

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

Natural Resources Committee
February 27, 2014

[LB1112 LB1113]

The Committee on Natural Resources met at 1:30 p.m. on Thursday, February 27, 2014, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1112 and LB1113. 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: Welcome to the Natural Resources Committee. I am Tom Carlson, senator from District 38, Chair of the committee. And committee members present: To my far left, Senator Rick Kolowski from Omaha, District 31; and next to him should be Senator Ken Haar from Malcolm, District 21; and then Senator Jim Smith from Papillion, District 14; then we have Senator Ken Schilz from Ogallala, District 47; to my immediate left, Laurie Lage, our committee counsel; to my far right, Barb Koehlmoos, the committee clerk; next to her, Senator Lydia Brasch from Bancroft, District 16, also the Vice Chair of the committee; and then Senator Jerry Johnson from Wahoo, District 23; and Senator Annette Dubas will be here from Fullerton, District 34. Our page today is Steve Schubert from Lincoln, a senior at UNL. Today we have LB1112 and LB1113. And we don't have every seat filled in here, so I don't think I need to ask how many are going to testify. And we'll just proceed forward. We won't use the lights today either. But make sure you fill out the green sheet if you're going to testify before you come up here and hand that in. And then of course state your name and spell it before you begin your testimony. All of you that I can see are just about veterans at this, but there's no need to adjust the microphone, just speak clearly and it will pick up your voice. We don't use electronics in this committee. So if you have a cell phone, please turn it off or put it on vibrate so it doesn't disturb the hearing. And really, that's about it. All of you have been here before. Any questions before we proceed? Okay, hearing none, Senator Christensen, welcome to open on LB1112. [LB1112]

SENATOR CHRISTENSEN: (Exhibit 1) Thank you. Chairman Carlson, members of 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. First of all, I want to start out with an apology to you guys. The other day I said...I asked why you hadn't got a simple bill out and wondered where it was at. It was actually...we hadn't heard it yet. This is one of them that...(laughter)...got jumped backwards. This one was scheduled earlier and moved back for LB1074 I believe it was which was fine with me. And anyway, I'll apologize first before I get started here. LB1112 would change the way current occupation tax on the activity of irrigation authorized in Section 2-3226.05 is implemented into the future. The bill would change the current occupation tax from a system where it is a uniform dollar per acre levy, is applied to all irrigated acres the same amount whether you put on 14 inches of water on an acre or a half-inch on the acres, to a system that the irrigator pays the same rate per acre-inch of water applied. This creates an incentive to conserve water use because the heavy users pay more and the light users pay less in total.

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

Natural Resources Committee
February 27, 2014

LB1112 would also put a cap...would cap the annual total amount needed to be raised by the occupation tax to finance bonds and projects to the average \$10 per certified acre within the natural resources district as it currently is. In addition, the bill would require that the annual per-inch rate be formulated from the total annual need to finance bonds and projects divided in total amount per acre-inch of water used through the district. This maintains the amount of revenue needed to be collected by natural resource districts by the occupation tax to pay bonds and other project payments for which they are obligated. The reason for introducing the bill: It's part of the same thing going back, that you've got surface water that's being used for compliance. And like last year from my district, I got 3 inches on my surface. I got 10.5 on my groundwater. I paid the same rate. It applies to limited capacity irrigation wells. I got places I can't put on 9 or 10 inches, that I'm stuck down in that 6-, 7-inch range, and yet I pay the same occupation tax as somebody that can put on double that. And I think it's a great way to reward these people that are getting less, whether it's being taken for compliance reasons or it's due to a limitation of a well. Again, the benefits: incentive to...conservation or conserve water, more balance and equitable approach, guarantees the needed revenue for bonding projects financed by the occupation tax. And I just want to hit a couple of objections that people have mentioned they probably have to this. That is, no records because they have no meters. And if you think back in the past, we've had a number of bills trying to get meters authorized everywhere. And they always say, well, we can use power records. So I'm saying, you could use power records here. Or if they wanted to, the farmer could have the burden on his back. He can put on a meter to prove it himself. It's very simple to handle these objections. I paid for the meters on my wells, and it was a requirement in the Republican and actually has turned out to be a great management tool. And if someone doesn't want to turn in the...have the records, they can pay the average. Or if an irrigation district wouldn't turn in the records for some reason--I don't believe that they would as it's written in the bill--then they can just pay the average that everyone else is paying. If that's based on \$10 an acre which most of them are in my district, or if it was 8 across the district or 6, they'd just have to pay that. It could be handled very easily. I want to thank you for considering LB1112 and encourage its advancement to the floor. [LB1112]

SENATOR CARLSON: Okay. Thank you, Senator Christensen. Questions of the committee? Let's go through this sheet. [LB1112]

SENATOR CHRISTENSEN: Okay. [LB1112]

SENATOR CARLSON: And I see the 13 inches, the 10 inches, and the 8 inches. Kind of relate the various amounts here that would be paid by the amount of water used to the occupation tax. [LB1112]

SENATOR CHRISTENSEN: Okay. Just for an example in this example up there, it just takes 1.2 million acres certified. And then it takes the 40 percent like the Upper

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

Natural Resources Committee
February 27, 2014

Republican's 480,000 acres. If they had \$10 per acre on, that's \$4.8 million as an annual cap that would be used in the Upper Republican. Annual project need is \$4 million. So they could base it off the \$4 million, or they can charge the full amount and use the money elsewhere. But the...then when you divide it out down below, it just shows how you're taking 130 acres times 13 inches used, is the total inches applied into the...and then put it into acre-foot. This is what I did in this example. And since the rate ends up at \$13.33 per acre-foot, then that would be \$1,877.26 on that quarter where the next example, using 10 inches they only ended up with \$1,444. And if someone only used 8 inches, they would pay \$1,155.31. But it's still based off of if you was using \$10 per acre--that's the max, that's what's being charged--divided by the actual usage based off of the metering device you're using to figure out what the cost is per inch. [LB1112]

SENATOR CARLSON: I got another question here as soon as I do a little figuring. [LB1112]

SENATOR CHRISTENSEN: I suppose I got an error. [LB1112]

SENATOR CARLSON: Pardon? [LB1112]

SENATOR CHRISTENSEN: Do I have an error? (Laugh) [LB1112]

SENATOR CARLSON: No, no, because the idea is to be an incentive to use less. [LB1112]

SENATOR CHRISTENSEN: Right. [LB1112]

SENATOR CARLSON: Now I look at that and I don't see \$1,877 to \$1,444 to \$1,155 as much of an incentive. However, it's a lot better than nothing. Do you think that that's enough of an incentive to have people pay attention to this? [LB1112]

SENATOR CHRISTENSEN: It may not, but when you get into the cases where, like surface water this last year where they only had 2 inches and my district had 3 inches, you would only pay...if it was an area you delivered 10 inches, so it's \$1 an inch, you'd be paying \$4 an acre instead of \$10 an acre to use 4 inches. So it'd be quite an incentive then. [LB1112]

SENATOR CARLSON: Okay. [LB1112]

SENATOR CHRISTENSEN: And that's where the incentive part would come in. And it's also a reward...I don't know if you'd call it a reward, but at least that much less that the people that are being used for compliance and having their water sent down the river for state compliance don't have to pay as much when they're not receiving it. [LB1112]

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

Natural Resources Committee
February 27, 2014

SENATOR CARLSON: Okay. So if they get zero inches and don't have groundwater, they would pay zero. [LB1112]

SENATOR CHRISTENSEN: Right. [LB1112]

SENATOR CARLSON: If they get 2 inches, they would pay on 2 inches rather than so much occupation tax per acre. [LB1112]

SENATOR CHRISTENSEN: Correct. [LB1112]

SENATOR CARLSON: So it does...it could get it down a lot lower than the \$1,155 here. [LB1112]

SENATOR CHRISTENSEN: Absolutely, and this is an example I'd used like three years ago. I just pulled it out of the file. And we hadn't seen examples of people getting 2 and 3 inches. And I probably should have updated the sheet but didn't. [LB1112]

SENATOR CARLSON: Okay. Yeah, that helps getting my head geared into what you're really aiming at is the people that get little or nothing. [LB1112]

SENATOR CHRISTENSEN: Right. [LB1112]

SENATOR CARLSON: Okay. Senator Haar. [LB1112]

SENATOR HAAR: Senator Christensen, interesting idea. And you put a meter on your water use. Would...I mean, that could be another iteration of this whole thing is that if you have a meter, you can use that whereas if not. How much does a meter cost on a well? [LB1112]

SENATOR CHRISTENSEN: I'm going to guess...I don't know. When I bought mine, they were all 300-and-some dollars. But it wasn't a year or two after that they were \$600, and I believe they're closer to about \$700, \$800 now. [LB1112]

SENATOR HAAR: So you could sort of look at as an investment over time then if this kind of system were in place. [LB1112]

SENATOR CHRISTENSEN: Correct. It would be. And again, the cost of that will vary whether it's a 3-, 4-, 6-, 8-, 10-inch meter too. [LB1112]

SENATOR HAAR: Um-hum. [LB1112]

SENATOR CHRISTENSEN: So it's all relative I suppose. But yeah, the actual cost of the meter is small, in my opinion, compared to the management ability of being able to

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

Natural Resources Committee
February 27, 2014

use it. And what I found out, I use a whole lot less water than I thought I did. And I've learned how to manage that and time when I want to put it on. [LB1112]

SENATOR HAAR: Good. Thanks. [LB1112]

SENATOR CARLSON: Okay, any other questions? I'll just ask you one more. What's the drawback? [LB1112]

SENATOR CHRISTENSEN: It's going to be a little bit more work on the NRDs' side of things because they're going to collect the data and do the divisions because they send their reports into the county. And it's an additional year delay because they have to send in their records by the end of August, I believe the assessor told me, or treasurer, whichever office I was in at that time. And they got to have it then to get everything printed and sent out for the year-end statements so people can pay it on this year's taxes. So that's why in the bill, it sets up that it stays as common practice until '15. Then you flip back and use what you used in '14 to be paid in '16. And you just start that delay. And the drawback is when the land sells, you only pay the current year's. So somebody could have a high...low use that they pay on this time, high use the next time. It gets passed to the next one, but that's going to be a minor deal. [LB1112]

SENATOR CARLSON: Okay. Any other questions? All right, seeing none, thank you for your opening. Now we're ready for on LB1112, proponents. All right, seeing none, opponents. Welcome, Brian. [LB1112]

BRIAN BARELS: (Exhibit 2) Good afternoon. Chairman Carlson and members of the committee, my name is Brian Barels, B-r-i-a-n B-a-r-e-l-s. I am here to testify in opposition to the bill. But what I'm...really like to do is answer some of the question you asked, Senator Carlson. What are some of the drawbacks of this bill? And to begin with, as we get into talking about occupation tax and how it's applied, the occupation tax we use to pay for projects in the water side of the world has come from the necessities within the Republican River. In the Republican River, we need to comply with a compact. And I don't know the exact words of the IMPs in the Republican River, but we've had enough discussion over the session to understand our main goal of those IMPs is to comply with the compact on the Republican River. The way the bill is set out, it would affect the occupation tax as collected for any project. Well, there are also now projects that are going to start in the Platte Basin and utilize the occupation tax. I think for example, the N-CORPE project will result in an occupation tax in the Twin Platte Natural Resource District in the Platte River Basin. It may apply to NRDs as they go through their IMPs. One of the things that's important to understand is IMPs in the Platte River Basin have a different goal and objective than IMPs in the Republican River Basin. The IMPs in the Platte River Basin are, and I would...the goal is to incrementally achieve and sustain a fully appropriated condition on the Platte River Basin. And objective number one in achieving that in the Twin Platte Natural Resource District IMP

Natural Resources Committee
February 27, 2014

and the basinwide plan is to offset impacts to streamflow depletions...depletion due to surface water appropriations and water wells that are recharged from flows in the stream. So the goals and objectives are to offset the impacts from wells to streamflow to keep surface water appropriations whole and those who depend on the recharge whole. So in that case, we have completely different objectives and how we apply that occupation tax. Should it be to the entire water users in the basin? Or should it be based on the goals and objectives of the IMP and the impacts that are trying to be offset? And let me give you an example. I'll use the Twin Platte Natural Resource District. You have the South Platte River and you have the North Platte River and they form to create the Platte River. So you basically have three stream segments within the natural resource district. If you build a project and that project will benefit one of the tributaries and the main stem, should those people on the other tributary be paying the occupation tax because their impacts may or may not be benefited by that project? Second of all, if the goal of the IMP or the project is to offset impacts to streamflows and surface water users, should surface water users be paying the occupation tax? Those are policy questions. Those are challenges that you folks have in front of you, but they're really a reality of what happens as the occupation tax concept expands beyond the Republican River basis which it was designed to address. So a couple challenges that we have. Those are ramifications that very honestly can come from the proposed bill. Also, a small item is the term "usage." Again, I think we talked about this in one of the bills yesterday. Again, "usage" is not a defined term, as I'm aware of anyway, within the statute. So that's something that we would want to address as well. And lastly, gets into the issue of whether or not you need to have a meter in the Platte Basin to achieve the goals and again, the cost associated with the meters whether they be for surface water or groundwater. Within the area that our three irrigation canals exist, we do not have an extensive set of meters. We meter the diversion as required by DNR under our appropriation. And so neither our individual turnouts nor do...and some do. I'll take that. All of them don't have meters on them nor to wells in the Central Platte Natural Resource District where our irrigation canals are. So again, a somewhat substantial financial investment to achieve that if it would become the basis by which offsets are paid for in accordance with, you know, the occupation tax. If you have any questions, I'd be glad to answer them. [LB1112]

SENATOR CARLSON: Okay. Thank you, Brian. Questions? Senator Haar. [LB1112]

SENATOR HAAR: Thank you. This is a little sideways question. But yesterday, we heard that Lincoln could put a call in the water. [LB1112]

BRIAN BARELS: Um-hum. [LB1112]

SENATOR HAAR: Would that affect any of your generation, of NPPD's generation, or any public power generation you're aware of? [LB1112]

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

Natural Resources Committee
February 27, 2014

BRIAN BARELS: It would have had the potential to. But very honestly, NPPD and other interests upstream entered into settlement agreements with the city such that if they did put a call on the river, it wouldn't affect the water right for Gerald Gentleman Station. And that has to do with the seniority. The water rights related to the city of Lincoln were backdated to when the wells went in I think which...don't hold me to this. I think the earliest was 1970. Gentleman Station's water rights are '76. So theoretically, the answer would have been yes. [LB1112]

SENATOR HAAR: It could, but they've worked out something with... [LB1112]

BRIAN BARELS: But we worked with the city of Lincoln during the application process and resolved that. Yes. [LB1112]

SENATOR HAAR: Yeah. Do you know of any of the other public power districts that do generation, whether it would affect them or not? [LB1112]

BRIAN BARELS: I believe that the Central Platte Natural Resource District, Central Nebraska Public Power and Irrigation District, and I can't remember whether there were any others that were all involved to make sure it didn't impact their operations. [LB1112]

SENATOR HAAR: Okay. Thank you. [LB1112]

SENATOR CARLSON: All right. Any other questions? I question the argument about meters being too costly. Now, when corn is \$3 a bushel, that's a little different than when it was \$6, \$7, and \$8. But the scope of agriculture today, and I think the benefit of having a meter to help regulate, determine what you're using and then how to manage it better, I don't think that's a strong argument. Do you? [LB1112]

BRIAN BARELS: I understand the benefit of measuring and understanding and knowing that. It's just when you're at zero and you've to go to 100 percent, it's a big jump all at once. It's a financial impact to the irrigation canal. [LB1112]

SENATOR CARLSON: Okay. [LB1112]

BRIAN BARELS: I think in this case, the requirement goes on the canal or the district. And so we probably would have to install them and then charge back through the rates to recover the investment. [LB1112]

SENATOR CARLSON: Okay. Senator Haar. [LB1112]

SENATOR HAAR: One last question, yesterday we heard a number of times: a solution looking for a problem. Do you think that's the case here or is this not the right answer to the problem? [LB1112]

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

Natural Resources Committee
February 27, 2014

BRIAN BARELS: I think in the case of this bill, it's trying to deal again, with the issues in the Republican Basin. And as you move that concept into the Platte, it has unintended consequences. [LB1112]

SENATOR CARLSON: (Exhibits 3, 4, 5, 6, 7, and 8) Okay. Seeing no other questions, thank you for your testimony. Anyone else in opposition? We do have letters of opposition from Steven Smith of the North Platte Valley Water Association, from Nate Jenkins of the Upper Republican NRD, from John Berge of North Platte Natural Resource District, and from Kent Miller, Twin Platte NRD. Do we have anybody in a neutral position? Okay, seeing none, Senator Christensen, you're recognized to close. We do have two letters in a neutral position, Brad Edgerton of Frenchman-Cambridge and Jeff Buettner of Central Nebraska Public Power. [LB1112]

SENATOR CHRISTENSEN: Thank you, Senator Carlson, Natural Resources Committee. Quickly, I'll just hit a couple of things that Brian hit that I think can be worked around because I think this is a something that really is beneficial. And as I mentioned in the preliminary because Brian was very gracious and talked to me ahead of time. You know, if we would...you could also put this, if meters available, or put it that it's farmer's responsibility to prove that he's using less to get. You know, it very easily could be amended to take care of the consideration, and I don't have a problem putting the financial burden of the meter on the farmer. You know, I had to do it in my district. I don't see it. I agree with you, Senator Carlson. It's not a major factor even if they're \$1,000. A thousand bucks and what we spend per acre farming anymore unfortunately is nothing. And when you got \$700, \$800 an acre and growing a crop very regularly, you know, to take a \$1,000 item, divided by 130 acres which it's commonly. Sometimes there's two or three wells on one quarter. But still, if you'd done that. And I think they gained a benefit out of the management tool that it is. So you know, I don't have a problem trying to adjust this a little bit to the needs of the Platte. And if they don't want meters, they can be exempt. Just say, you have to have a meter to prove that you use less. And I'd be glad to work that amendment up and work with Brian on it if that is acceptable with the committee. So otherwise, I just don't see...I know a lot of surface guys don't want to have to pay this tax. But no one has brought the bill yet because it's still on the activity of irrigation. That's one of the things he mentioned was impact to the stream. And he's told me he doesn't like surface paying for it. And I can understand that. I didn't originally when I introduced LB701 that implemented this. But we have seen such drastic changes now in how we're managing things. You know, that's an easy change if this committee ever decides to go the activity of groundwater irrigation. You know, if that's something that people see important. That's not something I was attempting to do. I was trying to even it out in the other direction. Thank you. [LB1112]

SENATOR CARLSON: Okay. Thank you. Questions? Yes, Senator Haar. [LB1112]

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

Natural Resources Committee
February 27, 2014

SENATOR HAAR: Do you agree with the idea that really this is a Republican Basin problem, or do you think that this is a solution that should be extended to the whole state? [LB1112]

SENATOR CHRISTENSEN: Oh, I believe it should be the whole state. If you want to make it the Republican only, it's real easy. We'd use language like in LB701. It just comes down to NRDs that have compacts and agree...have a three-state compact, is narrowing language that is legally left open, it could be done that way. But I'd turn it around and say, okay, it doesn't matter whether you're on the Platte River, Republican River, Niobrara, whatever, if you're a creek pumper and you're pumping out of that creek, you're subject to first in time, first in right regulations. So if any one of them farmers would be out there and start irrigating, get maybe 1 or 2 inches on his farm before they put a call on the river--whether that be the city of Lincoln as your example or that be an upstream user making a call...or downstream calling up--and he doesn't get to pump anymore the rest of that year. Should he have to pay the full \$10 an acre when he gets 2 inches when someone else gets a full 10 or 12 inches and as high as 14, 15 in some areas? I just think there's a great application statewide for this because anytime you're under the first in time, first in right statutes of surface water, you never know how much water you're going to get. You may think it's going to be wet. You're going to get to irrigate so you step up to do it. And all of sudden you get shut off for the rest of the year. And they understand that in that prior appropriation statute when they put that pump in, they could get shut off. But with the occupation tax being new since then, I think it's a fairer way of evaluating it on a statewide basis. And that's why I said, I don't have a problem not forcing them to put meters everywhere because I know that's objectionable from sitting on this committee. But to make it the farmer's responsibility to prove that he didn't use and should have a reduction, I don't have a problem with that. [LB1112]

SENATOR HAAR: Okay. [LB1112]

SENATOR CARLSON: Okay. Senator Schilz. [LB1112]

SENATOR SCHILZ: Thank you. Mark, thanks for coming in. And this has provided quite a bit of thought for me. When we talk about surface water and groundwater and you talk about whether surface water should be even included in that, what if I'm a surface water guy and I can show that I've put more in than I've actually used that year? Should the NRD pay me back? [LB1112]

SENATOR CHRISTENSEN: You mean, far as more recharge from the water that was allowed down the stream? [LB1112]

SENATOR SCHILZ: Right. [LB1112]

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

Natural Resources Committee
February 27, 2014

SENATOR CHRISTENSEN: Well, interesting concept but... [LB1112]

SENATOR SCHILZ: Just a thing for thought, yeah. [LB1112]

SENATOR CHRISTENSEN: ...answering that would be extremely tough. [LB1112]

SENATOR SCHILZ: Yeah. [LB1112]

SENATOR CHRISTENSEN: And that's why this...and I think this is the bill I...but it's on the amount delivered to the gate or delivered to the field because we all know that most of them are 50 percent efficient or less, if you call that efficiency. I call it groundwater recharge, and the groundwater people ought to be thanking the surface people instead of fighting them. [LB1112]

SENATOR SCHILZ: Right. [LB1112]

SENATOR CHRISTENSEN: But it's perception instead of reality. [LB1112]

SENATOR SCHILZ: Thank you. [LB1112]

SENATOR CARLSON: Okay. Other questions? Okay, seeing none, thank you. That closes the hearing on LB1112. And we go to LB1113, and you're recognized to open. [LB1112]

SENATOR CHRISTENSEN: (Exhibit 9) Thank you, Chairman Carlson, members of the Natural Resources Committee. I'm Senator Mark Christensen, C-h-r-i-s-t-e-n-s-e-n, represent the 44th Legislative District. LB1113 would add two new sections to clarify the powers and duties of irrigation districts, reclamation districts, public power and irrigation districts, mutual irrigation companies and canal companies, and the land owners related to surface water appropriations. The bill seeks to give surface water irrigators the most flexibility in their own operation regarding how to apply the volume of appropriated water rights on the acres of water attached to such land, whether the irrigator applies the total volume of water on allowable acres or applies the total volume to the water on the portion of allowable acres. I want you to take a look at this handout. Think it illustrates. This is something that I have already done on my father's land. A few years ago, they allowed this. I don't know if it's on a special right by special right case, or if it is...statute has been changed since I done this. But I guess I done it somewhere in the late '90s where I done a scenario just like you see on this sheet. If you...what this bill is saying, you take that yellow area, the surface rights, yellow and green area, that's the only surface water right that they have. Well, that was the scenario in my dad's case where one side was level, gravity irrigated. Then we put in a pivot, and the other side is not level. And I applied and got the right to spread the water. I have the 78 acres that I'm allowed to irrigate...or acre-feet because it's based off of...I got 78 acre-feet I can apply.

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

Natural Resources Committee
February 27, 2014

It used to be to 78 acres only. Now it applies to 125 acres. I just can apply less. Here's the problem. You take that circle and you're...got a pivot running. If you're going to do this according to the law and textbook, you have to shut that pivot off when that surface water is being applied, right before it gets to the blue. And you've got to start the well and run that side. And then you've got to stop it sometime again and start putting more groundwater on if you can't spread it. It's only common sense to allow your allocation to be spread across the farm. And if you noticed, I put on here areas have no irrigated base because this was a rough side. You could never apply to that. This is only on current irrigated acres that you're spreading on. So it's not a new base acres, and I think the bill makes that clear. I was looking at that this morning. It's on the base acres. So I can tell you, you just make good liars out of everybody when you don't let that pivot turn in a circle. And it makes no sense because in my case I have 78 acre-feet I can use. Who cares if I spread it to 65 acres in a pivot or 130 acres? When it's gone, I'm going to the well. Why do we want to make somebody have to be out there perfectly every minute to switch water sources? It's a simple thought. But the implications if you don't allow that spreading is you're making everybody a liar because I'll guarantee you, I wasn't good enough to get out there and get it shut off at the right time. I just don't have all day to sit and baby-sit one pivot. And I was very gracious that the Department of Natural Resources allowed me to spread. And they told me years ago they allowed that. Now they don't. So I believe it has been a change. I don't think it's been a proper change because the impracticality of using water-saving technology like a pivot on ground that is that way. And you could have the reverse. You could have groundwater on half of it and surface water on all of it. You could have the reverse scenario. I think they both should be allowed; not new irrigated acres, but only on already irrigatable land. And I believe I got that bill written that way. And I looked it over again this morning. I believe it's correct. Thank you. [LB1113]

SENATOR CARLSON: Okay. Thank you. Questions of the committee? Senator Haar. [LB1113]

SENATOR HAAR: Okay, and this is a real kind of situation. As we talked about fracking here, that somebody who does fracking can, with the NRD's permission, sell water, their water, allocated water to that fracking operation. So is there any connection to what you're talking about here? You get that certain allocated amount of water and then you can just do about whatever you want with it. [LB1113]

SENATOR CHRISTENSEN: Well, I didn't know that you could sell your base to somebody to go to frack but... [LB1113]

SENATOR HAAR: Well, that's what we heard in that one letter... [LB1113]

SENATOR CHRISTENSEN: Okay. I'm not going to question you, Senator. I'm just... [LB1113]

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

Natural Resources Committee
February 27, 2014

SENATOR HAAR: Yeah, no. [LB1113]

SENATOR CHRISTENSEN: I guess I'm shocked. [LB1113]

SENATOR HAAR: Yeah. [LB1113]

SENATOR CHRISTENSEN: But anyway, I know that I think this is a commonsense thing and a good thing because my surface water, I'm going to use first regardless because it's my cheaper water. And if I don't take it this year, it may not be available next year. I will never not use my surface first again because of, it could be passed on through. Or as I've said previous hearings, stolen from me. So I'm going to use it first every time. There will never be an exception. It's going to get used. So to me, you've got everybody going to try and maximize use of their surface water as fast as they can before they lose it again in my district. And you know, to me, that's not the issue whether they're going to use which one. I've given an example of what I do. But it's a commonsense thing because you know how hard it is to manage a pivot? It might get there at 3:00 in the morning. It might be at 7:00. It might be 1:00. It might be in the middle of the day, you know. And if that's during wheat harvest and you're trying to cut wheat and it's going to get there at 3:00 in the afternoon, you don't want to go shut combine off to run and change that pivot around. I mean, it's just a commonsense thing. Now as we hear, maybe I got the language wrong. I've heard somebody tell me that we agree with what you're doing, but the language is wrong. And if that's the case, I'll gladly adjust the language. But they haven't showed me that part yet. [LB1113]

SENATOR HAAR: And wouldn't metering take the line out of it? [LB1113]

SENATOR CHRISTENSEN: Sure. Meter readings clear up. But on the surface part, they're delivering X amount to your property. [LB1113]

SENATOR HAAR: Yeah. [LB1113]

SENATOR CHRISTENSEN: Whether they do it as some do, that you can get it three days a week and you're off four, then you get three days a week is the way some districts do it. Some districts do it that you order when you want it. That's the one I'm in. Order it when you want it, but I can't get shut off except once a day at 8:00 in the morning. I'm in a spot where the ditch rider starts at...mine goes on at 8:00 in the morning, off at 8:00 in the morning, nowhere in between. If my pivot breaks down and runs in one spot, sometimes they'll let me off. They're very gracious on breakdowns sometimes. But just because my pivot got there and they're going to have to waste that water...no, I'm going to have to try and reverse that pivot and run back while I'm on surface water. And then I'm going to have to come back and try and catch up the groundwater side. You know, same thing on the...two different sources and have to use

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

Natural Resources Committee
February 27, 2014

individual sources on each side makes management a nightmare. And that's what I'm after here. [LB1113]

SENATOR CARLSON: Okay. Any other questions? Let me ask you...I'll ask you in your closing. [LB1113]

SENATOR CHRISTENSEN: Okay. [LB1113]

SENATOR CARLSON: (Exhibit 10) So that's good. Okay, thank you. All right, we're ready for proponents on LB1113. And we do have a letter of support from Ronald Klein of Berthoud, Colorado. We're ready for opponents. [LB1113]

BRIAN BARELS: (Exhibit 11) Good afternoon. Chairman Carlson, members of the committee, my name is Brian Barels, B-r-i-a-n B-a-r-e-l-s. I'm the water resources manager for Nebraska Public Power District. As I talked about at the previous bill, we do own and operate three irrigation canals. I'm here today to testify in opposition to LB113 (sic--1113). Again, I believe these to be unintended consequences of the intent of the bill. Specifically, there's probably three things I would like to touch on. The first is that within our irrigation districts, we offer a service whereby all the acres covered by the appropriation don't need to be irrigated in any one year. In other words, if somebody has 100 acres and they only want to irrigate 80, we sign a contract and they pay for based on...they pay a different rate just to cover the 80 acres instead of the 100 acres. Okay. In this case, what we're saying is we need to allow those people to run that water to all...the whole entire 100 acres. And it would become a requirement. I think that would be contrary to the wishes of some of the irrigators because we would need to then charge them our rate based on every acre. If they could do that, it would basically eliminate one of the options we have for our customers. I think that potentially can be dealt with by adding to the statute, "unless agreed to limit it by contract," or something like that because our contracts do lay that out. So that's kind of an unintended consequence. And the other reason that that occurs on our Gothenburg Canal, on one of the main laterals there's a syphon. And that syphon limits the amount of water that we can deliver to the customers on that canal. Those customers have chosen to go to this kind of a concept where they don't irrigate all their acres so that we don't put a new syphon in and they have to pay the costs for that. This bill I think would require us to allow them to cover all the acres. And so all I'm saying is it takes that option away. I think there's a solution. The other concept, I think this requires not only meters and measurement at every turnout from the canal, it requires the delivery to each and every field. On the Kearney Canal, for example, that we own and operate, we run water down the canal. We don't run the laterals. We don't run the water to the fields. And again, this would require the irrigation district to do this. Again, as we talked about in the last bill, that can all be dealt with, but again, we don't operate the system in that kind of manner so again, an unintended consequence. As I listen to Senator Carlson talk about his needs, I understand that fully. He did raise a question...is, why shouldn't I be able to do

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

Natural Resources Committee
February 27, 2014

this. And I'm thinking about the Platte River program, the agreement with the three states. I'm thinking about the integrated management plans. I'm thinking about fully appropriated statutes. And essentially, what they don't allow to occur is an increase in acres or an increase in consumption. So I guess what we're saying is, we would want to count all the acres as consumption in every year, whereby now if we only serve half the acres, we only have to offset the consumption from half the acres. And so that's one reason that we might want to look at this in a little more detail, is its effect on consumption because if I'm serving all the acres and counting all the acres and I'm accounting for the consumption, or if I took half the water put it on twice the acres I've doubled the consumption. With that, I'd be glad to answer any questions you might have. [LB1113]

SENATOR CARLSON: Okay. Thank you. Questions of Brian? Senator Schilz. [LB1113]

SENATOR SCHILZ: Thank you. Brian, good afternoon. When you talk about that, if the irrigated acres are already certified and you're not expanding acres, would it really add to the consumption? [LB1113]

BRIAN BARELS: You know, it all depends on how you get down to calculate that number. You're exactly right. [LB1113]

SENATOR SCHILZ: Right. [LB1113]

BRIAN BARELS: You're exactly right. [LB1113]

SENATOR SCHILZ: Okay. [LB1113]

BRIAN BARELS: If we're counting every acre every year in that case, you're overcompensating. That may not be a bad thing. But it just may be different than it's actually getting done because as we put the surface water component together for OPSTUDY for example, the modeling effort, we'll put how many acres have floating...you know, how many acres are floating. And so in any one year that's all that really gets run through the model and looked at. So again, we could deal with that. But we would increase the amount of water that we needed to offset to the river for the Platte River program. [LB1113]

SENATOR SCHILZ: You need it to be consistent is what you're saying. [LB1113]

BRIAN BARELS: Yes, correct. [LB1113]

SENATOR CARLSON: Okay. Senator Haar. [LB1113]

SENATOR HAAR: Yes. From what you're saying then that people use less acres, they

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

Natural Resources Committee
February 27, 2014

pay less. That sounds a little bit like the bill we just heard of less...you know, if you get less water, you pay less occupation tax. Is there a parallel here? [LB1113]

BRIAN BARELS: Well, there is somewhat. Again, when we set rates, and this is a long, ongoing, historical process, we look at the cost to deliver water, both the natural flow from the river and how we supplement that with storage water. And that gets to be another variable is the storage water component. But what we do then is we divide those costs for every acre that we serve. And so if we have a customer that has a water right for 100 acres, signs a contract to only irrigate 50 of those 100, then we have a rate for that that is actually a lesser rate because he's getting less than the whole amount of water his appropriation would provide that we needed to deliver. [LB1113]

SENATOR HAAR: Thank you. [LB1113]

SENATOR CARLSON: Okay. Other questions? Thank you. [LB1113]

BRIAN BARELS: Thank you. [LB1113]

SENATOR CARLSON: Welcome, Ron. [LB1113]

RON WOLF: Thank you, sir. Senator Carlson and members of the committee, my name is Ron Wolf, R-o-n W-o-l-f. I'm here today representing the Nebraska Water Coalition. I'm sure you're all aware, it's a group of widely varied interests, that we come together to work on water issues. I'm here today opposed to LB1113, the portion of it on page 2 from line 10 through 21, essentially allowing the spreading of water. Chapter 46 districts in this state, most of those that have been built, both for irrigation and reclamation districts, were built by the Bureau of Reclamation. In 1902, the Reclamation Act...there was a limitation put on the amount of acres that any one ownership could receive water for, and that was 320 acres. Some of us started screaming in the late '60s and '70s. I'm sure you folks realize nobody is going to make a living farming two quarters today. It's not going to happen. Congress did reform the Reclamation Act in 1982, but it went from strictly ownership to owned and rented. And the purpose of these acreage limitations is to keep...not to use the man's name in vain, but it'll keep Ted Turner from buying a small district in certain states selling the water right to a municipality and leaving. So there is some good purposes to this law. The access that any recipient on owned or leased ground cannot receive water to more than 960 acres. And those acres are to be designated to the Bureau of Reclamation. If we're spreading it out, we're running afoul of Congress. We have had instances where someone in the case of an inheritance happens to go over that number, and we've worked with them for a year or two until they get the titles and distribution of the land spread out. But in the meantime, some of that's farmed dryland because it's a congressional act that says, you will not. And that includes leases and ownerships west of the Missouri River. So you can have 320 acres in a bureau project that hasn't totally met its repayment obligations in Idaho, 320 in

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

Natural Resources Committee
February 27, 2014

Colorado. But if you've got 340 in Nebraska, someplace you're going to designate 20 acres that will not receive water. So this bill as written is going to put me directly afoul of a congressional mandate. And while I do obey most of the laws I agree with almost all of the time, I don't want that to happen. I can't do this. Those laws are based on acres, not water supply. The Reclamation Reform Act doesn't recognize whether you're getting 1 inch or, in places there are people taking 60 inches; same thing, 960 limit. There's also a portion called "limited recipients," one of which right off the top of my head is any corporation with more than 25...25 or more stockholders. They are limited to 640 acres maximum. So there's some pretty tight restrictions in there that this statute would run directly afoul of and really mess up bureau-constructed districts that haven't met their repayment obligations. The third thing is changing acres every year. We have a 40-year contract to repay the construction of our project in the project I operate, the Twin Loups districts. And those are based on an acre amount, X bucks per acre. So if those acres decrease every year, our only option...or decrease in a given year, our only option will be to increase the cost on the acres that do irrigate. It's going to make a funding problem. For those and several other reasons, I must today oppose this bill. Senator Haar had had a question on selling allocations. We do allow in the district, and there are provisions in the state law to allow me to move allocation from field to field within an ownership or within an operation. So if...we do have fellows that maybe have got a quarter of alfalfa and a quarter of beans. And we're strung for about 145 miles. So there's been times we've had 20,000 acres almost shut off due to rain or hail and have two canal systems running at full capacity 50 miles away. So if they've got alfalfa or another needy crop, we allow them to move those allocations within the state limit of 36 inches to fields where they can be used more beneficially. They paid for the acres. Give them the opportunity to utilize the water to their best interests. They can't sell the allocation to a neighbor. There's a couple of things in here that really intrigue me. I have almost the obverse of Senator Christensen's example. And man, that would work slick in my own private operation. I could see where I could pick up a few bucks on that deal. But on the main, I have to oppose this bill today. And I'd sure try to answer any questions you might have. [LB1113]

SENATOR CARLSON: Okay. Thank you, Ron, for your testimony. Questions of Ron?
Senator Haar. [LB1113]

SENATOR HAAR: Could...I don't know if Ted Turner has a water allocation or not.
Could he sell water to Denver? [LB1113]

RON WOLF: Our district? [LB1113]

SENATOR HAAR: Yeah. [LB1113]

RON WOLF: I would love to. I would love to sell water to the Nebraska Game and Parks Commission if they'd bring their checkbook and talk to me. It would take a different

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

Natural Resources Committee
February 27, 2014

water right filing. The water rights we hold right now are all held for irrigation. So it would be necessary to get a water right on part of our storage changed from irrigation to some other purpose, in-stream flow enhancement, and work a deal. We could do that. I do believe under current statute, however, the actual physical, making it work... [LB1113]

SENATOR HAAR: Right, yeah. [LB1113]

RON WOLF: ...would probably be impossible. [LB1113]

SENATOR HAAR: That's a little scary because we have the water and other people in other states might really like it as well. [LB1113]

RON WOLF: There was a case...oh, wow...Sporhase case, I believe that was in the Upper Republican many years ago. So the state of Nebraska has originally lost that case but does have some controls on water being exported out of the state, Senator. I'm not familiar with most or all of them. [LB1113]

SENATOR HAAR: Okay. [LB1113]

RON WOLF: But like I said, I'd love to sell it to Denver. Our lakes are at about 2,200 feet above sea level. Denver is only 5,200 feet above sea level. And gravity has nothing to do with the flow of water. It will flow toward money. (Laughter) [LB1113]

SENATOR HAAR: I like that. [LB1113]

SENATOR CARLSON: Okay. Other questions? Seeing none, thank you, Ron. [LB1113]

RON WOLF: And thank you, folks, for your patience with me this year. I promise not to come back next week. [LB1113]

SENATOR CARLSON: All right. Thank you. [LB1113]

SENATOR HAAR: You sign that paper on the way out. [LB1113]

SENATOR CARLSON: (Exhibit 12) Any other opponents? And we do have a letter of opposition from Dennis Strauch from the North Platte Valley Water Association. Anyone in the neutral position? Welcome, Mike. [LB1113]

MIKE DELKA: Thank you. Good afternoon, Chairman, members of the committee. My name is Mike Delka, M-i-k-e D-e-l-k-a, and I'm testifying mainly in the neutral position just because my board hasn't had an opportunity of taking any action on this. And I only have a couple of concerns. One is the terminology of the owner of a water right. As in our district, we have landowners, most of the natural flow rights are held in the name of

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

Natural Resources Committee
February 27, 2014

the district. Most of the storage use rights are held in the name of the federal government. What constitutes the ownership? And actually, they say it's...the state is the...it's the state water and we have a right of use. So I'm not comfortable probably so much with that. Also the pooling as it is there because an irrigation district is not authorized to control the total acreage upon which the owner of the water right chooses to distribute it; so just some of the quirks. The recordkeeping, our district, that's not an issue. We basically meter and measure everything we do on a daily basis. But I do know that there are small districts that have limited staff, if a staff at all. And should that be a requirement, it would be a burden to them. The...another thing for our purposes beyond the pooling might be the use of no more than an allocated annual water volume. We catch our allocation as given to us by the federal government in January of every year, and that is a projection. It's not a hard number. So that we can plan on that as a minimum. But if there would be the blessing of a timely rain or two and possibly better inflows than projections, more water would be available and it wouldn't set the limit of the 36 inches per acre that the state has already a limit set. So the flexibility of...well, like this year we've been announced a half inch per acre. We won't start our system for that even though if a guy wanted to bring them all together, it just isn't feasible. We couldn't start our system for a half inch. Basically, they announced that projection based on each acre using one inch per acre within a seven-day period. And it'll take us three days to load the system. So a half inch isn't a feasible number for us. So at this point, we don't plan on operating this year. So for any individual user to demand that type of service, it just can't happen. So those are just some of the minor things that I've seen. I don't know that they can...I think they can be addressed. But I'll let it go with that. And I would answer any questions. [LB1113]

SENATOR CARLSON: Okay. Thank you, Mike. Questions of Mike? What percentage of your people in Bostwick are commingled? [LB1113]

MIKE DELKA: Probably a quarter to a third. [LB1113]

SENATOR CARLSON: Quarter to a third? [LB1113]

MIKE DELKA: I'd say probably around a third. [LB1113]

SENATOR CARLSON: Okay. And how many acres total do you cover? [LB1113]

MIKE DELKA: Twenty-two thousand four hundred and fifty-five. [LB1113]

SENATOR CARLSON: Okay. [LB1113]

MIKE DELKA: And that just changed because we have been subjected to adjudications originally. I think they applied for water rights for about 28,000 to 30,000. And periodically, adjudications have happened in the past. And when they did, normally we

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

Natural Resources Committee
February 27, 2014

lost acres. And prior to the last one, I think we lost 500 acres. [LB1113]

SENATOR CARLSON: Okay. On those 22,455 acres, what are the O&M charges? [LB1113]

MIKE DELKA: This kind of goes with both bills you guys have been talking about. We have a flat rate of \$22 an acre, and then \$3 an inch for every inch that is delivered. That's one of our motivations for having a daily accounting. [LB1113]

SENATOR CARLSON: Okay. All right. Any other questions? Thank you, Mike. Anyone else testifying in a neutral position? Okay. Seeing none, Senator Christensen. [LB1113]

SENATOR CHRISTENSEN: Well, so far, Senator Carlson, I think I've done good. I told you I wasn't going to keep you long. [LB1113]

SENATOR CARLSON: I know it. I'm watching you, though. (Laughter) [LB1113]

SENATOR CHRISTENSEN: Again, thank you for the opportunity. I understand a little bit of the concern that's come. I think I can...that could be easily dealt with. I'm not sure I agree with everything, but I can follow up with Brian on a couple things because they say they charge by the acre but you'd still charge by the acre...still out to be spread on additional acres. You know, whether it's on the volume of water or whether it's, you have a base of 78 acres. When they spread my ground, I still got a base of 78, but I can put it on 125. You know, so I still think they can do what the bill intends and still not change their billing practice. You still have your base acres that you're charging on, but you're allowing it to be spread in a smaller amount because...and then addressing the consumption part. If you've got 12 inches on 80 acres or you have 6 inches on 160 acres, same amount of water is being consumed. And like in my example, they're going to turn the well on and irrigate after that if they need more. And so I just don't see where the consumption part changes. And so like I said, I think it's something that can be worked around. Again, I wrote down as I started out with, you know, they contract 50 acres, spread it on the 100. I'm not sure of the conflict there. I understand when you get down to the Bureau exception. I didn't know there was. I'm trying to think of how many people would be in violation of that in my district. But I know they may have it in two different names, too, because they just went down, one guy counting quarters going, they're exceeding that. But I'll bet they have different names on it. One under the wife; one under the man, whichever the case, or a corporation. They can get around that. But anyway, I think there's many ways to handle this. And if you had to have an exclusion in there that says, we're prohibited by Bureau of Reclamation exclusions, that wouldn't be a hard thing to do in here so that you couldn't spread over your 960 acres. You know, I can see that we can handle the objections that have come forth, I think, with language tweaks and be able to handle this situation pretty well. So anyway, I'll close with that and take questions. [LB1113]

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

Natural Resources Committee
February 27, 2014

SENATOR CARLSON: Okay. Thank you. Questions? Senator Haar. [LB1113]

SENATOR HAAR: Senator Christensen, I ask you this in all honesty to find out your answer. Since you didn't prioritize these bills, did you not do that, I mean, because you didn't think they'd get out of committee or on the floor or...? [LB1113]

SENATOR CHRISTENSEN: No. Personally, I had made a commitment a year ago that if LB390 didn't get heard last year or through that I would prioritize that, never dreamt I'd have to honor that. [LB1113]

SENATOR HAAR: Um-hum. [LB1113]

SENATOR CHRISTENSEN: It'd just come down to honoring my word that I said I'd do that if I couldn't get it out the second year. So I just lived to my word and went on. [LB1113]

SENATOR HAAR: Okay. [LB1113]

SENATOR CHRISTENSEN: It's not that I didn't have a water bill I wanted to do or a tax spread. The opposite of this one I mentioned last time in here, trying to get the Revenue Committee and I think we've got an amendment to address everything to go to consent on that one to be able to take evaluation of surface water to surface water, groundwater to groundwater, limited wells to limited wells. I mentioned that in here before that I'm trying to work the property tax side to get it down to where it should be. So if we're going to pass the surface water through or limit them, then they can get a comparable to get their taxes down. Same way that I said I had this water bill that I thought was out already when I last told you, I apologized to you for, that this bill here would do the same thing, lower some...or the previous bill would lower some people's taxes by letting them, if they're only going to get 2 inches, or if, as Mike Delka said, if they'd have run and delivered a half inch, you'd have to think real hard as a farmer if you was only going to get a half inch to pay \$20 an acre...or I mean, sorry, \$10 an acre on an occupation tax. That's like being \$20 an inch, you know. So that situation, it helps address some of the inequities that we're trying to work through as a Legislature, and the NRD and surface guys in various districts where, especially the Republican right now where we have this compact that we're trying to hit and trying to somehow treat everybody equally. I brought these two bills trying to get them done, hoping to get them passed out either on consent calendar or attach them another bill with permission of the Legislature. [LB1113]

SENATOR CARLSON: Okay. Any other questions? I'm going to ask you the one that I was going to ask from your chart. [LB1113]

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

Natural Resources Committee
February 27, 2014

SENATOR CHRISTENSEN: Okay. [LB1113]

SENATOR CARLSON: Let's make an assumption here. The blue side is groundwater allocation. The green side is strictly surface water. So if you got on the green side, you got 4 inches of surface water allocation and on the green side you got 12 inches of groundwater, 4 and 12 is 16. You'd like to put 8 on each side with the pivot. [LB1113]

SENATOR CHRISTENSEN: Well if you had both of them, you'd have to work both directions. See, in my deal, I (inaudible) the groundwater only is one side, and then other side says, ground and surface water. [LB1113]

SENATOR CARLSON: Yeah. [LB1113]

SENATOR CHRISTENSEN: So there would be the 12 inches on the whole pivot... [LB1113]

SENATOR CARLSON: No, but I was asking...I was going to make it simple. [LB1113]

SENATOR CHRISTENSEN: Okay. [LB1113]

SENATOR CARLSON: Let's do the green side is surface water only. So if that's 4 and the other side is 12, 4 and 12 is 16, divided by 2 is 8. [LB1113]

SENATOR CHRISTENSEN: Yep, yes. [LB1113]

SENATOR CARLSON: You'd like to put 8 on each side with the pivot. [LB1113]

SENATOR CHRISTENSEN: Correct. [LB1113]

SENATOR CARLSON: Okay. Okay. Any other questions? Seeing none, thank you. [LB1113]

SENATOR CHRISTENSEN: Thank you, everybody. [LB1113]

SENATOR CARLSON: And with that, we close the hearing on LB1113. Thanks to all of you for coming. [LB1113]