republican NRD board of directors are both made up of farmers, ranchers, agribusinessmen and women who understand and appreciate the value of private property rights and private ownership. But these directors are also aware of the inherent and unnecessary risk of separating groundwater access from the surface property ownership. I would like to read the adopted N-CORPE policy regarding land ownership. The N-CORPE board at this time is not in support of selling N-CORPE lands due to common law principles linking land ownership to the ability to access the underlying groundwater and the desire to maintain the lowest costs of financing for the benefit of irrigated landowners funding the project. Selling N-CORPE lands absent clear legal separation between land ownership and groundwater access jeopardizes project operations and would breach a mortgage on N-CORPE land that exists to provide additional security to bondholders, therefore, reducing financing costs. Excuse me. The pol-- this policy was adopted last year by the N-CORPE board was also supported by the Lower Republican NRD board of directors. In June of 2018 the Nebraska Supreme Court offered these Opinions regarding this issue as part of the ruling in Upper Republican NRD v. Dundy County Board of Equalization. And I do apologize that some of this has already been covered before, but it's worth mentioning again. I quote from that ruling: We find no reason to treat underground uses, in this case the use of the aquifer wells and pipeline system, differently from any other use of the property. As the NRD points out, use of the groundwater is a derivative right immediately dependent on ownership of the surface water over it. The right to use groundwater does not float in a vacuum of abstraction, but exists only in reference to end results from ownership of the overlying land. Also mentioned today has been the Sorensen case. And interesting-- interestingly, that last sentence and portions were first originally stated by the Supreme Court more than 30 years ago on the same decision that Senator Groene portrays as a legal basis for LB606, the Sorensen case. The June 2013 Supreme Court decision used Sorensen as precedent for the Dundy County

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ruling, because it clearly distinguishes between water uses allowed pursuant to an act that establishes permits for municipal and domestic use, which N-CORPE is not, from other uses. To quote from the Sorensen case: Concerning landowners without a permit under the act, the common law still governs the use of groundwater inasmuch as such use is a limited private property right in Nebraska. It should also be noted that the Supreme Court in 2017 upheld the district court decision that N-CORPE did not need a permit. Also in, in Section 2 of LB606 mandatory allocations would be placed upon the amount of groundwater withdrawn for an augmentation project. Currently, NRDs across the state have the authority to place an allocation on groundwater pumping for beneficial uses within the boundaries of each NRD. The functional implementation of an allocation presently lies with the natural resources districts and the structural procedure for how this would be accomplished if LB606 were to pass and then be placed in Nebraska statute is unclear to us. Changing Nebraska law through LB606 in order to provide us permission to sell the overlying property at N-CORPE does not provide us sufficient comfort. The passage of LB606 would create more questions than answers and believe it simply invites and enhances the threat of litigation. Thank you, Senators. I appreciate the opportunity to speak today and am willing to answer any questions to the best of my ability.

**HUGHES:** Thank you, Mr. Siel. Are there questions? Seeing none, thank you for your testimony. Next opponent. Welcome.

**DEAN LARGE:** My name is Dean Large, that's D-e-a-n L-a-r-g-e. I have served as a director on the Upper Republican NRD for 28 years. That seems like a long time, but I still remember the day I started. But I also serve as an alternate director for the Upper Republican on the N-CORPE board project in Lincoln County. I'm also a farmer, irrigator, and also in retail. I'm here to oppose LB606. Several reasons. Just seven months ago a Supreme Court in the case of Upper Republican v. Dundy County, and it was talked about earlier, it stated that the use of the groundwater was-- is a right dependent on ownership of the land and, and in some cases [INAUDIBLE]. And a comment on that, most of the allocations that the Upper-- the Republicans had-- Upper Republican has is all based off of ownership of the land and how many acres. And even the N-CORPE allocation was originally based off of how many acres that they had purchased and originally irrigated. I'm going to make it short so I'm going to kind of skip over. In my opinion, LB606 does not protect the augmentation-- the rights of the augmentation projects from outside forces. As a-- the irrigators of the Republican Basin and

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the irrigators also in Twin Platte have taken on a challenge to work hand-in-hand with the state of Nebraska to meet compact targets and com-- and compliance levels. We must work with those irrigators, not against them. Remember this: the two augmentation projects were paid for by local irrigators through the occupation tax, not the state. These are local projects helping out the state in compliance so there's no further rules and regulations placed on them. The project of this size is bound to generate some opposition. We've seen some of it today. But as often happens in cases like this--and it is understandable--it is the opponents who seek-- speak the most. I urge you to read the letters sent to you today and also in this there's-- and I'm also speaking on behalf of two other people. Gayle White who borders the boundaries of N-CORPE on two sides said: N-CORPE has made many improvements with miles of fences, setting up hunting and hiking areas, while being mindful of neighboring landowners. As a good neighbor, they have worked to remove tumbleweeds and replace and repair fence damage. All this has been done by communicating and coordinating and cooperating with the N-CORPE. Steve Facka, also a neighbor, wrote that his property borders N-CORPE. And with some weed issues present along the borders the staff of N-CORPE worked well with me in combating these issues. Also, I have worked with N-CORPE staff on grazing plan for tumbleweeds on the N-CORPE ground. The N-CORPE staff have always been a good neighbor to me and have allowed property access at any time for any matters. Yesterday I spent three hours on a tour of the N-CORPE property myself, because as an alternate director I wanted to see what's going on. It's not the first time I've been there. I've been there multiple times over the last five, six years. I was very pleased with what I seen. They're addressing cedar trees, noxious weeds, cleaning up old fence rows, farms, and buildings, the junk on the property, managing the grass, taking care of the augmentation projects. And on a project that size until you're on it you don't realize how much labor can go into it. And I quickly figured up one day I've shred a lot of road ditches before. And to go from the one--east end to the west end and back and do miscellaneous mowing back and forth it's going to take you all day, just on one road. That's how big it is. Roughly, there's 1.1 million acres in the Republic and of irrigated ground in the Republican Basin and today there-- they said there was close to 300 and some thousand in Twin Platte. I've got 250. But anyway, totaling about 1.35 to 1.4 million acres being represented by 16 counties--that's also being represented by N-CORPE--being protected by 15,000 acres of retired crop ground, which now has livestock grazing on it. And quickly, that's 90 acres of grass that we've got grown or retired crop ground protecting-- being

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protected by one acre of N-CORPE ground. That's 90 acres of irrigated ground. I might have misspoke that, but 90 acres of irrigated ground within the basins being protected by one acre. And--

**HUGHES:** Mr. Large, your light's on, could you finish up?

**DEAN LARGE:** OK. To summarize it up, I, as a director, take it very serious that I was deemed to protect and serve my public in their years' investment and to risk their investment into this, since this is their program, I don't-- I'm not in favor of trying to sell the property at this time.

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

**DEAN LARGE:** Is there questions?

**HUGHES:** Are there questions? Senator Bostelman.

**BOSTELMAN:** Thank you, Chairman Hughes.

**DEAN LARGE:** Yes.

**BOSTELMAN:** Two parts of a question.

**DEAN LARGE:** OK.

**BOSTELMAN:** Just for my own-- you either have CRP or CREP ground, so when was that put in and how long are those contractors for, do you know?

**DEAN LARGE:** The CREP ground is minimum of 10 and maximum of 15 years.

**BOSTELMAN:** You know when it went in?

**DEAN LARGE:** We do not have any in our operation, but I have some landlords that did put it in. But our operation, we don't.

**BOSTELMAN:** I'm sorry. So N-CORPE doesn't have any CRP or CREP ground?

**DEAN LARGE:** No.

**BOSTELMAN:** Okay. Thank you. Is there-- do you have any other in another program?

**DEAN LARGE:** N-CORPE, no.

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**BOSTELMAN:** OK. Thank you.

**HUGHES:** OK. Any additional questions? Seeing none, thank you for your testimony. Oh, I'm sorry. A little higher. There you go. Senator Halloran.

**HALLORAN:** Thank you, Chairman. Thanks for your testimony. A common law protects or common law suggests that in order to pull water from ground you have to have ownership of the land above it. That's your understanding?

**DEAN LARGE:** I-- yes.

**HALLORAN:** As was stated earlier, it's my understanding at least from what I've heard that common law is the most rudimentary law and that Legislatures have the ability to pass statutes that basically trump common law. And Section 2 says: The governing natural resource districts shall allocate the amount of groundwater that may be withdrawn for a water augmentation project for streamflow enhancement pursuant to Section 46-739. I don't know how much clearer this could be. But what-- what's the issue you have with the wording on that? It protects the augmentation project.

**DEAN LARGE:** I look at it a little-- not so much from a legal standpoint but--

**MOSER:** What else is there?

**DEAN LARGE:** -- I'll compare that to, if I go out and buy a quarter of ground, would you buy mortgage insurance? Probably would to make sure you are totally guaranteed that you have the right to farm that ground and you have clear title. In this case, I think if we sell the ground off on the N-CORPE stuff it's like giving up the mortgage insurance. I, as a director that was part of all these decisions, I don't want to put my irrigators that are at risk or paying for this at risk with that unknown out there. I'd rather pay a little extra and have the insurance then-- and feel comfortable. And that's why at this time I think it is still wise for the NRDs to continue to own the ground because of the unknowns down the road.

**HALLORAN:** OK. I guess it's unclear to me what the unknowns are. The statute is very clear, if it were to be passed, that the augmentation program project would be held intact under the jurisdiction of the NRD. So what are the unknowns?

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**DEAN LARGE:** Well--

**HALLORAN:** And that's a hard-- that may seem-- sound like a silly question, what are the unknowns?

**DEAN LARGE:** It is. Yeah, the unknown. There's, you know, the first thing I'd think it's some legal issues, but one of the biggest impacts that I've seen was the-- in-- this is maybe a little different, but the drought of 2012, which was very unforeseen. It put us so backwards or so far behind in compliance that we needed this. If we was to sell it off, can we ever-- well, I'm just opposed to selling the ground because of-- we was tasked to protect and defend the water rights and the investments the farmers have made. And I think at this time, our district will not support selling the ground at this time.

**HUGHES:** OK. Additional questions? Seeing none, thank you, Mr. Large. Next opponent. Seeing none, any neutral testimony? Welcome, Director Fassett.

**JEFF FASSETT:** Thank you, Mr. Chairman. Good afternoon, Chairman Hughes and members of the committee. I'm Jeff Fassett, J-e-f-f F-a-s-s-e-t-t. I am the Director of the Department of Natural Resources and here today to present briefly-- to testify on LB606 in a neutral capacity. We've had a lot of discussion with Senator Groene and others over the last couple of years on this issue. Let me just start by indicating that the Governor has expressed I think directly to many of the folks that he has support for finding a solution to the underlying issue associated with this bill, which is designed to try to allow the sale of land--as we've talked about all afternoon--as long as those actions to sell the land do not jeopardize the state's ability through this project to come-- have compact compliance with the state of Kansas or, importantly, to disrupt existing water law. Private ownership, when comparable to public purposes, is preferred in the Governor's view to public ownership of large tracts of land. That is a philosophical view that he accepts and has expressed that. He has encouraged all of the interests involved with this issue and have expressed various concerns about this bill and the approach that's being taken to try to work together to find a solution that respects the important principles that he's landed on. I understand LB606 as you've discussed all afternoon intends to authorize and allow the sale of land owned by natural resource districts, the district or districts that were originally acquired specifically to develop an augmentation project like N-CORPE, but with an ability to retain the right to the use of the water for that project. That is the goal. That's the balancing



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act, if you will, that's being targeted. The bill provides an exception to the common law, as has been discussed a number of times, that looks at that unusual relationship under our laws between the relationship of water and the land. Usually any rights the beneficial use of the state's groundwater is dependent upon the overlying ownership. But as has been discussed at length today the Legislature can take specific action to address that, that issue. So there is-- there isn't that underlying sort of legal concern. But as I've testified before with this committee, because the language of the proposed bill, as, as Mr. Rempe and others have expressed this afternoon, it just is suggesting a change to our complex water laws. And as a result of that I, as, as I do routinely consult with the Attorney General's Office regarding this bill. The Attorney General's Office has expressed concerns to both me and directly to Senator Groene that the language of the bill, as it stands before you today, does pose some risk of litigation. And there are conditions and provisions in the language of this law, as expressed to me through-- by my attorney, that there could be effects on water law that have sort of this ricocheting effect that I've talked with the committee members about in the past with other proposed bills. And there is just simply left over concerns at this point. The language according to the advice I've received just leaves some uncertainty. And, and it's just uncertainty that needs additional time. If you will, it is not ripe in our view, according to the views that I've been advised, to bring forth the language as it sits today in this manner. It is a concern that while it was generated by interests associated with N-CORPE and the Rock Creek project that once it does become law, as others have mentioned to you, it then can apply to a variety of projects that maybe not even are being proposed at this point. And I think because of that, the attorneys want to be very careful and more precise in the language and the connection of making the change that could accommodate what's desired at N-CORPE by the proponents in a manner that does not disrupt other potential projects. That's really the issue. And certainly from the state standpoint, as I've had the opportunity to brief the committee in the past, the value of this particular project along with Rock Creek and the other management actions the NRDs are investing in is absolutely what's keeping the state in compliance with our relationships with Kansas in the Republican River Compact. That is something we do not want to place any risk on. The bill as it is doesn't intend to do that. And we understand the goals are the same. But the preciseness of the language, from what I've been advised by our lawyers, from the Attorney General's Office, needs to be better refined and remain

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clearer than as it sits before you today. Thank you for the opportunity, Mr. Chairman to testify. Be pleased to try to answer any questions you may have.

**HUGHES:** Thank you, Director Fassett. Are there other questions?  
Senator Halloran.

**HALLORAN:** Thank you, Chairman Hughes. I thank you, Director Fassett, for being here and I know you're not the Attorney General and neither am I. I want to make that clear. But so if there's litigation, it would imply that someone has been damaged. Right? That there's, there's damages that they're being sued for. In your estimation who would be-- who would be the litigant here, who would be damaged? If the augmentation being protected as this bill specifically specifies, who would be damaged?

**JEFF FASSETT:** I think what, what I'm understanding, Senator, is that there-- the risk is that there may be litigation over language that isn't as clear as the lawyers would like it to be. And it's, it's the ricochet. It isn't a direct injury sort of question. It may arise in an unrelated manner, but may ricochet back on potentially creating some weakness in the foundation of the project itself. I think you've, you've heard from a few people that have expressed that concern. But it is hard to crystallize precisely what that concern is. But it's enough of a risk after what the state has been through with litigation with the state of Kansas that it's something, again, as expressed to me even from the Governor. It's just a risk we're unwilling to take unless we are as secure as we are in our thinking about that. And I think that's why, while I am also not the lawyer and I'm conveying to you the concerns that come from my lawyer, that lawyer also visited with me and to visit directly with Senator Groene. He understands that there are still some concerns out there. But you don't know where that might come from precisely.

**HALLORAN:** And I understand that, because in the short time I've been here I also understand that there's not any law that we can't-- can pass that is perfectly litigation proof. Absolutely none. I know too many trial lawyers that can find holes in any law we would provide. And so I'm a little concerned that we are worried about unforeseen circumstances that prevent us from doing something that needs to be done and deal with it as it comes. Anyway, I appreciate your testimony.

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**HUGHES:** Additional questions. Senator Moser.

**MOSER:** Is the department and-- okay, plural. Are the department and the Attorney General willing to work with Senator Groene if he's willing to negotiate some changes in language to make it more acceptable?

**JEFF FASSETT:** It's my understanding that's the view that actually the Governor has taken as well, that he, he wishes that it would not have the hearing you're having today where it is still of some real controversy amongst various parties. This is something that ought to be worked out-- worked out with all the parties involved to bring back a consensus, if you will.

**MOSER:** Bring back next session or something or--

**JEFF FASSETT:** Bring back a bill--

**MOSER:** We're kind of up against the--

**JEFF FASSETT:** Where you are not in the middle of, of, of a very delicate debate among some legal minds that, that, that, that is an important debate. And I agree with Senator Halloran. There may never be litigation-proof legislation, but I'm saying there is enough-- as you've heard, there are enough concerns and risks, not just for this project but for other projects when you change Nebraska law that my lawyers are saying need to be addressed. They need to be very carefully thought out and they need to involve all of the participants, the proponents and the opponents, proponents and opponents. And that isn't-- that isn't where we are today, is sort of my view.

**MOSER:** OK. Well, thank you.

**HUGHES:** Any other questions? Seeing none. Thank you for your testimony.

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

**HUGHES:** Additional neutral testimony. Welcome.

**JOHN THORBURN:** Good afternoon. Mr. Chairman, members of the committee, my name is John Thorburn, J-o-h-n T-h-o-r-b-u-r-n. I'm the manager of Tri-Basin Natural Resources District and my district's name has been invoked a few times today. I actually did not intend to testify on

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this bill, I'm here to observe the discussion. But since my district's been discussed here I'd like to at least make myself available to the committee and also to go on record and assure the committee that contrary to the statement by Senator Groene, Tri-Basin NRD has not knowingly done anything illegal in operating our augmentation projects. We've taken a different approach from the N-CORPE project, but there are reasons for that. There are differences between our project and N-CORPE that are important to understand. And I'd like to just take a minute to explain that. Tri-Basin has three augmentation levels, two on the Platte Basin, one in the Republican, much smaller scale than N-CORPE, of course. We do not own the land on which the wells sit. The wells are in private or the land is in private hands, as are the wells. The wells are registered with landowners. We pay a fee to the landowners to operate those wells when we need water for augmentation purposes. We did not retire irrigated crop land in order to enable the pumping of water for augmentation, which is another difference from N-CORPE. We're able to do that because our district has an agreement with Central Nebraska Public Power and Irrigation District to divert excess flows from the Platte River. And we can use that water to recharge groundwater supplies and essentially replace everything that we pump out. We're simply retiming water that's already been put into the ground. Retiming the recharge, so to speak. So a very different situation. It's a project we've done in cooperation with the Department of Natural Resources, in consultation with the state of Nebraska. So I feel like we're on pretty solid ground legally in terms of the way we developed our project, but it is different in a number of respects from N-CORPE. I just wanted to be on record in that regard. Be glad to take any questions if you have any.

**HUGHES:** Okay. Thank you, Mr. Thorburn. Are there questions? Senator Halloran.

**HALLORAN:** Thank you, Chairman Hughes. Sounds like you had-- there's a prototype here for what Senator Groene is trying to accomplish. So in the Tri-Basin the land is still privately owned.

**JOHN THORBURN:** Yes.

**HALLORAN:** Right. And you lease, lease the water rights from that property owner? Is that correct?

**JOHN THORBURN:** It's not a lease, Senator, we have an easement agreement. So essentially we make a payment to the landowner, they

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operate the well in exchange for that payment. It's not a per gallon payment or an acre foot payment, it's just a payment for use.

**HALLORAN:** Can you we still irrigate on that same property?

**JOHN THORBURN:** Yes. Yes, they are allowed to do that.

**HALLORAN:** All right. So there does seem like there's a separation from the land and the water for the purpose of some augmentation though.

**JOHN THORBURN:** I'm not sure what you mean about separation of land and water.

**HALLORAN:** The ownership of the land. Tri-Basin doesn't own that.

**JOHN THORBURN:** No, no. But I just need to reemphasize that we have the ability, which N-CORPE does not to replace the water we pump out through other means by diverting these excess flows from the Platte.

**HALLORAN:** OK.

**HUGHES:** OK. Senator Gragert.

**GRAGERT:** Just a real quick question then. What would take precedence in that-- in that case if you needed the water for augmentation purposes? Do you take precedence over his irrigation?

**JOHN THORBURN:** Well, as I say we have agreements with these landlords, so they've agreed to allow or to do this, provide this service for us perhaps the best way to say that. And precedence? I guess I don't see there being a conflict in that regard when the landowner has agreed to provide this service for us.

**GRAGERT:** I'm just thinking, if you have one of those years like 2012, there's not enough water for both, you know, your project and his irrigating. What takes precedence in that case?

**JOHN THORBURN:** OK. And, and I guess maybe I need to explain the hydrologic setting of these two projects. The Platte Basin wells or along North Dry Creek, a tributary to the Platte, very sandy soils, very high groundwater table, very substantial saturated thickness of the aquifer. Water could be pumped continually for years without having a significant impact on wells more than, say, a half mile away. And the similar situation in the Republican Basin where we're just in a nice situation, in a sweet spot hydrologically and geologically

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where there's not really a concern about interfering with the ability of neighbors to pump their wells.

**GRAGERT:** All right. Thank you.

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

**BOSTELMAN:** Thank you, Mr. Chairman. And, and, and part of it is, if I remember from-- and thank you for being here, Mr. Thorburn. In our previous meetings, discussions we've had-- not with you, specifically, but with Natural Resources and mapping where the water is, this augmentation, there's supposed to be a plume of water that's coming from the north that sits just north of this project, I believe. So if we're talking about recharging, there's actually probably water sitting there that actually could be that. But that's an aside and I guess it's just comments I'm making. You know, the recharge potentially is there because there is a large plume of water sitting up there and groundwater that's sitting that potentially could, could be used, If recharge was an issue, it would be a similar project to what, what you're talking about. The other thing is, though, they're actually using-- whether they-- and, here again, you may or may not know on this one and it's more of a lawyer question than anything. But even though you're not using water rights by way-- say, from the irrigators, in N-CORPE they've actually-- have-- they are using the water rights of the existing land, that 19,000 acres, with the potential of augmenting what this plume of water that's supposed to be, I believe, north. So I'm not so sure if there's a big stretch between the differences of those because now they're just using the allocation that's there for that ground. And so if they would-- if, hypothetically, they lease that, however, they may lease that--I'm kind of curious as to how much of a stretch that is. And if it's similar, if it's completely different. Do you have any thoughts on that?

**JOHN THORBURN:** Just a couple of points I'd make in regard to that, Senator. It is my understanding that Twin Platte NRD, the Platte Basin NRD involved in N-CORPE, their board has passed a motion or has a policy that their pipeline cannot be used to take water out of the Platte to recharge the N-CORPE wellfield, so it can't be done directly. And that's, I think, the distinction between what Tri-Basin is doing and that, that water that is simply moving naturally in the direction of the N-CORPE wellfield. We have purposely and specifically diverted water, paid Central to move water on our behalf for the

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purpose of replacing water that we're pumping out. There's a more, I think, direct and intentional relationship.

**BOSTELMAN:** OK. Thank you.

**HUGHES:** Additional questions? Seeing none, thank you for your testimony.

**JOHN THORBURN:** Thank you.

**HUGHES:** Any additional neutral testimony. Seeing none, Senator Groene, you're welcome to close.

**GROENE:** We've got an hour before the St. Patty's party. Where do I start? I worked with the Attorney General's Office. I met with their attorney at least five times. I worked with Department of Natural Resources, I talked to them and their experts. I've also met with management and some board members all four NRDs, including Mr. Fanning. They all said the same thing. They'd like to sell the land as long on the augmentation project is protected. Last time I talked with-- met with the attorney from the AG, the agreement was, yeah, you worked with us. All we need is this promise, Senator Groene, that the committee puts it on the floor, you will work with us if we find a need for an amendment. I should have had him sign it, because apparently what Mr. Fassett had said and what I heard aren't the same things. A lot of this language came from the Attorney General's Office attorney, part (3) about the augmentation. The biggest problem he has--and we do have an error--because I do really, really put this thing into, into the-- to box in, and as they say, box in what they've done, because we used the wrong term in Section 1. It should be "river flow" enhancement as described and not "streamflow," because the only other place in statute with the term river flow enhancement is, is occupation tax and bond payment. So it really boxes it in. And we could do an amendment on that, but streamflow would probably stand up in court, but we need exact words that are used in the occupation taxes and streamflow enhancement statutes. It boxes it in. As far as the allocations, first I'd like to note-- you know who testified against it? Not one single person from the Twin Middle Republican or the Twin Platte or Lincoln County. Those two NRD managers and a board member don't have one single acre in Lincoln County, one single acre in the project. If you got a free lunch, you'd be up here protecting it, too. The burden is on Lincoln County and the Middle Republican and the Twin Platte. The Middle Republican took a neutral stance. The manager probably would've come here and testified for. We had one

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board member here. I've met with the Twin Platte board members. The majority of them would sell the land if we get the opportunity. That manager would probably be here against it, but his board wouldn't let him. Who helped me write this bill? A lawyer named Mossman. He's been up against Mr. Blankenau at least three to four times at the Supreme Court and he's beaten him every time on water law. So who you going to listen to? Mr. Blankenau, in his letter, has it wrong. Tri-Basin is not a lease, it is an easement. That is where I said they are in trouble. They could get sued. In statute you cannot have an easement. You can lease water. If you look at the statutes I mentioned earlier, to have an augmenta-- in a, in addition to an augmentation. They also use property taxes to put the wells in. There's been a huge court-- that's why the occupation tax started, is because all of this-- everybody got together for five years and wrote a bill the, the Christensen bill. Guess what, it was wrong. They put in there that they could have a property tax for, for river flow enhancements. Supreme Court said, no. You can sit and you can put 40 or 50 people on a panel and create a bill and you're still going to get sued. I don't think this law would get sued because Senator Halloran said, it's precise and to the point and it boxes in an area in law that they've already done. What was I going to say? Excuse me. Made notes all over the place. You heard Mr. Fanning sit up here and speak eloquently about things, about how they were going to reverse the pumps. My Middle-- my Twin Platte said, no way are you going to use our pipeline and those pumps to reverse water up to, to recharge water for the Republican River Basin, which is transferring water from one basin to another. They put a policy in. No way are you going to do that. He said they were going to do it. He said they're going to sit on the-- because maybes and ifs and angels are going to show up, that they're going to turn that land back into irrigation. It's not in his NRD. As I said, his NRD in the Lower Republican have not an acre in there. The Middle Republican will never ever reallocate irrigation of that. They are so far behind with the Republican pact, they will never do it. The Twin Platte, plan I told you it's 20,000 acre-feet behind now. The acres and their land-- they will have to retire some. They will have to go on allocations at the pivot, which they don't now. They will have to do a lot of things. One thing they will never do is put more land back in irrigation. That water-- that land is dryland and it is going to be dry land from here to eternity. That's how they get these board members to say maybe, ifs, buts, and maybes. They make these off the wall promises that this might happen. It won't. It'll never be irrigated again. The third one-- Mr. Fanning lives in Ogallala. He's a government employee in Chase County in Imperial. And he's going to



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come in and put solar panels in Lincoln County. Do you want NRDs to become economic development developers, to override-- walk in-- we like local government to walk into another county, another NRD and start making decisions that you're going to put windmills and solar panels on their ground? If it wouldn't have been for Senator Groene, there would be windmills there. Fought them tooth and nail and organized. Do the farmers in Lincoln County want to sell this land? I ran on it two times in a row. This last election I won every single precinct. I won every single rural precinct by 80 percent or more over well-financed, well-respected opponent. They want this land sold. It's our land. It's Lincoln County. It isn't Mr. Fanning's and the Upper Republican NRD members' land. It's not the Lower Republican's and their members' land. It's ours. It sits in our two NRDs and it sits in my county. And they are so arrogant, so greedy. We have bailed him out with our natural resources and they won't let us sell the land. You talk about negotiating? I'm going to sit down with those people? No way. I've tried. This body has done it over and over again every single water law. That Lower Republican NRD, every water law we passed they fought it tooth and nail. They threw chairs at Governor Heineman. Said, there's no way you're going to put allotments on us. They fought it all the way. Now they love it, as long as it's our natural resource bailing them out. And Senator Bostelman, you're correct. One of the things-- well, it sat right on the ridge between the two NRDs, two riverbeds. But the other thing was, we have NRD-- I mean, not NRD, Nebraska Public Power canal that runs along the north side of the Platte, runs to Sutherland power station. It's why I don't want in renewable energy in my county. We are a coal-burning county. And we should make that decision, not Mr. Fanning about renewable energy. That canal comes to Sutherland and it goes right into Lake Maloney, where I live nearby. And it goes back into the Platte. That canal causes a water dam where osmosis pressure-- water that would normally flow to the Platte backs up into them Sandhills. It does recharge to a point and the water levels have stayed constant up there. And that's one of the reasons they sold it to the public, that it would recharge. So his pie-in-the-sky scheme of going to reverse the pumps and recharge Platte River water for Republican River purposes is not going to happen. Anyway, that plus-- I hit the windmills hard enough I think. Ret-- and he'd mentioned that they're retiring more acres. They're going to take their \$10 dollars an acre and they're going to buy irrigation rights from people. That's the way they should do it to get in compliance. And the reason they're at 10 bucks an acre-- Senator Albrecht isn't here anymore, but they're 10 bucks an acre because they have two projects they're paying for, Rock Creek and

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they're 25 percent share of the N-CORPE. Middle Republican is 10 bucks an acre because they've got-- they don't have a lot of acres. The big winner is the Upper Republican with 1.1 million. The rest of us have 400,000 acres or something like that, around there, and we're paying 25 percent of the bill. They got a sweetheart deal, the Upper Republican. You can see why they want to keep it. They only got to pay 25 percent. The rest of us have to pay 25 percent and we don't have near the acres. We just want the land sold to get our costs down on this project. You're going to get sued no matter what you do. I actually think our bill will stop that suit from happening, because it, it protects the augmentation. And we've vetted this what, three years now. I think Senator Quick was with us of different forms to this bill. First time, I said-- I forced them to sell it because we wanted it sold. It's a "may," it's a "may." It's another tool in the toolbox. It gives a tool to those individuals in my two districts and other districts on them boards to say, no, let's just sell this thing. We shouldn't be landowners. Let's just sell it. Let's put a reservation in the-- and you're right, Senator Halloran, they could put a reservation in there. It's mineral rights. You put a reservation in there that you got the water rights. When they find oil on your land, they put the damn well wherever they want to. They could put an easement on them deeds where they're going to move those wells besides wherever they want to. And people will still buy the land, just like they buy the land when an oil company has, has the mineral rights or somebody has a mineral rights and it brings the same money, the land does. So-- my local Farm Bureau supports me, supports this bill big time. A lot of them are probably not going to be members in the future of the Farm Bureau because of their stance on this. But--and me either, maybe. But which I am a member. As far as the property taxes, the property tax you have heard that N-CORPE is voluntarily paying property taxes due to the passage of LB758. They are not. Irrigated farmers in southwest Nebraska are paying those property taxes. A government entity has no money. It is-- it is a situation of double taxation. The farmers are paying higher occupation taxes so that N-CORPE can pay the property taxes. That is called double taxation. And I supported Senator Hughes's bill. At least we're getting those individuals from the Lower and Upper Republican to pitch in a little bit for our schools. And, by the way, we're getting about \$200,000 now. When it was irrigated we were again about \$1.8 , about \$1 million. It would be well over \$1 million if it was still irrigated. So we took a huge hit on property taxes. And as far as, you know, they mentioned something about worried about the common law and domestic well. The reality is every municipal, commercial, industrial, other

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well owner besides owners of domestic wells is under the same constitutional edicts. N-CORPE presently has mitigated and agreed to pay for lowering agriculture wells for five of their neighbors. Ownership of the land did not change that. If they wanted to protect themselves from mitigation well complaints, they could purchase irrigation allocations. They don't have to own the land. And, and as we said, this kind of-- I've heard it from-- I've heard it from too many of the people on the boards and farmers with the Fanning sales pitch. Well, we can keep it. We can sell it for irrigated later. We can reverse the pumps. We can go into somebody else's county and stick windmills. They don't have to look at them. Solar panels, how much hunting is going to go around solar panels? You catch it here? These guys have visions and fancies of being-- of being venture capitalists and they're government employees. That's all they are, government employees. And they're going to put windmills and manage 20,000 acres? We need to stop that. We need to-- if you want to stop something, stop this from happening ever again. If you're going to mismanage your groundwater in an NRD so bad that you have to in a panic situation spend \$86 million dollars and dump water in a creek, you shouldn't be managing an NRD in the future because we know now that you can't kick the can down the road anymore. You're going to get-- the can is going to hit a wall and it did in this instance. And all we want is to give my people on those boards the "may" and the ammunition against the windmills and against the solar panels, which I'm going to put a couple in his backyard. But they can say, no. Here's another option, let's sell the land. And that's what we were trying to do. And I would like to prioritize this bill. You know, one last thing. You guys, many of you--one, two, three four did for sure--voted for me for Education Chair. Why? Because you know I'd stand up against the-- against the establishment, the bureaucratic establishment. And I do. And I stop bad legislation and I let good stuff help, because I'm not afraid of them. Don't let the bureaucratic management involved in water and NRDs and Natural Resources dictate and overrule those citizens that came down here and braved the weather and the cows on the ground and said, we want you to sell the land. Stand up to them. Let's put it on the floor. Let's debate it on the floor. When it's, when it's reality, the Attorney General will be in my office and we wi-- we will put an amendment on it if he deems we need to. It's that simple. As I said, you can sit, have 40 people on a panel and debate it 40 years-- for four years and pass a bill. And within a year you're in the court and the court-- Supreme Court says, no, you can't do that. That's what happened the last time with, with the property tax issue. I'm stopping the next lawsuit. So, as I said, I will be talking to all of you, with

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reason. And how I opened my, my hearing was the facts; quotes from law cases, quotes from laws. That's how I operate. We had people come up here and say, what ifs, maybes, and I fear the world. I don't get out of bed in the morning. We're going to get sued. But they don't mind taking our water and walking away. We need to sell the land and we need your help to get it out of committee. Thank you.

**HUGHES:** Thank you, Senator Groene. Questions? Senator Gragert.

**GRAGERT:** Thank you, Senator Hughes. Chairman Hughes, I'm sorry. I'm going to-- I think probably you will know the answer to this, but I'm going to ask it for the record. Do you know anyone that's prospecting right now to buy that land up cheap--

**GROENE:** Oh, yeah.

**GRAGERT:** -- to put windmills--

**GROENE:** The one fella back here--

**GRAGERT:** -- to put windmills and-or solar panels on it?

**GROENE:** Yeah. I know for a fact--it got to me--that there's a company in there negotiating behind-- in executive sessions, an unelected board, appointees called N-CORPE and executives negotiating with somebody for solar panels. Early on they tried to put windmills on it but they had such a pushback-- we're talking about a county that all of our jobs are shipping coal and producing energy. A coal power plant. That stopped. But the way they're operating is that it's just going to happen without a public hearing. They're just going to do it to us. Then they're going to go back to Alma and Imperial and Ogallala at the lake where he has his house and smile that he was a good public servant. They have a mining operation in Lincoln County that they'd benefit from and they liked the way things are, those two NRDs. So give us some-- give us some hope. Give us-- my two NRDs and those board members-- and there're board members on those other two NRDs when they find a reality and they hear the truth, they're going to start, start asking, why did you say that? Why did you-- why did you tell us that when it's pretty obvious what Senator Groene and a few others have said that their statutes and there's the court cases that say the opposite.

**GRAGERT:** Is there currently a planning committee in this county?

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**GROENE:** Zoning.

**GRAGERT:** Zoning commission.

**GROENE:** Which I'm going to do when I ever get back there--

**GRAGERT:** Do they ever allow [INAUDIBLE].

**GROENE:** I'm going to talk to my county commissioners. They can turn it down. They want it sold.

**GRAGERT:** Thank you.

**HUGHES:** Additional questions. Senator Moser.

**MOSER:** Well, let me paraphrase something here. I don't know if you'll agree with this or not. But since the Governor ultimately would have to sign this bill, you're willing to work with the Governor or any of his staff to look at what changes they may recommend to make your bill --

**GROENE:** Under one roof. We talked about one. When the last time the representative from Attorney General their top water lawyer left my office it was, get this out of committee-- you-- if you get this out of committee, will you agree to work with us on an amendment if I-- if we deem-- we think we need to change it? And the agreement was, yes. He nodded his head, I shook his hand, and he left. I don't lie. Eternity is a long time. Like some, I do not think lying is worth it.

**MOSER:** Okay. Thank you.

**HUGHES:** Any additional questions? Seeing none, thank you, Senator Groene. We do have letters for the record. We have four letters of proponents: Nicole Fox with the Platte Institute; Jerry Woodruff; Charles Stout; Randy Robinson. Five letters in opposition: Scott Brettman from the Nebraska Chapter of American Society of Farm and Ranch Management and Appraisal; Gayle White; Patrick O'Brien, Nebraska Water Research Association; Dave Custer, Twin Valley Public Power District; and Scott Facka. Neutral: Jack Russell, Middle Republican NRD District. With that, we will close our hearing on LB606.

**GROENE:** All I want to say is, I had a whole list I was gonna read letters, too, but I didn't-- I won't do it Senator Hughes. Thank you

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for being approachable. And-- but a lot of my people couldn't make it because of the weather.

**HUGHES:** I-- unfortunately, the weather affects everybody. Thanks.