

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

Natural Resources Committee
February 15, 2017

[LB218 LB488]

The Committee on Natural Resources met at 1:30 p.m. on Wednesday, February 15, 2017, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB218 and LB488. Senators present: Dan Hughes, Chairperson; Bruce Bostelman, Vice Chairperson; Joni Albrecht; Suzanne Geist; Rick Kolowski; John McCollister; Dan Quick; and Lynne Walz. Senators absent: None.

SENATOR HUGHES: Good afternoon, ladies and gentlemen. I believe we will call the hearing of the Natural Resources Committee to order. Welcome to the Natural Resources Committee. I am Senator Dan Hughes. I am from Venango, Nebraska. I represent the 44th Legislative District. I serve as Chair of this committee. The committee will take up the bills in the order posted. Our hearing today will permit public...will be your public part of the legislative process. This is your opportunity to express your position on proposed legislation before us today. The committee members may come and go during the hearing. This is just part of the process as we have bills to introduce in other committees. I ask that you abide by the following procedures to better facilitate today's proceedings. Please silence and turn off your phones. Please move forward to the front row of chairs if you wish to testify. That is the on-deck circle so we can get people in and out of the testimony chair as quickly as possible. I'm anticipating we will have a lot of input today. Introducers will make initial statements, followed by proponents, opponents, and neutral testimony. Closing remarks are reserved for the introducing senator only. If you are planning to testify, please pick up a green sign-in sheet that is on the table at the back of the room. Please fill out the green sign-in sheet before you testify. Please print. And it is important to complete the form in its entirety. When it is your turn to testify, give the sign-in sheet to the committee clerk or to a page. This will help us make a more accurate public record. If you do not wish to testify but you would like your name entered into the official record as being present at the hearing, there is a separate white sheet on the tables that you can sign in for that purpose. This will be part of the official record of the hearing as well. Written materials may be distributed to committee members as exhibits only while the testimony is being offered. If you have handouts, please make sure you have 12 copies and give them to the page to distribute to the committee. When you come up to testify, please speak clearly into the microphone, tell us your name, and please spell your first and last name to ensure we have an accurate record. If you do not do that, I will stop you and ask you to do that. We will be using the light system for all testifiers today. Can I see a show of hands of how many people would like to testify. Okay, we have quite a few so we will be using a three-minute light system. You will have three minutes to make your initial remarks to the committee. When you see the yellow light come on...when you see the yellow light come on, that means you have one minute remaining. The red light indicates that your time has ended and we would like you to wrap up your comments as quickly as possible. Questions from the committee may follow. No displays of support or opposition to a bill, vocal or

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

Natural Resources Committee
February 15, 2017

otherwise, is allowed at a public hearing. The committee members with us today will introduce themselves beginning on my left. [LB218]

SENATOR GEIST: Suzanne Geist, I am Legislative District 25 which is the east side of Lincoln and north to Waverly. [LB218]

SENATOR QUICK: Dan Quick, Grand Island and Hall County, District 35. [LB218]

SENATOR WALZ: Lynne Walz, District 15 which is all of Dodge County. [LB218]

SENATOR HUGHES: And on my far right. [LB218]

SENATOR ALBRECHT: Thank you. Good afternoon. I'm Joni Albrecht, senator from District 17. That's Dakota, Thurston, and Wayne Counties. Thought I was going to forget that. Sorry. Nice to have you here. [LB218]

SENATOR McCOLLISTER: John McCollister. I represent District 20 which is central Omaha. [LB218]

SENATOR BOSTELMAN: Bruce Bostelman, District 23, Sarpy...I mean, Saunders, Butler, and most of Colfax (laughter) Counties. [LB218]

SENATOR HUGHES: To my left is committee legal counsel, Laurie Lage, and to my far right is the committee clerk, Mandy Mizerski. Our pages for the committee today are Heather Bentley from Miller, Nebraska; she is a freshman at UNL studying agriculture and economics. And Lee-Ann Sims from Lincoln; she is sophomore at UNL studying political science and global studies. So with that, the first bill up is LB218, Senator Groene, welcome to the Natural Resources Committee. [LB218]

SENATOR GROENE: (Exhibits 1-4) Thank you, Chairman Hughes and members of the committee. In 1943, the state of Kansas, Colorado, Nebraska entered into an interstate compact addressing allowable surface water usage in the Republican River Basin as allocated between the three states. In 2005 and 2012, litigation ensued alleging overuse by Nebraska by Kansas that had to be addressed. In order to augment the water supply, the interlocal entity N-CORPE was formed by four NRDs. And in mid December 2012, N-CORPE purchased 19,514 acres in Lincoln County to create a Republican River augmentation project. That land is still owned by N-CORPE requiring management, infrastructure, and maintenance and keeps the land off the tax rolls. LB218 establishes procedures for acquiring or using land to pump groundwater for the

Natural Resources Committee
February 15, 2017

purposes of augmenting water supplies to comply with an interstate compact. Those procedures include publication by three weeks in a newspaper of general circulation in the effected area announcing a public hearing and invite public testimony regarding and planning pumping. And, two, adopt the resolution with the need, a governmental use, and the expected amount and duration of the pumping. That didn't happen in this case. There was no procedure. It was a panic. They just threw it together. The public was left in the dark that this was happening. After the public hearing, the entity created by the interlocal agreement may purchase the land directly impacted by such pumping for fair market value, install the necessary water wells, and pump according to current statutes, and upon commencement of such pumping have a public hearing every five years with prescribed notice and hear testimony to review the resolution. The review will include the entity's compliance, the continued need, any effect of pumping on an interest located within five miles of land used for pumping, the effect of pumping on surface water rights, the effect of pumping on groundwater resources, and increased and decreased in the water table in the area affected, the sustainability of groundwater pumping, the suspected continued amount and duration of groundwater pumping. Within 60 days after review, the hearing and interlocal entity will adopt the resolution about continued need, the government use, and expected amount of duration. After adopting the original resolution, the interlocal entity shall sell the land purchased by the entity to bona fide purchasers for fair market value without water allocations. It shall retain the irrigation water allocation and easements as necessary to service, maintain, or replace the water wells installed. A purchaser may install domestic or livestock water wells. The government entity shall apply the proceeds from the sale to: (i) any indebtedness incurred as a result of the purchase; (ii) To address any indebtedness incurred for the purchase and installation of water wells; and (iii) the remaining to be subdivided setting up the interlocal agreements, the subdivisions that set it up. The interlocal entity may not transfer the irrigation water allotments or sell the water wells except as provided in the bill. If the interlocal entity terminates the need for pumping the groundwater in the resolution, the allocation rights to use groundwater for irrigation shall revert to the owner of the land where the water wells were installed. When those applications...to use groundwater reverts to owner of the land where the water wells were installed. The interlocal entity may sell the water pumps and apparatuses for fair market value. The owner of the land has the rights of first refusal in purchasing the water pumps and apparatus. The bill also provides that the Department of Natural Resources may adopt and promulgate rules and regulations to carry out this section. What happened with N-CORPE was a brand new venture, never been done before. There was a project in west...Chase County by the Upper Republican NRD and there's one out in Colorado. Never before that I can find has man taken precious groundwater, mined it, and dumped it in a creek. But that's what we're doing. It needs oversight. This is new ground we are doing is mining this groundwater. Mining means take a natural resource and remove it from its natural location. Water in Nebraska is kept and used locally, groundwater, until this. So anyway, and that's what concerns my constituents. Nebraska Cooperative Republican Platte Enhancement Project, N-CORPE, has been a divisive issue in my district ever since the groundwater mining operation

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

Natural Resources Committee
February 15, 2017

was conceived in a panic. When reality set in with the then-pending Kansas lawsuit's success over Nebraska's noncompliance of Republican River Compact and the fast-approaching deadlines for the Platte River Recovery Implementation program, NRDs could no longer kick the can down the road. I will give you a little background. N-CORPE was hastily put together in 2012 to address the Kansas lawsuit's likely success, that Nebraska was not in compliance with the terms of the Republican River Compact. At the same time, it was known that chunk of land...irrigated land was going to be up for sale. On November 30, 2012, N-CORPE was deeded 19,514 acres from Lincoln Farms, Incorporated, a Delaware LLC for the price of \$83 million. On April 24, N-CORPE finalized the sale of 313 of those acres to Lowe Investment LLC, a Nebraska LLC, as dryland acres. N-CORPE retained the water rights. Remember these points when you hear testimony behind us. The proceeds were not used to pay off the indebtedness but instead has been used to fund the operational budget of N-CORPE the past four years, which disputes any claim that ownership of land in question must be maintained for collateral for bondholders. Exhibit one, which I gave you, is minutes from a July 15, 2015, meeting of N-CORPE. The legal counsel, Don Blankenau, described possible issues associated with selling N-CORPE. Land and holding easements for water rights or continuing to own the land. Blankenau said rules associated with bond issuance allow for land sale. You might hear different than that from some testimony. Go on. Due to loss of irrigation, property taxes lost to the local government entities went from \$463,205 in 2013 to \$196,006 in 2016. That's our county. The whole Republican River Basin, more importantly, the whole state of Nebraska profits from Lincoln County's efforts. We bailed the state of Nebraska out. about a tune of \$120 million and 20,000 acres out of production, Lincoln County. Keep that in mind when you hear testimony. NRDs originally promised to pay the property taxes, Exhibit 2, which shows you the change in property taxes once it went from irrigation to dryland, and they have. They've done it for three years, the past three years. They did for three years, but their legal counsel Don Blankenau...which I'm not criticizing, he's actually following the law...has since told them to cease doing so because our state constitution prohibits the levying of property taxes on public lands. And that's Exhibit 3, which is more minutes from where Mr. Blankenau made comments at the N-CORPE meeting. It is really foolish to think that you tax one person then turn around and pay taxes to somebody else. But they're taxing the farmers \$10 an acre in occupation tax and they turnaround and pay property taxes. The state of Colorado is a member of the Republican River Compact. This is all background information for you. The Republican River Water Conservation District is what they call their NRD. It's not an NRD. It's been put together by the state government--RRWCD. Purchased the irrigation water rights of 11,000 acres just over the border by Wray, Colorado, I think it's in Yuma County, 11,000 acres. The seller maintained the property rights of the land. RRWCD is using existing wells to augment the Republican River flows into Kansas--12,000 acre-feet last year. Colorado ownership of groundwater is similar to Nebraska where the state owns the groundwater, citizens...there they acquire rights; we have allocations to use, but they do not own the water. LB218's purpose is twofold. First, to set up accountability by requiring public hearings every five years to report on conditions surrounding

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

Natural Resources Committee
February 15, 2017

the project and to inform citizens of any future need for the project. I don't see anybody could be against accountability which there is none now. Second, to remove the taxpayers' operational cost of ownership of approximately \$2 million, Exhibit 4, of the associated land, but more importantly, put the land back on the tax rolls by returning it to private ownership. I want to get this straight. Oh, the budget of the N-CORPE, they have five employees. They have an office. It's \$2 million a year. Colorado is around \$2 million year. Colorado has one guy turning on the pumps and an office manager that does other work for the county. They don't own the land. They spend \$400,000 to fix fences, darn near \$1 million to plant grass seed...when it could've been owned by a private individual. There's absolutely no reason for government to own these 20,000 acres. And more importantly, put the land back on the tax rolls by returning it to private ownership. The state of Nebraska created this problem by entering into the compact. But we in North...in Lincoln County are paying the price. While the citizens of Upper, Middle, Lower Republican Natural Resource Districts along with the Twin Platte NRD created N-CORPE, the entire state and communities throughout the Republican River Basin profit from the N-CORPE project on the backs of my legislative district, Lincoln County. It is our citizens whose natural resource, groundwater, is being mined, lowering our water tables and causing farmers near the project concerned about their water levels dropping. It is our citizens who have lost the property tax dollars from productive farmland. I told you we lost back in 2012, the amount of property taxes was \$490,000. I had...make two points. In 2016, my county assessor said that would've brought in \$1.43 million in property taxes that we lost. That makes a point also how much property taxes have gone up for agriculture in four years, four to five years. We pay the bills. My ag producers, my ag, I lost \$20,000 of productive land where we do not sell the seed, we do not sell the fertilizer, we do not sell the crop insurance. But everybody in Republican River Valley in the state of Nebraska profits from our sacrifice. We're not attempting to stop the augmentation aspect of N-CORPE. We have to pay Kansas the water until we find a better answer, which I think my next bill is. We are attempting to put farmland back on the tax rolls and thus reducing the property tax burden for Lincoln County residents. Committee has received letters of support by...LB218 from our Lincoln County commissioners who are presently in dispute with N-CORPE over the property tax collections. They made a promise they were going to pay. They also promised the farmers they were only going to charge \$5 an acre occupation tax; it's \$10. They made a promise that they would only pump the same amount of water that was pumped before, which was 16,500 acre-feet. They have pumped enough water to cover 150-plus miles a foot deep in 3 years, all on the backs of Lincoln County. At the...who are now in...with N-CORPE over property tax collections at the Tax Equalization Review Committee. And you have a letter from Julie Stenger, our Lincoln County Assessor and from the Wallace Public School District who took a big hit on property taxes. You will hear testimony today from farmers, ranchers, and businessmen who are stewards of our natural resources in support of this legislation. They want their grandkids to irrigate. They want to support their schools with property taxes and they want everybody to do it. I hope they mention...I hope those also... (inaudible) legislation. You will also hear from those probably brought in to testify how great a

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

Natural Resources Committee
February 15, 2017

project this is. I hope they thank our taxpayers in Lincoln County because it's our burden. We're paying for the rest of them. You may also hear opposition from individuals and statewide organizations, Republican River community interests who profit from N-CORPE projects. Like I said, I hope they thank us because it's on our backs, Lincoln County. We don't mind it. But let us put that land back on the tax rolls would be a good start. Let's cut that budget of that...we don't need an administration, we don't need five employees. You know those pumps could be turned on from a remote location. You don't need anybody. They're electric pumps. I want to hear today the rationale why government needs to own 20,000 acres of farmland in my county. So thank you for your patience and now we'll listen to the testimony. Any questions? [LB218]

SENATOR HUGHES: Thank you, Senator Groene. Questions? Senator McCollister. [LB218]

SENATOR McCOLLISTER: Thank you for your testimony, Senator Groene. When you suggest putting that farmland back on the tax rolls, is that as irrigated ground or as dryland ground? [LB218]

SENATOR GROENE: Well, right now as pastureland, which the county assess it, it would still bring in \$196,000. A lot of...some of that land, it should be pasture, but some of it could be dryland. And once it would turn into dryland, that would probably double the value of it and bring in probably another 100,000 or so dollars. Remember, we lost \$1.4 million in property tax valuations. [LB218]

SENATOR McCOLLISTER: Thank you, Senator. Thank you, Mr. Chair. [LB218]

SENATOR HUGHES: Other questions? Senator Albrecht. [LB218]

SENATOR ALBRECHT: Thank you for being here for your testimony. Can you...do they have anything on that 19,000 right now, any kind of crop, or do they have...? [LB218]

SENATOR GROENE: They've spent hundreds of thousands putting new fence in, reseeding it to grass because it would blow sand and they needed grass. They brought a tractor out there and cut some trails. And you can go hiking if you want to. But that's all they do. They got five employees. [LB218]

SENATOR ALBRECHT: Okay. [LB218]

SENATOR GROENE: That I know of. Maybe they do something else. Any other questions? [LB218]

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

Natural Resources Committee
February 15, 2017

SENATOR HUGHES: I'm the Chairman. Any other questions for Senator Groene? [LB218]

SENATOR GROENE: I'm sorry. [LB218]

SENATOR HUGHES: Seeing none, thank you for your testimony. Will you stay to close?
[LB218]

SENATOR GROENE: Yeah. [LB218]

SENATOR HUGHES: Okay. Thank you. [LB218]

SENATOR GROENE: Be here all day. I checked out of Revenue. [LB218]

SENATOR HUGHES: Okay. Proponents for the bill, and I would ask again that if you wish to testify, please come to the front row so we can make this as orderly as possible. Welcome.
[LB218]

BOB PETERSON: Welcome. Good afternoon, thank you, ladies and gentlemen, for letting us exercise our right to be part of the government. We appreciate it. My name is Bob Peterson, B-o-b P-e-t-e-r-s-o-n, and I'm from North Platte, Nebraska. I was a former board member on the Twin Platte NRD when this purchase was in process. I was forced to resign. My wife had a heart attack. It goes God, family, and then everything else. But anyhow, the biggest thing that I see, the water farm...I'm going to get a little off base. I'll make it short. The Twin Platte NRD refuses to have meters on the pivots so that they can control the water usage. Middle Republican does a very good job. But so what you end up with is four NRDs that are overusing their water and this was a great escape for them. I found out that the purchase being pended in an executive session meeting. There was never a public meeting on the sale of this land. Anyhow, the biggest thing is, just like Senator Groene was saying, we have 19,000 acres of land that is suitable for range land and maybe a few areas for dryland farming. This has put a tremendous burden on the Wallace School District, as also for the businesses in Wallace and Wellfleet areas--fertilizer companies, fuel companies, and everything. We have this land sitting their idle, fences all over, they've seeded it, it's coming back not very well. Anytime you disturb sensitive land like sand hills they don't recover quickly. But there's a lot of cattle raisers and producers in the area that could use this land for grazing. It's a lot a large land but it would be something that would be on the tax roll and we would sustain it without having the government control of it. You still have control of the water as far as trying to save the water and meet allocation. But we can get the land back on the tax roll. That provides jobs. That provides more tax money, And as badly conceived as I think N-CORPE was, this would be some salvation to it and would help everybody in the community,

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

Natural Resources Committee
February 15, 2017

especially the taxpayers and the residents that live there. We desperately need this to keep the community vibrant--jobs, schools. I wouldn't want them to force the Wallace schools to be closed because there's no money to come in to keep them open. Then you put it even heavier burden. All of the parents in that area are going to be forced to run their children long distances to attend schools. And why would we want to have a fine city like Wallace, Nebraska, just go off the map, which it might very well do? I guess that's about as much as I wanted to express, but I thank you very much for the time. And I'm very much in favor of this. We need to restore private enterprise, not take it away. [LB218]

SENATOR HUGHES: Thank you, Mr. Peterson. Are there questions? Senator McCollister. [LB218]

SENATOR McCOLLISTER: Yeah, thank you, Mr. Chairman. Is grazing currently prohibited, Mr. Peterson? [LB218]

BOB PETERSON: Grazing? [LB218]

SENATOR McCOLLISTER: Grazing, yeah. [LB218]

BOB PETERSON: No, they're trying to...they've put it out for bids. But I don't know if anybody's really grazing now. They about have to give it away because the grass has not come back in a sustainable fashion right now. Possibly two more years or so, good moisture, and the seeding to get going. They had a lot of weeds in it. There's a tremendous amount of weeds. There's a couple of areas that are not too bad. But for the most part you could graze some cattle, not quite as many as it would sustain later on down the road when the land recovers. Then you have all the mixtures of the grasses growing well. [LB218]

SENATOR McCOLLISTER: Thank you for your testimony, Mr. Peterson. Thank you, Mr. Chairman. [LB218]

BOB PETERSON: Thank you. [LB218]

SENATOR HUGHES: Other questions. Seeing none, thank you, Mr. Peterson. Next proponent. [LB218]

ROBERT LUNDEEN: My name is Robert Lundeen, L-u-n-d-e-e-n. I come here today as a taxpayer resident of Lincoln County. I'm also the manager of a ethanol plant that purchases about 18 million bushels of corn, and a lot of that is coming from the area that was taken away by the

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

Natural Resources Committee
February 15, 2017

NRD. I am here also as the spokesperson for the Oppliger Farms who wanted to be here in person but had a personal funeral that he had to attend. And I represent a lot of farmers in the area that have asked me to come speak on their behalf. Olson (phonetic) Farms represented here by four generations of participants here, they have major investments in Lincoln County and the area, this NRD. Having said that, we've noticed a slight increase in bases that we pay for the corn. Naturally when you take this much out predominately corn production, the corn has got to come from somewhere so we're buying it from further out. And it's...I would...quantizing it would be somewhere, you know, close to 125,000-150,000 a year. As a Lincoln resident...Lincoln County resident, I'd say like Senator Groene said, that Lincoln County has really taken the blunt of sacrificing our revenue base for the sake of the whole state. That's totally unfair. Whether the settlement with Kansas was a necessity, we just accept it was and we support the agreement that was reached from it. It's just that we want that land back, put in the private hands, back on the tax base. And we're willing to sacrifice the water. And we know we probably won't get it back. Maybe someday we'll get it back, but right now we...we know there's mechanisms to do this because we notice...we know in our area where we built our plant. We bought the land with allocations. And then we had the allocations transferred to our entities and then sold the land back to private farmers that have it in dry farm now so it works. In fact, the NRDs' counsel was the one that set it up and made it work for us in (inaudible) which we appreciate. So we're not here trying to upset the settlement that was reached. We're just here trying to get the land back on private payroll and appreciate your support for that. [LB218]

SENATOR HUGHES: Okay. Thank you, Mr. Lundeen. Are there questions? Senator... [LB218]

ROBERT LUNDEEN: Senator. [LB218]

SENATOR HUGHES: Thank you, Mr. Lundeen. Next testifier. Next proponent. Don't be bashful. We don't bite hard. Welcome. [LB218]

DAN ESTERMANN: (Exhibit 5) Thank you. My name is Dan Estermann, D-a-n E-s-t-e-r-m-a-n-n. I would like to draw your attention to some of the specifics of this bill in Section 2(a), line 20 on page 2, it says that there should...that they should purchase the land directly impacted by such pumping for fair market value. I don't believe that N-CORPE should be able to purchase more land as they exhaust an ever-increasing diameter of the aquifer and I want to ask the question, do you really want N-CORPE to grow beyond the area of land that they have now? In Section 3(a), line 27 on page 2, doesn't it make sense that a provision for the hearing should clearly state that it does not preempt or revoke provisions for hearings by persons under any other statutes that currently exist? In Section (3)(a) on page 3, line 3 and 4 where it says a review shall include consideration of, and then under (iii) on line 10 of page 3, why should individuals impacted that meet those criteria have to wait up to five years for a hearing? Shouldn't there be

Natural Resources Committee
February 15, 2017

some mechanism for triggering a hearing as soon as the impacts occur? At Section (3)(b), page 3, line 22, that after the hearing described in subdivision (3)(a) of this section that the resolution setting forth whether there is a continued need for pumping be set to a popular vote of the people of the districts impacted. At Section 6, the last two lines of the bill where it says the Director of Natural Resources may adopt and promulgate rules and regulations to carry out this section, NDNR and the former Attorney General's Office were negligent in addressing the local grievances and burdens caused by this project. The project was forced down the throats of the NRDs under threat of limiting irrigation to three inches by NDNR and the Attorney General. And by NDNR's single access to the water model, they tell the NRDs when to pump and how much. The only control the NRDs have over this project is writing the checks for the cost. The Nebraska Department of Natural Resources and the former Nebraska Attorney General's failures to acknowledge or address local concerns and the predisposition of irrigated-rich NRD boards to protect irrigation without regard to collateral damage appear to need the mitigating reasoning that a popular vote of the people would provide. I look at N-CORPE a little differently than most. I see it as a government program to redistribute wealth as much as it is an augmentation project. This project, over its 25-28 year bond life will move close to \$200 million to \$300 million from southwest Nebraska to eastern interests. The occupation tax generates \$13 million annually across the four NRDs. A few of the financial benefactors of this program are, and these are only educated guesses because it is hard to get solid numbers, but Lincoln Farms, LLC, investors profited about \$31 million for their four-year investment in the land, bondholders will get about \$71 million in interest at 5 percent over 25 years, Ameritas, I believe, received \$1.7 million for underwriting the bonds, Pinnacle Bank got approximately \$3.1 million in interest for providing the \$76 million short-term financing, and I don't know what amount the Union Bank and Trust gets for holding funds, making payments, etcetera. [LB218]

SENATOR HUGHES: Mr. Estermann, your light is on, please. Could you wrap it up. [LB218]

DAN ESTERMANN: I have a little more. There are nearly as many employees of N-CORPE now as when the farm was producing agricultural products. I expect though the wages and benefits are higher. The farmers of southwest Nebraska have less money and less water than they did before this project. All of the occupation tax burden is borne by an irrigating taxpayer. However, the tax replications fall on taxpayers that didn't cause the water shortage and do not benefit from the project. It is a program to redirect water resources from Lincoln County to replace water used elsewhere across the four NRDs. I have suggested to the board of the Middle Republican NRD that they gave away the physical asset of water and paid to be part of the project, that the water itself should have been their contribution. [LB218]

SENATOR HUGHES: Mr. Estermann, in respect to the other people who wish to testify, would you please wrap it up. [LB218]

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

Natural Resources Committee
February 15, 2017

DAN ESTERMANN: Yes. I've come 250 miles on my own expense and I just have a little bit more that I'd like for you to hear. [LB218]

SENATOR HUGHES: We do have your testimony before us, is that correct? [LB218]

DAN ESTERMANN: I believe so, yes. [LB218]

SENATOR HUGHES: Okay. In respect to the other people who have a distance, make your final remarks, please. [LB218]

DAN ESTERMANN: Okay. Well, I thank the board here. And if we have time at the end may I finish? [LB218]

SENATOR HUGHES: We have your testimony. It will be entered in. [LB218]

DAN ESTERMANN: Okay. Thank you. [LB218]

SENATOR HUGHES: Are there questions for Mr. Estermann? Seeing none, thank you very much. We appreciate you coming. Additional proponents. Welcome. [LB218]

BRAD EDGERTON: (Exhibit 6) Good afternoon, Senator Hughes and members of the Natural Resources Committee. My name is Brad Edgerton spelled B-r-a-d E-d-g-e-r-t-o-n. I'm the manager of the Frenchman-Cambridge Irrigation District and I'm here to speak in favor of LB218. As background, I served 25 years for the Department of Natural Resources doing work in the Republican Basin, so I have a broad background of information about both groundwater and surface water in the Republican Basin. I want to thank Senator Groene in bringing this bill to provide some transparency with regards to pumping groundwater for an interstate compact. Let me give you some background about the Frenchman-Cambridge Irrigation District and how this bill would benefit the district. Frenchman-Cambridge Irrigation District was formed in the late 1940s under Nebraska law. FCID serves 45,000 acres in the heart of the Republican River Basin and holds many natural flow permits, the oldest dating back to 1890. The United States Bureau of Reclamation holds the storage and storage use permits on three reservoirs contracted to FCID--Trenton Dam, Red Willow Dam, and Medicine Creek Dam. The water stored in these reservoirs supplements FCID's natural flow permits. FCID water users are responsible for maintaining over 150 miles of canals and 110 miles of buried pipe laterals, all owned by the United States. FCID collects \$37 per acre from the farmer to maintain and operate these projects. In addition, the annual operation and maintenance of the canals, the water users have also paid the United States since 2001 over \$800,000 for maintenance on the three Federal Reservoirs.

Natural Resources Committee
February 15, 2017

These payments are made whether water is available from the reservoirs for irrigation or not. So when the state says that the water has to bypass the reservoirs to help comply with the interstate compact, we still write a check to the federal government for these repairs. The Republican River Basin is a project...in the Republican River Basin, there is a project called N-CORPE that would be affected by this bill. N-CORPE is a project encompassing 19,000 acres of farmland near Dickens, Nebraska, located at the headwaters of Medicine Creek and upstream of Medicine Creek Dam. In order to pay for N-CORPE, every farmer that irrigates has to pay \$10 per acre. It is \$10 per acre regardless if surface water allocation is 6 inches per acre or 13 inches per acre. Under the Republican River Compact agreement, Nebraska is entitled to 49 percent of the basin's water supply. But we are using much more than that. In 2016 Nebraska consumed over 60 percent of the basin's water supply--far in excess of the 49 percent the compact allows. In order to keep pumping groundwater at the current rate, we must either import water from the Platte River or mine groundwater to offset this excess depletion rate. N-CORPE was created to mitigate the excess rate of depletions. Simply put, Nebraska is pumping water out of the ground in order to solve our over pumping of groundwater. As a result, the aquifers and streams are drying up. The result is that surface water flows are decreased hurting irrigation districts, groundwater levels are declining, and still groundwater irrigators continue to irrigate at an unsustainable and unrealistic rate. The FCID supports LB218 for two reasons. This bill would require transparency on how N-CORPE is operated. Second, the bill would require that land used for this purpose be sold but the water retained. This is important to put the land back on the tax rolls, but also that the money from the land sale could be used to offset the cost of the irrigation occupation tax. In that case, there is no reason not...excuse me. You will hear that they can't sell the land. You will hear that the pumping that keeps Nebraska in compliance. And you will...and only the pumping...and they're only pumping what the crops consumed. If that's the case, there's no reason not to hold a hearing every five years to determine if the goals of the project are being met and if there's a negative effect on groundwater levels or if irrigators in the district are negatively impacted. [LB218]

SENATOR HUGHES: Mr. Edgerton, your light is on. Could you please wrap it up. [LB218]

BRAD EDGERTON: Okay. For this reason, FCID supports LB218. We would like to ensure that there is water in the future generations...water in the future for generations...excuse me...we'd like to ensure there is water for the future, for future generations to irrigate and produce crops to keep our communities viable. FCID needs your help in protecting our future. Thank you. [LB218]

SENATOR HUGHES: Thank you, Mr. Edgerton. Are there questions? Senator Bostelman. [LB218]

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

Natural Resources Committee
February 15, 2017

SENATOR BOSTELMAN: Thank you, Mr. Chairman. Mr. Edgerton, the first question I have for you with your history, on purchasing allocations, those mentioned before, could you explain that to me, do you know? Do you have any background on that you can give me? That we are talking about, I think Mr...was it Estermann or Lundeen was talking about, that there was water allocations purchased for the ethanol plant? (Inaudible) do you know anything about that? Am I correct with that? [LB218]

BRAD EDGERTON: Yeah, I guess... [LB218]

SENATOR BOSTELMAN: Do you know of any history of something...anything along those lines? [LB218]

BRAD EDGERTON: I don't. [LB218]

SENATOR BOSTELMAN: Okay that's fine. On your maps, could you explain these, your attachments, could you explain these to me just a little bit. [LB218]

BRAD EDGERTON: Yeah, there's a couple maps here created by the University of Nebraska. One shows the groundwater declines from predevelopment to the spring of 2015 with a large area above our three reservoirs that are being impacted by huge groundwater declines, which is also affecting the streamflow. The second map is from the spring of 2014 to the spring of 2015 and this shows groundwater level changes. And if you look in southern Lincoln County you can see exactly where N-CORPE is and what the pumping effects are having on groundwater levels in that area. There used to be a huge amount of water imported into this area through NPPD's canal. But with the advent of center pivots they no longer bring the same amount of water that they used to when they were flood irrigating. So those imported waters are actually...and those mound waters are actually declining. So we are concerned because this is the headwaters of a reservoir that has always filled in the Republican Basin. So we'd like to watch this very close to make sure that, you know, we're not negatively impacted down the road and would like to do something before it's too late to do that. [LB218]

SENATOR BOSTELMAN: Could you...sorry, one more and then... [LB218]

BRAD EDGERTON: Sure. [LB218]

SENATOR BOSTELMAN: You said there is water brought into for the gravity-fed irrigators. I'm not sure I understand what you're talking about there. The process I understand, but I mean, they

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

Natural Resources Committee
February 15, 2017

have the capability to bring more water into the area from where? And then...or is it from the existing dams we're talking about? [LB218]

BRAD EDGERTON: I think you're talking about the imported water from the Platte River, is that...? [LB218]

SENATOR BOSTELMAN: Yeah, right. [LB218]

BRAD EDGERTON: Right. In the groundwater model there's actually a calculation that's done and we actually get between 10,000 and 20,000 acre-feet of credit for water imported from the Platte River as an accretion to the stream that is calculated by the groundwater model. [LB218]

SENATOR BOSTELMAN: Was there a greater amount prior and there's less now, do I understand that correct? [LB218]

BRAD EDGERTON: It's...you know, Tri-Basin NRD is responsible for maintaining that mound credit that we get. But you know, 10,000 acre-feet of that mound credit arrives in Medicine Creek. So we're concerned that N-CORPE is actually intercepting some of that mound credit that we get. So we're very concerned about the inflows in the Medicine Creek going forward. [LB218]

SENATOR BOSTELMAN: Thank you very much. [LB218]

BRAD EDGERTON: Sure. [LB218]

SENATOR HUGHES: Okay, Senator McCollister, you have a question. [LB218]

SENATOR MCCOLLISTER: Thank you, Mr. Chairman. Our first testifier, Mr. Peterson, indicated that the Twin Platte NRD doesn't have meters on their irrigation water customers. I would presume that you do. [LB218]

BRAD EDGERTON: We do. Frenchman-Cambridge Irrigation District, we meter all the water that we deliver from the canal, so. We have good records and we're responsible for turning this data over to the Bureau of Reclamation which in turn is provided to the compact administration annually. [LB218]

SENATOR MCCOLLISTER: Thank you, Mr. Edgerton. [LB218]

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

Natural Resources Committee
February 15, 2017

BRAD EDGERTON: You bet. [LB218]

SENATOR HUGHES: Other questions. Senator Quick. [LB218]

SENATOR QUICK: Could you explain...I know you talked about maybe having a hearing or doing a hearing would provide transparency. Could you explain a little bit more about how you see that...how that would work? [LB218]

BRAD EDGERTON: Well, I think transparency would give us a better understanding of what their intent is with N-CORPE, how much water do they intend to pump. We were told when they built N-CORPE that they would only pump the water that the land had originally consumed. And since that, we have pumped it four years now and we have pumped enough water to fill the third largest reservoir in Nebraska. So that's a huge amount of water to pump for 15 acres....or 15,000 acres of allocation. So what they don't tell you is that might be over a 25-year period is where they're figuring that allocation. [LB218]

SENATOR QUICK: And who would you see doing the hearing? I mean who...? [LB218]

BRAD EDGERTON: I would see the natural resource districts and the Department of Natural Resources providing information at that hearing and also accepting testimony from the public that is being benefited from it and also being harmed by it if that potential is out there, so. [LB218]

SENATOR QUICK: Thank you and thank you for your testimony. Thank you, Senator. [LB218]

SENATOR HUGHES: Okay. Other questions for Mr. Edgerton? Seeing none, thank you very much. [LB218]

BRAD EDGERTON: Thank you, Senator. [LB218]

SENATOR HUGHES: Next proponent. Welcome. [LB218]

JAY SCHILLING: Thank you. I'm Jay Schilling, J-a-y S-c-h-i-l-l-i-n-g. I'm from McCook. I'm a current director of the Middle Republican NRD and I'm here testifying on my own behalf in support of LB218. I realize there are some small modifications that can be made and legalities that need to be worked through, but the general concept is needed and would be beneficial. With projects of this scope, it is imperative to have a hearing process before making the final decision.

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

Natural Resources Committee
February 15, 2017

I'm aware that negotiations for land can be time sensitive. But when taxpayer money is at stake, everyone should be allowed to point out the pros and cons. The N-CORPE project was rushed because of compliance obligations. With greater awareness of our water issues in our state, along with the advancements in predicting requirements, we should...this should not be an issue in the future. If there is such urgency as this again, the NRDs and DNR have failed to do their job. I feel the follow-up hearings at five-year intervals would be beneficial in allowing a broader group of participating members, state agencies, and the public to be informed of the benefits and the detrimental effects. This review process would be an enticement to develop and maintain a more sophisticated operating plan for these projects. For example, as in the case of N-CORPE, the last operating plan that I am aware of stated: to pump water as needed for compliance. This is far too general and needs to include specifics such as limits on pumping amounts and water level monitoring. Now there is current modeling going on by N-CORPE, but I feel that it needs to be done preferably before a project like this was started, if not at least within the first year. I truly believe that reselling the land, as in projects such as N-CORPE is needed. I realize there are legal challenges with separating the water from the land, but I'm sure there could be language drafted that would make this exclusive to projects as defined in this bill. The land value will be much less as it is resold, but that is to be expected when the resource of irrigation water is removed from the land. The sale of the land would provide debt reduction and reduce liability. It would also put the land in production for economic activity and most importantly would reduce operating expenses. In addition to the original expense of the pumping project and the cost of pumping water, there are operational expenses of maintaining the land. The Middle Republican NRD cannot meet this additional financial obligation in future years, based on budget projections provided by N-CORPE management. In closing, I ask you to consider the concept of LB218. To be honest, I hope there will be no future projects to which this bill would apply. With the technologies and resources we have at our disposal, there should be productive and economically feasible solutions that would not require exporting our precious groundwater out of state. And I thank you, Senator Hughes and members of the committee. [LB218]

SENATOR HUGHES: Thank you, Mr. Schilling. Are there questions? Senator Bostelman. [LB218]

SENATOR BOSTELMAN: Thank you, Mr. Chairman. Mr. Schilling, thank you for coming and testifying today. [LB218]

JAY SCHILLING: Thank you. [LB218]

SENATOR BOSTELMAN: I'll ask you the same question I asked the other gentleman on the purchasing allocations. Do you have any background information for me on that? Could you explain that if that's possible or not, how that's done? [LB218]

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

Natural Resources Committee
February 15, 2017

JAY SCHILLING: I know...I think he was talking to about...are you referring to the gentleman that was... [LB218]

SENATOR BOSTELMAN: Ethanol. [LB218]

JAY SCHILLING: ...with the ethanol plant. [LB218]

SENATOR BOSTELMAN: Yes. [LB218]

JAY SCHILLING: I know the ethanol plant in Cambridge had to purchase some land and then use that water right to offset their water use. And then the land was dryland. [LB218]

SENATOR BOSTELMAN: And it says, does the ethanol plant still own that land or they turn...do you know? [LB218]

JAY SCHILLING: As far as...I really don't know that. I can't answer that question. [LB218]

SENATOR BOSTELMAN: Okay. Thank you. [LB218]

SENATOR HUGHES: Other questions? Seeing none, thank you, Mr. Schilling. [LB218]

JAY SCHILLING: Thank you. [LB218]

SENATOR HUGHES: (Exhibits 8-10) Next proponent. Okay. Then we will move to opponents...excuse me, we have letters to be submitted, proponents from the Wallace School District; Julie Stenger; and Joseph Hewgley. Welcome. [LB218]

JASPER FANNING: (Exhibit 11) Thank you, Chairman Hughes and members of the committee. My name is Dr. Jasper Fanning, J-a-s-p-e-r F-a-n-n-i-n-g. I'm testifying on behalf of the Nebraska Association of Resources Districts and I'm the general manager of the Upper Republican Natural Resources District. I'll cover a little bit of the background of N-CORPE as I'm most familiar with it. I will also have testifying today our legal counsel for N-CORPE, Mr. Don Blankenau, and Mr. Joel Vanderveen who is N-CORPE's bond counsel that we used when we were financing the project to address some issues related to financing. N-CORPE is Nebraska's primary tool chosen to comply with the Republican River Compact and to assist the Twin Platte's compliance with their IMP in the Platte Cooperative agreement chosen and implemented by 44 elected officials of four NRDs in southwest Nebraska in cooperation in

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

Natural Resources Committee
February 15, 2017

collaboration with the Nebraska Department of Natural Resources as the preferred alternative to retiring far greater amounts of irrigation to meet the same requirements met by N-CORPE through the project's operation with a fraction of the tax and economic impact of retiring irrigation through voluntary programs or via regulation. The project is a very key component of the agreements with Kansas on the administration of the compact between the states. The four NRDs in the interlocal agency created to purchase the land and operate the project held every hearing, noticed every meeting, etcetera, as required by law so that hearings and notices are not opposed. But I'm also not aware of any real issue that needs addressed by additional hearings or notices. Philosophically, selling the land is not the issue or the concern, but it's the consequences and risks associated with selling the land that are the problem. The N-CORPE board has discussed selling the land and the potential consequences and impacts and the legal hurdles. The issue is that Nebraska water law is founded in common law that ties the volume of water that can be withdrawn to the amount of land that you own. There is no water right in Nebraska. There is no allocation that's transferable and separable from the land that guarantees the ability to pump a volume of water in excess of a volume that can be reasonably used on the amount of land that you own. Separating the land and water creates a risk that an adjoining landowner could seek an injunction to limit the volume to the land area owned. Further, the land is collateral for our bonds and mortgages and the asset that allows the water to have value if we would ever utilize another alternative. Nebraska's primary tool for compliance with the compact and agreement between Kansas, Colorado, Nebraska, you know, I don't think we want to invoke legislation that would mess with that right now, especially given our good working relationship. A lot has happened over the last few years with Kansas. We started off in litigation where they wanted to shut down 500,000 acres and wanted \$80 million in cash and a special water master to tell us how to run things here in Nebraska. We successfully defended that. On the heels of that, they wanted to make life still difficult for us and were a little sore that they only got about \$5.5 million and they wanted to force us to still shut off about a 500,000 acres to comply. They didn't want to give us credit for the augmentation water that we provide even though it was providing more water. More reasonable folks from Kansas came to the table and worked with our leaders here in Nebraska and figured out a win-win solution that made it so that Kansas could have the water when they could actually use it. And we here in Nebraska are now providing less water than what they would be strictly entitled to under the compact because it's better for both states. I'll conclude my testimony since the red light is on and take any questions. [LB218]

SENATOR HUGHES: Thank you, Mr. Fanning. Are there questions? Senator Albrecht.
[LB218]

SENATOR ALBRECHT: Thank you, Chairman. So this...I just want to get this straight, this N-CORPE actually paid land taxes to Lincoln County for the first five years, is that right? And now they're saying that they have to cease? [LB218]

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

Natural Resources Committee
February 15, 2017

JASPER FANNING: The issue on the land taxes is when we purchase a project, we understand the contention over this amount of land going into public ownership. And the constitution prohibits us from paying property taxes we found out. We said that we understood that that was an issue, whether we could pay property taxes or find some other way to mitigate that. What occurred then was the county assessor sent us a letter that she had determined that our ownership of the property was not for a public purpose, which by statute means that we own the property not for an authorized purpose that we're statutorily authorized to carry out. And so we contested that determination that we held this land for a not-authorized purpose because obviously this is a purpose that we're authorizing and the NRDs are created to carry out. So that issue is before TERC because we're contesting her determination that our ownership of the land is not for a public purpose. [LB218]

SENATOR ALBRECHT: So do you feel you should be paying them taxes or not? [LB218]

JASPER FANNING: Well, what we've figured out through our legal counsel is that it's unconstitutional or illegal for us to pay them. [LB218]

SENATOR ALBRECHT: But you have been for five years? [LB218]

JASPER FANNING: But we are required to pay them. They may be returned to us if TERC and the courts rule that we are correct on the constitutionality issue. They would keep the taxes. And if the court ruled that we should be taxed on this land, then we would be able to continue paying those. [LB218]

SENATOR ALBRECHT: Do you think N-CORPE put undue burden on Lincoln County, (inaudible)? [LB218]

JASPER FANNING: Well, I don't agree with the fact that we put undue burden on anyone. People really...and that's one of the issues in the Republican Basin water world, why does...they have the wrong baseline. They assume that they can continue doing and paying what they have historically been able to. That's their reference as a baseline. So now we're a tax burden. The reality was our other option was to shut off 60 percent of the irrigation in the Republican Basin. On the Platte side, they're not a lot different than that, maybe half of it. So these people who claim that they're now paying more taxes because of this coming off the tax rolls, what they're failing to realize is that they would only have about half their irrigated farm left to move forward into the future without a project like this or the projects that we've implemented. [LB218]

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

Natural Resources Committee
February 15, 2017

SENATOR ALBRECHT: But I guess at the same time what I'm hearing here, and we don't irrigate in my area of the state, but it's like Lincoln County is taking it for the team, for the whole state. So with that, the reason I'm asking you if you don't feel that it's necessary to...or the state, somebody has to have an obligation to these people because they have necessities to meet just as well, whether it's their schools, their roads and bridges. I don't believe that we as a state should just come in, take ground, and walk away and let them worry about it. We do need to be working through this with the communities that are burdened with this because that water is coming from somewhere and it is a commodity and it is something that we have to do as a state. But to me when people drive as far as they have to talk to us about this, I want to find a solution. So those are the reasons I'm asking you those questions. [LB218]

JASPER FANNING: Thank you, Senator. And absolutely, I don't disagree that there's a tax shift amongst the area that benefits from the project versus the area the project is located and that there may be ways to deal with that. Federal projects, I believe there are some state funds that are set up known to deal with federal projects or state projects that can be sort of an in lieu of way of handling them, not like in lieu of tax payments, but there's another fund that could be utilized at the state level, something like that, an alternative that we could spend the resources pursuing if we weren't spending all of our resources fighting ridiculous claims that this isn't for a public purpose. So I do think that there are other alternatives to that. But as an economist, it's not a whole lot different than...you know, what the real issue is all the tax boundaries...taxing entities' boundaries don't line up exactly the same, so we have NRDs that cover three counties. It's not much different than me paying taxes to Mid-Plains Community College and North Platte being the beneficiary of the economic development around the main campus. People from all over southwest Nebraska pay property taxes to support that and North Platte gets the benefit of that. I'm not suggesting that it's a wash, but this isn't the only instance of this issue. [LB218]

SENATOR ALBRECHT: But I guess what I'm hearing is when an ethanol plant no longer has those same resources--they can't sell seed, they can't sell fertilizer, they can't sell whatever they are to keep their economy going. So I feel like, you know, the state of Nebraska needed to do this for Kansas and Colorado, but it could have been in somebody else's areas too. So we need to work through this to make it what it needs to be for everyone involved. [LB218]

JASPER FANNING: With that, I'd certainly like to make sure the record does include the state of Nebraska has contributed several million dollars through the NRDs to help pay for this project. We don't want to insinuate that the state hasn't provided any funds for this. [LB218]

SENATOR HUGHES: Okay. Senator McCollister. [LB218]

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

Natural Resources Committee
February 15, 2017

SENATOR McCOLLISTER: Thank you, Mr. Chairman. Where is the Twin Platte NRD located in relation to the N-CORPE project? [LB218]

JASPER FANNING: The southern boundary of the Twin Platte project comes about a mile into the N-CORPE property. [LB218]

SENATOR McCOLLISTER: Does the fact that they don't meter aggravate the problem that we're dealing with here? [LB218]

JASPER FANNING: Not at all. It's not that they don't...there are other means of...you know, a meter gives you a measurement or the best estimate of how much water was pumped. They don't meter it but they use other technologies to estimate the amount of water consumed by crops in their districts. And that's done throughout the entire Platte Basin. Metering, you know, this sounds a little crazy, our district has had a metering program for 40-some years and we live and die by it. But it's not the only way of dealing with that issue of estimating water use in the business, so. [LB218]

SENATOR McCOLLISTER: Is metering the most accurate? [LB218]

JASPER FANNING: Metering is the most accurate determining the amount of water volume pumped, but it's not really any better when it comes to one of the things that matters which is what the historical consumptive use of the crop is. [LB218]

SENATOR McCOLLISTER: One of the big issues is the use of the ground. Would there be a way that you could lease out the ground to the original owners for use in grazing or dryland farming? [LB218]

JASPER FANNING: The original owners that we purchased the property from was a hedge fund out of Greenwich, Connecticut, and I don't think they know anything about cows or Sandhills and have any interest in pursuing that endeavor. But we are actually already in the past as some opportunities have come up where we have some grasses that are getting established, have leased out small parcels. That's expanding this next year. I think they just took bids. That's not something I deal with. But we're in the process to where, as the grass is getting more established, we're going through a process of leasing that out to private individuals to graze to control weeds, help the grass get established, and turn it back into, you know, really a working range land where it's being grazed. [LB218]

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

Natural Resources Committee
February 15, 2017

SENATOR McCOLLISTER: Do you envision the same kind of arrangement working for dryland farming? [LB218]

JASPER FANNING: There is not much property out of those 19,500 acres that I would imagine...I'm not going to say there's not anything that couldn't be dryland farmed. I'm just saying as a farmer myself, I wouldn't want to farm any of it dryland. [LB218]

SENATOR McCOLLISTER: Yeah. Thank you, Doctor. Thank you, Mr. Chairman. [LB218]

SENATOR HUGHES: Senator Bostelman. [LB218]

SENATOR BOSTELMAN: Thank you, Mr. Chairman. Mr. Fanning, is there a different way to, I don't know, say, own or manage this property? Could it be put into like a trust or something where we could do something with it and still have the allocations there but then we could then lease out the ground to be used and the taxes could be potentially used off of that ground and to the school districts wherever it needs? Was that thought of? Is that potential or not? [LB218]

JASPER FANNING: If it was thought of, that wasn't one of the thoughts that I asked any of our counsel to consider. So that may be something worth exploring. But that's not a whole lot different than some of the things we were talking about at the time. [LB218]

SENATOR BOSTELMAN: Okay. Thank you. [LB218]

SENATOR HUGHES: Other questions? Just a couple. Can you expand a little bit on the separating of the water from the land and how the state of Nebraska owns the water, what would happen there if we were to do that, or how would that work? [LB218]

JASPER FANNING: There...you know, I spoke about the common law and Don Blankenau can follow up on this more precisely when he testifies if I don't fully answer the question. In Olson v. City of Wahoo basically a landowner challenged their well--you know, owning a postage stamp-size piece of ground and then pumping a large volume of water. And the courts ruled and said you can't pump more water than what you can reasonably apply to the land that you control. And you know, that's a very reasonable restriction. And across Nebraska, quite honestly, there's...and in our district as well there are a lot of municipalities that go out and buy a half an acre or one acre and put a well down and have a well field. And I don't know that it's ever been challenged in Nebraska. But those...if a neighbor ever said, hey, my well is not pumping quite as much water as it used to and it's because you're pumping a whole bunch of water out there, they could walk into court and seek an injunction to reduce the amount of water that those cities could pump

Natural Resources Committee
February 15, 2017

from their well field. They obviously take that risk, you know, versus the cost of owning additional land. But they are taking a risk. In our case, I certainly...when we looked at this, the risk of someone being able to come in and say, hey, you don't own enough land to pump the water that you need pump to Kansas is a risk that we just simply can't afford to take, you know, as we investigated that. [LB218]

SENATOR HUGHES: Okay. One last question, the concern of the diminishment of a tax base, and particularly the school districts where they are the largest tax users, counties and community colleges, have there been other opportunities that have come up since N-CORPE has been in place that would have mitigated that, that tax base at all? [LB218]

JASPER FANNING: Certainly. We've instructed our manager of the project to engage and he was working with some of NPPD's economic development staff and some folks in Lincoln County and North Platte that were working to try and bring some other entities in. There are entities out there that are like in egg production and that sort of thing and some production facilities where they need their facilities to be a couple of miles or more away from any other house. And it's kind of hard to find a site that you're more than two miles away from any other house. So we were trying to work with some of those entities. It's my understanding they met with Wallace. One of the most impacted school districts is the Wallace School District. The city of Wallace and some folks have maybe gotten together ahead of time because they were going to need to do a skip annexation to build an egg facility out there and help get some of the tax benefits that they would need to bring that in and replace a significant portion of the value that was no longer on the tax rolls there if we sold them a small parcel of property. And my understanding is that people in Wallace said that...came out and said they didn't want that kind of economic development occurring in that area and weren't interested in doing a skip annexation, as I understand it. [LB218]

SENATOR HUGHES: Okay. [LB218]

JASPER FANNING: We're also working and continuing to work with a couple of wind energy development folks just exploring opportunities. It's a large block of land that's in an area...we met Kent Miller, the manager of Twin Platte NRD and I met with NPPD. They said at that time it was one of the top ten wind development sites in Nebraska, what we had purchased. Whether those opportunities would ever go anywhere or be acceptable, I don't know. But that's certainly something that would put more on the tax rolls than what's been taken off. [LB218]

SENATOR HUGHES: Okay. Thank you. Any additional questions? Senator McCollister. [LB218]

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

Natural Resources Committee
February 15, 2017

SENATOR McCOLLISTER: Yeah, thank you, Mr. Chairman. Dr. Fanning, Senator Groene brought up some of the operating costs of the project. Can you answer that or someone else that may be following answer some of those issues that he raised? [LB218]

JASPER FANNING: I'd be happy to answer some of those issues. When we develop a budget here in the first few years of getting going, we're trying to turn this from an irrigated farm back into range land. They didn't have a lot of usable working fences dividing this up into manageable pasture sections. There was a lot of fencing with neighbors that wasn't up to snuff. So yeah, we did budget quite a little bit for fixing up the fences and that sort of thing. This was a large commercial farm. We're natural resources districts. So there were some environmental things out there that maybe were acceptable on a commercial farm that aren't acceptable to us, our directors wanted some of that stuff cleaned up. So we've spent quite a little bit of resources cleaning up the place. There were some errors in information that was previously provided. We don't have five full-time employees. We have three full-time employees and two part-time employees. You can start wells remotely. It's a little bit easier to do if you're in an area where cell phones work so we do have to have people driving around and checking on wells and when you have 30 wells trying to keep running and there's a lot of creek crossings downstream. On landowners we realize that we don't want this project to be a burden to somebody. They had field and farm crossings. We've replaced those with structures that are more able to handle the continuous flow that's going down the creek when we're operating. If those wash out, we have the equipment and personnel to replace those if a storm event would take one of those out. There's some of those things that add to that budget. Now the budget though is kind of a worst-case scenario and the budget also...pardon me, Senator Groene wasn't real explicit on all the issues that there are in the budget and why it's so big. But one other thing is the N-CORPE budget, the fiscal year covers two different years in which we might have to deliver water to Kansas. And so if we had a large volume of water to deliver, we might get a \$1 million electric bill or \$2 million or \$3 million. So yeah, we need to have money budgeted to deal with worst-case scenario because that's what the project is designed and intended to cover is worst-case scenario. [LB218]

SENATOR McCOLLISTER: Thank you, Mr. Chairman. [LB218]

SENATOR HUGHES: Okay. Any additional questions? Seeing none, thank you, Mr. Fanning, for coming. [LB218]

JASPER FANNING: Okay. Thank you. [LB218]

SENATOR HUGHES: Next opponent. Welcome. [LB218]

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

Natural Resources Committee
February 15, 2017

DON BLANKENAU: (Exhibit 12) Good afternoon, Mr. Chairman, members of the committee. My name is Don Blankenau; my name is spelled D-o-n B-l-a-n-k-e-n-a-u. Since I haven't met many of the members of this committee, in the way of introduction I'm a local Lincoln lawyer. I graduated from UNL with a degree in water resources management. From 1991 to 1999 I served as the legal counsel for what was then the Department of Water Resources, now Department of Natural Resources. And since 1999 I've been in private practice where I've represented a variety of clients in water matters across 11 different states. I'm here today on behalf of N-CORPE. I think it's important for this committee to understand that the concept behind LB218 is really nothing new. Since 1933 when the Nebraska Supreme Court created the common law which tied land ownership to the ability to access groundwater, this body has from time to time looked at ways to modify that common law. And in fact it's done so in a variety of ways over the years. But as Dr. Fanning pointed out, that common law is essential this, that the amount of groundwater you can access is directly dependent upon how much you can put to beneficial use on the surface. And what that ultimately means is the more land you own, the more water you can withdraw and put to use. And that's important for a project like N-CORPE which needs to access large volumes of water to protect not only irrigators in the Republican Basin and Platte Basins, but Nebraska taxpayers generally. It insulates the state taxpayers from potential liability created by violations of a compact. Now the reason the Legislature has never fully abrogated that common law principle is because it opens up a Pandora's box of complicated and interwoven legal issues. And just a few of those are how are creditors who made loans based on the total value of property, including the ability to access groundwater, to be treated? Could they object to the sale of land? In what form would they object? Could they take a security interest in the water only? And if so, how would that security interest be valued and documented? Perhaps the more fundamental issue to both augmentation projects and municipal suppliers would be if the amount of water that can be withdrawn is no longer a function of the amount of land owned, how is that water provider to establish how much water they can in fact withdraw and use? It opens the door to questions such as, could city of Denver purchase a tract land of Nebraska without having to own a large amount of land and transport that water to augment its supplies in Denver? Would there be a whole new permitting process that would be required? These are just a handful of the issues that are raised when attempting to untie this Gordian Knot. And I would suggest that while there are ways to do this, I think, it really would be more strategic on behalf of this committee and the Legislature to enlist the aid of a wide variety of stakeholders including municipal, industrial, ag users, and also lending institutions and the university itself. And again, that would be done to structure this legislation so that it wouldn't open up a whole Pandora's box of difficult issues. Thank you. [LB218]

SENATOR HUGHES: Okay. Thank you, Mr. Blankenau. Are there questions? Okay. I've got one. In Senator Groene's opening remarks he indicated that the N-CORPE project had sold off some property and retained the water rights, is that accurate? [LB218]

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

Natural Resources Committee
February 15, 2017

DON BLANKENAU: I don't believe that is. I think...and I'd have to go back and look, and I apologize, but I think what actually occurred there was that it placed a restriction on the purchaser's ability to access that groundwater. N-CORPE didn't reserve to itself the right to pump that amount of water. What it did was it prevented that individual from increasing consumptive uses in that basin. So in other words, what they did in selling the land they didn't want the water use to increase to the further detriment of the area. So they simply placed a restriction as a condition of the sale of that land on the subsequent landowner. [LB218]

SENATOR HUGHES: So they said we'll sell you this land but you can't pump water from it, is that...? [LB218]

DON BLANKENAU: Effectively, correct, yes. And by selling that land, it didn't reserve to itself that quantity of water to pump. It simply prevented that quantity of water from being further consumed. [LB218]

SENATOR HUGHES: Okay. So being a water attorney, can you explain, like Mr. Lundeen, where they bought water from land then converted it to the ethanol plant? How does...? [LB218]

DON BLANKENAU: I can, Senator. [LB218]

SENATOR HUGHES: How is that different? [LB218]

DON BLANKENAU: Yeah, that was really an offset. So in the Republican River Basin there's essentially a requirement for hydrologic neutrality. That is, if you wish to develop a new use, you can certainly do that but you have to find someone who's willing to give up their existing use so that the impact to streamflow is neutral. So in a case of Mr. Lundeen with his ethanol facility, to increase water use they had to find some existing irrigator who wanted to part with their ability to irrigate to offset that new use. Now by contrast, that irrigator, because that right to access the groundwater hasn't been severed, can go out and find some other irrigator who's willing to sell him or her that same volume of right to use. So they could essentially leapfrog and get back to it. But by selling the land they didn't permanently sever that ability to access the groundwater. [LB218]

SENATOR HUGHES: Okay. [LB218]

DON BLANKENAU: And that was part of the partial abrogation of the common law that I referenced earlier that the Legislature did, in this case, through LB962 back in 2004. [LB218]

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

Natural Resources Committee
February 15, 2017

SENATOR HUGHES: Okay. Thank you. Other questions? Senator Geist. [LB218]

SENATOR GEIST: Just in simple terms, are you saying that what LB218 wants to do is open that Pandora's box? [LB218]

DON BLANKENAU: It would do so if it passed in this form, yes. I believe it would. [LB218]

SENATOR GEIST: Okay. Thank you. [LB218]

SENATOR HUGHES: Senator McCollister. [LB218]

SENATOR McCOLLISTER: Thank you, Mr. Chairman. In Nebraska law we recognize the relationship between groundwater and surface water, do we not? [LB218]

DON BLANKENAU: We do. [LB218]

SENATOR McCOLLISTER: Now the owner of that property, as you mentioned, has as a part of his ownership owns the groundwater, correct? [LB218]

DON BLANKENAU: Doesn't own the molecules of water. Those molecules are owned by the state. But what they have is what's called a usufructuary right to make use of those groundwater molecules. And that's the common law, that ability to make use of that water. [LB218]

SENATOR McCOLLISTER: Now are the regulations different on surface water? [LB218]

DON BLANKENAU: They are pretty dramatically different. In the case of surface water, those rights are issued directly by the state agency, the Department of Natural Resources. And when you get that water, you get a piece of paper which specifies what tracts of land that water right applies to, how much water you can apply to that tract of land, and what it may be used for. And that document is hard evidence of the right that you possess. [LB218]

SENATOR McCOLLISTER: Does the surface water situation have any impact on...of this particular project or what we're talking about today? [LB218]

DON BLANKENAU: Well, this...the N-CORPE project, is that...? [LB218]

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

Natural Resources Committee
February 15, 2017

SENATOR McCOLLISTER: Uh-huh. [LB218]

DON BLANKENAU: Yes, the Republican River Compact is a surface water agreement. That is, it accounts for all of the surface water in that basin and apportions it for consumptive use among the compacting states. To the extent groundwater use depletes streamflow, it must be accounted for in the compact. And it gets assessed as a consumptive use of that surface water the same way as if it were directly diverted from the river. So to the extent the surface water is an issue here, that's the link--through the compact. [LB218]

SENATOR McCOLLISTER: Mineral interests are different, correct? [LB218]

DON BLANKENAU: They are. [LB218]

SENATOR McCOLLISTER: The owner retains the mineral interest if there are any. [LB218]

DON BLANKENAU: There are and that's a great analogy, Senator, because what LB218 does is it makes the right to access groundwater more akin to a mineral right, which opens up questions of can it then be transferred, can it be inherited, do you create an open market for these rights as you would with mineral rights? [LB218]

SENATOR McCOLLISTER: And in Nebraska can you transfer your mineral rights separate from the ground? [LB218]

DON BLANKENAU: You can transfer mineral rights in Nebraska, but you cannot do that with groundwater. [LB218]

SENATOR McCOLLISTER: Okay. Thank you very much. [LB218]

DON BLANKENAU: To my knowledge the only state that allows that is the state of Texas and nobody wants to be like Texas. [LB218]

SENATOR McCOLLISTER: I think Illinois does it as well. [LB218]

DON BLANKENAU: Pardon me? [LB218]

SENATOR McCOLLISTER: Illinois does it as well. [LB218]

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

Natural Resources Committee
February 15, 2017

DON BLANKENAU: That may be. [LB218]

SENATOR HUGHES: Okay. Other questions? Thank you, Mr. Blankenau. [LB218]

DON BLANKENAU: My thanks to the committee. [LB218]

SENATOR HUGHES: We appreciate it. Next opponent. Welcome. [LB218]

JOEL VANDERVEEN: Thank you, Mr. Chairman and members of the committee. My name is Joel Vanderveen, J-o-e-l V-a-n-d-e-r-v-e-e-n. I'm here as counsel to N-CORPE and would like to comment in particular on Sections 1, 3, (c), (d), and (e) in LB218 as well as Sections 4 and 5 that relate to the mandated land sales and application of the proceeds of those sales. To the extent that these provisions apply to a joint entity created under the Interlocal Cooperation Act such as N-CORPE, they would likely serve as restrictions on the ability to access traditional financing structures such as have been used by N-CORPE, financing structures that are intended to access the lowest cost financing. In N-CORPE's case there is a mortgage securing multiple pieces of debt issued in 2013. That debt was issued under the Interlocal Cooperation Act, the longest maturing of that debt is...has a 25-year maturity. And as mentioned, having that mortgage security on the long-term debt is not an unusual structure and helps to obtain the lowest cost of financing. The provisions of LB218 that I'm speaking to, and that's those that provide for the sale of all or parts of the land and equipment that currently serve as security in N-CORPE's case for their debt and that provide for certain application of the proceeds of those sales, those provisions were not contemplated when the mortgage was put in place in 2013 and as a result if they were implemented in their particulars at this point we feel would impair the contract rights of those...of the existing debtholders. In addition to the general constitutional provisions on the impairment of contract rights, I'd like to call the committee's attention to a provision in the Interlocal Cooperation Act. It's Section 13-826 that provides that the state of Nebraska pledges to and agrees with the holders of any bonds and that those persons who may enter into contracts with any joint entity such as N-CORPE, any contracts under the Interlocal Cooperation Act, that the state will not alter, impair, or limit the rights thereby vested until the debt obligations are fully paid or the contracts fully performed. So if applied in N-CORPE's case, the provisions requiring the sale of the lands and application of proceeds here would seem pretty directly contrary to the provisions of the Interlocal Cooperation Act under which the debt was issued. Those are my remarks and I thank you for your time. [LB218]

SENATOR HUGHES: Okay. Thank you, Mr. Vanderveen. Are there questions? Seeing none, thank you. Next opponent. Welcome. [LB218]

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

Natural Resources Committee
February 15, 2017

DON BATIE: Senator Hughes, members of the Natural Resource Committee, my name is Don Batie, D-o-n B-a-t-i-e. I'm a farmer from Lexington, Nebraska, and I'm here today testifying on behalf of Nebraska Farm Bureau Federation in opposition to LB218. Let me say first that we think there are provisions in the bill that have merit and the committee might consider these provisions concerning requirements for public notice and public hearings regarding augmentation projects and the adoption of resolution setting forth the finding of need for such projects. In our view these provisions can help provide transparency, public understanding, and public buy-in for the need of augmentation projects when implemented. However, we are opposed to this bill the way it is written due to the language which requires entities involved in augmentation projects to sell land purchased as part of an augmentation project while retaining the, quote, water rights. The bill does not clearly spell out what is meant by water rights. Mr. Blankenau mentioned Pandora's box and we firmly believe this would open Pandora's box. This would represent a major change in Nebraska groundwater law. Presently, groundwater is publicly held for the benefit of all Nebraskans with landowners having the right to pump groundwater on the overlying land for beneficial purposes such as irrigation. As such, landowners do not really have rights to the water but have the right to use the water underlying their land. The language in this bill we believe would start the state down the path of treating groundwater similar to mineral rights where they are separated from the overlying land which could then be transferred and traded. This provision raises several questions which need further study before moving forward. How does this bill relate to the state's current constitutional and legal parameters for groundwater? Does the current law allow for severability of the right to use groundwater from the overlying land? Does this start the state down the path where the right to use groundwater can be severed from the overlying land? And how would such a change affect other types groundwater uses? How would such a change fit within existing NRD's authority to manage groundwater use? Given these questions, we have encouraged the committee to hold the bill and not move it forward. If there is interest in exploring the concept of the bill it should be studied further with the involvement of all the various interests, consider possible legislation next year. Thank you for the opportunity to testify. I'd be glad to answer any questions you might have. [LB218]

SENATOR HUGHES: Thank you, Mr. Batie. Are there questions? Seeing none, thank you. Next opponent. Welcome. [LB218]

KENT MILLER: Thank you. Senator Hughes, members of the committee, my name is Kent Miller, K-e-n-t M-i-l-l-e-r. I'm general manager of the Twin Platte Natural Resources District, and we're one of the four partners in the N-CORPE project. My testimony...LB218 is simply not needed. I mean some legislation is needed and some is just not needed. This legislation is not needed. A lot of what you've heard today, it explains to you why it's not needed. But I want to talk to you about the public information that was provided in the early days of this project. The purchase of the land was executed very quickly as Mr. Fanning testified to you because we were

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

Natural Resources Committee
February 15, 2017

in a buyer's market at that point. And the Republican Basin was looking for offset water for the compact issues. The Twin Platte NRD, we were looking at offset water for our integrated management plan requirements. But there were information meetings held shortly after the purchase was initiated and long before the occupation tax was initiated. In our NRD we held public information meetings in Ogallala and in North Platte. We had over 200 people attend each of those public information meetings. We set those up so they had stations where they could come and visit with board members and staff following the information that was provided. We didn't want an atmosphere of where it had to be a public meeting and they had to get up before 200 people and ask a question. We wanted information flowing. We also, since 2004 for four years, 2004-2008, had a group of stakeholders that developed our integrated management plan. Our integrated management plan was required by LB962 which was passed by this Legislature in 2004. A part of that integrated management plan on the Platte side, we needed to provide offset water because of groundwater development in our NRD and the effects it has had on the surface water flows in the Platte. And that's for state-protected flows. So that's why our interest was in this project. Our stakeholders, their number one provision was they met for four years, 20 of them, is that keep us out of regulations...regulations are very expensive, find offset water. With the N-CORPE project and other projects in the Twin Platte NRD, we're successfully doing that. That would conclude my testimony. [LB218]

SENATOR HUGHES: Okay. Thank you, Mr. Miller. Are there questions? Senator McCollister. [LB218]

SENATOR McCOLLISTER: Yeah, thank you, Mr. Chairman. We heard from an earlier testifier about a situation with your NRD and meters. Can we...can we depend on your water usage being accurate if you aren't using meters with your water...your irrigators? [LB218]

KENT MILLER: I was hoping you'd ask me that question because I figured I couldn't deal with it in the three minutes I had. So thank you. You know, in our NRD, our NRD sits on top of very sandy soil. So if irrigators are overapplying, overpumping water, they're not overconsuming it. The crops still use only so much water. That water doesn't run off. That water goes back into the aquifer. But again, our stakeholders and their direction to us was: find offset water, don't deal with regulations. But if we ever had to go to regulations, and that's a possibility if we don't find another offset water, if we couldn't do an N-CORPE project, if we couldn't do joint projects with our surface irrigation districts. But the point of it is that we are able to find offset water. Recognize in our NRD, there's been no new irrigated acres since 2004. When LB962 was passed in 2004, which required integrated management, at that point the NRDs in the Upper Platte Basin put moratoriums in. We're at 350,000 acres. That's the most acres we will ever have in our NRD. That's less than 9 percent of our surface area. So, you know, we did not have groundwater declines at that point. But when LB962 was passed, there had to be a reset and we had to begin...looked at integrated management groundwater and surface water. What we're doing in the

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

Natural Resources Committee
February 15, 2017

Platte Basin is we're having to find offset water. If we're not able to find offset water, we'll have to go to regulations to provide enhanced flows in the Platte River for state-protected flows. [LB218]

SENATOR McCOLLISTER: Where are you finding offset water? [LB218]

KENT MILLER: One of the ways we found offset water is through the N-CORPE project and that was a big way of it. One of our directions of our stakeholders was don't dry up irrigated acres if you can at all possibly keep from doing that. When prior to N-CORPE we were looking at if we dried up irrigated acres close to the river, we'd have to dry up close to 100,000 acres where with the N-CORPE project because of its location so far from the river, we get a one-for-one benefit. We are also working with surface water irrigation districts and transferring some of their nonuse. Probably 75 percent of our surface irrigated acres in our NRD are commingled so they have groundwater and surface water. So we're working with them on ways to catch excess flows in the Platte when there are excess flows, run it through those irrigation canals. That water is stored underground and moved back to the river. We've got an irrigation district that is right on the edge of the city of North Platte. It's called the Cody-Dillion Irrigation District. It actually was started by Buffalo Bill Cody. It's got one of the oldest water rights. Now a lot of the area where they have water rights, the city of North Platte has expanded into, people have bought acreages, horse farms, what have you. We're working with them to firm up those irrigated acres they had in that irrigation district, then there...we were then...they will then transfer them to the Twin Platte NRD and we'll transfer them to an instream flow use. So we are successful with these various methods, along with the N-CORPE, of meeting our offset requirements. And I would welcome the opportunity to visit with any of you separately, I mean, I could visit with you a couple hours on what we're doing, but we have a neat graph and chart I could show you. [LB218]

SENATOR McCOLLISTER: I suppose when those transfers occur, you pay for money...you pay money for those. [LB218]

KENT MILLER: That's correct. That's correct. [LB218]

SENATOR McCOLLISTER: Okay. Thank you very much, Mr. Miller. [LB218]

KENT MILLER: You know, in our NRD we substantially increased our property tax asking with the new requirement for integrated management was, if you will, imposed upon our NRD. Our share of the N-CORPE project is funded totally by an occupation tax. It is not funded by the property tax. [LB218]

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

Natural Resources Committee
February 15, 2017

SENATOR McCOLLISTER: Thank you. Thank you, Mr. Chair. [LB218]

SENATOR HUGHES: Okay. Senator Albrecht, do you have a question? [LB218]

SENATOR ALBRECHT: Thank you. So your farmers, if they...they have to be careful on how much groundwater they use, correct? [LB218]

KENT MILLER: Yeah, just from the economics. They don't pump more than they use. [LB218]

SENATOR ALBRECHT: Okay, correct, but if there was a situation or a season when there was a limited amount of rainwater, would they tell you in your area that you could only use so much water? [LB218]

KENT MILLER: You know, if we ever reached that point where we had groundwater declines and then that was being impacted by rainfall, we would have to relook at the requirement of water meters. But so far we have not had groundwater declines in our NRD that's required the use of water meters. And we feel that if we ever had to go to regulations, it would be based on reducing irrigated acres. Now we would obviously work with that producer if they wanted to do different crops or if they wanted an allocation. But our preference on regulations would be reduced irrigated acres. But the answer...that's a long yes. [LB218]

SENATOR ALBRECHT: Okay. Thank you. [LB218]

SENATOR HUGHES: Additional questions? Seeing none, thank you, Mr. Miller. [LB218]

KENT MILLER: Okay. Thank you. [LB218]

SENATOR HUGHES: Next opponent. Welcome. [LB218]

VANESSA SILKE: Good afternoon, Senator Hughes and members of the Natural Resources Committee. My name is Vanessa Silke. I'm an attorney with Baird Holm and the president of the Nebraska Water Resources Association. My name is spelled V-a-n-e-s-s-a and my last name is spelled S-i-l-k-e. I'm here testifying on behalf of NWRA in opposition to LB218. I'll give you a little bit of background on NWRA. This organization was founded in 1944 and we're directed by a 24-member board of directors. Our members include managers of groundwater, managers of surface water, municipal water users, ag, industrial, conservation, recreation, as well as financial institutions and members of the professional communities. We've got probably the most diverse

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

Natural Resources Committee
February 15, 2017

group of water managers and water users in this state. So you can imagine how difficult it can be for us to arrive at consensus on some pieces of legislation. But we did on this bill and we do oppose LB218. We oppose...NWRA's mission is to support sound water management policies that encourage the development and protection of Nebraska's water resources. Now our members recognize the challenges in developing tools to facilitate Nebraska's ongoing compliance with the Republican River Compact. And we all understand and agree that these aren't easy decisions, and all the testimony you heard today illustrates the amount of resources and time and effort that go into figuring out the best way to structure these types of projects. LB218 though ignores the existing regulatory framework that provides meaningful oversight and controls on streamflow augmentation projects by DNR and the NRDs. It also ignores the impacts of requiring the repayment of outstanding debt on a statutory schedule. And you heard from Mr. Vanderveen on how that would be impacted. LB218 also negatively impacts water managers' ability to plan for, finance, and acquire property rights for the implementation and operation of these types of projects in the future. And lastly, and as you heard from Mr. Blankenau, LB218 would create some legal implications of uncoupling groundwater rights from the overlying land. And so I'll leave my comments short though with that. If you have any questions, I'm happy to take them. [LB218]

SENATOR HUGHES: Okay. Thank you, Ms. Silke. Are there questions? [LB218]

SENATOR GEIST: I do have one. [LB218]

SENATOR HUGHES: Senator Geist. [LB218]

SENATOR GEIST: I'm just curious in the separation of the land and water rights, if that land was rented, for instance, and then the proceeds of that rent went to pay some property tax, would that have the same issue of separation? [LB218]

VANESSA SILKE: I think in that circumstance we're not separating groundwater from surface water at all. In fact, that's part of what Dr. Fanning had described in some instances. There are portions of the N-CORPE project that are further away from the area where they're pumping where they have actually rented out the property. And as Mr. Blankenau indicated, they put a restriction on the landowner's or the renter's use of groundwater for that property. In those cases, that portion of the property would still be subject to property tax to some extent. But in that instance we're also not separating groundwater from the land. [LB218]

SENATOR GEIST: Okay. And that was...that's the basis of my question. Thank you. [LB218]

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

Natural Resources Committee
February 15, 2017

SENATOR HUGHES: Okay. Additional questions? Seeing none, thank you, Ms. Silke. [LB218]

VANESSA SILKE: Thank you. [LB218]

SENATOR HUGHES: Other opponents. Welcome. [LB218]

JOE ESTERMANN: (Exhibit 13) Is this turned on? I hope, because my voice ain't very strong anymore? I'm Joe Estermann from Wellfleet, Nebraska. I'm 92 years old. I knew my granddad very well who was born in 1865, one year after the Civil War ended. He lived in southwest Missouri, which at that time was almost wide open country and had had roving armies from both sides coming through. Some of the biggest battles were in northwest Arkansas. Nowadays, Springfield has its Battlefield Mall, a name that carries over from the Civil War. During the war, his parents, my great-granddad, had his horses all stolen one night in the moonlight while they watched through the window. There was no law and order and they could do nothing about it. The cause of the war was because some people were stealing other people's efforts, which is slavery. Today there is a similar cancer growing in Lincoln County and Medicine Creek. Selling the ground on N-CORPE above the water would only be scratching the surface of the cancer. Be similar to selling the oil rights off of land. By now I have convinced you...I guess I've convinced you I'm an old fuddy-duddy, but I'll proceed to try to tell you. Some people are trying to steal our water in Lincoln County to grow corn in the Republican River shed. Corn is in oversupply and has all of the permanent storage all across the Midwest filled to the limit and the overrun is stored in white plastic bags all over the Midwest. And another crop will soon be planted. Talk about oversupply. Now the government is trying to run it through automobiles, very inefficient. That's why Hitler went to North Africa, to get oil because his armies were running on ethanol. Now if these corn growers had to take care of their share of the Kansas water wants on their side of the fence, a lot less water fuss would be going on. There would be less corn and less government subsidy. And we have a government right now with a Greece-type situation that's staring us like...looking at a lion or a tiger. The Greece situation is another situation that is coming at the U.S. in a short time and is hitting in the government bonds market. We are short of supply in our ranch country and if we could use one or two inches in a dry year to double the carrying capacity. Last year we had enough rain that that did double the cattle and we got through in good shape. NRDs will not let us put a well down though. The natural resource people have a choke hold on us that will eventually lead to food shortages like Venezuela and Russia had in the past. I've seen food shortages in countries many times in my lifetime. In a completely free business climate, why, that thing is taken care of in a hurry. This is why Trump got to be President, because he's trying to get the economy moving again and trying to get the national debt slowed down. We're all equal citizens of Nebraska. The citizens form the government. We have a Unicameral Legislature that makes the laws. The citizens act as a second house to the Unicameral, which we're doing right here today. Somewhere along the line, someone said the water belonged to the state. If our water was owned by the state, it would be

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

Natural Resources Committee
February 15, 2017

like Venezuela or Cuba or a dictatorship. What will be next? Our corn or our cows or maybe our cars or whatever? When our family bought the ranch 97 years ago, it was common law and understanding that we purchased the minerals and water under it along with the land. It took 30 years of very hard work to pay for it and many more years of scrimping and hard work to change generations. To steal water under pastures and flooding our most valuable land is a real rub. It's making big waves in our water table. It is real fighting words. It has already caused one man's death and several cattle have got stuck in the mud. If you had your vehicles and tractors stolen you would be mad, mad, mad. And now you know how we feel about the water. If the water table was bouncing up and down 40 feet under your property, you'd be mad. They have a big fire danger in N-CORPE--miles and miles of tall weeds. And we tried to start our well on account of fire problems. And they pumped all the water away from it. Some people think they can get by with anything. They think they're invincible. My Granddad and I have seen 150 years of people and situations go by such as Hitler, the bully in Skidmore, Missouri, and so many other invincible people. Where did they end up? Think of Jimmy Hoffa. The bully in Skidmore, Missouri, got shot on main street in a crowd of people and no one seen a thing. The majority of the people try to do the right thing but they are slow to rise up. We hope you live long enough to be an old fuddy-duddy like me. Think about what I said today, for tomorrow it may not be forgotten. Thanks for listening to my comparison of the people who dreamed up and did N-CORPE and how things turned out in the past. And a big thanks to Groene for trying to do something about the problems that have been wrongly created. Two things to think about: There is no new water, and one man can start a fight but it takes two to stop it. Thanks for listening to me. [LB218]

SENATOR HUGHES: Thank you, Mr. Estermann. I just want to confirm that you are... [LB218]

JOE ESTERMANN: What's that? [LB218]

SENATOR HUGHES: ...you are in favor of this bill, is that correct? [LB218]

JOE ESTERMANN: Yeah, I'm in favor of supporting Groene on what he wants to do. [LB218]

SENATOR HUGHES: Okay. Thank you, Mr. Estermann. Is there any questions? Seeing none, thank you very much. Additional opponents? (Exhibits 14 and 15) Seeing none, we have a couple of letters in opposition: Troy Stowater and Scott Dicke. Neutral testimony, anybody wishing to offer neutral testimony? Welcome. [LB218]

NATHAN LEACH: Mr. Chairman and members of the committee, thank you for your time and attention. My name is Nathan Leach; that's spelled N-a-t-h-a-n L-e-a-c-h. I reside in District 27

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

Natural Resources Committee
February 15, 2017

but grew up in Kearney, Nebraska, and graduated from Kearney High School in 2015. I'm speaking on behalf of myself and in a neutral capacity. I spent a little bit of time thinking about this bill and I couldn't really decide if I was for or against it, but I did feel that there were a number of statements relevant to how the committee considers this bill that ought to be placed into the record. And in 1937, the late U.S. Senator George Norris skipped the opening day of the U.S. Senate to speak to the Unicameral the first time it had ever met. And he said to the body, and I quote, this is from the Nebraska Legislative Journal of 1937: You are members of the first Legislature of Nebraska to hold your positions without any partisan obligation to any machine, to any boss, or to any alleged political leader. Your constituents do not expect perfection. They know that it is human to err. But they do expect and have the right to expect absolute honesty, ultimate courage, and a reasonable degree of efficiency and wisdom. The people of Nebraska will not condemn you even if they do not agree with your official actions. We realize that honest disagreements on things which are not fundamental is an evidence of courage and independence. We expect an economical and efficient administration and, above all, an honest administration free from any partisan bias, political prejudice, or improper motives. Mr. Chairman, members of the committee, this Legislature over the past few months has departed I believe from the advice of the late Senator George Norris. And I think the best demonstration of that is the fact that it has taken this Legislature two months to adopt its rules. And I think that these words are important to have in the record as you consider this bill and as the bill, if it moves forward to the floor, that the record would show that this was in the record. So I thank you again very much for your time. And I hope that you will reflect on these words wisely. Thank you, Mr. Chairman. [LB218]

SENATOR HUGHES: Thank you, Mr. Leach. Are there any questions? Seeing none, thank you. [LB218]

NATHAN LEACH: Thank you. [LB218]

SENATOR HUGHES: Other neutral testimony on LB218? Welcome. [LB218]

JACK RUSSELL: I am Jack Russell, J-a-c-k R-u-s-s-e-l-l, the manager of the Middle Republican NRD in Curtis. And thank you, Chairman Hughes and members of the Natural Resources Committee, for hearing my testimony today. I am testifying in a neutral position. I think up until now everybody has a pretty good grasp on what N-CORPE is and what the bill is trying to look at doing. There is 30 wells that pump water and augmentation water to Kansas and it will start pumping to the Platte River to meet compact compliance or Platte River recovery targets. On why the costs might be kind of high, I look at it as it's a pretty strong insurance policy that the payoff is probably 20 or 30 fold. So for us as an NRD, that works pretty well. There...one...just specific in the bill, one of the concerns with the bill is returning some of the groundwater irrigation rights back to the landowners. I believe that that should stay with the groundwater

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

Natural Resources Committee
February 15, 2017

management provisions that the NRDs have. And NRDs should make that call or not, whether it should revert back or not because whether there's enough to support more irrigation or not. There...like I did mention, there is a pretty good cost. Right now, each of the Republican NRDs pay pretty close to \$2 million a year in bond payments every year. So that's \$6 million on Republican side every year making bond payments on the land. If...what's really intriguing about this is if there could be a way to make the land sale and pay the bonds down and if we had even a 20 percent or 25 percent savings, that would be...instead of \$2 million, down to \$1.5 million a year. This is being met with occupation tax from our irrigators. And it's strictly within each one of the NRDs and the irrigators that are paying for this project. And I really applaud the effort to try to bring the burden of the cost down to our taxpayers, our local taxpayers. One thing that Don Blankenau did mention, that there are ways to do this or there may be ways to do this if this isn't the right one. And we would like to, with situations like this, we'd rather be at the table working at solutions instead of opposing or going against something and finding answers in a positive way. N-CORPE I think we've all learned is new and different. It's pretty young when you look at historical. Exploring options to many of the questions posed is critical in creating the guidelines necessary for current and future projects. Thank you. [LB218]

SENATOR HUGHES: Thank you, Mr. Russell. Are there any questions? Seeing none,... [LB218]

JACK RUSSELL: Thank you. [LB218]

SENATOR HUGHES: Additional neutral testifiers? (Exhibit 17) Seeing none, Senator...we have one neutral letter from Jeff Fassett, Director of the Department of Natural Resources. Welcome back, Senator Groene. [LB218]

SENATOR GROENE: Thank you. I find that interesting, Senator, that Mr. Blankenau and Mr. Fanning talked about a Pandora's box, about Omaha coming in and shipping...buying land and mining it and taking it to Omaha. He just described N-CORPE. N-CORPE is the first government entity--I don't care if it's a city, a county, a community college, an NRD--this is the first government entity that without regulations, without statutes, took it on their own to mine the water and to move it to Kansas. They're doing the Pandora's box. They opened it. That's what they are doing. LB218, after the cattle got out of the corral, the first part of it sets up statutes to do what they did and we make sure we boxed it in to just what N-CORPE has done. We do not give cities. We do not...we are helping N-CORPE by putting into statute what they already did, the first part of this bill. As to answer Senator Bostelman, it's allotments, not rights. We need to change those words in Nebraska. Colorado used the words rights for water. The ethanol plant, what N-CORPE already did with two quarters of ground that were irrigated, the legal talk you heard here about the water staying with it and not...and moving in the water, they were irrigated

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

Natural Resources Committee
February 15, 2017

quarters. They had pivots on them. They sold those two quarters and they kept the water and they sold them as dryland. The ethanol plant bought land, used the allotment for their ethanol plant, and then sold the land. It's already being done. It's already being done. Mr. Blankenau in his own words in the July 15, 2015, meetings of the N-CORPE said: "He said that alternatively it may be possible that N-CORPE could sell land and hold easements that give it access to the water, but that approach is untested." All right, he already said that. That's what he told the members of the board. He told you something different. As to the...I lost my notes now. Excuse me. Bear with me. As to common law, kept using this word common law. Let me read to you out of law handbook. The practical result of the principle of...parliamentary sovereignty is that legislation prevails over common law. That's what LB218 does. We are putting into statute legislation that prevails over common law. If there is a conflict between legislation and the common law, legislation will override the common law. That's why you need legislation. I found that humorous that the common law that he said in one of his notes to the board was that a person with 1,000 acres, for example, can use more water than someone who owns 100 acres and acted like a steward of the water of the ground like he was representing N-CORPE. They pumped 65,000 acre-feet in one year off of ground that was 15,500 acres. That's 52 inches an acre, that's 4.5 feet of water in one year. These are the folks who tell you they know how to manage our water and to trust them. We got cowboys. They still exist. We used to have open range in the 1860s where they said you'll never put a fence on my ground. We have a few with groundwater. We've got a few. And they happen to be in positions of power in the NRD. It's our water. It's everybody's water. When I ran for office, I dropped...I jumped into the race late. If you think I'm different than just a few individuals from Lincoln County farmers who are stewards of their water, when I ran for office my opponent who's a large irrigator, proponent of all this, friends with these guys, outspent me five to one. He won eight out of ten rural districts in the primary. I ran an advertisement on the TV that showed that water being pumped in the creek. I won six out of ten in the general election. The farmers are on my side. They are stewards of the ground. They are stewards of the natural resources. As to the chicken farm, they wanted to TIF that. Senator Hughes asked Mr. Fanning. They wanted to TIF that. So for 15 years, 20 miles out in the country it was going to be blighted and substandard and for 15 years they weren't going to get the property taxes. The people of Wallace have morals, have character. They knew that wasn't blighted and substandard. They did the right thing. But other people, the end justifies the means. So they can't understand why somebody would turn that down. Anyway, as far as the property taxes, Senator Albrecht, none of them defended why they need to own that land, did they? None of them defended it. Nobody, proponents said anything wrong about the augmentation project, did we? But we're willing to live with it, until my next bill, where somebody is starting to look at some other options. There's no reason for them to own that land. Pride. Mr. Fanning, he didn't tell you as the NRD manager for the Upper Republican, the Upper Republican doesn't have one acre of land in Lincoln County that it supervises but he somehow runs N-CORPE. The bully always takes over. There's four managers, four NRDs that own N-CORPE. But who's the expert? Who makes the decision? An NRD that profits from our cost, our sacrifice profits the most.

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

Natural Resources Committee
February 15, 2017

Government bonds, we all know government bonds are guaranteed by taxation ability. It's not...the lawyer said, well, they could be, it could be, it might be, it may be as collateral for the bonds, I'm going to find out. I'm going to do a FOIA and see if that is guaranteed part of the bond for the land. Remember, they sold 313 acres that was all part of that bond. Now if I have, which I do have some land I have borrowed money against, if I sold 20 acres off I'll guarantee you that bond company would be there in a hurry to make sure they have the proceeds of that sale. When they sold that 313 acres, bond company didn't care. They kept that money. And they funded their operations of the N-CORPE. They kept the money. Why didn't the bond company care? The collateral was the ability for the N-CORPE to tax a \$10 an acre occupation tax. That's all they cared about. Excuses why you can't sell it, excuses. No facts. No facts. This is what we're up against out there, folks. You've seen how smooth a couple of them are. That's what the common farmer is up against. We have a couple cowboys and they're bullying us out there. It sounded great, didn't it, rationale. We have very good farmers. We have very good stewards of our natural resources. We want to sell the land. We want to put it back on the tax rolls. I will close with that. But I told you about common law. I could quote Mr...I understand lawyers. I understand they say what has to be said, but I could quote you more minutes from the N-CORPE where he said something completely different than what he told you about selling land, about taxation, why you need to keep it. It's Lincoln County's land. It's Lincoln County's water. And I will give credit to the Middle Republican. That's why they probably testified neutral, because their farmers are involved in this too. In the southern half of my county is the Middle Republican NRD. The rest of it is Twin Platte. I will not attack the farmers in my Twin Platte but I will tell you this, Senator McCollister, there is no reason they don't have meters. It is the...I'm in agriculture, I'm in high production agriculture, it is one of the best tools there is to manage an input and that's water. The farmers who have land in the Republican Basin and in the Twin Platte, after finding out management tool that they have to put on in the Republican put it on their acre...on their wells in the Twin Platte because it's such a great management tool. He told you how good they were with 300,000 acres. When they became overappropriated, they had a certain amount of time. They put in 75,000 more acres after because they grandfathered them. Those 75,000 acres are why we're--he didn't tell you but we're pumping...we're building another pipeline from that well field and we're dumping it into the Platte River, 7,500 acre-feet. There's better ways to be stewards of water and protect irrigation for the future. This isn't the future. This is cowboys thinking it's their water. Thank you. [LB218]

SENATOR HUGHES: Thank you, Senator Groene. Are there questions? Seeing none, that will close our hearing on LB218 and we will open our hearing on LB488. Senator Groene, welcome. Let's take a five-minute break right quick. We've been here a couple of hours. [LB218 LB488]

BREAK

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

Natural Resources Committee
February 15, 2017

SENATOR HUGHES: Okay. We will come back to LB488. Senator Groene, welcome to the Natural Resources Committee. [LB488]

SENATOR GROENE: (Exhibits 1, 2, 3) Thank you, Senator Hughes...Chairman Hughes and members of the Natural Resources Committee. Too much information. LB488 creates the Water Conservation Grant Act. It sets up a grant program to be administrated by the Department of Natural Resources. The act would provide a grant to any person who owns eligible agriculture land and applies to the department in the program area. They would receive a grant equal to \$50 multiplied by the number of acres that are not irrigated under a provision of the Water Conservation Grant Act. The application period will run between September 1 and November 30 each year. The Water Conservation Grant Act will be provided grants up to \$3 million each year, minus the administrative costs of the program. The money of the Water Conservation Grant Fund would be transferred from the Water Sustainability Fund. The grant program is dependent upon the agreement of those states involved in the multistate compact allowing any reduction in water usage coming from the program towards its compliance with the multistate compact. This thing is designed to only cover the Republican...LB488--I shouldn't call it a thing--basically only be available in the Republican River area, because that's the only compact we have. It covers the, I believe, that area. So it's restricted to compact areas where we're overappropriated or appropriated. As I said earlier, in 1943 the states of Kansas, Colorado, and Nebraska entered into an interstate compact addressing allowable surface water usage in the Republican River Basin as allocated between the three states. In 2015...we had the lawsuits in '12. In order to augment the water supply, N-CORPE was created and they purchased 19,514 acres, about 15.5 of those were irrigated acres. The water augmentation project has depleted groundwater resources in a concentrated area in Lincoln County. If you look at Exhibit 1, if you understand why farmers and citizens of Lincoln County are concerned about N-CORPE...you see that red dot? This is the University of Nebraska "Groundwater Level Changes in Nebraska". If you look on the first page, from 1981 to 2014 there's no red dot. The spring of 2014 to the spring of 2015, after basically the first two years where they pumped 65,000 acre-feet, you see that red dot in the middle of my county, Lincoln County? That's N-CORPE. That's at the headwaters. The Estermanns are here; they've been ranching on the Medicine Creek for years. We have dried up the Republican River. That's fine. A hydrologist told me, you can walk from North Platte to the Texas Panhandle and never get your ankles wet. We've dried up rivers and streams all the way down for economic development. I've made my living off of it. I'm not criticizing it, but we need to stop. N-CORPE sits at the headwaters of the Medicine Creek. It's a beautiful stream, spring-fed stream. The Estermanns and other ranchers have relied on that stream to water their cattle and livestock for generations. You heard Mr. Estermann, 92 years old. They're going to dry that up. That's where it sits, right where the springs start. And it's pumping...and they've already dropped it 20 to 25 feet in decline in that area. That is the other side of the issue on N-CORPE is why I want to save irrigated farming for generations in western Nebraska. N-CORPE isn't the answer. They told us it was just an emergency. It was just an emergency action to settle the lawsuit. Well, now they're

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

Natural Resources Committee
February 15, 2017

going to wine and cheese parties and having fun and saying everything is solved, this is the answer for the future. I don't think it is. A lot of us don't think it is. We want to look for conservation methods. The bill creates that Water Conservation (Grant) Act by removing...taking \$3 million out of the Water Sustainability Fund. I see Senator Carlson is in the room. You worked really hard on that issue. I'm sure he's going to be against it because it's his pet project. But the emphasis of that Water Conservation Sustainability Fund (sic: Water Sustainability Fund) was the groundwater depletion that we seen statewide, the irrigation issues we've had, the Republican, the Platte, looking for issues in supplying money. I think they supplied it with like-- I'm not going to say--but it's \$11 million...it was seed money of like \$20 million or something. I might be wrong on that, but it's \$11 million every year. It's in our appropriations. It's in statute, that \$11 million a year we put into the Water Sustainability Fund and the emphasis was groundwater. So my idea was let's take \$3 million of it and set it aside and use it for a conservation project. Kansas...since Mr. Fassett has been hired by the Governor, he's working well with Kansas and he's working well with Colorado and they're coming to some agreements that if we find ways to offset the water usage besides pumping it in a creek, they will consider it. So the idea of LB488 is that we tell farmers close to the rivers, close to Medicine Creek the riparian areas--if I pronounced it right, I think you know what I mean--it's the low areas within five miles of river where the springs are that feed the river--within that area, if they're willing to farm it dryland for a year, we will monetarily reward them. And you say, well, why would anybody do that? Well, there was farmers doing it last year around the McCook area. The wells were dropping capabilities of pumping at all. So they will plant milo or wheat and basically not irrigate it. But they're still burdened with the high property taxes of irrigated land. It's \$35 or more higher than dryland. It might be \$15, \$20, \$30 an acre for dryland and it's \$60 or \$70 for irrigated. Plus they pay the \$10 occupation tax, because it's irrigated ground. So our idea was, we will...you sign up to farm it dryland for one year at a time, voluntarily, we'll give you \$50 an acre plus you don't have to pay the occupation tax, only if Kansas will accept that lack of water usage as part of the payment for the water we are giving them. It makes sense, doesn't it? That's long term. There isn't a water expert out there when you talk to him off to the side without the pressure of the cowboys that will not tell you this ain't going to work. We are pumping more than what's sustainable, period. We're doing it. It's getting worse. Exhibit 2, this is the Upper Republican now. They put in for the water sustainability grant money. "Years of Remaining Irrigation Usage in the Upper Republican NRD". This is their own facts. This is a document they gave to the Natural Resource Committee that issues the grants. The red areas is, they're going to run out of water in 20 years; purple in 30; the orange in 40. We're using it up. I don't want to use it up. I want to be a steward of it and manage it, that it can recharge itself and this is a foot in the door of actual conservation without doing harm to agriculture, irrigated agriculture. You heard Mr. Fanning say that Kansas wanted to retire...now it's 500,000, it actually was 300,000 acres in the lawsuit. But you know what lawyers do, they throw the kitchen sink at you. They'll ask for everything. They'll ask for your wife's silver. That doesn't mean they're going to get it. And the judge threw that out right away, said, you're asking for too much. But that could happen. And

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

Natural Resources Committee
February 15, 2017

what is not funny about the thing, it could happen naturally. Kansas won't take it, we'll do it to ourselves. If we don't come up with some conservation methods that are workable, that are common sense, we're going to do it to ourselves. The other...what concerned me also, when I looked at the...they've awarded from the \$11 million and I can't remember what the seed money was...in 2015 and '16, Omaha, \$2.9 million for the CSO program. The city of Hastings, \$4.4 million. Here's a sustainable one for groundwater in agriculture, \$151,000. Here's another one, groundwater management program review, \$249,000. Here's one for Lower Elkhorn Water and Soil Conservation Program, \$900,000. Do you get the flow of these things? Not only water flows east, money flows east. This was meant...2016. City of Omaha, \$801,000. Here's one for \$195,000 for the Lower Platte River Drought Contingency. Oh, here's one. Lincoln Water System Drought Resiliency and Flood Protection, \$7,600,000. Mitchell, Nebraska, the town got a water improvement grant of \$2.4 million. It had nothing to do with irrigation or groundwater. What I'm telling you, if we do not earmark this for what its original purpose was, one of its main purposes was, to look at conservation of our natural resource groundwater and the long-term sustainability of irrigated farming in the state of Nebraska, we're going to do it to ourselves. We don't have to have Kansas do it to us. This is a good foot in the door, a good approach to a program. You will hear that \$50 ain't enough. They'll compare it to the CREP program that Congressman Osborne started; that's \$250 an acre. There's another program for \$200-some an acre for wetlands. You know what the difference is? They can't farm. My plan allows them to farm it dryland. They can still raise a crop. They can raise milo, they can raise...if they want to try to raise dryland corn, they can still do it. What they can't do is turn the irrigation pump on. And then it's all contingent on the state of Kansas accepting in some form, in some form, the offset. And there's models already to do it, the closer to the river the more...the quicker you get credited for the water you did not use. Wouldn't that be a lot better way than pumping water in a creek? The most potable water in the world sits under where I live; in the world. The aquifer, the Ogallala Aquifer. So what do we do? We pump it into a creek, 150 square miles a foot deep. You know what that's worth to the world? I'm all for using it, pumping it and putting it right back on the ground it came from. What you don't use gets saturated. We have to look at better answers. You're going to hear arguments here, well, we worked so hard. We worked so hard for this sustainability fund. And we've got an end process. And we've got processes and we know what we're doing. Well, you have a handout and you know what they're doing. It's going east and it's not being used to save our precious groundwater resources for the future. So anyway, thank you. [LB488]

SENATOR HUGHES: Thank you, Senator Groene. Are there questions? Senator Kolowski. [LB488]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Senator Groene, I've got to go back to the...I missed the first hour because I was presenting in another area. But I wanted to just double-check with you. This is about the compact, is it not? [LB488]

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

Natural Resources Committee
February 15, 2017

SENATOR GROENE: Yes. [LB488]

SENATOR KOLOWSKI: So how do we get the water to Kansas in a three-state agreement compact unless we do the things that we're doing here? [LB488]

SENATOR GROENE: They accept conservation methods as an offset. So if you retire land...some of the plans were to buy irrigation allotment from a farmer and then Kansas will put that towards what they deem we are short. So to do it by conservation method...there's models, computer models that they figure out how much water that would have made it to the river if we didn't pump it. [LB488]

SENATOR KOLOWSKI: That doesn't deliver a drop of water down the river in Kansas that they need. And it's part of an agreement of a three-state agreement, is it not? [LB488]

SENATOR GROENE: There's two methods of what they do. One is how much reaches the river and then there's what's in Harlan County Reservoir. And it's all based on different models. [LB488]

SENATOR KOLOWSKI: Okay. Thank you. [LB488]

SENATOR HUGHES: Senator McCollister. [LB488]

SENATOR McCOLLISTER: Yeah. Thank you, Mr. Chairman. Just a follow up question on Senator Kolowski's question. But don't they base the need though of deliverable water in Kansas? How do we demonstrate that conservation projects have increased the water flow to Kansas? [LB488]

SENATOR GROENE: All I want to tell you is, they do it now. It's offset by conservation that local NRDs are doing. I don't know if Jack is still here. Russell? I would hope he would be, because the Middle Republican has done two or three projects where they are offsetting by projects like that, similar to it. [LB488]

SENATOR McCOLLISTER: Removal of trees? [LB488]

SENATOR GROENE: I think the Lower Republican did one which they offered 300, 400 bucks. They put it out for bids here a few years back when the corn was ten bucks and they took bids on people who wouldn't farm...would do what we're doing here, and Kansas accepted that. [LB488]

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

Natural Resources Committee
February 15, 2017

SENATOR McCOLLISTER: So Mr. Fassett would negotiate this arrangement with the state of Kansas? [LB488]

SENATOR GROENE: That would have to be in place first, Senator McCollister, before we offer the...Kansas will accept it. [LB488]

SENATOR McCOLLISTER: Is the department going to testify today? [LB488]

SENATOR GROENE: He said he was neutral. I don't know if he sent a letter and was neutral. My staff just said he was neutral, so I don't know if he's coming or if he just sent a letter. [LB488]

SENATOR McCOLLISTER: Thank you, Senator Groene. [LB488]

SENATOR HUGHES: Thank you. [LB488]

SENATOR McCOLLISTER: Thank you, Mr. Chairman. [LB488]

SENATOR HUGHES: Senator Bostelman. [LB488]

SENATOR BOSTELMAN: Thank you, Mr. Chairman. Mr. Groene...Senator Groene, thank you very much for your testimony. Couple questions I have. How many acre feet of water are we talking about again? [LB488]

SENATOR GROENE: We figured it at a foot kind of an average of what...by the way, the Republic Basin, they all have allotments. That's why they have meters, because some can only do nine inches, some can only pump up to 15 I think in Senator Hughes's area, but so we figured 12. If you figured that's \$50 an acre you're talking 60,000, 70,000 acre-feet if you did the whole \$3 million. I'm saying you would...the whole \$3 million would be accepted. But I would tell you this, when corn is \$3 an acre, you're going to get a lot more people to do it...\$3 a bushel. [LB488]

SENATOR BOSTELMAN: I'm trying to understand how many acres would need to be signed into your program in order to be effective. [LB488]

SENATOR GROENE: Right now we're pumping...I think it's 30,000 acre-feet. We're going to pump another 30,000 this year after two wet years, of rain. If you divided \$3 million by \$50, all

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

Natural Resources Committee
February 15, 2017

right, that's how many acres? And then take that by a foot, by 12 inches, by 1. And I could do it for you right now if everybody did it. I'm not saying you're going to get that all used up, but it's a start. [LB488]

SENATOR BOSTELMAN: I understand. I understand. [LB488]

SENATOR GROENE: And we could amend this to say we go arrange that the department has from \$50 to \$150 or something to say to find that market value where that farmer was willing to do it. [LB488]

SENATOR BOSTELMAN: I would think that the contract would have to be for several years, because you wouldn't be able to do it for a year or two because why would Kansas or the compact agree? You know, we'd have to have more of a longer term contract. [LB488]

SENATOR GROENE: No, this is continuous, but an acre's an acre. They don't care if it's the same acre. It has to be that acre how many miles away...how far from the river. [LB488]

SENATOR BOSTELMAN: Okay. Thank you. [LB488]

SENATOR HUGHES: Okay. Senator McCollister. [LB488]

SENATOR McCOLLISTER: Yes. Thank you, Mr. Chairman. So an acre of ground can only do it one year at a time? Is that correct? [LB488]

SENATOR GROENE: You can do, I believe, two years consecutive is what we put down. We...that could be amended, because you want to stay close to the river because that's...you get more credit and the model...a quicker response to river flow is the closer you are to the river. So that could all be amended in the program to give the department a little bit more leeway. [LB488]

SENATOR McCOLLISTER: Thank you, Senator Groene. [LB488]

SENATOR HUGHES: Okay. Senator Kolowski. [LB488]

SENATOR KOLOWSKI: Thank you, sir. Senator Groene, on the sheet you passed out you were reading from and made the mention that it seems like money flows east rather than west, are all these on both pages, have they all been funded the last two years? [LB488]

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

Natural Resources Committee
February 15, 2017

SENATOR GROENE: Yeah. It says,...where did I put it? [LB488]

SENATOR KOLOWSKI: It says, applications funded. I just wanted to make sure... [LB488]

SENATOR GROENE: Applications funded, yes. That means funded. [LB488]

SENATOR KOLOWSKI: Everything on both pages? [LB488]

SENATOR GROENE: I told my staff...I asked that same question. I said, this isn't applications, is it? And they said, no, this is the ones they funded. [LB488]

SENATOR KOLOWSKI: Okay. And from that, I don't think everything was flowing east. There are issues across the state. Having been involved with that Water Sustainability Fund from the time we ran all that, there are issues and topics and needs across the state, not just in the western part. And I know the compact is a specific need you're talking about, but there certainly are things throughout the state that are impactful and in need of financing and that's what the money is for. [LB488]

SENATOR GROENE: Yeah, if you listened to my testimony I mentioned Mitchell, Nebraska, I mentioned the Lower Platte, \$195,000. I was hoping people could deductively reason that I was hinting that more of it goes east than west. That's what my testimony was supposed to mean, but I guess I should have been clearer. I'm sorry. [LB488]

SENATOR KOLOWSKI: Well, if I knew where every one of these were exactly by county, I would probably rebut that issue. (Inaudible) west. [LB488]

SENATOR GROENE: Well, I could add up \$7.6 (million), \$6.7 (million) to West Branch Papillion Creek, I think that's Papio, and \$7.7 (million). And then I could take the one for Aquifer Storage in Hastings and I don't think the rest of them would add up to half of those three or four. So anyway, thank you, sir. Anyway. [LB488]

SENATOR HUGHES: Additional questions for Senator Groene? Seeing none, you'll stay to close? [LB488]

SENATOR GROENE: Yeah. Having fun. [LB488]

SENATOR HUGHES: Okay. Proponents of LB488. Welcome back, Mr. Edgerton. [LB488]

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

Natural Resources Committee
February 15, 2017

BRAD EDGERTON: Thank you. Good afternoon, again. Senator Hughes and members of the committee, my name is Brad Edgerton, B-r-a-d E-d-g-e-r-t-o-n, I am the manager of Frenchman-Cambridge Irrigation District. Frenchman-Cambridge Irrigation District does support LB488. Back in 2004, when LB962 was adopted, the Department of Natural Resources had some new responsibilities with that. One of them was to evaluate every river basin to see if it was not yet fully developed, fully developed, or overdeveloped or overappropriated. In the state of Nebraska, there's one area that is overdeveloped and that's the Platte River west of Elm Creek. When the department...let me back up a little bit. The department did evaluate the basins, every one except the Republican River Basin. There was never a scientific evaluation done of whether that basin was fully developed or overdeveloped. Actually, the Legislature is the one that declared that basin fully developed when, in reality it is overdeveloped. That's why we need to mine water from the ground and increase the water supply so we can meet the demands in the basin and the compact compliance. We support this bill because we see the long-term solution in the basin is to reduce pumping or reduce consumptive use. And we know there's going to be opposition to where the money is coming from. We don't care where the money comes from. It comes from the state of Nebraska and the compact is a state issue, so they should deal with the compact. But the reality is, we didn't do a scientific evaluation of this basin and we should have. I think we would have found that the basin was way overdeveloped and I believe if that was the case then there would have been an obligation for the state to put money in the Republican Basin to get us back to fully appropriated or fully developed. So with that, I'll close and take any questions if you have any. [LB488]

SENATOR HUGHES: Thank you, Mr. Edgerton. Are there questions? Senator McCollister. [LB488]

SENATOR McCOLLISTER: Yeah, thank you, Mr. Chairman. And welcome back. [LB488]

BRAD EDGERTON: Thank you. [LB488]

SENATOR McCOLLISTER: Is this a good deal for a farmer? [LB488]

BRAD EDGERTON: I'm not a farmer. I manage the irrigation district and it doesn't apply to surface water irrigation, it only applies to groundwater irrigation. I suspect there's going to be some that will see this as a good deal. There's allocations in the basin, so everybody is trying to do the best they can with the allocations they have. And there's some ground that probably shouldn't be farmed and if they can reduce their pumping they're going to set aside that ground, they'll have to weigh the benefits for themselves. But I would hope that there would be a lot of response to this. [LB488]

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

Natural Resources Committee
February 15, 2017

SENATOR McCOLLISTER: Is it really possible to grow corn without irrigation in that part of the state? [LB488]

BRAD EDGERTON: It depends where you live. I mean, across the basin, rainfall changes about an inch about every 25 miles. So from the McCook area east there's pretty good dryland corn. You get average rainfall, you can grow 100 to 125 bushel dryland corn pretty easy. But as you go further west, the soils change, it becomes more sandy, you're relying on rain to supplement irrigation instead of the other way around, so. [LB488]

SENATOR McCOLLISTER: Thank you. Thank you, Mr. Chairman. [LB488]

SENATOR HUGHES: Okay. Additional questions? Seeing none, thank you, Mr. Edgerton. [LB488]

BRAD EDGERTON: Thank you. [LB488]

SENATOR HUGHES: (Exhibit 4) Additional proponents. Seeing none, opponents. We have one letter, a proponent, from Duane Hovorka. Okay, we'll open for the opponents. [LB488]

NATE JENKINS: (Exhibit 5) Thank you, Senator Hughes and members of the committee. My name is Nate Jenkins, that's N-a-t-e J-e-n-k-i-n-s, I'm assistant manager of the Upper Republican NRD in Imperial, testifying in opposition to the bill on behalf of our NRD and the Nebraska Association of Resources Districts. Senator McCollister, I think you asked the most pertinent question, whether or not this is a good deal for farmers. I'm not a farmer myself, but we asked that question of a group of 11 farmers yesterday. And I mean no offense to Senator Groene, but the response that we got to this bill was a laugh. Fifty dollars an acre to pay people on an annual basis not to irrigate simply won't be accepted, at least in our district. Senator Groene had mentioned the CREP program. In our district, the new payment rate is \$190 to \$230 an acre. From September of 2015 to October of 2016 there was a grand total of 13 people who applied to participate in that program under that payment rate. Senator Groene is correct in that you can get paid...you can obviously farm dryland under his bill and it's a good point. We have another program that NRCS offers under EQIP that temporarily retires ground at a rate of \$140 an acre per year for three years. I called our NRCS district conservationist the other day to kind of gauge interest in that program and he said there was none. We appreciate Senator Groene's interest in issues in the Republican Basin and looking for alternative solutions. Unfortunately, this program for the reason I cited, the low payment rate, I don't believe will get many participants at all. But the second issue that we see with the bill is jeopardizing the Water Sustainability Fund using what we think is too broad of a brush in trying to attain applicants for this program. Under the bill, you would qualify if you had ground within five miles of the Republican River. If ground

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

Natural Resources Committee
February 15, 2017

within five miles of the Republican River was retired, I'm not going to argue that that's not going to have a beneficial impact to stream flow. The problem is that benefit to stream flow very well could occur in a year when you don't need the benefit. In other words, no action is needed to comply with the compact. So our concern would be we'd be spending or setting aside possibly \$3 million a year, let's assume it actually gets spent, that additional stream flow would be generated in years it would do the state of Nebraska and state of Kansas very little good. So for those reasons, we'd urge the committee not to support the bill and to keep the Water Sustainability Fund whole to fund what we think would be more worthwhile projects. [LB488]

SENATOR HUGHES: Thank you, Mr. Jenkins. Are there questions? Seeing none, thank you very much for your testimony. [LB488]

NATE JENKINS: Thank you. [LB488]

SENATOR HUGHES: Welcome. [LB488]

SCOTT SMATHERS: (Exhibit 6) Good afternoon, Chairman Hughes, members of the committee. My name is Scott Smathers, S-c-o-t-t S-m-a-t-h-e-r-s--sorry, sitting on the bench for a long time--I'm here representing my fellow 26, I'm the 27th member of the Natural Resources Commission, not committee, that was formulated out of LB1098, which Senator Tom Carlson brought several years ago. What you're receiving in front of you is a letter from our chairman, Kevin Fornoff, with the Natural Resources Commission, and the allocations that were awarded through the Natural Resources Commission for the last two years or, excuse me, the last year; 2016 was our first year of actual applications and process driven. On behalf of the Nebraska Natural Resources Commission, I express opposition to LB488 proposing to transfer \$3 million from the Water Sustainability Fund. The Natural Resources Commission statutorily has been granted the obligation to evaluate applications--that's the key word--applications to the Water Sustainability Fund and award grants to worthy projects. In the two grant cycles since its inception, over \$31 million have been designated for grants from the Water Sustainability Fund. However, other applications have been denied funding in part due to insufficient funds available. It is important to note that the original legislative group of bills establishing the Water Sustainability Fund also stated the legislative intent to appropriate \$11 million a year to the fund. Despite this intent, in both fiscal years '16 and '17 \$3 million was diverted from the fund and transferred to the Resource Development Fund. The effect of these diversions was to leave less money available for new projects designed to further the goals of the Water Sustainability Fund. Another reduction through a transfer of the Water Conservation Fund, as specified in LB488, would further hinder progress of achieving the important mission of the Water Sustainability Fund and only recently created by the Legislature. Therefore, the Natural Resources Commission urges you to oppose and not forward LB488 to the floor. I would like to add that we

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

Natural Resources Committee
February 15, 2017

do not object to Senator Groene's concept, we simply object to the fact of where he wants to receive his funding from. As I've said earlier in the letter, the word "application." LB1098 established 15 criteria questions that we had to abide by in statute to put into our rules and regulations and our questions to evaluate for the scoring committee. Those are in statute. If we create a separate fund or issue that does not have to go through the application process, what are we saying to the applicants that have already applied that have been granted and/or denied? In regards to where the money has gone, I think if you do a little homework you'll see it has not all gone east. The money that goes to Omaha was mandated prior to we ever see it at the Natural Resources Commission level. That is part of the LB1098 statute that was approved on the floor. So we ask for you to take a hard look at the numbers. I can tell you that I've been involved since LR314 with Senator Langemeier, LB562 with Senator Carlson, LB1098 and the Water Fund Task Force, and then the Natural Resources Commissioner. I am also the Chair of the Rules Committee, which we spent a year and a half writing the rules which have been questioned here today which I think you will find is an issue if you try to take money without an application process. With that, I'll answer any questions. [LB488]

SENATOR HUGHES: Thank you, Mr. Smathers. Are there questions? Seeing none. [LB488]

SCOTT SMATHERS: Thank you. [LB488]

SENATOR HUGHES: Oh, wait. Excuse me. Senator Geist. [LB488]

SENATOR GEIST: I could think of one. [LB488]

SENATOR HUGHES: Oh, wait. Just a second. [LB488]

SENATOR GEIST: What...do you have an average total that you usually try to maintain in that fund? [LB488]

SCOTT SMATHERS: No. The fund last year was the first year of distributions. We have two categories, below \$250,000 and above \$250,000. That was a decision made by the fellow 26 commissioners and I think earlier you heard somebody use the word "consensus." Senator Kolowski was there for the Water Funding Task Force and 35 people agreed to do consensus. A lot of people needed some mental health checks after that, I can tell you that. With that said, the way the projects are arrived at is what we receive from the passing of the Department of Natural Resources, and they're broken into two categories. Then they go to a scoring committee, which I was on the first scoring committee of ten. There's a member behind me that's been on a scoring committee and one behind that that's going to be on the next scoring committee. That roughly

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

Natural Resources Committee
February 15, 2017

took 40 hours to go through those applications to review, read, educate ourselves, find the necessary scientific backing if we didn't understand an issue, and then give it a raw score. Then the ten of us would meet, and we met in Gothenburg for three days and pored over those. And prior to that, none of us saw each other's scores until that first day in Gothenburg. We reviewed each application, each question. We took an average raw score and then we took a consensus amongst the ten of us of what the recommendation would be. On average, quite frankly, we found--and this will be verified by the folks behind me--it moved one or two points up or down. There really wasn't much difference in the scoring and it was kind of interesting. So we came to a recommendation, we then presented that to the full commission at the next regular meeting and it was voted upon there, and that's where it approved for the allocation line. We saved money back the first application period, the first part of 2016. We knew we were having another application period in July of 2016, so we saved some money back. After the second period, we were given a little bit of grief for being fiscal conservatives because we saved \$5 million. However, hindsight is always perfect vision. And as we know now, we have a mandate from the Governor to withdraw 4 percent. That now leaves us \$5 million in the account for this next round of applications this next July, which we're hoping, as we continue to grow our application process and it becomes more known by more project sponsors, we have a better pool of projects. We want to save some money for that next round of applications. Secondly, it is an appropriation. An appropriation is not a guarantee. We must prove our worth to receive that money. [LB488]

SENATOR GEIST: Thank you. [LB488]

SENATOR HUGHES: Any additional questions? Senator Kolowski. [LB488]

SENATOR KOLOWSKI: If I may add to the possibilities, what Scott's described is right on target. And we had a bill last year on the bonding authority in NRDs that did not go anywhere, that is a concept that we'd like to test again and see where that might go because we have 23 NRDs and if you have a project that laps over to two or three that you combine your money in different ways to do things on your own bonding authority to do some projects. And that would be a great boon for the money you would be able to assist them with to make impactful water changes across the state. That's just a future cast. [LB488]

SCOTT SMATHERS: After the last five years, Senator Kolowski, one thing I'm guaranteed and assured of, \$50 million is a drop in the bucket for what we need, so. [LB488]

SENATOR KOLOWSKI: Absolutely. [LB488]

SENATOR HUGHES: Okay. Any additional questions? Seeing none, thank you, Mr. Smathers. [LB488]

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

Natural Resources Committee
February 15, 2017

SCOTT SMATHERS: Thank you. [LB488]

SENATOR HUGHES: Next opponent. Welcome back, Mr. Batie. [LB488]

DON BATIE: Thank you. My name is Don Batie, D-o-n B-a-t-i-e. I am a farmer from Lexington, Nebraska, so I can answer your farming questions if you have some. I do currently serve on the Natural Resources Commission, I was appointed by Governor Heineman in 2014. But today I am testifying on behalf of Nebraska Farm Bureau Federation and myself, not the commission. We are opposed to LB488. We feel this has set a very dangerous precedent for the Water Sustainability Fund while not significantly increasing the water supply in the Republican River. Scott already went over a lot of the details of LB1098, so I won't repeat those. However, we did approve funding for 17 projects in the first round; it was about \$9.3 million. Second round we approved 11 projects for \$19.5 million. I don't have time in my three minutes to go over those projects in detail, but I would be willing to answer questions on those. Senator Groene talked about the goals of the Water Sustainability Fund and was characterizing them as trying to increase groundwater. I would say he's incorrect on that and I would be willing to answer that also in questioning. This last round of applications there was an application from the Upper Republican NRD to create a water bank and permanently retire the irrigation rights. It did not receive enough points and score high enough to receive any funding. However, it was the next highest project; if we would have had more funds, it might have gotten funded. The Natural Resources Commission is planning in June to revisit this last run of applications. After any further appropriations by the Legislature, we will determine how much money we have in the fund and we will look at funding then. The goal of our...ongoing goal of the Water Sustainability Fund is that we would take applications in July, take 11 months to go through the applications and score them, and then in June we would look at the money that had been appropriated by the Unicameral, and then award those money out in June, 11 months after the applications. The first two rounds we did on fast track, very much fast track. The first round of applications we scored, the scoring committee got them, we had one week to score them. That happened to be the week of Easter. As Scott mentioned, we all spent 40 hours during that week of Easter scoring applications; we didn't see our families much. The second round we happened to score right before and during Thanksgiving. I managed to get mine finished up Thanksgiving afternoon. We all decided it was probably a good thing not to do it on the Friday after Thanksgiving during the Husker game. Finally, the \$50 payment limitation or payment that was set in LB488 is too low a payment, as mentioned earlier. On my farm in the Platte River Valley, the difference between irrigated and rain-fed corn is \$150 an acre. It would probably take over \$200 an acre to entice me to make that switch. In closing, we would ask the committee to kill LB488. Thank you. [LB488]

SENATOR HUGHES: Thank you, Mr. Batie. Are there questions? Seeing none, thank you for your testimony. Welcome. [LB488]

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

Natural Resources Committee
February 15, 2017

KAREN AMEN: (Exhibit 7) Hello. Thank you. Nice to meet you all. I'm Karen Amen, K-a-r-e-n, last name like the end of a prayer, A-m-e-n. I live in Lincoln. I am the representative to Lower Platte South NRD for Subdistrict 10, and I was also elected to the Natural Resources Commission where I represent the Lower Platte Basin, which is from Columbus to the Missouri River. And I do have the printed testimony for you and there are also a few additional points I might want to make, so I may not read the whole thing verbatim. But what I am going to do is take a kind of big picture, historical look at Nebraska water policy and then look at where the Water Sustainability Fund fits into that. I have something of a background in geology and have studied the reports of the early explorers in the 19th Century. And lo and behold, as most of you probably know, Major Stephen Long said that what we are living in is a great desert, it's become known as the Great American Desert. And the good news is, those early explorers were wrong, because they did not know what was underneath the surface of our state. And with decades of scientific research, hydrogeologists up and down the Great Plains have discovered that over time the High Plains Aquifer, which is mostly the Ogallala Formation, has stored and transmitted billions of acre-feet of groundwater and that has been the essence of why our agriculture in this state has been so successful. But the really good news is that along with the scientific studies our state has developed really good water processes and policies. And it's interesting to look at the handout on water management...the history of water management in this state that was put together several years ago about...by DNR. And it is such a tribute to our state, our Legislature, to the Conservation and the Survey Division that they have worked together, including working with the technology that's been developed for irrigation. And we have come up with a group of laws and policies and approaches to water sustainability that is the envy of the country. And I've even attended the international water conference in Stockholm, Sweden. And even there, Nebraska is known for their excellent approach to water management. So my point about the Water Sustainability Fund is that it came out of a long-term history and a three-year history of a wide group of stakeholders forming it. And I think it would be a terrible mistake to backtrack and let LB488 disrupt that process. I also feel that LB488 needs to demonstrate or the drafters of the bill need to demonstrate that they understand the hydrogeology of the Upper Republican, because I--from the little bit I know--I would be skeptical that land that isn't irrigated that's five miles away from the river would have much of an impact in a year or two on the flow of the Republican. So red light, I'm finished. [LB488]

SENATOR HUGHES: Thank you, Ms. Amen. [LB488]

KAREN AMEN: Yes. [LB488]

SENATOR HUGHES: Are there questions? Senator Bostelman. [LB488]

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

Natural Resources Committee
February 15, 2017

SENATOR BOSTELMAN: Thank you, Mr. Chairman. Thank you, Ms. Amen, for being here. Question. Senator Groene handed out this map and he's shown and you didn't have the benefit of seeing it, but... [LB488]

KAREN AMEN: The water level decline map? And it's up until 2014, correct? And the newest map is coming out next month. [LB488]

SENATOR BOSTELMAN: Yeah. Do you know, is there any specific reason other than N-CORPE, I mean was there drought conditions, are the things that may have contributed to this? [LB488]

KAREN AMEN: There were the drought conditions in 2012. And also...and I shouldn't speak as a hydrogeologist, because I'm not. But in addition, we have to acknowledge that some of those declines were already taking place before N-CORPE was in place. And also, we...the best time I think to look at what the real declines are is...well, once again, I'm not a hydrogeologist, but at the end of the irrigation season in the fall is when you'll see what the full declines have been from irrigation season and then you can see it bouncing back up often in the spring and late spring. But I think there will be information available from the USGS in about a month. [LB488]

SENATOR BOSTELMAN: Okay. [LB488]

KAREN AMEN: And I also don't think...I would be interested to hear Mr. Edgerton's information on the decline of the groundwater mound that is north of Holdrege because it was my understanding that that mound was pretty stable. So there may be more recent information that I'm not aware of. [LB488]

SENATOR BOSTELMAN: Thank you. [LB488]

SENATOR HUGHES: Okay. Any additional questions? Thank you, Ms. Amen. [LB488]

KAREN AMEN: Okay. Thank you guys. [LB488]

SENATOR HUGHES: Next opponent. Welcome back, Ms. Silke. [LB488]

VANESSA SILKE: Thank you. Thank you, Senator Hughes and members of the committee. My name is Vanessa Silke. For the record, that's V-a-n-e-s-s-a, and my last name is spelled S-i-l-k-e. I'm an attorney with Baird Holm and the president of Nebraska Water Resources Association.

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

Natural Resources Committee
February 15, 2017

We echo the comments of the previous testifier, so I'll keep my comments very brief and I do appreciate the information that they shared with the committee. NWRA supported the process through LB1098 and appreciates the efforts of the Natural Resources Commission in vetting the applications that are submitted for this source of funding. And we oppose LB488 and any efforts to remove any sources of funding for the Water Sustainability Fund for that reason. So I'm happy to take any questions that you may have. Again, we echo the prior testimony. And I want to preserve what time you have this afternoon, so. [LB488]

SENATOR HUGHES: Okay. Thank you, Ms. Silke. Are there questions? Seeing none, thank you. [LB488]

VANESSA SILKE: Thanks. [LB488]

SENATOR HUGHES: Additional opponents. Welcome, Senator. [LB488]

TOM CARLSON: Thank you, Senator Hughes and members of the Natural Resources Committee. I've been in this chair once in the last year, but otherwise three years ago I was sitting in Senator Hughes's chair and then Senator Kolowski is one that goes back to really the study that began on water sustainability in Nebraska. [LB488]

SENATOR HUGHES: Senator Carlson, would you spell your name, please? [LB488]

TOM CARLSON: Oh, excuse me. I've only told people to do that about a hundred times. T-o-m C-a-r-l-s-o-n, from Holdrege, Nebraska. [LB488]

SENATOR HUGHES: Thank you. [LB488]

TOM CARLSON: So Senator Kolowski is a familiar face as is Laurie Lage and I certainly enjoyed my time working with the Natural Resources Committee. In 2013, (sic 2014) LB1017 (sic LB1098) was passed and that was really to study what is water sustainability in Nebraska. Senator Kolowski was a part of that group. We had about 27 people plus 6 senators that met 20 full days in the summer that year. And one of the big things that took place was the original Natural Resources Commission was made up--and I would say pretty heavy groundwater people--because it was 13 members that were elected by the NRD boards in the 13 basins in Nebraska, so that made 13 members. Then the Governor appointed three. And it's kind of interesting, because one of those that he appointed was to represent groundwater. Well, what do you think the NRD boards, in general, around the state elected to that commission? The other was to represent surface water. And then someone to represent municipalities. So that was 16

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

Natural Resources Committee
February 15, 2017

members. My wife and I own farmland in Phelps County and we're heavy ag people and we support ag, but I thought that commission is a little heavy on irrigation and agriculture. So in our study, we decided that that commission needs to expand and include more people with perhaps a different frame of mind. And that's how it expanded to 27 members. That's kind of an unworkable group. That's a lot of people. But if six people sit around a table and they all agree on everything, I don't know how good the decisions you make are. But with 27 people, you have to move in a consensus manner and that's what we did. And by the twentieth meeting, the commission said, this should be the commission, the new commission, and that's how the bill was written. So LB1098 passed 48-0 and part of that was an appropriation--Senator Mello was Chair of the Appropriations Committee--of \$10 million a year. And he put an amendment in, which was fine, it was another \$1 million for sewer separation in Omaha. Well, that's the art of negotiation and getting along. You've got to give people something if you're going to get something. And that's where it is today. There was not a guarantee, but there was an agreement that funding was going to take place for ten years. We're just in really the second year of it, so to criticize what some of those awards have been I think is shortsighted. And I know from experience of the people on the commission, they are good people that put in a lot of time and effort to make the right decisions. So with that, you may have some questions for me and I'll try to answer them. [LB488]

SENATOR HUGHES: Thank you, Senator Carlson. Any questions? Seeing none, you did a very good job. Thank you. Additional opponents. Welcome, Mr. Fanning. [LB488]

JASPER FANNING: Mr. Chairman, my name is Dr. Fanning, Jasper Fanning, J-a-s-p-e-r F-a-n-n-i-n-g, general manager of the Upper Republican Natural Resources District. I'm only here to correct the record on a couple of things. It was as questions came up and folks maybe gave the wrong information. In terms of how many acres you have to shut off in the Republican Basin to get a benefit, the answer is to do it, we can do it with N-CORPE to comply with the compact. What was presented to the special master in the United States Supreme Court case and won that case for us was, we have to shut off what we call the rapid response area in the Republican Basin. In our integrated management plans across the basin in the Upper, Middle, and Lower Republican NRDs, there are approximately 174,000 acres in the rapid response area. If we shut all those acres off in one year--and these are all of the acres closest to the Republican River and the tributaries, okay, the acres that have the highest impact on the basin--you shut off those 174,000 acres, within that first-year time frame when those are shut off, you get approximately 15,000 acre-feet of additional streamflow. Okay? So you need to shut these off a little bit early, like maybe the year before you need to make a 40,000 acre-feet, like we do with N-CORPE with the flip of a switch. So in the second year and thereafter those acres really close hit their roughly 45,000 acre-foot impact. So we can increase streamflow by about 45,000 acre-feet a year if we shut off 174,000 acres for two years and more there on out. So just to kind of put that into perspective so you have the correct numbers, it's 174,000 acres that are shut off; it's 15,000 acre-

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

Natural Resources Committee
February 15, 2017

feet in the first year; and it's roughly 45,000 acre-feet thereafter. And that's sufficient to keep us in compliance, rather than retiring the roughly 15,000 acres that we did with N-CORPE. The other thing that came up, the map, the groundwater level change map, it wasn't pointed out by those who presented that to the committee that UNL actually corrected that map, included a footnote on it to explain why there was a decline in the N-CORPE area. With that, they actually are measuring water levels every spring. And normally, across Nebraska there's not much pumping that happens before spring. But we were operating the N-CORPE project and had 30 wells. We have observation wells out there in the middle of those wells that take groundwater level measurements that are reported to UNL, so they used a measurement from a time period in the spring when we were actually operating and pumping water and has a cone of depression just like there always is, exactly why UNL doesn't use fall measurements or summertime measurements to try and show static measurements. They actually amended their report and said that part of the change from their previous year to the current year on the map is because we were operating a project. And if the measurements had been taken at a time when we weren't operating the project, after it had rested for approximately a year--and that's what we've seen out there when we shut off the project for approximately as much time as what it's pumped--we're seeing a recovery rate to where it's returning right to where it normally would be and that's what we expect. And so that's why that map was misleading and even the authors of the map provided a footnote so that it wouldn't be misused as it has been here. Thank you. [LB488]

SENATOR HUGHES: Thank you, Dr. Fanning. Are there any questions? Senator Bostelman. [LB488]

SENATOR BOSTELMAN: Thank you, Mr. Chairman. Dr. Fanning, I guess follow-up to that would be, if you're drawing down over the wintertime, farmers are going to need it and the irrigators in that area will need about...August time frame, whatever, what's that recharge back up for them? Are they...is there still a decline in that aquifer for available water or is there sufficient enough for irrigators to use? [LB488]

JASPER FANNING: There is sufficient water there for irrigators to continue use. There's 400 to 500 feet of saturated thickness. Where our wells are pumping at is generally away from and we're trying to manage the best we can to minimize our impact. We sited the wells that we use based on minimizing our impact on adjoining landowners. It's not that there couldn't be some small impact, but we haven't seen any large impacts. We've had landowners who have had complaints that maybe coffee shop talk, hey, you're impacting our well. We've had well folks go out and say they probably needed some pump work anyway. Now we've worked with those folks and helped them with their pump work, they're still pumping water. We've had guys call the well drillers saying, I'm out of water. I can't pump water. It's because of N-CORPE. He goes out there, the water in their well has actually been higher than where the same well driller measured it the last time he was out there to do well work. So part of the problem is there's this perception or

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

Natural Resources Committee
February 15, 2017

uneducated perception by folks that haven't actually put a tape down a well and measured. We went out...I actually sent my technicians over to assist and the Republicans sent theirs over to assist. We measured every one of the 115 wells on the N-CORPE property that we purchased to establish where those were at. And when we measured those, yes, there were some right around our well field that were a couple of feet or a little bit lower than what they were when we...because of the heavy pumping near our well field. In the other 115 wells there were a bunch of wells that actually had higher water levels because we didn't irrigate much in 2013 when we first owned the property and those wells don't have any active pumping around them since that time period. So there's areas where we actually have water levels that are higher on the property than when we acquired it. Right in the well field while we're pumping it, yes, there's a drawdown, that's what occurs. When we shut it off, it comes back. [LB488]

SENATOR BOSTELMAN: Thank you. [LB488]

SENATOR HUGHES: Okay. Additional questions? Seeing none, thank you, Dr. Fanning. [LB488]

JASPER FANNING: Thank you. [LB488]

SENATOR HUGHES: (Exhibit 8-11) Additional opponents. Seeing none, neutral. I have three letters, four letters in opposition: Dennis Strauch; Troy Stowater; Donna Garden; and Lyndon Vogt. Welcome. [LB488]

BOB HALLSTROM: Chairman Hughes, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m, I appear before you today on behalf of the Nebraska Bankers Association in a neutral capacity on LB488. I have visited with Senator Groene before the committee hearing and had proposed an amendment, which has been drafted by Bill Drafters. I only have one copy, but I will get additional copies to you. The NBA has no position with regard to the policy considerations of the committee and the Legislature will have to undertake in looking at LB488. But if the legislation is to be adopted, since it proposes to take irrigated land and convert it to dryland farming purposes for at least one year if not more, we have some concerns over what impact that will have on the lien positions of the lenders who have financed those particular farming operations. We have taken language out of existing Section 46-739, which we had worked on with Mr. Edson a number of years ago pursuant to programs under which the NRDs can establish financial or other incentive programs. And that existing statute, when you're taking irrigated acres out of production or receiving or obtaining financial incentives for doing so, requires a title report to be provided as part of the application process to identify lienholders, it requires consent from those lienholders and we are basically trying to insert the

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

Natural Resources Committee
February 15, 2017

same type of provisions for this particular legislation in the event it's adopted. So I'd be happy to address any questions and we'll get those amendments to the committee as well. [LB488]

SENATOR HUGHES: Thank you, Mr. Hallstrom. Are there questions? Seeing none, thank you for your testimony. [LB488]

BOB HALLSTROM: Thank you, Senators. [LB488]

SENATOR HUGHES: Is there any other additional neutral testimony? Seeing none, Senator Groene, you're welcome to close. [LB488]

SENATOR GROENE: Thank you, Chairman Hughes. I like to take on issues that stir them up, if you haven't noticed. I believe I'm living in an alternative universe. I just heard that the water levels aren't dropping. Everything's just peachy. There's a reason N-CORPE exists. There's a reason we have shut off irrigated acres in the Platte River Basin and the Republican River Basin for 20, 30 years. We are drawing down our natural resource. Do you know why the Republican River Basin isn't considered overappropriated and the Platte River Basin is? It was politics. The Legislature at that time knew if they did the right thing and said they were overappropriated, Kansas would have one huge hammer in the lawsuit. We would have admitted that we were overappropriated, overusing our water resources, which is also Kansas's. That's the only reason. People involved would tell you that. That's why it is not overappropriated and it's called appropriated, fully appropriated. The Upper Republican, Mr. Fanning and Mr. Jenkins put a grant in to the Water Sustainability Fund to retire irrigated acres, to retire irrigated acres. You heard the individual from Lexington say it did not quite reach the level of accepting...of being accepted, which I think it should have been, because that's where our crisis is in western Nebraska is on irrigation and the overuse of the groundwater. Don't ever get me wrong. I am fully a supporter of irrigated farming. I also am a realist and a steward of our natural resources. The path we were on is not sustainable. It is not sustainable. The Upper Republican themselves have a map here telling you when they're going to run out of groundwater...when they're going to run out in their area. Some of it's 200 years they say, some of it's 20. It's going to happen. You heard \$50 isn't enough. When you drive down the interstate you see them great green fields, 300 bushel corn, I'm talking about the Lower Republican and the Middle Republican. We're talking clay hills and banks and areas where it's hard to find water. It's sand. They only get nine inches allotment. Those guys around Lexington just pump whatever they want. Where Senator Hughes lives it's 13 inches of moisture. I will tell you what, I've been making my living off big, large farmers in that area for years. And there are years when a drought is heading their way they would love 50 bucks an acre. And to you, Senator McCollister, you heard the Twin Platte say only 9 percent of the acres are irrigated. There's five times that much of dryland corn in that area. Genetics have been amazing on production and what corn can be raised by the University of

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

Natural Resources Committee
February 15, 2017

Nebraska. I live two doors down from a professor who created skip-row dryland. They plant two rows, skip a row, plant two rows, made a big, huge difference. In that area if you could raise 67 bushels of dryland corn consistently, 80/90, it's a good crop. That's a good crop. So they do do it. They do it consistently. They raise wheat. They raise milo on that ground. And when you only got nine inches allotment and you could raise milo one year and save the 50 bucks and the \$10, that's not bad. Milo last year dryland made more than irrigated corn in that area. It actually did, it made more profit because they had less cost. We're not trying to get everybody to do it, we're trying to get some to start. We're starting to get the foot in the door on conservation. We're not headed that way right now, we're not, not even close. Most of the folks here hinted that they thought the program was good. They're just protecting the fund. They have a lot at stake, a lot of work they put into that Water Sustainability Fund. I just know we don't have any money. We don't have any money for an A bill to start a new program. And you heard here earlier that the state caused this, the state caused this compact. It wasn't the farmer, it was the state that got into...agreed to that compact. Well, by golly, the state ought to fork over some money. The lawyers will tell you from the state, from the AG's office, that they did such a great job, the lawsuit was \$5.5 million from \$80 million. No, it was a lot more than that. It's \$120 million to \$140 million, but our local farmers paid it, not the state. We pay for N-CORPE, we paid for other programs that's 10 bucks an acre and we're in debt now to pay that off. We bailed...sound familiar, Senator Hughes? The property taxpayer, ag, bailed the state out again. We bailed them out. So anyway, this is just an idea to get a conversation going that we got to look at conservation for the long run. So thank you. [LB488]

SENATOR HUGHES: Thank you, Senator Groene. Any following closing questions? [LB488]

SENATOR GROENE: Oh, can I say one more thing? [LB488]

SENATOR HUGHES: Sure. [LB488]

SENATOR GROENE: Mr. Fanning said something about electrical bill that wasn't in the \$2 million. There was an electrical bill to run those pumps in '15 was \$2,661,000, just the electrical bill to run those pumps to pump that 60 inches. The public power liked it. Also, one more thing I forgot to tell you as far as the state. There is a Supreme Court case...I'm just an average guy and not a lawyer like Mr. whats-his-name. Springer v. Kuhn, Appellate Court, October 21, 1997, the Legislature has...let me start over. Overlying land, even for pressing a need, is supplying urban water users, the Legislature has the power to determine public policy with regard to groundwater and it may be transferred from the overlying land only with the consent of the public through their elected officials. We are their elected officials. So thank you. [LB488]

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

Natural Resources Committee
February 15, 2017

SENATOR HUGHES: Okay. Any questions? Seeing none, thank you, Senator Groene. That will close our hearing for today, the Senator Groene Day. [LB488]