

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

Natural Resources Committee
January 23, 2014

[LB762 CONFIRMATION]

The Committee on Natural Resources met at 1:30 p.m. on Thursday, January 23, 2014, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB762 and gubernatorial appointments. Senators present: Tom Carlson, Chairperson; Lydia Brasch, Vice Chairperson; Annette Dubas; Ken Haar; Jerry Johnson; Rick Kolowski; Ken Schilz; and Jim Smith. Senators absent: None.

SENATOR CARLSON: Good afternoon. Welcome to the Natural Resources Committee. I am Tom Carlson, state senator from District 38, Chair of the committee. And committee members present to my far left, Senator Rick Kolowski from Omaha, District 31; next to him, Senator Ken Haar from Malcolm, District 21; just about in his chair, Senator Jim Smith from Papillion, District 14; and Senator Ken Schilz from Ogallala, District 47. To my immediate left is Laurie Lage, the committee's legal counsel; to my far right is Barb Koehlmoos, committee clerk; next to her is Senator Lydia Brasch from Bancroft, District 16 and Vice Chair of the committee; next to her is Senator Jerry Johnson from Wahoo, District 23; and then Senator Annette Dubas from Fullerton, District 34. She had indicated she wouldn't be here to start with, so, she will be coming in fairly soon. And so that some of you realize, we have senators that have to get up and present bills in other committees, and that may well be happening throughout our hearing, but that's not unusual. Our page for today is Steven Schubert from Lincoln, a senior at UNL, so we appreciate him helping us. And to begin with, in about three minutes, we're supposed to get a telephone call from Rick Morehouse for a confirmation hearing to the Nebraska Power Review Board and when we get that, we'll proceed with that. When we go to LB762, any of you that intend to testify, there's a green sheet at either door. Please take that green sheet, fill it out. When you come forward to testify, give it to Barb, put it in the box over there, and we appreciate that. As you come forward to testify, you can take the chair in front of me, and there's no need to adjust that microphone because it will pick it up whether you're on top of it or whether you're back away from it, so there's really no need to adjust it and we'd ask you not to. As you start your testimony, please give your name, first name, last name, and spell it for the record for the transcript so we have accurate information. The committee doesn't use any electronic devices during the hearing. If you have any, that's up to you, but if you have cell phones, please either turn them off or put it on vibrate so it doesn't disturb the hearing. If you want to submit something in writing, but you choose not to testify, you can do that and give it to our page and that will become part of the record. We're not going to have any problem with this, but we need to indicate it anyway. In our hearings, we don't want any support of opposition or...support for or in opposition to a bill, just being civil to everybody that does testify. And as I say that wouldn't be a problem. If it was a problem, you'd be asked to leave, so we want to proceed in good order. We'll see when we start the hearing on LB762 whether or not we use the light system. If we do and you come forward to testify, when you're ready to speak the green light comes on and that gives you four minutes, and then the yellow light comes on and that tells you

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

Natural Resources Committee
January 23, 2014

you've got one minute, and when the red light comes on, then you're to wrap up your testimony. I told the group yesterday if you don't, we've got a trap door under that chair and that will take care of things. But we've never had to use it, so, we don't think that we will. And that concludes my remarks to open this hearing, so we'll just sit at ease for a couple of minutes until we receive the call from Rick Morehouse. Three minutes seems like an eternity when you sit and stare. (Laughter) If you're busy, it just flies by.
[CONFIRMATION]

SENATOR CARLSON: Hello, this is Tom Carlson. Is this Rick? [CONFIRMATION]

RICK MOREHOUSE: Hi, this is Rick Morehouse. [CONFIRMATION]

SENATOR CARLSON: Rick, can you hear me? [CONFIRMATION]

RICK MOREHOUSE: Yes. [CONFIRMATION]

SENATOR CARLSON: Okay. And I'm Tom Carlson, Chair of the Natural Resources Committee. The committee is here and we appreciate you calling in to have your hearing on confirmation to the Nebraska Power Review Board, and what we would like to have you do is this: Tell us a little bit about yourself, and your interest in the Power Review Board, and anything else that you think we'd like to hear. And when you've done that, then the committee will be ready to ask you some questions. And if that's okay, Rick, just proceed. [CONFIRMATION]

RICK MOREHOUSE: (Exhibit 1) Sure. Again, my name is Rick Morehouse. I am the...currently the accountant representative on the Power Review Board. I am a CPA. I'm also a certified financial planner. I have...I was in public accounting practice for up until about 15 years ago and I still maintain my CPA license to practice, and so forth, so I am familiar with the accounting side of things. I live in Scottsbluff, Nebraska. I'm a branch manager of the investment center of Platte Valley Bank. I am married. I have three children, two sons and a step-daughter, and I guess that's about me. As far as the Power Review Board goes, I have had experience in the past. I had a two-term stint years ago and now this, I'm starting...I'm assuming approval of your board or your committee, this would be my second and final term on the board, this go-around anyway. And I cannot express the amount of knowledge I have gained about the electric industry, and just power in general in the United States and in North America. It's been a good learning experience for me. And like I say, I have gained a lot of knowledge and experience through my previous sessions on the board, and I think that really does bring a lot to the table as far as value to the current board. I've jokingly said that the electric industry, like so many others, and the Power Review Board specifically, we speak a different language when we start talking about the acronyms that we use. It sounds like a...like we've just stepped in from another country or maybe another planet, but there is definitely a learning curve there. It's a fairly steep learning curve and my

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

Natural Resources Committee
January 23, 2014

time on the board has allowed me to gain an understanding of a lot of the issues that are facing the electric industry, in not only Nebraska, but the United States.
[CONFIRMATION]

SENATOR CARLSON: Okay. Thank you for that information. And Rick, we'll open it up to the committee as they may have questions for you. Do we have questions from the committee? Senator Smith. [CONFIRMATION]

SENATOR SMITH: Thank you, Senator Carlson and Mr. Morehouse, thank you for your willingness to serve on this board. It's a very important board and really appreciate your service there. Based on your few years that you've been on the board, are there any particular concerns you have, changes, or just challenges that you see in your time on the board facing the board in its decisions? [CONFIRMATION]

RICK MOREHOUSE: Well, I think the board has made me more aware of several issues that are out there. Probably, nationally, the...well, we all know we've got an aging grid out there and that when you start looking at reliability and vulnerability, I think that is definitely an issue that we have to consider. Economic development is so dependent on the electric power industry. And I...that's one of the things that became apparent to me during my tenure on the board is just exactly how important it is. That you've got to have a plug for any industry to plug into, and I don't care whether it's a service industry or a manufacturing facility, it's a big deal. And I think we realized that and tried to...we've got to work within the law, but we try to make things work to let Nebraska progress in the electric energy field. So those are a couple of issues. I think the renewable energy is huge and getting bigger. I think we all understand the need for that. Sometimes it's a little bit sensationalized in the media. Reality has to be kept in our grasp when we're talking about that, but we definitely need to be moving forward. And I think there's been some legislation in recent years that has helped to allow that. So I think that's an area that is very, very important. Nebraska's participation in the Southwest Power Pool is...that's a new thing for us, relatively new thing. We've only participated in it a couple, three years. I think the Power Review Board has been instrumental in helping Nebraska stay in a good position as far as that...the power pool goes. And I think there's been a lot of work to really conserve the resources that Nebraska has and try to, maybe not minimize costs, but, at least to equalize costs for the benefit we receive from the power pool. That's a huge thing again and going forward, it's going only become more and more important. So I think those are the areas that I feel are the...really the hinge pins that we need to be paying attention to. [CONFIRMATION]

SENATOR SMITH: All right. Thank you. [CONFIRMATION]

SENATOR CARLSON: All right. Thank you. Other questions? Senator Brasch.
[CONFIRMATION]

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

Natural Resources Committee
January 23, 2014

SENATOR BRASCH: Thank you, Mr. Chairman and thank you for your willingness to be reappointed, Mr. Morehouse, and for calling in today. When you mentioned renewable energy, is there one specific source that you would like to see? Is there a priority in general, moving forward? [CONFIRMATION]

RICK MOREHOUSE: Well, I think...I'm sorry, I cut you off. I'm sorry, what was that? [CONFIRMATION]

SENATOR BRASCH: No, moving forward. Is there one specific...? There's several that have come to our attention here at the Legislature, one specifically. [CONFIRMATION]

RICK MOREHOUSE: Well, I think the obvious one...you got to remember, I live out here in western Nebraska where the wind blows all the time, it seems, and that's a pretty obvious one. That's one that I think we have the resource available most of the time. We have to also understand that the wind doesn't blow all the time and we need to have other renewables available when the wind is not blowing. I personally, and I guess that these are all technology driven, but wind is here and it's only getting better as time goes on, and I think we need to exploit that resources as we can. It's difficult to get...we've got some hydro opportunities here in Nebraska. I don't see a lot of new hydro expansion and I don't see that it's really possible, but I do...I would like to see solar more explored and that's a personal thing, probably, more again tied to technology and the amount of money that can be dedicated to that resource. But I think it needs to be a combination. I think we get too focused just on wind. We have to remember that the wind doesn't blow all the time, so we do need to expand that. I personally...I think that it's not a quote, unquote, renewable, but it's a pretty darn clean energy source and it's controversial at best, but nuclear power is something that we have good...it's a good resource for the state of Nebraska. It gives us...I'm going to say cheap, inexpensive power and I personally would like to see that expanded. Again, that's a little bit away from just the pure renewable side of things. [CONFIRMATION]

SENATOR BRASCH: Very good. Those are excellent answers and you've been very thorough. Again, thank you for your willingness to be reappointed. [CONFIRMATION]

RICK MOREHOUSE: It's my pleasure. [CONFIRMATION]

SENATOR CARLSON: Okay. Thank you. Other questions of the committee? Senator Smith. [CONFIRMATION]

SENATOR SMITH: Thank you, Senator Carlson. And Mr. Morehouse, you mentioned about renewable energy options. Any particular thoughts you have on clean coal solutions and natural gas fire generation? [CONFIRMATION]

RICK MOREHOUSE: The clean coal, again, we are so fortunate to be right next door to

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

Natural Resources Committee
January 23, 2014

providers of clean coal and I know that any carbon based or pollutant out there, folks are...it's a political hot potato. I believe that coal can be a resource that's used and used relatively cleanly. Natural gas, absolutely. I think that's a very price-driven thing right now. We've got cheap gas prices and we've seen that in new generation facilities that a lot of them are set up to at least, part time, use gas. And I think that's smart. That's the good, reliable, quick resource that we can use for generation. Coal plants take a long time to fire up and shut down. Gas you can get going pretty quickly. And for that base load when...let's use the example, the wind. If the wind is not blowing, you can turn the gas on and get the generators fired up. I think that's a good alternative. We can't just walk away from coal or gas, I don't believe. [CONFIRMATION]

SENATOR SMITH: All right. Thank you. Good answer. [CONFIRMATION]

SENATOR CARLSON: All right. Thank you. Other questions? All right, Mr. Morehouse, I've got a couple of questions. You made a statement about wind is getting better. I think you meant in technology in wind is getting better. [CONFIRMATION]

RICK MOREHOUSE: That's exactly. It doesn't mean I like the wind blowing any more, that's for sure. (Laugh) [CONFIRMATION]

SENATOR CARLSON: Okay. I agree with that. We've got good wind. I don't know how much more we need, but the technology that is improving is really great. How much do you talk about on the Power Review Board the electrical rates in the state? [CONFIRMATION]

RICK MOREHOUSE: You know, it's not a topic of conversation every meeting, but as a matter of fact, the last meeting we had we did talk about the rates. And the rates in Nebraska have slipped a little bit as far as our rankings go. We used to be lower in comparison to other states than we currently are. I think that will continue to come down. You mentioned technology on the wind. That is exactly what I was talking about. When we had the first wind generation proposals made, and I don't remember what year it was, but compared to today, there really is no comparison. The technology is that much more advanced and that much more efficient. So from that perspective, yes, that is where the advances in wind come in. But I also think that is one of the things that can help us stay very competitive in our electric rate. Do we talk about it every meeting? Really, we don't have control over the rates per se, but we are cognizant of how we stand and things that we as a board can approve to try to keep those rates low. That's one of our mandates is to go for the lowest cost approach and we take that to heart. But we're fiscally conservative, I think, as a group and we want to make sure that the money is well spent and can bring a lot of value back to the state of Nebraska. [CONFIRMATION]

SENATOR CARLSON: Okay. Thank you. And I'll ask one more question. What do you

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

Natural Resources Committee
January 23, 2014

think the most important thing that the Power Review Board does, is?
[CONFIRMATION]

RICK MOREHOUSE: Well, I think it's...when you talk about the most important, I think generation is extremely important, but generation is only effective if you've got good transmission and accessible transmission. And transmission's only important if you've got good reliability. So I'm going to kind of hedge my steps here a little bit and say, I think it's a package. And those are all things that the Power Review Board is aware of and responsible for. And one without the other doesn't get us really anywhere. If we've got all the power in the world but no way to get it anywhere, it doesn't do us any good. So I would...I hope I am not dodging your question here. I don't think it's one thing or another. I think it's an entire package. [CONFIRMATION]

SENATOR CARLSON: Okay. [CONFIRMATION]

RICK MOREHOUSE: And I think we are so fortunate to have...well, I guess we're fortunate because it's worked, that we're the only 100 percent public power state in the Union. It speaks volumes, I think, to the work that has been done in the state for public power, and how they have managed as good corporate citizens and provided good reliable energy for us. [CONFIRMATION]

SENATOR CARLSON: Okay. Thank you for that answer. Any further questions of the committee? Well, seeing none, thank you, Rick, for the phone call today and for responding to our questions and we appreciate that. And you'll be hearing from us before very long. So thank you for your time. [CONFIRMATION]

RICK MOREHOUSE: Well, I'd like to express my thanks to the committee for allowing this telephone hearing rather than driving the six and a half hours down and back. So I do appreciate that. [CONFIRMATION]

SENATOR CARLSON: Okay. Well, thank you. [CONFIRMATION]

RICK MOREHOUSE: You bet. [CONFIRMATION]

SENATOR CARLSON: And have a good rest of the day. [CONFIRMATION]

RICK MOREHOUSE: All right. Thank you. Good-bye. [CONFIRMATION]

SENATOR CARLSON: And with that, we conclude the confirmation hearing on Rick Morehouse with the Nebraska Power Review Board. And we will open up the hearing for Senator Christensen on LB762. So welcome to the committee, Senator Christensen, and it's yours. [CONFIRMATION]

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

Natural Resources Committee
January 23, 2014

SENATOR CHRISTENSEN: I don't know where I put my glasses. I just sent staff after mine. I can lose them fast. Oh, well. [LB762]

SENATOR BRASCH: Do you want mine? (Laughter) [LB762]

SENATOR CHRISTENSEN: (Exhibits 2 and 3) I've wore some pretty neat ones before. Thank you, Chairman Carlson and members of the Natural Resources Committee. I'm Senator Mark Christensen, C-h-r-i-s-t-e-n-s-e-n. I represent the 44th Legislative District. LB762 would amend Section 46-715 to require the director of the Nebraska Department of Natural Resources, or his or her designee, to represent surface water interests in development of integrated management plans. It would also require that equal or minimum surface water allocation goals be put into the integrated management plan. The bill seeks to provide a better representation for surface water interests. In addition, it tries to prevent the scenario that has happened in 2013, and is in process now of 2014, in the Republican River Basin where water was not allowed to be stored in reservoirs for surface water irrigation, but was released without compensation for the compliance while groundwater users were able to pump full allocation plus some carry forward. The last eight years we've made some good strides forward with projects that have helped us reach compact compliance, but we have not reached sustainability. Some irrigators have had a steady supply of water, but some have had reductions. Some irrigators have received compensation for forgoing irrigation, other irrigators have not received compensation. We are Nebraskans. We seek to give people opportunities in a level playing field, solutions, and not finger pointing and bickering. But I'd have to say, I believe the statutes are stacked in the favor of groundwater over surface water. What we need to do is work together as Nebraskans instead of looking out for our own self-interest. This bill, along with four other water bills I have introduced, are ideas to continue to move us forward as we seek a balance...seek to balance the interest of all the water stakeholders. We need to discuss, decide, and be honest about the policy road we are going to take in Nebraska when it comes to irrigation. Have we decided without a debate or discussion that we are a groundwater state, or are we going to seek...are we going to seek, or also seek solutions for surface water? I believe there are solutions, but I'm not convinced there is a desire to find them. I have some handouts. But anyway, AM1656, I hope was handed out to you. Great, because I forgot to bring any with me. But it changes the "department" to "director." That's on page 13. It adds "entity" as a designation by the director. It allows certain groundwater to be regulated. It allows for a request for IMPs to be amended. Requires surface water allocation goals and caps. Uses 2009, 2011 average...or average deliveries to set a minimum allocation. And I know there will be people come in and testify that they don't like them years. And I'm all right with it being changed. I tried to look at a ten-year average. I tried to look at a four-, six-years. The difficulty we have found has been what works in one river district doesn't work in another river district. And because the droughts are in different areas at different times, I'm working on another solution which I think can be done to remove the years and still bring in a minimum level to try to determine integrated management

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

Natural Resources Committee
January 23, 2014

plans off of. And it also puts a cap that ground...surface water cannot exceed the groundwater used in any one year either, so that we're more on a level playing field. LB762 seeks to provide a more level playing field between surface water and groundwater during compact call years. I want to step back a little bit and be very honest with you. Up until LB522 died a year ago, I had zero plans of introducing a water bill. I was taking a year off. LB522 would have compensated by the state surface water guys that were giving up their water for compliance. In 2007, we compensated the irrigation district, which compensated the farmers for taking the water out that was stored, and we compensated them so we could get compliance. The difference between 2007 and 2013 was the department closed the storage permits, allowed the water to pass through so the irrigation districts had none, or they had what was previously stored. Now in them handouts I give you shows what it is in the Republican irrigation districts' allocations the last four or five years based off of surface water. I just want to mention the Red Willow was drained, as they had to do work on the structure. That's not a very good representation of what normally comes in. But I want to have you think about, yes, the state probably acted legally in passing that water through the reservoirs. It's not been determined otherwise, but I'm not sure it was an ethical way of doing business. What we ended up doing was we allowed groundwater to have their full allocation and some carry-forward used, while surface guys got what was stored prior to January 1, 2013. My particular district, I was given an allocation of two and ended up receiving three inches. I did release it. I think it was somewhere around July 1 or July 15 until September 1 that we could use what was running into the reservoirs, but that give us a little bit more water but at the same time, that's not when the streams flow very much. It was a benefit to gain that and they have released the water that was stored that wasn't used for compliance to be used next year. So my particular district, I'll get about two inches. And you'll see in upcoming bills that I've got, that two inches I received, I paid \$10 occupation tax on, while the ground that I pumped ten and a half inches on cost me \$10 an acre. That's why I have a bill coming later to allow that to be redistributed because I think we have to make a decision. I visited with several of the groundwater people this morning I know that are frustrated with me. But since LB522 died, which I blame them for, I'll be honest, natural resources districts come in neutral at the hearing, and they proceeded when the bill was on the floor to visit with different senators--I was one of them--encouraging them not to pass the bill as long as there was a lawsuit in place. And Senator Carlson is one of them that spoke that on the floor. And that ended the momentum. I think it would have been right to compensate them as we're keeping the state in compliance, and if we need to do other things to make sure the state doesn't have to pay to be in compliance, is what we should be talking about today, not avoiding paying them and calling it the way Nebraskans treat people. I've taken a lot of offense in the last year because we have set it up so one group gets it all, one group is the sacrificial lamb. I don't believe that's the way Nebraskans operate. So I'm hoping that through this process of looking at LB762, and a few more of the bills I've introduced, that we'll be able as a committee and work with you to set this state forward. And I can be made happy several ways and I've even told the groundwater people this

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

Natural Resources Committee
January 23, 2014

this morning. Surface water won't like this statement, but if the policy of the state of Nebraska is going to be we are a groundwater state, then let's be honest, let's announce it, let's go forth. If we're going to be a state of groundwater and surface water, then let's find a balance. I'm not saying we got to shut off irrigation wells to fill the dams to give everybody equal amount of water, but I think there can be a balance drawn between what runs into reservoirs now when it's not pass through and with what is pumped and still be able to be in compliance. As you'll see in the amendment, it says you can bypass these regulations I've asked for, if there's compensation. I know we have to be in compliance. I'm not trying to put the state in liability. But at the same time, I want to see some equality, some fairness in how we treat people. And that's why I say, if we want to be up-front and say, you know what, we're going to become a groundwater state. If surface has to die, then I think we need to be bold enough to stand up, set the policy, and tell the people, not allow policies that allow surface water to disappear and die that type of death. I think we need a policy set up. I will be sharing some more statutes with you later as I get them all fully prepared, probably on one of the other bills. And I can show you that the statutes that's been set up really, strongly favor groundwater. (Inaudible) says you don't have to regulate groundwater to make sure surface water has their supply. And I don't think if that was publicly known and publicly done, yes, it was in a bill and publicly done, but the knowledge, I don't think was really presented and I'll bring that on another bill, that the people would have an uproar. I visited a lot of people that are groundwater only and I haven't had one of them say that surface water was treated fairly. I've had a lot of guys that have a...just like me, a little bit of surface water and majority groundwater say, it's just not right. Only 10 percent of my acres are groundwater...I mean, sorry, surface water. I am better off if you kill surface water and just give me everything on groundwater, but I do not believe that's the way Nebraskans operate. That's why I brought this bill. I think this is the first one that sets up the way to have representation. If you remember the task force for those that served on it, we had at least twice where people out of the Department of Natural Resources stepped up and said, surface water has no representation in integrated management plans. I asked the director, I said, if we have integrated management plans, does this mean we are regulating groundwater and surface water together, meaning integrated? And they said, yes. I said, well, how can we develop a plan that is good for everyone in Nebraska if only surface water is represented? NRDs represent NRDs, they regulate NRDs. Department of Natural Resources regulates surface water, but they say they do not represent them in an integrated management plan. That's why that's in this bill. I don't believe that's the way we operate. Like I said, if we can publicly say it, that's the way we do things, I'll back off. Thank you. [LB762]

SENATOR CARLSON: Okay. Thank you, Senator Christensen. Now, AM1656 really becomes the bill, correct? [LB762]

SENATOR CHRISTENSEN: Correct. [LB762]

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

Natural Resources Committee
January 23, 2014

SENATOR CARLSON: And I think for the benefit of the committee, it doesn't really start then until page 13. [LB762]

SENATOR CHRISTENSEN: Correct. [LB762]

SENATOR CARLSON: And then it jumps to page 15 and a lot of it is there, page 16, and then it starts on 19. But it...I'm not expecting people to follow me all the way through, but we go to page 13 before we see any new material. [LB762]

SENATOR CHRISTENSEN: Yes. [LB762]

SENATOR CARLSON: Okay. All right, thank you. And do we have questions from the committee for Senator Christensen? Yes, Senator Kolowski. [LB762]

SENATOR KOLOWSKI: Thank you, sir. Senator, on the...you were on the water commission this last summer. [LB762]

SENATOR CHRISTENSEN: Yes. [LB762]

SENATOR KOLOWSKI: As we all traveled around the state and got quite an education on lots of different places and lots of practices. If we are successful, as we hope to be, in gaining the financial support and building of projects, envision yourself ten years ahead, if things would happen in your part of the state, would that change what you're currently facing and put a different twist on the results for your own production? [LB762]

SENATOR CHRISTENSEN: I don't believe there's a project identified right now that would help this scenario. If there is, then we're going to have to use aug water to store in advance, and the second augmentation systems, hopefully, would be running within 30 days, hopefully quicker. Then we're going to have to be able to pump in advance and have a place to store it, which would mean we'd have to get surface water and groundwater people to sit down and work together. And hopefully the Supreme Court rules shortly on Kansas and Nebraska and Colorado lawsuit, so they feel like they can work together. I've been told that's the hang-up. I struggle with that because I had Senator Carlson at a meeting that I sponsored in McCook that had every irrigation district there, had every NRD there, and we got along very cordially. I think it could be done now, but I think, unfortunately, we're still using excuses instead of using Nebraska common sense. But for the Upper Republican, Middle Republican to become sustainable or quit seeing declines underground and streams drying up, we've got to either import water or cut back on our use. That's the two things that's going to happen. And so I haven't found myself a project that I think will do that. I love to compliment the department and the NRDs and irrigation districts how well they managed the water on the South Platte when it was flooded. It is the absolute best I've ever seen operate in this state. They utilized every canal system, every dam they could. They moved water

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

Natural Resources Committee
January 23, 2014

all over, which not only saved flooding and damage, but it's increasing groundwater recharge, increasing surface water supplies, electrical generation. It was fabulous management. I've got to admit I was impressed. I wish I could say I had a project that would change my view here. If we could build a different pipeline and work with Frenchman-Cambridge and use some storage into Red Willow Reservoir, would be a possibility. They took all the water through Medicine Creek and that dam fills every year anyway. It's allowed to fill and not being passed through. So there won't be any storage available there. There is a little bit of water that comes out of the Rock Creek project and there's potential of trying to store some in Swanson, if we can get agreements reached. There's a project...one project I can think of as we're talking here, Senator, a pump-back station from Frenchman Creek back to Swanson Reservoir would definitely allow us to better manage excess water in times of surplus and be able to store it, whether it's compliance or farmers' use or surface water use, whichever it is. There is a few small projects. I think there's some reservoirs to be built below Harlan County on some small streams, so we're using the water 12 months a year instead of 3. Because right now, it runs on into the stream, counts across the gauge for compliance, that could be stored and utilized for irrigation. That's why I'm saying, utilize it year-round the water there instead of just three months when we're irrigating. There's some small things but I guess I don't see a lot of big things unless we'd use "aug" water there. I don't...so far when I've asked the questions, can we pump some additional water like into Red Willow, have it stored for compliance, work a deal, use some for surface water irrigators, I haven't got positive results on it. [LB762]

SENATOR CARLSON: Okay. Thank you. Any other questions? [LB762]

SENATOR KOLOWSKI: Just to continue just a little bit on that. So there's minimal impact, if any, at the present time from the projects that you know about and there will be spots that won't be as impacted as others, depending on the projects that have been identified to date, but that doesn't exclude the possibility of projects coming to your area that would be specific to help you. [LB762]

SENATOR CHRISTENSEN: Correct. There's an old canal called the Perkins County Canal. The canals were built in Colorado. They've been tore out now. That actually gave us an older water right than some of the uses being used now in Colorado before it gets into Nebraska on the South Platte. But I don't see ever getting that put back in or the water getting moved down here. Now, if that project would have been in, it would have given them another opportunity when the South Platte was flooding to move water, but so far we've seen extreme caution on anybody from the Platte River seeing anything getting diverted down here. So, and I'm not sure that attitude has changed. [LB762]

SENATOR KOLOWSKI: Thank you. [LB762]

SENATOR CARLSON: Senator Haar. [LB762]

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

Natural Resources Committee
January 23, 2014

SENATOR HAAR: Thank you very much. Senator Christensen, when you talked about compliance, you mean with the compact, right? [LB762]

SENATOR CHRISTENSEN: Yes. [LB762]

SENATOR HAAR: Okay. So mainly we're talking about the Republican here or... [LB762]

SENATOR CHRISTENSEN: Republican, but, you know, this one here, I think anywhere you deal. They've got a lot more cooperation going along on the Platte River right now, and I think there's going to be people talk about that. But part of the problem we have is the lawsuit perception and the...you know, just maybe unwillingness to work, hurt feelings from what has been the damage versus concerns that I don't want to give somebody else an edge that can use it against me. There's just all kinds of reasons, but I've been talking compliance. I think this is reasonable policy across the state to make sure everybody has representation. There is one section in this where I do pretty much limit it to the Republican. [LB762]

SENATOR HAAR: Okay. Well, I appreciate all the thought you put into it over these years. And just an opinion, theoretical question, especially Senator Carlson has often talked about how much water comes in the state and then how much leaves and we ought to keep a lot more of it here. In terms of surface versus groundwater, which gives us the biggest payback? [LB762]

SENATOR CHRISTENSEN: Well, the use of the water is what gives us the payback, so the return is the same. It's going to be the farmer applying it to the ground growing the larger crop and taxes being paid and everything that way. I don't see a larger return for either one. [LB762]

SENATOR HAAR: Okay. [LB762]

SENATOR CHRISTENSEN: It's just easier to use surface water for compliance than groundwater. Though the NRDs have done a nice job with the augmentation systems to help water to send down the stream, the ultimate goal of the augmentation systems are to have enough water flowing out of them to meet our shortages so surface water gets their water. [LB762]

SENATOR HAAR: Okay. [LB762]

SENATOR CHRISTENSEN: We haven't got far enough down the road to see if it's going to work, but we hope it does. [LB762]

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

Natural Resources Committee
January 23, 2014

SENATOR HAAR: Thank you. Okay. Great. Thanks. [LB762]

SENATOR CARLSON: Okay. Thank you. Any other questions? Yes, Senator Brasch. [LB762]

SENATOR BRASCH: Thank you, Chairman, and thank you, Senator Christensen. You've spent a lot of time and thoughtful energy, and I'm curious on the outlook here. Have you had engineers involved, water scientists on, you know, the soil type? You know, that once we bring surface water to a certain standard, or a level that this can continue without the help of Mother Nature, or that this is a very sound, feasible, problematic plan to ensure that we have a continuation of the surface water where it's depleting. Does that sound...do you understand where I'm going? [LB762]

SENATOR CHRISTENSEN: I think I do. [LB762]

SENATOR BRASCH: That this is sound science and common sense. [LB762]

SENATOR CHRISTENSEN: Well, I think it's very common sense. [LB762]

SENATOR BRASCH: Okay. [LB762]

SENATOR CHRISTENSEN: And I think the science will back it up. That's why I put in the bill that we use USGS numbers where available, and if not, use DNR numbers. If you remember a water round table a year ago, I think it was in May actually, USGS used the Upper Republican as an example. And they said that for sustainability out there, they would have to be somewhere in that seven-, eight-inch range. And that's similar to what I've heard our own department quote before. The difficulty comes in and I asked the question of the USGS at that meeting, I said, so what happens if the streams continue to dry up and start flowing farther east? Is that going to affect the groundwater recharge? And his answer was a little bit hesitant. I want to be honest, it was hesitant. He said yes, it could affect it because you're not having the recharge of the water flowing, but at the same time it's the water coming out of the ground that's causing it to go. But as the ground depletes, then it takes more in the river channel to recharge as well as longer time to balance it out. And so it's a difficult scenario because if we're not careful, we kill the economy in an area. But if you do nothing, eventually it dies anyway. We're having areas in the Upper Republican that are on the outer edge of the pool that some have been converted to dryland, some don't pump enough to maintain the irrigated corn, some of these crops anymore. It's not that there's not concern. And as far as the true science, no, I have taken what people have showed us in the past. It's nothing unique in what I'm doing. What I'm saying is, in this bill as I'm giving representation to the surface guys, and then using USGS and DNR's experts to set up a plan. So the experts come in after we give them the direction. And so right now if you ask the department, they'll tell you in the Republican they are mainly regulating to

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

Natural Resources Committee
January 23, 2014

compliance. They'll tell you they're not necessarily regulating to sustainability. My question is, do we want to go there? If we don't go to sustainability, groundwater has to leave. You've got irrigation districts that used to irrigate out of Enders that doesn't no more, and some of them are being purchased by the NRDs, and things this way, and that's good if they want to use them recharge areas and things this way. I don't want to see any of the districts close. But I think we've got a decision to make as senators in the state of Nebraska. Are we in this to become a groundwater state only, and we're not going to manage streams? Are we going to manage so surface water gets some, we become sustainable, we end the depletions we're seeing in areas? To be honest, Nebraska has done a great job of managing depletions compared to Colorado and Kansas. Their depth of groundwater declines are much larger, but we still have them. We've done a great job compared to others. That's why I bring the question. Do we want to become groundwater only? And if so, let's be honest and tell the people. Or do we want to become sustainable where the creeks aren't going to keep moving farther east before they run? And it's not all due to groundwater pumping. We all know vegetation growing in the streams and along the rivers use more than when it was just grass. We know that terraces and dams that went in have held water back. No-till farmers hold water on their ground. It's a very difficult issue to deal with, but I wished I had it done. But I have, like I said, I'll be bringing the statutes to you guys to show you how we have isolated surface water into a box. And the groundwater doesn't have to be touched to make sure they get any water unless they were drilled after a certain date. And that's why I'm being so long in my opening, and running here is the fact, what do we want to do as a state? I don't think we had time this last summer with the funding task force, but it would have been real interesting to have done a study on groundwater, surface water, and what has to be done if we're going to maintain both versus what it would take just to convert to a groundwater state only. And literally, we're converting to a groundwater state only by doing nothing. And that's my concern is, are we going to be public and announce that's what we're doing? Or are we going to start managing for both? [LB762]

SENATOR BRASCH: Very good. I have no other questions. [LB762]

SENATOR CARLSON: Okay. Thank you. Any other questions? Thank you, Senator Christensen. I'm sure you'll be here to close. [LB762]

SENATOR CHRISTENSEN: Yep. [LB762]

SENATOR CARLSON: Okay. And now we'll start with those that are proponents of the bill, of LB762. And so as proponents, please come forward. I would...how many proponents do we have? Okay. Mike, do you want to come forward in the first row and hand in your green sheet before you start. And Brad, welcome. [LB762]

BRAD EDGERTON: (Exhibit 4) Thank you, Senator. My name is Brad Edgerton, B-r-a-d

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

Natural Resources Committee
January 23, 2014

E-d-g-e-r-t-o-n. I'm the manager of Frenchman-Cambridge Irrigation District. Mr. Chairman and members of the Natural Resources Committee, on behalf of 340 landowners with vested surface water appropriations dating back to 1946, I thank you for the opportunity to comment on AM1656 to LB762. I would also like to thank Senator Christensen for his work on this legislation. As you know, water issues are complex and contentious. By now everybody in the state knows that water equals money. We have already overspent in the Republican River Basin. Groundwater is being used faster than it can be replenished. Local NRD leaders know this fact, and with the assistance of DNR, are preparing to pump 60,000 acre-feet from the North Platte watershed to add to the Republican River Basin. With this much water being pumped from the ground and added to the stream, you would think that there would be ample water for every irrigated acre in the Republican River. Not so. The untold story is, the more water you add to the Republican River Basin, the more water we are required to send to Kansas. Approximately 30,000 acre-feet or half of the groundwater pumped is a windfall for Kansas under the compact accounting principles. The windfall comes at a price. Federal irrigation projects have been curtailed by DNR, federal reservoirs held at January 1 levels. These low lake levels have a negative effect on recreation and tourism in the area, not to mention the lost income from the producers and landowners of Frenchman-Cambridge Irrigation District. In 2013, FCID operated two of the four canal systems; 18,000 Cambridge Canal acres were allocated two inches from the Harry Strunk Reservoir; and 17,000 Meeker-Driftwood Canal acres were allocated an inch and a half from Swanson Reservoir. 2014 has also been declared a compact call year and federal reservoirs are currently bypassing inflows. The Bureau of Reclamation has estimated Frenchman-Cambridge water supply at two and a half inches on Cambridge Canal and an inch and a half on Meeker-Driftwood Canal, nearly identical to 2013. Bartley and Red Willow Canal will operate once again without any water. At the same time, the Middle Republican NRD and the Lower Republican NRD are recommending higher pumping allocations for 2014. Senator Christensen is simply trying to right a wrong with this legislation. I applaud him for his efforts. However, he can't do it alone. Therefore, I ask you to listen very closely to the testimony today, make changes to the legislation, if appropriate, and advance LB762. I've also added a copy of the surface water controls adopted by the NRDs and Statute 46-716(1)(a) through (d). Item (d) apparently gives DNR the authority to halt surface water diversions and storage in the basin. I would be curious to see if all of you agree with DNR's interpretation of "reasonable restrictions." Thank you for the opportunity to testify today and I'll answer any questions. [LB762]

SENATOR CARLSON: Okay. Thank you, Brad. Questions from the committee? Senator Dubas. [LB762]

SENATOR DUBAS: Thank you, Senator Carlson. Thank you, Mr. Edgerton. Would you expand a little bit on the comment that you make that the more we pump, it becomes a windfall for Kansas under the compact accounting principles? Would you give me a little

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

Natural Resources Committee
January 23, 2014

more specifics about that? [LB762]

BRAD EDGERTON: Yes, I can. The augmentation water being pumped into the river is going to be considered virgin water supply. And the virgin water supply is split between the states, and Nebraska gets approximately 50 percent of the main stem and Kansas gets the other 50 percent. So this water being pumped will be considered virgin water supply and will be divided. So the pie is getting bigger, so Kansas' piece of the pie is also getting bigger under this scenario. [LB762]

SENATOR DUBAS: Thank you. [LB762]

SENATOR CARLSON: Other questions? Brad, let's go to what you just said. This water that is pumped from the state of Nebraska into the Republican, Colorado is out of it, correct? [LB762]

BRAD EDGERTON: Correct. [LB762]

SENATOR CARLSON: So of the 49 and 40 percent, we're supposed to be able to have 49 and Kansas 40. Why do you say 50-50? [LB762]

BRAD EDGERTON: On the Medicine Creek, it's a subbasin named in the compact and we get 9 percent of the flow of Medicine Creek to use in Medicine Creek. Then the balance of that water is unallocated to the main stem. The main stem water is split basically 49.9 to Nebraska and 51.1 to Kansas. So it's about...I think Nebraska is about 54 percent with...if you add in the 9 percent on Medicine Creek. [LB762]

SENATOR CARLSON: Okay. So that's the way the water would be treated that in your view that comes from this extra water that's pumped. [LB762]

BRAD EDGERTON: That's correct. [LB762]

SENATOR CARLSON: Okay. Other questions of Brad? Oh, Senator Haar, excuse me. [LB762]

SENATOR HAAR: Yes, thank you. So you're...are you saying that augmentation pumping is not a good idea? Or put that in the context of what's going on here. [LB762]

BRAD EDGERTON: It's not a good idea for the Frenchman-Cambridge Irrigation District. [LB762]

SENATOR HAAR: Okay. [LB762]

BRAD EDGERTON: This water is coming in below three of our diversion dams. This

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

Natural Resources Committee
January 23, 2014

allows groundwater pumpers upstream of these diversion dams to keep pumping at a higher rate which will ultimately even decrease streamflow even more. So, you know, you're pumping water out west and offsetting it down east which has a negative effect on the river system, you know, west of us. [LB762]

SENATOR HAAR: Okay. Thank you. [LB762]

SENATOR CARLSON: Other questions? Brad, if this water that's being pumped into the basin and the object is to keep us in compliance, how differently would you feel if a portion--and I don't know what that portion is, you do--if that portion of that got to Sutherland? [LB762]

BRAD EDGERTON: I didn't hear you. [LB762]

SENATOR CARLSON: I didn't mean Sutherland. [LB762]

BRAD EDGERTON: To Harlan County? [LB762]

SENATOR CARLSON: No, to...I've lost my terminology... [LB762]

SENATOR CHRISTENSEN: Swanson. [LB762]

SENATOR CARLSON: Swanson. Swanson. If a portion of that got to Swanson, how would you feel? [LB762]

BRAD EDGERTON: Well, our water users, they want a supply that they can depend on every year. That's really what we're after here is, you know, we have 1946 permit and we feel that it's actually a priority water right, and they basically want to be treated fairly, so. If you can say that they're going to have a water supply year after year, you know, right now it's difficult for them to plan and prepay their seed and, you know, the cost, you know, you can't measure all the costs. You know, we know we lost the water, but there's other things that go into this and planning is a big part of it. [LB762]

SENATOR CARLSON: All right. Let me ask it a little differently. What would it take in the handling of that...is there anything that could take place in the handling of that water that's being pumped and eventually reaching the Republican that would...that could be interpreted as an advantage for Frenchman-Cambridge? [LB762]

BRAD EDGERTON: I think we still have to get to be sustainable. I mean, the basin is overdeveloped and that's the reason we're going outside the basin to add water to it. You know, if we had a piece of that pie, you know, I think our water users would be happy. We don't feel that augmentation is a long term. It's more of a short-term Band-Aid, you know, and we have payments to the federal government out until 2040,

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

Natural Resources Committee
January 23, 2014

and recently we just signed a contract to fix Red Willow Dam which will go out to 2060. So we have obligations we're trying to meet with a limited water supply. [LB762]

SENATOR CARLSON: Would you agree that--Senator Christensen mentioned it--if we're using more on average than our supply gives us, then we do have the two choices. We can cut back what we're using, or we can increase our supply. How do we...in your view, how would we increase the supply so it would help Frenchman-Cambridge? [LB762]

BRAD EDGERTON: Well, you have to bring it out from outside the basin. I mean, water supply in the basin is what it is, you know. A compact is a consumptive-use compact. You get in compliance by reducing your consumptive use. You know, when you start moving water around, you know, there's going to be some people that are going to be hurt by this, you know, especially if it's below, you know, diversion dams and reservoirs that, you know, would see that supply if we adopted a sustainability principle in the basin, so. [LB762]

SENATOR CARLSON: Then you're concluding that the only way you could see we can increase the supply is to divert water from another basin out west? [LB762]

BRAD EDGERTON: Yes. [LB762]

SENATOR CARLSON: Which to a degree is what happened with the Colorado flood water. [LB762]

BRAD EDGERTON: That's correct. [LB762]

SENATOR CARLSON: And shouldn't we be doing that every opportunity we have on excess flow? [LB762]

BRAD EDGERTON: I agree. I agree. [LB762]

SENATOR CARLSON: What do we need to do so that we can better do that, in your view? [LB762]

BRAD EDGERTON: You know, back in the '70s Frenchman-Cambridge Irrigation District with the other irrigation districts were...you know, they applied for a water right from the South Platte River and we took that to the Supreme Court and was ultimately defeated. And we weren't granted that water right, but we had the Bureau on board with that. There was a lot of studying done to do that, and it never happened. You know, Frenchman-Cambridge Irrigation District also offered a proposal to take water in times when we have excess and pump it back into Swanson Reservoir and store it and use it for compact compliance. We...I think I made that presentation to the task force this last

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

Natural Resources Committee
January 23, 2014

summer. You know, if you look at the ten-year average, you know, we're probably in compliance with the compact but, unfortunately, we don't have a ten-year average. I think the number was about 350,000 acre-feet of additional water was sent to Kansas that wasn't required. So, you know, we need to do a better job of managing water in the basin; but, you know, we need to respect everybody's rights when we start moving water, you know, from outside the basin, so. [LB762]

SENATOR CARLSON: Okay. I'll ask one more thing because I don't know this. What year was it that the negative decision came from the Supreme Court on transferring water...diverting water? [LB762]

BRAD EDGERTON: It was in the early '70s. You're talking about the South Platte River water? Yeah. I have a file in my office. You know, I looked through it a little bit and it was in the early '70s, I believe. [LB762]

SENATOR CARLSON: That was the decision, then how are we able to divert excess flow that we did with the Colorado water? Were we illegal? [LB762]

BRAD EDGERTON: Well, we didn't divert water from that Colorado water into the Republican River Basin. It was diverted into canals along the Platte River. None of that water made it to the Republican River. [LB762]

SENATOR CARLSON: Not to the river, made it to the canals. What would we have to do that that water could be in a position where it could...it could reach the Republican Basin in the western portion? [LB762]

BRAD EDGERTON: Well, you know, I think Senator Christensen talked about the Perkins County Canal and that was the intent back then was to put water in to Enders Reservoir from the South Platte River. You know, the recharge benefit from a canal up there would be tremendous, and you would be putting water back in the ground where we have 70-foot declines. You know, that would have a long-term benefit to the entire basin. [LB762]

SENATOR CARLSON: Are you saying if we had another structure out there west someplace that we'd be in a better position to hold water when we've got excess? [LB762]

BRAD EDGERTON: Well, we have empty structures. Enders is nearly empty. So, you know, it's just a matter of getting water in the right locations. I mean, you know, we have tremendous groundwater declines out there that need to be dealt with. They're eventually going to run out if we keep doing what we're doing. [LB762]

SENATOR CARLSON: Okay. [LB762]

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

Natural Resources Committee
January 23, 2014

BRAD EDGERTON: So we ought to be dealing with that problem. [LB762]

SENATOR CARLSON: Okay. All right. Any other questions? Okay, thank you, Brad, for your testimony. [LB762]

BRAD EDGERTON: Thank you. [LB762]

SENATOR CARLSON: Welcome, Mike. [LB762]

MIKE DELKA: Good afternoon. My name is Mike Delka, it's M-i-k-e D-e-l-k-a, and I'm the manager of the Bostwick Irrigation District in Nebraska. I haven't had time to have my board's full approval of anything that I say here today, so I hope you don't hold them to it as much as me. The...in hearing the presentation, I want to thank the committee and Senator Carlson for bringing this forward. I think it's a very important topic. Our district sits at where everything happens. Just as a historical fact, most of this started in 2012, if not before. In 2012, the Harlan County Reservoir was in the flood pool. Water was released most of the spring. We had a long dry summer and a time of record pumping by wells...record use by everything else. Our district, because we've taken the initiative for conservation, the amount that we diverted ranked 23rd from the bottom of the last 56 years of records when everybody else was setting records. And as a reward for that, in the fall, as it was announced, in November 2013 was called a compact call year. And basically that meant that only the water that we already had left over was available for us to use last year. We were thankful in that we did as well as we did and it made...even though we didn't deliver as much as the wells pumped, we had a successful year. But coming forward this year, we will not. Our announced supply for this year was a half inch per acre which we cannot operate for that. We won't be doing that. There isn't enough of a supply and that's based on delivering one inch every six to seven days, which would mean that we would have probably three days of operation which...it's just not physically responsible or even capable. By the time you even get the canal flushed, you're done. The...and then coming into now, and even with last year's, we managed to save 5,900 acre-feet. But because of evaporation and other issues, right now that's estimated to be around two or three thousand acre-feet. So even though we were a hopeful, we were hoping that we could move forward, the issues that we have currently are really abundant. If something doesn't happen, and we are allowed to store water, this compact call will not end. This is not something that has to happen. And most of this, as I was reading it this morning, most of the IMPs are in agreement between the state and an NRD. And in the IMPs, they fairly well address that during a compact call year as determined from the procedures and analysis set forth in Section 9, DNR will regulate and administer surface water in the basin as necessary. It doesn't say they have to, to ensure compact compliance. There's a million one, a million two acres in our basin. There's 100,000 surface irrigated acres. If they just ask everybody to cut back 10 percent, since this is a consumptive-use compact, you would think that

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

Natural Resources Committee
January 23, 2014

would balance out and avoid the sincere damages that have occurred. The state has put out money to do some acreage retirement and acreage...temporary retirement things with the NRDs with some matching things. That's been very significant, but that's done nothing for us and for our users. There's been a myriad of things. They like to call this a local decision, but this was not a local decision. We know that if the IMPs are developed between the state and an NRD, somebody represented surface water or had to. And they did it very badly to say that in the compact call year, we're going to shut off 100,000 irrigated acres of surface water before we ask anybody else to do anything. I believe it was said also last year that when they put out the allocations that they allowed for about 20,000 acre-feet of consumptive use to surface water that was not used. That water or that consumption was just rolled over into the NRD allocations to help them meet compliance. You'd have to ask the state people more about that. The...I don't want to go on a tremendous amount, but one of the comments that was made earlier, is there a larger return on surface water than groundwater, and I would say, yes. It's tough to go fishing or have somebody go boating or recreate in groundwater. When that becomes surface water, it can be put in dams, it stays in the river, our children and our children's children can do that. The IMPs are full of things that would encourage us to look for the future. They say things like the temp...the short-term and long-term sustainability in equitable treatment. But as long as we're doing what we're doing, it falls into neither their goals, their desires, or desires of people around us. We have tried to work, as Senator Carlson suggested, with the NRDs. We've...actually at our basin group meeting which is a...I call it the basin group. We at one of the last meetings we put forth the resolution that encouraged the state to keep the benefits in the local area that received, you might say, the penalty. So if they shut down my district, the credits that would have been accrued for that shutdown would have stayed in that local area to help, maybe, some of the guys who had wells or whatever get a little bit bigger allocation so that...and also help our local NRD stay in compliance. That passed with no opposition, but three people abstained--three and...which it would serve them--we don't quite understand that. We also had a resolution where surface irrigation would get a separate type of an allocation or an amount and that has yet to...they tabled that wanting to kind of think about it or study it. But we are working with them and if we...other than just take, I mean, you wouldn't allow...if this was an issue of one NRD taking the allocation from another NRD, this would be a different issue. This is still one political subdivision of the state utilizing something from another political subdivision of the state. There are no rules. I don't know who made the decision to shut down 100,000 irrigated acres. I think...I've heard some politicians say it was a local decision. We weren't involved. It's kind of tough, you know, when you kind of look around the world and see if this would have been a freeway in New Jersey, there would have been a major inquest; but because it's not, we can't even get an audience except for like right now. So with that I'll close. I appreciate this effort and I hope that this effort isn't wasted. And I commend Senator Carlson and I commend the Legislature for the actions that they take, and we hope that somewhere there can be some parity. Thank you. [LB762]

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

Natural Resources Committee
January 23, 2014

SENATOR CARLSON: All right. Thank you, Mike, for your testimony. I think you gave me some credit for, that you meant to give Senator Christensen, so I'll state that. Questions of the committee for Mr. Delka? Okay, thank you. Oh, Senator Haar. You've got to wave a little bit more. Okay. Senator Haar. [LB762]

SENATOR HAAR: Thank you. So as I'm hearing this now, basically, you were saying the state has picked winners and losers? [LB762]

MIKE DELKA: Has what? [LB762]

SENATOR HAAR: Has picked winners and losers and that's what you believe should be rectified. [LB762]

MIKE DELKA: I believe so. When they shut off all surface water, I think they picked the losers. And when, as was testified earlier, that then right afterwards that you have NRDs who increased their annual pumping allotments, I think they won. And if that's our definition, then I would say yes. [LB762]

SENATOR HAAR: Uh-huh. Talk just a little bit, because you brought up an interesting point that I haven't thought about before but--and these are my own words--but surface water has more uses than groundwater in terms of recreation and so on. Could you amplify on that a little bit? [LB762]

MIKE DELKA: Yeah, as far as getting the benefit to a crop, an inch of water is an inch of water, whether that's surface water or groundwater. But if...and one of the reasons that I believe, and you'd have to ask the state, that they decided to curtail surface water was because it can be moved. The amount of water that was bypassed through that dam was like a two-year supply for our district. And we're continuing...we were very lucky, for lack of a better word, that we've gotten some what they call WaterSMART grants through the Bureau of Reclamation to make these continued improvements. But as that water moves, you'll see opportunities for secondary users. We have quite an influx in our area, when we are operating, of people who will go tubing and canoeing down the river. It's a beautiful river. I'll give Senator Carlson credit for clearing out and helping clear out some of the debris from the channel and it's...I've more than once gone up to the head end to look at something and when you shut the pickup off and get out, you hear this laughter coming from the river. So it is a very big thing and there's quite a bit of recreational activity around the lake itself. And with the flowing of a natural flow of the river, you also have the opportunity for fish. You have the opportunity of waterfowl, you have the whole flora and fauna as a beneficiary as well. And when you have that, then you have hunting and fishing. Then you have...and I've not seen anybody put a line down a well to try to catch anything yet, but...so the Game and Parks has a stake in this as well. To deny everyone that opportunity, there's been a lot of people who say that the Republican, for right now, is in the forefront of larger issues. And whenever I hear of

Natural Resources Committee
January 23, 2014

Lincoln or Omaha talking about their water issues and the shortages or they have to curtail watering lawns in the summer and the growth that they're experiencing and their future needs, if all of the rivers follow the lead of the Republican and the state in dealing with the Republican, only when it hits there will it happen, will that become an issue of significance, and the strength to deal with it will be here. As these water tables continue to decline, and I think it was said earlier in prior testimonies, that as maybe a couple of the wells start to go dry, or the shallower ones, they will probably, because they'll be a minority at first, be ignored, like we are. And as that number grows and grows, it will be last man standing. The...I'm almost in hopes that something happens with Lincoln and Omaha first because you guys are at the bottom of order of the food chain down there. You have the greatest need, you have the public need. You have the long-term need. If this isn't dealt with across as a state issue, then we're all in trouble. We're just in the front of it, but we're not in. [LB762]

SENATOR HAAR: Yeah. Thank you very much. [LB762]

SENATOR CARLSON: Okay. Thank you. Other questions? Seeing none, thank you, Mike. [LB762]

MIKE DELKA: Thank you. [LB762]

SENATOR CARLSON: (Exhibit 5) All right. Any other proponent for LB762? All right, we're ready...we have a letter of support from Dale Helms of Holbrook that will go in the record for support. All right, those in opposition. All right, John, come forward. Anyone else to testify in opposition? Okay. Welcome, John. [LB762]

JOHN THORBURN: (Exhibits 6, 7, 8, 9 and 10) Good afternoon, Mr. Chairman, members of the committee. My name is John Thorburn, J-o-h-n T-h-o-r-b-u-r-n. I'm the manager of Tri-Basin Natural Resources District. Tri-Basin NRD is responsible for protecting the soil and water resources of Gosper, Phelps, and Kearney Counties. I am testifying on behalf of my district in opposition to LB762. I have also provided the committee with letters of opposition from Lower Niobrara, Upper Elkhorn, Upper Niobrara White, and Upper Republican NRDs. LB762 originally addressed only the issue of designating the Department of Natural Resources to represent surface water irrigators and laid out a demand that surface water appropriators be guaranteed a certain amount of water every year. These proposals were, by themselves, cause for great concern because they would turn long-established, fundamental principles of water regulation and management planning on their head. The amended version of the bill elaborates on these proposals and creates even greater problems for local and state water resources management agencies. First, this bill contains provisions that are apparently premised on the idea that when plans are made to manage integrated groundwater and surface water resources, natural resources districts represent groundwater users, while the state Department of Natural Resources is expected to

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

Natural Resources Committee
January 23, 2014

represent the interests of surface water users. This assumption is incorrect. LB962 in 2004, and before it, LB108 in 1998, set up the integrated management planning process so that the interests of all water users in a given area, both surface water and groundwater users, are protected and represented by locally elected NRD boards of directors. The needs and interests of the state as a whole are represented by the Department of Natural Resources. Now one subgroup of local water users, surface water irrigators, are demanding their own separate and distinct representation. Such a demand, if granted by the Unicameral, would disrupt the careful balance struck in existing law between the interests of local water users and state interests. Furthermore, it sets a terrible precedent for further factionalization of local interests. What special interest group will next demand their own seat at the table? Municipalities? Ethanol producers? Golf courses? Pretty soon, we will need to rent an auditorium to hold an integrated water management meeting. The second fundamental proposal in this bill is an apparent attempt to impose some sort of equality of rights between surface water and groundwater users. This bill proposes that surface water users be guaranteed either an amount of water that is equal to what they received at some fixed point in the past or that groundwater users have their water use limited to the same extent as surface water users. The bill goes on to assert that if DNR and an NRD are unwilling or unable to provide such equal allocations that the aggrieved surface water users need to be compensated for their reduced productivity. We view this proposal as misguided and an ill-conceived attempt to graft surface water rights into the correlative rights or share and share alike system set up for groundwater management. If this bill is advanced, DNR and NRDs would be left with no good options to limit water use to ensure compliance with state compacts. We would either have to unnecessarily limit groundwater pumping, damaging the local economy, or pay untold millions of taxpayer dollars to a special interest group that, under the laws in place when their water rights were granted, should have had no illusions that their water supplies were in any way guaranteed. LB762 is, quite simply, an attempt by certain surface water users to stack the deck in their favor when integrated water management plans are made. It is not the role of government, at the state or local level, to pick winners or losers. Current law contains procedures that provide for representation and protection of all local water users. No subgroup of local interests should be raised above any other, nor should they be given opportunities to extort payments or threaten economic harm to others if they don't get everything they want. Our current system of integrated water resources management planning isn't perfect, but it does work. Slanting the process in favor of a single special interest will not improve this process. On behalf of the board of directors of Tri-Basin NRD, I urge you not to advance this bill out of committee. Thank you. [LB762]

SENATOR CARLSON: Okay. Thank you, John, for your testimony. Questions of the committee? Well, I'm not done. [LB762]

JOHN THORBURN: Yes, sir. [LB762]

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

Natural Resources Committee
January 23, 2014

SENATOR CARLSON: Let's go to the second page here. Well, your first paragraph on the second page. "Furthermore, it sets a terrible precedent for further factionalization of local interests. What special interest group will be next." And I think you're stretching things there to bring in some of the others, but let's just go back to a fairness issue. Help me understand why it's fair that when you have a compact call year, that groundwater can pump full allocation and surface water gets no water. How is that fair? [LB762]

JOHN THORBURN: Well, Senator, surface water irrigation and groundwater irrigation are regulated by two different systems, as you are aware. And the prior appropriation system requires that senior water users get their water before junior water users, more recent water rights. As a practical matter, the state of Kansas is the senior appropriator on the Republican Basin, and until their rights are satisfied, Nebraska has no water for junior users in Nebraska. That water simply does not belong to us and can't be distributed by us for our users or we're violating the compact. Groundwater users on the other hand, as you know, again, I'm sure, have much less direct impact on streamflows. The compact regulates the consumptive use of surface water, surface water supplies. To the extent groundwater affects surface water supplies, it is involved in the compact. But that is usually a percentage. It's a percentage and usually a relatively small percentage of that total pumping that affects surface water. So a typical groundwater user in northern Harlan County, southern Phelps County, their pumping in any given year might have 10 percent or less impact on streamflows in a given year, or through the compact accounting, I should say. So sure, if...I'm sure it might make some people feel better to restrict groundwater users to the same extent that we restrict surface water users. It wouldn't help us with compact compliance and would really serve no purpose other than spread the pain around. [LB762]

SENATOR CARLSON: Okay. Let me ask another question. And I don't know the answer to this, so I'm not trying to put you on the spot. [LB762]

JOHN THORBURN: Okay. [LB762]

SENATOR CARLSON: I didn't understand that Kansas' rights to the river. I understand they're supposed to get 40 percent of the supply, but we get 49 percent. So the senior rights that policy...or that landowners have should apply to the 49 percent, shouldn't it? We get to use 49 percent. [LB762]

JOHN THORBURN: To the extent Nebraska has water available, yes, that is distributed among our water rights starting with the oldest and going down to the more junior. [LB762]

SENATOR CARLSON: And our figures are a year behind, correct, on water supply? [LB762]

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

Natural Resources Committee
January 23, 2014

JOHN THORBURN: Well, yeah, for us to actually know what was available to Nebraska, we don't know until after we've consumed it. It's a consumptive use system so we have to know how much was consumed to know how much we could have consumed. [LB762]

SENATOR CARLSON: And I don't know if I'm headed in the right direction, but I want to go this way. So whatever the supply is for the 49 percent that Nebraska is able to use, that's for both ground and surface water. In the virgin water supply we have a given amount that we can use, totally, correct? [LB762]

JOHN THORBURN: Yeah, that's correct, Senator. [LB762]

SENATOR CARLSON: Now if...I hadn't thought about this before, but if surface water is about 10 percent of the total irrigated acres, of that supply of water, should not surface water get at least 10 percent of it? [LB762]

JOHN THORBURN: Well, again, Senator, then we're...you're looking at trying to shoehorn the surface water regulation into the groundwater regulation process. Surface water is not a share and share alike system. Whereas, in groundwater we share the shortage, in surface water the senior appropriator gets all he's entitled to before the next most senior gets a drop. [LB762]

SENATOR CARLSON: In the Lower to the Middle to the Upper, we don't all have the same allocation, so it's not share and share alike anyway. [LB762]

JOHN THORBURN: Well, within those districts it is, within those portions of the basin. [LB762]

SENATOR CARLSON: Within the NRD, within the Lower NRD, whatever their supply is, that is share and share alike. But somehow, they don't share the same total as the Middle does and the Upper does. So, in my view, it's not really share and share alike. It's going by rule that somebody made someplace along the line. Where am I wrong on that? [LB762]

JOHN THORBURN: Well, Senator, yeah, in looking at the overall basin scenario that way, it is true that an irrigator in the western portion of the basin gets the opportunity to pump more than someone in the eastern portion of the basin. Now as, again, you're aware, the rainfall doesn't fall equally throughout the basin either, and so that's part of the basis for those higher pumping limits in the western part of the basin. These were decisions made by the locally elected boards of directors, and they are using their water supply within the limitations that were imposed on the state and with the divisions that were made by the NRDs as part of the integrated management planning process.

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

Natural Resources Committee
January 23, 2014

[LB762]

SENATOR CARLSON: Shouldn't allocations have some relationship to the supply?
[LB762]

JOHN THORBURN: For our own water quantity management purposes it is important to manage our supplies in such a way that we...as we all desire to achieve sustainability for the long term. [LB762]

SENATOR CARLSON: Now, and I'm not...you're not getting uncomfortable with me anyway, but I'm...you're smart so you can respond to this. [LB762]

JOHN THORBURN: And you're kind, Senator. [LB762]

SENATOR CARLSON: Tri-Basin, you know, you're in a good spot because you've got what a lot of people would still almost call an unlimited supply, so you don't have allocations. [LB762]

JOHN THORBURN: Well, with the exception of one township in my district, you're correct, we do not...we do not limit pumping. [LB762]

SENATOR CARLSON: And why are there allocations there? [LB762]

JOHN THORBURN: That's a situation where the groundwater aquifer is much thinner than in the rest of the district and so we have had to limit pumping in order to assure that we reach and maintain our goal of an infinite groundwater supply for our users. [LB762]

SENATOR CARLSON: So you want to achieve and maintain sustainability in that township? [LB762]

JOHN THORBURN: And the rest of the district, sure. [LB762]

SENATOR CARLSON: Okay. And more power to you. Now, it's a difficult thing because I have people talking to me both ways, but they will tell me, you need an allocation because it's not fair. Just because you've got the supply, you shouldn't be able to pump all you want. And I will tell them, it's got to relate to the supply, doesn't it? [LB762]

JOHN THORBURN: Yes, Senator, I believe it does. [LB762]

SENATOR CARLSON: Okay. [LB762]

JOHN THORBURN: And just as no two pieces of land are equal, some land is hilly and

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

Natural Resources Committee
January 23, 2014

some land is flat, and fortunately in Phelps County we have a lot of good, flat, very productive farmland. The same thing with groundwater supplies and surface water supplies. I think it was Tip O'Neill that said, all politics are local. Well, all water supplies are local, too, and all the groundwater aquifers vary significantly within small distances. And so it doesn't make sense to restrict a user in one area just because a user in another area doesn't have access to as much water as that other user. [LB762]

SENATOR CARLSON: Okay. And I think you've demonstrated with your testimony today, you are a believer in a policy of sustainability. I think you've demonstrated that in the Tri-Basin. Was that correct? You agree with me? [LB762]

JOHN THORBURN: I sure hope so, Senator. That is our intent, yes, sir. [LB762]

SENATOR CARLSON: Okay. All right. Good. Thank you. Any other questions of the committee? That's the most questions I've ever asked you in my life, so thank you. Thank you for your testimony. [LB762]

JOHN THORBURN: Thank you for your interest. [LB762]

SENATOR CARLSON: (Exhibits 11, 12 and 13.) Okay. Anyone else in opposition? Anyone testifying in a neutral...oh, excuse me. We have three letters of opposition: one from Jay Rempe of Nebraska Farm Bureau; one from Steve Smith of North Platte Valley Water Association; and one from John Berge of North Platte Natural Resources District. Anyone testifying in a neutral position? Welcome, Jeff. [LB762]

JEFF BUETTNER: Good afternoon, Senator Carlson, members of the Natural Resources Committee. My name is Jeff Buettner, J-e-f B-u-e-t-t-n-e-r, and I'm the public relations coordinator for the Central Nebraska Public Power and Irrigation District based in Holdrege. Thank you for the opportunity to provide testimony today in a neutral capacity on LB762 as introduced by Senator Christensen. Let me preface my remarks with a response to some earlier remarks about becoming a groundwater only state. If it were that easy, (laugh) not every irrigator in the state has the luxury or the opportunity to simply go out and drill a well and use groundwater. Whether it has to do with the characteristics of the aquifer itself, the depth to water or what have you, in some cases you can't just simply drill a well and satisfy your irrigation concerns. Our district serves a substantial number of acres itself that in areas where groundwater simply is not an option, so. With that out of the way, I'll turn back to my remarks about the bill and its amendment. It presents somewhat of a dilemma for Central. The district supports the concept offered by the bill to provide representation for surface water interests during the integrated management planning process. Although the current language leaves some uncertainty about--which could possibly be resolved--about a particular designee how he could necessarily represent all of the potential surface water interests in a particular IMP process. These various interests may have diverse concerns, and for a

Natural Resources Committee
January 23, 2014

single entity or person to represent all of those would require a little bit of finesse, so. Further, we find we have a few reservations about the language as it pertains to allocations among surface water appropriators and groundwater users, and let me address both of these issues separately. On the representation issue, Central has had considerable experience with integrated management plans. LB962, which was passed in 2004, required integrated management plans for fully or overappropriated basins and that such plan should be developed after consultation and collaboration with irrigation districts, public power districts, public power and irrigation districts, canal companies, etcetera, that rely on water from within the affected area. The statute states that the Department of Natural Resources and the affected natural resources districts shall adopt an integrated management plan if agreement is reached by all parties involved in such a process. While the process provides for consultation with all affected surface water interests, and despite language that indicates that the IMP shall be adopted only after all parties reach agreement, the NRDs and DNR approved IMPs despite Central's objections that the plans did not adequately protect inflows to Lake McConaughy, Central's ability to provide irrigation water to its customers, and for the many other benefits derived from the reservoir. And we've talked about these. Mr. Delka mentioned some of these with regards to recreation, wildlife habitat, hydroelectric generation, groundwater recharge, power plant pooling water, etcetera, that are particular to surface water. We believe that this section of LB762 attempts to provide fair and equitable treatment of water users. NRD directors are elected by and responsive to those who are affected by integrated management plans. The primary source of water for most of these constituents who are irrigators is groundwater. Despite assertions that NRDs represent both groundwater and surface water issues, in reality, groundwater has been the primary concern of NRDs during the IMP process. In contrast, the Department of Natural Resources has no such relationship with the surface water appropriators who stand to be affected by IMPs. The director of the department answers directly to the Governor; and the department is a regulator of, not an advocate for, surface water users. No one at DNR must answer to voters if their decisions during an IMP process do not adequately protect surface water interests. As currently constructed, surface water interests have no one to truly represent and protect their interests. Therefore, Central is supportive of legislation that would provide such representation. Turning to the second issue as previously stated, Central has some concerns about language related to the allocation of surface water and groundwater among users, or an allocation based on deliveries during the years 2009 to 2011. While this language may help in the Republican Basin, it may have unintended consequences of reducing the supply of water available to surface water interests in other basins. For example, at Lake McConaughy, which relies for its inflows primarily upon return flows from upstream surface water irrigation projects, such a reduction would have a negative impact on return flows and downstream water users who rely on these return flows for their water supply. Central is neutral on the language in the proposed amendment because it appears that some of it is new from a statutory standpoint. It makes reference to allocations of surface water when the state doesn't actually set such allocations, but

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

Natural Resources Committee
January 23, 2014

instead uses priority administration and shutoff notices for interstate compliance, etcetera, while the irrigation districts and canal companies set allocations based on available water supplies and within statutory limits. We appreciate Senator Christensen's efforts to address these important issues, and thank you for the opportunity to provide testimony on LB762. [LB762]

SENATOR CARLSON: Okay. Thank you. Any questions from the committee of Mr. Buettner? I'm going to ask...I think I heard you say this, are you saying that the NRDs have not followed the rules of LB962? [LB762]

JEFF BUETTNER: I don't know if I would go quite that far. The process provided by the statute seemed to have relegated surface water interests to a secondary status. We participated...our participation was less than effective in terms of our concerns. [LB762]

SENATOR CARLSON: And Central, how many NRDs are you associated with? [LB762]

JEFF BUETTNER: We participated in the basin-wide, the North Platte, or excuse me, the Platte River basin-wide IMP process, as well as the North Platte IMP process. So there's one, two, three, four...at least four NRDs that were involved in all of those processes. Central Platte, Twin Platte, North Platte. [LB762]

SENATOR CARLSON: Tri-Basin, Central Platte, Twin Platte, and what's the fourth one? [LB762]

JEFF BUETTNER: North Platte. [LB762]

SENATOR CARLSON: North Platte NRD. Okay. And you've shown some concerns about allocations and I think that's because when you are able to, you deliver 18 inches. [LB762]

JEFF BUETTNER: That is the contract amount. Now, in recent years we've been limited to as little as 6.7 inches per acre. Last year we allocated ten. This year it will be nine. Under normal circumstances, over time, the historical record, our irrigators got up to 18 inches of water, so everything changes, obviously. We've become more efficient. Farmers have become more efficient in their irrigation application. So 18 inches is a top limit and we've not approached it. [LB762]

SENATOR CARLSON: Well, historically, that's where you started, didn't you? [LB762]

JEFF BUETTNER: Yes. Yes. [LB762]

SENATOR CARLSON: And, yeah, practices have changed immensely over that period of time. [LB762]

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

Natural Resources Committee
January 23, 2014

JEFF BUETTNER: Yes. We also have a different pricing mechanism whereby it used to be you got 18 inches of water and you paid for that whether you used it all or not. Our current pricing structure now is more conservation base so that you are allocated a base allotment of nine inches and then, incrementally, you can get additional water based on the crop's demand. And the idea there is to have that irrigator use only what the crop needs. And it's been very effective in reducing and extending our water supply. [LB762]

SENATOR CARLSON: So beyond the base fee, the irrigator would pay an extra fee. [LB762]

JEFF BUETTNER: Yes. [LB762]

SENATOR CARLSON: Yeah. Okay. Okay. [LB762]

JEFF BUETTNER: Each additional inch would come with it, with an additional fee. [LB762]

SENATOR CARLSON: Okay. All right. Thank you. Any other questions? Seeing none, thank you for your testimony. [LB762]

JEFF BUETTNER: Thank you very much. [LB762]

SENATOR CARLSON: Next neutral. Welcome, Dean. [LB762]

DEAN EDSON: (Exhibit 14) Thank you. Senator Carlson and members of the committee, my name is Dean Edson, D-e-a-n E-d-s-o-n. I'm the executive director for the Nebraska Association of Resources Districts testifying in a neutral capacity to LB762. A primary reason for the neutral position today, our delegates have not voted on any of the bills yet, and this is one of them. They're coming into town next week and they'll take action on these. I want to preface some of my remarks here. This compact is a very complex issue. It's difficult to deal with. When I was visiting with Senator Christensen and Senator Carlson about it, we've bantered around on a lot of different ideas. When I talked to Senator Carlson this morning, he asked me if I'd come in here at least in a neutral capacity and go over some agreements that we've had with other districts. But before I get to those, I want to point out a couple of things or address a couple of things. I want to reiterate what John Thorburn said. Even though it's...this compact looks at consumptive use, there's also a delivery component to Kansas. And until Kansas gets their water, we're a junior user. And so when we develop these management plans in conjunction with DNR, we've got to look at actions by the NRD that will help with compact compliance. And when we get into a call year, each one of the districts is responsible then to put water back into the river and take conservation

Natural Resources Committee
January 23, 2014

measures or other actions to put water back in. We could look at shutting off all the groundwater irrigation in the entire basin, about 1.1 million acres. We would net about 4,000 acre-feet of water out of doing that. This next year, the department has asked us to help fill a 42,000 acre-foot need. So even if we shut down everybody, we still couldn't supply the water. And that result would be that both the groundwater users and the surface water users would get zero water until we've supplied all the water to Kansas. So that's the complexity of it. The Rock Creek project, N-CORPE, and other retirement programs that the district has done in the basin can generate up to 70,000 acre-feet of water annually. And we can do that in time when it's needed to meet those compact needs when they're in full operation. But what I wanted to do was go over some of these agreements with some of these other districts that we have, because the authorities that are being asked of here to come up with agreements with irrigation districts already exist in law. And you don't need to change the law to make those happen. Right now, we have six agreements with different irrigation districts. And I'm going to call them irrigation districts, although they may be canal companies, or the terminology may be different, but they're surface water delivery districts. There are six districts, three different NRDs, Central Platte, Middle Republican and North Platte NRD. The other agreements that we have all the way along the Central and Upper Platte, we have agreements now with just about every canal company and delivery company to take excess flows on the South Platte or North Platte when those come available. And so those agreements are pretty much in place so when that water hits, we don't have to go back and renegotiate deals. They'll take the water, we make the payment to the district for taking the water, and it provides the recharge, and takes the pressure off of flooding downstream. What I've handed out to you in this map is four different agreements we've reached with the canal companies in the Central Platte NRD. They're in Dawson County primarily. And they all have different components to them. The map on the first page, the area in red is the Thirty Mile Canal down the south side of the Platte River; the area in orange is Orchard Alfalfa Canal; the one in blue is Cozad Canal; and the one in green just south of Gothenburg on that map is the Six Mile Canal. The one in yellow that's outside of that is NPPD's Gothenburg Canal. We have reached an agreement with them on doing some conjunctive-use management. If you flip to the next page, there's basically four options in the Central Platte NRD has reached with these different canals. One is a complete buyout, Option 1. Option 2 is a 50-50 ownership with the NRD and joint management and conversion of the nonessential flow of water rights to other uses. Option 3 is an interlocal agreement between the canal company and the NRD, and Option 4 is a management/lease agreement between the canal company and the NRD. And that lease agreement was a 99-year lease agreement. So those are four options that we've already used with canal companies. Go to the next page, there's a picture of the Six Mile Canal. This was a complete buyout. And again, all of these are voluntary agreements. In this canal, the farmers wanted to close the canal. Recharge wasn't necessary, and the canal never got more than a mile away from the stream, away from the Platte, so it didn't provide much benefit. Farmers wanted to close the canal and switch over to groundwater use. Eighty percent of the users already were using

Natural Resources Committee
January 23, 2014

groundwater and the one remaining person that had 20 percent of the surface acres wanted to switch over. So we allowed him to do that. The next one on the next page, Cozad Canal is a management lease. Canal company leases to the NRD 117 cubic feet per second. NRD transfers and leases the water right. Canal company still delivers irrigation water. We applied for water rights for recharge and to lease for flow enhancement. Here's a key component. Maintenance and operations are shared 50-50. The income, of course, then would be shared 50-50. And you can see a before picture and after picture. The Cozad Canal before their cleanup, they had a lot of deferred maintenance. We're almost complete now. Should be finishing up, hopefully, before the irrigation season with the rehab on this canal. Thirty Mile Canal, Southside Canal projects: Thirty Mile is at 50 percent interest purchase. Transfer and lease of water rights. Southside Orchard Canal is a management/lease agreement combination. The canal company is considering converting to an irrigation district so we can do an interlocal agreement; but they have to take that step first, and then we'll do the interlocal agreement and go through and do all the rehabs. Now why did we do this with all these canal companies? We had to get water to the Platte River for the Platte River Recovery Program. Same thing can happen in the Republican. We could, if the parties get together and come up with some type of an agreement, these issues would be resolved. With that, I will close and try to answer any questions you might have. [LB762]

SENATOR CARLSON: Okay. Thank you. Any questions of Dean from the committee? I'll ask you one just to clarify it. So we are a junior user to Kansas until they get their water. So it doesn't make any difference on the Nebraska side when there was a senior right, that's null and void until they get their water? [LB762]

DEAN EDSON: Yep. Under the Supreme Court there's several cases that an upstream state cannot allocate surface water rights if that water belongs to a downstream state. And so until those water rights are fulfilled for a downstream state, we can't divert the water. And that's all part of this whole lawsuit. It's one of the components involved in it. [LB762]

SENATOR CARLSON: And so Kansas being the downstream party, they have an advantage on the Republican River like we have an advantage on the Platte River. [LB762]

DEAN EDSON: I hope we have an advantage on the Platte River. (Laughter) [LB762]

SENATOR CARLSON: Don't we get 75 percent of the natural flow on the Platte? [LB762]

DEAN EDSON: Well, in the...there's different agreements on the Platte. The South Platte is a different agreement than what's on the North Platte. [LB762]

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

Natural Resources Committee
January 23, 2014

SENATOR CARLSON: Do we get 75 percent of what comes out of Wyoming? [LB762]

DEAN EDSON: I'm not sure on the numbers. I'm going to hesitate to say yes or no on that. [LB762]

SENATOR CARLSON: Okay. All right. [LB762]

DEAN EDSON: I'll try to find the answer for you, though. [LB762]

SENATOR CARLSON: Okay. Are there any other questions? Okay, seeing none, thank you, Dean. [LB762]

DEAN EDSON: Yep, thanks. [LB762]

SENATOR CARLSON: Welcome, Mike. [LB762]

MICHAEL JESS: Thank you. Good afternoon. I'm Michael Jess. I'm an engineer. I live in Lincoln and I'm a member of the State Irrigation Association Board. We...I'm appearing in a neutral capacity and as you'll see from my comments, that's maybe a bit of a stretch. We see the bill as two parts. The first part is...calls for greater involvement of irrigation districts and ditch companies in preparing integrated management plans. We favor that, so that would actually probably allow me to testify in favor of the bill. The irrigation districts and ditch companies that are members of the Irrigation Association have long felt that they should have a greater role to play in the development of the integrated management plans. So we would welcome that change. The second part of the bill calls for allocations of both groundwater and surface water and doing that in a manner that would be based upon some sort of an arithmetic average for three years. We don't like that part, so we would oppose that and that's the basis for my dilemma, I guess, in telling you of whether I'm in favor or opposed to the bill. The allocation that is talked about for those three years, it may be appropriate for the Republican River Basin or elsewhere, but setting aside whether those are the right years, whether they represent normal or very wet or very dry times, I think what all of this calls for is a process of allocating water on an equal basis. It's much different and it's foreign to the concepts that have governed the use of surface water by irrigation districts, canal companies, or even the more recent instream flow water rights for fish and wildlife. Those are based upon prior allocations...appropriations by prior allocation. Others have talked about first in time as first in right. And that's far different than the correlative rights that our state uses for the allocation of groundwater. And so we oppose the second portion of this bill on that basis. Senator, that's all our board has authorized me to talk about, but I guess I could answer your questions. [LB762]

SENATOR CARLSON: Okay. Thank you. Any questions of Mr. Jess? If you could, quickly give your interpretation of the...of what correlative rights means in groundwater,

and then, first in right, first in time on surface water. [LB762]

MICHAEL JESS: I'll try. The correlative rights for the most part come to us through litigation stemming from a case in the 1930s involving a farmer near Wahoo and the city of Wahoo attempting to develop some wells in a jointly operator...in an aquifer that served both parties. There was no statutory regulations in place at that time and our Supreme Court was faced with, I'm sure, with legal arguments that prompted the court to ultimately rule that there should be a system of allocation based upon the amounts of water that might be below the respective landowner's property. And if the amounts were stressed because of lots of pumping, that they should be shared on that basis, giving rise to the notion of some sort of a sharing in a correlative fashion based upon overlying land ownership. The first in time, first in right, the prior appropriation doctrine was initially adopted in a formal way by the Legislature in 1895 and calls for each water user from a stream or river or a reservoir to hold the water right that would be granted by the state. And in times of shortage when the river or the streams were not flowing in sufficient amounts to satisfy everybody's need, that water would be limited and distributed to first the oldest...holders of the oldest water rights followed by those that came later on. And that's what's been in place on our rivers and streams actually prior to 1895. There were already a number of canals for irrigation and for hydroelectric generation that had been built and have been incorporated into that prior appropriation system ever since. [LB762]

SENATOR CARLSON: Okay. Thank you. Any other questions of the committee? Thank you for your testimony. [LB762]

MICHAEL JESS: Sure. [LB762]

SENATOR CARLSON: (Exhibit 15) Anyone else testifying in a neutral position? We do have a letter from Brian Barels of NPPD with a letter in a neutral position. So with that, Senator Christensen, we'll ask you to close on your bill. [LB762]

SENATOR CHRISTENSEN: Well, thank you. Appreciate the opportunity and your attention. I will point out a major change that occurred with 2013. If you've sat on this committee very many years, you've heard people testify from the NRDs that when you're looking at the Republican and the virgin water supply, that surface water people always get their water first and groundwater takes the balance. That's always been the rule of thumb in my previous seven years. It changed with the administration of water in 2013. We bypassed all the surface water and we give groundwater theirs. We have flipped the way we manage water, without legislation, and it caught a lot of surface people by shock. I want to talk about the perception of the NRDs. I've told my NRDs this, this is no shock. I said, when we come into a compact call year and surface water lose all their water, or get 1 or 2 inches, and groundwater gets their full allocation which is 9, 12, 13 inches across the district, plus carry forward. The Lower was allowed to

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

Natural Resources Committee
January 23, 2014

pump up to ten and a half last year, if you had some carry forward or wanted to borrow into the following year. The Middle did lower theirs from 12 to 10.8, but they allowed some carry which got them to 12.5. The Upper had a 13-inch allocation and they allowed their guys to use up to an additional 7 inches anytime over the next five years. Pretty much everybody come in under them numbers, but the fact is, they were allowed to take more, if they wanted to. The perception was you can have what you want as a groundwater pumper. Surface, you don't get any. Dangerous trend in my book. Perception I do not think is very good. I've challenged the NRDs to work on that and I can tell you, they are not. They're going to...and the Lower is going to their pumping cap. In this next month's meeting, they're discussing allowing you to have 7...sorry, 10.5 inches if you're pooling, 11.5 inches if you're not. The Middle is looking to going to 15 for the hard cap instead of 12.5. And the Upper hasn't changed theirs, to my knowledge. Perception is not good when surface isn't getting any. Can I use 12 inches in the Lower? That's where my irrigated land is. Absolutely. Can I get by with less? Yes. My surface water, they've cut me back to about eight inches every year, even though I've had ten in the dams before the state passed it through. They've voluntarily cut us back to save water. And I have learned to manage that and raise corn yields on that equal to my groundwater. That's why I say, the perception is not good. The reality is, people want more water, but perception is not good when we're taking and bypassing surface. Come back to those two. Everyone's trying to tell you that this is a consumptive use compact, but I've heard two or three talk about it's a delivery compact, and we're a junior right until Kansas gets theirs. If you want to take a one-year look at that, I agree with them, but the Republican River Compact is a unique compact. I believe it's the only usage compact in the nation. The rest of them are delivery compacts. The court cases they're referring to are based off of lawsuits that have been on delivery compacts. We do have to meet within our allowed 49, 40 and 11 percent. That is true. It's based off consumptive use, but let's look at that consumptive use a little bit further. You were given 1.1 million acre shutoff, will give you only about 4,000 acre-feet to the stream. Very true. First year. Next year, it increases. I wish I'd have brought the numbers from the Lower Republican. They done some dry year leases, which my family participated in, and they were excited, everybody renewed their contracts for a second year because Lower NRD gets a larger impact for offsets by having them same wells off two years in a row. The point of that is, if we reduce the usage by the wells, or shut off some ground that's irrigated by wells, we will put more water in the stream, and each year it will increase. So the fact that the NRDs say they can do nothing to hit compliance on a one-year basis is correct. Second year, third year, is correct. It increases each year, but they can't make a lot of impact. But you need to sit down with DNR and understand how that grows substantially each additional year. NRD said they can do nothing. It's written right in the IMPs, they can shut off the rapid response. That turned around and hits me again. But they didn't shut off any of those, and the reason it's called rapid response is they have the quickest response to the stream. John Thorburn talked about his district which is miles and miles away from the river. He's right. He has very little impact on it. But the rapid response acres would have an impact, yet they've chose not to. There

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

Natural Resources Committee
January 23, 2014

would be a lot of complaining done if that happened, much more there than on the surface. I'm not sure why, but I'm pretty positive. I've had a lot of guys jump me, Mark, you don't let them touch that rapid response. I said that's not my call, it's your NRD. You howl at them. And I know they don't want to do it. But the fact is, when it's a consumptive-use compact, if we got in sustainability so we weren't decreasing the groundwater table no more, means we're using less usage, which means we have to in the new term, I'm hearing, deliver Kansas' water, and we're a junior water right. That would reduce that. We would have less that we have to furnish. So I think we need to look at how we are managing this. Because unfortunately, it's obvious in how a couple of the NRDs are changing the amount they're allowing...the allocations haven't changed. The Lower is still 9 inches a year over five years, 45 inches. And if you had any carry forward, the maximum you can bring in is nine inches, so. And I had the maximum. So I had a 54-inch allocation I can use over five years. So I had a maximum carry because I had saved water. The Republican's only been able to save water for the previous five years and I brought nine in because I managed mine. But there's a lot of guys that aren't managing it like that. And when we allow them to go up to use 11.5 inches in one year, if they don't have the carry forward, they're borrowing from the years in the future where they're going to have to shut off, or they had the 9-inch carry like I did. The Lower did allow, and so did the Middle, if you wanted to exceed that, it was a two to one or three to one penalty. It's three to one in the Lower. I know some guys that used it. They give up a full 9-inch carry last year because they didn't want to restrict themselves. They won't be able to do that again without taking it off the fifth year's allocation. And some of them might do that. But I turn around again and I'll say, is that right? I asked some NRDs, I said, would it be too...asking too much for you guys to lock your allocation to not exceed the basic allocation on compact call years, which would be 9, 12, and 13? And they're not doing it. At the same time, surface guys are going to get two inches or three inches or none. That's why I opened up today with, do we want to become a groundwater pumping state only? Or do we want to have some type of equality or something in here? Do we need to change things? I think this is something this committee has got to think about. Yeah, they're saying I'm trying to mix correlative rights and first in time, first in right. If what we were told today is actual that groundwater is share and share alike, correlative rights, how is it written in the IMP that we can shut off rapid response? That's not sharing and sharing alike. It might be sharing and sharing alike within a water hydrology, or a rapid response versus being beyond that. But there's all kinds of new little tweaks that's been put in these IMPs. And none of it is favorable to the original irrigators here, the surface guys. I'll ask you this question. If there was zero groundwater pumping, there would be no impact from groundwater pumping to the stream, would surface guys get their full allocation? The answer is yes because the water running in there would have delivered full allocations. I think all the dams would fall in that in the Republican, even though conservation has had impact, vegetation has had impact, no-till farming has had impact. So to say that controlling groundwater will do nothing is not correct. In a one-year time frame, yes, you're right, virtually no impact. Two, three, but the farther you get out, the more impact it makes on that stream, the

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

Natural Resources Committee
January 23, 2014

more years you get away from pumping too much. It really comes down to sustainability. Are we going to go to sustainability or are we going to get rid of surface water? The Republican, that's a major issue. And I think it's something that the state needs to put a policy on. I know there was a comment made right at the beginning, the NRDs are to protect all natural resources and that they even protect surface water. They're not. That was one of John's early comments that NRDs protect it, but they're not. There's no way there's any protections for them when it's all being handed away. And I'll guarantee you, if you took a 20-year deal and you reduced a bunch of irrigation wells, you would turn around and see these other acres having water. That's why I say, what is the policy we want to have? I'm not saying we need to shut off half the irrigation wells so surface has theirs. I would like the state to stand up and say what our policy is, because right now we're on a slow death to surface, at least in the Republican. You know, I heard surface water called a special interest group. And then if, who else is next. I know Senator Carlson said something to it. We're going to need a whole auditorium there to do an IMP, really? I think that's quite a stretch in making that comment. I don't even know where to...how far to go. I guess I'll take questions. [LB762]

SENATOR CARLSON: Okay. Thank you, Senator Christensen. Senator Haar. [LB762]

SENATOR HAAR: Well, Senator Christensen, this has been very thought provoking and I don't know yet where I come down to. Very thought provoking and I want to hear more about groundwater fishing, though. (Laughter) We can talk about that on the floor. [LB762]

SENATOR CHRISTENSEN: There you go. [LB762]

SENATOR CARLSON: Okay. Any other questions? Senator Johnson's back is telling him it's time to stop this. (Laughter) So thank you, Senator Christensen, and with that, we end the hearing on LB762. Thank you for coming and for your testimony. And, committee, we've got to have a little bit of an Executive Session. [LB762]