

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Natural Resources February 9, 2022

**BOSTELMAN:** Well, welcome to the Natural Resource Committee. I'm Senator Bruce Bostelman. I'm the-- I'm from Brainard and I represent Legislative District 23. I serve as Chair of this committee. The committee will take up the bills and the order posted. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on the proposed legislation before us today. The committee members might 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 then neutral testimony. Closing remarks are reserved for the introducing senator only. If you are planning to testify, please pick up a green sheet that is in the back table 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 a page or to the committee clerk. This will help us make a more accurate record-- a public record. If you do not wish to testify today, but would like to record your name as being present at the hearing, there is a separate white sheet on the tables that you can sign for that purpose. This will be a part of the official record of the hearing. When you come up to testify, please speak clearly and loudly into the microphone. Tell us your name and please spell your first and last name to ensure we get an accurate record. We'll be using the light system for all testifiers. You'll 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 the red light indicates your time has ended. Questions from the committee may follow. There is 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.

**GRAGERT:** Thank you. Good afternoon. Tim Gragert, District 40, northeast Nebraska.

**HUGHES:** Dan Hughes, District 44, eight counties in southwest Nebraska.

**WAYNE:** Justin Wayne, District 13, north Omaha and northeast Douglas County.

**AGUILAR:** Ray Aguilar, District 35, Grand Island.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Natural Resources February 9, 2022

**BOSTELMAN:** And on my right.

**J. CAVANAUGH:** John Cavanaugh, District 9, midtown Omaha.

**MOSER:** Mike Moser, District 22, Platte County and most of Stanton County.

**BOSTELMAN:** To my left is committee legal counsel, Cyndi Lamm, and to my far right is committee clerk Katie Bohlmeier. I would like to thank our pages for today, both Malcolm and Joseph. Thank you for helping us today. With that, Senator Hilgers, you are welcome to open on LB1015.

**HILGERS:** Good afternoon, Chairman Bostelman and members of the Natural Resources Committee. My name is Mike Hilgers, M-i-k-e H-i-l-g-e-r-s, currently represent District 21, which covers northwest Lincoln and north Lancaster County. Today, I'm very pleased to introduce LB1015, which is a bill to authorize the Department of Natural Resources to take all actions necessary to develop a multi-purpose project that will divert water from eastern Colorado for use in Nebraska pursuant to the 1923 South Platte River Compact. The Platte runs through the heart of Nebraska and provides drinking water to more than half of the people of our great state, including Lincoln, an area that I represent. The river also supports irrigated agriculture, produces hydropower, sustains wildlife, and generates countless recreational opportunities. Nebraska currently is entitled to demand 120 cubic, cubic feet per second of water from the, from the Platte River during the summer under the, under the compact. The compact also allows Nebraska to divert demand over four times more than that, in other words, an additional five 500 cubic feet per second in the winter, but only if, only if Nebraska constructs the canal as authorized by Article VI of the compact. As an attorney, I can tell you that-- how important it is that Nebraska protects its legal rights under the contract-- under the compact. As you will hear shortly from Governor Ricketts and Director of Natural Resources, Tom Riley, if Colorado develops as they have currently planned, the 500 cubic feet per second this canal can capture will be gone forever. This will certainly jeopardize our existing water uses and force us to seek more expensive and less certain water supplies. The water from the Platte River supplies not just western Nebraska, but also the communities in eastern Nebraska as well. Those include, of course, the city of Lincoln, as I mentioned, as well as Omaha and other communities in Douglas and Sarpy County, which rely on the water flows from the Platte River. While this particular project is, is certainly further west, every drop of this-- of the Platte River

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Natural Resources February 9, 2022

is critical to the communities out in eastern Nebraska as well. And while these communities continue to plan for future growth, they can't-- cannot lose the water supplies they current-- currently rely upon. I would just say I did not bring any bills last year as Speaker and was not my intent to introduce any bills this year as Speaker. I have brought two, as you now, today and-- as well tomorrow, both on water. Water is one of our most important natural resources and truly the future of our state relies on our people and consistent water supplies. I think looking at the facts in support of this particular bill and this canal project, as we dig deeper in, I think it becomes very clear how critical it is for the state of Nebraska to invest in this project to protect our water supplies going forward. Governor Ricketts, as I mentioned, will be behind me, as well as Director Riley as, as well as, I'm sure, a number of other testifiers. I am more than happy to answer any questions that I, that I can now. And with that, that's my opening.

**BOSTELMAN:** Thank you, Mr. Speaker. Are there questions from committee members? Senator Wayne.

**WAYNE:** As an attorney, how, how long do you think this will be caught up in litigation?

**HILGERS:** That's a good question. I wouldn't assume in any particular case that it will be caught up in litigation. I think if you read Article VI of the compact, Senator Wayne, I think our rights are pretty clear.

**WAYNE:** And since we have not exercised those rights in over almost 100 years-- we started a canal and then abandoned it-- do you still think that we still have those same rights once you start exercising, but then don't--

**HILGERS:** No, that's a great question, Senator. Wayne. In fact, one of my first questions when I, when I read of the compact and understood how old it was, was exactly that, which is in my private practice, oftentimes, if you don't lose your rights, you can lose them, but talking to the Attorney General and others, these kinds of pacts-- compacts are a little bit different. If we don't lose them like you would maybe under a normal contract, there's no statute of limitations for a compact of this kind.

**WAYNE:** And in order to build-- in order to access the Colorado side, we have to start over here in order to start that or--

**HILGERS:** Well--

**WAYNE:** --how else can we ensure-- is there, is there a legal remedy, without exercising eminent domain in Colorado, that would allow us to continue to make sure Colorado keeps their same amount of flow?

**HILGERS:** Senator, it's-- Senator Wayne, I don't know if, if sequencing-- we would have to do one then the other. I think you would exercise eminent domain in furtherance of building the comp-- the canal under Article VI. So I don't know if-- I don't know how they would be-- maybe a question for Director Riley in terms of how-- if you would build in Nebraska, then Colorado. I think you have to do both. I mean, I think that's the beneficial use that's contemplated under Article VI.

**WAYNE:** I guess my question is can we, can we impose a lawsuit or an injunction to allow them to continue to flow without exercising the right of building a canal?

**HILGERS:** So I would say-- and we're building a record here and the Attorney General represents the state of Nebraska. This is introducer of the bill, not the position of the state, but the way that I read Article VI is we, we have the right to enforce those flows if we have the beneficial use, which is the canal. So unless we have the canal, we can't enforce those flows. That's my interpretation.

**WAYNE:** And what's the economic impact if we choose not to exercise this right and i.e. lose water?

**HILGERS:** Well, I think it will be devastating. I haven't seen any particular study, but what Colorado is-- what I have seen from the information is Colorado has suggested that their projects will take more-- 90 percent of the flow that we would be otherwise entitled to with the canal. I think you would judge that in pretty drastic economic terms, but also quality of life terms and the future growth of our community terms.

**WAYNE:** Now that study that was-- that was a study done by the legislature. Now we do a lot of studies, too, on the future. It wasn't actually a proposed business plan to build out the rest of Colorado. It was a study done by the legislature in Colorado. Would we build up to-- this is might-- not a fair question. Do we build up to the border and see if they continue to build out or would we exercise all the way through?

**HILGERS:** That's a good question. Senator Wayne, might be a better, better answer by Director Riley or the Governor. I certainly think, to your point about studies, whether the studies are an accurate forecast of the future, I think, is an open question. But what I don't think is an open question is the tremendous growth in the front range and the demand on water west to east. And so whether that's precisely accurate, it's 90 percent within ten years, or 80 percent within seven years, or 100 percent within three years, I can't quite say, but what I think is inevitable is that the growth in the eastern part of Colorado will absolutely put a demand on this-- on the Platte River unless we do something. And the what-- the second part of your question, I'm sorry.

**WAYNE:** You answered it good enough for me. I honestly don't get-- ask you questions so I was like this is my opportunity. I'm gonna think of some questions on the fly right now.

**BOSTELMAN:** Senator Moser.

**MOSER:** Mr. Speaker, thanks for coming to talk to us today. One of the questions that I get from people when I talk to them about this project is that-- well, two things: the, the game that we get for what the cost is, is-- it costs a lot of money to get not a lot more water. So are there ways to build into this some safeguards so that we don't have to go like all in? I mean, I know we've got a hand with four clubs and we got three cards to turn on the table and the odds are, are good, you know, we're going to have a good hand, but how do we protect ourselves as we move forward with \$500 million potentially to invest in this so that we don't spend money and then not be successful?

**HILGERS:** Well, I might, I might take issue with the premise of your question, which is that we would spend a lot of money and not get much more water. I certainly think as the-- as maybe the recent history might suggest, that we would continue to get some-- we have had some of the flows that we would like to get. But that is, that is not-- we only have a certain scope of legal right. If we do not build, Colorado will be able to take more and more water. And as you heard in my opening, 500 cubic feet per second is a significant amount of water that we would lose, we would lose if we don't build the canal. So the-- I-- for those who might suggest that we are only adding additional cost to not-- and we don't get much more additional water, I think that isn't the right frame of the question. I think this is an insurance to make sure that we can continue to get the water that we, that we are entitled to under the compact. So I think

it's very important. In terms of the cost, there's no doubt the number, I think compared to other budget items that we might have, is-- you know, it's not insignificant; \$500 million is a lot. But I would ask what's the cost of us not acting? If we don't act now and the growth of the front range does actually do what Senator Wayne and I were discussing, 80, 90 percent, 70 percent, 60 percent, put the number on and reduce flows from the Platte, think of the really incalculable cost that it will im-- that it will have on the state of Nebraska, not just in the western, but also the eastern part of the state.

**MOSER:** Thank you.

**BOSTELMAN:** Other questions from committee? Seeing none, thank you, Mr. Speaker. Will you stay for closing?

**HILGERS:** Yes, sir. Thank you, Mr. Chairman.

**BOSTELMAN:** We'll now entertain those who would like to speak as a proponent. Governor Ricketts. Good afternoon, Governor Ricketts.

**PETE RICKETTS:** Good afternoon, Chairman Bostelman, members of the Natural Resources Committee. My name is Pete Ricketts, P-e-t-e R-i-c-k-e-t-t-s, and I am the Governor of the great state of Nebraska. Thank you very much for giving me the opportunity to testify in favor of LB1015. After our people, water is our greatest natural resource here in the state. Agriculture is our number one industry, accounts for about 20 percent of our state GDP and about one in four jobs. And Nebraska is the largest irrigated state in the country, 9 million acres. In fact, three in eight of our farmland acres are irrigated and this is how we feed our nation and the world. And folks, we have done a wonderful job here in Nebraska of managing our water resources. Our farmers and ranchers were the original conservationists. And 50 years ago, far-sighted Nebraskans had the vision to put in place our system of water management through our natural resource districts based on river basin that have helped us keep the Ogallala aquifer within one foot of where it was in the 1950s. And I'll contrast that to Colorado. Colorado has mined their Ogallala aquifer and their aquifer is nearly 14 feet below where it was in the 1950s and therein lies our problem. Colorado is looking to take our water. The Denver area is projected to grow by more than double by the year 2050 and I believe Senator Wayne referenced a bill the Colorado Legislature passed where they said they wanted to make sure-- and this is their words, not mine-- that no excess waters above the legal minimum came to Nebraska. Last year, they released

their basin implementation plan. In that plan, they proposed 283 projects spending \$9.8 billion; 17 of those projects are already completed, 81 are underway. And if those projects were all to be completed, it would reduce the water coming to Nebraska from the South Platte River by 90 percent. Let me say that again. It would reduce the water coming to Nebraska from the South Platte River by 90 percent and that would have a huge impact on Nebraska. I already mentioned irrigation and how important it is to agriculture and as the Speaker mentioned as well-- and I want to thank the Speaker for introducing this bill-- we rely on drinking water for communities all along the Platte River, including here in Lincoln and in Omaha. We also use the Platte River to generate power, hydroelectric power. And our largest power generator, Gerald Gentleman Station uses that Platte River water to cool its plant. And of course, we also have an obligation to the natural environment. We provide water in the Platte River to protect species all up and down the river. All of those will be threatened if Colorado reduces the amount of water coming to us in the South Platte River by 90 percent. It'll put a much bigger strain on the North Platte River. Now here's the good news: we have a solution. In 1923, we signed a compact with Colorado that allows us to build a canal from the South Platte River in Colorado to a reservoir system in Nebraska. And during the nonirrigation season, we can get 500 cubic feet a second, as the Speaker described. However, as also the Speaker described, we only have the ability to require Colorado to deliver that 500 cubic feet a second if we build the canal and reservoir system. This is critical to make sure that we can get access to that water. This water is going to be critical for all the things I mentioned: agriculture, drinking water, the natural environment, power generation. And to put that 500 cubic feet of second in perspective, in 2012, which we all know was a drought year, bad drought year, the flows in the Platte River in this area of the state fell to 200 cubic feet per second. So it's a huge hedge against future droughts. Now, as Senator Moser had mentioned, people said, well, this is an expensive project. The cost of not doing this is way greater because it's going to be putting future-- the future prosperity of our state at risk. Fifty years ago, people took steps to protect our water here in the state. Fifty years from now, Nebraskans will look back on us, this generation, and ask were they the far-sighted visionaries that secured Nebraska's water for our agriculture, for our drinking, for power generation, and for the natural environment? Or will they look back on us and say this generation failed the state? That's the choice we have today and that's why I'm here to encourage the committee to ask you to advance LB1015. And with that, I'd be happy to take questions.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Natural Resources February 9, 2022

**BOSTELMAN:** Thank you, Governor Ricketts. Are there questions from committee members? Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Chairman Bostelman Thank you, Governor, for being here. I can't pass the opportunity to ask the Governor a question. So my understanding, and you, you did a very nice job of explaining it, is that we need to take this action to perfect our right that we have a right to, right? The water claim is not effective until we build the canal.

**PETE RICKETTS:** To require-- the, the only way we can require Colorado to deliver that 500 cubic feet a second is if we build the canal and a reservoir system. And in fact, just on that point, last week, February 4, Colorado dropped a bill that said they are prioritizing all their South Platte River Reservoir projects. They are trying to take our water.

**J. CAVANAUGH:** And this is because of the agreement we made in 1923, which has primacy over any later allocation because water right is first in time, first in right?

**PETE RICKETTS:** So the only way we have the ability-- and I'll refer the-- I'm not an attorney--

**J. CAVANAUGH:** I might be asking the wrong person.

**PETE RICKETTS:** --so I'll refer all the legal details to an attorney, but the only way that we-- my understanding is the only way we have the ability to require Colorado to deliver that 500 cubic feet a second in the nonirrigation season is if we have the canal and reservoir system.

**J. CAVANAUGH:** So my question is do we have no other legal mechanisms to preserve any nonirrigation season water?

**PETE RICKETTS:** Colorado would have no obligation to give us-- and again, in their bill that they passed, they said they do not-- and this is important because again, they said they do not want to give us any water above any what they term excess water above legal minimums. Legally, they're not required to give that to us. And again, if we-- if they do these projects and we see what our natural-- Department of Natural Resources assessment is, they reduce it by 90 percent, that water coming out of South Platte River, which what they proposed, then we are going to be hugely impacted here in the state of Nebraska. It will dramatically reduce what they're providing to us today.



Transcript Prepared by Clerk of the Legislature Transcribers Office  
Natural Resources February 9, 2022

**J. CAVANAUGH:** So that, that kind of answers my question, but just to be clear, the 90 percent-- so they couldn't make the Platte-- South Platte be bone dry. There still has to be some flow in it.

**PETE RICKETTS:** We would have no legal obligation or no way to require them to provide water in the South Platte River, just as the state of Nebraska, other than this compact.

**J. CAVANAUGH:** Thank you.

**BOSTELMAN:** Senator Gragert.

**GRAGERT:** Thank you, Chairman Bostelman. Thank you, Governor. I just have a quick question on if Colorado wouldn't have started these projects, would we be acting?

**PETE RICKETTS:** I think one of the things that we've seen is actually-- and I want to really complement our natural resource districts, our public power districts, our Department of National Resources, and the Attorney General's Office. They've been watching the developments in Colorado and seeing what Colorado is doing with regard to the front range and the amount of water they're looking to get and this basement implementation plan they announced last year. And that really is the impetus for us exercising our rights because we are worried about what will happen in the future. While we've been able to get the water in the past, these projects would threaten our ability to get those projects in the future and that's why we need to do this right now.

**GRAGERT:** OK and defining right now, is that if we-- if this is approved, we-- construction would start within a year or two?

**PETE RICKETTS:** Well, I'll let Director Riley, who follows me, talk about the details, but I presume that with the appropriation of the Legislature, we would start hiring the engineers to do the engineering studies and then we would be able to get a more accurate timeframe. But we would begin immediately, you know, engaging those engineers to be able to figure out how we're going to build this canal and reservoir system.

**GRAGERT:** Thank you.

**BOSTELMAN:** Senator Hughes.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Natural Resources February 9, 2022

**HUGHES:** Yes, thank you, Governor, for being here today. So during your testimony, you said that Colorado has roughly \$9.8 billion worth of--

**PETE RICKETTS:** \$9.8 billion--

**HUGHES:** --projects?

**PETE RICKETTS:** --through these 283 projects, yes.

**HUGHES:** And that's all on the South Platte?

**PETE RICKETTS:** I don't know that it's all in the South Platte. I think that's-- all that's river basin, but I'd defer to-- Director Riley would probably know the details about where all those projects are.

**HUGHES:** Well, that-- if it's on the river basin, so-- but I'm not-- so I guess my point, the, the concerns that I've heard of the price tag in Nebraska is \$500 million. Just my, my math--

**PETE RICKETTS:** But relative to what Colorado is spending--

**HUGHES:** Yeah, if they're willing to spend roughly \$10 billion for water in that basin and we're going to spend half a billion, I mean, that's 5 percent, if my math is correct, for-- to protect the same amount of water?

**PETE RICKETTS:** Yeah, Senator, I give you--

**HUGHES:** 90 percent--

**PETE RICKETTS:** --100 percent. Relative to what Colorado is proposing to spend in that basin on these different water projects, we're-- the state of Nebraska is spending significantly less and it will secure that compact from 1923 and that 500 cubic feet a second in the nonirrigation season.

**HUGHES:** That's what I wanted to hear--

**PETE RICKETTS:** Yeah.

**HUGHES:** --thank you.

**PETE RICKETTS:** It's a-- in my opinion, it's a bargain.

**HUGHES:** Yes.

**BOSTELMAN:** Senator Wayne.

**WAYNE:** How are you doing today?

**PETE RICKETTS:** I'm doing fine, Senator Wayne. How are you?

**WAYNE:** I haven't talked to you in a while, so we'll just catch up publicly. So this is more of a philosophical question for you. If the justification-- well, first I got something from the DRN [SIC] or-- yesterday that said that this is about a-- this could result in about \$1 billion of economic loss. Is that-- are you familiar with that number?

**PETE RICKETTS:** Yeah, I would, I would refer to Director Riley to get into the details of it.

**WAYNE:** OK.

**PETE RICKETTS:** But yes, again, as I mentioned, it could have a huge impact on our state.

**WAYNE:** So if the justification for building a canal to spend \$500 million to protect \$1 billion of economic activity, I guess the philosophical question is wouldn't it also be equally justifiable to spend \$500 million to create \$1 billion of economic activity?

**PETE RICKETTS:** Well, I can tell you right now that any time you're making about-- I'm going to spend \$5 million to get \$1 billion, in actual additional economic activity, it's speculative. But we know that if we lose this water, that is something that will have a big impact on our state because we're using the water today. And Colorado is, with their projects, is threatening to take away that water. So we're trying to protect something that we have today. This is not something speculative in the future. This is about protecting what we have today and making sure we continue to have access to it, not about some hypothetical project that may happen in the future.

**WAYNE:** I don't know if it's hypothetical, but the first thing you brought up was that people-- besides people, water is important. And what I'm trying to figure out is if we put \$500 million into economic development for jobs, I don't think it's speculative when it's going to create well over \$1 billion.

**PETE RICKETTS:** But if you want to create jobs in the state and you don't have water, you're not going to be able to create the jobs.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Natural Resources February 9, 2022

**WAYNE:** I don't disagree with that. I don't disagree with that, I just-- philosophically, I wanted to know where you were on that. When we got a lot of dollars, are we looking to protect or invest? It's always that question we always got to ask and so I just wanted to get your, your thoughts on that.

**PETE RICKETTS:** Yeah, I think like anything else, right, we always have to prioritize, just like every Nebraska household, you know, prioritize where your spending is going to be. And I think prioritizing to protect the water that we're getting today and our state's largest industry, which is going to be our largest industry for the foreseeable future, is where we need to prioritize our dollars.

**WAYNE:** Along those priorities, \$500 million, it-- does it make sense to put aside \$500 million now versus maybe \$30 [million], \$40 million to figure out the architect and the planning versus the \$500 [million] right now?

**PETE RICKETTS:** I am asking for the \$500 million so that we can make sure we've got the money set aside to complete this project. I think you referenced as well the conference-- the, the canal had been begun, actually begun in 1891 and not completed, so that's why I think it's important for the state to set aside this money to ensure the project can be done so that we can get the benefit from it.

**WAYNE:** Thank you.

**BOSTELMAN:** Senator Moser.

**MOSER:** Well, I don't want to misint-- mislead people into whether I support the canal or not, because I asked Senator Hilgers about the cost of it, but, but you're not averse to doing it some less expensive way if there's progress that can be accomplished without spending the \$500 million?

**PETE RICKETTS:** Yeah, so I believe the way the bill is written is that if it doesn't require the \$500 million, any money that is not spent goes back to the General Fund.

**MOSER:** And it's-- you're only going to commit what you need to make progress toward getting it done at one-- any one time.

**PETE RICKETTS:** Yeah, that's correct. So we'll set the money aside, but obviously we're only going to draw the appropriation as we need it. Obviously initially, it's just going to be for things like

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Natural Resources February 9, 2022

engineering studies and I'm going to defer to Director Riley on the timing of it, but, you know, we will only spend the money as we need it to start the project.

**MOSER:** OK, thank you.

**BOSTELMAN:** Senator Gragert.

**GRAGERT:** Not really a question, Governor, but I just want to say I really appreciate the value you put on water. Thank you.

**PETE RICKETTS:** Well, thanks. It is, again, our most valuable natural resource after our people. We need to make sure we continue to preserve and protect it, manage it and steward it, just like previous generations have.

**GRAGERT:** Thank you.

**BOSTELMAN:** Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Chairman Bostelman. Thanks again, Governor, for being here. This just made me think about the-- obviously the North Platte comes out of Wyoming, and we're kind of, I guess, in this problem because we hadn't considered getting a appropriation agreement with Colorado about the nonirrigation period of time. Do we have a protection for our water coming out of the North Platte out of Colorado-- or out of Wyoming?

**PETE RICKETTS:** You know what? Director Riley is going to follow me--

**J. CAVANAUGH:** OK.

**PETE RICKETTS:** --so I would defer to him with regard to what the obligations on the North Platte River are and he can talk in more detail.

**J. CAVANAUGH:** Thank you.

**BOSTELMAN:** Governor-- Senator Wayne.

**WAYNE:** Is there anything else you would like to tell us?

**BOSTELMAN:** He used my question.

**PETE RICKETTS:** Is that an open invitation for me to keep talking?

**WAYNE:** [INAUDIBLE]

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Natural Resources February 9, 2022

**PETE RICKETTS:** I can talk for a long time, Senator. No, I do appreciate the committee giving me the opportunity, though, to talk about this project. I do believe this is-- again, water is vital to our state. This is what-- agriculture drives our economy. It's the heart and soul of what we do and if we don't protect our water, we are undermining the very foundation of what our state economy is. There will be no future prosperity if we don't manage our water for the future.

**BOSTELMAN:** Seeing no other questions, thank you, Governor Ricketts, for coming in today and your testimony.

**PETE RICKETTS:** Great. Thank you, Chairman.

**BOSTELMAN:** Next proponent, please. Before you start, Director, do you have handouts for us or not?

**TOM RILEY:** I do have some handouts.

**BOSTELMAN:** Page for you.

**TOM RILEY:** And I'll address those in my testimony

**BOSTELMAN:** Good afternoon, Director Riley, and welcome.

**TOM RILEY:** Thank you, Chairman Bostelman and members of the Natural Resources Committee for having me here today. I'm Tom Riley, T-o-m R-i-l-e-y, and I'm the Director of the Department of Natural Resources here in Nebraska. I'm here to support LB1015, as this bill is central to water security in Nebraska. Senator Hilgers and the Governor made it clear that the need for this project is now and why we need to act now. I won't revisit that except to say that in my 35 years as a water resources engineer practicing in the field, I've never seen a more important water project for Nebraska. I want to thank the Governor and the Speaker for their foresight and leadership on this project. Let me inform you what will happen if Nebraska delays this project. If Colorado fully executes on its front range expansion plans, 90 percent of the water we currently receive at the state line at the South Platte River would be lost. We'll have no choice but to attempt to make up for those lost flows somewhere else. Today, our only feasible option is to replace those lost waters from storage in Lake McConaughy on the North Platte River system. This means lake levels will be lower, hydropower production will decrease, water supplies needed for irrigation for our farmers and municipal supplies for our cities would be jeopardized, and the millions of dollars that have already been invested by the state in the natural

resource districts to address the basins overappropriated water supplies would be for naught. All of those users will likely be subjected to additional regulatory restrictions and substantial increases to the cost of their service. We've evaluated the benefits of the canal by estimating the total value of the uses that we're seeking to preserve and protect. The economic impact of losing just a portion of this water would be in excess of \$1 billion. This analysis was done to validate the investments in the project and they're warranted. Enacting and funding the Perkins County Canal ensures Nebraska will continue to receive those benefits in perpetuity. Conversely, no action, we lose those benefits forever. If the project is not built, Colorado can simply cut off the supply. And if you read some of the recent stories in the newspapers, that's exactly what they're saying they're going to do. Their plans are now accelerating, including new legislation that the Governor mentioned and, for example, an \$800 million plan to pump tens of thousands of acre-feet each year 150 west to the Denver area. This is a catastrophe that we can prevent. The project proposed by LB1015 would capture all remaining South Platte River Compact allocation, the winter flow, and ensure it remains available for Nebraska water users. All this can be done while we balance our commitments to protect the natural environment that Nebraskans currently enjoying. Indeed, if Nebraska fails to act and assert its rights on the South Platte River, less water will cross the state line in the future. By passing LB1015, we'll ensure the South Platte flows are maintained in the key stretches that support federally protected species and their habitats and give water managers greater flexibility to maximize while-- maximize wildlife benefits. This flexibility will work to limit increasing federal obligations under the Endangered Species Act and those burdens that could otherwise force Nebraskan-- or be forced on our Nebraska water users. I want to emphasize that this project is absolutely feasible. From an engineering standpoint, this project can be planned and bid with construction commencing as early as 2025. This will ensure our South Platte water supplies are secure and protected while complementing the planning of additional supplies for our cities. There's no debate about the existence of our rights and I will do everything in my power to ensure our long-standing cooperative relationship with Colorado continues as we work toward completion. Finally, I'd like to address a point of confusion about the compact and the project. While the project is called the Perkins County Canal and this is a colloquial name that's come about because it's identified in the compact itself, the canal and the reservoirs would be designed and constructed to protect and preserve the water in the Platte River Basin. We must act now to prevent losing Platte

River water from being lost forever to new growth in Colorado. I've left the committee a few handouts that will further explain some of the background for the project, including recent legislation, as recent as last Friday, that Colorado dropped, SB 22-166, which prioritizes South Platte storage water through the legislative actions there. I've also provided a letter from Director Macy at the Nebraska Department of Environment and Energy that addresses the project's eligible ARPA-- or ARPA eligibility. Given that, Senator, I'd be happy to answer any questions.

**BOSTELMAN:** Thank you, Director Riley. First question I'm going to have is how long will it take to build this project?

**TOM RILEY:** So using my own engineering background experience, given the authority and the dollars to do so, it would take about 18 months to 36 months to design, layout the project, and have it ready for bid for construction. Construction activities, I'd estimate on a five- to seven-year window and we could be using this project within a decade.

**BOSTELMAN:** Why do you need the \$500 million now?

**TOM RILEY:** Well, beyond just the construction element, we need to show that-- Colorado, at least, that we intend to build this project and having the construction dollars available and we get to that point of bidding it out, we need to have that money ready to go so we can hit the road running on that. And I think we don't need to look any further than Colorado accelerating their own needs to try and capture as much of this water and they're giving them money-- I noted \$800 million-- right now for a project to use the very water that we're trying to protect and keep coming to Nebraska. So we need it now to get the job done now.

**BOSTELMAN:** And I would presume that the \$500 million projections out there includes projected cost increase and construction and those type of things?

**TOM RILEY:** Senator, to the best of our ability, we try to include those. I can tell you in the environment of design, engineering, and architecture costs right now, it's a little hard to, to say. There might be some cost increases just because of all the logistics and things that we've seen as a country and really our nation and state with some of the cost increases in the last couple of years. But I feel pretty good about that number and the ability to manage it. And again, those prices do increase the longer we wait. What also happens is Colorado is continuing to access this water. They're using it for



a municipal supply. It'll be harder and harder if we think we could ever rake that back for our own uses. So the time for the money is now, as is the legislation.

**BOSTELMAN:** So will this, will this provide us any additional water?

**TOM RILEY:** So Senator, it's not giving us additional water per se, but it is protecting what water we have now. It's really the opportunity to protect that, as the Governor said, for our future generations. If we lose the baseline that we have now with water-- and I think everybody would agree that it's probably not good to have less water in the Platte River-- if we lose that, the cost is the benefit. The benefit of those uses right now, that's how we calculated them. If we lose those benefits, we'll lose them forever. So while there's not additional water, it does establish the ability to gain our entitlement. The project also allows the state and our water users to manage our water portfolio best in time and place. So this project would give us an opportunity to manage that water in a better, better way than we could now.

**BOSTELMAN:** So how will the project impact our compliance with endangered species?

**TOM RILEY:** So I think it was-- Senator Cavanaugh asked about the North Platte River and, and, and our obligations for that. That, that's set aside with another decree with Wyoming on, on those uses. And actually the headwaters of the North Platte River start in Colorado so they're a part of that as well. But over the years, we've reached an agreement with the Fish and Wildlife Service, Colorado, Wyoming, and Nebraska to manage those resources that you're talking about in the Central Platte River for endangered species. This project will help us to, I think, strengthen and complement those very activities that are going on now in that we have the ability to store water in the South Platte River system. The North Platte River system already has some difficulties with conveying water, something that the interest to bring water to the Central Platte would like to do, bring more water down. That gets harder to do in the North Platte area because of the river channel has been clogged and for lack of a better word, you just can't convey as much water. If we had a system like this, this could really complement the ability to move water down the system.

**BOSTELMAN:** Thank you, Director. Are there questions from committee? Senator Aguilar.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Natural Resources February 9, 2022

**AGUILAR:** How many jobs would you estimate will be created building the canal?

**TOM RILEY:** So Senator, that isn't something that we actually calculated in our economic evaluation. That would certainly be another benefit during the construction of a project like this. Over the number of years, you'd have those jobs that would be created during that time frame, but I don't have a good answer for you here, but I'd be happy to get one for you later.

**AGUILAR:** Thank you.

**BOSTELMAN:** Senator Hughes.

**HUGHES:** Thank you, Chairman Bostelman. Director Riley, thanks for coming today. So is it unusual to wait decades before a compact is enforced? I mean, are there other compacts that the state of Nebraska has been involved in that have been agreed to, you know, decades sooner and then enforcement at some point comes into play?

**TOM RILEY:** No, it's, it's not unusual, Senator. And in fact, I can tell you that in spades on the Republican River, that those issues of, of compliance and the necessity to, to look at that with the other states came much later. Now this part of the compact in the South Platte is different in that we've never enforced or asked to use our entitlement that we have under Article VI in the, the compact and that's what we're talking about here, being able to have that entitlement and use it. And right now, we know that Colorado continues to use that water because we haven't done it before. And let me just read you something that spurs my, my memory about this. Just-- just read this today and this is not a direct quote, but paraphrased in a news article that the 1923 Compact reserves 500 CFS for Nebraska, but ties to the canal project. Since it was never built in Colorado. Colorado has never had to meet the quota. This comes from Colorado. So until we build this canal, we really don't have the authority to demand our water.

**HUGHES:** So the, the recent legislation that was introduced in Colorado, I didn't see any price tag on-- any, any estimate of allocation that the Colorado Legislature was willing to spend. Have, have you heard of any number that they're going to try and include in that bill?

**TOM RILEY:** And by the way, I, I included that bill in your packet of information for your reference. Not directly, it just got dropped

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Natural Resources February 9, 2022

Friday. It talks about directing all water or all monies into a fund to be able to accelerate these storage projects. I would expect that some of those are the ones that they've already mentioned that you've heard the Governor say, over, over 280 of them that they have in play, but I don't have a specific number for you.

**HUGHES:** OK and then last question, if I may, you've indicated in the past that there is language that Colorado includes in water rights if you're building a subdivision that does indicate that you can have this water as long as Nebraska doesn't enforce their-- or doesn't enforce the compact. Is that-- do you have that--

**TOM RILEY:** Yes, I can, I can give you some, some background on that. So as in Nebraska, Colorado issues orders on water rights and water rights is a first in time, first in right, the prior appropriation system. This compact gives us the authority to go back to 1921 and call out rights junior, or those established past 1921. Up until the mid 1980s at least, Colorado generally included, when they gave you a new right, a junior right, a paragraph that highlighted and pointed out to that water user's risk that if Nebraska would pursue this portion of the compact Article VI, that they would be at risk for not being able to have that water rate that they were granted.

**HUGHES:** So they would in essence be a junior water right to Nebraska's senior water right. Is that correct?

**TOM RILEY:** That, that's correct. And to maybe simplify that, the first in time, first in right, someone that came before has the right to call out someone that comes out after and stop them from using their water to get their own supply.

**HUGHES:** OK, thank you.

**TOM RILEY:** Thank you.

**BOSTELMAN:** Senator Gragert.

**GRAGERT:** Thank you, Chairman Bostelman. Thank you for your testimony. I was just wondering, you know, with the canal and the canal being the action that we need to do now, is the canal going to be the only project that we're going to need to do or will there be reservoirs down the road that will also be required with this project?

**TOM RILEY:** So Senator, we would have just not the canal, but a system of reservoirs to take that water in and redistribute it in time and place back to the South Platte River for purposes of agriculture,

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Natural Resources February 9, 2022

environmental needs, and those things, so. So we would store this water in, in reservoirs inside of Nebraska.

**GRAGERT:** So the \$500 million, that just includes the canal, not the reservoirs that will follow?

**TOM RILEY:** No, sir, that does include the construction of a reservoir system as well.

**GRAGERT:** Oh. Thank you.

**BOSTELMAN:** Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Chairman Bostelman. Thank you, Director Riley, for being here. So I had a couple of questions that come up over the-- you sort of answered the one on North Platte. Do we-- or-- do we have a compact with Wyoming and Colorado that contemplates the nonirrigation season?

**TOM RILEY:** So, so that's a, that's a messier compact, sir, and they're all different, a little bit different. It, it does allocate different water out of different reservoirs and different times. Unlike this reservoir, which-- or under-- unlike the South Platte Compact, which really has the two provisions. The summertime provision that manages flows, if they are reduced under 120 CFS, Colorado has the responsibility and obligation to manage and, and stop junior users just as it would if we enforce the Article VI piece that highlights the 500 CFS, so-- in the wintertime. So that's quite a bit different from the North Platte, so it's not a good necessarily comparison.

**J. CAVANAUGH:** And I don't want to get too deep into the North Platte. I wanted some-- I just want to know if we're going to be in the same position at a later date on the North Platte, where we're going to have to go and take some other action on, on that. As to-- so that number, we have no number between October 16 and March 31. Could the South Platte River be a dry riverbed in, in that period then without some action?

**TOM RILEY:** Senator, that's exactly why we need to run this-- develop this project because it very well could, could go to that if Colorado continues to use those waters that come in that time of the season.

**J. CAVANAUGH:** So there's no minimum obligation?

**TOM RILEY:** Not in the wintertime.

**J. CAVANAUGH:** OK and as to the prior appropriation part, and this is-- I'm confused about, I guess, so we have a prior right, first in time right under this compact for the water that goes through this canal. However, over the last 100 years, we have been using that water and it's been appropriated in many places throughout the state of Nebraska and across that. What is the difference between these projects that Colorado is talking about now that would give them primacy over the use that's already being undertaken for that water in Nebraska? How come we don't have a prior appropriation right already?

**TOM RILEY:** So, so the compact was developed to really manage two different things. The first was the western canal's need for water and there is a litigation history behind that. And at that time, most of the uses for water-- and continue to be today-- are in the summertime. The wintertime uses are kind of the off time that you normally would not have an irrigation demand or a demand on water, a beneficial use that you'd be calling out for. So it's unusual in that aspect that we'd be able to call out those uses. However, in Colorado, as I understand it, for their groundwater pumping, in certain instances, they pump groundwater in the summertime. To the extent that those groundwater pumpers deplete flow in the, in the Platte River, they need to offset those. Colorado does this with augmentation plans and those plans take water from the wintertime to offset the summertime flows. So that's water that presumably in some instances, we'd be able to call out that as well.

**J. CAVANAUGH:** But I guess the question still is if the rights have to be based on use or authorization or appropriation, we have been over the last 100 years using these 500 cubic feet-- or cubic-- I'm sorry, cubic feet of water in the wintertime. We fill up the reservoirs. We use it for municipal water supplies, right? I guess I don't understand why we don't have a right outside of the compact. I understand the compact doesn't contemplate anything other than the use of the canal, but how is there no other right that's been asserted or, or in place by us prior to this and why are these new projects in Colorado have primacy over existing uses in Nebraska?

**TOM RILEY:** I, I think I can address that. So the compact really defines the apportionment of water between the two states. That is the contract between the states. That is the federal law. While--

**J. CAVANAUGH:** So the-- I'm sorry to interrupt you. You did answer that. So the answer then, I guess, is individual-- this is not a situation between individual use. This has to do with the total

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Natural Resources February 9, 2022

amount that the state and that we as Nebraska then are responsible to police the amount of water that we get as part of the compact.

**TOM RILEY:** That's correct.

**J. CAVANAUGH:** And Colorado--

**TOM RILEY:** And once, once it comes into Nebraska, that water is managed through a water rights system that the department oversees. We work closely with the NRDs for the conjunctive management of groundwater uses as well, so.

**J. CAVANAUGH:** Thank you.

**TOM RILEY:** You're welcome.

**BOSTELMAN:** Senator Moser.

**MOSER:** How could you illustrate the magnitude of 500 cubic feet per second? I mean, it doesn't sound like a huge number. And, you know, compared to what water a city would use or an irrigator would use, I mean, how does-- how significant is 500 cubic feet per second?

**TOM RILEY:** So engineers create these difficult numbers to wrap your head around, but I think the best way to think about 500 cubic feet, think about 500 basketballs moving across at one time. That's kind of the volume of it. The use of-- if you have 500 CFS all day long in a stream, that creates about 1,000 acre-feet every day. So acre-feet is the amount of--

**MOSER:** An acre a foot deep.

**TOM RILEY:** That's correct, so that can give you some context of the volume. And some of the materials that I handed out, some of the, the water that we have at risk is at about 300,000 acre-feet. Again, we-- I get this information from Colorado. This is what they've said they're going to do. And we have an illustration in there that would suggest that Memorial Stadium, that would fill up Memorial Stadium about 1,000 times. Maybe Husker Football is not the greatest reference, but we're hoping it-- we're hoping it becomes a better one sooner.

**WAYNE:** It's better than basketball.

**MOSER:** Thank you.

**TOM RILEY:** You're welcome.

**BOSTELMAN:** Can-- all right, Senator Wayne, go ahead.

**WAYNE:** So I mean, kind of along the lines of what Senator Cavanaugh and Chairman Bostelman was saying, I'm just confused on the \$500 million right, right now. Is it just to-- you said earlier, just to show Colorado we're serious? Is-- does \$200 million get us to show that we're serious? Like, does it need to be \$500 million?

**TOM RILEY:** Well, \$500 million, Senator, that's the estimate to design and construct this project. And I'm suggesting that we could do that and have it ready to go in two to three years and we'll start to build it. So we need that money ready to go to hire a contractor to actually construct a project.

**WAYNE:** I did talk to Senator Hughes. If I get the dynamite and he gets a earth loader, we can do a lot, a lot cheaper. I'd blow it up for free-- shovel, but-- no, in all seriousness--

**TOM RILEY:** We're always looking for innovative construction techniques, value added.

**WAYNE:** No, in all seriousness, I think, you know, for me, water is one of the most important things and I see Mr. Winkler back there from the NRD and we, we've always talked about water, what we can do to make it better. Who maintains the canal on the, on the Colorado side? This is really selfish. I just need to know if I got to buy a Colorado fishing license or not.

**TOM RILEY:** So--

**WAYNE:** But how, how are we going to maintain and project to maintain costs for the-- for both our side and then who maintains the Colorado side?

**TOM RILEY:** Well, I think th--- my read of the conc-- compact would be it would be Nebraska's responsibility to maintain our diversion in that portion of the, of the, of the canal system within Colorado, just as it would be within Nebraska.

**WAYNE:** So if Colorado diverts, in our canal, water to breach that threshold, are we, are we going to go back in the litigation? Is that-- I'm just trying to think of how many billable hours this is going to cost.

**TOM RILEY:** I'm not sure I'd track your question.

**WAYNE:** So we, we build into Colorado using eminent domain. We have to maintain it, but if there's a subdivision who is taking water from that canal that we own, what's the enforcement rights? Like, who-- how do we enforce it?

**TOM RILEY:** Well, just, just as in Nebraska, they, they, they wouldn't be able to do that. I would, I would submit to you that the Colorado law system would not allow somebody just to take water in-- out of a system of somebody else's. But the authority for that, those details, I think we'd have to lay out with Colorado, but I presume that nobody's going to be able to stick their own straw into someone else's water just like they can't now. It's a senior user. You have a water right for it.

**WAYNE:** So who owns the canal then?

**TOM RILEY:** So the canal ownership, and the authority bill lays this out, would be with the state of Nebraska. The compact does give us the right to have eminent domain in Colorado, but I fully expect, just like in Nebraska, we work with willing buyer, willing sellers to first purchase and, and have that type of contract for the development and construction of the canal before we'd ever have to go down the eminent domain pathway.

**WAYNE:** This is interesting to me because in my district, I have Iowa, but it's not across the river. I have Carter Lake and so there's a lot of joint efforts between the Omaha Police and Omaha and-- but there's costs associated with that. So if somebody is boating on a canal in Colorado, I'm just trying to figure out who, who's protecting it, who's owning it, who's making sure the water quality is-- like, all those extra costs that are built into the construction, are we taking all those costs on and all those liabilities?

**TOM RILEY:** Well, we would, we would be responsible for the management and operation and maintenance of any facility like that. So that would be through the authority bill, on, on the DNR's plate to do that, but that would be with any project.

**WAYNE:** Well, this was not what-- this is a little different because we're in Colorado. So like, there's kids out there playing along the shores and illegally drinking. Who's enforcing that? Is it the shores there? And-- because all that matters in my district because



literally when you cross the street, you're in Iowa. And, and you don't have to cross the river, so there's some-- a lot of interlocal agreements, but I just don't know how that's going to happen when Colorado is probably going to be mad that we're enforcing this. So I'm just-- I'm, I'm trying to figure out the extra liabilities that are outside the \$500 million that the state's going to have to bear.

**TOM RILEY:** Well, I, I, I can't speak to the legal aspects directly, Senator, but I can tell you Colorado is, is probably mad. That's one way to put it. They're, they're pretty excited about this and it looks that-- more so every day about our intent to do this because it is important for us to maintain what we have now and not lose that, as you've-- your-- both the Speaker and the Governor talk about. It's difficult to lose the baseline from what-- from which you're working and I don't think I've heard from any one of the stakeholders and water users that I've talked to that have said that they are interested in having less water in the river and without our action here, that's really what we're up against.

**WAYNE:** And these questions aren't necessarily fair. It's the lawyer in me and conflicts law. It's one of the worst areas of law in the world and you have two opposing jurisdictions and which one applies. So I'm not opposed to this, but I will tell you where I am on this. And this is kind of for the general public, I think we have to protect our water, agreed, \$500 million, I have no problem committing \$500 million. I do have a problem with some of these details around the liabilities and things like that from attorney's perspective and that's just me, but I also have a problem when we say people then water. And I look at the community I represent who have not had any investment truly in years, 50 years, 60 years or more, who are looking for the same kind of investment of \$400 [million], \$500 million and we're not, we're not-- it's not being treated the same. And so my community is telling me, you're going to spend \$500 million on a canal for western Nebraska, but we're only getting \$12 million in north Omaha. So that's, that's the struggle that I'm dealing with. I just want everybody, you know, in this committee, to know where I'm at. Thank you.

**BOSTELMAN:** A couple of questions: what involvement, if any, do the-- will NRDs have in this?

**TOM RILEY:** Well, aside from-- they are a water stakeholder that we work with, just as the power districts and, and so forth. This will be a state water right. The state department will manage the facilities and decide the best and highest use for how that water is

distributed within the state. So to the extent that we'll work with all stakeholders, NRDs included, we'll work with them, but the decisions will be at the, at D-- DNR level.

**BOSTELMAN:** So-- and also, what, if any, do the surface water irrigators have within this project?

**TOM RILEY:** Well, they're, they're-- the stakeholder group that I mentioned, they also are part of that and we've continued to work with them, just as we do on, on all of our river basins. And of course, there's, there is a irrigation district that is right there, Western Irrigation District. Really, the impetus for what the compact and how it got developed was Western Irrigation District's interests, so we've continued to work with them as well.

**BOSTELMAN:** Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Chairman Bostelman. I forgot a question I wanted to ask you, Director. So about the riverbed being potentially dry, one, does the full 500 cubic feet have to go through the canal or is that just to get our right and then we can still let it run through the river?

**TOM RILEY:** So we would want to be able to divert that amount of water and put it in the reservoir system because it, it does give us the ability to manage our overall water portfolio in a better way. Of course, if we don't build a project, there wouldn't be 500 CFS available.

**J. CAVANAUGH:** Right, I'm asking if we build the project, will be-- will we be required to have all 500 feet go through the canal?

**TOM RILEY:** Well, presumably-- and this is true for any water, right-- we'd be able to take up to that amount in some-- and really, we're not limited. If there's excess flow, there's a flood or something, we might be able to take more of the channel capacity or the canal capacity could take it. But if there's 200 CFS in the river, we might take that.

**J. CAVANAUGH:** But if it-- if we don't take the full 500 through the canal, do we lose our access to it and could Colorado then appropriate the remainder of whatever we don't take through the canal? So if they're--

**TOM RILEY:** And I'm-- let me think about that. You know, if, if we're not taking our full amount, I think they're already trying to, to do as you suggest.

**J. CAVANAUGH:** Right, well, here's what I'm concerned about and what I'm kind of trying to get at is you're saying that we're getting to a point where when you're getting more than 500-- and generally, it's dropping below that and there may be something like get down to 501. And if we divert all that, the riverbed will be dry and we'll be still getting our water. Do we have an obligation to make sure that that section of the riverbed, for Endangered Species Act and other federal regulations, that we preserve any of the water flows in that river itself? And are we going to be damaging habitat by moving the water around and then presumably connecting it back up at some later date? So will there be a section of the Platte River that becomes dry as a result of our actions for periods of the winter?

**TOM RILEY:** All right, thanks for that question. I, I think I, I understand it better now what you're saying. Maybe let me start with we kind of-- we are at a tipping point in terms of those flows if we don't act now and they'll continue to go down and maybe less than 500 CFS. Generally, we'd always have some water that would go by and these river systems are, for the most part in various areas, gaining river systems so they don't stay dry very long. There is a tributary just downstream of where this would be, Lodgepole Creek, that brings water in and other irrigated lands that offer return flows to the river. So while there might be less water in that particular stretch, we'd again be able to regulate that further downstream in Nebraska, where some of the endangered species issues are, to be able to better provide water security for those.

**J. CAVANAUGH:** Thank you.

**TOM RILEY:** You're welcome.

**BOSTELMAN:** Senator Moser.

**MOSER:** The, the technology and the engineering to build this canal is not like putting a man on the moon. I mean, we've got canals like the Loup River Canal that takes water out of the Loup River and puts it back into the river after it generates electricity, where it is about 25 miles long. And as part of your process of getting this right of way, you'd need some margin so you can maintain the canal and you'd have to have some gates or something to let water in, I would assume, and control the outflow. And you've got that all figured out, you

know, or you will have it all figured out as part of the process. It's not like-- I think some people look at the size of the cost and the fact that Colorado's not going to be a, a willing donor necessarily of this water and they feel like it's, you know, like sending somebody to Mars and bringing them back alive. It's, it's just a matter of engineering and actually going through the process to claim our water. Is that true or is that--

**TOM RILEY:** Well, I-- Senator, I think that's a fair statement. I don't want to minimize the, the design of any kind of process, but it's a pretty straightforward one: moving dirt for the canal, we'd have to probably-- I would presume we would line some of these areas to make sure they don't leak, and building a reservoir. These are all, all things that-- we do civil works projects all the time in this state, so reasonably straightforward in that sense to do that. In terms of design, I would let, I'd let the committee know that to help inform me on some of the costs that we might see for this, we made use of a-- and some of you may have seen it-- of a, a document from the '80s that the Bureau of Reclamation put together. They laid out a more intricate system than, than what we might need and it had cost in that document and concept-level reservoirs and sizes and sizes of canals. I used that to inform us of what the cost might be today for a system that would probably be able to hold 150,000 to 180,000 acre-feet and divert the amount of flow that we're interested in and that's where the \$500 million comes up with. That also takes into account some of our design standards and such have changed in 45 years, so we tried to accommodate those as well in that cost estimate.

**MOSER:** Thank you very much.

**BOSTELMAN:** Senator Gragert.

**GRAGERT:** Thank you. Where, where does the Corps of Engineers come into play as far as the waters of the United States? Like on the Missouri River, they regulate the flow of water with some concerns about we getting or giving on our 500 CFS. Does the corps have jurisdiction on the regulation of, of the South Platte?

**TOM RILEY:** Broadly, the answer would be no. There might be some upstream reservoirs in Colorado that could have some flood storage, and in some instances, the corps can then be part of that regulation if-- in times of flooding. I don't think that's true, Senator, but don't hold me to that one. Where they might come into play is some of

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Natural Resources February 9, 2022

the standard regulatory procedures, 404 permits and those kind of things for what we-- when we would develop our diversion.

**GRAGERT:** Thanks.

**TOM RILEY:** You're welcome.

**BOSTELMAN:** Thank you, Director Riley for your testimony, appreciate you coming in this afternoon.

**TOM RILEY:** Thank you for having me.

**BOSTELMAN:** Next proponent. Good afternoon.

**KENT MILLER:** Good afternoon. Senator Bostelman, members of the Natural Resources Committee, my name is Kent Miller, K-e-n-t M-i-l-l-e-r. I am general manager of the Twin Platte Natural Resources District and our offices are in North Platte. I am testifying today for the Twin Platte Natural Resource District and I'm-- District and I'm also testifying for the Nebraska Association of Resources Districts. The Twin Platte Natural Resource Districts support LB1015. The Nebraska Association of Resources Districts' members, on January 25, voted to support LB1015. For the last 40 years beginning in the 1980s, I have been promoting that Nebraska utilize the provision of Article VI in the South Platte River Compact and to build the South Platte-- to build the South Divide Canal. It's also referred to in the compact as the Perkins County Canal. And I've always referred to it over the years as the South Divide Canal because I saw the benefits for this type of project for the Platte Basin. The majority of South Platte River in Nebraska is within the Twin Platte Natural Resource District. I have been observing the developments occurring in the front range of Colorado and their desperate need for water. The past opportunities that front range of Colorado had from the Colorado River on the west slope are going away or they're gone. I enthusiastically applaud and thank Governor Ricketts for proposing and funding the Perkins County Canal project. This is the right time and Nebraska cannot wait any longer. It is essential to the economic prosperity, health, and welfare of the people of the state of Nebraska and to the environmental health of the entire Platte River Basin across the Nebraska to protect Nebraska's full entitlement to the flows of the South Platte River that's provided for in the South Platte River Compact. Colorado cannot stop Nebraska from building the Perkins County Canal project and Nebraska must build the Perkins County Canal project now. This is in a compact that was approved by the legislatures in Colorado and in

Nebraska and ratified by Congress. I have heard time and time again from Colorado folks at conferences and in conversations. They are working to dry the South Platte River up at the Nebraska state line and the only protection Nebraska has for this-- for the water is in the South Platte River Compact. As, as was discussed earlier in this-- in testimony, the Colorado Legislature just last week introduced SB 22-126 and basically what it says is its requiring the Water Conservation Board-- that's a agency in the state of Colorado-- to prioritize water shortage in the South Platte River Base-- drought water storage in the South Platte River Basin. Now, this is the board that works with funding for projects over the entire state of Colorado. This was dropped last week and I'm sure it's directly related to what's proposed by Governor Ricketts to start prior to rising, moving that money to the South Platte River. I mean, they can't stop this project, but they're going to look at every option they can look at to do this. The Twin Platte Natural Resource District-- and I want to bring that down to our-- what we do in the Twin Platte Natural Resource District. The requirements in our Integrated Management Plan, required by the Legislature in 2004, for conjunctive management of groundwater and surface water for the overappropriated Upper Platte River Basin in Nebraska. These regulatory burdens will increase if the South Platte River flows into Nebraska from the state-- South Platte River continue to decrease. So I mean, this is, this is needed not only for the Twin Platte Natural Resource District, but entire river basin, as you've heard in earlier testimony, all the way down to the Lincoln and Omaha well fields. Nebraska must protect the flows we are now receiving. I mean, this is something I've been promoting for 40 years and when I started talking about this 30 years ago, folks just laughed at me. They said, we have all of this water coming across the state and-- from Colorado. We don't need to worry about this. The time has come. We need to worry about this and we need to act upon it now because Colorado is serious and with all the people moving into the front range, they're going to use every drop of water and dry up the South Platte River unless we take this opportunity to use the only protection we have on the South Platte River for water into the state of Nebraska. Thank you for the opportunity to testify today.

**BOSTELMAN:** Thank you. Excuse me. Thank you, Mr. Miller. Are there questions from committee? My question would-- I want to go back and what's the natural resource districts' involvement in this project or could be involved in this project moving forward?

**KENT MILLER:** Well, you know, we would, we would be available to work with the state, but as Director Riley said, this is envisioned as a

state project and state-operated project. But we are, you know, we have boots on the ground and we partner with, you know, a lot of different programs with the Director of Natural Resources and with the Department of Natural Resources. And we are ready to partner with them, we're ready to partner with Central Nebraska Public Power and Irrigation District who has facilities in the Twin Platte NRD. We're willing to partner with the Nebraska Public Power District, who has facilities in the Twin Platte NRD. So we're available to partner, but this-- as Director Riley said, this is a state of Nebraska project.

**BOSTELMAN:** OK, thank you. Are there any other questions from committee? Seeing none, thank you, Mr. Miller, for testifying today. Thank you for coming--

**KENT MILLER:** Boy, you guys were a lot easier on me. Thank you.

**BOSTELMAN:** Next proponent, please. Good afternoon.

**MICHAEL DRAIN:** Good afternoon, Chairman Bostelman, members of the committee. My name is Michael Drain and I live in Holdrege, Nebraska. I'm the natural resources and compliance manager for the Central Nebraska Public Power and Irrigation District. I'm here today to testify on behalf of Central in support of LB1015.

**BOSTELMAN:** Excuse me, spell your name, please.

**MICHAEL DRAIN:** M-i-c-h-a-e-l D-r-a-i-n. Thank you for the reminder. I told myself not to forget that. The Central Nebraska Public Power and Irrigation District is the largest hydropower producer and irrigation water provider in Nebraska, generating on average more than 300,000 megawatt hours of carbon-free hydropower and delivering water to more than 100,000 acres of irrigated farmland each year. Beyond that, Central additionally provides storage water to 12 other irrigation and/or power canal systems, groundwater recharge for the benefit of water users in three different river basins, water-based recreation at more than 20 reservoirs, and water releases for instream flows in the Central and Lower Platte River. Many Nebraskans are familiar with Central's Lake McConaughy, the largest reservoir in Nebraska, which at full pull, holds over 1.7 million acre-feet of water. For reference, this is more than all of the water contained in all of the rest of Nebraska's reservoirs combined. Put another way, it's enough water to cover an area the size of Omaha nearly 20 feet deep. Less familiar to some is the importance that the South Platte River plays in providing the many benefits that I mentioned a moment ago. The South Platte River provides much of the reliable base of natural flow

that Lake McConaughy releases just-- that, that Lake McConaughy releases supplement. Unfortunately, for every acre-foot of water that Colorado development takes away from Nebraska use, an additional acre-foot of water must be released from Lake McConaughy to make it up. And the 300,000 acre-feet that Colorado asserts to be in quote excess and available for development is not an insignificant amount, being equivalent to a full Lake McConaughy approximately every five to six years. Make no mistake about it, as large it is-- as it is, Lake McConaughy does not provide enough water to, to satisfy all of Nebraska's downstream water needs should Colorado deplete the South Platte flows that are currently coming into Nebraska. Left unchecked, Colorado clearly can and will deplete the flows at the South Platte that so many Nebraskans, so many Nebraskans use, from irrigation to power production, from reservoir storage to groundwater recharge and from instream flows to municipal well fields that they ultimately rely upon. Fortunately, when the South Platte Compact was negotiated 100 years ago, our predecessors had the foresight to include a provision for a canal to bring this important South Platte water out of Colorado for use in Nebraska. The time has come to exercise this right to preserve this water for Nebraska before the now rapidly growing Colorado thirst for water soon takes it all. Fail to act now and Nebraska may forever be giving up this water to which we otherwise have a right and that we have already been using all these past years. For these reasons, Central fully supports LB1015 and the preservation of Nebraska's rights to South Platte River water and I would be glad to answer any questions you have about Central or Lake McConaughy.

**BOSTELMAN:** Thank you, Mr. Drain, for-- Drain, for your testimony. Are there questions from committee members? Question I would have on McConaughy, there's such a influx-- you know, the, the water flow coming in through the year, the elevations really drop over time. Would you foresee that this would help stabilize that in some sense or not?

**MICHAEL DRAIN:** Well, as has been pointed out, we're really not talking about gaining new water so, so much as preserving what we have. So what I would suggest to you is if we don't preserve this water, we would see greater fluctuations. We would, first of all, be forced to be more conservative during the wet years and not run some water out when we otherwise would. And yet we would expect-- as I mentioned, this is, you know, one-fifth or one-sixth of the Lake McConaughy supply each year. If we're having to make that up, I think we would see McConaughy drop much faster and much more frequently than we do now. That being said, Director Riley also mentioned that



the canal is not just a canal, but also a storage project. And he mentioned the potential that even though it's not new water for Nebraska, but preserving what we have, if we have the ability in the state-- if the state has the ability to regulate that South Platte water and retime it to some summertime uses say, for example, some of the irrigation that either we serve directly or that we release water from McConaughy for other irrigators, then perhaps we won't have to draw on McConaughy as much. So in that context, no new water, but more flexibility to, to utilize both the North and South Platte Rivers more efficiently and perhaps reduce the fluctuations of Lake McConaughy.

**BOSTELMAN:** Thank you. Senator Wayne.

**WAYNE:** So I just want to-- I should have asked somebody else-- the previous one, but I apologize-- or our previous-- two previous ago. So it's my understanding we're going to build a canal into the South Platte River in Colorado.

**MICHAEL DRAIN:** A canal starting in the South-- starting in Colorado.

**WAYNE:** And connect it back to the South Platte?

**MICHAEL DRAIN:** Bring it-- yes, my understanding is based on the topography you have in at least the earlier bureau studies that we've seen, it would, it would cross out of Colorado into Nebraska, go to some places where-- that are suited well for reservoir construction. And then from there, release that water back to the South Platte River, the details of which I'm sure have to be worked out with the studies that were talked about. So potentially connecting back to either the river directly, could go into the NPPD Sutherland system, which I know NPPD is going to be testifying on later. It could be a combination of both of those. But the key is it would come into Nebraska. Now we would have control and be able to put it back if we needed to.

**WAYNE:** So we're taking water out of the South Platte to put back into the South Platte. It just seems easier to negotiate a new compact to say just keep the river flowing.

**MICHAEL DRAIN:** I'm not, I'm not an attorney. I'm an engineer. I suppose it is possible that if Nebraska is going to exercise this, maybe, maybe Colorado would be open to negotiating something different. But today, what Nebraska's rights are is you got to build the canal to get the water.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Natural Resources February 9, 2022

**WAYNE:** To maintain the water.

**MICHAEL DRAIN:** To maintain the water.

**WAYNE:** OK, that's just--

**MICHAEL DRAIN:** It is what we have.

**BOSTELMAN:** OK. Thank you, Mr. Drain--

**MICHAEL DRAIN:** Thank you.

**BOSTELMAN:** --for coming today, appreciate your testimony. Next proponent, please.

**DON BATIE:** Good afternoon, Chairman Bostelman and members of the Natural Resource Committee. My name is Don Batie, D-o-n B-a-t-i-e. I am a farmer from Lexington. I also currently serve as vice chairman of the Nebraska Natural Resource Commission. I'm testifying here today as a former state board member of the Nebraska Farm Bureau and I'm currently a member of the state legislative policy at the Farm Bureau. As a farmer who irrigates, I know the importance of water and water rights in Nebraska. In addition to Nebraska Farm Bureau, I'm also testifying on behalf of the Nebraska Corn Growers Association, the Nebraska State Dairy Association, and the Nebraska Soybean Association. You have a chance with the passage of this legislation to finish the work that the Nebraska Legislature started 99 years ago. The project has been tried before. The South Platte River Compact was written upon the assumption that the Perkins County Canal would be built. I am supporting LB1015 because we need to protect our water rights, as been stated earlier. This is a bold move, but it's needed to protect the storage season natural flows coming out of Colorado. Front range population is increasing. Their leaders want to keep all the water for themselves. Nearly \$10 billion worth of projects are being proposed in Colorado, many of those targeting the South Platte River. Ensuring that Nebraska's portion of the South Platte River Compact is upheld is the one piece needed to legally bind Colorado to deliver the appropriate the amounts of water in the nonirrigated seasons. That investment is extremely important for the agricultural, environmental, and economical future of Nebraska. Make no mistake, unless Nebraska acts, Colorado will continue to move forward with water projects, as been previously mentioned about the bill that was just dropped Friday from-- in Colorado, SB 22-126. I'd like to address a couple of questions that were asked of previous people that-- asked about the quantity of water, way to visualize it;

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Natural Resources February 9, 2022

500 CFS, if collected for an entire 24 hour day, is 1,000 acre-feet, as Director Riley said. That would fill a swimming pool the size of a football stadium-- or a football field 1,000 feet deep every day. This is a six-month storage contract we could have, so we could have that for six months. That's a large quantity of water. Another point of view is the value of the water. I've-- few years ago, I was visiting with a farmer in California. He has to pay \$2,000 for every acre-foot of water he uses on his irrigation and now a 1,000 acre-feet today at \$2,000 an acre-foot makes a \$500 invest-- \$500 million investment pretty cheap. We would recover it every day. Any questions?

**BOSTELMAN:** Thank you, Mr. Batie. Are there any questions from committee members? Senator Wayne.

**WAYNE:** What was those numbers again? You literally calculated--

**DON BATIE:** That's fine; 500 CFS is roughly a 1,000--

**WAYNE:** But what-- the farmer--

**DON BATIE:** OK.

**WAYNE:** --what the farmer pays.

**DON BATIE:** The farmer pays \$2,000 per acre-foot, so \$2,000 times 1,000 is \$2 million, if my math is right in my head. That's on a per-day basis.

**WAYNE:** So we could build the reservoir and sell it back.

**DON BATIE:** And as far as your--

**WAYNE:** Pay for the canal. I'm, I'm--

**DON BATIE:** I don't want to sell--

**WAYNE:** This is even better. I'm going to support this more and more. This is--

**DON BATIE:** I don't want to pay the \$2,000 an acre-foot. And part of your question you had earlier about the-- diverting water out of the South Platte and putting it back into the South Platte and it doesn't seem to make sense. A lot of that is the retiming. Under the cooperative agreement that Director Riley talked about, we have to maintain flows in the river and usually we're short certain times of

the year and we're long other times of the year and by the-- building of a reservoir will allow us to collect the water in high flow times, release the water in low flow times so that we have a better supply of water for the endangered species that reside on the Platte River in the Central Platte. I've been involved with the negotiations since 1990, so I definitely understand what he's talking about on that. We do need to retime water, all the water coming into Nebraska to meet environmental needs.

**BOSTELMAN:** Other questions from committee? Seeing none, thank you, Mr. Batie, for being here--

**DON BATIE:** Thank you.

**BOSTELMAN:** --today. Next proponent, please. Good afternoon.

**JOSEPH CITTA:** Good afternoon, Chairman Bostelman, members of the Natural Resources Committee. My name is Joseph Citta, spelled J-o-s-e-p-h C-i-t-t-a. I'm the director of corporate, environmental, and water resources for Nebraska Public Power District, commonly known as NPPD. I have worked for NPPD for more than 45 years in the environmental and operations area. Today, I'm testifying in favor of LB1015. Water is the lifeblood of power production. With few exceptions, water is required for NPPD to provide low-cost and reliable power for the people of Nebraska. Because very little water is consumed when it's used for power plant cooling and for hydropower production, additional benefits can also be realized. These benefits include recreation, groundwater recharge, environmental and irrigation supplies. NPPD supports the state of Nebraska's effort to protect the South Platte River flows from further reductions in Colorado. NPPD's diversion on the South Platte River near Korty, which is west of-- located west of Paxton, Nebraska, was constructed in the 1940s and has operated with limited interruption then. The South Platte River water can be diverted into the NPPD Korty canal, which goes into the Sutherland canal system. This provides recreation opportunities for filling Sutherland Reservoir and Lake Maloney and also provide for cooling at Gerald Gentleman Station, which, as you know, is the largest power plant in Nebraska. This water also helps the Gentleman station comply with its Clean Water Act thermal limits. The river flows also provide for carbon-free generation at the North Platte hydroplant. It also provides incidental groundwater recharge to large, large areas of Keith and Lincoln Counties. Once, once we use it from-- at the North Platte hydro, NPPD returns the water to the Platte River at North Platte. Further downstream, this water is again diverted for irrigation at the NPPD-owned Gothenburg and Dawson

County canals and then again is diverted for irrigation and hydropower production at the NPPD-owned Kearney canal and Kearney hydroplant. Once again, Dawson and Buffalo Counties can also benefit from incidental recharge from those irrigation canals. Throughout its journey across Nebraska, the river flows provide environmental benefits and help meet the related Endangered Species Act requirements of the NPPD Federal Energy Regulatory Commission license. On the years where the South Platte River reaches the Missouri River, it also helps provide water for operations of the Nebraska power plants, which are located downstream of the Platte River, which this would include, and NPPD's Cooper Nuclear Station all. Finally, I think it was mentioned before, when NPPD can use South Platte River Water for beneficial uses previously described, NPPD can rely then less on the North Platte River water, which in turn benefits water storage in Lake McConaughy and its downstream water users. For these many reasons, NPPD supports the advancement of LB1015 from the community. I would be glad to answer any questions.

**BOSTELMAN:** Thank you, Mr. Citta. Are there any questions? Senator Moser.

**JOSEPH CITTA:** Yes, sir.

**MOSER:** Hi, neighbor.

**JOSEPH CITTA:** Hello. How are you, sir?

**MOSER:** I'm good. Once in a while, the Platte River goes dry in dry years--

**JOSEPH CITTA:** Yes.

**MOSER:** --at Columbus. How far west is it dry? Where does it stop flowing, typically, when it's-- I mean, I can remember at least six or eight times that it was dry in the last 20, 30 years.

**JOSEPH CITTA:** I think typically rule of thumb, you know, the river is what they call a gaining river up to about the Grand Island reach. And I think then from Grand Island to Columbus, it's, it's a losing river, you know, in other words. And part of it, I believe, is, you know, once again, there's not a lot of irrigation projects that can char-- have recharge for the river and what-- most of those are located west of Grand Island, but typically some of the losses would occur between Grand Island and Columbus.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Natural Resources February 9, 2022

**MOSEER:** So not exercising our right to get the South Platte water could cause the Platte to go dry more often?

**JOSEPH CITTA:** Unless it was subsidized with North Platte River water, which once again is a challenge. But yes, sir, that could be a possibility. I would agree.

**MOSEER:** Thank you.

**JOSEPH CITTA:** You're welcome.

**BOSTELMAN:** Senator Hughes, do you have any questions? Thank you, Mr. Citta, for being here today.

**JOSEPH CITTA:** Thank you.

**BOSTELMAN:** Next proponent, please. Good afternoon.

**JERRY KUENNING:** Good afternoon. Good afternoon, Chairman Bostelman and members of the national-- Natural Resources Committee. My name is Jerry Kuenning, J-e-r-r-y K-u-e-n-n-i-n-g. I'm vice president of Nebraska Cattlemen and I'm here today to share the Nebraska Cattlemen's perspective in support of LB1015. My family operates a farming, cow-calf, and feedlot business in Chase and Perkins County. I've had a vested interest in water for most of-- all my career. I served on the local NRD board, which was the Upper Republican NRD, for 26 years and have farmed all of my working life. As I look forward to the future of our cattle operation for my son and daughter, adequate and ample water sources are critical. Reliable water sources is good for agriculture, and it's also good for the state of Nebraska. The South Platte compact was signed with Colorado 99 years ago this year. Enactment of the Perkins County Canal Act provides for Nebraska water users certainty of continued South Platte River flows to protect Nebraska communities, businesses, agriculture, and the environment, environment. Currently, Colorado only fulfills the compact during the irrigation season, but does not meet the requirements in the nonirrigated seasons. The annual water supply shortfall is roughly at 400,000 acre-feet per year for agriculture uses in the South Platte River Basin. I'm-- my ask of you today is to have a vision for the future, not today, not tomorrow, or next year, have a vision similar to those that made the decisions to build the Lake McConaughy. Recently, Colorado Legislature began supporting efforts to determine what can be done to ensure no excess South Platte River water passes into Nebraska. Further, Colorado believes that the excess water may remain in their state because the Perkins

County Canal has never been completed. I might add here 16 miles of that canal are completed. They were hand-dug in the 1920s by farmers from Perkins County that put dirt on the wagon pulled by a horse team and then taking it and unload it. And you can see that going down the interstate by Julesburg, Colorado. Colorado surmises that if the Perkins County Canal never is built, they can reduce the South Platte River flow by approximately 90 percent. Where I live, which is in Lemoyne, Nebraska, north of-- on the north side of Lake McConaughy-- topic for another day, but I only get Colorado news and it's very unusual in a week that I don't hear two or three stories about sub-- suburb of Colorado buying Colorado water. If I have an irrigated quarter in Colorado worth, let's say, \$1 million, that suburb will pay me \$1 million for the water on that quarter and the land is free and clear. Water is very precious in Colorado. Let's remember that Col-- the Platte River flows out of Denver to Fort Morgan, Brush, Sterling, Colorado, and on to Julesburg and that's where the water would be diverted for this project. While this project was proposed in the late 1800s, the future of our state's shared water with Colorado adds major benefits to southwest Nebraska. Ensuring Nebraska's-- ensuring Nebraska receives the water as intended in the South Platte River Compact protects Nebraska's water supply by providing the Department of Natural Resources all necessary authority to develop, construct, manage, and operate the Perkins County Canal project consistent with the terms of the compact. Thank you, senators and Governor Ricketts, for your continued support in this effort. Nebraska Cattlemen support this bill and ask the committee to advance LB1015. Thank you for this opportunity to testify and I'll try to answer any questions you might be.

**BOSTELMAN:** Thank you, Mr. Kuenning. Are there any questions from committee members? Seeing none, thank you very much for coming in today and testifying.

**JERRY KUENNING:** Thank you.

**BOSTELMAN:** Appreciate your time. Next proponent, please. Good afternoon.

**JOHN WINKLER:** Good afternoon, Chairman Bostelman and members of the Natural Resources Committee. My name is John Winkler, J-o-h-n W-i-n-k-l-e-r. I'm the general manager of the Papio-Missouri River Natural Resources District in Omaha, Nebraska. First, I'd like to thank you to give me the opportunity to testify in support this afternoon on LB1015. I will keep things brief. Many of the things that I was going to say is-- has been already said, so I don't need

to repeat them. Obviously, you heard without the compact, that there's a, a chance that we cannot protect these historic flows if the Perkins Canal is not built. That could reduce our flows 200,000 or 300-- 300,000 acre-feet annually. Therefore, it is imperative that we protect and enhance the resiliency of our water supply in the Lower Platte River corridor, where nearly 70 percent of the state's population resides. This effort to protect our water supply would be beneficial to the city of Omaha, the city of Lincoln, who relies partially or completely on the Platte River Basin for its water supply. Once again, I'd like to thank you for the opportunity to provide testimony in support of this bill and be happy to answer any questions that you might have.

**BOSTELMAN:** Thank you, Mr. Winkler. Are there any questions from committee members? Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Chairman Bostelman. Thank you for being here. Mr. Winkler. We had, had a conversation-- there's been some talk about, you know, the-- and, I guess, benefits, ancillary benefits of building reservoirs and being able to have the control to discharge, those sorts of things. If Colorado were to agree to recognize our right without us building this canal, are those benefits worth \$500 million or would it be in our better interest-- and maybe you're not the right person to ask this, but you're the guy who's here when I think of this question.

**JOHN WINKLER:** No, that's fine. One thing about the \$500 million investment, I think, again, you have to look-- and you've heard other people testify that it's a, it's an investment in perpetuity. And, you know, \$500 million, if you think of all the benefits or all the damages that could occur yearly and might not having that supply, I'm sure it's way more than \$1 billion. And I think, again, you look at we need to be progressive and we need to look at not only what's occurring today, but what will occur 50 years, 100 years from now. There was a lot of folks that came before me that had the foresight not only in the Legislature, but it was mentioned even building Lake McConaughy and even creating the NRD districts. I can say from a personal level that attending many of the national events, working with Congress and the corps from the-- FEMA and all the other national agencies, that this system in this state is, is held in very high regard. I know we maybe argue about it a little bit internally, but if you look outside of our, our state, there are many, many states that wish they had this system, not only now, but they wish they would have had it 50 years ago. So I think we have to very-- look very far into the future, not just what we have today. If we



decide that, you know, we're not going to build this now and we decide, oh, maybe ten years from now, we're going to build it, that \$500 million won't touch it. You're chasing-- just without the current inflation environment, in our experience with building reservoirs, you're chasing 4 to 10 percent increase in construction costs every single year and that was during the years when we had the CPI at 2 percent or less. Now, with the CPI 4, 5, 6, 7 percent, you're going to see chasing a huge amount of inflation to get these projects done. So if you're going to do it, the time to do it is now.

**J. CAVANAUGH:** Well, I guess my question is-- and it is expensive and it's probably going to cost more than \$500 million realistically, to your point and the timeline that's been laid out. If our-- we go forward and then Colorado says, OK, fine we'll recognize it-- because, I mean, I'm sure that there's interest even in Colorado, not to recognize our right, but not to have us eminent domain some of their land there. They have a vested--

**JOHN WINKLER:** Right.

**J. CAVANAUGH:** --interest in some different outcome maybe and may be willing to-- and I don't speak for anybody other than myself here, but they might be willing to, you know, recognize our 500-- our right or claim to--

**JOHN WINKLER:** Right.

**J. CAVANAUGH:** --500 CFS without the canal.

**JOHN WINKLER:** Right.

**J. CAVANAUGH:** So I guess my question is with \$500 million being the low end, is it possible-- is-- would it-- would you still be in favor of building the, the canal and reservoir if we were able to get the 500 CFS without building those things?

**JOHN WINKLER:** That's above my pay grade. I think that's at the Governor's level and the Legislature's level. I mean, I think there would have to be some serious guarantees. I know the compact has stood the test of time. I know we had our issues with Kansas and things like that. So it is a very binding document. I don't know-- again, you'd have to work with the AG's Office. Is there another mechanism that would be as, as binding and as, as guaranteed as that particular document? If there is, I think everybody would agree if you don't have to spend \$500 million and still get the same amount of water, I think that would be a good thing. But again, I think others

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Natural Resources February 9, 2022

have said that at this particular point in time, we don't see that path forward. And maybe it will exist, but maybe it won't and that's just my opinion.

**J. CAVANAUGH:** I appreciate the answer.

**JOHN WINKLER:** Yeah.

**J. CAVANAUGH:** And sorry to ask it if--

**JOHN WINKLER:** No, that's fine.

**J. CAVANAUGH:** Thanks.

**JOHN WINKLER:** I'm happy to give you my opinion.

**BOSTELMAN:** Seeing no other questions, thank you, Mr. Winkler, for being here today.

**JOHN WINKLER:** Thank you, Senator.

**BOSTELMAN:** Next proponent, please.

**LYNDON VOGT:** Senator Bostelman, members of the committee, my name is Lyndon Vogt, L-y-n-d-o-n V-o-g-t, and I'm the central manager or sorry-- I'm the general manager of the Central Platte Natural Resources District out of Grand Island, Nebraska, and I'm here to testify today in support of LB1015 for the Central Platte Natural Resource District. I'm not going to stick to my testimony that's handed out because I'm, I'm aware all of you can read. So the Central Platte Natural Resource District has spent millions of dollars in our local tax dollars to protect and preserve the Platte River. We've worked diligently to keep the state in compliance with Nebraska's new depletion, depletion plan and the Platte River Recovery Implementation Plan, which requires 125,000 acre-feet of water back to the river that is supplied by Nebraska. It may not be all paid for by Nebraska, but it's supplied by Nebraska. And we're also required to meet the, to meet the requirements of LB962 that was passed in 2004. That requires the Central Platte NRD to get the Platte River back to its 1997 level of use. That's about 18,500 acre-feet of water that we have to put back to the river as, as a result of that bill being passed. And the third item I want to touch on is we, we do have instream flows too. The Central Platte NRD holds instream flows mainly for endangered species issues within the Platte River. Any erosion of flows coming into Nebraska erodes these rights and costs us local tax dollars. The reduced-- reduction of current flows have

long-lasting negative effects on our municipalities that depend on groundwater recharge and the associated industry in irrigated crop production. These negative effects will reach well beyond the boundaries of the Central Platte NRD and will be perpetual if, if we don't pursue this water. Protecting current flows or claiming our right to additional flows will assist with compliant-- compliance concerns of not only the Platte River program, but the overappropriated designations in the five NRDs in the Platte Basin. And, of course, future economic growth, where-- we work with a number of, of communities within our district that have to offset new uses, new water uses coming in. So any erosion of them rights requires additional offset of uses. Right now that's-- we can either, we can either retime our current flows or we're drying up irrigated acres, which, which, as you well know, have a very negative effect on our district. Just to touch on a couple of, of items that-- questions that were asked, one thing about a canal and reservoir system, it will allow Nebraska to manage the inflows in the best interest of the state. When we're putting water back to the river to get back to 1997 flows, inflows have to be in time and place. So having control over the inflows is, is a major issue. The NRDs are responsible in that overappropriated area and, and any, any erosion of, of current flows are made up by us as well. So we're, we're taxing our local taxpayers to put water back to the river. So any additional use by Colorado that reduces inflows are made up at the local level, but with local tax dollars. And I know you've heard this before, but on the 500 CFS, the comment was made that that don't sound like a lot of water. Well, we've spent about \$20 million to put 18,500 acre-feet of water back to the river. That's about nine-- or sorry, that's 18 days of flows at 500 CFS that we've spent over \$20 million just in the Central Platte to put them kind-- that kind of water back to the river to meet the requirements of LB962. So we certainly appreciate the Governor bringing this to the forefront. It's time for Nebraska to exercise these rights under the compact and protect our South Platte River flows. And I'd like to thank you for the opportunity to testify and I'd be happy to answer any questions.

**BOSTELMAN:** Thank you, Mr. Vogt. Is there any questions from the committee? So will this-- could this potentially reduce the need for you to augment the flow, do you think or not?

**LYNDON VOGT:** We would hope that it would reduce the possibility to-- for us to have to augment it further because any erosion of rights-- we, we have a robust review done about every three to four years based on our management actions and stream flows. And if-- and based on that modeling, if, if we're not meeting the 1997 flow regime, we

have to put more water back to the river. So any water taken out of the South Platte that does not reach our district is being made up at the local level right now.

**BOSTELMAN:** Where was your augmentation process-- projects at?

**LYNDON VOGT:** So we've partnered with three irrigation districts in Dawson County, in the Gothenburg and Cozad area. So that's where the majority of our augmentation projects are is the Southside Irrigation District, Thirty Mile Irrigation District, and Cozad Ditch. And we've also, we've also dried up a number of, of irrigated acres. We've had producers come to us and offer their water to us. And to put another-- kind of to bring that in perspective, if we dry up 130 to 140 acre pivot, it's probably cost us a couple of thousand dollars an acre to do that and we're gaining about 100 acre-feet of water back to the river. It's not a viable program and we're having a negative economic impact on the immediate area when we do that. But to meet our LB962 requirements and the deadlines that we're, we're held to in them, we're forced to do that.

**BOSTELMAN:** Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Chairman Bostelman. I appreciate the number. I was looking-- you don't have that \$20 million, 18-day-- that's not in your prepared remarks?

**LYNDON VOGT:** It is not.

**J. CAVANAUGH:** OK.

**LYNDON VOGT:** I just, I-- that question came up a couple of times before my testimony--

**J. CAVANAUGH:** Yeah.

**LYNDON VOGT:** --so I, I added that in, but-- so--

**J. CAVANAUGH:** That's helpful.

**LYNDON VOGT:** Yeah, we're required to put 18,000-- 18,500 acre-feet of water back to the river to get the 1997 level of use in, in the Central Platte.

**J. CAVANAUGH:** You do that every year or--

**LYNDON VOGT:** It, it's-- so our management actions are over time, but that's the total over time.

**J. CAVANAUGH:** OK.

**LYNDON VOGT:** Yeah.

**J. CAVANAUGH:** That's what you're talking about taking those acres out of--

**LYNDON VOGT:** Yeah, so and we're taking them acres out of production-- yeah, drying up a pivot of ground in an 85 to 90 percent depletion area, which would be within a mile or two or less of the river, is only getting us about that 100 acre-feet, 110 maybe. But if we're, if we're five, six, seven miles from the river and it's at 40, 50 percent depletion, it's not worth our money drying it up because the cost to the landowner is the same to, to give up his irrigation rights. But our return flows to the river are probably half as much then, so we maybe only get 40 or 50 or 60 acre-feet. So, so we're-- when we dry them acres up, we have to look right next to the river and our hope is to dry up our least productive acres, but we would love to-- we have-- our board has been very diligent about trying to find as much water elsewhere as possible to have the least negative, negative impact on our, on our counties.

**J. CAVANAUGH:** Thank you.

**LYNDON VOGT:** You bet.

**BOSTELMAN:** Senator Gragert.

**GRAGERT:** Thank you, Chairman. Just for clarification then, this 18,500 acre-feet, is any of that groundwater that you augment?

**LYNDON VOGT:** So them are surface water flows and we are augmenting that by surface water and by groundwater. So the groundwater aspect of it is we're drying up irrigated acres that are right next to the river so we get the biggest bang for our buck and, and the majority of it is coming from an agreement. We actually purchased 50 percent of Thirty Mile Irrigation District and we have 30-year management agreements with two other irrigation districts to change their, their management style to, to benefit this stream during the irrigation season.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Natural Resources February 9, 2022

**GRAGERT:** So is-- I'm going to expand on the question there. Is that, is that every year that you're, you're-- so is that, is that irrigated acres taken out of production--

**LYNDON VOGT:** They are.

**GRAGERT:** --every year? The same acres?

**LYNDON VOGT:** Yes.

**GRAGERT:** OK, thank you.

**BOSTELMAN:** Seeing no other questions, thank you, Mr. Vogt, for coming in today, appreciate it.

**LYNDON VOGT:** Thank you.

**BOSTELMAN:** Next proponent, please. Good afternoon.

**ELIZABETH ELLIOTT:** Good afternoon. Chairman Bostelman and members of the committee. My name is Elizabeth Elliott, E-l-i-z-a-b-e-t-h E-l-l-i-o-t-t. I'm the director of Lincoln Transportation and Utilities and I'm here today to testify in support of LB1015. Protecting the water for Nebraska communities and residents is vital. The Platte River is critical to municipalities, farmers, businesses, and residents across the state. The 2012 drought gave us a brief glimpse into the water shortages issues that we would experience if the flow in the Platte River were severely reduced. We were lucky that that drought ended and the water continued to flow. We know the 2012 drought won't be our last and we must plan for future weather events. Over the last several weeks, we have had the opportunity to learn more about and discuss this project with the state's administration. We appreciate and welcome the open dialogue and the opportunity to work with the state on water supply challenges. After reviewing the data, we believe the canal will assist in keeping water flow at its current level and offer some protection for the state in times of drought. The South Platte River provides approximately 7 percent of the city of Lincoln's water during droughts like the one in 2012. If dry, this river would impact Lincoln's water. Because the canal simply maintains the current flow levels, Lincoln still must continue to pursue our second water source. Lincoln welcomes the opportunity to continue working with the state and the Legislature to solve Lincoln's long-term water needs. I would like to thank you again for the opportunity to testify here today and I'm more than happy to answer any questions you may have.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Natural Resources February 9, 2022

**BOSTELMAN:** Thank you, Ms. Elliot. Are there any questions from committee members? Seeing none, thank you for your testimony.

**ELIZABETH ELLIOTT:** Thank you.

**BOSTELMAN:** Next proponent. If there are any other proponents, please move up to the front row. Good afternoon.

**SCOTT MERRITT:** Good afternoon. Chairman, members of the Natural Resource Committee, my name is Scott Merritt, S-c-o-t-t M-e-r-r-i-t-t. I currently serve as the executive director of the Nebraska Water Resources Association and as our association, we're in support of LB1015. Nebraska Water Resources Association is a private alliance of state agencies, political subdivisions, private groups that consider the regulation of Nebraska's water resources. We are-- consist also of private entities and professionals, professionals dedicated to development and the implementation of sound water policy for our state. We were founded in 1944 and we're led by a board of 24 board members, directors that represent surface water, groundwater irrigation, public power, municipalities, and district-- industrial water users and are professional, conservative-- are a conservation, I'm sorry, conservation, recreation, education, and financial institutions. We're a very diverse group, as you can tell, and we work very diligently to have a unified voice to elected officials and the public on important water issues in the state. Our board believes Perkins County Canal project is critical to maintain the state's water rights with the state of Colorado and that we need to move forward with this to ensure Nebraska has both our irrigated agriculture and municipal and industrial needs to meet the future of the state. We appreciate your consideration and if there's any questions, many of my board members have been here prior to providing testimony today, so I'll defer to their technical expertise.

**BOSTELMAN:** Thank you, Mr. Merritt. Are the questions from the committee members? Seeing none, thank you for your testimony.

**SCOTT MERRITT:** Thank you.

**BOSTELMAN:** Any other proponents today? Other proponents? Seeing none, would anyone like to testify in opposition to LB1015? Anyone to test-- if there's anyone else that would like to testify in opposition, if you would like to move up front, that will help us move along. We appreciate it. Good afternoon, Mr. Davis.

**AL DAVIS:** Good afternoon, Senator Bostelman, members of the Natural Resources Committee. My name is Al Davis, A-l D-a-v-i-s. I'm a registered lobbyist for the 3,000 members of the Nebraska chapter of the Sierra Club. The Sierra Club opposes to the construction of the Perkins County Canal for a number of reasons. First, we believe that the Platte River is a fragile ecosystem which has already been dramatically altered by the interference of mankind. The river is a vital corridor for wildlife and serves as a resting place for many species of birds traveling north and south as the seasons dictate, as well as habitat for fish, the associated predators, birds, and mammalian species that rely on the river for water and habitat. The annual migration of the Sandhill cranes is Nebraska's most well-known natural event and brings visitors from all over the world. Further restricting the flows in the river, even with efforts to retime that water, are interfering with the natural seasons and streamflow converting an endangered river into an intermittent stream. Wildlife will pay the price for a frivolous, unnecessary project designed to produce more corn and more soybeans. Secondly, the proposal requires a staggering investment, \$500 million or over \$250 for every Nebraska man, woman, and child, and leaves dozens of unanswered questions. The lead question, of course, is whether the project is viable and realistic. The legal questions associated with the construction are innumerable and will take a decade or more to sort through and resolve. Can the state of Nebraska use eminent domain in a neighboring state and how is that possible? What restrictions would the Waters of the United States legislation impose? Will the national environmental groups oppose the canal? And if so, how long will their lawsuits delay construction? What impoundment structures will be needed? What federal rules and regulations will need to be cleared? Is interbasin transfer contemplated and would that impose further complication on the canal? There are far too many unanswered questions to tie up \$500 million for decades when that money could be used for the immediate, immediate benefit of Nebraskans. Water is life and Nebraska has done a better job managing our water supply than many other states, but much more could be done to protect our ground and surface water from further overconsumption. Technological developments have made it possible to grow a crop with less water when applied at strategic times. A better use of this money would be to consider retiring acres in overappropriated portions of the state and helping other farmers implement the latest technological developments through grant programs, which would reduce the amount of water needed on their farms. We must make investments in our children and in our seniors. The state's nursing and assisted living facilities across the state are on very shaky ground. A rash of



closings has impacted many rural facilities and these facilities are often outdated and in desperate need of renovation. Investments in this area will keep Nebraskans close to their families and the state needs to plan for the avalanche of boomers who will be pressuring the existing facilities in the next 20 years. Investments in childcare and preschool pay long-term benefits when children are better prepared for school. Nebraska's housing stock is old and outdated. Our investment-- one investment which would pay major dividends would be an investment in weatherization for every homeowner in an older home. This would dramatically reduce heating and cooling bills for our most vulnerable citizens, boosting the economy when they use newly freed disposable income for other purchases. These types of investments will also reduce our carbon footprint. The Perkins County Canal is a project which requires enormous investments and appears to be designated strictly for the benefit of agriculture. Does the state really need more corn and beans derived from a few farms? No, it needs investment in trails, parks, and its citizens. These investments will improve the lives of all Nebraskans, not just those whose land will be improved with access to additional irrigation water. We urge you to vote no on the construction of this project. Thank you.

**BOSTELMAN:** Thank you, Mr. Davis. Are there questions from committee members? Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Chairman Bostelman Thank you, Mr. Davis, for being here. I agree with a lot of the things you said there. The one problem we have is what-- the scenario that's been laid out in front of us is that whether we build this or not, the water-- Colorado is coming after that water, right? Do you, do you disagree with the fact that Colorado could potentially appropriate all of that water?

**AL DAVIS:** I'm not a water attorney. We've heard a lot of experts say that that is the case. I'm not convinced that that's completely the case and I think that this group needs a lot more information. And I think you all need to take a trip to Colorado and visit with people out there and really get a feel for that. There's no question about the fact that, that water in Colorado is the goal.

**J. CAVANAUGH:** Yeah. So I don't know if you heard my question to Mr. Winkler, who was admittedly not the right person to ask that question, but if we can convince Colorado to recognize our right to the 500 cubic feet per second without building the reservoirs and the canal, do you think that would be a better option to go or do you think-- well, I mean, I guess you've already stated you disagree with

the-- that canal in principle, but I guess, do you, do you see what I'm saying there is that if we could convict-- if we could perfect our right and could guarantee that we get the 500 cubic feet, do we need this canal and reservoir otherwise?

**AL DAVIS:** Well, I don't think we do. I mean, if you-- if, if, if Colorado says, yes, we're going to, we're going to be sure that you get your water, why would we spend \$500 million when, you know, we already export more water out of the state than-- you know, I mean, they-- we-- they call us the water machine in Nebraska. We've got tremendous soils that are very impermeable and they absorb water and when we get good rains. So I would hate to see us spend money on a project that has marginal benefit.

**J. CAVANAUGH:** Um-hum, thank you.

**BOSTELMAN:** Any questions from committee members? My understanding of what this is, is this is ex-- if, if we don't do this, what's been testified before is that we cannot exercise our senior water rights in Colorado. So then we don't have access to water, so then Colorado can do as they, as they see/ wish with, with the water on the South Platte. Do you see that differently?

**AL DAVIS:** As I said, I'm not a water attorney, Senator. I think we need more information. You know, I think we need information. I think we need to go to Colorado and see what their opinions are and their thoughts before we would consider undertaking a huge project like this that has so many unknowns.

**BOSTELMAN:** OK. Any other questions? Senator Moser.

**MOSER:** So if we don't exercise our rights to protect this water and the Platte River dries up more frequently, is the Sierra Club OK with that?

**AL DAVIS:** No. You know, I think the National Sierra Club would be taking issue with Colorado if they're going to divert more and more water for their residential property. We went through this with Kansas, as you well know. And so in some respects, we now are the Kansas of-- when Kansas sued us, now, we're the Kansas of that, of that case. But, you know, we had-- you heard reference to it earlier, the, the Platte River compact that was put together to try to preserve the water in the river, I mean, I wouldn't think that any, any federal agency would look kindly on Colorado just saying, well,

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Natural Resources February 9, 2022

we're going to dry up the river and you, you have no choice to-- and there's nothing that Nebraska can do.

**MOSER:** Thank you.

**BOSTELMAN:** Seeing no other questions, thank you, Mr. Davis--

**AL DAVIS:** Thank you.

**BOSTELMAN:** --for being here today. Next opponent, please. Anyone else like to testify in opposition to LB1015? Seeing none, anyone like to testify in the neutral capacity, please step forward. If there are others like to testify in neutral capacity, why don't you move up to the front row so we can-- thank you.

**JOHN HANSEN:** Mr. Chairman, members of the committee, good afternoon. For the record, my name is John Hansen, J-o-h-n, Hansen, H-a-n-s-e-n. I'm the president of Nebraska Farmers Union. And as I look at our policy and as I look at the sort of the, the flood of bills that are going through the Legislature, we really haven't had enough time as a board to come together to-- in order to provide direction to me about where we would land on this issue. I think there's going to be concerns raised about the use of eminent domain and, and some of those issues. And as there's any large water development project, there's always going to be concerns about the folks whose land is, is going to be at the bottom of a lake somewhere. I, I have a lot of experience in that area. I could guarantee that that will be the case. So as you look at all the, the pluses and minuses of it-- and I'm familiar with, I think, what most of the minuses are going to be-- I will be discussing with my board what the other side is and, and see what their judgment is. But I have, I've been either a natural resource district director or the president of a farm organization since 1974. And I have been tied to the back of the pickup and I have been driving around long enough to know that whether you agree or whether you disagree with the compact law, that it governs and it is in charge. And so we've spent a lot of time trying to modify and mitigate the impact of what happened with the Republican River Compact. But at the end of the day, Kansas won and Kansas will continue to win and the only way that you repeal the compact is if you get all of the cooperating states plus Congress all on the same page and willing to do that. And that's not going to happen with that compact and it's not going to happen with this compact. But the compact with the-- which I read makes it fairly clear in the language that it's-- that we know what we're going to get, we know pretty much what we have, and we know what we have a

legal right to relative to summer utilization. But it's also fairly clear to me-- as I read it, I don't see how you circumvent it or outrun the provisions that make it fairly clear that you cannot make claim to the 500 CFS for the winter draw and use unless you build the canal. And so that's my reading of, of the compact and if that is in fact the way is the, the way-- that's that's going to be how it works relative to that much water. And I've also had the, the, the pleasure of serving on the, the National Farmers Union board for 32 years and for most of those years, we owned a property southwest of Denver that had a lot of water rights on it, as the South Platte River flowed through our property. And so I'm somewhat familiar with what's going on with development in Colorado and the drawdown on those water resources. And also in discussions with the folks over at the Rocky Mountain Farmers Union and there's no question that Colorado is moving forward with development and they're increasing population and whether we're ready or not, they're, they are definitely going to go after that water. And I'm less than sure how it is that Nebraska will ever get that water-- those water rights back once that they have been fully developed by Colorado. So that's where we're at. And if our-- if we can get our board together and we can figure out where, where we're going, we'll see whether or not we can come up with a firm direction. But I think it is really an important opportunity and I do thank the Governor and Senator Hilgers for giving us the opportunity to pause and give this the hard consideration and the look that I think it deserves. And with that, I would end my remarks and be glad to answer any questions if I could.

**BOSTELMAN:** Thank you, Mr. Hansen, for coming in. Are there any questions from committee members? Seeing none, thank you for your testimony.

**JOHN HANSEN:** Thank you very much.

**BOSTELMAN:** Next neutral testifier, please. Good afternoon.

**MELISSA MOSIER:** Good afternoon. My name is Melissa Mosier, M-e-l-i-s-s-a M-o-s-i-e-r. I am testifying today in a neutral position on LB1015. I have been the Platte River program manager for Audubon Nebraska since 2020 and have worked in the Platte River Basin for the past ten years. Audubon staff and members have been a strong voice in the Platte River Basin since the early 1970s and have always advocated for protecting stream flow for the benefit of birds, wildlife, and people. Audubon's Rowe Sanctuary, located along the Central Platte, is a globally important bird area because of the habitat that it provides for close to 1 million sandhill cranes, as

well as the endangered whooping crane and the threatened piping plover. Securing future streamflow for the Central Platte River will all-- always be a top priority for Audubon, but we also have to remember that the rest of the basin, including the South Platte River, has unique ecological value, and that the birds and wildlife that depend on this ecosystem do not recognize state lines. Audubon supports both Colorado and Nebraska remaining compact compliance and will work with our partners to ensure that the ecological benefits of the South Platte River and the water that flows through it are acknowledged in upcoming discussions. We will-- we believe that with open communication and broad thinking, Nebraska can sustain and even increase the value realized from the South Platte River through management that provides multiple benefits. As more details about Nebraska's proposed South Platte project develop and in light of legislation recently introduced in Colorado to prioritize their South Platte River projects, Audubon asks that policymakers consider the following: how design and management of the project might provide more or less resilience for people and wildlife as we face a changing climate and its impacts on water availability; how the proposed project might restrict sediment and often overlooked, but important component of riverine habitat; how the proposed project might alter seasonal high and low flows, the timing of which are important to ecological function; what the actual costs of building a physical, a physical canal would be compared to the amount of water it will yield over the long term; how the proposed project will impact the operation of existing projects designed to return stream flow to the Platte River system; and finally, how the proposed project may affect relationships that we have built around the Platte River over the past three decades. The Platte River Recovery and Implementation Program, which has been negotiated and implemented since the mid 1990s, has shown what can be accomplished when you sit down and work to find common ground on water issues. That spirit of cooperation should be maintained and we encourage Nebraska to initiate good faith conversations with our natural resource agency partners in Colorado that are timely, frequent, and transparent. As those discussions progress, Audubon will continue to work on both sides of the state line to ensure that the water needed to support the Platte River ecosystem is protected. Thank you.

**BOSTELMAN:** Thank you, Ms.-- thank you, Ms. Mosier, for coming in. Are there questions from committee members? Seeing none, thank you for coming in today and testifying, appreciate it.

**MELISSA MOSIER:** Thank you. Good afternoon.

**BOSTELMAN:** Next neutral testifier, please. Good afternoon.

**KATIE TORPY:** Good afternoon. Thank you. Thanks for the opportunity to be here today. My name is Katie Torpy. That's K-a-t-i-e T-o-r-p-y and I'm grateful for the opportunity to share with you on behalf of the Nature Conservancy today that we're in-- offering testimony in the neutral position. We are a leading conservation organization working around the world to protect ecologically important lands and waters, nature and people. We've worked in Nebraska for 50 years. Since the 1980s, we have forged partnerships with private landowners and local government and NGO groups to impart flow and habitat protections in the Central Platte. Maintaining the Central's Platte-- Platte's natural flow regime is necessary for protecting endangered species like the whooping crane and for providing clean water and air for society. The efforts of TNC and our partners were strengthened with the establishment of the Platte River Recovery and Implementation Program you've heard about today in the mid-1990s. We serve on that governing body. Today, our testimony is offered in the spirit of our ongoing collaboration-- collaborative commitment to preserving the Central Platte. The continued sustainability of the Platte River Basin and its multiple services to nature and people rely on a careful balance of withdrawals and preservation. Much remains uncertain about the proposed South Platte project. It will require extensive modeling and studying the natural hydrographic of the Platte, the nat-- that is the natural occurrence of it high-- its high and low flows, keeps the river flowing in a free-ranging state and is critically important for maintaining a healthy river for people and wildlife. Understanding how this proposed project might change the timing of ecological function is paramount. And while ensuring Nebraska gets the compact-designated flows during summer months could be a net benefit to the objectives of the program, many additional questions remain, such as the following: is a reservoir needed to store water? Compact water should be left in the river to provide ecosystem benefits by our view. What impacts do and will the canal and reservoir have on people and wildlife in Nebraska and current and future climate-- climatic conditions? How does the project affect the program and state, state depletion plans and the relationships we've built to achieve current successes through the Platte Recovery Implementation Program? And lastly, a question that's been shared earlier-- throughout the hearing today, have all avenues for enforcing the compact have been exhausted? As we continue to understand the impacts of the proposed South Platte project, we remain hopeful that it will be in service of the river's natural flow regime. Until our partners and we have a clear sense of the project's

impacts, we will testify in a neutral position. Thank you for the opportunity and I can take any questions.

**BOSTELMAN:** Thank you for your testimony. Are there any questions from committee members? One question I have and maybe should have asked--

**KATIE TORPY:** Um-hum.

**BOSTELMAN:** --the last testifier as well, do you know in Colorado, is there-- is the Nature Conservancy, is Audubon-- have they gone and, and talked, you know, on the bill, the bills they have, what Colorado is planning or-- in the legislation? Do you know is there any discussion in Colorado like we're having here with you now?

**KATIE TORPY:** I mean, I know we're in conversations with our, our chapters in other states and, and trying to come at this in the most pragmatic way. And I don't know if-- what their plan is regarding testimony. What I've heard from my colleagues in Colorado is that the, the number of projects that had been proposed were simply a brain dump and that there was no intent to pursue all of them and that their recommendation has been to prioritize those projects as quickly as possible to dispel the confusion that we are experiencing on, on this side. And then the other comment that I had from my colleague was simply that his understanding is that the compact, that they-- that Colorado has never failed to deliver on the compact and in fact, at times, overdelivers on the summer flows.

**BOSTELMAN:** OK. Yeah, I'm just kind of curious since we're talking-- this bill came about because of what Colorado's doing.

**KATIE TORPY:** Um-hum.

**BOSTELMAN:** And now we're this and they're that. And, and what, what's the discussion or what's opposition or testimony in Colorado? What's going on there? Just don't know if you had a--

**KATIE TORPY:** Yeah, I have--

**BOSTELMAN:** --little more information on that?

**KATIE TORPY:** Thank you. I haven't had a chance to discuss the one that just dropped last week. I just connected to let them know we were coming today--

**BOSTELMAN:** OK.

**KATIE TORPY:** --so.

**BOSTELMAN:** Thank you.

**KATIE TORPY:** Yes.

**BOSTELMAN:** Thank you for coming in today, appreciate your testimony.  
Thank you.

**KATIE TORPY:** Thank you.

**BOSTELMAN:** Anyone else like testify in neutral capacity? Seeing none,  
Mr. Speaker, you're welcome to close.

**HILGERS:** Thank you, Mr. Chairman, members of the committee. I, I appreciate the engagement on this issue today and the opportunity to be here. I'll be very brief. I'm grateful for all the testifiers in support. I mean, there's a wealth of knowledge across the state. We, we heard about the impact on Lake McConaughy, the city of Lincoln, Omaha, and all places in between. I think the, the takeaway is this is of statewide importance. This project is necessary for us to assert our legal rights and if we don't assert our legal rights, very significant negative consequences will happen in the state of Nebraska. I would ask the committee to advance it to General File. I will tell the committee that I've, I've received multiple commitments to prioritize from senators to prioritize this bill. As you know, I only need one. I do anticipate this will, this will be prioritized in the very near future. And certainly, if there are any questions now or anything I can address offline, I'd be happy to do so.

**BOSTELMAN:** Any further questions?

**WAYNE:** I have one.

**BOSTELMAN:** Senator Wayne.

**WAYNE:** It's no surprise. Would you be amenable or consider anything less than \$500 million with the caveat-- I think this is diff-- what's different about this is we have a fund-- we have a right clearly to exercise and to go with the canal route. So I think that puts us in a unique and powerful position. So I guess what I'm asking is, is it possible to amend the bill to say-- I see Attorney General Peterson here, I see the next Attorney General-- to negotiate over the next two years a new compact or at least get a letter of intent or something because I do agree with it's going to take a while for Congress and them to approve, but to start down that path while we



start to plan, while we start to to do those things? And if it falls through, then pull the trigger on the actual construction side. I think 250 is still a, a sign of commitment from the state, but that-- but also instruct the Attorney General and possibly the next Attorney General to negotiate over, over a period of time where we, where we try to do something that necessarily doesn't cost \$500 million right now.

**HILGERS:** Well, I appreciate the question, Senator Wayne, and I, and I agree and also acknowledge some of the difficulties of any re-- renegotiation with the compact that might require federal approval. I view this as this is a real ask for a real project that requires \$500 million. If the goal, though, is to renegotiate-- which I don't think that's the goal. The goal is to get this project done-- it seems to me that the best way to do that is to put your strongest foot forward and then see what, what Colorado comes back with. The good news, I think, is that we not only have the resources, but we also have the legal right now. So if anyone wants to come to the table to renegotiate, it seems to me it would be Colorado. But again, this-- the goal of this is not to sort of put ourselves in a good negotiating position. We could-- if that was the goal, 250, I don't know, but it does seem to be going all in on the project has put us in our best position to negotiate if that were the goal.

**WAYNE:** Thank you.

**BOSTELMAN:** Other questions? Seeing none-- oh, Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Chairman Bostelman. I couldn't let the Speaker go without at least one question. So thank you, Mr. Speaker, for bringing the bill and for this great conversation today. You heard-- I mean, Senator Wayne's question is kind of what I was asking. There-- we did hear descriptions of ancillary benefits to the canal and reservoir system. Does that merit-- is that ancillary benefits merit enough that we would build it anyway, even if Colorado recognized our right without the canal?

**HILGERS:** So the only-- so right now with that-- so what you're suggesting, I think, Senator Cavanaugh-- I appreciate the question-- is, in other words, a revised compact that says we, Colorado, will give Nebraska the guarantee-- legal guarantee, not just a pinky promise, that we will give you the-- no less than this flow in the nonirrigation season. To my answer to Senator Wayne, that would presuppose a lot of things, one, that, that they-- we would agree, that we could all come to the table and also get Congress to sign off

on that revised compact. It seems to me if that were to happen, it would only happen-- it wouldn't happen now. It would only happen after we actually move forward on this project. Is that your question?

**J. CAVANAUGH:** Well, my question is if all that were to happen before we would move forward on the project, would we still move forward on the project because of the ancillary benefits that we've heard about today, which is the reservoir and the time that Mr. Riley talked about, the ability to disperse the water at a different rate than we--

**HILGERS:** To have more flexibility--

**J. CAVANAUGH:** Right.

**HILGERS:** --on allocation? That's a, that's a very good question. At least part of that hypothetical, I would, I would answer by deferring to the experts. They may say the \$500 million-- if eve-- if you were to take out, in other words, if I understand your question, if you were to take out the-- as a benefit from the canal, the guarantee that we would get the 500 cubic feet per second and would it then be just the-- would the \$500 million spend of the reservoirs be justified by the ancillary benefits?

**J. CAVANAUGH:** Right.

**HILGERS:** Is there another way to answer-- I would defer to the, to the experts on that. I'm not entirely-- I don't know how to answer that question. I wouldn't know.

**J. CAVANAUGH:** Just thought it was fair not to just ask John Winkler that. Thank you, Mr. Chair.

**HILGERS:** Thank you, Senator Cavanaugh.

**BOSTELMAN:** So we're not actually appropriating money. You have a separate bill that goes to Appropriations for the funding, for--

**HILGERS:** Correct, there's-- so there's two and the, and the Governor, the Governor's budget included a request, I think \$400 million of Cash Reserve and \$100 million from ARPA.

**BOSTELMAN:** OK.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Natural Resources February 9, 2022

**HILGERS:** This, this bill, LB1015, gives the, the department the authority that it needs to construct the canal.

**BOSTELMAN:** Correct. Thank you. Senator Hughes.

**HUGHES:** Thank you, Senator Bostelman. Thank you, Speaker Hilgers, for bringing this bill. So your conversation with Senator Wayne and Senator Cavangaugh kind of brought up an additional thought and I don't know if you have considered this or-- but I, I did want to-- be able to throw it out there. I'd like your opinion on it. So we're talking about minimum flows. That's all we've talked about today. So in the, in the times when there are excess flows in the Platte, if we-- or on the South Platte, excuse me, if we have canal capability, storage capability, that's, I think, the value of the ancillary end of that, of being able to capture more of that, keep it from, you know, going clear across the state, causing damage as it goes and ultimately ending up in the Missouri and the Gulf of Mexico. Is that, is that a fair statement, in your opinion?

**HILGERS:** From my conversation with subject-matter experts, yes, it is a fair statement.

**HUGHES:** Thank you.

**WAYNE:** This is more--

**BOSTELMAN:** Senator Wayne.

**WAYNE:** This is more of a strategy question I probably shouldn't ask. This is one where an attorney asks one too many questions. Should we amend a, a dollar amount onto this bill to make sure that we have the dollar discussion on the floor?

**HILGERS:** I don't think it would be nec-- it's a good question, Senator Wayne. I don't think it would be-- well-- and let me take a step back. Our whole-- our budget conversation is going to be pretty complex as it is, maybe the most complex we've had in modern times. I anticipate that to be next month some time. What I would anticipate, knowing what I know now, is that this conversation will happen on the floor in the context of the budget itself or the budget bills, which is not just, not just-- it's not a budget bill, it's ARPA as well as the Cash Reserve transfer, and the Governor's-- or the-- and the, the budget-- deficit budget bill. So I do think-- I don't think you need-- this conversation is we need to give the department the authority. The second conversation is how much money. It's possible, as part of that conversation, the Legislature could decide to do

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Natural Resources February 9, 2022

something, something more, something less, defer some answer to that question later. But I don't think we need to put or would want to put the money into the-- this particular bill. Although I had-- to be fair, I haven't considered until your question, so I'll think on it.

**WAYNE:** I only based it, Speaker, off of the preliminary budget report where they didn't have money for this project.

**HILGERS:** Oh, that's a good question, Senator Wayne.

**WAYNE:** I'm here as an ally.

**HILGERS:** Thank you.

**BOSTELMAN:** Seeing no other questions, for the hearing record, we do have nine proponent comments and one opponent comment. That we'll close our hearing on LB1015. Thank you, Mr. Speaker.

**HILGERS:** Thank you, Mr. Chair.

**MOSER:** OK, now we get down to the real meat of our agenda, LB1099. Senator, you have the floor.

**BOSTELMAN:** Good afternoon, Chairman-- or Vice Chairman Moser, and good afternoon, members of Natural Resource Committee. My name is Bruce Bostleman, spelled B-r-u-c-e B-o-s-t-e-l-m-a-n, and I represent Legislative District 23. I'm here today to introduce LB1099. The bill creates the Nebraska Hydrogen Hub Industry Working Group. Working group would consist of members from the Department of Economic Development, manufacturing and industry, agriculture, transportation, energy, and clean hydrogen sectors. The working group is being created to draft a sub-- and submit a competitive proposal to the U.S. Department of Energy to be selected as one of only four regional clean energy-- clean hydrogen hubs in the U.S. There would be a one-time appropriation of \$800,000 General Funds in order to hire a consulting group to help draft a first-of-its-kind, comprehensive proposal to create a first-of-its-kind regional hydrogen hub here in Nebraska. Last November, Congress passed infra-- the Infrastructure Investment and Jobs Act, and one of the provisions of the Act was an \$8 billion grant funding to establish at least four regional hydrogen hubs around the United States. Secretary of Energy will select regional hydrogen hubs using criteria such as production, processing, delivery, storage, and end use of clean hydrogen. After speaking with NPPD and Monolith Materials about the hubs, we recognized that Nebraska is a prime candidate for a hydrogen hub location. We already meet some of the more important criteria, such as having a diverse

mix of electric generation and having substantial rail infrastructure capable of transporting hydrogen across the United States. Monolith, a clean hydrogen manufacturing, is already established in Nebraska. They are currently producing clean hydrogen and are seeking to expand the Olive Creek facility. What I believe is an important factor is that Nebraska is strategically located in the United States, allowing for quick transportation nationwide. This bill provides an opportunity for Nebraska to secure significant, significant federal grant funding to bring substantial economic and job opportunities to Nebraska. I urge the committee to advance-- advance the bill to General File, and I'll be happy to answer any questions.

**MOSER:** Questions for Senator Bostelman? Senator Hughes.

**HUGHES:** Yes. Thank you, Vice Chairman Moser. Thank you, Senator Bostelman. So you said this was applying for a one-time \$800,000?

**BOSTELMAN:** Yes.

**HUGHES:** But our-- the fiscal note's \$250,000, so what's-- what's the difference?

**BOSTELMAN:** Good-- good catch. That obviously is a misprint.

**HUGHES:** So in the-- in the bill, you have not specified how much money you want for this consultant, but in the fiscal note, it-- as I read it, it says \$250,000.

**BOSTELMAN:** Eight hundred thousand is the number that I've been given.

**HUGHES:** OK.

**BOSTELMAN:** I know it's incorrect.

**HUGHES:** We'll- we'll--

**BOSTELMAN:** And that needs to be addressed.

**HUGHES:** OK, thank you.

**BOSTELMAN:** Um-hum.

**MOSER:** Other questions?

**J. CAVANAUGH:** Thank you.

**MOSER:** Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Vice Chair Moser. Thank you, Senator Bostelman, for bringing this bill and this issue. I know it's probably really early, and I talked to some folks about this. Do we have any idea what the hub would look like in terms of like number of jobs potentially?

**BOSTELMAN:** That's--

**J. CAVANAUGH:** Is that what we're paying the consultant--

**BOSTELMAN:** That's the challenge and that's why the working group's getting put together. That's why we're-- there will be those who testify behind me, but that's really what this is about, is trying to figure out what-- what all that entails, what that looks like, and how we're going to put it together.

**J. CAVANAUGH:** But just based off of pure numbers, \$8 billion federal dollars and four sites, we could expect maybe \$2 billion in federal investment into a project?

**BOSTELMAN:** Potentially, sure.

**J. CAVANAUGH:** Thank you.

**BOSTELMAN:** Um-hum.

**MOSER:** We're letting you off easy. Thank you. Anybody else to speak in support of the bill?

**COURTNEY DENTLINGER:** Good afternoon, Vice Chair Moser and members of the committee. My name is Courtney Dentlinger, C-o-u-r-t-n-e-y D-e-n-t-l-i-n-g-e-r. I'm the director of wholesale services and external affairs for Nebraska Public Power District, the largest generator, electric generator, in the state of Nebraska, and I'm a registered lobbyist for NPPD. I'm here today to testify in support of LB1099, and I'd like to thank Senator Bostelman for introducing this legislation and for recognizing the enormous opportunity we have in Nebraska to position ourselves as leaders in hydrogen. The energy industry is seeing tremendous change, particularly in the evolving generation mix; however, diversity of fuels will continue to be an asset as consumers and policymakers demand less carbon intensity. Hydrogen is a fuel with significant potential, from electric generation to electric storage and transportation. In order to scale up the use of hydrogen in the United States, we need to see

investments in hydrogen production, transportation and delivery, storage, use, and related infrastructure. As Senator Bostelman mentioned, the Infrastructure Investment and Jobs Act directs the U.S. Department of Energy to support development of at least four hydrogen hubs, clean hydrogen hubs, meaning a network of clean hydrogen producers, potential clean hydrogen consumers, and the infrastructure necessary to connect them, and it sets aside \$8 billion over a period of five years for that purpose. Among other factors, the IIJA notes that the hubs must reflect geographic diversity. Many states will be competing for this designation and the associated investment. We believe Nebraska should put forth a competitive application, which would require collaboration by multiple industries and agencies in the state. LB1099 provides for the creation of that statewide industry work group to pursue this opportunity. While there are many details yet to be revealed by the Department of Energy, multiple states have already begun pulling together teams to work on their applications. The official solicitation will be released no later than May 15, 2022, so time is of the essence and we're ready to get to work. NPPD has a direct interest in hydrogen from both the generation and energy storage perspective. In addition, from an economic development perspective, we're interested in the potential that a hub would bring to the state and the associated infrastructure investments. While not specifically highlighted in the IIJA, we believe that the agricultural industry could also see significant benefits from hydrogen and from this designation. Nationally, NPPD is one of the sponsors of the Low-Carbon Resources Initiative. This is a partnership between the Electric Power Research Institute and the Gas Technology Institute. Together, those organizations are paving the way for fundamental advances in a variety of low-carbon electric generation technologies and low-carbon chemical energy carriers such as clean hydrogen, bioenergy and renewable natural gas. As the senator mentioned, we've begun working with EPRI, Tallgrass Energy, and Monolith Materials, a clean hydrogen producer located right here in the state of Nebraska, to pursue this opportunity. Once again, I'd like to thank Senator Bostelman for bringing this bill, and thank you for the opportunity to testify today. I'd be happy to try to answer any questions.

**MOSER:** Questions?

**GRAGERT:** I got a question.

**MOSER:** Senator Gragert.

**GRAGERT:** Thank you, Vice Chairman Moser. Thank you for your testimony. How-- I-- I vaguely remember that this hydrogen process was talked about a couple years ago, and it seemed like it was pulled because it was just going to be too expensive.

**COURTNEY DENTLINGER:** Ah, OK, so I think, Senator, you're referring to some work that we were doing with Monolith Materials initially. NPPD was looking at taking the hydrogen that Monolith was producing directly and converting Sheldon Station into the nation's first utility-scale hydrogen-generating station. And what we found through your cost estimates was that the economics didn't work for that opportunity, so Monolith instead is utilizing that hydrogen for other opportunities, including creating ammonia for agricultural producers in the state. We completely understand that, and that's why we had off-ramps in that agreement, to ensure that if the economics didn't work out, that that's the direction that we would go. But there are still numerous opportunities for the creation and use of hydrogen in Nebraska.

**GRAGERT:** So then I'm assuming, better not do that, but I'm assuming that this process is well within the range of being able to work in the [INAUDIBLE] and creating a hub and-- and we're in a geographic location to-- for this to be optimal?

**COURTNEY DENTLINGER:** We think that Nebraska would be in an optimal location. From what we understand, from what the-- the federal government would be looking for here, again, it's a regional network. We know that either coast is going to be looking at applying for a hub. We're likely to see one in Texas. They need to connect everywhere in the central United States. We think Nebraska is the perfect place and we'd like to make the case for that.

**GRAGERT:** Thank you.

**MOSER:** What would be the source of hydrogen? Would you fracture that off of natural gas somehow?

**COURTNEY DENTLINGER:** Well, and I can-- Monolith Materials has someone here to testify following me, and she could certainly answer that question.

**MOSER:** OK.

**COURTNEY DENTLINGER:** But, yes, they utilize natural gas and split it apart.



**MOSER:** OK, thank you.

**COURTNEY DENTLINGER:** Um-hum.

**MOSER:** Thank you very much for your testimony.

**COURTNEY DENTLINGER:** Yes.

**MOSER:** Anybody else here to speak in favor, in support of this bill?

**AMY OSTERMEYER:** Good afternoon, Vice Chair Moser and members of the Natural Resources Committee. My name is Amy Ostermeyer; that's spelled A-m-y O-s-t-e-r-m-e-y-e-r. I am executive vice president of development for Monolith Materials. Today, I'm here to support LB1099 on behalf of Monolith and our 170 employees. I'd like to provide a brief background on Monolith and our development in Nebraska. Monolith is a producer of clean hydrogen and cleanly made carbon black. Monolith's proprietary process uses clean electricity to convert natural gas into these two products without producing any carbon dioxide. Monolith's flag-- flagship location, known as Olive Creek 1, is located in Hallam, Nebraska. It was completed in 2020 and is successfully running and selling product to customers today. Company headquarters, along with our world-class research and development center, are also located in Lincoln, Nebraska. Since breaking ground in 2016, Monolith has moved over 50 team members and their families to Nebraska. Olive Creek 1 represents a over \$100 mill-- \$100 million capital investment and is the only commercial-scale facility of its kind in the world. Our OC1 operations, as we call it, "OC1," are responsible for creating over 50-- 90 direct jobs, 108 indirect jobs, and generating over \$50 million in annual economic impact to the state. The jobs created by Monolith are highly paid, highly skilled, clean energy jobs located in Nebraska. Due to the growing demand for clean hydrogen production, just after completing construction of the first facility in 2020, we began our expansion plans in Nebraska. The expansion project is known as Olive Creek 2. Construction of Olive Creek 2 will begin in the second half of 2022, with production anticipating starting in 2025. The Olive Creek 2 expansion project increases clean hydrogen production to nearly 60,000 tons annually. In Nebraska, we will convert that clean hydrogen to clean anhydrous ammonia, enabling the production of 275,000 tons of clean ammonia annually from Hallam, Nebraska. This facility will be over a \$1 billion capital investment, will create another 260 direct jobs, 600 indirect jobs, and over 800 construction jobs. Our goal is to distribute our clean ammonia through local co-ops for use in the region, helping to secure local

supply chain for this essential resource for Nebraska farmers. Currently, most anhydrous ammonia is imported into Nebraska, and now we will have a method to provide this essential product right here in the state. We recently announced that Monolith received conditional approval-- approval for a \$1 billion Department of Energy loan to fund a significant part of this expansion project. Over the past two years of working with the Department of Energy Loan Program Office, Monolith has developed a strong working relationship with the DOE. The Department of Energy will be responsible for administering-- administering the hydrogen hub grants. As previous testifiers have stated, the goal of the Department of Energy's hydrogen hub program is to demonstrate the production, processing, delivery, storage, and end use of clean hydrogen, and ultimately provide insights into how such a hub can be scaled nationally to drive a clean hydrogen economy. The bill defines a regional hub as a network of clean hydrogen producers, potential clean hydrogen consumers, and connected infrastructure located in close proximity. Given the existence of Monolith's commercial-scale hydrogen-producing plant and plans to expand in Nebraska to become the world's leading clean hydrogen producer, a Nebraska-based regional hub would take advantage of the existing production source of clean hydrogen situated in the central United States, creating a very unique ability to connect hubs from coast to coast right through the Heartland. For years, the United States and countries around the world have focused all of our decarbonization efforts on the power and transportation sectors. The reality is that electrifying those sectors cannot be our only solution. The next phase of energy transition is clean hydrogen. The production of clean hydrogen allows us to decarbonize these much-harder-to-abate sectors such as ammonia production, while creating hundreds of high-paying advanced manufacturing jobs in America. The future of energy is hydrogen, and with Monolith's production capabilities and strong potential partners within this state, we sit in an incredibly unique position to establish a regional hub centered in Nebraska. On behalf of our team at Monolith, I want to thank you for your time today, your support of this very important bill to support both decarbonization and economic development through jobs creation right here in Nebraska.

**MOSER:** Questions from the committee? Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Vice Chairman Moser, and thank you for being here. This is an interesting topic. So the-- you kind of were laying out a little bit of what the hub is. I guess that-- that was probably language from the federal law that was passed. Could you just go into a little bit more detail about that? So it would be kind of a-- it's

a hub of producers like Monolith; consumers, which would include users of the anhydrous ammonia and hydrogen for fuel cells or burning it or what?

**AMY OSTERMEYER:** Yeah, it's for users of the hydrogen itself, and hydrogen can be used in a variety of methods, and one of those is to produce anhydrous ammonia. But it's a-- it's-- and it's very conceptual right now, which is why bills like this are important to fund the shaping of hub applications in terms of designing that. But the idea is to bring together that unique group of industry producers and users and the connective tissue or the-- the infrastructure in order to move hydrogen. Hydrogen is a very difficult molecule to move. Without proper infrastructure around the country, it's difficult for-- for us to really, you know, begin that energy transition into hydrogen, so the idea is to create those hubs in regional locations in order to do that and to be able to essentially build a nationwide network of hydrogen infrastructure to be able to move it for energy production and all sorts of uses in industry that's needed today.

**J. CAVANAUGH:** So the idea of the hub would be-- so the idea of the bill would be to create a group of folks that are listed here to present an idea of what our hub would look like.

**AMY OSTERMEYER:** Correct.

**J. CAVANAUGH:** And so not all these hubs are necessarily going to look the same. One here, one in California, one in Texas or something like that, they might all look a little different?

**AMY OSTERMEYER:** That's right. But it is important to bring a diverse coalition together, you know, representing users and producers and the infrastructure companies, as well, in order to create a highly competitive hub application, and that's what this bill allows us, to begin that very important planning process with those groups.

**J. CAVANAUGH:** And the transportation looks like, I mean, are we talking trucks? Are we talking pipelines or both or--

**AMY OSTERMEYER:** You-- you can't-- you can use trucks. It's expensive and fairly inefficient, so I think the goal is to develop pipeline infrastructure to be able to move hydrogen around the country.

**J. CAVANAUGH:** Does that currently exist?

**AMY OSTERMEYER:** There are some hydrogen pipelines, typically around the Gulf Coast, and there's kind of some bespoke pipelines in highly industrial areas around the country, but not a network like you have, like natural gas pipelines that run across the country, and you can imagine a vision in-- by 2050, where we have that with hydrogen through programs like this.

**J. CAVANAUGH:** Thank you.

**MOSER:** Senator Gragert.

**GRAGERT:** Thank you, Vice Chair Moser. Question. Are there any hazards associated with all the-- the process and the "transportating" of-- of the hy-- of the product?

**AMY OSTERMEYER:** Certainly. I think with the handling of any chemical, there are hazards associated with it, and that is part of why funding like this is important, to be able to put concepts together, not just to be able to-- to move it, to be able to handle it safely, the education required for-- for those groups and all of the infrastructure, not just pipeline but training programs and education programs, in order to do that effectively. And so many, many hubs are emerging around the country where they're looking at universities, research and development labs coming together to be able to build that entire infrastructure in order to successfully deploy hubs.

**GRAGERT:** So being a hub, you-- you plan on pipelines going north, south, east and west?

**AMY OSTERMEYER:** That's part of what would need to be explored, is what's the right direction, but certainly the idea behind this being passed in the infrastructure law is that it ultimately would create a network that spans the country, and so of course you would go in all those directions. And being in Nebraska, we would be looking at solutions like that.

**GRAGERT:** Thank you.

**MOSER:** Questions? The process of using this hydrogen is-- the hydrogen is a byproduct to the separation of carbon black from the natural gas?

**AMY OSTERMEYER:** We think of as a co-product, so essentially what Monolith does is we heat the gas in an air-free environment and crack it into its original elements of hydrogen and carbon, and so we think of it as a co-product coming out of that process.

**MOSER:** But the carbon can be used for industrial purposes?

**AMY OSTERMEYER:** Yeah, yeah. Monolith's proprietary process allows us to convert that carbon into a product called carbon black, and the most common use of carbon black is in a tire. A third of every tire around the world is made up of carbon black, and so and then it can be used in a variety of other applications, any black plastic. Batteries use carbon black. There's many applications.

**MOSER:** Paint?

**AMY OSTERMEYER:** Paint, for coloring, UV protection. It-- literally, around this room, we're-- we're surrounded by products that are using carbon black today. Today it's used-- it's produced by burning oil, so it emits a tremendous amount of CO2. Monolith's plant is the first plant that's been permitted to be built in the United States in over 50 years due to the emissions that are no longer permitted to be built in the United States under the EPA.

**MOSER:** The-- the process of burning gas or oil to get the carbon separated is to kind of have imperfect combustion, and so some of the carbon is elemental and then the other gasses are vented off and--

**AMY OSTERMEYER:** We don't burn the gas.

**MOSER:** No, but I'm saying--

**AMY OSTERMEYER:** Yeah.

**MOSER:** --otherwise--

**AMY OSTERMEYER:** Otherwise, that's right.

**MOSER:** --you have a process that does it that doesn't waste all the energy--

**AMY OSTERMEYER:** Correct.

**MOSER:** --and it doesn't vent things to the atmosphere and--

**AMY OSTERMEYER:** Correct. It's very high yield for those pure pro-- those clean products of hydrogen and carbon in the process, so it's very clean, both from an air and water perspective, process.

**MOSER:** So if you wanted to be environmentally correct, you could use carbon black that you got from Monolith.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Natural Resources February 9, 2022

**AMY OSTERMEYER:** That's right. We are the number-one raw material in a tire, and as large tire manufacturers are seeking to produce the very first green tire, we're a key ingredient in that process to produce a green tire.

**MOSER:** Other questions? Thank you.

**AMY OSTERMEYER:** Thank you.

**MOSER:** Appreciate you coming in to testify for us today.

**AMY OSTERMEYER:** Thank you very much.

**MOSER:** Anybody else in support?

**JOHN HANSEN:** Vice Chairman Moser and the committee, good afternoon again. For the record, my name is John Hansen, J-o-h-n, Hansen, H-a-n-s-e-n. And so we, Nebraska Farmers Union, does have a position on this and we are in support of this. And at our recent wind and solar conference, as we-- as we share the latest and best information on a whole wide range of topics that impact renewable energy, this year, we thought that because of the-- of the level of interest in the level of the technology and sort of taking a look at next-gen kinds of things. We had a session with the head of Monolith, as well as one of the senior researchers from the United States Department of Energy's National Renewable Energy Lab, that was a part of a very interesting session that helped us all better understand the many different kinds of choices that are available in the technologies that can be used to both create and also use hydrogen. And so I would just, for advertising sake, say that you can go to the-- just Google the Nebraska Wind and Solar Conference, and you can pick that up out of this last year's session. And it was very interesting, and it raised a lot of interesting questions that we hadn't thought of. But as I thought, as I read Senator Bostelman's bill, and I thank him for bringing this, it seemed like a really logical thing to me, based on our-- our state's development with the Monolith project, our geographic location, and my experience that I've had in working with the Department of Energy on other issues down through the years, that I think Nebraska has a strong case to be made for why it is that we would be a good location for one of these hubs and that it would behoove our state to move forward and try to find the resources to put together a good application. And we would be supportive of that application and that process. And any time that we can recruit more good, high-paying jobs and-- and more clean energy to our state, that's a positive thing to do. And so we thank Senator Bostelman for

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Natural Resources February 9, 2022

bringing the bill. We're in support of it and would be glad to answer any questions if we could.

**MOSER:** Questions for Mr. Hansen? Thank you very much for coming to testify for us, with us today.

**JOHN HANSEN:** Yeah, thank you.

**MOSER:** Anybody else in support? Anyone here in opposition? Is there anyone here to testify in the neutral capacity? Seeing none, Senator Bostelman, you're back up.

**BOSTELMAN:** Real quick, the fiscal note didn't come out until over lunch, so we will-- we'll take a look at that and discuss it with our teammates here as to what that-- what that is. This is a unique opportunity that's, again, one of these things that doesn't happen very often. We have an opportunity to capitalize on a-- on a company that, Monolith, that-- or other similars that decided to come to Nebraska several years ago, and they're doing the clean hydrogen and they have other applications, so this fits very well. We are centrally located. Our location is great. We've got an opportunity here to make a significant economic impact change to-- to Nebraska, to Lincoln or, actually, I think, Omaha as well. So with that, I'll take any other questions and thank you for your time.

**MOSER:** Any other questions for Senator Bostelman? Thank you. We did receive position letters, two proponent letters and no opponents or neutral. That would conclude our hearing for today. Thank you for coming.