

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

Natural Resources Committee  
February 03, 2011

---

[LB529 LB563 LB621]

The Committee on Natural Resources met at 1:30 p.m. on Thursday, February 3, 2011, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB563, LB621, and LB529. Senators present: Chris Langemeier, Chairperson; Ken Schilz, Vice Chairperson; Tom Carlson; Mark Christensen; Annette Dubas; Ken Haar; Beau McCoy; and Jim Smith. Senators absent: None. [LB563]

SENATOR LANGEMEIER: Very good. First of all, welcome, everyone, to the Natural Resources Committee hearing. I'd like to welcome everybody that's here in the crowd and is going to participate in the hearings before us today. I'd like to also welcome those that are on closed-captioned television that are watching us throughout the building and around the area and also those that are watching the hearing on the Internet. We appreciate your participation. My name is Chris Langemeier; I'm the Chairman of the Natural Resources Committee. I'm going to introduce our committee members that are around the table here today. A number of them have bills in other committees, so you'll see the senators come and go throughout the day as their staff advises them they have to go testify in other rooms. But they will come back as their schedule frees up. We're going to start with our sole end post to the committee here, Senator Jim Smith from Papillion. Senator Haar from Malcolm will be joining us shortly. Senator Christensen from Imperial, Nebraska, has a bill in another committee and will be joining us. Senator Ken Schilz is also in another committee and will be with us shortly. Laurie Lage is the legal counsel for the Natural Resources Committee. To my immediate right we have Senator Annette Dubas from Fullerton. Then we have Senator Tom Carlson from Holdrege. And then we have Senator Beau McCoy from Elkhorn in west Omaha. We have at the end of the table Barb Koehlmoos, who's the committee clerk; she'll be your first stop as you come up to testify today. For those of you that care to testify on a bill, in the corners of the room you're going to see this green sheet; we ask that you take one and fill it out. And as you come up to testify, if you would hand that to Barb, it helps us keep an accurate record of the proceedings here today. Also in the corners of the room--if you're here and you want to be part of the hearing but you don't plan to testify, there's also this spreadsheet in the corner that you can sign in and tell us what bill and that you support or oppose so we can add you to the record as being here but not testifying. We have two pages today with us. We have a new page going to help us today. We have Tom Kelly from Sutherland, Nebraska; he's a sophomore at UNL. And then we have our page that's dedicated to our committee, going to be here all year, Kate DeLashmutt, who is from Burwell, Nebraska, and she's a senior at UNL. For those of you that have things to hand out, we ask that you have 12 copies. If you know you need a couple more copies made, raise your hand now, and one of the pages will come help you with that. If you hand something to the committee for us to look at, once you hand it to us it becomes part of our record; we will not return it. So if you have a family photo or...we see a lot of pictures; if you have something like that you'd want us to see, please show it to us from the testifier's table and then allow a senator after the

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

Natural Resources Committee  
February 03, 2011

---

hearing--if they would like to come up and look at it in more detail, they'd have that opportunity. But again, if you do hand it to us for us to look at, we have to make it part of the record. At this time I would ask everybody to look at your cell phone and please either turn it off or put it in vibration so we don't disrupt those that care to testify here today, as everybody gets an opportunity to do that. So with that all said, we will start the hearings. We're going to hear them in the order they were posted outside, so we will start with LB563. Senator Utter is here, and we'll open the hearing for you. And welcome to the Natural Resources Committee.

SENATOR UTTER: Thank you, Senator Langemeier and members of the Natural Resources Committee. I believe maybe this is my first appearance before this auspicious committee. And so I'm not sure what to expect, but they--you all look like friendly faces, so we'll proceed from there. I am Senator Dennis Utter from District 33, which is the Hastings area. That's spelled D-e-n-n-i-s U-t-t-e-r. I'm here to introduce LB563. LB563 gives the village of Ayr, Nebraska, which is located in southern Adams County, control of the Crystal Lake State Recreation Area. The purpose of this transfer is to alleviate some of the fiscal responsibilities from the Parks Division of the Nebraska Game and Parks Commission. The division has been in a tight budget situation for several years. In response to these tough budget times, Game and Parks has come up with a plan approved by the board of commissioners to alleviate some of that responsibility with regard to some of the state recreation areas. The intent of this plan is to streamline the park operations, to include, among other courses of action, the conversion of some of the smaller, less frequently visited satellite park areas to more natural wildlife areas and thus reducing the operating expenses for the Nebraska Game and Parks Commission. In some instances, Game and Parks has approached potential partners, namely, local subdivisions of government, those being either city or county, and inquired about their interest in managing these satellite parks and managing them more like a state recreation area than a wildlife management area. Game and Parks has found a number of local entities willing to assume leadership and take over these areas. Crystal Lake State Recreation Area is an example of such an area, in which the village of Ayr, in cooperation with the Little Blue Natural Resources District, is willing to accept and operate. This appears to be a mutually beneficial arrangement for both parties and certainly for the public. The local community benefits from the park visitors that frequent these areas, the commission benefits from a reduction in operating expenses, and the public continues to enjoy the benefits from a park area that provides outdoor recreational opportunities for all Nebraskans and their families. And I just want to say at this point a word about...the village of Ayr is a village of about 107 people, according to the latest figures that I have. And I want to express my gratitude to them and also my admiration for their willingness to step up and take over this small recreation area, it's about 35 acres in size and that is next to the village of Ayr, and to continue to operate it for the benefit of local residents, for all citizens of Nebraska, and all visitors, as a matter of fact. And I look forward to your favorable treatment of this bill. I'd be willing to answer any questions that anybody might have. [LB563]

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

Natural Resources Committee  
February 03, 2011

---

SENATOR LANGEMEIER: Very good. Are there any questions for Senator...Senator Carlson. [LB563]

SENATOR CARLSON: Thank you, Senator Langemeier. Senator Utter, where is this located from Ayr? [LB563]

SENATOR UTTER: It'd be north, basically a little north of Ayr. Yeah. [LB563]

SENATOR CARLSON: Okay. And you failed to acknowledge that Ayr is a community that's just located a few miles north of the best legislative district in the state, District 38. (Laughter) [LB563]

SENATOR UTTER: I really try to forget that, Senator Carlson, because there's some dispute, I think, about that. But that being said, we're happy to have your legislative district as a neighbor of ours. [LB563]

SENATOR CARLSON: Thank you. [LB563]

SENATOR LANGEMEIER: Any other questions? Seeing none, thank you. [LB563]

SENATOR UTTER: With your permission, Mr. Chairman, I have business next door, and I will...I know there are several people here to testify for this bill. And I will waive closing... [LB563]

SENATOR LANGEMEIER: Okay. [LB563]

SENATOR UTTER: ...and move to my other duties. So... [LB563]

SENATOR LANGEMEIER: Sounds good. [LB563]

SENATOR UTTER: ...thank you very much. [LB563]

SENATOR LANGEMEIER: Thank you. You have heard the opening on LB563. In the Natural Resources Committee we do use the light system. You'll see you get five minutes to testify, for testifiers; a green light will come on at the start. When you have one minute left, you'll see a yellow light. Then after that it will go red, and we ask that you conclude. So you've heard the opening on LB563. Those that want to testify in support, proponents, please come forward. Mr. Kuhn, welcome. [LB563]

ROGER KUHN: Senator Langemeier, members of the committee, my name is Roger Kuhn; it's R-o-g-e-r K-u-h-n. I'm director of the Nebraska state parks system and am representing the Nebraska Game and Parks Commission today. I think Senator Utter

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

Natural Resources Committee  
February 03, 2011

---

explained it very well. This is a situation where we have went out and tried to solicit partnerships with a variety of entities and political subdivisions and communities. And last year, you might recall, we did transfer...this body did transfer Arnold and Atkinson Lake state recreation areas to those local communities. Earlier this session you heard about Bowman Lake for Sherman County as a possible transfer. And today we're talking about Crystal Lake. And we want to thank Senator Utter for him proposing this legislation and also thank the village of Ayr for their willingness to take this over. This area has been around since 1937; it's a very old area. And there's been a lot of investments made in the area with the help of the local community over the years. They donated a lot of money through fund-raisers over the years or the life of Crystal Lake that we've managed it. So I think you'll hear a little more about that. But it is--it's a--I think it's a win-win situation for the Game and Parks and the state of Nebraska along with the village of Ayr. As budgets have gotten tighter and we have reduced services, these communities...they're very important to the local communities that are willing to step forward and take over management. Understand that this particular area has federal funding invested in it, the Land and Water Conservation Fund money. Therefore you'll notice in the legislation it talks about certain requirements that you have to follow when federal money is invested; those are some of the strings attached with federal money. It also has a reversion clause, meaning that if at some point in time the community or village of Ayr cannot manage the area, it would revert back to the Game and Parks Commission, and that falls in place with the federal requirements. So I think that's important to note. Also the area...it'll save us around \$5,000 in spending. We'd take care of it as a satellite area out of Grand Island headquarters that we have there. So it will save us trips down to Ayr to take care of this area. With that, I would try to answer any questions that the committee may have. [LB563]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Kuhn? Seeing none, thank you very much. [LB563]

ROGER KUHN: Okay, thank you. [LB563]

SENATOR LANGEMEIER: We're seeing a trend with these projects. Anyone else care to testify in support? Good afternoon and welcome to the committee. [LB563]

RANDY KORT: Senator Langemeier and fellow senators, I appreciate your time today. My name is Randy Kort, R-a-n-d-y K-o-r-t. I am a member of the village board of Ayr. Have been a resident of Ayr about three generation's worth. Crystal Lake Area has been a long-established park and association with the village of Ayr. Really, the...it was asked earlier where it is located from the community; it's a mile north. There really isn't any connection between the two, other than close proximity. Once we were approached by the state Game and Parks Commission that they were considering closing the park in order to, for budget savings, and they asked if we were interested in going into conjunction with them in order to turn ownership over to the village if we were

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

Natural Resources Committee  
February 03, 2011

---

interested. After some consideration and some investigation, the village decided that we would attempt to do this if the Legislature allows us to. We feel it's important for this park, just because we have seen a lot of interest, a lot of repeat visitors not only from the Hastings area, but the surrounding outstate Nebraska. A lot of people use the park regularly; we felt it would be unfortunate if it was allowed to just be closed. As was mentioned earlier, in the mid-'70s to early '80s there was a lot of money invested into the park, because it had kind of been I don't want to say neglected, but it just wasn't kept up to the standard of what it had been in the past. Once that money was invested in it, the state has done a wonderful job of keeping it up and keeping the interest within that park so that it is used and appreciated by the residents of Nebraska. In our conversation that we had...we have also had conversations with the natural resources district in our area. They're going to help us in conjunction with some--trying to manage the park more successfully, due to the fact that of a village of 107 people, as you might imagine, our budget isn't very large either. We do not want this to become a burden for our residents, so we are going to try to manage this as fiscally, you know, successfully possible as we can. I guess that's all I...I just wanted to make sure that your committee was aware that the village has given this some thought and consideration, and we are in favor of this if you so see to move along with this. [LB563]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Kort? Senator Carlson. [LB563]

SENATOR CARLSON: Thank you, Senator Langemeier. Randy, of the 35 acres, how much of it is lake? [LB563]

RANDY KORT: I think the lake was measured at between three and four. [LB563]

SENATOR CARLSON: Okay. And does that stay pretty steady, pretty level all year long? [LB563]

RANDY KORT: It is a spring-fed lake, so that as the water table drops, so does the lake. And normally that happens during the late summer. The water level always decreases as the summer progresses but usually recovers back to, you know, its--I don't want to say its maximum, but it recovers to a set level every--during the winter months. [LB563]

SENATOR CARLSON: And what else is a part of that 35 acres? In terms of facilities, what's there? [LB563]

RANDY KORT: There are cement camper pads with electrical hookups. There are three--there's an electric well with three water hydrants that provide water for camp use. There are--the rest rooms are just outhouse-style rest rooms; I think there's four of them located around the park. There are two picnic areas, covered picnic areas that have been there since the park was established back in the '30s, like was stated earlier. So

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

Natural Resources Committee  
February 03, 2011

---

I...and then there's a storage structure that is also on site, where, I think, things in the past were stored; I'm not so sure anything is in them as of right now. [LB563]

SENATOR CARLSON: Okay. Thank you. [LB563]

RANDY KORT: You're welcome. [LB563]

SENATOR LANGEMEIER: Very good. Senator Smith. [LB563]

SENATOR SMITH: Mr. Kort, thank you for being here today. And thank you and your community for stepping up and sacrificing to do this. For a 107-member community, that is a sacrifice, so thank you. Do you have a sense as to how much it's going to cost your community to maintain this? [LB563]

RANDY KORT: Well, the figures we have been using is based off what the Game and Parks has been investing in the park. And they offset their expenditures with camper fees, which has been on an honor-based system. From the village standpoint, we intend on continuing that. Our concern is we don't know if the camper fees will continue to be consistent. So income versus expenditure becomes a big question mark on our side. We're planning on doing as much volunteerism as we can. As far as outlaying expense, they have told us that utilities run around \$3,500 a year. And then the only, really, other expenditure that they have incurred is the fact of lawn care, upkeep, things like that. Those type of expenditures we're hopeful that we can keep to a minimum. The electricity--as long as we can keep camper fees coming in should offset the electrical bill, is what we're hoping, because their annual camper fee that they had been collecting averages around \$5,000 a year. The other concern that we did have was liability insurance. In order to have a facility like this, somebody was going to have to be responsible for the liability concern. That is part of, hopefully, something we can come to agreement with with Little Blue NRD, because they currently have sites like this that they insure. So they're giving us some guidance and some help as far as what the village can do to keep that cost at a minimum as well. [LB563]

SENATOR SMITH: Okay. Thank you. [LB563]

SENATOR LANGEMEIER: Very good. Are there any other questions? Seeing none, thank you very much for your testimony. [LB563]

RANDY KORT: Thank you. I appreciate the time. [LB563]

SENATOR LANGEMEIER: Further testimony in support. Good afternoon. [LB563]

MIKE ONNEN: (Exhibit 1) Senator Langemeier and Natural Resources Committee members, my name is Mike Onnen; that's M-i-k-e O-n-n-e-n. I'm manager of the Little

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

Natural Resources Committee  
February 03, 2011

---

Blue NRD in Davenport. And I'm here today in support of LB563, which would transfer the title of Crystal Lake property to the village of Ayr. The Little Blue NRD became involved in the Crystal Lake project in 1975. At that time the village of Ayr established the Ayr Bicentennial Committee, which had a goal of rejuvenating the park, which had deteriorated over time. The local community sought assistance from Adams County and the Little Blue NRD. The NRD was instrumental in securing funds for dredging and diking the lake that was in the park, through the Nebraska Natural Resource Development Fund. Assistance was also provided by Game and Parks Commission through the Land and Water Conservation program, which you had heard about earlier, for renovation of the facilities. In total, \$181,000-plus was spent for renovating the lake and facilities. About \$67,000 of that came from the Nebraska Resource Development Fund and \$90,000 from the Game and Parks Commission. And then Adams County, the bicentennial committee, and the Little Blue NRD each contributed about \$7,500 toward that effort. The area continues to provide opportunities for camping, fishing, picnicking, hiking, and swimming ever since that time. Following the Game and Parks' communication with the village about taking the park's maintenance over, the village contacted the district, seeking possible funding sources for upkeep and maintenance of the park. And having made an investment in the restoration of the park many years ago and recognizing that few areas do exist in this part of the state for public recreation, the board believes that this park should continue to provide the current level of public outdoor opportunities. The board felt that the village's proximity to the park provides probably the best option for local oversight, and we therefore support the transfer of the park and campground to the village. The NRD has taken action to approve, or agree to supply the insurance needs for this property, which includes a liability as well as a property/casualty coverage. And that will help the village in that regard. We also will provide whatever technical assistance the village would be needing in terms of regulations, development, and so forth. So we are very willing to work with them as much as we can to make this project a reality. We therefore support LB563 and would encourage the committee to forward the bill to the floor. Are there any questions? [LB563]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Onnen? Seeing none, thank you very much for your testimony. [LB563]

MIKE ONNEN: Okay. [LB563]

SENATOR LANGEMEIER: (Exhibit 2) We appreciate it. Further testimony in support. Seeing none, any testimony in opposition? Seeing none, any testimony in a neutral capacity? Seeing none, I think we can wish Ayr good luck with their new park. That concludes the hearing on LB563. And we will open up the same subject matter but LB621. Senator Heidemann, you're recognized to open. All right. Before we do that, I've got a letter from Donna Babcock from Platte Valley Antique Machinery Association in support of LB563. Now I'll open LB621. Good afternoon. [LB563]

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

Natural Resources Committee  
February 03, 2011

---

SENATOR HEIDEMANN: Senator Langemeier and members of the Natural Resources Committee, I'm Senator Lavon Heidemann, spelled H-e-i-d-e-m-a-n-n. And I represent District 1 in the southeast corner of the state, including Brownville, and I'm here today to introduce LB621. LB621 would convey the land comprising of the Brownville State Recreation Area from the Game and Parks Commission to the village of Brownville. It is the intent of the commission that the property continue to be managed for public access and for public outdoor recreation opportunities, including the continued maintenance of the federally funded public boating access facilities through 2013. Situated just southeast of Brownville, this 22.6-acre area offers boating access to the Missouri River and provides a site for picnicking and camping. The village of Brownville board of trustees approved a resolution on January 10, 2011, to receive the recreation area properties back from the Game and Parks Commission. The board's resolution also refers to the transferring of funds being held in trust by the Game and Parks Foundation for maintenance of the park area. The Game and Parks Foundation met on January 22, 2011, and agreed to transfer the money to the village of Brownville pending an agreement with the community that the money will be spent on the Brownville park. As I understand, the commission is taking care of this. At the present time the park area remains somewhat unusable due to flooding last year that left river debris and silt deposited in the area. The village believes that the best way to get the park restored is to get the property returned to them. The village board has been working with the Game and Parks Commission, who has been supportive of the transfer, as they are looking to divest of smaller areas due to the budget cutbacks if they can find a willing recipient. The only federal funds used on this project were for a boat ramp, therefore only the obligation in this transfer is that the boat ramp remain open to the public through 2013. There were no federal Land and Water dollars involved. I believe that LB621 will benefit both the village of Brownville as well as the state. The village has received support from the county board, and no community members have expressed opposition. Therefore, with a willing recipient whose intent is to clean up the area and keep it open for public access, I urge your support in advancement of LB621 from the committee. If there are any questions, I'd be happy to answer them; however, I will note that there are representatives from the village of Brownville and the Game and Parks here today, and they may be able to answer your questions. Also, before the questions I will state that we're a little short in Appropriations today; I will waive closing. And hopefully, you'll look favorably upon LB621. [LB621]

SENATOR LANGEMEIER: Very good. [LB621]

SENATOR HEIDEMANN: Okay. [LB621]

SENATOR LANGEMEIER: Are there any questions for Senator Heidemann? Seeing none, thank you very much. [LB621]

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

Natural Resources Committee  
February 03, 2011

---

SENATOR HEIDEMANN: You betcha; thank you. [LB621]

SENATOR LANGEMEIER: Well done. You have heard the opening on LB621; now we'll go to anyone wanting to testify in support, or proponent. And welcome back. [LB621]

ROGER KUHN: Thank you, Chairman Langemeier, members of the committee. My name, again, Roger Kuhn, R-o-g-e-r K-u-h-n, representing the Nebraska Game and Parks Commission. Again, Senator Heidemann, I think summarized things very well. The community of Brownville is interested in taking over the control and management of the Brownville State Recreation Area. It is approximately 22 acres. It was conveyed to the Game and Parks Commission, or state of Nebraska, in two different actions, one in 1961, the other in 1968. Those two combined actions total the 22-plus acres. As Senator Heidemann pointed out, Brownville State Recreation Area, located near the community of Brownville, sits on the Missouri River. One of the important roles that this area plays is access to the Missouri River by a significant number of boaters--fishermen, pleasure boaters. Also it serves as a primary access point for the "Belle of Brownville," which is owned and operated by Randall Smith that I know is here today and has done that for many years. And we've had agreements with Randall over the years to provide access to his "Belle of Brownville" excursion boat or ferry boat for quite a long time. So it serves an important role, an important purpose to the state of Nebraska in access on the Missouri River. I think with the "Belle of Brownville," the excursion boat, it's been an important tourism attraction for the community of Brownville and the state of Nebraska. We're very happy and want to give our thanks to Senator Heidemann for carrying this legislation and the community of Brownville for stepping forward. Over the years we've had a good relationship. It is prone to flooding. There's been a number of floods over the years we've had control of it. And with flood comes, you know, a major effort to clean up. It dumps a lot of silt completely over the property; the cleanup can get quite expensive at times. And then reseeded and reworking the roads and all the things you have to deal with is a pretty big undertaking, and we've done that numerous times. It's kind of ironic. Crystal Lake had a major tornado/windstorm last year that, you know, we've been dealing with as well. So these areas do have their issues. It varies as far as expenses from year to year, depending on the situation of flooding or other things like that that can happen. Generally speaking, this, again, is a satellite area that we take care of out of our Indian Cave State Park operation. So we transfer mowers and stuff by trailer and truck, which is about 15 miles away. So with Brownville controlling this area, that saves us quite a bit of travel time and equipment time and all these sorts of things, which saves the state of Nebraska money. So with that, I would try to answer any questions that the committee might have concerning this transfer. [LB621]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Haar. [LB621]

SENATOR HAAR: Yes, I was just wondering, will the maps of Nebraska that list parks

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

Natural Resources Committee  
February 03, 2011

---

and so on still have these areas listed even though they belong to the communities?  
[LB621]

ROGER KUHN: That's a good question. They will not technically be state recreation areas or Game and Parks areas any longer, so probably not, not in our brochures or literature. But that is an excellent question. We would probably have them on there. One thing that would change, of course, with these areas would be the park permit requirement would no longer be needed. Now, if the community wants to issue a permit or an access fee, they can. I think on Brownville, it is important to note, and Senator Heidemann touched on it, but the federal money involved is with the boat ramp, and there's a requirement that's got to remain open to the public through 2013. But also important to note in this legislation, it is the intent of the legislation to keep this area open to public access and public use, I think, throughout its life. So there is no Land and Water money, and there is no reversionary clause in this legislation. So if the community of Brownville cannot run it any longer, there isn't any automatic reversion back to the Game and Parks Commission, as there was with the Crystal Lake bill.  
[LB621]

SENATOR HAAR: Well, the person that talked from Ayr was saying that he would still like to collect fees from campers coming in and, you know, camping trailers. And so I would at least suggest that you figure out some way so that you can continue to show these areas, if nothing else for the--so that some of the income can continue to come to them. [LB621]

ROGER KUHN: Sure. I understand, to help promote the areas. [LB621]

SENATOR HAAR: Yeah. [LB621]

ROGER KUHN: And it would be up to the communities to establish their own fees and rules and regulations on these areas. [LB621]

SENATOR HAAR: Sure. But in terms of publicizing... [LB621]

ROGER KUHN: Right. [LB621]

SENATOR HAAR: ...that would be much better through Game and Parks. [LB621]

ROGER KUHN: Yeah. And we'll be happy to work with the communities on that, on that very issue, as far as... [LB621]

SENATOR HAAR: Well, maybe sometime in the future you could let us know how that's working... [LB621]

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

Natural Resources Committee  
February 03, 2011

---

ROGER KUHN: Sure. [LB621]

SENATOR HAAR: ...because I think that's really important. [LB621]

ROGER KUHN: Okay. Be happy to. [LB621]

SENATOR LANGEMEIER: Very good. Are there any other questions? Seeing none, thank you very much. [LB621]

ROGER KUHN: Okay. Thank you. [LB621]

SENATOR LANGEMEIER: Further testimony in support. Good afternoon and welcome. [LB621]

JAY TALLMON: Good afternoon. Senator Langemeier and the rest of the Natural Resources Committee, my name is Jay Tallmon, T-a-l-l-m-o-n, and I am on the--or representing the village board of trustees, Brownville, Nebraska. And I'm here in support of LB621 and the deeding back of the two parcels, as Roger mentioned, back to the village of Brownville. We have also went through some of the exercises as far as liability goes for the park area. We've identified that; we have a...it's a very minimal impact to the village. We also have the...what we're calling seed money from the Game and Parks Foundation to start our project. And we are in the effort of soliciting private, local, company support in not only the direct Brownville area, but Nemaha County and southeast Nebraska. We also have...you should have a letter on record from the Nemaha County Board of Commissioners in support of this effort, also. I have been in contact with the local NRD, also, and some of the trails commissions. Our intent is to keep the area open for public use, picnicking, camping, and not to charge any fees, keeping the boat ramp open. And, hopefully, we will be able to maybe charge some fees for the camping as soon as we can restore the area to a usable condition. [LB621]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Haar. [LB621]

SENATOR HAAR: Yes, just to follow up on my previous question. Tourism is important to Brownville, and would you find it useful if Games and Parks continued to show your recreation area? Or would you just as soon they stay out of that? [LB621]

JAY TALLMON: I would think that anywhere that we can promote or advertise or market a recreation area throughout the state, be it through the, you know, the Tourism and the...or the Game and Parks or local advertising, on the Web, in print, absolutely. We need to make sure that it's on the map and that when people come over the bridge from out of state that they want to stop in Brownville and maybe have a picnic with the family or go bike riding or hiking or visit the stores and help us in some of that revenue generation. [LB621]

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

Natural Resources Committee  
February 03, 2011

---

SENATOR HAAR: Okay. Well, I really encourage you to continue that discussion, then, with Game and Parks, because I think, too...maybe a different-colored dot on the map, but you ought to be on that map of record. [LB621]

JAY TALLMON: I totally agree; thank you. [LB621]

SENATOR HAAR: Yeah. Thanks. [LB621]

SENATOR LANGEMEIER: Senator Carlson. [LB621]

SENATOR CARLSON: Thank you, Senator Langemeier. Again, of that 22-plus acres, about how much of it is water? [LB621]

JAY TALLMON: Well, I don't know if I can answer that. I think that everything of the 22.8 is above water right now. (Laughter) The Missouri River borders us on the east, and I'm not sure; I'd have to...but the way that we looked at it on the plat maps, it looks like it's all above water right now. [LB621]

SENATOR CARLSON: Well, what is there, a channel, then, out to the river? What's, where's the boat ramp? [LB621]

JAY TALLMON: The boat ramp is actually on the river's edge. [LB621]

SENATOR CARLSON: Okay. [LB621]

JAY TALLMON: Right on the river's edge. [LB621]

SENATOR CARLSON: Okay, so this area isn't meant to have a pond on it. [LB621]

JAY TALLMON: No. [LB621]

SENATOR CARLSON: Not at all. [LB621]

JAY TALLMON: No. [LB621]

SENATOR CARLSON: How often does it? [LB621]

JAY TALLMON: Over the last few years, it's had a pond there a few times, yes... [LB621]

SENATOR CARLSON: And that is a challenge. [LB621]

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

Natural Resources Committee  
February 03, 2011

---

JAY TALLMON: ...or an extension of the river. [LB621]

SENATOR CARLSON: But obviously you feel like it's an advantage to you if you can maintain that and keep it up, to help bring people in there and provide a service as well as possibly bringing some business to Brownville. [LB621]

JAY TALLMON: Absolutely. I think that we can possibly help mitigate some of those levels when the river comes up and gets to a certain footage with maybe a series of berming down along the river's edge, an extension of what exists, that we might be able to mitigate probably 90 percent of that lakefront that we end up with sometimes. [LB621]

SENATOR CARLSON: Okay, well, good luck to you. [LB621]

JAY TALLMON: Thank you very much. [LB621]

SENATOR LANGEMEIER: Are there any other questions? Senator Haar. [LB621]

SENATOR HAAR: Then I also take it that...well, I've done some camping in rec areas, and occasionally I have some campers out there, you know, drinking beer, whatever, late at night. And that would be just taken care of by your local sheriff's department or something like that. [LB621]

JAY TALLMON: We would have to, obviously, talk to the sheriff's department to help support that type of policing, yes. [LB621]

SENATOR HAAR: Good. Okay, thanks. [LB621]

SENATOR LANGEMEIER: Very good. Seeing no other questions, thank you very much. Well done. [LB621]

JAY TALLMON: Thank you. [LB621]

SENATOR LANGEMEIER: Further testimony in support of LB621. Seeing none, is there anyone that'd like to testify in opposition? Seeing none, is there anyone in a neutral capacity? Seeing none, and the senator waived closing, that concludes the hearing for LB621. Now we will move on to LB529. And Senator Carlson, you are recognized to open when you're ready. [LB621]

SENATOR CARLSON: Good afternoon, Senator Langemeier and members of the Natural Resources Committee. I am Tom Carlson, spelled C-a-r-l-s-o-n, representing the 38th District, to introduce LB529. And I would hope that this one goes as smoothly as the first two have gone this afternoon. First of all, I want to say that I am not an enemy of the Environmental Trust. And I'd like to make it clear that the help that I have

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

Natural Resources Committee  
February 03, 2011

---

received through my efforts in legislation in the previous four years in the Legislature, the Environmental Trust has been very, very good. And in my project of removing vegetation from the streambeds of the Republican and Platte rivers, particularly in the last two years, if it weren't for the Environmental Trust and NRCS, we wouldn't have a project. So I very much appreciate what the Environmental Trust has done. This bill is a result of many constituent and county contacts over the past two or three years. LB529 proposes several changes to the conservation easement statutes as well as the Nebraska Environmental Trust provisions. First of all, all political subdivisions that tax property subject to the easement shall receive written notice from the proposed holder stating the fiscal impact of reclassifying the land or removing it from the tax rolls. I think that's a reasonable request. Secondly, a county may refuse to approve an easement on the basis of the best interest of the county. That's a key provision of this bill. Third, easements shall be limited to ten years, with provisions for continuing. And if ten years is not acceptable, what would be better? What would be acceptable? Fourth, the Nebraska Environmental Trust shall not hold land in fee or obtain easements. Fifth, no more than 10 percent of Nebraska Environmental Trust allocations in any year shall be used for land purchases and acquisitions. I believe this is a key component of this bill. Number six, only political subdivisions shall use Nebraska Environmental Trust grants for land acquisitions. I think this is an important aspect of this bill. The real purpose of this bill is to make everyone economically whole when land is reclassified. As you've heard me say many times in committee and on the floor of this body, water and crops are the economic drivers of this state. One of my constituent county's residents have met in my office and also testified in front of the Nebraska Environmental Trust about the effects of irrigated farmland being acquired with perpetual conservation easements. That particular county supplied figures showing that the net local impact associated of thousands of acres of average irrigated farmland in that county acquired by perpetual conservation and easements would create a loss of a very significant amount in property tax revenue annually and a reduction of millions of dollars in economic activity. Taken over a period of ten or more years, these figures become huge losses of property taxes and multimillions of losses in local economic activity. Other counties outside of my district have contacted the Nebraska Association of County Officials about this situation, and NACO assisted in the drafting of LB529. They will be following me with testimony. The Nebraska Environmental Trust executive director, Mark Brohman, also contacted me this morning to say the Trust would not be appearing today due to their board meeting. However, they are agreeable to working on an interim study to bring parties to the table on this issue. In conclusion, agriculture is our number one industry. Having been to conferences in the past three years as Chairman of the Ag Committee, I've been told and I believe that we must double our production in agriculture in the next 20 years to feed the world. I think that next to the mission of the church, feeding the world is the next in line. What can be more important? So do we continue to allow permanent easements? Our mission is to feed ourselves and a significant portion of the world. We may need some of those acres. I think it's very important that we allow counties to make decisions in the best interest of their county. And the fairness issue in regard to property

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

Natural Resources Committee  
February 03, 2011

---

taxation is paramount in regard to this bill. I ask the committee to keep these concerns in mind as they listen to opposition to the bill and please ask those in their opposition to offer a solution to the lost property tax issue. Thank you for allowing me to open on LB529. [LB529]

SENATOR LANGEMEIER: Very good. Are there any questions for Senator Carlson? Seeing none--oh, Senator Haar has one. [LB529]

SENATOR HAAR: So according to this bill, then, Senator Carlson, if I deeded or willed, or whatever, some of my land into a conservation easement, it couldn't be for more than ten years. [LB529]

SENATOR CARLSON: That's what the bill says. [LB529]

SENATOR HAAR: Okay. Okay. Thank you. [LB529]

SENATOR CARLSON: Okay. [LB529]

SENATOR LANGEMEIER: Now, no other questions. Thank you very much for the opening. We'll move now to proponents of LB529. Come on up. Welcome. [LB529]

IVAN FINTEL: (Exhibits 3, 4, 5 and 6) Thank you. My name is Ivan Fintel, it's I-v-a-n F-i-n-t-e-l, Clay County Board of Supervisors chairman. I'm a no-till farmer and have farmed and lived in Clay County all my life. I'm the chairman of the board of the Clay County supervisors, whom I represent today. Clay County became concerned when Ducks Unlimited came in to protest their taxes. They based their protest on the Farm Service Agency crop certification of grasslands on farms that they had sold conservation easements on. The 800 acres of farmland was valued at \$803,095, and DU requested their valuation to be lowered to \$320,000. This single devaluation would result in a loss of \$484,095 in taxable valuation, equally an estimated \$9,420 per year of lost tax revenue. And the Board of Equalization had two landowners come in to protest taxes on land which they sold their rights of decision-making with regard to what they can do with the land. They lost their income ability to the conservation easements. The board felt that these landowners did not have adequate information from these conservation groups on what they got involved in. They were looking at the dollars they were paid for these land rights without taking into consideration the fact that they would be required to pay taxes on this land for the rest of their lives and the lives of their children. The holders of the conservation easements have total control over this land. The landowners' concerns are that they have no means to generate income from this land to sustain the tax burden, or even the reduced tax burden, on this property. During these meetings we also had concerned citizens of Clay County come in to question us why we devalued this productive farmland for conservation groups. They felt that these were not fair practices to the landowners and citizens of Clay County since it would put

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

Natural Resources Committee  
February 03, 2011

---

an undue burden on them and the county, which in effect would limit the ability to provide essential tax money for schools, roads, emergency services, etcetera. These services are essential to run our county. With an eroded tax base, the need for the county's services does not go away, so we must rely on other landowners to make up the lost tax revenue. At this point in time we appointed an advisory committee from the concerned citizens of Clay County to help the board of supervisors research these organizations' intent, their practices, the sources of their funding, and the effects on our county. After further study we found that there were a lot of things like this going on in our area. We expressed our support of conservation in Clay County to DU, however asked that they consider our concerns in the future of conservation plans. Shortly thereafter they purchased and then transferred a half section of agricultural land to the U.S. Fish and Wildlife. We also learned that a lot of the funding of these activities was coming through grants from the Nebraska Environmental Trust. At this point in time we started attending the NET meetings and testified to the effects they were having in Clay County with perpetual easements and land acquisitions, the loss of tax revenue, and the negative economic impact to our county. We were told by staff that the NET only used about 15 percent of their funding each year for these types of projects and that was a small amount of what they did. We attended NET meetings for the last year and a half. At these meetings we always testified, answered their questions, but we were denied important information that we requested which would help us to get a handle as to what their impact to our county might be. We were denied to the point where we had to contact the Attorney General's office to remind them that this was public information they're dealing with and we had every right to obtain it. Regrettably, our failed attempts of achieving meaningful public input regarding the use of public funds has appeared to be viewed as an irritation and an inconvenience. We are in support of LB529 in its entirety. We feel this bill will once again help our county to make decisions that are in our best interest. Clay County would like to thank Senator Tom Carlson for introducing this bill. We'd like to thank Chairman Langemeier and the committee members for allowing us to testify. If you have any questions, I'll try to answer them. [LB529]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Christensen. [LB529]

SENATOR CHRISTENSEN: Thank you, Mr. Chairman. Thank you, Ivan. Would your support of the bill go away if the property tax was maintained? I guess that's what I'm hearing. You did say you supported the whole bill. [LB529]

IVAN FINTEL: Um-hum. [LB529]

SENATOR CHRISTENSEN: But if you're testifying on the end of the property tax reduction, if it was held constant to the value of when it's converted would that...? [LB529]

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

Natural Resources Committee  
February 03, 2011

---

IVAN FINTEL: No, I don't believe so, because I guess we're not considering what the economic impact is. Because a lot of times, I guess, what we had been, I guess, figuring at the board of supervisors is, if we have a farmer on that piece of land, most of the time the money he invests to farm that farm, you know, gets turned over at least two and a half times, maybe even three times, within that area or the county. And that's a huge impact. So, I mean, we need that option to stay working for our county also. It's just not the taxes; it's...we've got to, you know, maybe the economic part of it is almost bigger than what the taxes are, I guess. I don't know how else to explain that better. But, I mean, the taxes are important; I mean, when they come in and they devalue, say, an irrigated farm where you're getting maybe 40-some dollars an acre for taxes, and then they bring it down to maybe the lower \$20s or mid-\$20s, you know, that's a huge impact also. But we feel that, you know, both of these have to work in combination, I guess. [LB529]

SENATOR CHRISTENSEN: Thank you. [LB529]

SENATOR LANGEMEIER: Senator Haar. [LB529]

SENATOR HAAR: Could you go over again, you said that some of the information that you requested you didn't get. Did you finally get it and it was just a hassle? Or you really haven't even gotten some of the information? [LB529]

IVAN FINTEL: We did receive it after the Attorney General, after we sent a letter to him. We did receive the grant information then. But prior to that time, most of the time what happened when we went to the meetings there, everybody said, well, we need to be to the next meeting. And when we attended the next meeting, it seemed like all the other subcommittees and different things had already talked about the issues that we wanted to confront with the Nebraska Environmental Trust, though it seemed like we were always a step behind every time we went to a meeting, just because we didn't have this information prior. And then a couple times when we contacted the Nebraska Environmental Trust, anyhow Mark Brohman said that, you know, he said, well, we didn't really want to hand this information out because we had an incident with the Omaha World-Herald about I believe it was the Snake River situation. And they didn't want that to get out to the paper, so he felt that this wasn't proper to hand this information out yet. And I guess we felt that anytime anybody hands anything to us in a meeting of the board of supervisors, as soon as they hand that information in, it becomes public information right away. So we felt that we had a right to that information. [LB529]

SENATOR HAAR: So was it like information where they planned to buy these easements and so on? Or was it...? [LB529]

IVAN FINTEL: Yes. It would be...a lot of times it seemed like what we found out in these

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

Natural Resources Committee  
February 03, 2011

---

grants...there's so much detail to them, it takes, I guess you need to really have the whole grant to read through it, to find out what they're really going to do with this money. And in some cases they can have grants that maybe are taking place in another part of the state of Nebraska, and, in turn, they let some of that grant money open-ended, to where maybe they could bring that back around and use it maybe in Clay County then. So actually, you know, it's kind of hard to track where all this money is going. And so it was important to us, I guess, to have that information and try to see if we could pinpoint some of the main things they were thinking about doing in Clay County. [LB529]

SENATOR HAAR: Thank you. [LB529]

SENATOR LANGEMEIER: Senator Christensen. [LB529]

SENATOR CHRISTENSEN: Thank you, Chairman. Ivan, how many acres are affected in your county, do you know? [LB529]

IVAN FINTEL: I'm going to have another person coming up testifying here that'd probably have more detail on that. But right now we have probably about 42,000 acres in the whole county that's affected. And some of that would be the Meat Animal Research Center. Some of that would be the Greenlief National Guard site. And then the rest of it would be U.S. Fish and Wildlife, Game and Parks, DU, and whatever, you know, NRCS-type easements and all that kind of stuff that's going on in our county, so... [LB529]

SENATOR CHRISTENSEN: How many acres does it take to sustain a farmer in your area? [LB529]

IVAN FINTEL: Well, it seems like...since I'm a farmer, I'm not a large farmer, I just basically almost call myself a hobby farmer, and I farm about 1,000 acres. And honestly, you know, if I was a young farmer, that wouldn't be enough to sustain my operation. But since I...you know, I'm like the third-generation family farmer, and so I've had the opportunity to have the farm kind of handed down to me, I guess, so it makes, you know, my situation a little different than somebody just coming in starting out. But I would say, you know, if they didn't have livestock and things, they would need at least, you know, probably 1,000 to 1,200 acres to sustain, you know, their livelihood, I would think. [LB529]

SENATOR CHRISTENSEN: Thank you. [LB529]

SENATOR LANGEMEIER: Senator Dubas. [LB529]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you very much, Mr. Fintel, for bringing your perspective into this discussion. I would like to give you an opportunity

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

Natural Resources Committee  
February 03, 2011

---

to clarify something in your testimony. You're saying the board felt that several of these landowners didn't have real adequate information when they entered into these easements. Do you feel they were misled? Or they just didn't take the time, maybe, to do their own homework on what they were signing? You know, I would be very concerned if these people were being misled. [LB529]

IVAN FINTEL: Well, I think both. I think, you know, I did hear some instances where they do put quite a bit of pressure on, you know, some people that have this type of land. I mean, they keep calling, and they keep, you know, trying persistently to buy this property. And I feel that it's probably, you know, guilt on both sides. And I think...well, it's a tough call. Most of it, the decisions are made, you know, on the...looking at the money part of it. I mean, because these organizations, they come in and they'll offer, you know, an enormous amount of money for this type of property. And, you know, it's just you're almost foolish if you don't take it, I mean, to get to that point. So I think, you know, a lot of it is just the money part of it, honestly. [LB529]

SENATOR DUBAS: Okay. Thank you. [LB529]

SENATOR LANGEMEIER: Are there any other questions? Senator Schilz. [LB529]

SENATOR SCHILZ: Thank you, Senator Langemeier. Ivan, thanks for coming in today. You struck me with something that you said as you were going along and you were talking about Nebraska Environmental Trust grants. You--can you explain a little more what you meant by open-ended grants and that there's grants that are applied in certain areas that they...are you claiming they're keeping money back to use in other areas that weren't specified in the grant? [LB529]

IVAN FINTEL: Well, I think a lot of times what we've noticed that a lot of these grants that are applied for, they apply for a lot more money than they need. And then in that circumstance then, that maybe allows them to, you know, shuffle some of this around. And what we've found out also, no matter what the name of the conservation organization is, I mean, they basically all operate the same way. I mean, they're all out to get this, you know, basically what I'd call free money to, you know, do these conservation perpetual easements and all this kind of stuff, I guess. So, you know, our concern is that it almost seems like it's just a big, you know, money basket and everybody is just kind of shoving the...laundering the money around to whoever needs it and whoever they can put a name in to...I guess, maybe I should start over here on this example. We have a little organization in Clay Center there; they call it the Wing Ding event. Each year they have that to help people, encourage people to come in and view the geese and the ducks and things like this. So that organization doesn't have the ability to go purchase a piece of property on their own. So what DU did is they come in and help them with the grant and kind of sponsored them to get this grant, which, in turn, you know, in the process, I mean, DU would probably be the winner of the

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

Natural Resources Committee  
February 03, 2011

---

outcome of this, you know, or the U.S. Fish and Wildlife, because they were using a--on what they call a roundout area, just to, I guess, to fulfill this wetland area that they were working on. So I guess we've seen the organization, you know--are these grants, you know, used in that way where, you know, if you can put another group's name in here, they, you know, jump on that, and then, with their backing and ability to write the grants, and they get more funding, so... [LB529]

SENATOR SCHILZ: How many acres in your county are controlled by Fish and Wildlife Service? [LB529]

IVAN FINTEL: I believe it'd be over 6,000-plus acres. [LB529]

SENATOR SCHILZ: And what sort of a presence has Fish and Wildlife Service had in your county throughout history? If you know. [LB529]

IVAN FINTEL: Well, if I know...I don't know, I can't remember the date when they actually really started their presence in Clay County. I guess when they started, I guess it was on there, the concept where they would work with the farmers and try to help them develop, you know, their wetland areas and things like that. And then it for some reason it changed, and then they decided it was better if they controlled everything instead of, you know, helping the farmers, which I'm sure would be a lot easier, just controlling it, and then they could do what they wanted. And I guess over the years, too, we've saw the changes in conservation practices. Because when they first started out, they planted trees and they, you know, did certain kinds of grasses and all this kind of stuff. And then, you know, about so many years later then somebody else must have been in charge, and then all of a sudden they decided, well, you know, this isn't acceptable for, you know, water fowl, and so they come in and tear all the trees out and redesign the whole system. So I don't know if that really answered your question, but... [LB529]

SENATOR SCHILZ: Sure, well, yeah. And then, I guess my next question is, Fish and Wildlife Service came out, and how does...? Are they coming out and negotiating for this land? I mean... [LB529]

IVAN FINTEL: Well, not so much. I don't know if the U.S. Fish and Wildlife really has the money to go out and, maybe, buy the property right at the moment. But it seems like through them working with these other nonprofit organizations and things like this, somehow they work the system, then, to get this accomplished, to where, say, DU goes out and buys the property, like we were talking about. And then somehow through all these conservation easements and different things they can get this transferred around to where somehow DU probably gets their money back and the U.S. Fish and Wildlife ends up with the conservation easement on the property to do what they want then, so... [LB529]

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

Natural Resources Committee  
February 03, 2011

---

SENATOR SCHILZ: Okay. And then could you just tell me, last question, how many of these conservation groups are actively working in your county to acquire easements or land or both? [LB529]

IVAN FINTEL: I would say there would probably be maybe four or five main ones, probably. [LB529]

SENATOR SCHILZ: Do you know who they are? [LB529]

IVAN FINTEL: Well, we'd have DU, the joint...okay, well, let's see, I've got to think about it. [LB529]

SENATOR SCHILZ: The Rainwater Basin group? [LB529]

IVAN FINTEL: Yeah. And, let's see, then we have the U.S. Fish and Wildlife, and then we have the state organizations. [LB529]

SENATOR SCHILZ: NET being one of those? [LB529]

IVAN FINTEL: NET, yes, would be part of the--some of the funding or all the funding or most of the funding in Clay County probably. [LB529]

SENATOR SCHILZ: Okay. Thank you very much. [LB529]

SENATOR LANGEMEIER: Senator Christensen. [LB529]

SENATOR CHRISTENSEN: Thank you. How many acres total would be in your county? Give me a... [LB529]

IVAN FINTEL: I don't know, it's just the normal, or pretty much a normal-size county, 36 miles by 36 miles. So I guess I don't have that figure on the top of my head. [LB529]

SENATOR CHRISTENSEN: But it is 36-by-36, roughly? I can figure it from there. [LB529]

IVAN FINTEL: Uh-huh. Yeah. [LB529]

SENATOR CHRISTENSEN: Okay. Thanks. [LB529]

SENATOR LANGEMEIER: Senator Haar. [LB529]

SENATOR HAAR: Do groups like Ducks Unlimited actually buy up cropland? Or do they

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

Natural Resources Committee  
February 03, 2011

---

buy up places that are flooded and things like that? [LB529]

IVAN FINTEL: Well, basically, they're buying up farmland now, because I guess they justify it if there's just a small area, maybe on a farm. It doesn't seem like it has to be a whole lot, I mean, maybe, say, anywhere from 8 to 12 acres of wetland area or something on a farm. Basically, I guess what the county supervisors are thinking is, when they're buying these irrigated farms, I think they're buying it for the irrigation wells and the water so they can use it, I guess. Our thoughts are if they need to sell this plan to some of their people that, you know, donate money to them, that when they come out to hunt they want to see water somewhere. I guess, you know, if they kept everything natural, you know, there's some years where there are not going to be any wetlands, and there's some years where it's going to be. But I think they, you know, use that kind of as a selling point, you know. When they come out there's going to be water there. So they can promote it that way. But they, yes, they've been buying, you know, dryland and irrigated farms. And, you know, that's our biggest concern right now. I mean, we just think that's just a sad way to go, you know, with our farmland, so... [LB529]

SENATOR HAAR: So then if they buy up the...and unfortunately you're first, so you're going to have to educate us in some of these... [LB529]

IVAN FINTEL: Okay. [LB529]

SENATOR HAAR: Okay. [LB529]

IVAN FINTEL: I'll try. [LB529]

SENATOR HAAR: So if they buy up cropland, for example, or irrigated land, do they convert that to wetland? Or you're saying they use the water rights there to keep the wetlands wet? Or...? [LB529]

IVAN FINTEL: Right. That's kind of what they're doing. In some cases we've noticed they've converted the whole farm, you know, to like a grassland area. And then in some cases, then, they'll put a fence around it, and then sometimes they'll let somebody pasture that with cattle. And then in some areas, like, you know, where they buy the irrigated farms, sometimes we've seen it where they converted maybe half the farm into a conservation part and they're renting out the other half of the farm to a farmer yet that is...all this land has perpetual easements on, so basically, you know, at any time they could probably change their mind on letting that person farm that, and then convert it into whatever they desired, I guess, at that point in time. [LB529]

SENATOR HAAR: So if they rent out let's say half a piece of land to someone to farm it, are the taxes lower then? Or where does the tax...? [LB529]

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

Natural Resources Committee  
February 03, 2011

---

IVAN FINTEL: Well, on that part of that land yet, we are able to keep the taxes what the normal irrigated rate would be on that, you know, at this point in time, I guess. But once it's converted, and then like I said in the little talk here, they'll go to the FSA office, and then they'll certify it however they feel their use is, I guess, on that piece of land. And then that's what they bring in to us to devalue it. And so we're kind of, I guess, up against the wall a little bit, because when they bring that in, you know, that's their use of this land. And if they aren't, you know, if they're going to hay it more than two times a year, then we could charge them a higher rate, you know, for taxes on the land. But if they're maybe going to hay it one time or just pasture it, then it would be figured at a pastureland rate. So otherwise, the other part of the land that's being farmed would be assessed just like a regular irrigated farm. [LB529]

SENATOR HAAR: A regular farm. And then when this land is bought up by Ducks Unlimited or whoever it is... [LB529]

IVAN FINTEL: Um-hum. [LB529]

SENATOR HAAR: ...do they pay fair price for this? Or you feel that the residents of your county are getting less than they should? [LB529]

IVAN FINTEL: So far I don't think Ducks Unlimited is, at least to my knowledge, I guess. If they were interested in a farm, they have bought it. So I think they've always had the highest bid. I guess we had a concern with that, too, when we brought this up to the Nebraska Environmental Trust, that we felt the appraisal on some of this property, you know, probably wasn't done right. Because a lot of times when we sit in the Board of Equalization as, you know, the Clay County Board of Supervisors, you know, people will bring appraisals in for their houses and different things like that. And in certain cases, we can't accept them because we feel you can go out and you can get an appraisal on a house or a piece of land, and that appraiser can appraise it the way you need it appraised, you know, in certain instances. And so we feel sometimes, you know, that maybe makes a willing seller, you know, out of somebody just because they can offer more than what a farmer could to produce a crop or whatever off of that land, you know, and actually pay for it and, you know, make a living from it. [LB529]

SENATOR HAAR: But generally in these cases you have a willing seller... [LB529]

IVAN FINTEL: Right. [LB529]

SENATOR HAAR: ...of the land. Okay. [LB529]

IVAN FINTEL: Um-hum. Um-hum. I mean, I guess, just like I was saying before, I mean, if somebody comes and offers, you know, \$5,000, \$6,000 for my piece of ground, I'm definitely, seriously probably going to think about it. And if it's DU... [LB529]

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

Natural Resources Committee  
February 03, 2011

---

SENATOR HAAR: Um-hum. [LB529]

IVAN FINTEL: ...you know, I guess, you know, it's DU. [LB529]

SENATOR HAAR: Um-hum. [LB529]

IVAN FINTEL: Or if it's another farmer, I guess it'd be another farmer. But in some of the cases we've seen, it's been a conservation organization that's come out on top in a lot of instances. [LB529]

SENATOR HAAR: Okay. Thanks. Thanks. [LB529]

SENATOR LANGEMEIER: Senator Schilz. [LB529]

SENATOR SCHILZ: Thank you, Senator Langemeier. One more question. When folks come in to protest their taxes and stuff, are they saying that some of that ground is no longer irrigated but it's gone to pasture? Or how are they...? [LB529]

IVAN FINTEL: Well, actually, the people I was talking about in the letter here... [LB529]

SENATOR SCHILZ: Um-hum. [LB529]

IVAN FINTEL: ...the ground that they put into the easements was probably, well I guess one of them could have been farmed, more like a dryland farm... [LB529]

SENATOR SCHILZ: Um-hum. [LB529]

IVAN FINTEL: ...and the other one would be more like a wetland area and pasture area. And so, you know, that's kind of what those two would be. [LB529]

SENATOR SCHILZ: So had they ever been irrigated before? [LB529]

IVAN FINTEL: Those two probably hadn't, no. [LB529]

SENATOR SCHILZ: Probably hadn't. Do you have any that had been irrigated before? [LB529]

IVAN FINTEL: Not that I know of. It would have just been the conservation groups that come in on those situations. [LB529]

SENATOR SCHILZ: Okay. And then I guess the reason I ask that is that you said they're buying this land to be able to have the wells... [LB529]

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

Natural Resources Committee  
February 03, 2011

---

IVAN FINTEL: Um-hum. [LB529]

SENATOR SCHILZ: ...to pump water. [LB529]

IVAN FINTEL: Right. [LB529]

SENATOR SCHILZ: And is that going on? Are those folks that are pumping the water also asking for less valuation? [LB529]

IVAN FINTEL: Well, can you repeat that? I guess I... [LB529]

SENATOR SCHILZ: I guess what I'm asking is... [LB529]

IVAN FINTEL: Okay. [LB529]

SENATOR SCHILZ: ...whether you're irrigating a crop... [LB529]

IVAN FINTEL: Um-hum. [LB529]

SENATOR SCHILZ: ...or irrigating a duck... [LB529]

IVAN FINTEL: Um-hum. [LB529]

SENATOR SCHILZ: ...you're still irrigating. [LB529]

IVAN FINTEL: That's correct, yes. [LB529]

SENATOR SCHILZ: Is that not...? [LB529]

IVAN FINTEL: It's not considered irrigation anymore at that point in time, because... [LB529]

SENATOR SCHILZ: It's not. [LB529]

IVAN FINTEL: Right. [LB529]

SENATOR SCHILZ: But you're still...but they're still pumping the water out of the ground... [LB529]

IVAN FINTEL: Yes, that's correct. [LB529]

SENATOR SCHILZ: ...and using it that way. [LB529]

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

Natural Resources Committee  
February 03, 2011

---

IVAN FINTEL: Um-hum. [LB529]

SENATOR SCHILZ: Hmm. [LB529]

IVAN FINTEL: If I... [LB529]

SENATOR SCHILZ: That might be a valuation issue. [LB529]

IVAN FINTEL: If I could make a point here, awhile back here Ducks Unlimited came in and they wanted to put--bury an underground water pipe across one of our county roads. And we told them at the time, no, we wouldn't allow that, because it's in an area where we have a real shortage of water. And we had a hearing on that at our county board meeting. And we had the landowners come in, and they voiced their opinion, you know, that this is a serious thing for them and, because the wells that were in jeopardy, there was probably, I don't know, probably about 13 different landowners there and houses, you know, included with most of this. And they were, like, concerned because right now their wells are pumping really fine sand and things like that, and they have serious problems even with the irrigation season going on sometimes, that even most of the irrigation wells are further away from this. But DU wanted to use this one well that they bought on this one farm and pump the water a mile maybe, or I don't remember the exact distance, and stuff to put into this wetland area. And so we refused them to--because we have a perpetual easement on our roads, we refused them to go across our road. And so after that, you know, they threatened to sue us; they brought their attorney in and threatened us and different things like that. And then after that, too, they went out and, I guess, I don't know the exact count but maybe six or eight test wells they've drilled and there's no water there, to our knowledge, I guess, that they found. So we felt that was, you know, kind of threatening to the county. And they just really didn't want to be good neighbors, you know, to the people that live by these areas and things like that and take things like that into consideration. So... [LB529]

SENATOR SCHILZ: Thank you. [LB529]

SENATOR LANGEMEIER: Senator Haar. [LB529]

SENATOR HAAR: By the way, many years ago I went out to watch ducks and geese and so on and didn't realize that some of those county roads are just becoming very muddy. And I got stuck really bad. But does tourism--at that point I was a tourist in your county. Does tourism play a part in the economy of your county or doesn't it really make any difference one way or the other? [LB529]

IVAN FINTEL: It probably really doesn't make much difference. In Clay County we probably have, this is just kind of a guess but maybe 25 motel rooms. And then

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

Natural Resources Committee  
February 03, 2011

---

depending on...just the people coming out maybe wouldn't necessarily stay in a few, couple of those motels maybe. And so we don't get a lot of, you know, people staying, you know, for that part of it. If they do, they probably maybe, go to Hastings or something like that and stay and then drive into our county. Sometimes when there are hunting seasons going on, some of these areas that DU and U.S. Fish and Wildlife have, they don't allow people to hunt at certain times on those areas. So then it comes back to the landowners of Clay County to provide places for these people to hunt anyhow and things, so...but we feel we just really don't gain hardly anything from that, you know, considering if we had a farmer on that quarter of land, you know, and, say, he spent \$100,000, and... [LB529]

SENATOR HAAR: Um-hum. [LB529]

IVAN FINTEL: ...that turned over two or three times, you know, we'd be so far, you know... [LB529]

SENATOR HAAR: Ahead, yeah. [LB529]

IVAN FINTEL: ...ahead than the tourism, you know. I mean, we have people come in and do things and whatever, but it's just not, you know, what's sustaining our county, so... [LB529]

SENATOR HAAR: Well, thank you very much for that information. [LB529]

IVAN FINTEL: Um-hum. [LB529]

SENATOR HAAR: I appreciate it. [LB529]

IVAN FINTEL: Okay. [LB529]

SENATOR LANGEMEIER: Any other questions? I just have one tidbit of information. [LB529]

IVAN FINTEL: Okay. [LB529]

SENATOR LANGEMEIER: My real job, I am an appraiser. [LB529]

IVAN FINTEL: Okay. [LB529]

SENATOR LANGEMEIER: And if you have any of those appraisals, I also sit, when I'm not living this life, I sit in the committee that does the enforcement on those. [LB529]

IVAN FINTEL: Okay. [LB529]

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

Natural Resources Committee  
February 03, 2011

---

SENATOR LANGEMEIER: So as you get those, send them to us. [LB529]

IVAN FINTEL: Okay. [LB529]

SENATOR LANGEMEIER: We'll properly evaluate them and take action that needs to be taken. So... [LB529]

IVAN FINTEL: Okay, thank you. [LB529]

SENATOR LANGEMEIER: ...we appreciate that, and you did a great job. [LB529]

IVAN FINTEL: Okay, thank you. [LB529]

SENATOR LANGEMEIER: Further testimony in support of LB529. Mr. Dix, welcome. [LB529]

LARRY DIX: (Exhibits 7, 8) Good afternoon, Senator Langemeier and members of the committee. For the record, my name is Larry Dix. I'm executive director of the Nebraska Association of County Officials, appearing today in support of LB529. Typically, certainly I would allow other county board members that are here to testify in front of me. I'm trying to jump in here. I've got a couple other hearings that I'm trying to cover today; it's just been one of those days. But a couple of points that I want to make, and I'm sure there's going to be some people that will be able to address some of the more specific questions, I think, that we were talking about or were being asked, as far as number of acres and some of those things. But from the Nebraska Association of County Officials, I...and, in fact, I have two letters that I'll hand in in support, from Cedar County and Saline County. I've had e-mails from a number of other counties. I think I've had e-mails from 15 other counties that are in support of this. Because I don't want somebody to say, this is just a Clay County issue. Some of the issues that Mr. Fintel were describing are certainly happening across our state. And I've got to tell you, they're happening north, south, east, or west. So it's pretty well going on across the state. One of the things that we want to talk about, and I think at some point in time you'll probably going to hear some testimony in regard to payment in lieu of taxes or the U.S. Fish and Wildlife revenue sharing program. And payment in lieu of...those are, somewhat, two different United States programs that pay for land in which the federal government own. Either it is through the forestry service and, or it is through U.S. Fish and Wildlife. And this morning, I just got off the phone with some folks in Washington, D.C. that were talking about the U.S. Fish and Wildlife funding. And of course, what we're seeing here at our state level, which we are also seeing at the national state level, is as funds dry up, there is fewer and fewer funds available to provide this. And so, at least the information that I could obtain from the National Association of Counties is that the U.S. Fish and Wildlife program pretty much goes to sustain properties that were already in

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

Natural Resources Committee  
February 03, 2011

---

existence at a certain period of time. But new properties that's being bought, there's really very, very limited resources to pay any "in lieu of taxes" into the future. So that's something that certainly is going on. I also want to talk a little bit about the tax base, because I think that's important. And from the seats that you all sit in, as you know, the tax base, when we've got some county folks up here talking, but that the tax base isn't just the county tax base. This is the same tax base for your schools, the same tax base for your NRDs, for many of the other political subdivisions. And, of course, if that tax base diminishes, as you all know, TEEOSA will come in, state money will come in to make some of that whole, so that puts a little bit more pressure on the state side. Then, you also have to take into consideration the nonequalized schools. And once you get into the nonequalized schools, of course, tax base goes down, they can't come back in with TEEOSA money; they just lose that valuation within their school districts. So it doesn't just impact counties; there's also school districts that are involved. And I have visited with the Nebraska Association of School Boards about that, and they, too, have that concern. Senator Haar, you had mentioned the tourism dollars and things like that. One of the things that...now I'm putting my, just my county hat back on again. But when a tourism--when a person comes into a county for tourism, the money that they typically spend, or the environmental impact, and I know it's a big, big picture, but from county government's point of view, there's very few of those dollars that come to county government, because our money is based on property tax. And a lot of that time if there's a sales tax, that money maybe goes to the cities, because they have the ability to collect the sales tax. So if someone stays there and pays some locals sales tax, that stays in the city. Or an occupation tax, that can stay in the city side of it. So those are the comments that I briefly wanted to make sure to have on record and make sure that NACO is on the committee statement that we do support what Senator Carlson is doing in this bill. We think it's a very, very serious issue that is going on across the whole state. And with that, I would be happy to answer any questions you may have. [LB529]

SENATOR LANGEMEIER: Are there any questions for Mr. Dix? Start with Senator Christensen. [LB529]

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you, Larry. Just using the math from the last example, 42,000 acres of about 829,000, just over 5 percent, have you ever looked at it from the perspective of what percent you think would be logical that could be in easements at one time? I don't think anybody wants to get rid of all easements... [LB529]

LARRY DIX: No. [LB529]

SENATOR CHRISTENSEN: ...and I don't think anybody wants to put counties or anybody else in a bad position. [LB529]

LARRY DIX: No, I don't think so either. And I would tell you, Senator Christensen, as we

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

Natural Resources Committee  
February 03, 2011

---

look--our organization typically looks across the whole state, and we have not made any calculation that would come up with and say, here's a logical percentage of how many acres. We haven't looked into that. [LB529]

SENATOR CHRISTENSEN: Okay. Thank you. [LB529]

SENATOR LANGEMEIER: Senator Haar. [LB529]

SENATOR HAAR: Several questions, the letter from Saline County said that their county commissioners "passed to support NACO's position." NACO's position is set how? By a vote of all the counties, or...? [LB529]

LARRY DIX: Yeah, let me make sure you understand that. NACO's position...the NACO board is made up of 18 members, and that is made up of geographic representation. There are members from Douglas and Lancaster that sit on that board; there are clerks, assessors, treasurers, highway superintendents that sit up on that board. So it's a very, very broad-based...that group comes together and analyzes every bill, and they take their position. And the counties, then...every county is represented by a district representative, so they can provide their input to the district representative, who carries it forth that has voting power on the NACO board. [LB529]

SENATOR HAAR: Okay. I think I got that. [LB529]

LARRY DIX: Okay. (Laugh) [LB529]

SENATOR HAAR: And how many counties, then, support this, the NACO position? [LB529]

LARRY DIX: We don't go by, we don't ask for a vote of every county. NACO takes its board based on that representation. So we would say that the counties in the state of Nebraska support that based on NACO's position. [LB529]

SENATOR HAAR: Well, you'd mentioned 15 counties... [LB529]

LARRY DIX: Fifteen counties had contacted me. [LB529]

SENATOR HAAR: Oh. Okay. [LB529]

LARRY DIX: I'm sorry. I'm sorry, I didn't mean to misrepresent that there were only 15 counties that were... [LB529]

SENATOR HAAR: Okay. [LB529]

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

Natural Resources Committee  
February 03, 2011

---

LARRY DIX: ...voting on this. Fifteen counties personally had contacted me... [LB529]

SENATOR HAAR: That's what... [LB529]

LARRY DIX: ...through a phone call. Yes. [LB529]

SENATOR HAAR: Yeah, that's what I'm asking. [LB529]

LARRY DIX: Yeah. [LB529]

SENATOR HAAR: One of the provisions of this is easements should be limited to ten years, with provision for continuing for another ten years. So your understanding of the bill, then, and I should have probably asked this of Senator Carlson. I didn't think of it at the time, but...so if Ducks Unlimited came in and bought an easement, would that easement be void, or would they continue to hold that and it would simply have to go back to what it was? What's your understanding? [LB529]

LARRY DIX: Yeah, I think there's been some conversation, and I know, quite honestly, there's been some groups that have talked to me up in the Rotunda about the ten-year. And there's some heartburn about the ten-year. And I would say from NACO's position, we're not necessarily tied to the ten-year, but we wanted to look at a process where at some point in time it was reviewed. As I think, I can't remember, one of the newspapers said, well, you know, why do you want a certain period of time on that? And I said, well, right now permanent is permanent, which means my kids' kids' kids' kids' kids' kids' kids. And so is that, do we want to make something so permanent that we never ever have an opportunity to re-examine it as times changes in the course of history? [LB529]

SENATOR HAAR: Now, this would just, in your understanding, apply to conservation easements and not the easement I might have with my neighbor about... [LB529]

LARRY DIX: I believe that to be the case. [LB529]

SENATOR HAAR: Okay. Thank you. [LB529]

SENATOR LANGEMEIER: Senator Dubas. [LB529]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Mr. Dix. Do you have any ability to determine, either individually or collectively, how much in property taxes there's been in a loss to counties? [LB529]

LARRY DIX: I think, you know, somebody could probably do that study. It would be a little bit labor-intensive... [LB529]

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

Natural Resources Committee  
February 03, 2011

---

SENATOR DUBAS: Right. [LB529]

LARRY DIX: ...but I think the number probably could be obtained. But it would take some time. [LB529]

SENATOR DUBAS: Okay. I just was wondering... [LB529]

LARRY DIX: Okay, we have not. [LB529]

SENATOR DUBAS: ...if that had been brought up at all... [LB529]

LARRY DIX: No. [LB529]

SENATOR DUBAS: ...that there was an idea. All right. Thank you. [LB529]

SENATOR LANGEMEIER: Larry...oh, Senator Haar. [LB529]

SENATOR HAAR: And one more. I asked the question earlier about tourism. And you stated that, really, in terms of county boards, you don't get much out of tourism. But it's an important industry for Nebraska, would you agree? [LB529]

LARRY DIX: I would agree 100 percent; it's a very, very important industry. And it's important to counties; tourism is very important to counties. I think Senator Schilz, actually, had brought a bill that dealt with sales tax county-wide, because then there are some instances in Senator Schilz's part of the country that deal with that, that tourism is a huge economic engine that could benefit counties. And it does benefit counties in some ways. I don't want anybody to walk out of here and say Larry said it didn't benefit in any way. We have some instances where some counties run a Keno, and so there's some Keno money that come back to the counties. There's certainly a lodging tax that our county boards have people that sit on those committees. So there are some. But the economic driver of having somebody on the farm that's actually making improvements to that farm in the form of grain bins and things like that, that's a much larger economic engine to counties. [LB529]

SENATOR HAAR: For the county government. [LB529]

LARRY DIX: Yes. [LB529]

SENATOR HAAR: Okay, thanks for clarifying. [LB529]

SENATOR LANGEMEIER: Larry, I have one question. As you talked about it was yours and your kids' kids' kids' kids' kids' kids' kids' kids' kids... [LB529]

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

Natural Resources Committee  
February 03, 2011

---

LARRY DIX: I think you had one too many "kids." [LB529]

SENATOR LANGEMEIER: Would not the holder of the easement could give up the easement at any time? So once you set these, they don't necessarily have to be... [LB529]

LARRY DIX: Right. I think it's just the wording of a, quote, permanent easement. The word "permanent" is... [LB529]

SENATOR LANGEMEIER: But even if I bought an easement on your property, permanent easement on your property, and I decide ten years from now that okay, maybe that wasn't such a brilliant purchase... [LB529]

LARRY DIX: Sure. [LB529]

SENATOR LANGEMEIER: ...on my part. And I could sell it back to you and pull it off. [LB529]

LARRY DIX: You probably could do that. I don't know that history has shown that in this instance that's ever happened. [LB529]

SENATOR LANGEMEIER: But it could. [LB529]

LARRY DIX: But it could. [LB529]

SENATOR LANGEMEIER: It could. [LB529]

LARRY DIX: I agree. [LB529]

SENATOR LANGEMEIER: It could. [LB529]

LARRY DIX: It could. [LB529]

SENATOR LANGEMEIER: Okay. Thank you very much... [LB529]

LARRY DIX: Thank you. [LB529]

SENATOR LANGEMEIER: ...for your testimony. [LB529]

LARRY DIX: Thank you. [LB529]

SENATOR LANGEMEIER: Further testimony in support of LB529. Yeah, we'll check the transcript; see if I got the right number of "kids." Welcome. [LB529]

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

Natural Resources Committee  
February 03, 2011

---

JERRY SCHMIDT: (Exhibits 9, 10) Senator Langemeier, I am Jerry Schmidt, J-e-r-r-y S-c-h-m-i-d-t. I'm the vice chairman of the Clay County Board. We believe that LB529 will be very helpful in giving the county boards authority to make decisions on what is best interest of our counties concerning easements and local impacts. As no one can predict what is best forever, we feel that having the requirements to review a decision as to what is best interest of the county is important to the vitality of our future. A ten-year review of conservation easements seems to be an appropriate amount of time to adapt to future changes. The requirement of notice to tax-levying entities on the affected property is also utmost important. As these are public funds, we feel that if use may affect our ability to collect tax revenue, all entities which might be affected should be entitled to the knowledge prior to the commitment of the arrangement. Clay County feels that public funds should not be used to fund the purchase of real estate property or conservation easements for private entities or for the federal government. We believe that this is a negative influence on our property markets and have led to an increased tax burden to many neighbor property owners. Recently, NET funds have been used to purchase a large amount of this type of land in our county. From 2009 to 2010, irrigated cropland valuations increased 21 percent and similar wetland valuations increased 150 percent. We have learned that by current state statutes, the NET is able to conduct themselves in this manner. We ask that the committee considers our concerns. We feel that this money should be used for Nebraskans, not for nonprofit organizations or a federal agency, whose primary concern is not of the state. I would like to share with you, Clay County is somewhat unique. We have 35,000 acres of land that's in the NAD, and that was established in 1944. And from 1944 to 1982, we received no tax money at all. In 1982 we were successful of being able to get Impact Aid, so we do get Impact Aid to our schools. But in this Impact Aid, these funds sometimes are not available. So on an average, we get about 60 percent of the Impact Aid. And we're not up here to say, hey, we want you to feel sorry for us; we're saying that if this won World War II, we're very proud of the fact that we're able to testify in this manner today. But, again, going back to...we have 7,000 acres that are payment-in-kind-type taxes. We have Ducks Unlimited, which has 1,620 acres as of last week. Last week they purchased 160 acres. It has a pivot on it; it has a well on it and, from what I can gather--a short time, I haven't been able to get the information--probably 10 to 15 acres of wetland. So I'm saying that not only have we got a tax impact, I had a farmer come up to me, and he said, Jerry, I'd have liked to bought this ground, but nobody offered it to me. It was sold on a private sale for \$5,600 an acre, so they gave about \$900,000 for this piece of ground. He said I have a son that lives within a mile of that piece of property. He said I would sure like to have been able to buy it. I said, what would you'd have gave for it? He said \$6,000. So, again, we're looking in the county of not only having economic impact of the revenues, plus the taxes, now we have a competitor in the market. If this ground would have been...and my understanding...and I don't know what, for sure, Ducks will do, but they'll probably go three or four years and cash-rent that piece of property to get the revenues back. Then they'll split it, half grass, half farmland, and ask for a devaluation of land.

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

Natural Resources Committee  
February 03, 2011

---

And again, I would like to thank Senator Carlson for introducing the bill. And Senator Langemeier, I appreciate you letting us testify. [LB529]

SENATOR LANGEMEIER: Are there any questions? Senator Haar. [LB529]

SENATOR HAAR: Could you--thanks for the map--could you tell me, what's the brown area on the map? [LB529]

JERRY SCHMIDT: That is the NAD. [LB529]

SENATOR HAAR: Okay. And what does that mean--NAD? [LB529]

JERRY SCHMIDT: That's was the ammunition depot that was by Hastings. [LB529]

SENATOR HAAR: Gotcha. Okay. Okay. And then the "NGPC" stands for--the blue? [LB529]

JERRY SCHMIDT: I can't tell you what that is. [LB529]

SENATOR HAAR: Okay. [LB529]

SENATOR LANGEMEIER: Nebraska Game and Parks. [LB529]

SENATOR CHRISTENSEN: Nebraska Game and Parks. [LB529]

SENATOR HAAR: Oh, all right. Okay. [LB529]

JERRY SCHMIDT: Okay. [LB529]

SENATOR HAAR: Thank you very much. [LB529]

JERRY SCHMIDT: You bet. [LB529]

SENATOR LANGEMEIER: Are there any other questions? Mr. Schmidt, I... [LB529]

JERRY SCHMIDT: Thank you. [LB529]

SENATOR LANGEMEIER: ...just one comment is... [LB529]

JERRY SCHMIDT: Oh, sorry. [LB529]

SENATOR LANGEMEIER: ...we can't legislate people to make smart sales. [LB529]

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

Natural Resources Committee  
February 03, 2011

---

JERRY SCHMIDT: Right. [LB529]

SENATOR LANGEMEIER: So when you said somebody may give \$6,000 and they bought it for \$5,300... [LB529]

JERRY SCHMIDT: Right. Right. [LB529]

SENATOR LANGEMEIER: ...unfortunately we can't do that. [LB529]

JERRY SCHMIDT: No. [LB529]

SENATOR LANGEMEIER: And as a real estate agent, I'd tell you use a realtor and maybe that wouldn't happen, but that's a personal note. (Laughter) There's my little plug. So anyway, I appreciate your testimony. [LB529]

JERRY SCHMIDT: Okay. Thank you. [LB529]

SENATOR LANGEMEIER: And thanks for coming down. Appreciate it very much. Further testimony in support. [LB529]

SENATOR HAAR: You say no one can trust realtors, is that it? [LB529]

SENATOR LANGEMEIER: Oh, no; I said you should use them. Welcome. [LB529]

KYLE KINYOUN: (Exhibits 11, 12, 13, 14, 15) Kyle Kinyoun, K-y-l-e K-i-n-y-o-u-n. Thank you, Senators, for giving me the opportunity to participate in my government. I'm here in support of LB529. I used to work for the Rainwater Basin Joint Venture as a local coordinator. My job was to meet with farmers and explain some of the programs we had available. This was not a moneymaking thing. It was more of a reimbursement for their expenses. We took low areas and paid the farmers to do maintenance and maybe put a buffer strip, SHIP programs, things of that nature. The programs eventually took off. We felt like we justified our existence. The more money we spent on these projects, the more money that became available. Pretty soon the tool of choice became permanent federal easements and 30-year easements. They wanted to really push these long-term agreements. In my opinion, we were rating our success on how much money we were spending. To find willing participants, they created tax incentives, estate planning, you're going to get more money for the ground than what it's worth in most cases, or you can go buy ground. Don't worry about the price, you'll get most of your money back if you sign an easement. I quit working with the Rainwater Basin Joint Venture at this point because I couldn't do this to my neighbors and friends. What had we actually gained by perpetual easements? Have we guaranteed the land will be quality habitat forever? No. I can sign an easement today with full intention of maintaining it as long as I am capable, but I can't control what will happen 50 to 100

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

Natural Resources Committee  
February 03, 2011

---

years from now. Large conservation groups can't guarantee they'll have the funding 50 to 100 years from now either unless they continue to receive ET or other fundings. Senator Carlson's bill will give us ten years to find out the positive and negative effects on wildlife. We can judge what is the economic stability of the area and we can change our course and do something else if it's not working or not achieving our objectives. Permanent perpetual easements should be a very cautious tool used. Senator Carlson's bill, where it only does political subdivisions, would be able to use grant allocations to land acquisitions, this would provide the best chance that funds would be available to maintain the land in the future. I'm sure you'll hear from several people testifying that this bill will be hard on conservation. I totally disagree. The ET is currently spending \$2,000 to \$4,000 per year for these type of conservation projects. On a landowner's project, they'll spend \$200 to \$700 per acre and achieve the same goal. And in most cases, the landowner already has the tools to do most of the maintenance on the land. Through the grant ranking process, we've made permanent perpetual easements high-ranking projects. I feel that for every \$6 million the ET spends on these types of projects takes away approximately \$12 million in tax base from local areas. One of the other things I like about this bill is to give county officials the authority to decide what is the best interest of the county. They can decide how much of a reduction in tax base they can stand and who would know better? What is good for one county may not be good for another. Each county can decide for themselves. Thank you for letting me participate, and I'd be more than happy to answer any questions and...I don't know. I have a...can I...a letter that I want from another person, do I enter that now? This is from John Taylor and he'd like to have it... [LB529]

SENATOR LANGEMEIER: Are there any questions? Senator Haar. [LB529]

SENATOR HAAR: You make a good point that money could run out after a conservation easement after ten years. On the other hand, a conservation group could spend a lot of money in that area and the easement would be gone and that money would be gone as well. [LB529]

KYLE KINYOUN: Can...well, the easement would be gone? [LB529]

SENATOR HAAR: Well, if the easement terminated after ten years and let's say that that group did spend considerable amount of money or whatever to make that a really fine area, now the easement is up and they're out of there. So how would...who would look and see if that was a good easement or not? [LB529]

KYLE KINYOUN: Well, I think at the time would be the person that's holding the easement, whether it be the NRCS on a ten-year deal and so then at the ten years, I can sit there and see do I have a good participant? Are we achieving the goals that we do or did he just leave it go to waste? And at that point, then I can sit there and at ten years we can say, well, I don't think that you're a good participant and we didn't achieve

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

Natural Resources Committee  
February 03, 2011

---

our goals; maybe go somewhere else and deal with a better participant. [LB529]

SENATOR HAAR: So who do you see as making that decision whether to extend it another ten years? [LB529]

KYLE KINYOUN: Probably the easement holder or the agreement at the time, yeah, because they would be the ones that would set the goals that they're trying to achieve and the partner they have in it. I think it would be their responsibility to make sure that they're achieving them. [LB529]

SENATOR HAAR: Thank you. [LB529]

SENATOR LANGEMEIER: Senator Schilz. [LB529]

SENATOR SCHILZ: Thank you, Senator Langemeier. Well, thanks for coming in today. Something struck me when you were talking about giving counties the opportunity to define how much land in their county should and could be used for this. Are we talking about a zoning issue here? [LB529]

KYLE KINYOUN: No, I'm not really talking about a zoning issue by any means. But the thing is if it does go in front of the county board, you know, like through their ranking system, I think that the target areas. And you know, when you're under that bull's eye or whatever, I mean these guys can't do anything. And a lot of them when these easements come in, they come in and they're private landowner issues. So then there's the confidentiality of it. County officials can't really even go get a grasp on how much is in their county right now. And the things is and in the future and if first they had that in front of him, in the future down the road, when I sit there and what if I have a conservation or a bunch of conservation groups come in there and then all of a sudden instead of devaluing 1,000 acres of ground I'm going to devalue hundreds of thousands of acres? [LB529]

SENATOR SCHILZ: Um-hum, I understand. Thank you. [LB529]

SENATOR LANGEMEIER: You just sparked a thought in my mind there. You said they can't keep track of how many of these there are. Any good easement that somebody had spent any money for should have went and recorded it at the courthouse. [LB529]

KYLE KINYOUN: Well, if you do one through the Farm Service Agency like you go through that, that's confidential records. To go through Rainwater Basin Joint Venture, for an example, if they would buy an easement or anything like that, that's...once that money goes there, if it goes out, it's... [LB529]

SENATOR LANGEMEIER: So on that note, on that philosophy, as a landowner...do I

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

Natural Resources Committee  
February 03, 2011

---

have less rights than in your mind than I...you want to take some rights away from me? I mean I bought it. Shouldn't I be able to do with it what I want? [LB529]

KYLE KINYOUN: Well...the... [LB529]

SENATOR LANGEMEIER: Or does the county be the mother like we see the federal government taking over our lives? Should the county take over my life and say what I can do? [LB529]

KYLE KINYOUN: And I see the point you're making. But it's still, you know, as an elected official and as local government, we are responsible to sit there and provide educations and quality of life for people. And your landowners, I don't really think that it as a landowner's right. It's more of a public fund thing at this time. Because if they're using public funds to buy it, I guess I don't know...to me, it's not a fair thing. [LB529]

SENATOR LANGEMEIER: So, okay, on that note, no public funds could be used for conservation easements. Now do you like conservation easements in that mind-set? [LB529]

KYLE KINYOUN: No. I will tell you, I love...I'm...I love conservation. I think there's just ways that we can achieve it without permanent perpetual easements. [LB529]

SENATOR LANGEMEIER: Okay. Sounds good. Thank you very much, appreciate your testimony and coming back to the committee. [LB529]

KYLE KINYOUN: Thank you. [LB529]

SENATOR LANGEMEIER: Further testimony in support. Just out of curiosity, how many people plan to testify today? Cool. And while we're waiting, we've had two phones go off. Everybody take your cell phone out and look at it and make sure it's off. I've heard ducks and I've heard ringing and...I assume that won't happen again. Welcome. [LB529]

CARL ANDERSEN: (Exhibit 16) Thank you. Thank you, Senator Langemeier. I wasn't sure I was going to be able to do this presentation because of a health issue, but I thought it was so interesting and important that I feel a lot better because I was able to come down here. [LB529]

SENATOR LANGEMEIER: You look pretty good. [LB529]

CARL ANDERSEN: I thank you for the chance to discuss my concerns about actions being performed in the name of wetland conservation within... [LB529]

SENATOR LANGEMEIER: Oops, I got to stop you. I need your name and spell it for

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

Natural Resources Committee  
February 03, 2011

---

me, please. [LB529]

CARL ANDERSEN: Oh, I'm sorry. Carl Andersen, Andersen, A-n-d-e-r-s-e-n. [LB529]

SENATOR LANGEMEIER: Thank you. [LB529]

CARL ANDERSEN: Thank you, Senator. ...concerns about actions being performed in the name of wetland conservation within the Rainwater Basin. Significant funds are being provided with the Nebraska Environmental Trust for these actions. Many of these actions are severely impacting our communities. As a third generation, 35-year farmer in the Rainwater Basin, an engineer, and a 15-year veteran of the Joint Venture Management Board, I hope my experiences can be beneficial. I come from a family of serious conservationists. My father received the Nebraska State Conservationist of the Year Award and the State Tree Planter of the Year Award. We have participated in several conservation programs on our farm such as SHIP, QUIP, WRP, CRP, and so on. We believe in conservation, but within sensible parameters. We do not believe in perpetual easements. Thankfully, grandfather did not either or we wouldn't be here, neither would our son, a beginning farmer. In the last few years I've seen a major shift in the progress of achieving conservation. Of most concern here is the explosive expansion of perpetual easements and in the buying and selling of land, largely financed by NET funds. U.S. Fish and Wildlife Service has pretty well stopped buying land, but they have now started using Ducks Unlimited as a sort of go-between to acquire new lands and then transfer it to the U.S. Fish and Wildlife. They being federal, they are basically tax-exempt, paying in lieu of taxes. This has typically yielded from 13 cents up to \$3 per acre total. Over the past 40 years, they have already obtained some 26,000 acres and are now asking for approval to acquire an additional 12,000 acres. This should get everybody's attention, especially if they learn what the economic impact is as a result of these actions. Also, please recognize the economic shortfalls of most budgets in these days. You have heard and will continue to hear that these parcels that are being purchased are just wetlands and marginal farmland. The true picture is that about half of the purchased land is good farmland, much of which could be irrigated or was even irrigated in the past. Think of it this way: Land is sold in square and rectangle parcels, quarter sections at a time, 80 acres at a time and so on. Wetlands occur as ovals and circles, leaving much good upland around them as good farmland. That totals to some 18,000 acres of good farmland with potential revenue of some \$600 per acre is now being replaced with grass worth at best about \$50 an acre. Many people, especially local government entities, are starting to notice the significant decrease in their real estate tax revenues. This lost real estate tax revenue is estimated at about \$1.2 million per year. These losses are quite significant, but pale when compared to the total economic impact of the lost production revenue in the community from this lost cropland. The total U.S. Fish and Wildlife goal will easily cost the Rainwater Basin communities \$1 billion, and that's true, I didn't mean million, I meant billion, by the end of the next 40 years. Grain at \$600 per acre compared to grass at \$50 an acre is a loss

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

Natural Resources Committee  
February 03, 2011

---

of some \$10.5 million per year. The economists suggest that such revenue be spent and respent two times to two and one-half times within the community, giving a realistic \$26 million per year or \$1 billion-plus over 40 years. This totally ignores inflation and ignores what perpetual means. It ignores lost sales taxes, improved real estate taxes, local, state, and federal taxes. It ignores the loss of businesses, farmers, ranchers, service providers, and schools. No one seems to look at the real economic impact of all of this. In my several years on the board of the Joint Venture, we never once, to my knowledge, explored this issue. A Fish and Wildlife employee acknowledged in a recent informational meeting that they have not done so either. With the current budget shortfall in Nebraska, why are we using NET Nebraska dollars to buy land for the federal government? Why are our local communities bearing this financial burden? How much land must we gift for the federal government in the name of conservation at the expense of the survival of our farm families and our communities? Doesn't a billion dollars mean anything anymore? Does the time frame of perpetual make sense? We need your help. Respectfully submitted by Carl Andersen. Thank you for this opportunity. May I offer to answer questions? [LB529]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Andersen?  
Senator Smith. [LB529]

SENATOR SMITH: Yes. Thank you, Mr. Andersen, for being here today. In your opinion, is the ten-year easement the right duration? [LB529]

CARL ANDERSEN: The ten-year? [LB529]

SENATOR SMITH: Yes. [LB529]

CARL ANDERSEN: It's certainly a step in the right direction. I don't know what the exact number of years should be. I think it should be acceptable. [LB529]

SENATOR SMITH: All right. And then in your opinion, who would make the determination of renewing that easement? [LB529]

CARL ANDERSEN: That's a tough one to decide, but it's going to have to be negotiated between the property owner and the easement owner. But I think that there is room for discussion with local political subdivisions also. Perhaps legislation should address this issue. [LB529]

SENATOR SMITH: Thank you. [LB529]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much, Mr. Andersen. [LB529]

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

Natural Resources Committee  
February 03, 2011

---

CARL ANDERSEN: Thank you. [LB529]

SENATOR LANGEMEIER: Thanks for your testimony. Glad you could make it. Further testimony in support of LB529. Welcome. [LB529]

JOSH ANDERSEN: (Exhibits 17, 18) Thank you, Senator Langemeier and committee members. My name is Josh Andersen, J-o-s-h A-n-d-e-r-s-e-n. I'm a fourth generation farmer and conservationist from Edgar, Nebraska. I'm also a member of the Clay County Farm Bureau. My wife and I and our four children raise corn, soybeans, and care for livestock. I'm here today to testify on behalf of the Nebraska Farm Bureau to offer the organization's support for LB529. This bill attempts to address a handful of concerns that have come to light as a result of the Nebraska Environmental Trust's current practices of granting public monies to private conservation entities for land acquisition and also for purposes of placing permanent restrictions on the use of private property through conservation easements. I'd like to start by saying that we are private property rights advocates and that we are not opposed to conservation efforts. However, we do have concerns about the uneven playing field that is created when public monies are used to compete with private citizens for land and the unintended negative consequences of using monies to restrict land uses in perpetuity. As a young farmer, a landowner, and active conservationist in Clay County, I've witnessed the tremendous push for these practices firsthand and I've seen that they can have major implications for our local tax bases and for the viability and opportunity of producers, particularly like young farmers like myself. LB529 would prevent the Environmental Trust from granting monies to private conservation groups for purposes of land acquisition. We believe this would be a positive step to level the playing field for farmers who currently find themselves competing for land with conservation groups who are subsidized by lottery dollars through Environmental Trust grants or against conservation buyers who flip publicly funded conservation easements on purchased land to help pay for the price. As a young farmer, I'm willing to compete against other private interests for land, but it is something entirely different to try and compete against entities that are receiving public funds specifically to buy land. This practice also has the potential to create an additional hit to area producers, as is the case when property is acquired using these lottery funds are later transferred to a tax-exempt entity. The result is that other property owners are then left to deal with added property tax pressures when viable agricultural land is either devalued or removed from the tax rolls. Not only does this affect agriculture, but it affects surrounding communities as well. LB529 would also recognize inherent concerns that producers like me have related to the use of perpetual conservation easements, which are also currently being funded by NET grants. Delegates to the Nebraska Farm Bureau's annual meeting in December adopted policy stating that conservation easements should be limited in time and should not extend into perpetuity nor should they be acquired using public funds. While we recognize the ability to enter into a conservation easement as a property right, our members have an overriding concern about the long-term implications for local tax bases and for the state

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

Natural Resources Committee  
February 03, 2011

---

as a whole when land use practices are restricted forever through a conservation easement. It is important to realize what perpetual means. Our membership also expressed concern that public monies are being used to secure easements to be held by private organizations that do not have any citizen oversight and, furthermore, may not have any vested interest in the long-term economic well-being of our state. It is one thing for private interests to fund land acquisitions or conservation easements through privately generated resources. However, it's quite another when public funds are being used, as is the case with NET funds. In short, the idea of using state monies to transfer permanent control of our natural resources, which is the wealth of Nebraska, to private out-of-state interests is of great concern. We feel that agricultural producers are the best stewards of our state's land and that agriculture and conservation are not competing interests. We also value the property rights of both today's and tomorrow's producers in Nebraska. We support private land-based conservation projects which do not have the undesirable negative effects previously mentioned. For these reasons, we support LB529. I'd be glad to try to answer any questions you might have. [LB529]

SENATOR LANGEMEIER: Very good. Senator Haar. [LB529]

SENATOR HAAR: So are you also opposing if private money buys conservation easements and then I own the land, is that exercising my property right or how do you find that that fits in? [LB529]

JOSH ANDERSEN: Well, I think Nebraska Farm Bureau's policy is directed towards any easement should be limited in duration to a specific time and that public monies shouldn't be used to help procure the easement. [LB529]

SENATOR HAAR: But if there's no public money involved, you still...I mean this is really a tricky issue. We're saying, you know, should property rights trump... [LB529]

JOSH ANDERSEN: Right. I think the Farm Bureau policy the way it is stated would like...the members would like to see a limit, a term limit on the easements. And we're not saying that ten years is specifically the number, but that people were uncomfortable with the word "forever." [LB529]

SENATOR HAAR: And then because Senator Smith just asked the question of the previous testifier, at the end of let's say it's 20 years or whatever, at the end of a 20-year easement and it's my property and you're the conservation group and you put a lot of money into that easement, who decides whether the easement should be extended in your opinion? [LB529]

JOSH ANDERSEN: Well in my personal opinion, which I have had a 15-year easement before, I think that that determination should be made between the private property owner and the owner of the easement collectively together. And I think that as this tool

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

Natural Resources Committee  
February 03, 2011

---

may have an impact on the local community and the local government, I don't see it would be inappropriate for a local government to also be represented in the discussion if there were an impact to the local... [LB529]

SENATOR HAAR: Yeah and that's the tough part. If there's an impasse, if this goes into state law we sort of have to declare who would be the winner, I think. Otherwise, you just have an impasse with no definition for that impasse. So what will you...what would you do with that? [LB529]

JOSH ANDERSEN: I guess you're asking who gets to say, the property owner or the easement holder, who trumps who? [LB529]

SENATOR HAAR: Yeah, finally, if all negotiation fails, yeah. [LB529]

JOSH ANDERSEN: I would say the private property owner would. [LB529]

SENATOR HAAR: Okay, thanks, appreciate it. [LB529]

SENATOR LANGEMEIER: Any other questions? Senator Schilz. [LB529]

SENATOR SCHILZ: You say you have an easement right now for 15 years. Can you explain that a little bit and what it's... [LB529]

JOSH ANDERSEN: Sure. Used to have one, let it expire, and it still is in just as good a shape as it was the day that it was signed into easement so. [LB529]

SENATOR SCHILZ: What kind of an easement? [LB529]

JOSH ANDERSEN: It's a WRP, a 15-year WRP easement, Wetland Reserve Program. [LB529]

SENATOR SCHILZ: Okay, great, excellent, sure. Thank you. [LB529]

SENATOR LANGEMEIER: Very good. Seeing no other questions, thank you very much for your testimony. Well done. [LB529]

JOSH ANDERSEN: Thank you. [LB529]

SENATOR LANGEMEIER: (Exhibits 19, 20, 21) Further testimony in support. I have two letters, one from Harlin Welch from Ainsworth, Nebraska, in support; and I have a letter from Chad Yost from Lincoln in support of LB529. And you have another one? And I have another one from the Nebraska Soybean Association in support of LB529. With that, that moves us on to opponents of LB529. And I like to see the excitement of

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

Natural Resources Committee  
February 03, 2011

---

people coming up. Just hold on to your sheets until you come up to testify, so one at a time. Again, I like the enthusiasm. Come on up. You got there first. Good afternoon and welcome. [LB529]

LANE KUGLER: Good afternoon. My name is Lane Kugler, L-a-n-e K-u-g-l-e-r, from Lexington. When I first read LB529 I had to really stop and think about what it was attempting to do and try to understand why. And since our family has entered into one of these easements in perpetuity, I had to go back and study all the reasons on why we did enter into that agreement and rethink everything, all the reasons why we might not have entered into that agreement. We started our wildlife conservation effort in the Platte River in 1997. And in 2003 and in 2005, we received private landowner stewardship grants from U.S. Fish and Wildlife Service as well as Platte Habitat Partnership and from the Nebraska Environmental Trust, and a few others pitched in as well over the years. With all of this aid and restoration agreements, they were for 10 to 15 years. So we had to ask ourselves how...what happens when these agreements expire? And who will see to it that the money on our projects that was spent will not go to waste? Who will see to it after I'm dead and buried that this land will continue to be used for what it is intended? Who will be there after my family is gone to make sure that the trees don't grow back? We removed 150 trees. And without permanent protection, I could let them all grow back when the existing agreements expire, and no one could do a thing about it. So who will see to it when something happens and damage will occur, like last year's flood, that it be repaired? Who will take this burden? Our government? Our taxpayers? I don't think so and they shouldn't. It has to be up to the private sector with the help of where they can find it. The Nebraska Environmental Trust has done a fantastic job of helping where it has been needed, and they're doing it without tax dollars. They call it the Environmental Trust for a reason. So we chose to enter into an easement in perpetuity for a reason. It solved our concerns forever. We are encouraged to enter into this agreement by every single entity that had been involved in our project. They all saw the benefits and a solution to a long-term concern. So I have to ask, why is LB529 wanting to remove the ability for landowners to do this? Do you, our government, want the responsibility for caring for protecting wildlife areas? If you do, I hope you are prepared to come up with an amazing amount of funding to do it. I've been told and I had just heard there is a few people, pretty much from one county, that are on a crusade to stop easements and have them declared a bad thing. They are trying to get the lawmakers to agree. From my perspective, the information that they are using to convince you to is misleading and their quest to stop easements are for the wrong reasons. They say it drops land values and it reduces taxable value. That wasn't the case in our scenario. Our taxes went up and our land values were increased. They say it reduces agriculture production--not in our case. We increased agriculture production by creating prime grazing land where it did not exist before and it is being used. They say it reduces economic activity, again, not in our project. Our project was wasteland, absolutely usable for nothing. We've had multiple contractors and companies working there every year since this project was started. And then we have to think about the

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

Natural Resources Committee  
February 03, 2011

---

continuous maintenance that will go on forever, all at a cost to no taxpayer, but a benefit to all Nebraskans. In my opinion, any land that was moved into a wildlife conservation area was done for by the landowner for a reason. It does not produce anything efficient or the landowner wouldn't have done it in the first place. The cost of production on marginal land is too high. It's simple economics. We've seen all kinds of reasons that this bill...we've heard all kinds of reasons today that this bill should go through. And I say from my perspective it's being...it is misleading information, and the information is being distorted and not the true facts of what the situation is all the way across the state of Nebraska. The long-term benefits of permanent easements far outweigh any short-term perceived loss. It is not even comparable. The benefits of permanently protecting these wildlife areas cannot be measured. I have to wonder if sometimes our government has been so greedy for revenue that we have lost sight of good conservation efforts and that what is best for our natural resources and wildlife habitat. Does our government have the right to remove control of wildlife conservation from private landowners because of a perception of lower revenue? I think we have to stop and think about that question. These conservation works know what they're doing. Their expertise and experience in habitat conservation and protection is second to none. Please help them do their job. Please don't make it more difficult for them to continue. They need all the tools available and permanent easements are a critical part of that toolbox. LB529 is a killer to conservation efforts and in my opinion, should die right here. I'm afraid that you have been duped into believing that this bill is a good thing. I'm afraid that if you do pass it, at some point it may come back to haunt you. The other question I have before I finish the other half of my six-hour drive coming up here from my five minutes, what happens to existing easements? I have to wonder about that since we are involved in one of those easements. Should you choose to pass this bill and change the rules midstream, so to speak, I'm afraid that my family might be...you might see us again. It might not be in the Capitol building. And I really don't like the idea of going to a courthouse. But it really would...it's the only way I can protect my family's goal. Thank you. [LB529]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Schilz. [LB529]

SENATOR SCHILZ: Thank you, Mr. Kugler. Thanks for coming in. I just want to clarify a couple different things. Your land is there on the Platte River, which is what... [LB529]

LANE KUGLER: That's correct, between Lexington and Cozad. [LB529]

SENATOR SCHILZ: Right. So you're part of the Platte River Recovery Program is covering part of your easements. Is that... [LB529]

LANE KUGLER: No, we've not received any from the Platte River Recovery Program. Most of our funds have come from U.S. Fish and Wildlife Service, Nature's

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

Natural Resources Committee  
February 03, 2011

---

Conservancy, Ducks Unlimited is what we did. Most of it was U.S. Fish and Wildlife Service. [LB529]

SENATOR SCHILZ: Are any of those easements that you're talking about, are they counting towards credit for the land part of the program? Do you know? [LB529]

LANE KUGLER: Excuse me? I'm not... [LB529]

SENATOR SCHILZ: For the land component of the Platte River Agreement? [LB529]

LANE KUGLER: We had some funds I know came from the NET. The last thing we did was from Ducks Unlimited, and they received some funding from NET. [LB529]

SENATOR SCHILZ: Okay. And I just want to clarify and I think I'm right and if I'm not, somebody can correct me later, but under the Platte River Recovery Program, when that was set up, it was negotiated into that program that the taxes would be paid. It would be kept to what that land was taken out of when it was started if I remember right. So if that's the case, you possibly may be in a little different situation than what the folks in Clay County would be. [LB529]

LANE KUGLER: I don't think so. I don't think...in the original part of our agreements, we had no conversations with any of the county board or on tax issues whatsoever. The only time that it was a tax issue was when Ducks Unlimited had to get permission from the county to enter this easement which, you know, we did not have any reduction in taxes. We increased our taxes. [LB529]

SENATOR SCHILZ: Okay. So...okay. And then the next thing you said that it's no cost to taxpayers. [LB529]

LANE KUGLER: Um-hum. [LB529]

SENATOR SCHILZ: It's no cost to you. But if those lands are taken off the tax rolls... [LB529]

LANE KUGLER: They're not taken off the tax rolls. [LB529]

SENATOR SCHILZ: Excuse me. If they would be donated to someone that doesn't pay taxes, say Fish and Wildlife Service, which we've seen that that's happened, then it would cost all the taxpayers in the county more, wouldn't it? [LB529]

LANE KUGLER: I don't have an answer to that. That's not my intention as a private landowner. I have no intention of that. [LB529]

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

Natural Resources Committee  
February 03, 2011

---

SENATOR SCHILZ: Right. I understand that. But the reality of the situation is that could be what happens if that would be the case. [LB529]

LANE KUGLER: I don't know. I don't have the answer to that. [LB529]

SENATOR SCHILZ: Okay, thank you. [LB529]

SENATOR LANGEMEIER: Very good. Senator Haar. [LB529]

SENATOR HAAR: I'm just curious, what you said you work...the trees could grow back so you took, what, just land with a bunch of trees and turned it into pasture land or what did you do with your...? [LB529]

LANE KUGLER: Yes. It was completely grown over with woody vegetation, old cottonwoods, so we completely removed all of the trees with their exception and the plan was for it to create wildlife habitat that had been lost. [LB529]

SENATOR HAAR: So in your case the tax on it beforehand was much less I would imagine because it wasn't useful for anything. [LB529]

LANE KUGLER: Right. It was useless. [LB529]

SENATOR HAAR: So why would you want your taxes to go up? [LB529]

LANE KUGLER: I didn't. I wanted the habitat restored. That wasn't the intention was to pay more taxes. But I don't mind doing it. [LB529]

SENATOR HAAR: We're looking for those citizens who want to pay more taxes (laughter). [LB529]

LANE KUGLER: That's just the way it is. I mean that's what happened, you know. So it was never my intention... [LB529]

LANE KUGLER: It never occurred to me to go to the county and ask for lower taxes. They sent me the tax bill and they increased it and, okay, fine. It is worth more money than it was when it started. [LB529]

SENATOR HAAR: Thank you very much. [LB529]

LANE KUGLER: Thank you. [LB529]

SENATOR LANGEMEIER: I'm keeping track of those people on this hand, and I haven't run out of fingers (laughter). Just out of curiosity, and I know we've got a lot of people to

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

Natural Resources Committee  
February 03, 2011

---

testify here so I'll be quick, but you talked about taking woody vegetation out. Were you part of the vegetation management plan and some of the Platte River clearing that we've done? Have you participated in that? [LB529]

LANE KUGLER: I'm not sure. Again, our project was started back in 2003 and everything that we did on our original grants was through U.S. Fish and Wildlife Service private stewardship grants. And I don't think that our project really got funding from any of those other projects that are there. Now what U.S. Fish and Wildlife or TNC or Platte River Habitat Partnership where they got their funding, I'm not sure. Okay. [LB529]

SENATOR LANGEMEIER: Okay. Okay, just curious. [LB529]

LANE KUGLER: Most of it was U.S. Fish and Wildlife Service and just the last couple of years has been Ducks Unlimited. [LB529]

SENATOR LANGEMEIER: Pre-vegetation management. Senator Haar. [LB529]

SENATOR HAAR: And in terms of your permanent easement, what are the terms of that? I mean what does it say about that land that it's going to be up to Ducks Unlimited to do with whatever they want or what within terms? [LB529]

LANE KUGLER: You know, basically again the reason we did it was because an easement in perpetuity was to make sure that the land was cared for. And that even after I'm gone or even my family is gone, if that easement is still there, Ducks Unlimited then has the responsibility of making sure that that doesn't occur and that it is maintained for this purpose. Last year we had...two years ago we had a lot of work done and then we had the high water and there was damage and Ducks Unlimited came back in and repaired it and reseeded it. It's still up to me to oversee and to do the actual work. When we made our agreement, you know, it's a pretty thick agreement, you know, and there were parts in there I didn't care for. And there was never any pressure. I don't lose control of anything on our property. There's things that I can't do. I can't build wherever I want to. I can't sublease it out for hunting. I can't mine it. In other words, I can't go in and do it unless, you know, they agree to it. There was never any pressure, and it was a negotiated agreement and it was very satisfactory to both parties. [LB529]

SENATOR HAAR: Okay, thanks. [LB529]

SENATOR LANGEMEIER: Very good. Seeing no other questions, thank you very much. [LB529]

LANE KUGLER: You bet. Thank you. [LB529]

SENATOR LANGEMEIER: Further testimony in opposition. The committee is getting a

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

Natural Resources Committee  
February 03, 2011

---

little lopsided here. If we were in a jon boat, we would have sunk already. Welcome.  
[LB529]

MIKE KELLY: (Exhibit 22) Good afternoon. Mr. Chairman and members of the Natural Resources Committee, my name is Mike Kelly and our family owns a cow/calf ranch north of Sutherland in Lincoln and McPherson County. In the spirit of full disclosure here and to ascertain that we do not have a conflict of interest, I want to tell the committee that my son is a page here, and I don't want that to become an issue. (Laughter) But anyway, what I'm here for today is to tell you our experience with the conservation easement on our ranch. And in order to do that, I need to tell you a little bit of history on our ranch that in 1886 my grandfather was a stowaway on a ship. He came over from Ireland at the age of 19 and homesteaded in Keith County. But unfortunately, he chose a place in Keith County that was today at the bottom of Lake McConaughy. And I'm sure that Lake McConaughy probably went through some of these conversations at that time, that property was taken off of the tax rolls at that time. But anyway, my father was not one to give up. He moved downstream and he bought a small place in Lincoln County north of Sutherland to continue the family ranch. Well, a generation later when I came up my turn to be a rancher, I joined with an investor from Maryland and that investment from Maryland allowed us to expand into McPherson County, and we bought a ranch up there. And a very unique feature on this ranch was the meandering Birdwood Creek. And Birdwood Creek is significant in that it is one of the most steady flowing streams in the world. Ninety-five percent of its flow comes from springs and seeps, and the creek is very well known for its habitat corridor, surrounding wetlands, and Sandhills prairie. In fact, in 2003 that ranch won the national environmental stewardship award from the National Cattlemen's Beef Association. And to my knowledge, it's the only ranch in Nebraska to date that has won that award. But unfortunately, within a few years of ownership, my investment partner from Maryland wanted to sell the ranch and to pocket the appreciation in land value. Again, the Kelly ranch was threatened because of the capital that would be required for us to purchase out my partner's interest. And what that caused our family to do was a tremendous amount of scrambling, but a partnership was formed with the Nature Conservancy and the Sandhills Task Force. I call it a partnership because the easement preserves and protects that high-quality riparian habitat for future generations while keeping that ranch a working ranch. By our family selling that conservation easement, we were able to purchase out the investor from Maryland and to continue our family's history of ranching. That easement has not reduced the property tax to McPherson County, and I would like to restate that. It has not reduced the property tax paid to McPherson County. What it does do is protect those values that are important to our family and what it should do is protect the values to all Nebraskans to hand that off to the next generation. And those values should be open space, clean water, and wildlife habitat. Those values are a legacy that will be passed on to future generations. After the sale of the easement, our ranch continued to work with various conservation groups on conservation projects. These projects were win-win projects which not only enhanced forage production on the ranch, but also increased wildlife

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

Natural Resources Committee  
February 03, 2011

---

habitat and improved water quality. The Nebraska Environmental Trust was an integral partner throughout that process. These partnerships and Environmental Trust Fund cost-share dollars help ranchers like myself accomplish environmental practices that they cannot do by themselves. I am proud that this ranch will be protected into perpetuity. Easements can be used as a tool to generate capital or for estate planning to help farms and ranches pass from one generation to the next or to just even survive, such as is what it allowed our ranch to do. For the sake of Nebraska's conservation legacy for future generations, I ask that you continue to allow conservation easements in perpetuity and to maintain the current funding formulas that we now have with the Environmental Trust Fund. With that, I'd like to say thank you. I had a...besides my testimony, I also handed out the story of Shane and Kristi Daniels, which is a ranch family from north of Mullen. That family was able to purchase a ranch of about 3,500 acres from not only the Nature Conservancy, but the Sandhills Task Force. And this was a win-win which allowed a young ranch family to begin ranching, and it was because of a conservation easement. With that, again I thank you and would welcome any questions. [LB529]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Kelly? Senator Schilz. [LB529]

SENATOR SCHILZ: Thank you. Mr. Kelly, thanks for coming in today. Welcome to Lincoln. Just a couple of questions. On your land, you didn't change any of the practices or anything that you're doing. It didn't go from cropland back to grassland or anything. It's a ranch, right? [LB529]

MIKE KELLY: It's a ranch. But in fact...and basically what the easement entails is the riparian corridor that passes through the ranch. And that area is protected in that we are not allowed to develop any of that for farm ground. We are not allowed to put a golf course on that property. And we are not allowed to put a Holiday Inn on that property, not that I would want to. I mean it's a beautiful part of the country. For any of you, I invite you to come up and see that part of Nebraska. But, you know, I guess my conservation ethic is that I want to protect that area into perpetuity. [LB529]

SENATOR SCHILZ: It really is a natural wonder that we have out there. Who actually did you sign the easement with? Was that with the Sandhills group or? [LB529]

MIKE KELLY: It's with the Nature Conservancy, but the Sandhills Task Force helped to raise funds for the conservation easement. [LB529]

SENATOR SCHILZ: Right. So you had the Trust and the Sandhills Task Force buying the... [LB529]

MIKE KELLY: And the Nature Conservancy. [LB529]

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

Natural Resources Committee  
February 03, 2011

---

SENATOR SCHILZ: ...and all three of them went in to buy that. [LB529]

MIKE KELLY: Um-hum. [LB529]

SENATOR SCHILZ: Okay, thank you. So the Nature Conservancy owns it all now, the easement. [LB529]

MIKE KELLY: They own the easement, that's correct. Um-hum. [LB529]

SENATOR SCHILZ: Right, okay. Did... [LB529]

MIKE KELLY: And I should say that they've been great partners over the years and they've really went to bat, you know, like our ranch when we bought it, it was in large pastures which did not lend themselves to good grazing management. They helped me raise some funds to cross-fence the ranch and they also helped me put in some additional watering locations so we could get the pressure off the creek. And so, you know, my experience with the Nature Conservancy and the Sandhills Task Force has been very good. [LB529]

SENATOR SCHILZ: Okay. So it does belong to the Conservancy. Do you know, was the money that came from the Trust or from the Sandhills Task Force, was that just given as a grant or were they paid back that money? How does that work? Do you know? [LB529]

MIKE KELLY: Well, I know that the Nature Conservancy had fund-raising efforts on their own. And so what share, who came up with what I do not know except that they were successful in... [LB529]

SENATOR SCHILZ: Except that it worked out good for you. [LB529]

MIKE KELLY: Yes, it has. [LB529]

SENATOR SCHILZ: Great. Thank you very much. [LB529]

MIKE KELLY: All right. Good, thank you very much. [LB529]

SENATOR LANGEMEIER: I have one question. [LB529]

MIKE KELLY: All right. [LB529]

SENATOR LANGEMEIER: In 2008 when McConaughy was almost dry, did you go back and walk on the ranch? [LB529]

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

Natural Resources Committee  
February 03, 2011

---

MIKE KELLY: We did. We sure did and actually we had some photos from back in the early 1930s and we were able to match up the homestead footings exactly with the picture so it was really neat. [LB529]

SENATOR LANGEMEIER: A lot of people did. That's why I brought that up. [LB529]

MIKE KELLY: Yeah okay. Thank you. [LB529]

SENATOR LANGEMEIER: Very good. Thank you. Further testimony in opposition of LB529. Got to be quick in this operation. (Laughter) Levy has been here before. Go ahead. [LB529]

DAVID LEVY: (Exhibit 23) Thank you, Chairman Langemeier and members of the committee. David Levy, L-e-v-y, Baird Holm law firm, appearing today before you as a registered lobbyist for Edison Mission Energy and Midwest Wind Energy. Edison Mission and Midwest Wind together are the developers of the Elkhorn Ridge and Loredo Ridge wind farms, which are both now under commercial operation at 80 megawatts each. And they are currently developing the Broken Bow wind farm as well. Edison Mission and Midwest Wind oppose LB529 because LB529 has the potential to significantly damage the wind energy industry in Nebraska. And that may seem a little surprising or attenuated, so let me explain why that would be. For each of these projects, one of the things that we've had to do to develop these projects is to obtain sign-off from the United States Fish and Wildlife Service and the Nebraska Game and Parks Commission. And so as part of that process, we go to them and we negotiate an agreement with them that includes measures to mitigate the wind energy project's impacts on the surrounding habitat and the species that inhabit that habitat. A centerpiece of those agreements is a contribution to a private, nonprofit, qualified conservation entity that that conservation entity then puts together with other funds and leverages to acquire conservation easements over particularly sensitive habitats. And the theory being then that those conservation easements serve as mitigation for the wind farm's environmental impacts. So without the ability to do that, LB529 would take away the ability of a private nonprofit entity to acquire and hold a perpetual conservation easement. Without that ability, the wind developers would not be able to mitigate their impacts in this regard. They, therefore, would not be able to get the sign-off from U.S. Fish and Wildlife and the Nebraska Game and Parks Commission and, therefore, they would not be able to build these projects. So again, LB529 has the potential to significantly damage and undermine the wind energy industry in Nebraska which, of course, this committee in its most prior iteration did a tremendous amount of work last year on LB1048 to try and foster that industry. The Legislature, for a number of years, last three or four, has been working very hard to try and foster that industry. And I always like to be here supporting bills, and I don't like to be here opposing bills. But in this case, as I said, Edison Mission and Midwest Wind Energy do oppose LB529 for the

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

Natural Resources Committee  
February 03, 2011

---

reasons I stated. I'd be happy to answer any questions. You know, actually one other thing, too, just to show you the breadth of the potential reach of this bill. When I'm not doing wind energy work, I serve as president of the board of the Joslyn Castle Trust in Omaha. And the Trust operates and manages the Joslyn Castle and recently in December took ownership of the Castle from the state at the state's great urging and pleasure. The one legal mechanism that we have as the Trust to make sure that the Castle stays as it is as a thing for the public and for the people of Omaha and Nebraska is to put that property into a perpetual conservation easement. If we can't do that, then when I'm gone and when the Trust someday, say, (inaudible) unfortunately goes away, there's no legal mechanism to prevent somebody from coming in, highest and best offer, Castle goes and it becomes condominiums, townhouses, whatever the case might be. So I just wanted to throw in that example to demonstrate the extremely far potential reach of LB529. [LB529]

SENATOR SCHILZ: Thank you, Mr. Levy. Any questions for Mr. Levy? Mr. Levy, I have one for you. As we talk about this, are perpetual easements needed for your wind folk, you know, to make those projects go or do you need something that lasts the life of those projects? What's your thoughts there? [LB529]

DAVID LEVY: You would need something that at least lasts the life of those projects, which right now is thought to be 40 or 50 years. Elkhorn Ridge, for example, has a 40-year power purchase agreement, so at least that long. There is some tax consequences and some other things that make easements much more attractive to people who donate them that require them to be perpetual. But for our interests, at least 40 to 50 years, if not perpetual. [LB529]

SENATOR SCHILZ: Okay, thank you. Any other? Senator Haar. [LB529]

SENATOR HAAR: LB1048 was a long bill, took a long time to develop. Thanks for your help in that. Now the mitigation you talk about, is that in LB1048 or that's working with...a result of working with Game and Parks and National Wildlife? [LB529]

DAVID LEVY: I'll give you a lawyer's answer--it depends (laugh). [LB529]

SENATOR HAAR: Thank you very much. [LB529]

DAVID LEVY: On domestic projects, there is not a...we do this voluntarily. But also quite frankly, or my clients do, to help them if something does happen in terms of enforcement. And this is something that's gone on with Fish and Wildlife and Nebraska Game and Parks to get their support for these projects. LB1048, for an export project, requires consultation with Nebraska Game and Parks. So for an export project, this is absolutely legally required. I would argue and I advise my clients that it's the prudent legal thing to do for a domestic project as well. [LB529]

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

Natural Resources Committee  
February 03, 2011

---

SENATOR HAAR: It depends. [LB529]

DAVID LEVY: Depends, but it's...every project that I'm familiar with, with one exception, has gone through this process. And like I said with LB1048, it would be legally required. [LB529]

SENATOR SCHILZ: Thank you. Any other questions for Mr. Levy? Mr. Levy, thank you very much for coming in today. [LB529]

DAVID LEVY: All right. Thank you. [LB529]

SENATOR SCHILZ: Next opponent to LB529. Welcome, Mr. Douglas. [LB529]

JAMES DOUGLAS: (Exhibit 24) Senator Schilz and senators of the Natural Resources Committee, my name is James Douglas, J-a-m-e-s D-o-u-g-l-a-s. I am the deputy director of the Nebraska Game and Parks Commission, and I'm appearing on behalf of the Commission to testify in opposition to LB529. The Commission believes that the effective delivery of conservation requires a diversity of partners and a wide variety of tools. Nebraska Environmental Trust has been, in our opinion, instrumental in enabling the use of this wide array of conservation tools by both public and private partners. Nebraska Environmental Trust grants for conservation easements and for fee title acquisitions have actually attracted millions of dollars of match from a variety of sources, which makes conservation more affordable in Nebraska and provides the state with direct economic benefits. The Commission recognizes that conservation easements, when properly applied and executed, are appropriate to use in some instances to protect not only wildlife values, but as was heard, can also be used to protect agricultural, cultural, and other values as well. We believe that some private sector nonprofit conservation organizations do possess the proper expertise and proficiency in securing funding and executing conservation easements. We believe they should not be precluded in any wholesale manner from contributing to the conservation of the state in this way. We believe it may be appropriate to further study the potential effects of conservation easements on property tax revenues, but to our knowledge, statewide figures from a comprehensive study about this haven't been made available in support of an argument to place severe restrictions on the use of conservation easements. Additionally, the Commission wishes to point out that in the proposed legislation there would be a prohibition for the ability of the Nebraska Game and Parks Commission to use Environmental Trust grant dollars for land acquisitions because the Commission is not considered a political subdivision. Although we have not used this source of funding extensively for acquisition, we see no reason why it should be precluded. The Commission buys very little land, but we do pay in lieu of taxes on all habitat lands acquired and the value of our habitat lands are determined by the county assessor by law as if it were being used for the use it had immediately before

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

Natural Resources Committee  
February 03, 2011

---

acquisition by the Commission. So, for example, if such lands were purchased by the Commission and they contained some cropland, even if we chose to convert it to grassland, it would be assessed as cropland forever. So with this, I'd be happy to answer any questions you may have. [LB529]

SENATOR SCHILZ: Thank you, Mr. Douglas. Any questions for Mister...Senator Christensen. [LB529]

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you, James. I appreciate your willingness to look at studying the property tax because I think that definitely could solve some of the arguments we've seen here today. Do you see any conflict with Environmental Trust money being used to compete against private individuals buying land? [LB529]

JAMES DOUGLAS: Obviously, you know, we're not familiar with all the transactions that take place. But for the most part, those that I'm familiar with usually involve appraisals so at least the potential seller and buyer have some basis for negotiation. Now there may be some land purchased at auction, but Nebraska Game and Parks Commission doesn't participate in auctions. [LB529]

SENATOR CHRISTENSEN: I understand that part, but I guess if I've seen anything I've struggled with through this whole hearing so far has been the property tax, which you said you're willing to look at and share it on how it's handled. And then is when land is being purchased using state dollars to compete, whether it's at an auction or whatever, against another private citizen wanting to use it for another use, I'm not sure that's a good thing in my evaluation. I guess that's why I was asking. [LB529]

JAMES DOUGLAS: Well, you know, the Nebraska Game and Parks Commission has a really longstanding and set process for purchasing any acquisitions. And so we have a lot of safeguards built into our process. You know, we only buy from willing sellers. We don't buy at auction. We do appraisals. We don't pay more than appraised value, but we have to pay at least appraised value. We could maybe pay 2 or 3 percent more in a negotiation. We have 15 steps that we set out and talk to prospective sellers with and about. We have a local public hearing and then a public hearing, another public hearing. So we have all these safeguards, and so really the position of the Commission is conservation purchases should be done in that fashion and that's why we've adopted those. So it becomes a little bit hard for us to comment on all the practices of all the other conservation organizations. [LB529]

SENATOR CHRISTENSEN: Appreciate that, thank you. [LB529]

SENATOR LANGEMEIER: Senator Haar. [LB529]

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

Natural Resources Committee  
February 03, 2011

---

SENATOR HAAR: Just real briefly, I didn't quite absorb the part where you...my impression from what you said is that let's say you buy something that's irrigated land and you change it to grassland, that it's your decision to keep paying the same property tax or what? [LB529]

JAMES DOUGLAS: By law. [LB529]

SENATOR HAAR: And that's only for... [LB529]

JAMES DOUGLAS: In the statute. In 1976, there was statutes enacted that specifically created a habitat stamp that most hunters have to purchase. And it was within that law it was also set forth that the Commission had the ability to acquire lands for habitat purposes with those funds generated from that source. And as part of that, there was specific language that was enacted in statute that concerned how those lands that we might purchase would be taxed. That's been amended one time, and the current state of affairs with that statute is as I described. And I can provide you a copy of that statute if you are interested in it. [LB529]

SENATOR HAAR: I'd be interested in it. Thank you. [LB529]

SENATOR LANGEMEIER: Any other questions for Mr. Douglas? Seeing none, thank you very much for your testimony. [LB529]

JAMES DOUGLAS: Thank you. [LB529]

SENATOR LANGEMEIER: Further testimony in opposition to LB529. Welcome back. [LB529]

STEVE DONOVAN: Thank you, Senator. My name is Steve Donovan, S-t-e-v-e D-o-n-o-v-a-n. I'm the manager of conservation programs for Ducks Unlimited for the state of Nebraska. Ducks Unlimited recognizes Senator Carlson's concerns for the citizens in his district and in the Rainwater Basin. And we would like to state from the very beginning that we are very happy to work with Senator Carlson and others to deal with some of these issues in ways that do not produce unintended consequences. Ducks Unlimited and the others you have heard from and will hear from today, for some time I believe, we are concerned about a lot of these issues that arise out of the use of conservation easements and land acquisition. But we believe that a landowner has the right to determine the way in which he or she wants to manage their land. A perpetual conservation easement is the only tool available to private landowners who wish to establish some type of permanent protection on their property while also keeping it in private ownership. We want to make it very clear that we're willing to work with Senator Carlson and others on these issues, and we want to look for reasonable alternatives to address valid concerns. But LB529 is simply not the answer. I want to say there's been

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

Natural Resources Committee  
February 03, 2011

---

plenty of misinformation already presented here today, particularly in regards to Ducks Unlimited and our work in Nebraska, especially in Clay County. I would be more than happy to spend my entire five minutes or as long as you want answering some of the questions that have been raised today. I would love to hear some of the exact same questions that were asked earlier thrown my way. For example, the Mr. Schmidt mentioned the 160-acre property that we acquired in Clay County last week. We did not acquire 160 acres in Clay County last week. I should know. I'm the one who handles those types of things. With that, again, I welcome the opportunity to answer any questions you might have with regards to our activities. [LB529]

SENATOR LANGEMEIER: Very good. Are there questions? Senator Haar. [LB529]

SENATOR HAAR: Yeah, the image of Ducks Unlimited that was painted earlier is kind of dismal actually. Do you actually buy irrigated land then? [LB529]

STEVE DONOVAN: Some of the properties that we have acquired do have irrigated acres on them. [LB529]

SENATOR HAAR: And how do you handle that then? [LB529]

STEVE DONOVAN: It varies by property. I can give you two extreme examples. Mr. Fintel talked about the 320 acres that we bought a few years ago in Clay County. Well, the full story is that the other 320 acres on that square mile was already owned by the U.S. Fish and Wildlife Service. And on that square mile, there's a very large wetland basically planted in the middle of that square mile that is in excess of 300 acres in size. And the property line between the Fish and Wildlife Service property and the private land that we bought runs right through the middle of that wetland. In that situation, it makes it very hard for the Fish and Wildlife Service to manage their wetland because it spills across and the landowner, obviously, he's trying to farm a lot of wetland acres. Now on that 320 acres that we bought, there was only about 110 acres of active cropland. The rest was either wetland or very wet grassland. There was about...100 of the 110 acres was a gravity irrigated, triangle-shaped piece of property that has some fairly steep slope and the irrigation furrows ran directly into the wetland. Well, all of us who manage wetlands in the Rainwater Basin knows what happens when gravity irrigated land goes into a wetland all summer long. It generally results in a plant community that is not what we are trying to achieve. We usually get very thick cattails and reed canary grass, and it's not the kind of wildlife habitat we are all collectively trying to provide. And so we considered a type of project where that particular irrigated cropland could stay as cropland. But with it being gravity irrigated and the topography and it being a triangle-shaped piece of ground, it just did not make sense. And we knew if we did that it would simply create a permanent problem with trying to manage that 300-acre marsh. So we decided to keep the whole 320 acres, restore it all to wildlife habitat, and transfer it to the Fish and Wildlife Service so they can manage that entire

Natural Resources Committee  
February 03, 2011

---

square mile. Now on the flip side, we have examples where, for example, in Nuckolls County we bought 160 acres because 80 acres of it lies adjacent to an existing Nebraska Game and Parks property and their wetland extended onto this quarter section. Well, when the property came up for sale, it was the entire quarter section or nothing so we bought the entire quarter section. But the wetland was all on one 80. And so what we did in that case was transfer 80 acres to the Nebraska Game and Parks and we took the other 80, which had a pivot on it, and we sold it to the person who had been the long-term tenant on that 80 at appraised value. The previous owners had asked us to consider selling it to their long-term tenant because he had been a good tenant, and we gave him the opportunity to buy it at appraised value and he did that. Now an interesting thing about that, prior to selling that to that landowner, we put a perpetual conservation easement on it. Nebraska Game and Parks holds that easement. It does not prevent farming. In fact, it allows farming. It's a pivot irrigated 80 today. What the easement prevents is the current owner or any future owner from building houses on that 80, which at the time we thought, well, if that were to happen, we know what happens. You can't hunt next to an occupied house. And so we had the opportunity to put an easement on that cropland so that it would never impact the public's opportunity to enjoy that state wildlife management area in the future. That's a good example of the kind of permanent easement that we feel provides significant public benefit. [LB529]

SENATOR HAAR: And maybe there are models other places of this, but let's say that we do put...let's say easements were limited to 25 years or whatever or 10 years and Ducks Unlimited holds the easement and it's my property, and you invest some money for wildlife management and so on. At the end of that time, who would get to decide, in your mind, and, you know, how could you as Ducks Unlimited work on whether that...how do you see that happening? [LB529]

STEVE DONOVAN: Well first of all, I would like to point out that for 20-plus years now there have been 10-year, 15-year, 20-year type of projects available for landowners. So limiting an easement to ten years doesn't create another tool. That opportunity for a ten-year lease, which is really what it is, it's not an easement, those types of opportunities are already available to landowners. Now with regards to who would decide, I think it's clear in this proposed legislation that the holder of the easement and the landowner would have to go back to the county at the end of ten years and ask for approval to extend that easement. And this bill gives counties great latitude to deny a proposed easement or terminate an existing easement for I believe it says if it's not in the best interest of the county. Well, that could be anything. And so I think really it would be up to the county. At the end of that ten-year period, the county would have great latitude to simply say, no, we don't believe that this easement is any longer in the best interest of the county and the easement would be extinguished. And in a case where you've already restored wildlife habitat on that piece, the wildlife habitat would disappear and all those natural resource benefits would be lost. [LB529]

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

Natural Resources Committee  
February 03, 2011

---

SENATOR HAAR: Do you have any of those 10- or 15-year kind of leases with Ducks Unlimited? [LB529]

STEVE DONOVAN: We...Ducks Unlimited as a business practice across the country, we only hold permanent conservation easements with perhaps a few exceptions. The nine easements we hold in Nebraska are all perpetual. It's a business decision because it's very expensive to get conservation easements on the ground. There's a lot of paperwork involved. There's a lot of negotiation. And we choose not to put our limited financial resources into...for easements into shorter term easements. So we simply as a business practice only pursue permanent easements. Now with that said, we also use all kinds of short-term agreements working with private landowners who may want to enhance a wetland and they're willing to sign a ten-year agreement saying they will manage it for ten years. We do that routinely. [LB529]

SENATOR HAAR: And then do...what...and I know buyer beware is kind of the motto, but what do you do to make sure that people understand the permanent easement? [LB529]

STEVE DONOVAN: Right. We go to great length over a period of often six months to a year meeting with landowners and going through the details of an easement to the point where the landowners are often sick of hearing about it because we do not want to get into the position of having a landowner sign an easement without thoroughly understanding all of the pros and cons, the potential impacts, the good, the bad, the ugly that are associated with a perpetual conservation easement. And from my knowledge in working with other nongovernmental organizations, the federal government through, say, the Wetland Reserve Program, I know those folks do the same thing. And the testimony earlier that implied that landowners are being hoodwinked into signing easements I believe is a gross exaggeration of the truth. [LB529]

SENATOR HAAR: And then finally, and then I won't ask any more, do you hound people to finally get them to... [LB529]

STEVE DONOVAN: No. Actually...for easements? Are you talking about conservation easements? [LB529]

SENATOR HAAR: Yeah, yeah (inaudible). [LB529]

STEVE DONOVAN: We have landowners come to us. I mean we've got so many landowners, particularly on the Platte River, who really want to protect their property, like Mr. Kugler earlier, that me and my limited staff, we just can't keep up. I mean landowners come to us. They hear about success stories like Mr. Kugler's property and his neighbors are now interested in an easement, and there's a lot of work involved in.

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

Natural Resources Committee  
February 03, 2011

---

We don't have to hound anybody. We don't have to go knocking on doors along the Platte River. We have people coming to us asking for help in putting easements on their property. [LB529]

SENATOR HAAR: Okay, thanks. [LB529]

SENATOR LANGEMEIER: Senator Christensen. [LB529]

SENATOR CHRISTENSEN: Thank you, Mr. Chairman. Thank you, Steve. You mentioned transferring some land over to Fish and Wildlife, and I understand why with the situation. What happens to the property tax at that point in time? [LB529]

STEVE DONOVAN: As we heard earlier, the Fish and Wildlife, the federal government does not pay "property taxes." They do make an in lieu of tax payment. And as we heard earlier and in the Rainwater Basin, it is not...most years it's not even close to what it would have been if it were still privately owned and being taxed. They have a different kind of formula that they use. In some states it tends to come closer to what private property taxes would be. In other states like here, it's not. And clearly it's an issue. I wish there was an answer to it. It's an issue that Ducks Unlimited faces in North and South Dakota, the same issue where the Fish and Wildlife Service is trying to protect wetlands and native grasslands and the same issue exists up in those states with regards to property taxes. [LB529]

SENATOR CHRISTENSEN: And was any NET money used in that purchase where we give land to the Fish and Wildlife? [LB529]

STEVE DONOVAN: Yes. [LB529]

SENATOR CHRISTENSEN: I guess I'll make a statement and you can answer if you want to. I guess I struggle with using what could be tax dollars coming out of the Environmental Trust, coming off the gambling to donate to the feds. [LB529]

STEVE DONOVAN: Well, I would answer that two ways. First of all, I would bet that the Nebraska Game and Parks Commission has never bought a single property in the state of Nebraska where there was not someone else interested in buying that property. And so the idea that, you know, we might be collectively, the conservation community might be competing with other buyers, well, there's always other buyers. Now that particular property, contrary to what you may have been led to believe, to date, that is the only time that we have been successful at auction buying a property. We paid less than appraised value. We've never paid more than appraised value. We have been at numerous auctions in the last two years where we failed miserably. We had our appraisal, we had our limit, and the price went like that. And so, you know, we're not out there...I don't think we're out there competing with other people. We don't pay more than

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

Natural Resources Committee  
February 03, 2011

---

appraised value. But I'm sorry, Senator, if I may add one thing. It is in the public's best interest to buy lands like this. You know, I've got a picture here that I was going to share of my four-year-old daughter standing on a property that we bought with the help of Nebraska Environmental Trust dollars and we gave to the U.S. Fish and Wildlife Service. It's federal land, but it's our land. It's owned by the public. We all--my kids, my kids's kids, Senator Langemeier's kids's kids's kids's kids... [LB529]

SENATOR LANGEMEIER: One more. [LB529]

STEVE DONOVAN: ...that land will always be there in public ownership and we can all go and enjoy that wetland. We can walk around, our kids can walk in the mud and find frogs and look at ducks and enjoy the wildflowers on that restored grassland because it's public land and all Nebraskans will be able to enjoy that property forever. And it gives me a great deal of personal satisfaction knowing that I'm involved with a group that is restoring and protecting natural resources for us for future generations to enjoy. [LB529]

SENATOR CHRISTENSEN: Couldn't we do it in such a way because, you know, this just hits me broadside and I hate it, that is, giving something to the feds there. Couldn't it just be owned by you guys and managed by the feds? Couldn't it be done that direction rather than giving it away? [LB529]

STEVE DONOVAN: Sure. Sure. And in fact, or Nebraska Game and Parks Commission. [LB529]

SENATOR CHRISTENSEN: Correct. [LB529]

STEVE DONOVAN: I think everybody would agree we like their payment...their system of paying property taxes better than the feds. [LB529]

SENATOR CHRISTENSEN: Yes. [LB529]

STEVE DONOVAN: And with, you know, if Mr. Douglas and the rest of his crew are willing to take some of these properties, I think that would be a wonderful partial solution to some of the issues that we are facing. Now in the case of the one in Clay County, when you already have the Fish and Wildlife Service owning half of it, half of that wetland, it made sense for them to own the other half because of the management concerns. Clearly, that doesn't address the tax issue, but it certainly made sense at the time because of the ease of managing an entire square mile of habitat. [LB529]

SENATOR CHRISTENSEN: I'll agree to disagree with you there, but having them manage it makes sense. But their ownership, in my opinion, is not good. Thank you. [LB529]

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

Natural Resources Committee  
February 03, 2011

---

SENATOR LANGEMEIER: One quick question. Were you here at the start of today?  
[LB529]

STEVE DONOVAN: Yes. [LB529]

SENATOR LANGEMEIER: Game and Parks just gave away two pieces of ground.  
[LB529]

STEVE DONOVAN: Oh, yes. [LB529]

SENATOR LANGEMEIER: We're not taking ground in here. Senator Schilz I think has a question. [LB529]

SENATOR SCHILZ: Thank you, Senator Langemeier. Mr. Donovan, thank you for coming in today. When land is purchased using NET money, is NET ever reimbursed for what they pay into this? [LB529]

STEVE DONOVAN: Well... [LB529]

SENATOR SCHILZ: Do you know? I'd love to be able to ask them... [LB529]

STEVE DONOVAN: If...I guess I can only speak for the projects that we have been involved with. And they come in all different shapes and sizes, but basically we write a proposal and we say, for example, we want to buy this piece of...we have one that's being decided today I think. I want to walk over and see if we were successful with our grant proposal. We submitted a proposal last fall to buy a piece of ground in Morrill County. It's a very unique wetland complex, alkaline wetlands, lots of unique wildlife. We had a letter of support from the county commissioners in Morrill County, and we submitted that grant proposal. We're anxious to find out if we are successful so that we can buy that. And the Nebraska Environmental Trust knows that that's the proposal is for them to give us money so that we can buy it, and we would then work with Platte River Basin Environments Group, a local conservation group out there, who would eventually assume the deed to the land and manage it forever and open it up to public uses. So NET knows going in that they're not going to be reimbursed. I mean they're giving us a grant to help us fulfill this proposal to buy land. [LB529]

SENATOR SCHILZ: Okay then...so DU takes title. [LB529]

STEVE DONOVAN: In that particular case, that land would be our...yeah. [LB529]

SENATOR SCHILZ: And then you will just transfer the deed to this Platte group.  
[LB529]

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

Natural Resources Committee  
February 03, 2011

---

STEVE DONOVAN: Platte River Basin, yes, sir. [LB529]

SENATOR SCHILZ: No reimbursement to you folks either. [LB529]

STEVE DONOVAN: Correct. [LB529]

SENATOR SCHILZ: Okay. And then can you tell me...I haven't looked around, but is there anything like this going on in any other states that...I mean is there any other controls on easements in any other states that you know of? [LB529]

STEVE DONOVAN: I think I will defer to Dave Sands. He may be a great one to answer that. I'm very familiar with Nebraska. [LB529]

SENATOR SCHILZ: Right. [LB529]

STEVE DONOVAN: Some of the other land trusts are much more familiar with rules in other states and how they apply. I'm sure these same kinds of issues arise. [LB529]

SENATOR SCHILZ: And I was just wondering if anybody else had seen the need to try and act anywhere else. Thank you. [LB529]

STEVE DONOVAN: I can speak for my work out on the West Coast. You know, in Oregon and Washington and California where obviously there is many more people and development has consumed a lot of natural areas out there that the people realize now, more than ever, that some of these natural areas need to be protected. And it is absolutely amazing how much money is being spent per acre by the people who agree to tax themselves to raise money to set aside green space and wildlife habitat before it's all gone. [LB529]

SENATOR SCHILZ: In high population states, I can understand why that's a huge deal. In low population states where property tax drives the boat, it becomes a very, very serious consideration when we go forward. Thank you, Mr. Donovan. [LB529]

STEVE DONOVAN: You bet. [LB529]

SENATOR LANGEMEIER: Senator Dubas. [LB529]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Mr. Donovan, for being here. How often...when you purchase land, how often do you seek to have it reevaluated for its valuation? [LB529]

STEVE DONOVAN: Oh. We have only done that once and that was on a block of land

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

Natural Resources Committee  
February 03, 2011

---

in Clay County. And the reason we did that was because...there are several reasons, but it was a block of land that collectively Ducks Unlimited had decided that we wanted to own that for as long in the future as we can see today. And we want to use it as a showcase and we want to open it up to the public and we want to take volunteers there to show them what we're trying to accomplish. Well, it had been in grass for about five years at the time. And every year the tax bill came and the assessor had portions of it listed as cultivated cropland. And we felt, for a number of reasons, that we needed to correct the county's records. I mean it's not...it was not cultivated cropland. It had been in grass for five years, and it was encumbered by an easement that would prevent it from being cropland. So we went in to the county and asked that they fix their records and adjust property taxes accordingly. That's the only time that we have done that. And if I may, I would like to mention, you know, we all sort of are operating here on the assumption that easements deplete property taxes. Well, in the nongovernmental side, most of the nongovernmental conservation organizations across the country, the vast majority of conservation easements don't change land use. And therefore, they're not having any material impact on property taxes one way or the other. There are some exceptions like some of our work in the Rainwater Basin where we're actually trying to restore some wetlands and grassland. But the vast majority of conservation easements, like the ones we have along the Platte River, they do not...we do not change land use on those properties; and therefore, our property taxes do not change. And there's one other interesting thing. One of our tax bills that we got in the mail a few weeks or a month or two ago from Clay County was for a parcel that we enrolled into the Wetland Reserve Program permanent easement this past year. And so when the tax bill came, it reflected the change in property taxes. And we actually had a net increase in tax. And part of that was attributed to the fact that the existing wetland on that property had been taxed at an average of about \$500 per acre assessed value. And now that it's in the Wetland Reserve Program, it's assessed at \$900 per acre. So those 46-odd acres, actually the tax bill went up. [LB529]

SENATOR DUBAS: Well that was going to kind of go into my next question as far as the properties that you've been involved with. How often have you actually taken cropland out of production, switched it to grass, done things that would just by the nature of the changes change that valuation? So you're saying by and large, you don't change the valuation through changing the property. [LB529]

STEVE DONOVAN: We've only asked for that change one time. [LB529]

SENATOR DUBAS: Right. [LB529]

STEVE DONOVAN: Now when we do projects where some pieces of cropland are planted back to grass, sooner or later when that...whoever brings that to the attention of the county assessor, yeah, that will. I mean that happened in Clay County. They switched to a GIS system and every landowner in the county got a postcard. We had to

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

Natural Resources Committee  
February 03, 2011

---

go in and stare at the maps on the computer and point at land and say, that's cropland, that's grass, that building site is not there, whatever. And so those sorts of things are going to happen sooner or later, I assume, when there is a change in land use. [LB529]

SENATOR DUBAS: At any time do you do what Game and Parks does in the way they continue to pay their property tax on land? [LB529]

STEVE DONOVAN: Well, we pay our tax bill. It shows up and we pay it. [LB529]

SENATOR DUBAS: And I guess I'd kind of like to go back. You touched on this earlier, but when you're dealing with property owners on these easements, do you encourage them to run these easements through their own personal attorney so that they... [LB529]

STEVE DONOVAN: Oh, yeah. [LB529]

SENATOR DUBAS: ...are certain that what they're signing is what they're signing? [LB529]

STEVE DONOVAN: That happens on the first visit and every visit thereafter. They need to have their attorneys involved, absolutely. [LB529]

SENATOR DUBAS: I know sometimes there are people who are maybe discouraged, like it's take this offer or leave it. And so I would hope that that's the way you operate, that you're encouraging those...and you would hope the landowner would do that on their own, but I would certainly hope as a business practice that would be something you do too. [LB529]

SENATOR DUBAS: Yes, Senator. It raises a huge red flag when an attorney is not involved for the landowner, and we make sure they get an attorney involved. [LB529]

SENATOR DUBAS: Thank you. [LB529]

SENATOR LANGEMEIER: I do have a couple of questions. One of the earlier testifiers was good enough to print just about your whole Web site for us here. And maybe if I pay my \$25, I can get my fleece jacket here with my membership. But you have a whole section in here on land sales. How often do you buy these and sell them? [LB529]

STEVE DONOVAN: The Revolving Habitat Program is something DU does in various areas across the country. We have that program here in Nebraska. We have exercised that. We've gone completely through that I think twice now in Nebraska. For example, there's a property just outside of Holdrege that's probably on our Web site, I wrote the article, I hope it's on our Web site, where we bought a property, we restored it, we put a permanent conservation easement on it, and we recently sold it to a rancher out there

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

Natural Resources Committee  
February 03, 2011

---

who was looking for more grassland. [LB529]

SENATOR LANGEMEIER: Okay. And it says in here that you use that funds to acquire more properties when you sell them. [LB529]

STEVE DONOVAN: Yes. Yeah. I basically have an account in Nebraska so we use that account to purchase...for this particular program, we have that account, the Ducks Unlimited account. We can buy land and when we sell the land, the money stays here in Nebraska. And it gives us financial resources to go out and accomplish more projects. [LB529]

SENATOR LANGEMEIER: So in that account have you used NET funds in that account? [LB529]

STEVE DONOVAN: We have. Twice the NET has given us a grant specifically to create the Revolving Habitat, or to help create our Revolving Habitat Program in Nebraska. That's exactly what the grant proposal was written for, and that's what NET gave us the grant for. And I believe, I'm putting words in their mouth, but it's sort of a dollar that keeps on giving when you consider the revolving nature of it. It's one thing to give a grant and just go buy a piece or property and be done. But if that grant can live on and continue to achieve more natural resource protection in the future, some people, not everyone I suppose, but some people would consider that a wise investment of resources. [LB529]

SENATOR LANGEMEIER: Okay. In...can...how do I want to put this? Can you give me an example of one you bought that you bought it for \$1,000 and you put the easement on it and sold it for \$1,200? [LB529]

STEVE DONOVAN: The...there's one in Kearney County that, as it turns out, was more lucrative for our revolving program that I had ever imagined, but that was because after we bought it, the Tri-Basin NRD...they're essentially a fully appropriated, or maybe it's overappropriated, but anyway, landowners can no longer drill new wells and bring in new irrigated acres. And landowners who have dryland that want to irrigate, they can't. So there's...a market has developed by selling irrigated acres. Well, on a portion of that farm where we wanted to restore wetlands and grassland, we were willing to sell the irrigated acre rights and allow another farmer who had a dry farm to drill a well and start irrigating his dry farm. So that created an additional revenue stream, I guess you could say, that allowed us to put some dollars back into our revolving program. Now we still own that, so the bottom line...I don't know what the end result will be, but. [LB529]

SENATOR LANGEMEIER: You just sold the certification for the acres. [LB529]

STEVE DONOVAN: Right. Right. And we still own the full quarter. Half of it is...we will

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

Natural Resources Committee  
February 03, 2011

---

sell half of it as an irrigated 80, and the other half we will eventually sell as a grassland 80 for someone who wants recreational land or maybe a rancher who wants some more grassland. [LB529]

SENATOR LANGEMEIER: And they'll both have a permanent easement upon the sale. [LB529]

STEVE DONOVAN: The grassland portion already has a permanent easement on it. And the cropland does not yet, but we may put a no-development easement on that just to...you know, it will still be in cropland, that easement will allow that, but it may have a no-development easement on it before we sell it. [LB529]

SENATOR LANGEMEIER: Okay. Any other questions? Senator Schilz. [LB529]

SENATOR SCHILZ: Thank you, Senator Langemeier. Mr. Donovan, on the property that you're talking about, so NET helped set up the fund. Was NET also involved in helping to purchase that property? [LB529]

STEVE DONOVAN: On that particular property, NET was not involved in purchasing it. That was entirely Ducks Unlimited's own money. [LB529]

SENATOR SCHILZ: Okay. Right. Are there any properties... [LB529]

STEVE DONOVAN: Yes. [LB529]

SENATOR SCHILZ: ...in the state where that revolving fund was used and then NET stepped up again and gave more money? [LB529]

STEVE DONOVAN: For a different purpose. There was one where we used some of the revolving program grant dollars to help buy it, and then we later submitted another grant proposal because the original proposal...the original grant was just for land acquisition assistance. And we submitted a second proposal a year or two later after we owned this property and asked for some help with restoring wetlands on the property. So it was two different grants, two different purposes, but it was the same property. [LB529]

SENATOR SCHILZ: Okay. And let me make sure...I'm trying to...excuse me, and I'm sorry for...it's getting to be a long day, and so you're saying that the revolving fund was used to purchase the ground, but no NET dollars were used to purchase that ground. NET dollars were used later to do the restoration? [LB529]

STEVE DONOVAN: Well, we're talking about two different projects, I'm sorry, Senator. The one in Kearney County where I was talking about the half irrigation... [LB529]

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

Natural Resources Committee  
February 03, 2011

---

SENATOR SCHILZ: Right. [LB529]

STEVE DONOVAN: ...and half grass, that was entirely purchased by Ducks Unlimited with our own private dollars. The other one, where we used an NET grant for...that was awarded to Ducks Unlimited for the purpose of creating a revolving program, it was their dollars. We used their dollars to help...I think they provided half of the dollars needed to buy that property. And then...at the time we wrote the grant, we didn't know that that would be the particular property that we would buy. So anyway, we got that grant; they helped us buy it; and then we submitted a grant proposal later asking for some financial assistance to help restore it. [LB529]

SENATOR SCHILZ: Okay. So there were basically three things going on there, if I understand you right, the revolving loan...or the revolving fund that you have was used, NET funds were used, and then a further grant to restore wetlands with NET funds was also used. Is that correct? [LB529]

STEVE DONOVAN: I think I understood that correctly. Two grants from NET. [LB529]

SENATOR SCHILZ: Right. [LB529]

STEVE DONOVAN: One for the purchase and the one later to help with the restoration. [LB529]

SENATOR SCHILZ: Right. Right. And then you used your revolving fund as well. [LB529]

STEVE DONOVAN: We used our own dollars to help pay for it too. Yes. [LB529]

SENATOR SCHILZ: Right. And then was any of that ground sold later on to anyone? [LB529]

STEVE DONOVAN: That particular property is the one that Mr. Fintel was talking about that we sold to the U.S. Fish and Wildlife Service to make that square mile of wetland. [LB529]

SENATOR SCHILZ: Did you profit off of that? [LB529]

STEVE DONOVAN: The money from that sale went into our revolving account and is now helping us with more wetland restoration projects. [LB529]

SENATOR SCHILZ: But none of that went back to NET? [LB529]

STEVE DONOVAN: Correct. [LB529]

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

Natural Resources Committee  
February 03, 2011

---

SENATOR SCHILZ: Okay. Thank you. [LB529]

STEVE DONOVAN: Yep. [LB529]

SENATOR LANGEMEIER: Seeing no other questions, very good, good job. [LB529]

STEVE DONOVAN: Thank you. [LB529]

SENATOR LANGEMEIER: Further testimony in opposition? Mr. Donovan, before you leave, we didn't get your green sheet. [LB529]

STEVE DONOVAN: Oh, I'm sorry, I didn't have one. [LB529]

SENATOR LANGEMEIER: Okay. Fill one out and if you'd give it to him, I'd appreciate it. Go ahead. [LB529]

DAVE SANDS: Good afternoon, Mr. Chairman. [LB529]

SENATOR LANGEMEIER: Afternoon. [LB529]

DAVE SANDS: (Exhibit 25) My name is Dave Sands, D-a-v-e S-a-n-d-s. I'm executive director of the Nebraska Land Trust here to testify against LB529. As a young man, Steve Breuklander was hunting elk in Wyoming when he came upon the most beautiful place he had ever seen. His guide had just led him into a perfect meadow framed by the Grand Tetons when he remarked, that's where I want to build my cabin. The guide had a quick reply, you and about 40,000 others who have seen this place and said the same thing. As Steve tells it, this response helped him to appreciate the need for permanent preservation of irreplaceable places. He realized that if some places aren't preserved for all to enjoy, they can easily be lost. Ultimately, this wisdom led him and his father, Roy, to permanently preserve their own special place, an 1,125-acre cattle ranch on the Niobrara National Scenic River. Thanks to a conservation easement purchased with essential funding from the Nebraska Environmental Trust and the Natural Resources Conservation Service the ranch is now protected from subdivision and development forever. For the multitudes who love the Niobrara Valley, this is a substantial benefit as the scenic property is highly visible to thousands who float the river every year. Thousands more appreciate the vistas from land as River Road crosses the ranch for nearly 2.5 miles. Public access is even possible as the family runs Sunny Brook Campground. If one wants to hike up their canyon, just stay there at night and ask. Like many conservation easements, this agreement preserves unique wildlife habitat and it also preserves a unique endangered species, one of the last working cattle ranches between Valentine and Rocky Ford. Ranches are endangered in this stretch of the valley because cattle can't compete with people in pretty places. The price of land

Natural Resources Committee  
February 03, 2011

---

becomes too high for agriculture and recreational buyers replace cattlemen. For the Breuklanders, a conservation easement offered an alternative. It allowed Roy to sell the development rights and retire after 84 years, while allowing Steve to buy the ranch from his dad at an agricultural price. The agreement itself is an agricultural easement, with provisions tailored to accommodate their cattle operation. This ranch could have easily been lost to subdivision, but thanks to a conservation easement, it stays in the family and in agriculture for another generation while its scenic beauty, clear streams and wildlife habitat are preserved for us all. In most states, a landowner has the right to protect their land without local government approval, but Nebraska is one of the few exceptions to this rule with a high degree of city/county oversight. This is a good thing so that conservation easements don't interfere with local planning and we've worked well with counties. The Breuklander easement is a good example. Unanimous approval was received from two county boards and the Niobrara Council. In fact, the easement was complementary to the Keya Paha County plan as the land is within a restrictive zoning corridor where conservation is encouraged. It was also noted there would be no harm to the county tax base which I'd suggest is the rule, not the exception. In our view, there is no need for an anything goes provision allowing counties to deny easements for any reason. Such a standard would never fly in zoning and is bad public policy. So if LB529 is based on the premise that conservation easements harm county taxes while taking land out of agriculture, you should question this premise very closely in all of our 93 counties. In our experience, conservation easements keep land in agriculture with no change to the tax base. If tax issues do exist, they should be documented through an unbiased statewide report and we should all sit down to resolve them. Unfortunately, LB529 is akin to killing a fly with a sledge hammer when we aren't even sure the fly exists. The collateral damage to conservation would be lasting and severe. Sunny Brook Ranch is a prime example. Steve and Roy didn't want the government exercising rights over their land. The family felt more comfortable with a private organization they trusted. Without this right to choose, their land may never have been preserved. This is not a rare sentiment among landowners and private nonprofits offer an essential option. LB529 would remove the private option, forcing landowners to choose between a government run protection or no protection at all. If this doesn't kill land preservation in Nebraska, the 10 percent limit on NET grants for easements and acquisitions surely would. This is bad news for Nebraskans because matching funds are often obtained from federal sources for land protection, funds that simply go elsewhere if they aren't spent in Nebraska. FRPP alone has provided more than \$2.4 million for land protection in Nebraska, funds that would have been sent to other states without the match from the NET. In addition, arbitrary limits on funding is contrary to competition where best projects win. In summary, LB529 would start us down a slippery slope that leads to erosion of property rights, more government, reduced interest from landowners, slashed funding for preservation, fewer projects, lost opportunities, and the loss of irreplaceable places. In a state like Nebraska where many people cherish their land, this is not a path the state should take. I'd be happy to answer any questions. [LB529]

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

Natural Resources Committee  
February 03, 2011

---

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Sands? Senator Haar. [LB529]

SENATOR HAAR: Yes, thank you. On your first page, you say, in most states the landowner has the right to protect their land without local government approval. Nebraska is an exception with a high degree of city/county oversight. Explain that to me a little bit more. [LB529]

DAVE SANDS: Yes, Senator. I actually did a little bit of research. I'm not smart enough to research the laws of all 50 states, but there's a national umbrella group for land trust called the Land Trust Alliance. And they do maintain attorneys that do follow laws in all 50 states. According to the research they provided me, there's only two other states in the country that require local approval of conservation easements, Montana and Massachusetts. [LB529]

SENATOR HAAR: So in this case, in...but it sounds like from Clay County there wasn't approval for the easement. [LB529]

DAVE SANDS: Oh no, it's in the Nebraska statute. You have to go to the county to get a conservation easement approved, or the community of jurisdiction. If the easement is within a city boundary, then you have to go to the city and you have to go to the planning commission first and they will rule, like any planning commission, they will give an opinion on whether or not it conforms to the comprehensive plan. Then it goes to the county board or the city council and they actually will then rule...make the ruling or approval that it conforms to their planning. [LB529]

SENATOR HAAR: So some of these situations then from the past may not have...because I'm confused now. It sounded like there was no need to get any kind of governmental approval for these easements. [LB529]

DAVE SANDS: Oh, I'm sorry if that perception has come out today, Senator, but it's quite the opposite. Nebraska requires...it's right in the statute, that you have to get the county or the city of jurisdiction's approval to do an easement. But it is tied to three things. There's three reasons a county could deny an easement or disapprove of an easement. One would be it does not conform with the comprehensive plan in place at the time the easement is conveyed. The second is that it would be contrary to an identified public works project. When they were proposing to build dams in Washington County, I got a lot of calls from Washington County landowners wanting to know if an easement could stop the dam. I told them no. And the third reason, which is hard to imagine, is that an easement would conflict with an existing local, state or federal conservation plan. [LB529]

SENATOR HAAR: Okay. Thank you. [LB529]

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

Natural Resources Committee  
February 03, 2011

---

SENATOR LANGEMEIER: Other questions? Seeing none, thank you very much, well done. [LB529]

DAVE SANDS: You're welcome. Thank you. [LB529]

SENATOR LANGEMEIER: Further testimony in opposition? He's patiently waited in the front row this whole time. Or did you stay over from last night? [LB529]

SCOTT SMATHERS: I will not disclose that information, Senator. [LB529]

SENATOR LANGEMEIER: Okay. (Laughter) [LB529]

SCOTT SMATHERS: (Exhibit 26) I am Scott Smathers, S-c-o-t-t S-m-a-t-h-e-r-s. I am executive director of The Nebraska Sportsmen's Foundation. We are here today in opposition to LB529. As I stated in yesterday's testimony, a good portion of my membership base that I represent is actively considered ag producers, ranchers, farmers, and sportsmen, all in the same combination. So when we sat down to discuss legislation issues that appeared this year, this was a rather long and lengthy conversation between myself and our membership base because they live on both sides of the fence. Also, for myself growing up as a child in Malcolm working for Floyd and Larry Hudkins on the farm and also hunting and occasionally fishing in their ponds, unbeknownst to them, I have a very fond appreciation of the ag community in the world. What...let me interrupt for a minute, what has been passed out to you I've done on behalf of Mark Brohman. He's unable to be here today. This is a petition that was taken to Pheasant Fest last weekend. I was unable to participate last weekend due to the flu bug, but the League of Conservation voters and the NET did have individuals at a table at Pheasant Fest, presented all three legislative bills, LB229, LB529, LR51CA, presented the information to the individuals who came to the table. And what you see there is 197 instate Nebraska sportsmen and women signing the petition. There is 21 nonresidents on the last two pages of that, stated clearly at the top as nonresidents that signed the petition. Forgot to mention that that came from Mark Brohman; I pass it on on his behalf and on behalf of sportsmen. The biggest issue for the Nebraska sportsmen in regards to LB529 goes down to the basic grassroots level is that property rights. And again, a good portion of our membership own a tremendous amount of ag and recreational property in this state. Basically, LB529 would harm the most basic and fundamental of property rights that you obtain when you purchase that property. The right of the landowner to determine the future of their land. If the landowner wants to sell their land for any reason, whether it's a shopping mall, conservation easement, it is his or her choice to do as they wish with. They have purchased that right with the purchase price of the land. To enact a statute that would give the state Legislature, or anybody else, the power to be influenced in that conversation of what they do with their land. Quite frankly, it strikes a very raw nerve with sportsmen in the state. When does it stop

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

Natural Resources Committee  
February 03, 2011

---

from there with rights for sportsmen? Suddenly now we can't do this; we can't carry this gun; we can't shoot this particular animal; we can't fish here. We see a trend here than can develop for sportsmen. So at the end of the day, my members that are ag and farm producing individuals, it's still their fundamental right to do what they wish with their land. With that said, conservation is a huge issue for all of us in this room. Obviously, I'm on the opponent side today. Ninety-seven percent of the land in Nebraska is privately owned, so preservation of scenic landscapes, rivers, wildlife, prairies, forests, historic sites, and agricultural are largely dependent on the future use of private land. Conservation easements have proven to be an effective, efficient, voluntary, and widely accepted tool for preserving these resources. LB529 would seriously weaken these opportunities. And I'm only going to give you three points, because I know we've been here a long time today. In closing, it is clear that there is a miscommunication or lack of communication or wrong communication, maybe in particular in one county in this state, maybe in several counties, maybe a wide variety of counties in this state. Pertaining to tax dollars, who has bought what and how they bought it or when they bought or if they even bought it, I think that's been proven here today by both sides that there's a miscommunication of information. If nothing else, if LB529 brings all the partners to the table to discuss the tax issues, to discuss what percentage should be purchased, then that needs to happen. And I know that the sportsmen in my group that I represent are more than willing to come to the table and have that conversation. However, the continuation of "he said, she said" accomplishes zero for all of us, except for bringing legislation of this nature which is far reaching more potential harm than good for our landowners. I thank you, committee, for allowing me to sit in front of you. My members thank you for the opportunity to sit in front of you. And I'll answer any questions. [LB529]

SENATOR LANGEMEIER: Well put. Are there questions? Senator Haar. [LB529]

SENATOR HAAR: Your group, is that kind of a federation of different organizations, or are you an actual organization? [LB529]

SCOTT SMATHERS: We are an actual organization. The Nebraska Sportsmen's Foundation was founded in 2002 by a group of concerned sportsmen from all walks of the sportsmen world. Typically in the sportsmen world, you have...I'm a member of Ducks Unlimited; I'm a lifetime member of Pheasant and Quail Forever; I'm a member of the Wild Turkey Federation; I'm a member of White Tails Unlimited; and this is, I just realized on record. My wife is not aware I'm a member of three of those groups, but (laughter) she is now. Everybody has their own personal choice whether it's the trout, the walleye, the pheasant, the quail, the deer. When Sportsmen's Foundation was enacted and started was the simple fact is that we need to have a individual group represent everybody and work together to distribute the message of positive/negative influences in our organization what is about to come about. Unfortunately, as a volunteer organization until just this past May, as you all know with working with volunteers, that energy cycle ebbs and flows, comes and goes. I was the chairman of

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

Natural Resources Committee  
February 03, 2011

---

the organization, was asked by the past founder of the organization and a board member to come on board in May of this year as the first time ever paid, albeit lower paid, individual for the organization. I'm fortunate at my age that I have one in medical school, I have one that has finally decided that college is in his future next year at McCook, thank God, so now I have time to work on my passions which is the outdoors and sportsmen's rights and bringing everybody together, work a positive, because again, too many years the ag community has been pointing fingers across the river; the sportsmen have pointed their fingers across the river and said it's your fault, it's your fault. We're all one in the same. We need to work together to find issues and solve those issues. [LB529]

SENATOR HAAR: You get paid less than we do? [LB529]

SCOTT SMATHERS: I don't know what your salary grade is? I mean, you know, I've obviously read, but it's comparable, Senator. (Laughter) [LB529]

SENATOR HAAR: We'll take you out for drinks afterwards. [LB529]

SCOTT SMATHERS: I don't have an expense report, Senator. [LB529]

SENATOR HAAR: About how many members do you have? [LB529]

SCOTT SMATHERS: We have 752, I think I stated 750 yesterday. We picked up two members. And, Senator Langemeier, if you'd like to...ours is cheaper than Ducks, it's only \$20, so. (Laughter) We'd be glad to make you a member. We don't provide a jacket. We will give you a nice koozie though. Seven hundred fifty-two as of today. [LB529]

SENATOR HAAR: Good. Okay, thank you. [LB529]

SENATOR LANGEMEIER: Seeing any other questions? Well we appreciate helping you increase your membership. [LB529]

SCOTT SMATHERS: Thank you very much. [LB529]

SENATOR LANGEMEIER: Thank you very much. Further testimony in opposition? [LB529]

JOE HERROD: You got to start over on this side next week. [LB529]

SENATOR LANGEMEIER: You just got to hop up. [LB529]

JOE HERROD: Okay, I'll hop up. Let me hop up. This poor lady, she wants to go and

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

Natural Resources Committee  
February 03, 2011

---

I...you can put the thing on one minute and I'll be done. [LB529]

SENATOR LANGEMEIER: Okay, go quick. You're always quick. [LB529]

JOE HERROD: Okay. I am. [LB529]

SENATOR HAAR: Ten seconds? [LB529]

JOE HERROD: Hmm? [LB529]

SENATOR HAAR: Ten seconds? [LB529]

JOE HERROD: (Exhibits 27, 28, 29, 30) No. My name is Joe Herrod, J-o-e H-e-r-r-o-d. I'm here today representing the Nebraska Council of Sportsmen's Clubs. I will not give any testimony other than to hand out what I don't want to carry all the way back to my car because I think it will be of interest to those of us that are concerned with the amenities of Nebraska, study done there, the economic benefits of these activities. Something that I will show you because you can't keep, because I didn't make copies of it, but copies of the article in there about cooperation between the Nebraska Cattlemen and grazing. That...also Larry Hutchinson had to go, he handed me his letter. I have my green sheet here. I was tremendously pleased to see Mike Kelly. Mike Kelly was my inspiration to do the conservation easement that I did on my ranch. In fact, I haven't seen him for quite awhile. But I have a mile of river and a permanent conservation acres, about 1,000 acres, with Ducks Unlimited. There's two miles in between us that is what is called the bluffs which was famous in the days of the Mormon Trail and then there's Mike Kelly's place. And we're working on the guy in between us. So it was a great pleasure to see him. So I have...like I said, if you have any questions about how this process takes place from somebody that has a conservation easement, I have it. I'm a 68-year member of Duck Unlimited. I've served on their national board of directors. I've been a lifetime member since I was born. My dad was pretty much into this stuff. That's it. Any questions? [LB529]

SENATOR LANGEMEIER: Very good. Are there any questions? We do appreciate your enthusiasm every time you come before us. [LB529]

JOE HERROD: Okay. And...yeah, nothing was mentioned...I would say, as I get up and get out of here, that to do anything like this would probably be an affront to Canada and Mexico because they're big players in the whole North American Waterfowl Conservation Plan and act that realizes the importance of the Rainwater Basin particularly. [LB529]

SENATOR LANGEMEIER: Very good. Thanks. Now we're going to rotate. Okay, go ahead. He was up here once. That's an extra one, we'll get that picked up. [LB529]

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

Natural Resources Committee  
February 03, 2011

---

RON BISHOP: (Exhibit 31) Chairman Langemeier and members of the committee, my name is Ron Bishop. You may not recognize me because I went home and got my tie and my dress shoes. [LB529]

SENATOR LANGEMEIER: I noticed that. [LB529]

RON BISHOP: I'm general manager of the Central Platte Natural Resources District headquartered in Grand Island and I'm testifying today in opposition to LB529 on behalf of Central Platte, North Platte, Twin Platte NRDs and on behalf of the Nebraska Association of Resources District. I want to talk to you today a little bit about a different kind of conservation easement, the conservation easements that we use out in the Platte River there. LB529 has what I believe is some unintended consequences and some unintended impacts on natural resources districts. In our efforts out there in the Central Platte to meet the commitments made by the state to the Platte River Program, we and the Nebraska Department of Resources have been acquiring water rights from willing sellers and retiring those rights so the water will add to the flow of the Platte River as per the agreement and requirements under the Platte River Program. And I repeat, we and the Department of Natural...the state of Nebraska through the Department of Natural Resources. We take...in order to acquire these water rights and assure the program that they will remain retired, we take them with a conservation easement that is perpetual. All of this is done through an interlocal cooperative agreement between the Department of Natural Resources and five Platte Basin NRDs impacted by the state's Platte River Program. With LB529 as it is written, we would have to go to the county assessor each time we proposed to obtain a conservation easement on an individual piece of ground in order to acquire the water for a water bank. We would have to develop a list of governing bodies of all entities levying a tax on the property we seek to obtain the water rights from, determine the change in valuation of the property when it goes from irrigated to dryland, if that's what the easement does, and determine the fiscal impact of any valuation change to each entity levying a tax. And then we would have to give them notice delivered by first-class mail. The bill also gives county boards the expanded authority to deny conservation easements if it's "inconsistent with the best interest of the county", whatever that means. Perhaps a county would decide it was inconsistent with the best interests of the county to reduce the irrigated acres or reduce the irrigated tax values. If that were to happen, we could not buy water rights from willing sellers in that county and could be forced into a situation where the load falls on the adjoining county or we reduce the number of acres farmers could irrigate in a whole area, catching some who contribute to stream loss very little, while catching some who contribute much more. Under a scheme of acre reduction, there would be a lot more acres dried up and off the tax roll than it would be under a scheme of drying up irrigated rights from willing sellers, who, because of the pricing structure we have, contribute more water per acre of land dried up than do the average irrigated lands. Another impact to us and the state is the limitation of NETF

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

Natural Resources Committee  
February 03, 2011

---

funds would be limited to no more than 10 percent of the grant allocation in any year. We and the state currently have a grant that averages \$1 million a year and it varies up to \$1.25 million which would approach the 10 percent of the NETF fund. And it can all be dedicated to conservation easements. If the Trust has any other easements or acquisitions, a program like we have could be jeopardized. As I said at the beginning, I think these are all unintended consequences, but they are serious enough that we, as NRDs and as an association, must oppose LB529. We would, however, be willing to work with the sponsors to correct what is harmful to the interests of the state, the NRDs, and the to the program. And we want to thank you for your time and your interest. And I'd be happy to answer any questions. [LB529]

SENATOR SCHILZ: Thank you, Mr. Bishop. Senator Dubas. [LB529]

SENATOR DUBAS: Thank you, Senator Schilz. Nice to see you, Ron. [LB529]

RON BISHOP: Thanks. [LB529]

SENATOR DUBAS: A question, you know, there's been a lot brought up today about these easements and the potential impact it has on property taxes and as an NRD you receive a lot of funding from property taxes. [LB529]

RON BISHOP: We're one of the "benefitters" of property tax. [LB529]

SENATOR DUBAS: And because of the work that you're trying to do to help you deal with being fully and overappropriated in your NRD, you are, basically, converting irrigated to dryland to help you deal with those issues, is that correct? [LB529]

RON BISHOP: That's correct, but we use the conservation easements three different ways. One, some of them we go out and acquire a conservation easement and we dry up a piece of ground so he can't use that groundwater and let it go back to the river to supply some of the needs that we and the state are committed to providing. Sometimes we go out and buy out a surface water right on a live stream that is feeding the Platte River. And if they quit using that surface water, 100 percent of that water then that they would have used, would have consumed, goes back to the river. And we let them go on groundwater. And when they go on groundwater, then there's no reduction to the valuation of the land, it still stays at irrigated land. And we pay them the difference in amount of water reaching the river between that surface water that's shut off and the lesser impact from groundwater. And then the third place that we use them, sometimes we buy out water rights in the fully appropriated area and make them available to people that want to expand. And in some cases it might be an ethanol plant, for example, at Central City. Most of it, though, goes to farmers who have got a 12-acre or 18-acre or 2-acre patch where they want to put on a center-pivot, but 2 to 18 acres of it was dryland before. Because of the state's designation, they can't develop that dryland

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

Natural Resources Committee  
February 03, 2011

---

unless it is offset, and so we use water out of our water bank that we have acquired with the perpetual easements. [LB529]

SENATOR DUBAS: So how are these decisions impacting the local property tax with collections. What are you hearing from your assessors? What are you hearing from your supervisors and commissioners? [LB529]

RON BISHOP: Well, we...there was some questions with the first ones, and so we went and visited with the county boards each time one of those came up and told them here's what the deal is. We're required through the program of the commitments that the state has made and through LB962 to do these certain things to return certain flows to the river. We're working with the state to do it. We can either do it this way, or we can go in and have a blanket reduction in acres. It would be like if this group represented the landowners within four miles of the river. And I was able to cut a deal with Senator Christensen where he'd be willing to dry up half of his farmland and he was willing to sell us that right through a conservation easement and I took it. The other option is to go to every one of you and say you got to cut back 10 percent on your irrigated acres. Well you might not have much impact to the river, where Senator Christensen has got a lot. I can do it with a lot less acres coming off the tax roll if I deal with Senator Christensen because he's got a tremendous impact on the river. And our pricing is such that it favors those folks that are close to the river because we pay based upon acre feet to the river. And so we pay more for Senator Christensen's drying up than we would you. [LB529]

SENATOR DUBAS: Thank you. [LB529]

SENATOR LANGEMEIER: Are there any other questions? Senator Schilz. [LB529]

SENATOR SCHILZ: Thank you. Ron, good afternoon, good evening almost. Just a question, how much of the funding to buy out these rights to put the easement on are you getting from the Trust? [LB529]

RON BISHOP: From the Trust? [LB529]

SENATOR SCHILZ: Yeah. [LB529]

RON BISHOP: The current agreement that we have, the current application that we've got with the Trust was entered by the five NRDs, by the state of Nebraska through the Department of Natural Resources and the Game and Parks Commission. Under that agreement we get 40 percent of the funds for the acquisition from the Water Resources Cash Fund, 40 percent comes from the natural resources districts, and the other 20 percent then comes from the Environmental Trust. [LB529]

SENATOR SCHILZ: Okay. Great. Thank you. [LB529]

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

Natural Resources Committee  
February 03, 2011

---

SENATOR LANGEMEIER: Seeing no other questions, Mr. Bishop, thank you very much. [LB529]

RON BISHOP: Thank you very much. [LB529]

SENATOR LANGEMEIER: Have a safe drive home. Further testimony in opposition of LB529? Welcome back today. [LB529]

LYNN MOORER: (Exhibit 32) Thank you. Good afternoon, Chairman Langemeier, members of the Natural Resources Committee. I am Lynn Moorer, L-y-n-n- M-o-o-r-e-r, an environmental attorney in Lincoln. Today I speak as a representative of Friends of Wilderness Park on whose board I serve. Friends of Wilderness Park seeks to promote long-term sustainability and preserve the ecological values of Wilderness Park. Toward that end, part of our mission is to work with governmental agencies and property owners adjacent to the park to maintain buffer zones around it. We oppose LB529 because it would effectively remove conservation easements as a tool to protect, in perpetuity, the property in the buffer zones around Wilderness Park. Another reason is its prohibition on the Nebraska Environmental Trust awarding nonprofits like ours grants for land acquisition. We also oppose the stricture of Trust grant allocations for land purchases and easements to only 10 percent of its grant allocations. These features of LB529 will severely hamstring our ability to carry out this important part of our mission. I share information from Karin Marchetti Ponte, K-a-r-i-n M-a-r-c-h-e-t-t-i P-o-n-t-e, of the Maine Coast Heritage Trust, one of the foremost experts on conservation easements in the country. Her analysis of LB529 is attached to my remarks. Senator Carlson has said LB529 is needed because easements put a greater property tax burden on agricultural landowners while taking land out of crop production. In response I quote Ms. Ponte. She's talking, of course, from a national perspective. She said, "Ironically, the goal of keeping land in productive use would be thwarted by this bill because farmland cannot compete economically with development pressure for its land. It is the very fact of conservation easements on farmland that enables farmers to keep their land in productive use. Without easements, farmers will have to pay property taxes based on the value of their land for shopping malls and residential subdivisions forcing them to convert to these uses, not keep their lands in crop use." Moreover, we are convinced that a problem in fact...we're not convinced that a problem, in fact, exists across the state with respect to the effect of conservation easements on property tax revenues. We believe an independent peer-reviewed study is needed that demonstrates there is actually a problem across Nebraska before the measures in this bill should be considered. We also respectfully suggest that it is shortsighted to look at conservation easements only in terms of their effect upon the property tax burden of a county. Permanent conservation easements provide many public benefits, regardless whether they are controlled by public or private entities. Because they invariably help to control or lessen runoff and water pollution, conservation easements help municipalities and

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

Natural Resources Committee  
February 03, 2011

---

their taxpayers avoid or reduce huge infrastructure costs for stormwater management, for example. That matters to the city of Omaha as it faces potentially multibillion-dollar costs to upgrade its sewer system to meet federal requirements. Land with conservation easements also frequently serves as a flood retention area, thereby preventing or reducing the costs to private landowners, municipalities, counties, and/or political subdivisions to deal with flooding. We're also concerned that LB529 has a lot of technical problems as written. What happens to easements currently held by a charitable corporation or trust? Is the legislation intended to disturb existing agreements? If so, that raises constitutional issues which I'll talk more about in a moment. As written, LB529 requires holders of easements that were originally approved by cities, villages, or the Niobrara Council to seek approval from the county board if they are to be continued. Do we really want county boards second-guessing these other governmental bodies? LB529 provides no criteria for the county board to use when deciding whether to continue or deny an easement. The statement of intent identifies one criterion, the best interest of the county. This vague standard will inevitably lead to arbitrary and capricious decision-making by county seats. This, in turn...county boards I mean to say...this, in turn, is likely to yield lots of lawsuits and litigation costs for counties to defend their decisions. If LB529 is enacted, we expect each county will be bearing a greater burden for litigation expenses because of the lawsuits they will be forced to defend. Indeed, LB529 might be termed, the Nebraska attorneys' full employment act. We are concerned that LB529 may have additional legal problems. The Nebraska Supreme Court has ruled that there is a right to full and free use and enjoyment of ones property as the owner may choose, so long as it is not a nuisance or injurious to others. LB529 would trample on that right. It may also be unconstitutional in that it may be a taking of a property interest by interfering with distinct investment-backed expectations. And if this bill is intended to operate retroactively, it raises another constitutional issue. It may constitute an impermissible interference with a contract. In our view, the most prudent decision is to indefinitely postpone LB529. We would support an interim study on the effect of conservation easements statewide with respect to property values. Thank you for this...or property tax base. I'd be happy to answer any questions you may have. [LB529]

SENATOR LANGEMEIER: Senator Haar. [LB529]

SENATOR HAAR: Lynn, one of the things that the Chairman didn't say that those that were testifying at ten after five had to buy cookies for the panel. [LB529]

LYNN MOORER: Thank you for alerting me to that. [LB529]

SENATOR HAAR: I have a question, because I live on an acreage outside Lincoln. It's way too far out that the city will never expand there in many lifetimes. But if I had a conservation easement on my property on part of that, could the city or the county under current laws come and rezone that like for commercial use or something?

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

Natural Resources Committee  
February 03, 2011

---

[LB529]

LYNN MOORER: Well, they would have to go through a process which, and first of all, it would...now let's see, let's make sure I understand your question. You're saying if you had a conservation easement. [LB529]

SENATOR HAAR: If I had one on my property, right. [LB529]

LYNN MOORER: Okay. They could disturb it only if it met their certain...if it had particular...well, there would have to be an over...really good public purpose to begin with, okay. The rule is that there has to be a significant and legitimate public purpose behind their new regulation, their new involvement, okay. [LB529]

SENATOR HAAR: Not just rewriting the comp plan or something or I guess it could be if. [LB529]

LYNN MOORER: Right. I mean, they would have to demonstrate that there is a significant and legitimate public purpose and that the step that they want to take that is messing with your conservation easement was reasonable and necessary in order to accomplish that public purpose, okay. So the burden would be upon the government to demonstrate they've got a really pressing, good reason for this and that their interfering with your conservation easement was absolutely reasonable and necessary to accomplish that purpose. And in...that is a very narrow exception to the constitutionality problem. But if they can't demonstrate that, then it's definitely unconstitutional because in the state of Nebraska and other places, the constitution provides that the government may not interfere with contracts. [LB529]

SENATOR HAAR: And the reason I ask that because there are some farms which are fairly close to Lincoln and then the question whether just by rewriting the comp plan all of a sudden that which is farmland and somebody wanted to keep it as farmland could be made an industrial zoning or something. So again, you're saying that according...it would have to fit those kinds of. [LB529]

LYNN MOORER: It would have...it would...that's what our state constitution is and that's what the rules are. That's the way they've been interpreted and that's the way the U.S. Supreme Court has interpreted it that you can do it, but the government has the burden and it doesn't happen a lot. The government does have the burden to show there was a significant public purpose and legitimate...significant and legitimate public purpose. [LB529]

SENATOR HAAR: And so since farmland is taxed at a lower rate than industrial tract land, could that be used by a farmer, for example, to...so that all of a sudden, even though he's still farming that land, if it's rezoned that his taxes go up. So it could be

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

Natural Resources Committee  
February 03, 2011

---

used, it almost sounds like to me, to prevent taxes from going up just because of rezoning or redistricting. [LB529]

LYNN MOORER: I won't speculate as to what techniques that people might want to use to avoid that. But I can tell you that the case law is strong in that the supreme courts uphold the very basic...property rights and the full and free use of one's land, as long as...in the way they want to, as long as it's not a nuisance or a harm to others is one of the most basic of property rights. And therefore, the supreme courts have erected a very high hurdle that any government entity has to jump over in order to disrupt that. [LB529]

SENATOR HAAR: Okay. Thank you very much. [LB529]

LYNN MOORER: You're welcome. [LB529]

SENATOR LANGEMEIER: Any other questions? Seeing none, thank you very much, Miss Moorer. [LB529]

LYNN MOORER: You're welcome. [LB529]

SENATOR LANGEMEIER: That will cost you. There you go. Thank you. Just lift it straight up. There you go, like that. It records better that way. Thank you and welcome. [LB529]

JAREL VINDUSKA: (Exhibit 33) Thank you. Senator Langemeier, members of the Natural Resources Committee, my name is Jarel Vinduska, it's spelled J-a-r-e-l, last name Vinduska V-i-n-d-u-s-k-a. I'm here to represent a couple of organizations. First I'm a board member of the Nebraska Wildlife Federation and we have submitted a letter with our comments on it, so in the interest of time, seeing how we're going late here, I won't reiterate some of those. You can read that on your own. I'm also chairman of the Schramm Association for a Viable Environment. That's a Sarpy County landowners organization in the Schramm Park area of Sarpy County, that's in far southern southwestern Sarpy County. The reason I mentioned this organization is our group lives in a part of the county, well actually the only county in the state of Nebraska that requires conservation easements in their comprehensive plan on our part of the county. It's called the Schramm Park Conservation Development District. We worked really hard to get that to occur because we're in a really environmentally sensitive part of the county. It's the steep bluffs and flood plain to the Platte River. And we saw with Sarpy County being the fastest growing county in the state that soon all that land would be consumed for residential housing development. And it wasn't in the best interest of the county or in the best interest of the environment to cover that land with high density housing development. So we fought hard to get the county to go along with our ideas, and thankfully they agreed. And so I'd like to bring up a couple of points that I don't think

Natural Resources Committee  
February 03, 2011

---

have been brought up today. Well first off, I guess I should state up front that we hope this doesn't even get out of committee because we think it's a very bad bill and it's going to have unintended consequences and I'll give you a couple of those consequences from what I am familiar with. I'm not familiar with the Clay County issue so, I mean I am to a certain extent, but I'm not expertise on it, so I won't comment on those as far as property tax losses there. But in Sarpy County if a developer wants to develop a part of the land in the Schramm Park District, it's required that 40 percent of the land be put in a conservation easement of some sort. And currently nonprofits are about the only way that's available to us, that are at least the best way. I mean you can do it in a homeowners' association or something like that, but it's one of the better way to put it so that there's a monitoring agency to take care of it. And so in that regard, LB529 would kind of trample on local...local issues, local property, or local...your right to local control because basically the state would be saying that's one avenue that the counties can't use. And then we can also get into the federal realm, we've already had several conservation easements put in place by our neighbors in the Schramm Park District. And some of that money came from the Environmental Trust and that money that came from the Trust was leveraged by getting...participating in a federal program in which half of the money came from the Nebraska Farm and Ranchland Protection Act. So in that sense, federal dollars were used to increase the value of the money that was from the Environmental Trust. Well, there's no way that the Farm and Ranchland Protection Act with that federal money would go toward an easement that was only a 10-year deal. They want it to be a permanent easement because why would they put their investment in something in which a county board could overrule? So in that sense, Nebraska citizens would lose their right to participate in this federal program. And I don't...I suspect that's not legal. I don't know, I'm not an attorney, but I think every citizen in the United States should be able to participate in every program that the federal government offers. And so in reality, a few of my own personal comments, you know, every city in the United States, every big city, the reason that big city is there, virtually in all cases, Omaha, Chicago, any place, it's because that's where the people settled because that was where the water was available and that's where the good land was. Well every city is consuming that good land, so what happens there, that's why we have the Farm and Ranchland Protection Act. The federal government has recognized that if we don't do something about it, we're jeopardizing our national security because we're going to ever inferior farmland. So in the essence like these farms in Sarpy County, Sarpy County used to be the most highly productive land in the state because it rains there and it's good soil. Same with Douglas County, it's already covered. Well, so what do we do? We forced agriculture onto the sand or into dry areas where we need irrigation. So now we're sitting here saying, oh, we begrudge taking money out of the land trust to put easements on land, on the good land, I shouldn't say good land, but the most productive agricultural land and we force it to the land where you need irrigation. But somehow it's okay to rob money out of the Trust to buy off wells that shouldn't have been put down to begin with in the dry areas. It's okay to use that money for that, but it's not okay to use the money to buy up easements to keep land in farming. That's why I

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

Natural Resources Committee  
February 03, 2011

---

was kind of shocked that the Nebraska Farm Bureau is here. Why would a farm organization be against preserving farmland? I mean, the good farmland, the best farmland. So, I could go on and on, but I know a lot more people want to talk. And so if you got any questions I'd be happy to answer them. But I hope this doesn't leave committee, because it's a bad, bad bill. [LB529]

SENATOR LANGEMEIER: Are there any questions? Seeing none, thank you very much. [LB529]

JAREL VINDUSKA: Okay. [LB529]

SENATOR LANGEMEIER: Appreciate your testimony. Further testimony in opposition to LB529? Good evening. [LB529]

STEVE MORAN: Good evening. Thank you. [LB529]

SENATOR LANGEMEIER: You're welcome. [LB529]

STEVE MORAN: (Exhibit 34) My name is Steve Moran. I'm passing around a letter that Mel Taylor, he had to leave so his testimony is being provided in the letter that's being passed around. I'm going to provide testimony in opposition to LB529. [LB529]

SENATOR LANGEMEIER: Steve, I need you to spell your name. [LB529]

STEVE MORAN: Oh, I always forget that. Steve Moran, S-t-e-v-e M-o-r-a-n. [LB529]

SENATOR LANGEMEIER: Thank you. [LB529]

STEVE MORAN: (Exhibit 35) I'm a little disturbed that I had to take time out of my day to testify about a bill which is so fraught with bad ideas. But this is the land of the free and people are allowed to have their own opinions. If this bill were to pass, it would be a little less free due to infringement upon personal property rights and the empowerment for government to make decisions which should be made by private citizens. In the early and mid 1990s, I was the coordinator for the Rainwater Basin Joint Venture. The Joint Venture is a collegiate partnership of state, federal and local government agencies, conservation organizations, and private landowners. One of the many goals of the Joint Venture was to protect wetland acres through fee title acquisition. Protection from whom? I'll get back to that. Farmers would approach the Nebraska Game and Parks Commission, the U.S. Fish and Wildlife Service, and the Nature Conservancy to sell land. And why do you suppose they were approaching these entities rather than their neighbors about land being for sale? Most likely because the neighbors have been watching them try to farm a wetland for years and the seller knew it possibly had a higher value as a wetland than flooded cropland. So the Joint Venture partners would

Natural Resources Committee  
February 03, 2011

---

pool resources and write grants to buy the land and eventually deed it over to the Nebraska Game and Parks Commission or the U.S. Fish and Wildlife Service. Like I said, this was the early '90s. The farmers on the Joint Venture management board would express concerns about this process. In particular, they would express concern over buying a whole quarter when the wetland only occupied only 30 to 50 acres. Why is it necessary to have good cropland in the hands of government agencies, they would ask? Further, they would ask, why move more land into government ownership when the evidence suggests they have trouble managing the land they already own? The answer to these questions, a solution was to create another tool, the conservation easement. With an easement the land can remain in private ownership, can continue to produce agricultural products and landowners continue to pay property taxes. Therefore, the management board instructed me to develop a conservation easement program for the Rainwater Basin wetlands that would recognize that a wetland tract could be both a wetland tract and a grassland resource, provide a grassland resource to cattlemen in the Rainwater Basin, allow for the resale of some land as cropland if those portions did not contain wetlands or were needed as wetland buffers, allow alternatives to state and federal acquisition of Rainwater Basins and keep land in private ownership. I want to repeat that one, allow alternatives to state and federal acquisition of Rainwater Basins and keep land in private ownership. And to capitalize on the fact that grassland management practices are perfectly compatible with proper wetland management in this landscape. It took many years to develop and implement a successful conservation easement program that met these goals. So now, here we are in 2011 at a hearing for LB529, which attempts to obliterate all the hard work that was done in the Rainwater Basin to address landowners' concerns about wetland protection. Let's talk about the need for wetland protection. For decades developers have worked to convert wetland habitat to cropland in the Rainwater Basin. We continue to lose wetlands each year. Each spring tens of millions of waterfowl show up during a world-class migration spectacle and attest to the value of the Rainwater Basin wetland habitat while developers continue to drain, fill, and degrade these same wetlands. And that is what conservation easement programs protect against. The Joint Venture Partnership worked very hard to develop a wetland conservation program in the middle ground, attempting to conserve wetland habitat while taking into account local concerns. If LB529 passes, the Joint Venture Partnership will have to revert back to the fee title purchase government ownership, inflexible options, federal easements rather than locally held easements and a one-size-fits-all process to protect wetlands. Back to more government, less flexibility, more red tape, and costlier approaches. This really is the death of common sense. My final point is that LB529 ignores and trivializes the roles that nongovernmental conservation organizations play in the restoration, preservation, and conservation of natural Nebraska across the state. Limiting their easements to ten years and excluding them from Nebraska Environmental Trust grants is shortsighted and callous. It also disregards the fact that charitable organizations such as Ducks Unlimited, Pheasants Forever, The Nature Conservancy, Audubon, etcetera, are supported by tens of thousands of Nebraska citizens. Citizens who contribute because

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

Natural Resources Committee  
February 03, 2011

---

they believe in the mission of the organizations to which they belong. By excluding the organizations, LB529 stifles the intent of those citizens to contribute to natural Nebraska and the quality of the good life. Ducks Unlimited is not just a charitable organization. It is thousands of Nebraska citizens who are firm in their support for wetland restoration, protection and preservation. Why in the world would a legislative bill seek to exclude tens of thousands of citizens from participating in their passion? This is more death of common sense. The intent of LB529 to direct when and where the Nebraska Environmental Trust funds can be spent is the epitome of government stepping in where it doesn't belong and eroding citizens' rights. When the Environmental Trust was formed, gamblers in Nebraska agreed that their losses should be used for education and the environment. The Nebraska Environmental Trust board has a proven system for allocating grants. Why do legislators feel the need to change fund distribution? More government intrusion into where it is not needed. More death of common sense. Thank you. [LB529]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Moran? Seeing none, thank you very much. [LB529]

STEVE MORAN: Thank you. [LB529]

SENATOR LANGEMEIER: Well done. Further testimony in opposition to LB529? [LB529]

JAMES WEBER: (Exhibit 36) Good afternoon, Senators. I'm Jim Weber, I'm from Alliance, Nebraska. The sun rises on you folks back east, but it sets on us. (Laughter) [LB529]

SENATOR LANGEMEIER: I got to stop you. You got to spell your name first. [LB529]

JAMES WEBER: James, J-a-m-e-s, Weber, W-e-b-e-r. My handout, just ignore the first page because I want to make this short and to the point. I am a landowner. We run cattle, we take cattle in. I also serve on the local zoning and planning commission back in Box Butte County. I was under the impression the rights of an easement are already protected under zoning regulations that the counties are supposed to adhere to. If you would look at Section 4.02 of the zoning regulations, it states that a private property owner has the rights to grant an easement to the public, corporations or persons for a specified purpose or purposes. I'm under the impression that the Legislature gave the counties this, for lack of a better word, power to do this. In Section 3.10 it deals with private agreements. It states that these regulations are not intended to abrogate, annul or interfere with easement, covenant, or other private agreement or legal relationship. The word easement, covenant and legal relationship seems to be covered by writing included within a permanent easement contract. Section 5 pertaining to an agricultural district, says a conditional-use permit can be granted for property considered to be of a

Natural Resources Committee  
February 03, 2011

---

proposed recreational or sporting facility. By definition, an easement for wildlife could be considered recreational if the public uses it. I don't know if this is all...if it's all factual, but I do know that the counties have the right to accept an easement. And we have the right to a conditional-use permit and we have the right to change zoning. I think that we fall, the county falls well within these rights to accept easements just on what you've handed us for regulations. I'm entering my ground in Morrill County along the Platte River into an easement. I went to the local county commissioners. They got a letter from Clay County asking them to sign off and never to allow easements in Morrill County. They said that it would take the people from Clay County, the commissioners that wrote the letter said it would definitely take the land off the tax roles if land was put into an easement. They said it wasn't right, we were going to lose revenue. The county came to me and they said, gee, we want to look again at this issue of easements. We're not going to accept your easement. I said why, and they showed me what Clay County wrote them. I told the county commissioners, you're going to lose out on about \$225,000 this year because of the expenditures that were going to be spent on my place in improving this easement. They looked at it and thought, oh my gosh. I said, yeah, look we're not losing any taxes. You're going to add jobs. You're going to bring money into the infrastructure of the local community. You're going to get a whole lot out of my property by going along with this easement than you ever will in taxes. I've worked my property for 14 years and I bought it off my folks after my dad died. And my dad wanted to build this property into something. He thought it was his chance to put something back for what God had given him in life. Now it's up to me to finish my dad's dream. I can't do it on my own. I need a little help. I have put my life savings into this and I want to leave something for my kids and I think the rest of Nebraska deserves something. I am sold on these easements 100 percent, because I hear from the Clay County farmers that we got to feed the world. But they have no problem putting their ground into CRP programs and taking that ground out of production and taking the taxpayers' money to pay them for subsidized farming. I understand the CRP program helps pay and helps do a lot of good for wildlife, but the simple fact is, it takes ground out of production. I vehemently oppose this LB529 just because I think we need to leave a legacy to the next generation. I appreciate your time. I love being in this Capitol. I've been in this building twice in my lifetime and I was born and raised in Nebraska. I have never addressed senators. I'm sorry if I sound abrupt, but I am passionate about these things. I have worked my tail off to try to put something back and it looks like it's not being appreciated. If there's any questions, I'll try to answer them. [LB529]

SENATOR LANGEMEIER: You're doing good. On your sheet, just for clarification. On the sheet you said...you marked that you're representing the board of commissioners for Box Butte County. [LB529]

JAMES WEBER: Zoning commissioners. [LB529]

SENATOR LANGEMEIER: So you represent the zoning commission. [LB529]

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

Natural Resources Committee  
February 03, 2011

---

JAMES WEBER: I am on the zoning. [LB529]

SENATOR LANGEMEIER: But is your testimony their testimony or is it yours personally? [LB529]

JAMES WEBER: No, it's mine, but I have...I told them I was coming. [LB529]

SENATOR LANGEMEIER: Okay. Just so we clarify it, right? Senator Christensen? [LB529]

SENATOR CHRISTENSEN: Thank you. I just...thank you for testifying. I just make one statement to you, you said we're using...when they go into CRP they're taking federal dollars to...or state dollars to retire ground. You're doing the same thing if you use NET. To me, there is no difference, because that is tax-... [LB529]

JAMES WEBER: I think that there's a distinct difference. [LB529]

SENATOR CHRISTENSEN: ...generated dollars that the Legislature donated there. [LB529]

JAMES WEBER: I think that's a distinct difference. I mean, you can accept or leave...you can accept or agree to take on an easement. Those guys, I'm sorry, I rely on corn to feed my cattle. I'm not getting any subsidy because I take my cattle off the range. I'm not getting any subsidy for that. I can get a deferred program from the state of Nebraska and some of the NRD programs to take my cattle off the range. I can get a deferred payment, but that's about \$3 an acre. Those guys are doing quite well on their CRP programs. What's the difference? How do they differentiate that program? They're taking ground out of production. We're not taking ground out of production with these easements. Definitely, on my place. [LB529]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much. [LB529]

JAMES WEBER: Thank you very much. [LB529]

SENATOR LANGEMEIER: Appreciate it. Mr. Weber, is that your folder up here? [LB529]

JAMES WEBER: Yes, I'm sorry. [LB529]

SENATOR LANGEMEIER: That's okay. Well done. Mr. Winston, welcome back. [LB529]

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

Natural Resources Committee  
February 03, 2011

---

KEN WINSTON: (Exhibits 37, 38) Good afternoon. My name is Ken Winston, last name is spelled W-i-n-s-t-o-n. I'm appearing on behalf of the Nebraska Sierra Club and the Wachiska Audubon Society in opposition to LB529 and written statement of mine is being handed out. Also a written statement of Tim Knott. And since the written statements are being passed out, I will, if you have any questions about any of that, I'd be glad to answer them. [LB529]

SENATOR LANGEMEIER: Are there any questions for Mr. Winston? Seeing none. [LB529]

KEN WINSTON: Thank you. [LB529]

SENATOR LANGEMEIER: Well done. Further testimony in opposition to LB529? [LB529]

MACE HACK: (Exhibit 39) Good afternoon, Mr. Chairman and members of the Natural Resources Committee. My name is Mace Hack. I am the state director of The Nature Conservancy in Nebraska and I am testifying in opposition to LB529 on behalf of The Nature Conservancy. Mace is M-a-c-e H-a-c-k. I will try to keep my comments brief. I have some handouts here with more extensive testimony, but a lot of these points have been made already today. I do want to echo a couple of things though. One is, as a nonprofit organization in this state, we derive a great majority of our support from Nebraskans. And I've heard today that we are...outside organizations coming in and buying land. We are an organization of Nebraskans for Nebraska. And all of our conservation work happens in Nebraska. Overall, we oppose LB529 because I think it greatly expands government powers, especially at the county level. And it really restricts the rights of private property owners to place permanent conservation easements on their lands. And I...we seriously question whether enough problems exist with easements to warrant imposing such a far-reaching and consequential solution for all private landowners. The Nature Conservancy began over 30 years ago using conservation easements, permanent conservation easements as a means to preserve ecologically important lands for future generations. And we currently hold over 23,000 acres of easements in this state. This bill would completely eliminate our ability to continue using this effective conservation tool. Now, we acknowledge that counties may be concerned about the effect of conservation easements on property taxes and we sympathize with our fellow landowners on this point, because we also pay property taxes on every acre that we own. In fact, our property taxes this year are about 12 percent of our operating budget. We don't want our property taxes to go up either. But regarding the easements held by The Nature Conservancy, and you heard some examples of them today, our experience has been that the easements have not changed property taxes or land valuations in the least. And in most cases, as you've heard today, they've actually gone up. And the reason is most of our easements are in

Natural Resources Committee  
February 03, 2011

---

rangeland, so land uses are not changing. I think another important point that got muddied with earlier testimony is how few acres in this state are actually held by nonprofit conservation organizations. And this, again, this bill would take away the right of nonprofit organizations to hold permanent easements. There are 40,000 acres, roughly, total of conservation easements in this state held by nonprofits; 40,000 acres out of a state of 46 million acres. That's one-tenth...less than one-tenth of 1 percent of the land base in this state. We question whether if such a tiny fraction of Nebraska poses a great enough threat to county tax receipts that it justifies again this bill's great expansion of county powers and severe restrictions on private property rights. We're talking about very few acres. And the earlier testimony about Rainwater Basin Joint Venture ownership, there were a lot of federal lands put in there, not conservation easement. Forty thousand acres total in this state held by nonprofit conservation organizations. The Nature Conservancy also shares a concern of many Nebraskans that young people face increasing obstacles in acquiring the land to start their own farms and ranches. And that is exactly why we have used permanent conservation easements to transfer our own lands back into the hands of young ranchers and farmers. The information packet that I gave you contains two examples, one involving a ranch in the Sandhills which was referred to in earlier testimony, and the other involving a tract of irrigated farm ground along the Platte River. In both cases the easement allows everything these young people need to have a productive, profitable, agricultural operation. Yet neither sale to these young producers could have happened without the use of a permanent conservation easement. Taking this tool away from us will take away these win-win results for both conservation and the future of our young agricultural producers. Finally, this bill will prohibit the Environmental Trust from funding land acquisitions by conservation nonprofits. The projects involving young producers I just mentioned would not have happened without a grant of financial support from the Trust to The Nature Conservancy. The Trust, has a representative board of citizens and agency directors and regularly solicits public input to determine its funding priorities. Its track record of 15 years demonstrates its sensitivity to public concerns. Thank you for your attention today and I'd be happy to take any questions. [LB529]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Haar. [LB529]

SENATOR HAAR: How do you make sure that the people who are entering into conservation easements with you understand what they're doing? [LB529]

MACE HACK: Our first step always in talking to anybody about a conservation easement is to encourage them to get legal representation. And as was stated before, if there's no legal counsel there, it's a red flag for us. So legal counsel is absolutely essential; and independent legal counsel, not a legal counsel that we would provide, but they would get for themselves. And as mentioned earlier, these easements are typically long negotiations, many months, and a back and forth between us and the landowner and is tailor-made in most situations. So it takes an extensive amount of legal input to

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

Natural Resources Committee  
February 03, 2011

---

make sure it satisfies both parties. [LB529]

SENATOR HAAR: The way you identify land for these easements, do you usually approach the landowners or do you have people approaching you? [LB529]

MACE HACK: Our approach in Nebraska, we use easements primarily to protect places where we have already preserved through purchase of land, through preserves, and so we will often go to landowners to see if they have an interest in selling us a conservation easement. Most of the easements we have in Nebraska we have purchased at fair market value. [LB529]

SENATOR HAAR: Where you actually purchase the land? [LB529]

MACE HACK: Yeah. And have been very strategic about places that we go. We don't just accept easements anywhere and we don't pursue easements everywhere. We try to be very strategic and add value to existing areas of conservation lands. [LB529]

SENATOR HAAR: Thank you. [LB529]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much. Well done. [LB529]

MACE HACK: Thank you for your attention. [LB529]

SENATOR LANGEMEIER: Further testimony? Welcome. [LB529]

CHERRIE CLARKE: (Exhibit 40) Hi, Senator Langemeier and representatives of the committee. I'm Cherrie Clarke, C-h-e-r-r-i-e, Clarke, C-l-a-r-k-e. I'm here to represent a fourth generation of my family who are Nebraskans and own 442 acres of homestead property on the North Platte River. Our meadow is one of the largest unplowed, ungrazed virgin meadows on the North Platte River. The prairie provides feeding and resting places for the Canada and snow goose migration. Oshkosh, Nebraska, is known as the goose capital of Nebraska. And it's home to a rare Nebraska flower that...it's the only population, large population that we have. I actually, you have pictures there of our land. Since 1893 my family has kept the land in its natural state. And we spent the past year creating a conservation easement with Ducks Unlimited to ensure that it won't become a corn field or have commercial building. And I assure you that DU did not stalk us, and in fact, we stalked them. And in fact, my family probably...Nebraska Land Trust, I see Nature Conservancy, all these guys in here will know my name because we went all over to every one of the organizations trying to find out which one we wanted to go to and we spent a lot of time. We actually even went to the state entities and asked them if they could help us. And they replied to us, no, you need to go to the Nebraska Land Trust or Nature Conservancy because they'd like to help us, but they didn't have the

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

Natural Resources Committee  
February 03, 2011

---

monies, they didn't have the manpower and they didn't have the programs to be able to help us. Supporters of this bill say that easements take land out of production, but in our case it's simply not true. We lease our land for hay which is agricultural usage and we also have a sand and gravel pit on our land that provides for building and for roads. And should we want a housing district on this land, that's our right. But it should also be our right to put in an easement and to put in an easement with whatever entity that we decide that we trust to do that. A lot of you know Paul Johnsgard being from Lincoln, the UNL professor, and Nebraska botanist, Gerry Steinauer. Bill Whitney with Prairie Plains Institute have all been out to our land and they tell us that we have one of the jewels of Nebraska. The Sandhill cranes are moving further west. Paul Johnsgard is thinking they're only about eight miles from our land now which is going to be a very important foraging site for them. Our land also...DU, we aren't complete with our easement yet. As they were saying, it's a long process. We have worked our tails off for a year to get the wording and everything down right. This has been a huge amount of work. In fact, a lot of families, I don't think, will even go to all the work to create one. But we want to make sure that it's absolutely right. We have...you'll see the flower in the picture there, that's the largest population in Nebraska. It's a very rare plant on our wetland meadow. DU did go to the Environmental Trust for a grant for our land to take that money to enhance our wetlands which is badly needed. And after all, NET's, their mission is to enhance and protect our natural environment. And in our case it is badly needed because we have a warm-water slough that stays open all winter long that provides for the wildlife which is starting to silt in. This funding will clear that out. We also have several natural ponds on our land that are also...these funds are going to be used to dig out, because like I said, we have the Canada and snow goose that come in there like tornadoes and sit on our land. So I guess I'm saying to you, and I feel a tremendous weight sitting in front of you and to represent 118 years of my family's hard work to protect this. Our only way to permanently protect this land is through easements and we've done this unselfishly. There are important, other important things than tax revenues in your county. And we did go to our county board by the way, our county commissioners, to get permission to do this. I guess I just want to say that I hope that you'll really take our rights into consideration that...and Bill Whitney said your family has done a tremendous amount of work in handling this land right. You're good managers of your land and I so hope that the government would take a look at us and my family, what we've done there and say, yes, you do know what's going on, you do know how to protect it. And let us have that right and not take that away from us. So in ending, I want to say that this 10-year holding easement, I don't know how in the world you could ever think that we would go along with that or think that our land is going to be protected every 10 years. That just reeks of future manipulation, as far as I'm concerned, to have to go through this process. And we're all old. I mean, my family ranges...there's five of us who owned this from 70 to 55 years old. We're getting old. We need to make these decisions what to do with this land now. In 10 more years, 20 more years, our family is gone. Who is going to be making those decisions what to do with our land? And we know what should be done with our land. And I hope that you'll consider this special property that we have. Thank

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

Natural Resources Committee  
February 03, 2011

---

you. [LB529]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Haar. [LB529]

SENATOR HAAR: Yes. You said that you actually went to your county board. Why, when you've got these easements? [LB529]

CHERRIE CLARKE: The commissioners, they have to decide if they approve it. Like you say, if there's any zoning problem where they have to approve and see if it is going to affect anything in the area. Our land happens to be very close to the edge of the city and on the river. And so we had to go get permission to be able to go through with the easement which we did get permission. [LB529]

SENATOR HAAR: Okay. Thank you. [LB529]

CHERRIE CLARKE: Anybody else? [LB529]

SENATOR LANGEMEIER: Seeing...any other questions? Seeing none, thank you very much. [LB529]

CHERRIE CLARKE: Oh, one other thing, I'm also the director of a Pawnee Indian sacred site. Kirby Zicafoose was here and he had to leave, but I've been the director there for 30 years. It was the very first conservation and historic easement ever made in the state of Nebraska. And I've been directing that property. If there hadn't been an easement on that since 1983, that very special historic property would not be here. [LB529]

SENATOR LANGEMEIER: (Exhibit 41) He did submit his testimony though. [LB529]

CHERRIE CLARKE: Good. Thank you. [LB529]

SENATOR LANGEMEIER: Thank you very much. Further testimony in opposition to LB529? Good evening. [LB529]

MARIAN LANGAN: Good evening, I'm Marian Langan, M-a-r-i-a-n L-a-n-g-a-n. I'm here representing Audubon Nebraska and I'm testifying in opposition of LB529 for all the reasons we've already heard so I'm not going to reiterate any of that, other than to tell you our organization has acquired land, does own easements, has supported our neighbors in acquiring easements with other organizations over the years completely successfully. We pay our property taxes, everybody has...it hasn't had any affect. And we've done them all strategically in two areas, the Spring Creek Prairie area south of Denton, and then along the Platte River out by Gibbon, Nebraska where Rowe Sanctuary is. And just to give you a picture of our world, I think the nonprofit world,

Natural Resources Committee  
February 03, 2011

---

conservation organizations have truly have been grossly mischaracterized in this hearing this afternoon. And we, almost all of us, have to raise all of our money here. It's Nebraska supporters that are wanting to do it. It's very tough to raise money and it's really tough to go around and ask money to contribute to pay for property taxes. So they're not a bunch of organization trying to acquire land because we don't know how we're going to pay the taxes on it. It's tough. So easements are absolutely win-win for everyone. They're win-win for the donors, for the supporters, for the organizations, for the landowners, multitudes of ways. But I also want to talk just for a second about nonprofits. America has an incredible tradition of citizens organizing to solve problems so that the government doesn't have to step in and always do it. Now the nonprofits do that work on wide multitude of social issues and conservation is one of them. You see my face right here representing this organization, but really at Spring Creek Prairie last year over 120 volunteers did over 2,500 hours of work out there to make it possible for kids to come on field trips, for families to come out and enjoy weekends out in the prairie, for all those kinds of reasons. They're not doing it because anybody wants to acquire any land. Sometimes acquiring is what has to be done; sometimes an easement is what has to be done. But, you know, it depends on the circumstance. At Rowe Sanctuary, let me jump backwards, we've heard a lot over the last couple of years about clearing vegetation out of the rivers in Nebraska because of our water problems. Audubon started out on that Platte River project over 35 years ago and there are people in the room today that actually by hand were clearing vegetation out of that channel over 35 years ago. That's how long it has taken us to get to the point that we're at today. Fortunately, we can do it more efficiently now. But this started by Nebraskans getting together and trying to get out there and solve problems. And during that time since then as well, we've acquired more land, there's been easements, because that was what was needed. Altogether it's part of that huge toolbox to solve these problems. LB529 is not going to help us solve any of these problems. And if there is a problem, let's get together, do the interim study and figure that specific problem out. But this is not an answer. Thank you. I'm happy to answer any questions. [LB529]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, thank you very much, well done. [LB529]

MARIAN LANGAN: Thank you. [LB529]

SENATOR LANGEMEIER: Further testimony in opposition? Welcome, Glenn. [LB529]

GLENN JOHNSON: (Exhibit 42) Good afternoon, Senator Langemeier, members of the Natural Resources Committee. My name is Glenn Johnson, G-l-e-n-n J-o-h-n-s-o-n. I'm the general manager of the Lower Platte South Natural Resource District here in Lincoln. I'm here representing that district and also representing the Nebraska Water Resources Association and the Nebraska State Irrigation Association in opposition to LB529. The Conservation and Preservation Easement Act in Nebraska was adopted in

1981, introduced by Senator Jerry Warner, who happens to be in our district, on the behalf of a landowner just east of Lincoln, one of his constituents. Immediately after that bill was passed, that landowner turned around and donated a conservation easement...I'm sorry to say, it was the first one, because it was in 1981, to the natural resources district. Over 145 acres of trees and prairie on property that he wanted to see preserved as the city grew. He wanted to protect that and maintain that as that area in perpetuity and binding on all successive owners. That was his intent, and that was what he has done. Since that time, the NRD has acquired 13 additional permanent conservation easements on its own initiative over about 1,200 acres...primarily what we look at as native timber, native prairies, riparian stream corridors and fresh water in saline wetlands. That's the focus our district has been and they've all be voluntary easements and, basically, they've all approached us about these easements. They've been acquired through a combination of NRD funds, private donations, donations from those landowners themselves as part of a deferred payment or that they could use for a tax write-off, funding from the NRD, funding from Environmental Trust and other sources. So it's been a very combination where we've actually purchased those. The NRD and the city, in addition, own and hold jointly probably another 15 permanent conservation easements within the city and around the perimeter of the city. So again, a little bit different flavor of some of the use of conservation easements. Most everything you've heard so far is all in the agricultural, rural areas. We're talking urban; we're talking in the middle of the city. We're talking on the very edge of the city; we're talking about flood plains that permanently prohibit development within the flood plain. The smart thing to do. They will never develop; they will never build homes. They will never build...and we'll never have to go back in there and spend public dollars to come in and save them from flooding after they have built in there. We're tired of doing that and conservation easements is the best tool we've got. It trumps zoning because zoning can be changed by the next...in the next comprehensive plan. Comprehensive easement continues and endures in there. In every single easement we have prepared is customized to that particular land, that particular landowner, developed with that landowner and have certain restrictions and certain conditions. All of our easements also contain management requirements because these are basically conservation and preservation easements to maintain that land in the same use. It's either going to...if it's a grassland, they're going to have to graze it, they're going to have to hay it, they're going to have to burn it, they are going to have to do management of it. So it's not just taking the money or giving the easement. There is a requirement on them; that's binding on the next landowner and the landowner's...the kids, kids, kids, kids, whoever buys it, whoever inherits it. Every one of those also has gone to the county boards and been presented to them and they've reviewed it and determined it's consistent with the comprehensive plans and have signed off on those easements before we actually enter into those easements. And that's a requirement today. And in some cases the city has had to also sign off on those. The current law, in the NRD's opinion, works very well in that process with the approval by the governing body. There are reasons why they can disapprove it in the current statutes and we think those are appropriate. If a county has

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

Natural Resources Committee  
February 03, 2011

---

an issue, the zoning and comprehensive plan is the appropriate way to deal with it in the future, we feel. There is a process set up in the statutes, if for termination, the question was raised here about termination, and either the landowner or the easement holder have the right to petition to the courts for the courts to hold a hearing and the requirement is on the petitioner to establish that it's no longer in the public interest to hold the easement or that the easement no longer substantially achieves the conservation or preservation purpose for which it is created. There may come a time, at some of the easements that we hold, that when it is totally developed around, it may make some sense to take a look at those easements again. But there were a lot of reasons that were cited by many of the other folks that testified of the technical concerns of the act. And it's an important tool that we use and we certainly would hope to be able to maintain and continue to use that tool. Thank you. [LB529]

SENATOR LANGEMEIER: Are there questions? Senator Haar. [LB529]

SENATOR HAAR: So...I mean, this bill isn't about all easements, it's about conservation easements, but that's what you use in the flood plains? [LB529]

GLENN JOHNSON: Yes. That's what we use in the flood plains. [LB529]

SENATOR HAAR: Okay. That is a good choice. [LB529]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much. [LB529]

GLENN JOHNSON: Thank you. [LB529]

SENATOR LANGEMEIER: Further testimony in opposition? Good evening. [LB529]

JOHN KNAPP: Good evening, Senators. Thanks for the opportunity to testify. My name is John Knapp, J-o-h-n K-n-a-p-p. And I, likewise, would like to testify in opposition to this bill. I agree with most of the comments made, I guess most the comments made previously by other opponents. I think the proponents give a lot of misleading facts and one of them on the county commissioners. And I'm from Sarpy County, I'm a small farmer in Sarpy County. And of the conservation ease...and I attend county board meetings quite a bit. And all the easements that I know of in Sarpy County have had to go before the Sarpy County Planning Commission for approval, the Sarpy County Board for approval. And so it's not...I don't know where these county commissioners are coming from. I don't know if it was the previous board that approved these easements and they didn't like it and felt they didn't have an opportunity to testify. But the law says it has to go through the planning and county boards get the final say on it if they like it or don't like it. And the other thing is, I think it's a taking of property rights. If somebody wants...if a farmer wants, in Sarpy County, we're about the fastest urbanizing county in the state and it doesn't bother anybody to turn over a farm for a motel or a gas station or

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

Natural Resources Committee  
February 03, 2011

---

a slab of concrete. And I hear a lot of these proponents talking about protecting the ground for agriculture. Well I've talked to Dave Sands with the Nebraska Land Trust about an easement. Unfortunately, I inherited the farm. My family has been in Sarpy County since about 1870, so I'm a fourth generation farmer. And since the '60s my folks have said, why aren't we protecting...this is the best farm ground in Sarpy County. Why are we turning this into houses? We don't irrigate. And the last...since 1984, when I started farming, took over from my dad, I've only had six claims on crop insurance. And most of those just refunded my premium. I think one year I actually got a couple thousand dollars more than what my premium plus the government's portion of the premium was. So basically, you know, I do good crops...raise good crops with no irrigation creating problems, you know, mismanaging water and stuff like that. And you're just paving this over, but you have no problem with, you know, going out in the sand and trying to pump water and, I mean, it's not all mismanaged, but there's quite a bit of mismanagement been going on. And so I think there should be a means of protecting my farmland and unfortunately they didn't leave me a million dollars to put your land in an easement. These conservation organizations don't always like your land because it doesn't have a pond on it or something like that. Talking to Dave Sands, I'd have to come up with approximately \$70,000 to...and they do a whole evaluation process, so you can't give you an exact value, but potentially I'd have to come up with \$70,000 to get somebody to supervise my easement. And so I think...well, probably have to wait until I die and leave it in a will that it goes to a conservation easement with the money they collect from my estate. But anyway, another thing is I think that hasn't been brought up today is if you put a conservation easement on the farm, if you read these farm magazines, one of the big issues in estates is that there's one sibling gets the farm and the other three nonfarm siblings are worrying about how they are going to...being compensated fairly. Well if you put the land...if I put the land...or the farmer puts the land in a trust, everybody knows in perpetuity, that land is going to be farm ground. And these organizations encourage you to put the least restrictions on it when you set it up. You can always amend it to put more restrictions on it, but you can't back out. And so anyway, if the family knows that if I inherit the farm, that it's going to be farm ground, I ain't going to as soon as the estate is settled go out and turn around and sell it to a developer for a housing project, they're going to feel...they will be a lot more assured that the values they're getting for their share of compensation is going to be equitable because you can put the land...the value of that farm, and it's going to stay farm ground, and therefore, you know, it's going to be such. And so anyway, I guess that's all. [LB529]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Haar. [LB529]

SENATOR HAAR: Just real quick. Since you went to a lot of these county board meetings, did you ever see the county board turn down an easement? [LB529]

JOHN KNAPP: Not yet, not in Sarpy County. [LB529]

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

Natural Resources Committee  
February 03, 2011

---

SENATOR HAAR: And some of these were permanent easements? [LB529]

JOHN KNAPP: It's a long...yes. They're all permanent easements. And the county attorney's office...and I don't know if this is required, but in Sarpy County, like I say, Dave Sands would negotiate with me, we get...my attorney get the contract, and then we run the...we take the contract to the county attorney's office. They have the county attorney's office review the contract and see if they're satisfied with the conditions in the permit and they may make changes and then it goes...when it goes to the county planning commission, the county board says...the county attorney's office says, yes, you know, these conditions are adequate. And so that's the process of Sarpy County. [LB529]

SENATOR HAAR: Okay. Thank you. [LB529]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much for your testimony. [LB529]

JOHN KNAPP: Thank you. [LB529]

SENATOR LANGEMEIER: (Exhibits 43, 44, 45, 46, 47, 48, 49, 50, 51) Appreciate you coming. Further testimony in opposition to LB529? They finally stopped, Senator. Except I'm not done. I have a bunch of letters in opposition. I have Duane Hovorka with the Nebraska Wildlife Foundation; I have Kirby, and I'm going to kill her name, Zicafoose, there it is, from Omaha; Judith Parks from Papillion; Don Cox from Hastings; Wes Sheets with the Izaak Walton League; Stu Luttich from Geneva; Bruce Kennedy from Malcolm; Lyle and Alice Sittler with the Bluestem Valley Farms; Norris Marshall from Kearney; Jerry McDonald from Pheasants Forever; Ron Patterson from Gretna; and that's it for letters in opposition. Now we move on to neutral testimony, those that would like to testify in a neutral capacity. Good evening. [LB529]

REBECCA HORNER: (Exhibit 52) Good evening. I'll be brief. My name is Rebecca Horner. I'm the planning director for Sarpy County. That's R-e-b-e-c-c-a H-o-r-n-e-r and I'm speaking on behalf of Sarpy County. As was mentioned previously, Sarpy County has a mandatory conservation development district which mandates 40 percent of the property be placed in a permanent conservation easement. And that represents, probably, up to 20 percent of our county jurisdiction. So the bill as drafted appears that it may create problems with the Sarpy County Comprehensive Plan and the zoning regulations that were developed after many public hearings with the stakeholders of Sarpy County. Sarpy County has implemented this comprehensive plan in this conservation development district for approximately five years without any issue to...with its tax base which I believe is because we have designated conservation residential areas in our comprehensive plan, which is attached to the handouts I've

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

Natural Resources Committee  
February 03, 2011

---

given to you. Also, because we have a well-established process in our zoning regulations, which I've provided to you as well. And also because we have the authority through state statute to deny any conservation easement that is in conflict with our comprehensive plan. I'd be happy to work with the committee and Fred Uhe as well, on behalf of Sarpy County to help resolve any issues that you might have to seek a solution to this issue. And I'd be happy to answer any questions as a professional planner. [LB529]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, thank you very much, well done. Further testimony in a neutral capacity? Good evening. [LB529]

JOE CITTA: Good evening. Chairman Langemeier and members of the Natural Resources Committee, my name is Joe Citta, that's J-o-e C-i-t-t-a. I'm the corporate environmental manager for Nebraska Public Power District. I'd like to talk a little about how NPPD utilizes conservation easements. NPPD in the course of providing power to our customers, both through utilizing our own facilities and also through power purchase agreements, has utilized conservation easements when working with state or federal agencies to address potential impacts to fish, wildlife, and threatened or endangered species. I'd like to give you an example. As part of our recent Cooper Nuclear Station license renewal, NPPD entered into a memorandum of understanding, or MOU, with the Nebraska Land Trust, U.S. Fish and Wildlife Service, and the Nebraska Game and Parks Commission. The MOU required NPPD through the Nebraska Land Trust to obtain a perpetual conservation easement along the Missouri River for aquatic habitat development to benefit the endangered species, pallid sturgeons. Conservation easements have also been utilized when working with wind developers and on other electric infrastructure projects. NPPD believes it's important to preserve the ability to utilize this very useful tool and process. We believe the process must also include the ability to enter into long-term easements and to be able to utilize the services of specialized land trust-type entities to help obtain and administer the conservation easements. These entities are very helpful to NPPD as we do not have experienced resources in this area. Our power plants and transmission infrastructure represent a multibillion dollar investment in the state and are built to last 40 to 60 years or more. We feel placing too rigorous of restrictions, approvals and time limits on easements could result in prohibiting the ability to obtain appropriate long-term conservation easements, thus precluding the use of this tool to address fish and wildlife and endangered species concerns. NPPD also realizes the importance to preserve the ability to protect tax income for counties. Therefore, we believe an option to consider would be to place certain requirements that protect the county's tax income as a condition contained within the conservation easement. Thank you for the opportunity to testify and I'd sure be glad to take any questions. [LB529]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Citta? Senator

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

Natural Resources Committee  
February 03, 2011

---

Haar. [LB529]

SENATOR HAAR: Earlier we talked to somebody from Game and Parks, and, I'm sorry, someone who talked about using permanent easements in connection with wind development. [LB529]

JOE CITTA: Yes, sir. [LB529]

SENATOR HAAR: Do you actually get involved in that, or is that simply the developers working with Game and Parks and so on? [LB529]

JOE CITTA: Well it's the developers working. But we also, since we have a PPA, a power purchase agreement with the developers, we go with the developers to meet with the Game and Parks Commission and negotiate the...and get their approval and negotiate the easements and that type of things. But the actual easement is with the developer and, I believe, they utilize like the Nebraska Land Trust or some other kind of nonprofit agency to obtain the easement. So we're a part of it, but the easements are not with NPPD. [LB529]

SENATOR HAAR: Gotcha. Thank you. [LB529]

JOE CITTA: Um-hum. [LB529]

SENATOR LANGEMEIER: Any other questions? Seeing none, thank you very much. [LB529]

JOE CITTA: Thank you very much. [LB529]

SENATOR LANGEMEIER: Did a great job. Further testimony in neutral capacity. [LB529]

PETE McClymont: (Exhibit 53) Chairman Langemeier, members of the Revenue..revenue, excuse me, Natural, we've all paid a price to be here, I guess, that's where I came from. Anyway, I'm here as vice president of legislative affairs for the Nebraska Cattlemen. [LB529]

SENATOR LANGEMEIER: You never did your name. [LB529]

PETE McClymont: P-e-t-e M-c-C-l-y-m-o-n-t. Thank you, sir. The board took a position of neutral within my written testimony is the reasons for that and I would be happy to answer any questions. [LB529]

SENATOR LANGEMEIER: Are there any questions for Mr. McClymont? Seeing none,

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

Natural Resources Committee  
February 03, 2011

---

very good, thank you. [LB529]

PETE McCLYMONT: Thank you. [LB529]

SENATOR LANGEMEIER: Further testimony in a neutral capacity? Mr. Hansen, welcome. [LB529]

JOHN K. HANSEN: Mr. Chairman, members of the committee, for the record my name is John K. Hansen, H-a-n-s-e-n. I'm the president of the Nebraska Farmers Union, appear today before you as our president and lobbyist. We are neutral, but we would probably be neutral/opposed. We...this discussion that you've heard today is a discussion that we have heard within our organization. We have folks who are strongly in favor of easements and use them. We have folks who come from problem counties and are very concerned. We are familiar with the problems with wind energy development and are concerned about those. We're concerned about the NRD, the mitigation, all of those kinds of things. Our suggestion to the committee would be to much more clearly narrow the focus of what it is that you're dealing with here so that we can limit the amount of unintended consequences or things that we didn't really see in terms of the whole thing. There's also an issue, and I don't understand it well enough to do it in any depth, but our board discussed this also last Friday, took up a lot of time at our board meeting and one of the problems has to do with...we would like to see something less than a permanent easement in some cases; other cases not. But if you don't get a permanent easement, you're not getting the federal income tax benefit which makes the easement much less enticing and valuable. So there's trade-offs in almost everything that you do here. And with that I will close and wish the committee well and salute you for your endurance and commitment to the hearing today. Thank you very much. [LB529]

SENATOR LANGEMEIER: Thank you. Are there any questions for Mr. Hansen? Seeing none, thank you very much. [LB529]

JOHN K. HANSEN: Thank you. [LB529]

SENATOR LANGEMEIER: (Exhibit 54) Further testimony in a neutral capacity? I do have a letter from Lynn Johnson, from the city of Lincoln in a neutral capacity. No other testifiers in a neutral capacity? Senator Carlson, you are recognized to close. [LB529]

SENATOR CARLSON: Senator Langemeier and members of the committee, thank you for your patience. I will not take 24 minutes to close. [LB529]

SENATOR LANGEMEIER: Thank you. [LB529]

SENATOR CARLSON: And I thought maybe that might be in the running for the most in

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

Natural Resources Committee  
February 03, 2011

---

opposition, but I see LB229 still beat me, so I feel pretty good. I'm only going to comment that...there was a lot of compelling testimony given by those in opposition. Appreciate those that came to testify and particularly those that came from a long distance. There were a couple that I discounted, was comments made that farmers don't know how to manage their own land and that irrigation is evil, so I discount those statements in opposition. But I look forward to summarizing the notes that I've taken and discussing that with the committee in Executive Session. Thank you. [LB529]

SENATOR LANGEMEIER: Very good. Thank you very much for your closing and bringing us the bill. That concludes the hearing on LB529. We thank everybody that was here to participate, those that watched it on-line, and those who watched it on closed caption. Thank you very much. (See also Exhibits 55 and 56.) [LB529]