

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

BOSTELMAN: All right. Good afternoon, everyone. Welcome to the Natural Resources Committee. I'm Senator Bruce Bostelman, from Brainard, re-- representing the 23rd Legislative District, and I serve as Chair of this committee. The committee will take up the bills in order posted. This public hearing today is your opportunity to be part of the legislative process and to express your position on the proposed legislation before us. If you're planning to testify today, please fill out one of the green testifier sheets that are on the table at the back of the room. Be sure to print clearly and fill it out completely. When it's your turn to come forward to testify, give the testifier sheet to the page or to the committee clerk. If you do not wish to testify but would like to ident-- indicate your position on a bill, there are also white sign-in sheets back on the table. These sheets will be included as an exhibit in the official hearing record. When you come up to testify, please speak clearly into the microphone. Tell us your name and spell your first and last name to ensure we get an accurate record. We will begin each bill hearing today with the introducer's opening statement, followed by proponents of the bill, then opponents and, finally, by anyone speaking in the neu-- neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. We will be using-- and we will look before each of the hearings, but right now the intent would be five minutes, light system for all testifiers. When you begin your testimony, the light on the table will be green; when the yellow light comes on, you have one minute remaining; and the red light indicates you need to wrap up your final thought and stop. Questions from committee may follow. Also, committee members may come and go during the hearing. This has nothing to do with the importance of the bills being heard. It is part-- just part of the process as senators may have bills to introduce in other committees. A few final items to facilitate today's hearing: If you have handouts or copies of your testimony, please bring up at least ten copies and give them to the page. Please silence or turn off your cell phones. Verbal outbursts or applause are not permitted in the hearing room. Such behavior may be cause for you to be asked to leave the hearing. Finally, committee procedures for all committees states that written position letters to be included in the record must be submitted by 12:00 noon the last business day before the scheduled hearing on that particular bill. The only acceptable method of submission is via the Legislature's website at nebraskalegislature.gov. You may submit a written letter for the record or testify in person at the hearing. You cannot do both. Written position letters will be included in the official hearing record, but only those testifying in person before the committee will

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Natural Resources Committee March 1, 2023

be included in the committee statement. I will now have the committee members with us today introduce themselves, starting on my far left.

FREDRICKSON: Thank you, Chair Bostelman. Good afternoon. I am John Fredrickson. I represent District 20, which is in central west Omaha.

SLAMA: Julie Slama, District 1, Otoe, Johnson, Nemaha, Pawnee, and Richardson Counties.

HUGHES: Jana Hughes, District 24, Seward, York, Polk, and a little bit of Butler County.

BOSTELMAN: Now my far right.

BRANDT: Tom Brandt, District 32, Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster Counties.

JACOBSON: I'm Senator Mike Jacobson, District 42. It'd be Hooker, Thomas, Logan, McPherson, Lincoln, and three quarters of Perkins County.

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

MOSER: Mike Moser, District 22. It's Platte County and most of Stanton County.

BOSTELMAN: Senator Moser also serves as Vice Chair of this committee. Also assisting committee today, to my left, is legal counsel Cyndi Lamm, and to my far left is committee clerk Laurie Vollertsen. Our pages for the committee this afternoon are Trent Kadavy and Landon Sunde. Thank you both very much for serving with us today. With that, we'll begin today's hearings with the gubernatorial appointment of Mr. Dan Hughes for the Nebraska Game and Parks Commission.

HUGHES: Got a little pet.

DAN HUGHES: There can't be any props.

BOSTELMAN: Welcome--

DAN HUGHES: Thank you--

BOSTELMAN: --Senator Hughes.

DAN HUGHES: Thank you, Chairman Bostelman. Members of the Natural Resources Committee, my name is Dan Hughes; that is D-a-n H-u-g-h-e-s, and I'm-- live in Venango, Nebraska. I am before you today as a

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Natural Resources Committee March 1, 2023

potential candidate for a member of the Game and Parks Commission. In my time in the Legislature, I spent eight years on this committee, Natural Resources, my entire career, and during that time I think it's fair to say that I was an adversary but also an advocate for Game and Parks. We did butt heads on a few items and-- but I did carry legislation for the Game and Parks Commission on other instances. A couple of the more notable bills was I carried a license plate bill for them for the bighorn sheep, the Sandhills crane, and the rainbow trout. Sandhills crane and rain-- and bighorn sheep are in the mix for vanity license plates. The rainbow trout, there was some bit of controversy as to whether or not it was native to Nebraska, so we did pull that out of that bill. Also, most notably, probably, the funding increase by-- allowing Game and Parks to increase the fee for out-of-state park permits, I think my last year or two, in order to try to get more money for Game and Parks for the infrastructure building of our state recreation areas. On the adversarial side, I was very vocal and adamant about the landowners' damage that's done by big game, deer, elk, antelope, and turkeys. We did-- were able to pass a couple-- a couple of pieces of-- of compromise legislation to address that issue to a certain extent. So although I have not attended a Game and Parks Commission meeting, per se, yet, there's one in a couple of weeks that I hope the-- this body will confirm me and advance my nomination to the full body, and hopefully that will move forward so I can fully participate in two weeks with the next Game and Parks Commission. So with that, now I-- I'm a farmer and rancher-- or farmer, no longer a rancher, and have a variety of wildlife. I've had elk on my property. I've had antelope, lots of-- used to have lots of pheasants, deers everywhere. Some turkeys walk through. So looking forward to this opportunity, it's pretty easy from the outside looking in to see problems and think you have solutions and, you know, make suggestions, and I was-- I made a lot of suggestions to Game and Parks. They came to the table and we had very frank conversations with the commissioners and we found some common ground. You know, sometimes we agreed; sometimes we couldn't agree and we moved on. So it's going to be very interesting. I'm very excited about this opportunity to go on the other side of the table, to be on the inside of Game and Parks and to learn more about the challenges that come from that position. I have no doubt my learning curve is going to be very significant, so hopefully I can get this committee's blessing and-- and move on to the next step in the process. Thank you very much for your time.

BOSTELMAN: Thank you, Senator Hughes. Any questions from committee members? Senator Jacobson.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

JACOBSON: Thank you, Chairman Bostelman. Senator Hughes, great to see you back.

DAN HUGHES: Thank you.

JACOBSON: I can't think of anybody better to go on Game of Parks Commission with you, given your background, and so I'm glad you're here and I'm glad you're testifying. I would just mention one thing. Two weeks, don't plan on your confirmation being done on the floor before that time. We've got a little issue with getting confirmations done, but definitely--

DAN HUGHES: I un-- understand.

JACOBSON: --by this time next year, we're hopeful that we [INAUDIBLE]. So thank you. Great to have you here.

DAN HUGHES: We'll-- we'll hope for the best.

JACOBSON: Thank you.

BOSTELMAN: Senator Moser.

MOSER: Wondering if you could be the emissary from Game and Parks to Natural Resources?

DAN HUGHES: I need to-- I will be one of nine commissioners. I know they do have an executive committee that I do believe handles the coming to the Natural Resource Committee. I know Director McCoy is here. He testified a lot when he was deputy director, so I-- I think you'll see probably the staff continue to do that to be in this hot seat, and not--

MOSER: Yeah, I'm not-- I'm not serious. I just always enjoyed your kind of gentle nature--

DAN HUGHES: I--

MOSER: --most of the time.

DAN HUGHES: --I-- it is a little different being on this side of the table, absolutely.

BOSTELMAN: Senator Jana Hughes.

HUGHES: The better senator-- no, just kidding. From the old Senator Hughes-- or the-- I'm sorry, from the new Senator Hughes to the old

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

Senator Hughes-- sorry, I really screwed that up. Thanks for coming in. Thanks for volunteering for this. What do you see some of the biggest challenges you think that'll be facing Game and Parks, because how long is your term first?

DAN HUGHES: It's a four-year term.

HUGHES: Four-year term, yeah.

DAN HUGHES: Yeah. The Game and Parks is-- and-- and I've said this when I sat on that side of the table-- they're in a tough spot because you're caught between the hunters, and not only rifle hunters but bow hunters-- they're-- they're two separate groups-- the fishermen, PETA, Humane Society, the campers who enjoy the weekends, the locals-- who, you know, that's my lake, what are you doing here?-- and the landowner. So they're caught in the middle of a lot of different factions that are-- usually have an idea of how to do something better. So it-- it's going to be an interesting balancing act. I'm sure I'll have a greater appreciation for the staff of Game and Parks of how they balance that as-- as a commissioner. You know, I'm certainly-- have my opinion on things, but I'm there to learn. You know, that's-- that's why this-- this opportunity intrigued me and I did agree to accept it.

HUGHES: Well, thanks. I think you will bring a great perspective there. And honestly, just from like you said, from being on this side of it to-- to your side, and maybe we'll make some of our natural resources maybe less contentious because we've got your insight then. We won't talk about L-- shooting them from helicopters then. Thank you.

BOSTELMAN: Senator Brandt.

BRANDT: Thank you, Chairman Bostelman. Thank you, Senator Hughes, for appearing today. If-- and it's-- you-- you know, we've dealt-- you've dealt with a lot of problems over the years with this specific agency, and I guess I'd like to shift gears a little bit. If you were to tell somebody about Game and Parks in Nebraska, what would be the three best things that you would tell somebody from out of state about our Game and Parks?

DAN HUGHES: I think we've got extremely good state recreation areas. Nebraska is very blessed with a lot of water, you know, not only our rivers but our lakes. There are fantastic camping opportunities within the state of Nebraska. There's some places where the facilities are

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

not quite as great as I would like to see, so I-- I hope that we can, you know, focus on improvement on making the-- the amenities at our state recreation areas. The hunting opportunities in Nebraska are tremendous. We-- we complain a lot about the-- the recent invasion of elk, but there are some massive bulls out there, you know, and that-- that's what brings the high-dollar hunter in. That herd needs to be managed a little better, I think, and I know there's a study between Game and Parks and the University of Nebraska trying to get a handle on the number of elk that we have in the state, but that's an opportunity to manage that herd for a huge benefit to really put Nebraska on the map of, you know, massive game. And there are-- and same thing with deer. We've got some-- some mule deer in my country and some-- and-- and whitetail that are really trophy animals that are-- would be interesting to, you know, promote Nebraska as a-- as a destination for high-dollar hunts. Now the problem you have with that, then the landowner becomes involved because, whatever, 90-plus-some percent of Nebraska land is privately owned. So there's gotta be a balance between the landowner and the rules and regs of Game and Parks, or possibly statutes, to allow that-- it should be a partnership to promote Nebraska as a destination for hunting.

BRANDT: All right. Thank you.

DAN HUGHES: Um-hum.

BOSTELMAN: Senator Fredrickson.

FREDRICKSON: Thank you, Chair Bostelman. Thank you, Senator Hughes, for-- for being here and both for your willingness to serve in the past and continued willingness to serve our state. You-- you mentioned in your-- in your opening, I believe, you kind of talked about your relationship history with Game and Parks and kind of different ups and downs, and as-- as a therapist of myself, I find that those are the best relationships, when there's ups and downs. But I'm kind of curious to hear a little bit if you might want to speak a little bit more to kind of how you envision your-- that kind of history of Game and Parks Commission, kind of moving forward, and sort of integrating that in your work moving forward as a commissioner potentially?

DAN HUGHES: Well, I'm under no illusion that I'm going to step into that board and-- and have a huge impact from day one. There's no question I-- you know, there are eight other commissioners, you know, and I know all of them. I'm acquainted with all of them. I do not know them. So, you know, we all come from different backgrounds, different perspectives. I think I know the background of most of the-- of the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

commissioners there. And they've been there a lot longer than I have, most all of them, so, you know, I'm-- I'm looking to learn from their experience. I mean, they've been through a lot of these issues, a lot more in-depth than I have, so I've got a lot of learning to do, but I also do bring, you know, from my perspective as a landowner. And, you know, one of the things, in my district in the Legislature, I was eight counties in southwest Nebraska, so the Republican River Basin area, and there the-- the two complaints I heard most were property taxes and deer problems, so I became somewhat focused on working, trying to find solutions with Game and Parks on that issue and that kind of-- you know, our-- our love-hate relationship, if you will, probably progressed from there. But, you know, it's-- there's no easy solutions because if it was easy, somebody had solved it already.

FREDRICKSON: Sure.

DAN HUGHES: So there's opportunities to maybe look at something differently and me coming in as a new commissioner, you know, but I've gotta build a relationship with all the other commissioners, too, in order to-- to get something done, so I'm-- I'm looking forward to the challenge.

FREDRICKSON: Thank you.

BOSTELMAN: Senator Moser.

MOSER: So what's the balance of hunters versus ag producers on the Game and Parks Board, do you think?

DAN HUGHES: You know, I don't know. I guess I know who the commissioners are. I'm acquainted with them, but I do not know them, how many are avid hunters or fishermen or, you know, what-- what their backgrounds are. I mean, they all came before me and this committee in the past, but as you know, you see a lot of people in this chair wanting--

MOSER: Oh, sure.

DAN HUGHES: --wanting positions.

MOSER: Sure. Do you-- do you still hunt?

DAN HUGHES: I have not hunted for quite a few years, but, you know, if the opportunity presents itself, I--

MOSER: Do you have more time though?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

DAN HUGHES: Well, you and I discussed a-- a rifle and scope over lunch that would be pretty cool. [LAUGH]

MOSER: Thank you.

BOSTELMAN: Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Bostelman. Thank you, Senator Hughes, for being here. And I really do appreciate your willingness to serve. I know once you, you know, get out of here and go back to your land, it's the draw of your land pulling you back in maybe is a little hard to escape. And so, you know, just that-- the willingness to get away from that, despite the amount of force drawing you back there, I appreciate. And I appreciate the-- your coming in and starting out with laying out your controversies there about the-- the rainbow trout. I mean, I think it's good to own your-- your prior mistakes and that's helpful. [LAUGH] So but my serious question is about do you-- did you have a relationship with the person you're replacing on Game and Parks?

DAN HUGHES: I knew Robert Allen was his name. He was from Eustis or Farnam. I met with him a few times early on in my career as a senator, talking about the-- the deer problem in my district in those ten counties. Other than that, I'm acquainted with him and, you know, we-- we had discussions about that and he, you know, told me what Game and Parks had been doing at that time and-- but I-- I-- you know, he's an acquaintance.

J. CAVANAUGH: Yeah. Well, I guess the reason I'm asking is, you know, sitting where we sit, and I learned a lot from you sitting on this committee, and a lot of things were kind of surprising to me about what were the issues that we faced, and particularly Game and Parks, and my impression is some of it just has to do with kind of trust and, you know, people not feeling, people on this side and, you know, and you when you were on the side, feeling like Game and Parks wasn't being an honest broker on these sort of depredation things. And I guess I-- I wonder about your perspective on that, now that you're-- you're looking at it from the other side, if you're-- how you would-- your approach might differ from your predecessor's in terms of building that kind of relationship so we don't have so many of those conversations in here, the need for them.

DAN HUGHES: Well, you know, as-- you know, from a freshman senator to a senior senator being, you know, termed out, you know, you learn a lot; every year you learn a considerable amount. And the depredation

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

issue is still a problem in some areas. Mother Nature has a tremendous role in the amount of wildlife. I mean, there are-- there are parts of the state where the deer population is de-- has been decimated recently because of disease. There are other areas of the state that are-- they're doing really well, so, you know, it's a balancing act between-- and-- and it's a-- it's a very good fit, I think, from being a farmer, because I'm-- I go to battle with Mother Nature every day that I get up and go outside. And it's kind of the same thing with Game and Parks because you are trying to manage a resource that is extremely dependent upon Mother Nature. You know, our pheasant population is way down because we haven't had very good spring hatch weather. The-- the winters in my area have been devastating, so our pheasant population is way down, our deer population is way up. You know, the-- the disease has not taken a big toll in my immediate area, but you go south and, yeah, there's not near the numbers that there has been. So it's-- it's a balancing act, and trying to balance between the landowner and the sportsman and the camper, Game and Parks is in a tough spot and I've got a much greater appreciation for that position than I had when I first started as a senator.

J. CAVANAUGH: Thank you. Me too. Thanks.

BOSTELMAN: Any other questions? Seeing none, thank you for coming in.

DAN HUGHES: Thank you.

BOSTELMAN: Thank you for your willingness to serve. Anyone who would like to testify as a proponent, as a proponent for the gubernatorial appointment of Dan Hughes to the Game and Parks? Proponent, please. Good afternoon. Welcome.

JOHN ROSS: Senator Bostelman, members of the committee, my name is John, J-o-h-n, Ross, R-o-s-s. I'm here to try to encourage you to nominate him and send it forward. He's an active farmer, and I think that's one thing that's been lacking on that Game and Parks Commission for a lot of years. They really haven't had anybody who's actively farming. There's a lot of people own land and some of them manage it just for hunting. So I think he will bring a different perspective there. And like he said, he's con-- been controversial with them. So have I. I'm a hunter education instructor, and I dearly love that program. It's fantastic. But as a landowner like Senator Dan Hughes, there's times I've had issues with what Game and Parks was doing managing our water. So I think he'll bring that perspective there. The-- his record in the Legislature, you-- it's there. You-- a lot of you know him. He's willing to compromise and do things that will help

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

the entire state of Nebraska, and that's what I think we're looking for. I think the one thing he didn't-- he mentioned raising fees, which was to-- on out-of-state permits, was to help with the issue out at Lake McConaughy, and that was a big problem because I knew some firemen out-- and EMTs that were from that area and they said they wouldn't go out there on certain weekends unless they had law enforcement escorts and that, you know, that's-- that's not good. That's not what we need. So I just think Senator Hughes will be a great person to have on the Game and Parks Commission. Thank you.

BOSTELMAN: Thank you. Are there any questions? Seeing none, thank you for your testimony.

JOHN ROSS: Thank you.

BOSTELMAN: Next proponent. Anyone else like to testify in support of Dan Hughes to gubernatorial appointment to Game and Parks? Seeing none, anyone would like to testify as opposition? Good afternoon. Welcome.

AL DAVIS: Good afternoon, Senator Bostelman, members of the Natural Resources Committee. My name is Al Davis, A-l D-a-v-i-s. I'm the registered lobbyist for the 3,000 members of the Nebraska chapter of the Sierra Club. We recently learned that Dan Hughes had been nominated by Governor Pillen to serve as a board member of the Game and Parks Commission. The Nebraska chapter of the Sierra Club stands in opposition to this appointment. During Senator Hughes's leadership of this committee and as a member of this committee, he has demonstrated contempt for the entity and the mission of the Nebraska Game and Parks Commission on several occasions. In large part, the commission does an admirable job juggling the demands of the public with limited means available to them and dealing with the dicey relationships between landowners and hunters on the game side. That relationship is especially critical since so much of Nebraska is privately owned and landowners often carry the weight of caring for game which is owned by Nebraska residents. Through statements made in front of this committee, Mr. Hughes has demonstrated unhappiness with the management in place today and argued for an expansion of the rights of landowners over the public. Will his appointment lead to further limitations for public hunting? His record indicates that that would be one of his goals. Hughes also introduced a bill last year which would have required the commission to sell their Lincoln facility, move the headquarters to a city of less than 10,000 people, with the requirement that the location be over 200 miles from a metropolitan area. Such an action would result in significant cost to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

the commission, multiple retirements, and would weaken the ability of the commission to perform its duties effectively. The Nebraska chapter of the Sierra Club does not believe the Commission should be filled by people who do not respect the current goals and objectives of the commission, and not by those intent on gutting the functions of the commission. For those reasons, we stand opposed to this appointment. Thank you.

BOSTELMAN: Thank you for your testimony. Any questions? So my question would be, do you feel that only those people who support all the actions of Game and Parks should be a commissioner?

AL DAVIS: No, but I think that the-- the commission needs to be guided by people who respect at least what I've seen them do for the last 50 years, which is try to juggle the different competing demands of people.

BOSTELMAN: Yeah, and I appreciate that, and I think Senator-- Senator Hughes had said that he was both supportive and-- and he had issues with it, which I think some of us on the committee have had issues, so I think he articulated his position there. And I appreciate--

AL DAVIS: When I was here as a senator, I had issues, too, so.

BOSTELMAN: Right, exactly, so, OK. Thank you. Any other questions? Senator Jacobson.

JACOBSON: Thank you, Chairman Bostelman. Mr. Davis, I-- I guess I want to kind of go down this same line. How-- how many commissioners are there today on Game and Parks Commission?

AL DAVIS: I think he said nine.

JACOBSON: OK. So right now you're suggesting that adding one more out of-- one out of that nine that has a perspective from a producer's standpoint, as the previous positive testifier indicated, is going to upset the balance and we're-- I mean, I-- I thought this was about getting perspective from all areas and-- and you seem to be concerned about adding one of the nine. I mean, is that--

AL DAVIS: So-- so I'm representing my organization. I-- I'm doing what they've asked me to do.

JACOBSON: Gotcha.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

AL DAVIS: Right? I understand your point, and what Senator Hughes had to say today, I thought, went a long way towards massaging some of the concerns of the Sierra Club has about the appointment.

JACOBSON: Perfect.

AL DAVIS: A lot of the bills that-- that I heard last year and the year before were-- was a lot of animosity, which causes me concern because I do know that one board member can, if driven to a point, result in terminations or people quitting because they-- they just don't want to put up with that. So I think what Senator Hughes said today would-- is helpful.

JACOBSON: All right. Well, thank you, because I-- I would tell you, I've known Senator Hughes for a long time and we don't agree on everything. In fact, there might even be an issue today that we're on the opposite sides of, but I will tell you, I've always had great respect for him. I think he's a great thinker. I think he'd be a great person on this board, and that's why I was a little taken aback by the opposition. So I appreciate your answer. Thank you for being here.

AL DAVIS: Thank you.

BOSTELMAN: Senator Moser.

MOSER: Well, when we've had issues, back when I was mayor of Columbus for 12 years, we had committees that just couldn't make a decision and they-- we-- well, for one thing, viaducts. So we had people from the engineering and the city, but we didn't have regular citizens on the committee, so we just never got anywhere. So I put all the worst enemies all on the same committee and just let them talk it over and work it out. And we wound up building two viaducts and-- three? Two. They got one more maybe to build. But so I think it can work out. And first of all, I probably agree with anything Dan Hughes said, I-- says. I don't-- I don't dispute-- he's got more knowledge in a lot of the areas that I aspire to. But saying that, if I had somebody on a committee that was going to be the negative foil for everything, he can be a gentleman and a-- and a very personable guy and he can work through it, I think.

AL DAVIS: And I've worked with him before, so I know you're-- what you're saying there.

MOSER: Yeah. Yeah. And you were here in our seats, and so you kind of know what you have to do to succeed here. You don't always get-- we don't always get our way. But thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

AL DAVIS: We-- we try-- we try to though.

MOSER: Yes. Well, and I-- I enjoy listening to you come testify against most of everything we're doing, just to-- just to see if I can learn something, you know, and-- and I usually do, so I'm glad to see you.

AL DAVIS: Thank you, Senator. I appreciate that.

MOSER: Sure.

BOSTELMAN: Senator Slama.

SLAMA: I'll just leave it at that. Senator Moser took my point better there.

MOSER: Sorry.

SLAMA: You're fine.

BOSTELMAN: Seeing no other questions--

AL DAVIS: Thank you.

BOSTELMAN: --thank you for coming in today. Appreciate your testimony. Any other opponents? Anyone else like to testify in opposition? Anyone like to testify in neutral capacity? Anyone testify in neutral capacity? Seeing none, that'll close our gubernatorial appointment hearing on Dan Hughes to the Nebraska Game and Parks Commission. Thank you. There is-- for the record, there was two proponents, letters that did come in for Dan Hughes's appointment. So I have an idea, can I have a hand-- see a show of hands how many people plan on testifying on LB656, the one we have here right now? We're just timing for the next testifier so we kind of have an idea. OK, we'll do five minutes, so, OK. With that, we will open up our hearing on LB656. Senator McDonnell, you're welcome to open.

McDONNELL: Thank you, Chairperson Bostelman and committee members. My name's Mike McDonnell, M-i-k-e M-c-D-o-n-n-e-l-l, represent Legislative District 5, south Omaha. It's with great pleasure that I present LB5-- LB656, a bill aimed at supplying the Small Watersheds Flood Control Fund with sufficient funding to cover local shares for all active Nebraska projects. In total, these projects cover an area of 5.5 million acres and cover 43 legislative districts. Helping cover the local cost share will allow our state to access the billions of dollars in federal funding necessary to conserve our watershed and

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

protect our-- our water. The Watershed and Flood Prevention Operations, WFPO, is a crucial player in the Nebraska water resource management mission. The-- the WFPO strives to reduce floods, renew river healthiness, protect public infrastructure, and guard communities against the effects of runoff. Through a variety of projects, the WFPO works to improve water management for the purpose of flood damage reduction, watershed protection, public recreation, public fish and wildlife, agricultural water management, water supply management, and water quality management. These projects are carried out in order to protect Nebraska's natural resources and promote stability through our communities with approval from the Natural Resources Committee. LB656 will authorize funding for the local cost share necessary in order to strengthen and protect our state's watersheds. I have passed out a map of the state's active WFPO projects covering 43 legislative districts. Combined over the next decade, the local cost share for all projects is estimated at \$404 million. Funding this local cost share would unlock billions of dollars in federal funding for those projects and protect one of our greatest resources and support our agricultural economy. The WFPO pro-- projects are vital to Nebraska's economy, both for the short and long term. The projects help sustain a healthy agricultural industry by reducing flooding, improving water management, providing access to safe drinking water, and protecting critical infrastructure. In addition to these, they-- they provide recreational opportunities such as fishing, boating, hunting and stimulate economic activity in the rural areas of the state. By investing in these projects now, it will ensure that the future generations will be able to enjoy the same opportunities we have today while facing fewer environmental challenges due to our efforts. Further strengthening our watershed-- watersheds can reduce long-term maintenance costs associated with repairs or replacements of infrastructure damaged by extreme weather events. Also here to testify is John Winkler, the general manager of the Papio-Missouri River Natural Resources District, and Mike Murphy from the Niobrara Natural Resources District. I'm here to answer any questions. The map I handed out, if you-- if you look at the \$404 million, that would be our cost share, and the projects going on throughout the state, I think they're all important projects, and how do we get there sooner based on-- on the need of these projects and how essential they are to our future of our state.

BOSTELMAN: Thank you for your opening. Are there questions from committee members? Senator Brandt.

BRANDT: Thank you, Chairman Bostelman. Thank you, Senator McDonnell, for bringing-- bringing this. And reading the note on the fiscal note,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

and I guess this is just for clarification, it appears that the money can only be used for land purchases. And then typically what happens, they build the watershed and then they sell the land and then all that money goes back into this fund. Is that correct?

McDONNELL: Well, the money that I'm-- I'm looking at is being appropriated from the-- the-- the Cash Reserve. That's where our share would be coming from. The people testifying behind me will get more into detail about the percents of the federal monies and the match--

BRANDT: All right.

McDONNELL: --and how that would work.

BRANDT: Yep. I'll wait to see what they say then.

McDONNELL: OK.

BRANDT: Thank you.

BOSTELMAN: Other questions? Seeing none, will you stay for closing?

McDONNELL: Yes.

BOSTELMAN: OK.

McDONNELL: Thank you.

BOSTELMAN: Thank you. Like to ask anyone who would like to testify as a proponent for LB656 to please come forward, proponent. And if you plan to testify, it just helps out if we move to the front, start populating the front seats. It just helps us move along a little bit quicker. Good afternoon. Thank you.

JOHN WINKLER: Good afternoon.

BOSTELMAN: Welcome.

JOHN WINKLER: Thank you. Thank you. Chairman Bostelman, members of the Natural Resource Committee, my name is John Winkler, J-o-h-n W-i-n-k-l-e-r, and I'm the general manager of the Papio-Missouri River Natural Resources District. I'm testifying today on behalf of the Nebraska Association of Resource Districts in support of LB656. The Small Watershed Fund would dir-- was originally created in the 1960s to serve as a local match for federal funds for the PL566 program. The fund largely went dormant after the federal funds dried up. However, the fund is set up to do exactly what we in Nebraska need to do to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

access and bring home hundreds of millions of dollars in federal funding through the USDA NRCS Watershed and Flood-- Flood Prevention Operations Program, or WFPO. The WFPO provides technical and financial assistance to states, local governments and tribal organizations to help plan and implement authorized watershed projects for the purpose of-- and Mike listed those for you, Senator McDonnell, so I won't go over those. Currently NRDs have applied to the Water Sustainability Fund for the local cost-share funding assistance for three WFPO projects-- that was Wahoo Creek, Papio Creek and Long Pine Creek-- and thus far have been successful on all three of those applications. However, if all the entities and local sponsors begin trying to tap the Water Sustainability Fund for every eligible WFPO project, the fund will not be able to have sufficient funding to fund those or other valuable water sustainability projects. There-- I have attached a map to my testimony which identifies all the potential WFPO projects throughout the state. The potential exists, as stated by Senator McDonnell, for \$400 million in required local cost share if all the plans identified are implemented. There are 33 current WFPO projects in Nebraska. In addition, 43 out of the 49 legislative districts have active watershed management plans and could be eligible for the WFPO partnership funding. Nebraska NRDs spend-- spend a tremendous amount of time and effort to apply for outside funding sources to assist in implementing projects and programs for the protection of life and property, and to wisely manage our state's most valuable natural resources. For example, the Papio NRD has recently been awarded over \$5.3 million in federal FEMA funding for the construction of a flood control reservoir in Sarpy County, and last month was authorized for over \$91 million in federal funds through the 2022 Water Resources Development Act for construction of flood control, levee improvements, and flood wall in Douglas and Sarpy Counties. However, most, if not all of these outside funding sources, including federal funding, requires a local match of varying percentages in order to access the program funds. Therefore, to bring more outside funding sources to the state of Nebraska and further reduce our reliance on property taxes to get vital project construction, we need the ability to match those funds with local resources. Thank you once again for the opportunity to testify. I would be happy to answer any questions that you may have.

BOSTELMAN: Questions from committee members? My question would be, I guess, on some of these projects, are these cooperating with landowners or not?

JOHN WINKLER: Yes, the-- the majority would be cooperating with-- with local landowners, with other units of government. They-- they are--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

they're varying projects. They're-- they're land treatment; they're water management. There's, you know, there's smaller type of flood control structures. They're not like the big dams that-- that we typically would see in the metro area. They're smaller, like the farm pond you see, erosion control, sediment control, all those types of things, water quality projects, so, yeah, there-- there are varying degrees. But again, we-- those projects typically follow-- we have cooperative agreements or we have cooperation with the landowners to have those implemented in their vari-- various areas.

BOSTELMAN: OK. Senator Hughes,

HUGHES: Thank you. Thank you, Chairman. Thanks for coming in.

JOHN WINKLER: Yes.

HUGHES: OK. So we've got-- I don't even-- I should know this-- how many NRDs across--

JOHN WINKLER: Twenty-three.

HUGHES: Twenty-three, and clearly these projects are across all of them. How is the money-- if-- if this would happen, how would-- which projects would get that \$40 million every year, like it-- because-- because we want them there, because you're saying we can-- it's money that could be matching federal-- federal funds to match it, whatever.

JOHN WINKLER: Right.

HUGHES: Who would decide that? What takes priority?

JOHN WINKLER: So the process, you would apply to the USDA or the NRCS.

HUGHES: Each NR--

JOHN WINKLER: Yes.

HUGHES: An NRD that has one of these projects--

JOHN WINKLER: Right, would--

HUGHES: --would apply.

JOHN WINKLER: --would go through that process, and there's a very specific proc-- federal process to go through to get approval--

HUGHES: OK.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

JOHN WINKLER: --a very public process. You have to have public gathering and public input. And then so once that project would be approved through--

HUGHES: Federally--

JOHN WINKLER: --the NRCS--

HUGHES: --right.

JOHN WINKLER: --then it's eligible for-- for it to go further for funding.

HUGHES: So then-- but that-- so let's say you've got-- we've got way-- we've got \$100 million that we're federally approved. Who gets the 40? How would that be-- do you know what I'm saying?

JOHN WINKLER: So-- yeah, so say-- so one thing about these pro-- they're all not going to get approved at once, which is-- which is--

HUGHES: OK.

JOHN WINKLER: --the beauty of you have time to--

HUGHES: Over--

JOHN WINKLER: --to implement these over--

HUGHES: Uh-huh.

JOHN WINKLER: --over years. So it depends on the-- the practice of what you're using of what the match is. Varying practices, if it's flood control or if it's water quality, whatever that may be, has a-- has a different match, so-- so what-- if you have an approved project and the-- say the NRD applies to DNR, who manages this fund, then it-- you know, I highly doubt that you know, the whole \$40 million will be used in one year. But if-- if so, it would probably be a first-come, first-serve basis.

HUGHES: OK.

JOHN WINKLER: But DNR would have to iron that out in their--

HUGHES: Come up with some time frame.

JOHN WINKLER: --yeah, rules and regs, so, yeah.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

HUGHES: OK. Thank you.

JOHN WINKLER: But that's-- that is my anticipation of how that would work.

HUGHES: Very good. Thanks.

BOSTELMAN: Senator Jacobson.

JACOBSON: Thank you, Chairman Bostelman. I guess I would kind of follow up a little bit on Senator Hughes's question. So if I understand this right, someone, Papio, for example, could have a project and take the entire \$40 million and-- if their project was approved, and we're really not dis-- distributing this among congressional districts or areas of the state. Basically, it's first-come, first-serve; whoever gets there with their project first, they could take 100 percent of the funding. If there were two projects out there, the first project to the-- to the finish line would get 100 percent of it. The second one, they'd be left with nothing.

JOHN WINKLER: Very unlikely that-- very likely that Papio could have the capacity to do that big of a project that would require all \$40 million, or that many projects, so most likely we would-- per district, we would do one or two of these and it would take several years to implement to do that. So it is-- it-- it's highly, if not impossible, for-- for one district to-- to do and get approved by the NRCS that much work to take the whole thing.

JACOBSON: Would it make sense to at least allow for some kind of a basis to where, if one congressional district got a significant amount of the funding, that if there were other congressional district projects that had interest, they would go to the front of the line on the next round and so on--

JOHN WINKLER: Right.

JACOBSON: --so that we get some kind of even distribution of dollars. It probably wouldn't be completely even. It'd depend on the project.

JOHN WINKLER: Right.

JACOBSON: But obviously, as a rural senator, I continue to get concerned about making sure that if this is coming-- it said state dollars-- it's not all funneled into one specific area.

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Natural Resources Committee March 1, 2023

JOHN WINKLER: Right. And-- and-- and that would be something to work out, obviously, with Senator McDonnell, who introduced the bill, but I think all the NRDs would be perfectly comfortable with working out some type of either priority status or-- or arrangement where the money's evenly distributed. Obviously, we work very well together and we wouldn't want to take the whole pot and leave somebody high and dry that had a viable project. So that would be something to, you know, work on, and we would have no opposition to that. It's just-- but I highly doubt that it would be an issue, but we could always put that safeguard in place in case it was.

JACOBSON: I really like Senator McDonnell, but with that said--

JOHN WINKLER: Yeah. [LAUGH] No, and I think that's perfectly fine to make sure it-- it stays fair. One thing about this, we're not asking for this fund to cover all the local cost share. We're asking it to be a-- as a-- as a part of that. And the reason is, is even at the Papio, we have a pretty healthy tax base to draw from, obviously, and even we don't have the wherewithal to meet all of this cost share that-- that could generate from our project. So you can imagine small rural districts. They would-- you know, they could potentially pass up tens of millions of federal dollars because they don't have the wherewithal to meet that local cost share. Again, you're penalizing those projects where we in the urban areas, sometimes, we can't even get there. So it-- it is an unfair advantage, so to speak.

BOSTELMAN: Senator Moser.

MOSER: So how often do NRDs use eminent domain in acquiring property?

JOHN WINKLER: So in these particular-- in these particular projects, I think part of the-- the eligibility to apply for the funds is an entity has to have taxing authority and an entity has to have that ability to use eminent domain. But in these projects, we find that it's very rarely, if ever, used, because these are more, I think, more cooperative type. We want to engage the producers. We want to engage landowners to put these practices into place, whatever that may be. I don't know of any WFPO project that has used eminent domain thus far, and-- and this was re-funded in 2017 by Congress. So I haven't and-- but again, it may have occurred, but I have not heard that that was the case.

MOSER: Thank you.

JOHN WINKLER: Yeah.

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Natural Resources Committee March 1, 2023

BOSTELMAN: Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman. Thanks for being here, Mr. Winkler. So you reference smaller projects like farm ponds and things like that. So I guess I'm trying to picture how this would work because you're not going to apply to the feds to fund one farm pond, right?

JOHN WINKLER: No. And again, these are-- no, it would be-- it would be a watershed management practices, so there could be multiple different ent-- or activities--

J. CAVANAUGH: Over a--

JOHN WINKLER: --over a project.

J. CAVANAUGH: Right, so it's not one person's property [INAUDIBLE]

JOHN WINKLER: No, you could have-- you could have one. You could have several. It just depends on whatever that particular-- whatever particular management practice you're using.

J. CAVANAUGH: And-- and we talk about land acquisition, but some of that wouldn't necessarily be acquisition. You'd just be helping the landowner themselves do some sort of project. Right?

JOHN WINKLER: Yeah, so, you know, that was a great question by Senator Brandt, I think. And in working with-- with DNR and then working with the-- the districts, because the original Small Watersheds Fund was limited to, I guess, right-of-way acquisition, property acquisition, to maybe work with the committee and work with the Legislature to allow more activities to be eligible for the local cost share, so it's just not property. It could be other things that would be required of the project that you can apply the local cost share to. So we-- we would probably want to expand that language to make it more successful and applicable even to rural areas and-- in the state.

J. CAVANAUGH: So just so-- I'm trying to follow you there. So this bill is to create a fund that is accessible for matching eligible federal projects.

JOHN WINKLER: Right.

J. CAVANAUGH: Are all of those federal projects land acquisition projects?

JOHN WINKLER: No.

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Natural Resources Committee March 1, 2023

J. CAVANAUGH: OK. But the state statute requirement is that it's only for land acquisition [INAUDIBLE].

JOHN WINKLER: That-- the way the current Watershed Fund is written--

J. CAVANAUGH: OK.

JOHN WINKLER: --the rules and regs of that fund, yes.

J. CAVANAUGH: And this bill doesn't change that?

JOHN WINKLER: Not yet.

J. CAVANAUGH: And it's not something you've asked Senator McDonnell to entertain?

JOHN WINKLER: We have.

J. CAVANAUGH: OK.

JOHN WINKLER: We just did. No. [LAUGH] No. Yeah.

J. CAVANAUGH: We'll ask him when he comes back--

JOHN WINKLER: Yeah, yeah, there we go.

J. CAVANAUGH: --[INAUDIBLE] to close. And so you said there's-- it's-- it's not just one federal program. There's a lot of federal programs?

JOHN WINKLER: Well, it-- it is. It's this-- it's-- so like the original was the PL5-- it was Public Law 566. Those were specific structures that were funded by the federal government and that-- that kind of-- that went away, so this is specifically to the WFPO NRCS Program and project. Yes.

J. CAVANAUGH: So-- because you said there's different amounts of match.

JOHN WINKLER: Yes.

J. CAVANAUGH: Is there-- there's not a standard percentage to qualify for this fund?

JOHN WINKLER: No, because there's different-- if-- if you remember, in Senator McDonnell's statement, there was, I think, seven different types of-- it was water supply. It was flood prevention. It was water

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

quality. All of those different strategies have a different match applied to them.

J. CAVANAUGH: OK, so depending on which thing it serves--

JOHN WINKLER: Yes.

J. CAVANAUGH: --the feds will put up a certain--

JOHN WINKLER: Yes.

J. CAVANAUGH: --percent.

JOHN WINKLER: It-- and what type of strategy used depends on what that match will be that they will require.

J. CAVANAUGH: OK. Thank you.

BOSTELMAN: Any other questions? Seeing none, thank you for your testimony.

JOHN WINKLER: Thank you.

BOSTELMAN: Next proponent for LB656. Good afternoon. Welcome.

MICHAEL MURPHY: Good afternoon, Senator Bostelman, members of the committee. My name is Michael Murphy, M-i-c-h-a-e-l M-u-r-p-h-y. I'm the general manager of the Middle Niobrara Natural Resource District, headquartered out of Valentine, Nebraska. I'm going to modify from my written testimony, I think just due to the questions that you guys have asked today, which have all been very pertinent. John stated, Senator stated that the need, the need for money, and gotta back up. This-- this process-- and we've been involved in this process for a little over four years on our Long Pine [INAUDIBLE]. You have to physically apply to NRCS and-- and-- and get approved to go begin the planning process. That planning process initially is a two-year process for flood prevention or flood protection. If you go down one, it can maybe be up to 100 percent on project cost of stuff, but that doesn't involve the-- the design, the engineering, the permits, all that stuff. Go down the prevention side of it, then you get into a maximum of 75 percent cost share, and that's where a lot of these projects across the state are. But a lot of them are still in that-- that-- that planning phase. After 2019, we as Middle Niobrara applied for five of them singly in Cherry County because of-- of-- of the events that we experienced with the cyclonic blizzard and the rainfall events. So here we are, 2023. The Long Pine, that process was-- was

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

started in June of 2019. That planning event has still been going under-- underway. Now I've been told by NRCS that we're close to finalizing that stuff to hopefully move forward and begin projects, so that's where we had applied to the water sustainability funding for some of that-- that-- that match to meet that local requirement. Now the other-- we were approved for three of the five in the-- in the other district. And you've gotta remember that they try to limit the size of the-- the watershed areas to 250,000 acres. So on Long Pine, when we applied, we applied for two separate applications, and then they came back to us and asked us if we'd consider combining them and making it a larger watershed area, so it ended up being like 340,000 acres. Well, it made it a little bit easier because we didn't have to have two local stakeholder groups, have two sets of meetings and everything else. We could all do that through one process, work with, you know, Brown County on everything and try to, you know, go through the-- that process on-- on a larger scale. Things changed over a few years. Now they want you to go down a-- what they call a preliminary investigation feasibility report, a PIFR, just to justify that there's a need to do these watershed-based approach for-- for conservation management. We were the-- one of the first ones with our-- with our request for a WFPO south of Valentine with all the flooding issues on Highway 83, if you remember, that year and the road closures and the water and stuff on-- on-- on the refuge. So we-- we went down that process. Of course, everything with the federal government takes extra time. That was supposed to be a one-year process. That ended up turning into a two-plus-year process. We've been notified now that we've been approved, but because of all these additional watershed activities going on in the state, they've-- and staffing issues, I feel, at the federal level, they've kind of put that on hold for us, so that one's-- that one's on hold. And I guess what I'm getting to is there's going to be various phases, back to the questions on funding and how that gets spent, on-- depending on where that planning effort is in the timing of when it goes to Little Rock, Arkansas, for-- for review and then submitted to Washington, D.C., and then back to the state and then for final public review, and then you still gotta get those Army Corps of Engineers permits to do the projects. I mean, just Long Pine alone, we've identified 36 Tier 1 projects. We also have Tier 2 and Tier 3. Those Tier 1 projects are estimated at over \$7 million. If I gotta come up with 25 percent of that locally, that's-- that's where that additional cash in this-- this-- this funding is needed. If I gotta take that out of my general tax request on a yearly basis, you know, 10-- if-- if I ask the board to take 10 percent, that's \$90,000. That would take me 20 years just to try to pay for-- pay for that. That's-- that's where this additional money and

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

leveraging, whether it's-- it's Water Sustainability or Environmental Trust or some other dollars, is-- is needed and-- and can-- hopefully can be utilized with-- with this type of funding mechanism.

BOSTELMAN: OK.

MICHAEL MURPHY: That's all I have.

BOSTELMAN: Let's see if there are--

MICHAEL MURPHY: Like I said, a complete change from what I had-- had wrote, but I've-- you guys had some great questions and hopefully it opens up for some discussion.

BOSTELMAN: Sure. Thank you for your testimony. Are there questions from committee members? So what I heard, if you-- current process is-- is applying to the other potential funds, Water Sustainability Fund or that, to get the funding that you need to-- for your [INAUDIBLE]

MICHAEL MURPHY: Try to-- or-- or using local tax dollars is-- is-- is the other option. And, I mean, there again, these-- and just-- just in the last four or five years, the cost of all these projects, inflationary cost, the cost of materials, trucking, everything else has went up. Just recently, on our two most recent projects that we bid, we seen anywhere between a 29 and 50 percent increase in cost before the-- from two years ago when we applied for Environmental Trust Fund.

BOSTELMAN: OK.

MICHAEL MURPHY: Where-- you know, and for a little-- we are the lowest valuated entity in the state. Where are we supposed to come-- try to come up with all that money?

BOSTELMAN: OK.

MICHAEL MURPHY: And that's that rural aspect, so literally, I-- and I believe-- I think, Senator Cavanaugh, you asked the question about that landscape base. That's the thing about these, is not just looking and dealing with one landowner. These in-- in rural Nebraska are looking at 250,000 acres and landowners. Now that being said, parts of Cherry County don't have a lot of landowners. But how that water-- I mean, we've literally had water, since 2019, sitting and standing on the properties for three years. The best thing that happened was it got dry this last year and helped dry things up. But we had landowners that literally in 100-plus years had never seen water on their

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

properties where-- to the extent that it was after 2019. We saw an average increase of five-foot groundwater elevation, you know, after-- after 2019. We're-- literally part of this planning process is looking at picking up and moving entire branches and headquarters to higher ground because of the-- the [INAUDIBLE] increase in groundwater level.

BOSTELMAN: OK. Seeing no other questions, thank you for coming and testifying today, appreciate it.

MICHAEL MURPHY: Thank you.

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

KYLE HAUSCHILD: Ready? Chairman Bostelman and members of the Natural Resource Committee, thank you for taking my testimony on LB656. My name is Kyle Hauschild, K-y-l-e H-a-u-s-c-h-i-l-d. I'm the general manager of the Ne-- Nemaha Natural Resources Districts in Tecumseh, Nebraska. I'm here to testify on behalf of the Nemaha NRD as a proponent of LB656. I think John might-- kind of took my thunder a little bit, but I'll run through it anyway and then answer your questions at the end. At the Nemaha NRD, we operate and maintain over 460 watershed structures that make up the biggest stormwater infrastructure in southeast Nebraska. In the 1950s and '60s, the SCS, now known as NRCS, worked on watershed plans that are some of the oldest in the country, with Brownell Creek that is located to the east and south of Syracuse, being the third oldest nationwide. The Nemaha NRD's 460 structures are the most dams that are maintained by any NRD in the state. As these structures start to age and near the end of their life, their design life, we are tasked with rehabbing and rebuilding them. The standard design life of a dam is 50 years. We have some of-- some dams that are approaching 70 years old, which has outlived their design life. The time has come to continue to help them perform as their intended purpose. These dams were built 40, 50, 60-plus years ago, were designed to the standards and precip needs of that time. Advancements in engineering modeling will likely change the footprint of the size of some of these structures to make them as effective as they were when they were first built. The Nemaha NRD is currently working on multiple watershed and flood prevention operations, WFPO, formerly known as the PL-566, plans with NRCS to bring these structures up to today's standards, on-- on a new plan to bring watershed protection improvement-- water quality to my district. One area of the WFPOs that we are currently working on, there are 137 structures in Brownell, Wilson and Ziegler watersheds. The influx of flood-- or federal funds of the-- of-- to Nebraska through the WFPO program will help to implement these st-- these projects, but the need

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

for local fund remains. With help-- with the help of the 5-- 566, the Nemaha NRD will be able to continue to improve our watersheds and provide vital stormwater protection to the district that was-- that was intended 60-plus years ago when PL-566 plans were put in place for flood and grade control structures. I thank you for your time and I'll answer any questions you have.

BOSTELMAN: Senator Slama.

SLAMA: Thank you, Mr. Chairman, and thank you, Mr. Hauschild, for being here. I'm always grateful to have District 1 representation here, and I'm grateful for your service. Can you walk me through, given the amount of watershed structures we're looking at here, even within the Nemaha NRD, what's the average cost to replace one of these dams, like a typical dam that you'd be seeing in the Nemaha NRD?

KYLE HAUSCHILD: Honestly, it depends on the size--

SLAMA: OK.

KYLE HAUSCHILD: --is the biggest thing. And like Mike said before, prices have increased a ton.

SLAMA: Sure.

KYLE HAUSCHILD: We're kind of moving down the path of a lot of these structures are starting to fill in with sediment, again, because they're designed for 50 years.

SLAMA: Yep.

KYLE HAUSCHILD: We're looking at a lot of sliplining, which is basically you're re-- you're not necessarily replacing the pipe, but you're actually leaving the current pipe in place and you're putting a fiberglass sleeve on the inside of it, and we've found that that's a lot more cost-effective. But just to do a very small structure, you're talking \$40,000, \$50,000, \$60,000 just to do that. If you're talking like just sort of a removal or replace of that pipe, you're talking probably \$80,000 to \$90,000 just to do that, and that's not changing, updating the standards, or anything like that to-- to the new precipitation models that are being shown. That's just to have the dam that's in place now, to basically keep it in place without adding any benefits to what was originally designed.

SLAMA: Um-hum. And what's the regulatory process your office has to go through to even get one of these structures replaced?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

KYLE HAUSCHILD: Honestly, so that's-- that's the biggest reason we're going through that sliplining process, because the-- the regulation doesn't really change because everything stays the same. If we were to go through a new process, we'd probably have to go through an EA, which is environmental assessment, because you could be affecting wetlands or anything like that. Along with doing designing, permitting, I mean, you're talking a pretty healthy bill just to-- just to go through-- before you even put a shovel in the ground, it's going to be pretty pricey.

SLAMA: All right. Thank you, Mr. Hauschild.

KYLE HAUSCHILD: Thank you.

BOSTELMAN: Question would be, are some of these rehabilitation projects on dry dams then?

KYLE HAUSCHILD: We don't have very many dry dams in our district. We have-- do have a lot of grade control structures which kind of act as a dry dam. But it's-- it's more-- it's just the whole grade. One issue we had on the Little Nemaha River, for example, was in the 1950s, '40 and '50s. They straightened a lot of creeks, which caused a lot of issues with-- with head cutting. So the-- at-- at the time of the Brownell, Ziegler, and-- and Wilson Creek, for example, they had to go through and actually put in grade control structures, so basically it was a drop structure. You're locking that grade in place so that way, you're not getting a head cut running up and then you're getting these big gullies running through fields, getting into the smaller bridges that are on small creeks and stuff like that. So we don't have a lot of dry structures. A lot of them, since they were built so long ago, were-- were dams with ponds on them essentially. So we don't have a lot of-- of dry dams, necessarily.

BOSTELMAN: Well, you mentioned silting during your testimony. Could you speak to that, just--

KYLE HAUSCHILD: Yeah. So originally most of these dams were built. As an NRD manager, we build a lot of these dams for flood control. So the top of the pipe is what we call a riser. From the top of the pipe to whatever holds that water back, as an NRD, that's what we care about, is the flood control. The landowner is the ones that care about the-- the fish and the water and the ponds. As they start to fill in, we're-- we're making more wetlands than-- than actual ponds that are standing. So the flood control remains, but the water quality essentially is what starts going away with the silt coming into the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

lakes. That's where you get the blue-- blue-green algae blooms. That makes the lakes a lot more shallow, which is providing more habitat for rough fish. And you're not going to have your-- your high quality for like your crappie and your other--

BOSTELMAN: Sure.

KYLE HAUSCHILD: --more desirable fish.

BOSTELMAN: And I appreciate it. I-- I know years ago, when I was working on flood control issues in my district, so I call them dry dams. Some slow down the water.

KYLE HAUSCHILD: Yep.

BOSTELMAN: Well, there's old ones that are out there and they silted in. I said, well, why don't we go have a bill? We'll come in. We'll just, you know, clean them out. And they said, oh, no, it's not cost effective, it doesn't do any good, we have to build new, basically, in another area to do that. So I guess-- I guess the silting in ponds where there is-- where they're holding water, that's a little bit different story.

KYLE HAUSCHILD: It is. The one that is kind of the joke that's out there, the-- the-- the one thing that ponds are really good at is capturing sediment, and-- and that's what they essentially end up doing, is-- is filling in with sediment. They're still doing what they were designed for originally, but your water quality, you start to lose that aspect of your water quality. As they start filling in, that's where you get your algae blooms and a lot of that moss and algae that grows on there and-- and your water quality somewhat goes away, but you still have your flood prevention and your grade control.

BOSTELMAN: OK. Seeing no other questions, thank you for coming in.

KYLE HAUSCHILD: Thank you.

BOSTELMAN: Next proponent. Any other proponents for LB656? Any other proponents? Anyone like to testify in opposition to LB656? Good afternoon. Welcome again.

AL DAVIS: Senator Bostelman, welcome back. Al Davis, A-l D-a-v-i-s. So I'm passing out what had been my original testimony. I-- since I wrote that testimony this morning, I got some other information. I'm just going to read that into the record. So we know that this-- that these dams were largely put in for flood control purposes, and the Sierra

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Natural Resources Committee March 1, 2023

Club, which I'm the registered agent for, feels philosophically that it's probably just not the appropriate solution in this day and age. So I'm just going to kind of augment some of what I said with-- with some information that I got from other members.

BOSTELMAN: State and spell your name, please.

AL DAVIS: Oh, I thought I did that.

BOSTELMAN: [INAUDIBLE]

AL DAVIS: Al Davis, A-l D-a-v-i-s.

BOSTELMAN: Oh, sorry. My-- my bad. I missed it.

AL DAVIS: The use of \$80 million to support Small Watershed Fl-- Flood Control Fund is simply the wrong approach to addressing flood risk reduction options. The Small Watershed Flood Control Fund is part of a larger set of antiquated projects developed in the mid-20th century under the false premise that one can control floods or flooding. No land management process can-- can control flooding. The best one can do is reduce the risk of flooding, known in modern watershed management and engineering as flood risk reduction. As LB656 is written, the only statutorily authorized use of this \$80 million is for land rights for potential flood abatement protect-- projects, which has been principally small dams constructed by various natural resource districts with federal funding coming from the Watershed and Flood Prevention Operations Program, as PL-566 watershed dams. We know today that such watershed dams have negative environmental consequences to the natural functioning of stream systems and the native species adapted to residing in flow water systems. The watershed dams allow for the stocking of non-native game fish that eventually establish reproducing populations both upstream and downstream of the dam, which in turn eliminate many of the native fishes and insect species in these streams systems. As an alternative to the antiquated thinking of flood control, the \$80 million proposed in LB656 would be better spent on meaningful watershed restoration programs that would use natural infrastructure processes to reconnect streams to their floodplains. Such a process involves removing infrastructure from the 100-year floodplain, restrictive covenants prohibiting future development in floodplains and floodways, establishing permanent conservation practices that reestablish permanent vegetative cover through buffer strips, filter strips, and grass waterways. Other measures include permanent easements that remove road cropping from highly eroded hill slopes and frequently

flooded lands within the floodplain. Reestablishment of wetland systems within floodplains and wetland detention structures higher up in the flood-- in the watershed will greatly reduce future flood risk. Such areas could still be used for agricultural production in the form of livestock grazing. Given the vastly different climatic conditions of today, principally intense and frequent participation [SIC] events from those in the mid-20th century, a new vision of watershed rehabilitation and management must be instituted in Nebraska. Redistributing the proposed funds of LB656 would be a prudent choice rather than continue to fund outdated programs like the small watershed flood control project. So I wanted to make one other observation, which Mr. Murphy referenced, talking about Cherry County and all the water that we had, because I have a ranch there and certainly dealt with that the last several years and it is very frustrating, which I'd have to say that these events are probably going to be more frequent where we have these, you know, inundations of water and then none for some time. So last year, there wasn't any water in Cherry County, no rain. I'm not sure that these projects are going to be effective when you deal with massive rain events like that. You have eight inches of rain anywhere, that's-- that's an inundation of any water project, so we just think there are better ways to do-- use the funding. Thank you.

BOSTELMAN: OK. Thank you for your testimony. Are there questions?
Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman. Thank you, Mr. Davis, for being here. So, I guess, I mean, I-- the-- the way the bill is written kind of complies with what you're talking about, But it sounded to me like the guys, the testifiers who have come, they're interested in projects such as that you've described as better alternatives. Did I-- am I misunderstanding something?

AL DAVIS: From my discussion with other people, I understand basically what we're doing is renovating what we are-- what's already there. So you've heard talk about the silting in, and my impression was we have a lot of silt that had come into a lot of these dams and have just destroyed their ability to retain water, and then you end up with these ponding issues behind them.

J. CAVANAUGH: OK. So when they're talking about terracing and that sort of stuff, it's not-- it-- it would be still water retention behind a wall, is what you're saying?

AL DAVIS: Well, a lot of--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

J. CAVANAUGH: I guess, am I missing--

AL DAVIS: A lot of water management is trying to control the timing of it.

J. CAVANAUGH: Sure.

AL DAVIS: You know, so if you-- if you-- if you've got structures in place that re-- that slow it down, you're going to prevent damage further down. If you have a massive rain event, you're-- you're-- and you live in a silt-- sandy country, especially, that dam will fail very quickly.

J. CAVANAUGH: In a massive rain event, yeah, OK. So your point is just that we shouldn't continue to fund and rehab these-- these water retention--

AL DAVIS: I think-- I think we need to think about new-- new approaches to how we're going to manage water.

J. CAVANAUGH: Do you think that this fund could be turned to such a purpose, I guess, is what--

AL DAVIS: I'm not sure how-- so it's connected with funding from the NRCS, Natural Resource Conservation Service, so I'm not sure how those two could work together. You'd have to ask someone who's a specialist in the-- that works with them, like Mr. Murphy does all the time.

J. CAVANAUGH: Thank you.

AL DAVIS: Thank you-- or Mr. Winkler or any of those gentlemen.

BOSTELMAN: Seeing no other questions--

AL DAVIS: Thank you.

BOSTELMAN: --thank you for your testimony. Next opponent, please. Anyone else like to testify in opposition to LB656? Any other opponents? Anyone like to testify in neutral capacity? Good afternoon. Welcome.

DON BATIE: Yeah. Senator Bostelman, my name is Don Batie, D-o-n B-a-t-i-e. I am from Dawson County, and I had not planned on testifying on this bill today. I was here for the other bill. But I am also currently chairman of the Natural Resource Commission and I am speaking on my-- testifying on my own behalf, not the commission. But

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

I-- being as how some of the questions earlier were regard to the Water Sustainability Fund and this-- on the Small Watershed Funds, which are both overseen by the Natural Resources Commission, I thought I'd at least come up and give you-- answer some questions, possibly, if nothing else. The Watersh-- small-- the Water Sustainability Fund currently is appropriated approximately \$11 million a year and we have had no shortage of applicants for that money. The Small Watershed Fund has not been funded recently. The fund is still there. Title 257 operates that. It was, according to Title 257 that I read real quick in the back of the room, it is for property acquisition, property rights acquisition. If the proponents want that to be used for more than just property rights acquisition, it would be-- to be a change in the statute as well. And then we would have to change the rules commensurate with that, which we will do whatever the Unicameral tells us to do. So that is what I have been out to answer any questions you might have.

BOSTELMAN: Questions from committee? Are there applications, a lot of applications today, but specifically to what this bill speaks about, that you see?

DON BATIE: We've-- we've had a number of applications for projects that would do some of the same things. But the-- as I said, there's a-- like I said, there's more applicants than we have money. For example, this last year, in the \$11 million, we actually had one project that we did approve, but we were unable to fund the entire amount. That was for actually a drinking water project. I know one of the projects that Papio had applied for was the next on the list, but they-- was not money sufficient for them. That's one of them that would qualify for the Small Watershed, probably, but it just didn't quite make the list.

BOSTELMAN: Are there any areas you know of that historically have applied that maybe have not applied for some reason?

DON BATIE: I can't tell you that.

BOSTELMAN: OK.

DON BATIE: I-- I-- I've-- my time on the commission was after the Small Watershed was in effect, so I've not ever dealt with it personally.

BOSTELMAN: OK. Seeing no other questions, thank you for your testimony.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

DON BATIE: Thank you.

BOSTELMAN: Next neutral testifier? Anyone else like to testify in neutral capacity? Seeing none, Senator McDonnell, you're welcome to close. We do have three propon-- proponent letters for LB656. Senator McDonnell, welcome to close

McDONNELL: Thank you, Senator Bostelman. Try to cover a couple things. Senator Jacobson had mentioned the fairness and you're looking at the 23 different NRDs, and however we can improve on that to make sure that the-- the money would be spent effectively and efficiently throughout the state, that's great. The proponent, you know, is concentrated on dams, not talking about the projects above the dams. And the seven categories that we were talking about when-- when-- when John testified earlier was the flood damage reduction, watershed protection, public recreation, public fish and wildlife, agricultural water management, water supply management and water quality management. So that was part of my-- my testimony. Here we are, we're-- we have these projects and you have them in front of you. How are we to do that fairly? We know that we have-- right now, \$404 million would be our-- our contribution from-- from the state or the local based on the idea of freeing up millions and millions and-- and possibly billions of dollars from the federal government. That's-- that's our money that's sitting out in the federal government. That's-- that's the taxpayers of the-- the state of Nebraska that's paid that. So we know we have these projects. We know that we're short. We know that we can-- and again, the-- the percents vary depending on the project, but we know that this is possible to move this along faster and these projects are definitely needed for the long-term success of our state.

BOSTELMAN: Other questions from committee? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman. Thank you, Senator McDonnell. It's been an interesting conversation. Just to put a point on the conversation about changing the statute to allow for non-land acquisitions, would you be amenable to that change [INAUDIBLE]

McDONNELL: Yes.

J. CAVANAUGH: Thank you.

BOSTELMAN: The other, it does have General Funds in there, General--

McDONNELL: Well, the-- it's coming from the Cash Reserve.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

BOSTELMAN: Sure.

McDONNELL: That's where we're--

BOSTELMAN: Gotcha.

McDONNELL: --we're-- we're focusing.

BOSTELMAN: And it's the intent, so what this-- if this bill would pass, this biennium the money would be there. Future years would have to come back before this committee to approve it? Is that--

McDONNELL: Yes, so it would be based on the-- the appropriations of we do a biennium budget, so we're looking at 40-- \$40 million for '23-24 and then \$40 million for '24-25.

BOSTELMAN: OK. Other questions? Seeing none, that will conclude our hearing, LB656.

McDONNELL: Thank you.

BOSTELMAN: Thank you. The next hearing will be on LB396. Senator Erdman, welcome to open.

ERDMAN: Thank you, Senator Bostelman. Good to be with you this afternoon. My name is Steve Erdman, S-t-e-v-e E-r-d-m-a-n, I represent District 47, nine counties in the Panhandle. So I'm here today to introduce LB396. LB396 is a bill that has been heard by this committee on several occasions. I want to, just for the record, make this statement that in no way, no shape or form have I ever spoken to Senator Groene or did he encourage me to do this bill. I don't know if he even knows that I'm doing this. So it wasn't something that, that he encouraged me to do. And I wanted you-- I think it was important for the committee to know that. I was in support of Senator Groene's efforts in the past to do this. There are irrigators in my district that pay the 10 percent occupation tax, and so one would say, why would I be concerned about a project that's not in my district? And that is the reason, because it does affect some of those irrigators that are in my district. Two summers ago, two years, interims ago, we had an LR, LR to deal with or talk about or review what the NRDs do. And so consequently from that conversation with those NRDs back then, I have-- I drew several conclusions from what needed to happen going forward with the NRDs. It was very peculiar to me when I began to analyze what N-CORPE is and what they do. And I think one of the most surprising things, and I want to pass out a document here I want you to look at or be able to-- I have so many things here, see if I can

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

find it. Here you go. Maybe I don't have it with me. I guess I didn't bring it. Anyway, what I want to tell you is that-- what I want to share with you is this, that in 2012, the Department of Natural Resources contacted four NRDs in that district, in that area, and they suggested that they purchase this land that was put together by the Prudential Life Insurance Company some 40 years ago. And that, that land was 19,500 acres became available for sale. Here it is. If you would pass this out. It was very strange. We were doing the, the LR. The N-CORPE was set up to augment the use of water, so they took, they took this 19,500 acres out of production so they could do recharge for the Republican River. But as you'll see in the document you're going to get, I had highlighted or circled around the, the portion of that I want you to pay attention, particular, particular attention to. It says the Department of Natural Resources September 12-- of '12 formally presented to the NRDs with the idea of creating an augmentation project in Lincoln County after learning a large block of property was for sale. The four NRDs involved in N-CORPE quickly decided to pursue the property, knowing that the window to act would be short because the property was on the market. Then down below it says by mid-December 2012, they owned it. I never could figure out how you could establish the N-CORPE in September, do the necessary documentation and have hearings or whatever you need to do to set that up and purchase the land and buy it by December. That was strange, strange to me. And consequently, they've owned it ever since. So in the hearing, in the, in the hearing we had that summer, we had an opportunity to ask the NRD, N-CORPE about how they-- what they do with the money, where it goes, how they pay off the bonded indebtedness. And what we discovered from the discussion we had with the manager, Kyle Shepherd, is that he don't know really what they do. And we had an opportunity to ask some questions in that hearing because of the fact that I was-- I did the LR, I was able to have a back-and-forth dialogue with Mr. Shepherd about what they do with the money and how much has been paid down. Back then, this was, this was-- the last information we had was 2019, and they owed about \$88,000. They start-- \$88 million, and they started \$120 million back in '12. And so then the question was also asked, does all of the NRDs charge a \$10 occupation tax? And the answer was no, not all of them charge \$10, some charge a different amount. And not all of them used the occupation tax to pay down the bonded indebtedness for N-CORPE. And so that was very peculiar. And as I began to do a little more research into the situation within N-CORPE and how it's managed, what I discovered was the manager, Kyle Shepherd, had advertised some hay for sale that was baled-- processed and baled on the N-CORPE property and advertised it on eBay on his wife's Facebook account and sold that hay

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

through that medium, sold it through Facebook to a lady in Kansas. And when she received the hay, it was inferior and she rejected it. And her reimbursement check for the, for the transportation was given back to her through the N-CORPE checking account-- the NRD checking account. So she's paying very peculiar-- it was very peculiar to see how that works, so she contacted Sheriff Kramer in Lincoln County and he did an investigation. And his question to the NRD board was, this is kind of peculiar that you would have a government entity selling something on Facebook and then he would be able to use that money for whatever. And they said, that was just-- that's fine. We'll let him do that because he's using that for operations. Now, this is the management of N-CORPE, and so this is what we're dealing with. And so when the question was asked, how many acres do you have? And Mr. Shepherd responded, We have about 19,000 acres. And it originally started out at 19,500 acres. And so then the next question, quite obvious, is what happened to the other part of the land, the 500 acres? They have sold several parcels of land. And it's amazing that they say they can't sell the land and retain the opportunity to pump the water, but part of the deed, part of the deed that they sold the property, the deed says the following-- that they sold the property to these other private landowners, is a gradual reserves to itself and gives the assessor assignments to all rights of use of the groundwater apparent to the property, and is expressly agreed that the grantor shall have the sole and exclusive right to use such groundwater and may convey, sell or assign the right of use of such groundwater as its sole discretion. They retain the opportunity to pump the water after they sold the land, proof that we can sell the land. There is no reason why we can't sell the land. They've already done it. They've proven that they can do that. They have this discretion to do that. So what I want to pass out to you now is a document that-- it's a rare document that I never thought I would ever see in the state of Nebraska. And you'll notice at the top of that document, it says contract for purchase. This is a very, very-- what shall I say, rare document? This document comes from Morrill County, Nebraska. I'm very familiar with this. This is an issue where we built an ethanol plant. And the ethanol plant was going to begin processing corn for ethanol and they discovered that the well that they had on their property wasn't adjudicated to that property. And they had to purchase water so that they could manufacture ethanol. And you'll notice right at the top, it says contract of purchase. Contract to purchase. And if you read down there number two, they paid \$289,700 for the water that was on one quarter section of ground and they transferred that water to the ethanol plant. So we have sold water in the state of Nebraska. We've done that. We've sold land and retained the water rights. We

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

have several communities that have bought a property and retained an acre and a half or an acre, whatever it is, where the well is, and they continue to pump the water. So for them to tell you that they can't sell the land because it is a opportunity that they have to have the land to be able to, to pump the water is not true. And so then they will tell you that because of the, the collateral that the land has with the bonded indebtedness that they have, you can't sell the land. That's not true either. It's either the land or the money. And so if they sell the land today, I don't know exactly what that land is worth in Lincoln County, but I would assume it's probably the 20-- \$2,000, \$2,500 an acre. So we're talking \$40, \$45, \$50 million that they can pay down their indebtedness, continue to collect their occupation tax and pay this off, because they're estimating now it's going to take till 2035 to pay this off. And so consequently, the sooner they pay this off, the sooner they can drop that occupation tax. So here is the, here is the statement of what N-CORPE purpose is. N-CORPE is not attempting to guarantee that certain quantity of water is used for beneficial use or reaches a certain point downstream for particular use, but rather the purpose of N-CORPE's project is to simply add water to the Republican River basin in order to offset water depletion. That's the purpose of N-CORPE. And so we don't need to own the land. And they will tell you that they have to manage the land and they have to keep people off of the land because they're protecting their wellhead. So it's an opportunity for us to sell this land, put it on the tax rolls again, and have an opportunity for those taxpayers in Lincoln County to pay less taxes. And I'll give you an example. And when we did that interim study, I asked the question about this land is surely available to the public, right? It's public land, it's surely available to the public. The answer was no, no. One-third of the land is available to the public, the other two-thirds is off limits to the public. Now, why would that be? Well, they will tell you that it's to protect their wellhead or their wells. It doesn't make any sense that they would have 19,000 acres, they allow 6,000 acres for public use and the other 13,000 is reserved to protect their wellhead. And some of this land is not contiguous. It's not like one block of land, it's not, not even contiguous. And so we talked about what do you pay in taxes? The answer was back then, we pay \$145,800. And how do you arrive at that? Well, the county clerk sent us-- the county treasurer sent us a notice and said, this land that you're using, we feel is not used for public purpose, so this is the amount you must pay. So back in '19, that amount of taxes that they don't pay was, would have been \$757,000. And I would assume the way that property tax has gone up over the last three or four years, it's probably in the \$900,000 range now if that was held privately. All

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

right, so here's the question. Who pays the other \$750,000? Who pays that? I'll tell you who pays that. It's the little widow, little widow lady that lives in North Platte. It's a person that doesn't own any farm ground. It's all the people that pay property tax in those counties where this N-CORPE is situated. They pay the difference because they don't pay. So back then, they said their, their operation cost was around \$370,000 and they sell about that much in produce off of the, off the N-CORPE land. And then they'll tell you, well, we have to manage the wells and we have to look after to make sure they function. When the well malfunctions, they call a well service company. They don't even do the repairs on the well. All the wells are handled and ran by remote, they don't even have to go out there. And if you've ever been to N-CORPE, it's like going to a military camp, the gates are locked. They lock the gates and keep you out. I don't know what they're trying to protect there, but it doesn't make any sense that we continue to own the land when it's not necessary, forcing other people to pay more taxes than they should. So in Dundy County, the property tax-- there was a case of the property tax case. The court referred to language of the 1905 Supreme Court that actually strengthens our argument. And it said in the case of the court, the court affirmed the ownership of as little as one half acre of land encompasses a well, and it was sufficient to be beneficiary to use the equipment to pump water for public use. So what I'm trying to say to you, they could sell the land, retain that area where the wellheads are, and they could sell the rest of the land, put it on the tax rolls. It's very simple. And so you will hear numerous people come up behind me that will be associated with the NRD, and they will tell you that it's not possible to sell the land because we have to have that to pump the water and it'll, it'll ruin our bonding indebtedness, those people that have the mortgage. All of these things they are going to tell you will happen, none of those things are true. None of those things are true. And so we've been talking about trying to sell this land for as long as I've been in the Legislature, at least, and I would assume longer than that. I would assume we've been talking about trying to sell this land since the day they bought it. That's my guess. Since the day they bought it, I would assume there are people in Lincoln County that thought this was the wrong thing to do and they should sell the land. So in light of what kind of management we have at N-CORPE, in light of what they do there and how they do it, and also taking into consideration the burden we're putting on the taxpayers in Lincoln County and those other counties and the \$10 surcharge, occu-- occupation tax for putting on those farmers and ranchers, it's time for us to make a decision to put the taxpayer first and the NRDs, that's mission creep with the NRDs. And as we

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

reviewed what the NRDs do and the 12 things they were charged with, one of the things they were charged with is trying to get clean groundwater. And we have nitrates going out of sight in a lot of places, and what are they doing about that? But they're interested in doing recreational areas and dams for recreation and all the other things. So it's time for us to make a decision once and for all. Put the land on the market, sell the land, pay the indebtedness down, get it off the tax, or get the occupation tax moved so people can actually do what they need to do without having the government interfere in their life. So with that, I'll try to answer any questions you might have.

BOSTELMAN: Senator Jacobson.

JACOBSON: Thank you, Chairman Bostelman. Thank you, Senator Erdman, for being here and for bringing this bill. Obviously, full disclosure, I'm supportive of your efforts here and have had concerns along the way. And I really want to start with some simple questions, I think, in terms of the last points that you made, I think, are important points in terms of what is the mission of the NRDs. And when they join together in N-CORPE, what is their mission? And their primary mission is water quality, water quantity. I get very concerned about any agency that has mission creep, particularly when you're starting to talk about managing 20,000 acres and getting into other areas. And as we've seen from your testimony, clearly there can be mischief involved when you start getting this a little too far outside of your, of your mission. I want to go back to the bonded indebtedness, because I know there will be some testifiers and I want to just kind of cut this off from the beginning.

ERDMAN: All right.

JACOBSON: The bond has been outstanding now for ten years, and I know there's a call date coming up in-- on the-- in 2025. So you could-- it could be repaid at that time. But I just want to be clear that the repayment source for the bonds today is being generated from the occupation tax, right?

ERDMAN: That's my understanding.

JACOBSON: Yes. And, and obviously, they're not selling the land to replace-- to repay the bonds today. It's occupation tax, OK? And we also talked about that there was some land that was sold.

ERDMAN: That's correct.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

JACOBSON: And so obviously, the trustee for the bond signed off on that sale, didn't he?

ERDMAN: I'm sure he did.

JACOBSON: So it's kind of hard for me to believe that the trustee is not allowed to release collateral because he already has. So then the next question I guess I look at is the value of the land. The land was in corn production, irrigated corn production at the time. So when the land was purchased, it's worse than buying a brand new car. OK? That you drive it off the lot, it's worth less money than when you paid for it. On this case, we took irrigated farmland, corn ground and paid X dollars for it and let the bonds to be able to fund that purchase. And by the way, and fund all of the augmentation process-- project. And then when we took the land out of production, out of corn production, the value of land dropped precipitously. So really, the land isn't, I mean, the land is there for collateral. But let's face it, as a lender, I can tell you, I don't, I don't want to get repaid through the collateral. I want to get paid from the primary resource-- repayment source. And in this case, it's the occupation tax. And there's no reason to believe that the occupation tax is going to go away.

ERDMAN: That's correct.

JACOBSON: So if the occupation tax is going to stay in place as my repayment source, as a lender, I'm willing to take it unsecured. I know-- if I know that repayment source is in place. And oh, by the way, the bonds have been amortized down significantly. There is an ability to sell the land to prepay the bonds, which would further reduce debt service. It could be refinanced if need be and handled through the repayment of the occupation tax. Is that-- would that be your understanding?

ERDMAN: I understand that. I think I think you're exactly right. One of the things that, Senator Jacobson, that I recognized or I read, is that the actual cost per acre was around \$3,780 when they got all done doing everything they did.

JACOBSON: Got you.

ERDMAN: So that, you know, if it's worth-- I don't know what dry land is worth in Lincoln County, but Cheyenne County is probably the best dry land county I have in my district. And some of that ground is bringing \$1,600 to \$1,800 an acre. And I would assume every 50 miles

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

you go east you get another inch of rain. So maybe dry land in Lincoln County may be \$2,500. So if you sell, if you sell 18,000 acres, reserve the thousand acres where the wells are, then you sell 18,000 acres, it's \$45, \$50, \$50 million. Leaves very little left on the, on the bond to be paid off. And in, in a short period of time at the \$10, it would soon to go away.

JACOBSON: Thank you. Well, and I just, I would be remiss if I didn't say I'm a huge fan of NRDs, huge supporters of NRDs. I really think they've got an important mission. I think they've got a lot of challenges ahead, as you mentioned, nitrates and some other, other issues to manage. I really see this as a distraction for the NRDs to deal with. And you did lay out one situation as it relates to, to the hay, which seems really peculiar. I can tell you what would happen if that individual were working for me. And so I'm a little baffled by what happened there. But I get concerned as this being an example of some of the things that can happen. And, and that concerns me. So I again, I appreciate you bringing this. And one other question I guess I would ask is, I presume you're, you're familiar with an individual called-- by the name of Steve Mossman, who's an attorney--

ERDMAN: I am.

JACOBSON: --with the Mattson Ricketts firm,

ERDMAN: Yes, sir.

JACOBSON: And he's done some extensive reading and on this, on water laws. And what would be his conclusions to what can be done here?

ERDMAN: His conclusion is, and I've seen that same information. His conclusion is there's no restriction or no, no reason why we shouldn't sell the land. I did send a request to Attorney General Hilgers for his, his review and his, his opinion. I visited with him day before yesterday, and he was at a very important thing in Washington, D.C., so he said he hadn't completed it yet, but he's going to complete that when he gets back. And he will give me his opinion on that. But I think Attorney General Hilgers will come to the same conclusion Mr. Mossman did.

JACOBSON: All right. Thank you very much.

ERDMAN: Thank you.

BOSTELMAN: Senator Hughes.

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Natural Resources Committee March 1, 2023

HUGHES: Thank you, Chairman. Thank you, Senator Erdman. I-- this is a whole new thing for me, so my questions might be a little young. I am the younger Hughes, I did say that, right? So the Nebraska Constitution, which I think you even said, stipulates that the land and water are joined, right? And when you transfer ownership of land, it also transfers the groundwater rights, is that true? And if so, wouldn't selling them without the water, selling land without water rights be a violation of our Nebraska Constitution?

ERDMAN: No, it would not.

HUGHES: It would not?

ERDMAN: No.

HUGHES: So that's not in the Constitution?

ERDMAN: No, and exactly what I just said about they've already sold, they've already sold a portion of the land.

HUGHES: Yeah, you said a couple acres.

ERDMAN: And they have retained the water rights. So if that is the case, what you just said, they wouldn't have been able to sell the land.

HUGHES: So would we have unintended-- I mean, if this would go through often, I just think-- I'm not, you know, forget N-CORPE like around my district. I-- we own a great 80 acres of farm ground irrigated. Got really good ground around here. I sell the land, but I keep the water, I mean, like the precedent that would set, I think, for the future, it would be pretty negative. I don't-- I, I don't know. Maybe I'm, I just need to think through this. But that's what concerns me, I guess.

ERDMAN: Did you see that document that I handed you?

HUGHES: This one? Yeah.

ERDMAN: That's exactly what they did there.

HUGHES: I have a problem with that too. So OK, let me think on it, ask other questions.

BOSTELMAN: What is owed yet?

ERDMAN: You know, I don't know, Senator Bostelman. When we had the, the study, I asked Mr. Shepherd on several occasions how much we owed,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

and I asked him how much do they pay annually. I asked all those questions and I reviewed the, the statement, the committee hearing today. And he never answer those questions. So I can't tell you what it is. Their annual budget, annual financial statement was one 8 by 11 sheet of paper. That was it. Expenses, income, that was it. I mean, so I can't tell you what it is.

BOSTELMAN: Yeah. My curiosity is maybe someone who's going to testify that's coming up can answer this. My curiosity is because you're talking about the \$10 occupation tax, well, if that's going to pay off the bond, pay off whatever, my question has always been: Then why don't we drop-- why don't we have a bill that pays that indebtedness off and then we get rid of the occupation tax as part of, of a solution to that?

ERDMAN: So what would that do? And I know I'm not supposed to ask questions, but let me just make a statement then. How would that help the taxpayers make up that \$750,000 in taxes that N-CORPE doesn't pay?

BOSTELMAN: That land, my understanding, that land will always be dry land. You will not change it, so that value is not going to go back up. So that loss of that land, that tax valuation, you're right, it's going to be there. It's not going to be made back up. They're paying in lieu of taxes now.

ERDMAN: No, no, they're paying in lieu of taxes on a very small portion. They're paying \$145,000, they should be paying \$900,000.

BOSTELMAN: But the \$900,000 is based on what? Is that--

ERDMAN: All the land.

BOSTELMAN: Is that based on the irrigated value of the land or the dry land?

ERDMAN: No, that's, that's what they should be paying on the dry land price.

BOSTELMAN: If it-- I'm sorry, say that again.

ERDMAN: On the price that the dry land would be worth.

BOSTELMAN: OK, that's what I understood. OK, just trying to--

ERDMAN: Yeah.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

BOSTELMAN: --come down with some numbers and--

ERDMAN: So doing away of the occupation tax doesn't solve the tax problem.

BOSTELMAN: Well, well no, but I mean, it would address one of the issues we have with one-- you're leaving that \$10 base tax on on the wide breath of people so that--

ERDMAN: And if they collected \$10 an acre on the 1.4 million acres that they irrigate, that would be \$14 million a year. But they don't collect \$10 from-- all the NRDs don't collect \$10. And I was, I was surprised to learn that they don't use that occupation tax just for the bonded indebtedness, they use it for other things. So that surprised me as well.

BOSTELMAN: OK. Senator Hughes.

HUGHES: Thank you, Chairman. So the, the \$10 ac-- this whole thing was done so that everybody that has current irrigated land in that area could keep irrigating, correct?

ERDMAN: Correct. That's right.

HUGHES: Because Kansas sued us for their-- the water rights down there.

ERDMAN: Exactly right. Yep, that's right.

HUGHES: So I'm kind of assuming if I would-- if I owned ground there and it was irrigated, I'm probably assuming I'm pretty happy paying that \$10 an acre occupation tax so that I can keep irrigating my land and keep farming. And it-- was this not all made clear when this all went down, however many years ago, in 2012 or whatever? I mean, I just--

ERDMAN: You mean to the, to the landowners?

HUGHES: Right.

ERDMAN: What they did, they, they--

HUGHES: Because otherwise it was we were going to take 300,000 to 500,000 acres, all would not be irrigated.

ERDMAN: Right. So but the assumption needs to be clear on how they did this. They started in September. They bought the land, by December,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

they owned it. There was no input from the farmers in saying, hey, what do you want to do here? I understand what they did was important and they needed to do that, OK? I'm not arguing with that point. They needed to do it to settle the issue with Kansas. The point I'm trying to make is they do not need to own the land to continue to have them, those farmers have the obligation to irrigate. All they have to do is meet the requirement with Kansas. Kansas didn't tell to put the \$10 occupation tax in place. The N-CORPE decided to do that. So they could have done one or two things. They could have done what they've done, or they could have taken the land that they needed for the wells and sold the rest of it and never had N-CORPE started in the first place and spend \$380,000 to \$400,000 a year to manage something they don't need to manage. That's the other savings. If we go away, you sell N-CORPE, they don't have to have a headquarters out there, don't have to have the people manage it, mowing the weeds where the tumbleweeds blow onto the neighbor, they can't harvest their crops. All that goes away, all that goes away. And it doesn't doesn't jeopardize those people pumping or irrigating land at all. Has no no effect on most people. None. But we're worried about what may happen with the, the compact with Kansas. It may interfere with that. Kansas don't care. Kansas, what they want to know is how much recharge are we putting back in the ground on the Republican River to meet the compact. That's what they care about.

HUGHES: OK, thank you.

BOSTELMAN: Senator Jacobson.

JACOBSON: Thank you, Chairman Bostelman. Senator Hughes-- or, excuse me, Senator Erdman, I guess. I know Senator Hughes raised some questions that I think probably I may dig in a little deeper here. The land that was purchased is largely in Lincoln County, [INAUDIBLE]. And so obviously Wallace School District was significantly impacted--

ERDMAN: Right.

JACOBSON: --by this because Wallace School District lost a significant amount of tax base because it went off the tax rolls and got replaced with this in lieu of taxes, which is significantly less--

ERDMAN: Correct.

JACOBSON: --than what the current market value of the land would be and what it would produce for property taxes. And as a result, taxpayers in that Wallace School District are not only-- that are

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

irrigators-- are not only paying \$10 in occupation tax, but they're also paying higher property taxes on their land because there's acres that got taken off the tax rolls. And that's not something that's being picked up by taxpayers and the other NRDs that are involved in this augmentation project. So would that-- is that your understanding?

ERDMAN: Yeah. The other, the other issue also, Senator Jacobson, is the economic advantage to having someone farm 18,000, 19,000 acres. There's an economic advantage for the local community and the businesses to have that happen, and that is-- I haven't taken that into consideration either.

JACOBSON: So that you're referring to seed sales, fertilizer sales, grain that's going to the grain-- grain, that's going to ethanol plants, feed barrels and so on.

ERDMAN: Right. All of those things that happen. And that's a pretty significant piece of land. And, you know, even if they, even if they kept that portion where the, where the wellhead is-- and I had a picture of that, where the wellhead is. Even if they retained that thousand acres or whatever it is, you put 18,000 back into circulation, back into production, it's a significant amount of income.

JACOBSON: And just to clarify one more time, I think where you're at on this project is you're not, you aren't criticizing the formation of N-CORPE, you're not criticizing the augmentation project, which was important to do.

ERDMAN: Yeah.

JACOBSON: You're not taking-- you're not challenging the occupation tax. You're not challenging the idea that they should have run this project and that they've got wellheads, they've got interest. What you're back to is just the simple point--

ERDMAN: Right.

JACOBSON: --that the NDR through N-CORPE should not need to continue to own the overlying land, and this would be a tough precedence to set if we're going to continue to allow other ones to happen in the future. Is that really your concern?

ERDMAN: Yeah, very simple. And if you look at the bill, I thought-- I think it's very simple, the way that Bill Drafters drew the bill up. And it just says this. OK, basically what it says, once the irrigation

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

district has developed what they need to do, they shall sell the overlying surface interest and retain the right to pump the water. That's what it says. It's very simple. Once they've done it, they buy the land, they do whatever they need to do, retain the water rights, sell the land. And it's very peculiar to me, as I stated earlier, that-- because I'm telling you as a county commissioner, we would have never been able to make a decision from September to December to buy a piece of land. I don't know how they did that. They formed N-CORPE, completely formed it, bought the land and closed in December. That's 90 days. How did they do that? That's, that was strange to me. I never got an answer on that.

JACOBSON: I think the people in Lincoln County are pretty progressive evidently. They must be.

ERDMAN: Must be.

BOSTELMAN: Seeing no other questions, will you stay for closing?

ERDMAN: I'm going to try.

BOSTELMAN: OK.

ERDMAN: Thank you.

BOSTELMAN: You bet. Proponents for LB396, please step forward. Anyone that would like to testify in support of LB396, please step forward. Anybody that would like to testify in opposition to LB396, please step forward. Good afternoon and welcome.

TOM RILEY: Good afternoon, Senator Bostelman, committee members. My testimony is being handed out, so you can follow along if that makes it easier for you. So Chairman Bostelman and members of the Natural Resources Committee, my name is Tom Riley, T-o-m R-i-l-e-y. I'm the Director of the Department of Natural Resources, and I'm here appearing in opposition of LB396. LB396 appears to seek the creation of an additional exception to our common law's usual relationship of groundwater to the overlying land. Usually, any rights for beneficial use of the state's groundwater are dependent upon ownership of that overlying land. The department is concerned about possible unintended consequences with such a deviation. LB396 modifications would require the natural resources districts to, quote, sell the overlying surface interest after an augmentation project has been developed, end quote. This exception runs counter to our common law's usual relationship of groundwater to the overlying land ownership, which is foundational to protecting future access to our groundwater resources for all

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

Nebraskans. These concepts have been proposed in prior Legislatures and the department has consistently expressed concern about this change in the law and how it may impact the state's strategies and abilities for compliance with the Republican River Compact and potentially create other unintended consequences. Nebraska's water laws are complex, they're interrelated, and they beg for stability and legislative caution. Any modification to the state's water law structure may create a potential impact that isn't readily available or apparent to us in this moment. In this case, such changes to funda-- excuse me, fundamental provisions of our water laws may affect our future compact obligations and the protections of our groundwater users that they currently enjoy. With that, I'd be happy to answer questions.

BOSTELMAN: Senator Jacobson.

JACOBSON: Yeah, thank you, Chairman Bostelman. And Director Riley, thank you for being here. And I appreciate your testimony. I guess I just have a couple of questions primarily. First, I know Senator Erdman has reached out to the Attorney General for a, an Opinion with regard to whether or not this can be done. In the event that the Attorney General's Opinion would be that this can be done, would that satisfy your concerns?

TOM RILEY: So certainly that could go a long way to doing so. One of the things that we have to balance in with the compact is the other states and the obligation. I've already had a discussion, a call from Kansas about this as they monitor our activities, and looking for assurance that we will still meet our compliance. And I think I heard Senator Erdman talk about the water is just pumped and when these, when these projects are used and it goes to streams. And that's true. It's just water, it just goes to meet the depletions that have been created by the uses before and as part of our compact obligation. I think I heard Senator Hughes talk about the 200,000 to 300,000 acres that might have been having-- we might have had to take out of production. And those are real numbers, that's where we started. Certainly, we'd have to look at taking 100,000 acres of irrigated land out of production if we didn't have access to this type of, of system and program. The N-CORPE system, we haven't-- they haven't used it in a while, which is good. They haven't had to pump that groundwater. As we know, last year was a pretty dry year. The way our compact accounting works, it kind of has a lag effect. So this coming year, I'm assuming the districts are going to need to access that water and have full access to it, to put back into the stream. So those concerns of being, being certain that they still have access to the water and

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

we can meet our compliance, are really important. And maybe one other--

JACOBSON: To that, to that point, why does it matter to Kansas? As long as we're delivering the water to them, why is it any of their business how we-- who owns the land?

TOM RILEY: Well, I think, I think their interest is how can we remain in compliance? So to your point if--

JACOBSON: But as long as we do, what's the problem?

TOM RILEY: --if the water can be delivered through whatever mechanism and there's no restrictions from that, then that's what we need to do. The districts need to have access to that, to that tool, to that insurance policy so that we don't have to shut down other acres.

JACOBSON: And I think that therein lies my concern, I guess. If there would be an Attorney General Opinion that says we can do this, that this bill would hold up and N-CORPE could continue to operate just as they are today and could sell the surface land and that land could go back on the tax rolls and they no longer would be paying in lieu of taxes. They would no longer be paying for people to try to manage the property and getting outside of their normal scope of work. I guess I'm failing to see how Kansas could be-- why that would be any of Kansas' business if that happened. I mean, would you agree with that?

TOM RILEY: So in the kind of the but/for where you described, if that change was made, then I'm sure I could talk with them and the assurance that we have, the tools that we can meet compliance are important. Maybe one other thing to add, it's just not the Republican River that uses this, that particular project. It is the Platte River as well, Twin Platte Natural Resource District also accesses N-CORPE and pumps about 4,000 acre feet.

JACOBSON: Sure.

TOM RILEY: To meet our program, Platte River program obligations that are due to that district's [INAUDIBLE].

JACOBSON: Well, again, let me be perfectly clear. I am in full support of what N-CORPE is doing, I'm in full support of the formation. I'm at full support of the augmentation project and I think it's worked well. The only thing that doesn't seem to be working right is the mischief that's occurring on the management of the land itself and the fact that I think it's a distraction and that it's coming off the tax

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

rolls, it could be back on the tax rolls. And I would agree also that unless there's an Attorney General Opinion that says this could be done, I would be reluctant to separate it as well. But I am seeing a number of cases, and maybe you can help me with this. But for example, I know in Buffalo County, I think is that Central Platte NRD, where we're constantly selling irrigated acres? OK. So like, for example, if the city of Kearney would, would expand there will be auctions to sell off the water rights. Which I think in that case, correct me if I'm wrong, is that's basically NRD allocations, if I'm not mistaken, or in that particular watershed. But how does that work and how is that different?

TOM RILEY: Well, I think what you're talking about is sometimes in districts, and especially in areas where we're over appropriated--

JACOBSON: Right.

TOM RILEY: --in these basins, Republican River and certainly the Platte River are over appropriated basins. We use, we use too much water to meet our obligation. So I think the instances you're talking about, sometimes that water will be purchased or the land, the ability to irrigate will be taken off--

JACOBSON: Right.

TOM RILEY: --in the form of an easement, so it can't be irrigated. So that's the water savings that you're not using that any longer. So kind of the opposite of pumping it to replace your depletions. You're removing the land that might have had an irrigated system on it that caused the depletion, you're taking that depletion away.

JACOBSON: Right. OK, and one last question for you, I guess. So did you hear, hear from Kansas at all when the land-- there was land that was sold? Did you hear anything from Kansas when that land was sold that, that's part owned, that was owned by N-CORPE?

TOM RILEY: Yeah, I, I heard Senator Erdman talk about that. And I don't know that particular piece of land, and I can't tell you if the department heard. I wouldn't have been there at that time. I certainly would have been working peripherally--

JACOBSON: Right.

TOM RILEY: --supporting the state.

JACOBSON: OK.

TOM RILEY: But I don't know.

JACOBSON: Thank you. Appreciate it. Thank you.

BOSTELMAN: Let's talk about the Republican River Compact a little more. And could you expect-- one, since you have a lot of history, I think, with that compact going back years and speaking straight to some of the questions that Senator Jacobson was saying, what's Kansas' concerns with that? In other words, what's the concern with this legislation that, that Kansas have with us?

TOM RILEY: Well, I can't crawl into their minds. I've tried to do that before, and that's just a unhappy place to be in general. But I think just like any, any other state, my colleague, my counterpart, sometimes is challenged with changes in the water law system. And it's a complicated critter that we've worked on and tooled with a lot of time. So when you see those kind of changes from that perspective, I'm sure their interest is like, well how could that affect our compact compliance thinking about their own state laws? And so I think the questions come from that kind of perspective.

BOSTELMAN: And with our-- with the previous director, I think there has been some, and you may have been involved with this too, there's been some-- I'll call them positive gains in the compact as far as water being released, as far as what we're allowed or what is, what is counted, if you will. You know, water evaporation, things that's, things that's released from the, I think, from the wells. And that I think we're sitting in a better place there with the relationship we have with Kansas. Is that right?

TOM RILEY: Yeah, I-- the-- your comment, are we in a better place? And we certainly are. And one of the, the ways that we are is that we have these kind of tools that our NRDs have. have access to, like N-CORPE and the ability to offset our depletions. And it's not just a number that you're kind of guessing, you're taking a field out of production. You hope something-- this is water that goes back to the stream and you know it's there. So it gives Nebraskans a lot of flexibility to be able to meet our compact obligations, not have to overdo it and still be there in a happier place. And the agreements that you're talking about really put Nebraska in a place where we work and count most of this water in Harlan County Lake. And Kansas' interest is generally for their Kansas Bostwick Irrigation District, somewhere you'd be familiar with, and their ability to use water. So it's in the lake and it's able to be part of the water supply when they need it, and has

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

given the state enormous amount of flexibility in helping us meet our compact commitments.

BOSTELMAN: Do you think there's any compelling reason that the state needs to take up this legislation?

TOM RILEY: Well, maybe to follow up on kind of that and maybe a question that Senator Jacobson asked, that we want to be able to maximize the tools we have for our water, our water portfolio in Nebraska. And I know we're talking about a very specific site, but when I see projects like this, I'm thinking about not what's happened in the past, but what might happen in the future. And for Nebraska, we do have water-- blessed with a lot of water. We hear about this all the time, but it isn't always in the right place at the right time. And augmentation projects might become an important piece of doing water management in the future. So I think we just [RECORDER MALFUNCTION] changes we might make to the state law now, how that might affect-- affect somebody's thinking of a augmentation project in the future and its viability to do so. Maybe the-- another thing, Senator, that comes to mind when you ask this question is I hear the interest of making sure that we protect our water, we keep it in Nebraska; and when you start to crack the door open for a change into the common law of separating land and water, it opens the opportunity for the next change, and the next change might make it easier for somebody to take water and perhaps transport it out of the state or do things that we're not interested in as a-- as a state, as a way to manage our water po-- portfolio. So I just throw caution to those kind of changes to our water law system, thinking about those future opportunities that we don't even know what they might be, but we don't want to limit our tools in the tool chest as we think about these things. So I'd ask for you, as you ponder these, to also think about not what's happening in the future and-- and maybe how people might view this particular project, N-CORPE, which is this is kind of focused on, but how it might relate to any kind of future projects in water management that we would want to do as a state in the future.

BOSTELMAN: Yeah. Perhaps you're speaking to Senator Briese's bill already heard in committee?

TOM RILEY: Yes.

BOSTELMAN: [INAUDIBLE] affect it? OK.

TOM RILEY: So tho-- those kind of thinkings and, you know, we-- we do have to watch about our water and interest from others, look no

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

further than the states to the west and the Colorado River challenges that we have there, so.

BOSTELMAN: Will there be someone following you that could shed some light on the-- what's owed on the bond, the debt that's still out there? Is there someone that's going to be able to shed light on that?

TOM RILEY: Yeah, I just, kind of taking a glance in the room, I-- I'm pretty sure there would be. OK. I'm not sure who's all going to be here, but I-- I think the answer to that is probably a safe yes.

BOSTELMAN: All right. Other questions? Seeing none, thank you for your testimony.

TOM RILEY: Thank you.

BOSTELMAN: Next opponent to LB396, please. Good afternoon. Welcome.

DON BATIE: Chairman Bostelman, members of the Natural Resource Committee, my name was Don Batie, D-o-n B-a-t-i-e. I am a farmer from Dawson County that irrigates using both surface and groundwater, and I've been involved in the water discussions in Nebraska for over 30 years and I'm currently serving as chairman of the Natural Res-- Nebraska Natural Resource Commission. Today I'm testifying on behalf of Nebraska Farm Bureau, Nebraska Cattlemen, Nebraska Corn Growers Association, and Nebraska Soybean Association. We oppose LB396 for several reasons. We support the common-law principles linking land ownership directly to the ability to access underlying groundwater. We oppose any efforts to separate groundwater from the overlying land, which LB396 would do. We believe passage of LB396 would be a dangerous precedent. In a June 2018 Opinion the Nebraska Supreme Court noted, quote: The right to use the groundwater does not float in a vacuum of abstraction, but exists only in reference to and results from ownership of overlying land, unquote; also, quote, it is clear that the right to use groundwater is an attribute of owning fee simple title to land overlying a source of groundwater and is inseparable from the land to which it applies, end quote. Moreover, the language in LB396 states that the Natural Resource Districts shall sell the overlying ground. Many of these types of projects have multiple purposes, and forcing NRDs to sell the overlying ground would negate many options they might have. This language is overly broad, including all NRD augmentation projects. While this looks like it's aimed at the N-CORPE project in Lincoln County, it would affect many stream augmentation projects operated by many NRDs across central and western Nebraska. These augmentation projects are essential to keeping

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

Nebraska in compliance with interstate compacts, decrees and agreements. Over the last 30-plus years of water discussions, Nebraskans have always held to the principle that the beneficial use of groundwater must be tied to ownership of the overlying land. For these reasons we would like to-- the Nebraska--the Natural Resource Committee to not advance LB396 and not cause undue confusion or questions with the Nebraska water law. Willing to answer questions.

BOSTELMAN: Thank you. Are there any questions? Senator Jacobson.

JACOBSON: Thank you, Chairman Bostelman. Mr. Batie, thank you for your testimony today. I guess I'll ask you the same question I asked the director earlier. If the Attorney General came back and said that there's nothing wrong with-- with this, selling the land and re-- and retaining the water rights, would that change your opinion?

DON BATIE: It would not.

JACOBSON: Why not?

DON BATIE: Look to Colorado. It doesn't take-- you live closer to Colorado than I do, Senator. Many areas of Colorado farmland are no longer farming because the city of Denver's bought them up. And I think this precedent would be a very, very dangerous and detrimental to the state of Nebraska long term. And even if the Attorney General would say it's permissible, I think we ought to stay away from it.

JACOBSON: And so to be clear, so you're saying that you're concerned that the water rights, the water under the ground, would be sold to third parties and render the land--

DON BATIE: Correct.

JACOBSON: --dryland. That's what your--

DON BATIE: Correct.

JACOBSON: --concern would be.

DON BATIE: I-- I-- I am very concerned about keeping the water with the land, and that's-- Nebraska is a common law. Some states have adjudication. Colorado's one of them. Nebraska's common law, where the water and land are tied together, and the Supreme Court has ruled over and over and over again that that is the case in Nebraska.

JACOBSON: And then there are some other opinions out there that would be to the contrary and they-- in terms of surface water, separating surface water from groundwater and saying that the surface water is tied but the groundwater may not be. And so I just throw that out there and I think that's one of the things that [INAUDIBLE]--

DON BATIE: The surface water-- surface-- there are surface water appropriations that are tied to the land. The groundwater is what sort of underlying. And again, Nebraska water law, as you well know, is very complex. Surface water is adjudicated by the Department of Natural Resources while the groundwater is adjudicated by natural resource districts, local NRDs. But all the water ultimately belongs to the state of Nebraska. It is just the beneficial use of the overlying landowner.

JACOBSON: And then let me ask you this too. I-- I just-- and I realize that that's why the AG probably needs to weigh in, to really get us that Opinion. But the-- the primary concern that I've had, if it can-- is I want to see that land back on the tax rolls and I want to see the land being managed by private entities, not by the NRDs, because I don't think that's their mission. So the question then becomes, if this were to change to where they had to lease the land or allow it to be managed by third parties in a lot-- which would then cause it to go fully on the tax rolls because then it's now going to be in a productive use, my concern is what's happening to the taxpayers in Lincoln County who have lost 20,000 acres from the tax rolls because of this project and they don't need the land. And you've raised the question about multiple purposes. So are you aware of other purposes that the N-- that this land is being used for today?

DON BATIE: I can't speak for N-CORPE.

JACOBSON: OK.

DON BATIE: However, I can tell you that just a quick Google search of Nebraska augmentation projects, I found several that have multiple purposes, including working with endangered species, both in the Platte River and the Republican River Basin. So I-- I hate to tell you, I don't know. But the natural resource districts, yes, they have multiple duties. Quantity and quality of water is one of them, but they have a lot of duties that has been given to them by the Unicameral. And I think just by saying, oh, they can do it without the land, I think that's disingenuous to the local NRDs. That's why we have local NRDs making these decisions, not a state agency.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

JACOBSON: I-- I got you. I-- I guess, again, I would just suggest that some of the activities that have occurred out there that many would consider to be illegal.

DON BATIE: I'm not defending any activities that have occurred on N-CORPE.

JACOBSON: But-- but that's-- that's where part of my concern comes from on 20,000 acres.

DON BATIE: And I understand that. I mean, I-- you know, a lot of counties have lost land over the years for things that aren't getting any in-lieu-of-tax monies. You know, Gosper County has a couple large lakes on it and Gosper County is a very small county and they lost a large percentage. They don't get any in-lieu-of-tax money either, where there is at least some tax-- in-lieu-of-tax payments going. Whether it's sufficient, I'm not going to say, but there is something.

JACOBSON: Well, in the case of a lake, you'd have some recreational opportunities, would you not?

DON BATIE: Maybe, maybe not; some lakes do, some lakes don't. Some lakes are strictly used for irrigation, not for recreation.

JACOBSON: Gotcha, but they would still be there po-- potentially for use. Well, thank you.

BOSTELMAN: Other questions? Seeing none, thank you for your testimony.

DON BATIE: Thank you.

BOSTELMAN: Next opponent, please.

DON BLANKENAU: Good afternoon, Mr. Chairman. My name is Don Blankenau, D-o-n B-l-a-n-k-e-n-a-u. I'm an attorney in private practice with about 30 years of experience in the area of water law. I also teach water law at Creighton University Law School, and I am providing my testimony today in opposition to this bill on behalf of the Nebraska Association of Resources Districts, or "Association." The Association provides representation to Nebraska's 23 natural resource districts, or NRDs, a number of which have developed augmentation projects. For the newer members of the committee, I think a little historical perspective regarding this bill may be helpful. When NRDs first developed augmentation projects to ensure state compliance with interstate agreements, a previous senator from North Platte objected, arguing that the land acquired for the project would be tax exempt and

thereby diminish the tax base of Lincoln County. The NRDs responded by drafting the legislation to correct that. A bill, carried by Senator Hughes, which allowed for the in-lieu-of-property tax payments was adopted and passed, and the legislation allowed N-CORPE to continue to make those in-lieu-of-property tax payments to Lincoln County. But resolving that key issue did not stop future attempts to undermine the stability of these projects. LB396 is now the fifth it-- iteration of the same legislation that attempts to sever the legal connection between landownership and the volume of water allowed to be used for augmentation. If passed, this bill will inject significant legal instability to the continued op-- operation of the augmentation projects and Nebraska's ability to comply with interstate agreements. Now it's worth noting that in Upper Republican NRD v. Dundy County Board of Equalization, and this is 912 N.W.2d 796, and this is what Don Batie quoted, the Nebraska Supreme Court said, and I will quote it again, it is, quote, clear that the right to use groundwater is an attribute of owning fee simple title to land overlying the source of groundwater and is inseparable from the land to which it applies, end of quote. So while Senator Erdman may believe that land and water can be separated, the Nebraska Supreme Court clearly disagrees with him. Some of the legal questions created by this bill include: How is the volume of water that can be used to be determined? The legislation requires land to be purchased then sold, but how much time must pass before it's sold? Must a project sponsor buy a proportional amount of land relative to the water expected to be used? How much land must be retained around each well? By what legal mechanism is the restriction to use groundwater on the sold lands to be recorded? Who will enforce the restriction? And most importantly, is the state willing to deal with noncompliance of its interstate agreements if augmentation projects are prevented from future operations as a result of this bill? None of those questions are answered by this bill, and they are all important. Ultimately, this bill does not address any issue of statewide concern. You heard Director Riley, and you will hear from other additional water managers. None of them are calling for this change. To the contrary, this bill simply creates instability to established processes for the development and continued operation of water augmentation projects and actually increases risk to Nebraska taxpayers. Accordingly, the Association asks the committee to keep the lid on this Pandora's box tightly closed and requests that it be indefinitely postponed. Thank you.

BOSTELMAN: My question would be, how does it increase the risk to Nebraska taxpayers?

DON BLANKENAU: Well, number one, if the legislation as written doesn't answer all of those questions that I just set forth, it could be that N-CORPE could be forced to cease operations. Certainly, there's no-- been no shortage of litigation to do that in the past. We've weathered all of those storms. If that operation is closed down, then Nebraska will not be able to comply with its interstate agreements and the state as a whole would be on the hook.

BOSTELMAN: So do you think, even though there were-- if there would be an agreement-- I'm saying "if," so hypothetical-- if the land is sold and if there is an agreement, I think cons-- state constitution-- constitution-- you can correct me if I'm wrong-- says that the land and water stays together. And even though you may say that you have the rights to it, the owner of the property still has rights to that water. So then if they shut that off or-- is that the point of-- of a lawsuit then, not only by Nebraska, with-- with now the landowner, but also with the NRD potentially for rights to that water?

DON BLANKENAU: Yeah, I-- I think, if I understand your question correctly, Senator, the-- the risk element would be somebody who would want to access the water from lands sold would then sue to have that right, which would prevent N-CORPE perhaps from continued operations. And that would result then in Nebraska's noncompliance, which would start the domino effect of other states then suing Nebraska for that noncompliance.

BOSTELMAN: OK. The other question I have, I think we just may have answered that one. In your statement, comments, says, if passed, LB3-- LB396 will in-- inject significant legal instability to the continued operation of augmentation projects and Nebraska's ability to comply with interstate agreements. So you want to expand about-- I'd like to hear a little bit more about that.

DON BLANKENAU: Well, for instance, in the Republican River case, it's-- it's-- that's the easiest one. So if this project were unable to continue to pump, Nebraska would conceivably exceed its allocation. Kansas would then sue Nebraska for damages, and probably some punitive damages as well. You may recall from the last round of litigation, Nebraska got hit with an additional penalty over and above damages for failure to address these concerns soon enough. And to kind of tee off what Director Riley indicated, Kansas is aware of the risk element of this. They read the same case. They know that Nebraska is presently linked to land ownership. And if there is any failure of Nebraska to be able to operate this project, then Nebraska's noncompliance would

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Natural Resources Committee March 1, 2023

necessarily open the door to yet a third round of litigation with Kansas.

BOSTELMAN: Are there any questions from committee members? Senator Jacobson.

JACOBSON: Thank you, Chairman Bostelman. Mr. Blankenau, I guess I would have a couple of questions since you're an attorney. So if the NRDs or N-CORPE were to offer a 99-- sell a 99-year lease on the surface water, they would then be retaining the ownership; they would be reserving the water as part of that lease. Would that be feasible?

DON BLANKENAU: So long as the lease was just for dryland uses?

JACOBSON: Correct.

DON BLANKENAU: Yeah, I-- I-- I think that is a possibility.

JACOBSON: And would that not also put the land back on the tax rolls since there would be a for-profit entity on the lease, it was sold to a for-profit entity?

DON BLANKENAU: It would be back on the tax rolls, but the-- Lincoln County wouldn't receive any more money than it receives now.

JACOBSON: And why is that?

DON BLANKENAU: That's because the land is valued at its present use.

JACOBSON: Right.

DON BLANKENAU: And the-- the in-lieu-of payment is linked directly to that.

JACOBSON: OK.

DON BLANKENAU: And if it gets leased, it can't ever receive another irrigation well.

JACOBSON: Correct.

DON BLANKENAU: Yeah.

JACOBSON: Yeah. And you're suggesting, though, that-- that the dollars they're getting today in lieu of is the same as what the market value times this tax assessed value would be?

DON BLANKENAU: Correct.

JACOBSON: OK.

DON BLANKENAU: That-- that's the way the legislation was written because the intent was to make Lincoln County whole from the very beginning.

JACOBSON: Gotcha. And that's been my concern all along. It's been really twofold. It's been (a) that (b), being able to put the land back into be operated in private hands so that the NRDs are not moving into some kind of mission creep beyond what they were really set up to do and that we're not seeing-- I've heard everything from wind projects, solar projects, hunting thing-- activities. None of that, it seems to me, should be part of the NRD mission, and that's why I feel that having private control of the surface of that land is important. And-- and I-- it would seem to me there's multiple ways to get there. A 99-year lease would generate a significant amount of income. They could still keep the water, connect land, connect it to water, and we're not hiring three people to go out and try to manage the land, potentially having someone selling hay personally off of the land that's owned by the NRD, by the N-CORPE and the NRDs, and that we're not moving into other areas, but if we did, it would be done privately. And then if they generate tax revenues as a result of that, that would indeed go to Lincoln County and the school districts that are-- that are impacted there. Correct?

DON BLANKENAU: Yeah, I-- well, there's a lot in there, and I
[INAUDIBLE]

JACOBSON: I tried to go slow.

DON BLANKENAU: --answer all that. I--

JACOBSON: I tried-- because you're a smart guy, so I'm trying to go slow.

DON BLANKENAU: Well, thank you. What-- what I will answer is there are people who can probably address some of that after me. But I will say that much of this land is already leased out, so-- so it's effectively in private hands through the-- the leasing process. And it's leased for grazing purposes and haying purposes and-- and other such purposes. So, again, I don't know that the dollars are any different for-- from a county perspective going forward.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

JACOBSON: Unless it would be developed into something additional on that private land.

DON BLANKENAU: That-- that's true. And-- and I've frequently heard, well, if we sell it, we can put those wells that were originally there back in, we can start irrigating again. That's simply not going to happen.

JACOBSON: Totally understand.

DON BLANKENAU: OK.

JACOBSON: Yeah.

BOSTELMAN: Other questions. Seeing none, thank you for your testimony.

DON BLANKENAU: Thank you.

BOSTELMAN: Next opponent, please. And if you're going to testify, please move forward to the-- populate seats toward the front so we can continue to move along.

STEVE FACKA: Hello.

BOSTELMAN: Afternoon, welcome.

STEVE FACKA: I'm Steve Facka, S-t-e-v-e F-a-c-k-a, S-t-e-v-e F-a-c-k-a.

BOSTELMAN: Could you speak up just a little bit, please?

STEVE FACKA: OK. That better?

BOSTELMAN: There you go, yep.

STEVE FACKA: OK. Could you hear everything before? Yeah, appreciate you listening to me. I live two miles from N-CORPE, the west mile-- west end of it. And I have the opportunity to lease grass. I run a cow-calf operation plus a yearling operation on there, and I also farm. And there's not many places we get to go lease that opportunity of land and on a bid deal, then they've turned it into a long-term deal now as long as we take care of things and we go-- I guess not follow their-- to the T, but, you know, we correspond with the managers there how we graze it, and they get a pretty good chunk of money per acre out of it. Normal land is about \$25 an acre. You figure on, like, a \$65 a month cow-calf pair and they're getting about \$33 because we graze a bunch of yearlings ahead of the cattle to take care

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

of the invasive grasses like cheatgrass, brome grass, and all that. And I just-- they're very good neighbors to me. And I guess that's short and quick. That's all I really have to say. I mean, I appreciate the opportunity and if it's sold, I think one outfit would buy the whole thing.

BOSTELMAN: OK. Thank you for your testimony. Do you know how much of that percentage of that land, the 18,000, 19,000 acres is leased now? Do you have any idea?

STEVE FACKA: I'm going to say probably about 97 percent of it--

BOSTELMAN: OK.

STEVE FACKA: --be my guess, although I--

BOSTELMAN: So, and most of that, is it dryland-- is it dryland crops or is it all pasture hay?

STEVE FACKA: It's all pasture.

BOSTELMAN: OK.

STEVE FACKA: And then we was talking today, somebody, about dryland. We're in the Sandhills. It can't be farmed without irrigation. You know, they'd blow away.

BOSTELMAN: And since it's-- since most of that ground is leased, is that why public doesn't have access to it or do you know?

STEVE FACKA: There's public hunting. And the only time I know the gates are locked up is during deer season, to keep all the people off, but the rest of the time, the gates are open.

BOSTELMAN: OK. Any other questions?

JACOBSON: I--

BOSTELMAN: Senator Jacobson.

JACOBSON: Thank you, Chairman Bostelman. Thank you for being here. And I-- I guess that's news to me that 80 percent of that land, of that 20,000 acres, is being leased out. If that's the case, I'm glad to hear that. I'm trying to figure out then why it takes three employees to manage it, if that's the case. But I'll probably have a later justifier to ask that question. But-- but the-- and-- and basically

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

what you're saying right now is it's a bid. So how often are you bidding?

STEVE FACKA: Was every five years.

JACOBSON: OK. And is that what you're on right now is--

STEVE FACKA: Yes.

JACOBSON: --a five-year deal?

STEVE FACKA: Yep.

JACOBSON: So you're going to-- you're going to bid a per-acre rate?

STEVE FACKA: It's per animal per-- per month.

JACOBSON: So how-- and there's a minimum number of animals or how is that working?

STEVE FACKA: Yeah, they say like how many animals and you bid from there.

JACOBSON: Gotcha. OK. But you would be interested, obviously, in doing-- continuing to do long-term leasing and--

STEVE FACKA: Yes.

JACOBSON: And-- and that's important what you're doing. Appreciate that.

STEVE FACKA: Yes.

JACOBSON: Yeah. Thank you.

STEVE FACKA: OK.

BOSTELMAN: Seeing no other, thank-- questions, thank you for coming in today. We appreciate your testimony very much.

STEVE FACKA: Well, thank you very much.

BOSTELMAN: Appreciate it. Next opponent. Good afternoon. Welcome.

JEREMY MARTIN: Good afternoon. Senator Bostelman and committee. My name is Jeremy Martin, J-e-r-e-m-y M-a-r-t-i-n. Just like my neighbor, Mr. Facka that went previously, I'm a rancher in southwest Lincoln

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

County. We live about two miles from the N-CORPE property that's south of Highway 23, that's often referred to as the [INAUDIBLE] unit. And we've leased that property down there, which amounts to 3,000 acres, give or take, for three or four years now. And let me start by saying that I've heard repeatedly that this project needed done. And I'm-- I'm not an irrigated farmer. I don't have a dog in that fight. I don't have any idea how they managed to do it in 90 days and-- and, you know, I'm not sure at that point in time that I would have been in favor of that, right? But today that-- that has been done. And from my perspective, it's an opportunity for my family and I, as first-generation ranchers in Lincoln County, to lease ground that's close to home at a fair market value. They initially leased those parcels on one-year deals, and we didn't participate in those because there's not enough stability in a one-year lease for our operation. We're now in the middle or-- or maybe towards the end of a five-year lease and-- and I have-- I've pushed pretty hard on those guys in a lot of ways, both in terms of management, in terms of extending those leases and giving those leases an option to renew. I tried to add up the number of lessees, and I'm not sure that I know the north end of that property well enough to-- to account for everybody, but I think currently there's somewhere probably in the neighborhood of 8 to 12 lessees, most of which would be what I would call medium-sized operations. And the vast majority of that land is-- is leased for grazing. So I got on my Nebraska taxes online and I pulled up my property taxes on a section of grass that's just down the road from N-CORPE. And then I multiplied that times 19,000 acres and the number I came up with was \$130,000. And the in-lieu-of-tax payment, as stated earlier, is \$145,000. If you're going to value that land at \$2,500 an acre, for the sake of argument you're assuming it's dryland farm ground, I have a lot of experience managing the case on unit south of Highway 23. There's a very, very, very small part of that that ever should be broke again, should ever-- should ever see the plow again. It's-- it's really sandy. It's really soft. It will not make dryland farm ground in-- in most of those acres. So I think the in-lieu-of-tax payment is appropriate in the sense that it's being taxed as pasture ground. I realize that cost of the-- the Wallace school district \$500,000 or \$600,000 that's now being scattered amongst other landowners to-- to foot that bill. But that, that has been done and-- and I think everybody's adjusted to that. But I can tell you from my perspective that I appreciate the interaction I have with the-- the grazing management team at N-CORPE and that they're also very receptive to our ideas and what works best for our operation and what-- what we'd like to try on those acres. I would tell you on the unit that we lease, I've had the opportunity to bump into University

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

of Nebraska researchers studying bats, which I didn't even know there was bats there and was a little bit unsettled to learn that, quite frankly, and I've also had the opportunity to bump into numerous hunters because there's, I believe, two sections, two-and-a-half sections of that that we lease that's open to public hunting. So my-- from my perspective, you know, I-- I think it's positive for the area. I think it's positive for those of us who have an opportunity to-- to be in those leases. And I would ask you, if you're going to separate the surface use of the land and the water rights, is-- is a project designed for interstate transfer of water where you want to do that? Is that where you want to set that precedent?

BOSTELMAN: OK. Thank you for your testimony.

JEREMY MARTIN: Thank you.

BOSTELMAN: Yep. Thank you. Questions? Senator Jacobson.

JACOBSON: Thank you, Chairman Bostelman. And thank you, Mr. Martin, for being here and for your testimony. A couple quick questions. So what school district do you live in or is your land in?

JEREMY MARTIN: We have land in different school districts, so it's a fairly remote part of the world, as you probably know.

JACOBSON: Oh, come on now.

JEREMY MARTIN: My kids--

JACOBSON: Come on now.

JEREMY MARTIN: [LAUGH] My kids go to school in Wallace, we have a Wellfleet address, and we're closest to the town of Dickens. And so the Wallace school district would encompass some of our land. We also have land that's in the Hershey school district to the north.

JACOBSON: Great. Thank you. And for the record, you're the one that said it's a remote area, not me, so--

JEREMY MARTIN: Yes. Yes, it is

JACOBSON: [INAUDIBLE] record. Tell me, on these units, unit you have, so how are the union-- units-- is this based-- is there fencing already there or did you have the installed fencing? Did N-CORPE install the fencing? How did that take place?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

JEREMY MARTIN: N-CORPE installed permanent fence on the perimeter. It's nearly new fence and most of it was put in since they bought that unit. We had installed some-- some cross-fences to manage grazing better. And, you know, there's-- the challenge-- one of the challenges that we face there has been water. That has been augmented significantly, and I think a lot of that was done in cooperation with the Game and Parks, which is why I don't groan as much when I see the parade of hunters going by my driveway on opening day of pheasant season, because that partnership has allowed us to improve the grazing scenario there. It's--

JACOBSON: So to that piece, I-- so what you're telling-- how-- how many acres are involved in the unit that you lease?

JEREMY MARTIN: Three thousand, more or less.

JACOBSON: OK. So you're telling me that-- that N-CORPE put a perimeter fence-- fence around 3,000 acres? It's all new fence?

JEREMY MARTIN: There's a lot of new fence around that.

JACOBSON: Right.

JEREMY MARTIN: Now some of that perimeter fence was there and it's certainly not all been replaced.

JACOBSON: OK. And I-- we're-- you're grazing 3,000 acre, so are there stock wells on-- in that-- in that land as well?

JEREMY MARTIN: Yeah. As I alluded to in the last question, there are stock wells. They're solar stock wells for the most part and-- and-- in our unit.

JACOBSON: But you are pumping water from the stock well?

JEREMY MARTIN: Yes, sir.

JACOBSON: And in several locations probably--

JEREMY MARTIN: Yes, sir.

JACOBSON: --on that property?

JEREMY MARTIN: Yes.

JACOBSON: OK. Thank you. Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

JEREMY MARTIN: Thank you.

BOSTELMAN: Thank you for your testimony. Thank you for coming in today.

JEREMY MARTIN: Thanks.

BOSTELMAN: Next opponent, please. Good afternoon. Thank you.

AL DAVIS: Al Davis, the registered lobbyist for the 3,000 members of the Nebraska chapter of Sierra Club. You hear it every night, every day. A-l D-a-v-i-s. I'm also here today representing the Independent Cattle of Nebraska and the Nebraska Farmers Union. John couldn't be here this afternoon, so he asked me to speak up for him in opposition to LB396. One of the advantages to coming late and testifying late is you get everyone-- what everyone has already said, you were going to say, so some of this I don't need to say. But I think the thing that we're most concerned about is that the sale of the surface rights basically sever the-- sever the connection that all Nebraskans understand exist in statute today, that-- that the water can be used by the landowner but is not owned by the landowner. This looks to me like we're moving right-- right down the road towards ownership, which I think is a very destructive approach. We've seen how that has worked in our neighboring states south of here, Kansas, Oklahoma and Texas, where water now is so scarce. And you've probably seen articles about Kansas being concerned about trying to shut down wells in western Kansas. Thank God we haven't had to do that. When the project came out in the first place, I thought it was a poor decision. As we have moved beyond that and you step back and look at it, I think it was a very wise decision for those NRDs to go ahead and put that together. I think your concerns are justified, Senator Jacobson. Glad to see these landowners come in and talk a little bit and refute some of the things that we hear. So I'm not going to say anymore, just to say that those three organizations are opposed to this bill and we think you should IPP it. Thank you.

BOSTELMAN: Thank you for your testimony. Are there questions from committee members? Seeing none, thank you very much.

AL DAVIS: Thank you,

BOSTELMAN: Next opponent, please. Afternoon. Welcome.

JEFF WALLIN: Senator Bostelman, members of the committee, thank you for taking the time to listen to our testimony today. My name is Jeff Wallin, J-e-f-f W-a-l-l-i-n. I'm a farmer and an irrigator in

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

southwest Nebraska. My farming operation is locate-- located near Imperial, Nebraska, which is in Chase County. Most of the land that I farm is serviced by one or more of the NRDs that own the two augmentation projects that we've been discussing all afternoon. So approximately ten years ago, we were faced with a problem where Kansas was-- had us over a barrel, so to speak, and the NRDs out there were faced with solving the problem of coming into compliance with a three-state compact with Kansas and Colorado and Nebraska. So these augmentation projects were put in place, and in the years following that, up till today, those projects have been used multiple times and we've been in compliance with that compact because of those projects. During that time, farmers, landowners, irrigators like me have paid an occupation tax and that tax is what has funded those augmentation projects. So when I look at the leaders of this state, the state of Nebraska, and I see people here that had a problem ten years ago, or a little over, and now we don't have that problem because we have these augmentation projects in place and we are in compliance with that contract. And if I'm a smart leader, which I assume most of you are by looking around the room, and I'm looking at projects that are successful and aren't costing the state, I'm wondering, why am I questioning what's going on? Would I not want these projects to continue to serve the irrigators, the landowners and the people of the state of Nebraska? It seems to me like a no-brainer. Why would you want to open up a can of worms, put any obstacles in the way of these projects being successful? And I think that's what LB396 is doing, is trying to put an obstacle in so that these projects can't be successful. So I think you should take a good, strong look at that before you go any further with LB396. Many people before me have discussed the problems with LB396 that could arise, that could be detrimental to these augmentation projects, and I think we need to really think hard and long about those problems and that could arise if we were to push on LB396. So in summary, I'm opposed. I think it's a bad idea. It's bad for the augmentation projects, it's bad for irrigators, it's bad for the state of Nebraska being able to stay in compliance, and it's just bad for all Nebraskans. So the best thing that could happen is if this thing died right here, right now. Thank you.

BOSTELMAN: Thank you for your testimony. Are there questions from committee members? Senator Jacobson.

JACOBSON: Thank you, Chairman Bostelman. Thank you, Mr. Wallin, for being here. Now you said you live down by Imperial?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

JEFF WALLIN: That's correct. I actually live in Imperial, farming operation right around there.

JACOBSON: And you're-- so you're in the Imperial school district?

JEFF WALLIN: Yes, sir.

JACOBSON: So if there were 20,000 acres that came up for sale in your area and we decided to put the augmentation project down there, take 20,000 acres out of production, put it into grass instead of irrigated corn ground, would that be a concern of yours at all?

JEFF WALLIN: It would be a concern, but I would weigh the benefits versus the cost, and the benefit of keeping all of our irrigated acres irrigating would by far outweigh the cost of--

JACOBSON: Except for the 20,000 that came out of production.

JEFF WALLIN: Right. But I'm saying we have many more acres than that, that would be able to stay in full irrigated production because we did that.

JACOBSON: Because the reason I raised the question is, is obviously when you-- if you're living in the Wallace school district, there are a number of producers there who do have concerns about the fact that they're making a significant sacrifice by having that augmentation project in their school district, and all of the other school districts to the south and all of the landowners to the south get to pay \$10 an acre to keep irrigating where, admittedly, they all maybe would have had to have reduced their water, if not shut off altogether. So there's no question, as I've said many times, this is a-- was a great project. The problem really came back to who paid the sacrifice, because even at the current in-lieu-of-taxes, that's still a fraction of what that irrigated land would have been at irrigated values, but it was Lincoln County and those school districts, Hershey, Wallace, in that area that lost the tax base and are paying the bigger price, along with the loss of commerce. And so that's where the concerns have been. And I think the-- the purpose of this bill has been trying to figure out how we can at least try to restore the ability to have development there and-- and keep the tax base in place without this in-lieu-of. And I would think as a producer that you're paying that-- your-- your occupation taxes are paying that in-lieu-of tax because-- and-- and-- and also I would suggest that the-- you're also paying for the salaries of people that are managing it. All of that could go away if this were back on the tax rolls directly, either

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

through a lease to third parties or-- or a sale altogether. So I appreciate your testimony. I-- I appreciate the comments and I thank you for answering my questions.

BOSTELMAN: Seeing no other questions, thanks for coming in today. Appreciate it. Thank you.

JEFF WALLIN: Thank you for your time.

BOSTELMAN: Next opponent, please. Good afternoon. Welcome.

JASPER FANNING: Good afternoon, Chairman Bostelman and members of Natural Resources Committee. My name is Dr. Jasper Fanning. I'm the general manager of the Upper Republican NRD. J-a-s-p-e-r F-a-n-n-i-n-g. Just want to cover three or four main points that maybe have been misspoken at times and-- and somewhat straighten out others. First off, what we pay of-- for in-lieu-of-taxes is the amount that the county assessor says that the taxes would have been had it been in private hands; in other words, they go through the same valuation and calculation as if the land was owned by a private entity. They pass that along to us as the maximum amount that we can pay in-- in lieu of taxes, and that is what we have historically paid. To date, we've made about \$2.34 million of tax payments or in-lieu-of-tax payments to-- to Lincoln County, and for Rock Creek we've made a little over a half-million dollars. Rock Creek's a project that we developed, just our district, in Dundy County prior to N-CORPE being developed. The notion that it happened quickly, it happened quickly because it needed to, and part of the reason that it happened very quickly is because we had already done a study across the basin identifying sites with engineering folks and developed a report. And this wasn't one of the sites that we looked at, but it was near and similar to other sites that we had looked at. And so just because of its location relative to one of the streams in-- in-- in-- one of the streams that's in the compacted county in the Republican base, and we knew that it was a good fit. And so we moved-- moved quickly, and fortunately we did because we had to operate the project within about the first 12 to 14 months of-- of acquiring the land to keep Nebraska in compliance. You know, there's been a lot of talk about how much money we would save if we didn't have to own the land, that we don't need employees. Yeah, we have remote SCADA systems to see if the wells are operating, but you still have to send somebody out there to check on the physical and mechanical things within the wellfield, all of the valves that are there servicing-- servicing items within the wellfield and the infrastructure that delivers water, the pressure sustaining valves that determine whether water goes to the Republican or to the Platte,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

all of those things. I would-- I would point out Colorado developed an augmentation project before we did in Nebraska, and that project's pretty small. It's-- it's about-- it's got a capacity of about 13,000 acre-feet right now and the potential to develop it to about 25,000 acre-feet. To put that in perspective, N-CORPE has a capacity of about 60,000 acre-feet maximum annual ability to deliver. Our Rock Creek project has about a 20,000 acre-foot capacity, so it's a little smaller than Rock Creek right now, but it can be basically just a little bit bigger than Rock Creek once they-- they fully develop it. Their operational costs in 2019 were about \$1.1 million and they don't own the land; our operational costs in 2019 for N-CORPE project of about four times the size of the one in Colorado, about \$1.1 million, so, you know, there's-- there's probably some things within those annual operating expenses that you might want to look at a little bit closer to-- to get a true apples-to-apples comparison. But my point is the ownership of the land is not what drives our operating cost. Right now we have about 100 percent of the land leased out. It's-- it's very-- you know, I think everything's leased out for grazing. About 75 percent of it, I believe, is in what we-- we're going to call long-term leases. The laws, the laws related to the bonds and what we can and can't do with-- with property that's financed through bonds, dictates a lot of the terms of what's allowed in those leases. And so those leases are for a five-year term with an option to renew them for a five-year term for a total of-- of ten years. But again, a lot of those stipulations, we've already moved to long-term leases to-- to have that stability for the landowners so that they can invest in their operations knowing that they've-- they've got the land leased for a period of time, and I anticipate we'll continue to do so. The reason that we hadn't before is we had to-- you know, there were a lot of areas that we needed to graze very quickly and then not graze very much while we were trying to establish grassland on-- back on this very fragile, sandy, sandy soil. So those are some things that people brought up that I-- I think maybe led the committee down the wrong path, that there was some shortage of the taxes other than just the valuation, that we would save a lot of money by not operating or by not owning the land. And then really, with respect to the bond payments, Senator Erdman said he found it surprising that we were spending our money on things other than just the bond payments. Well, LB701, when it came out, we had a Supreme Court that told us we couldn't use property taxes, our one other funding mechanism, for state purposes such as augmentation. That's why we don't use property tax to pay those operating costs of augmentation and why those costs are authorized to be paid with the occupation tax, and that's why we use it in that fashion.

BOSTELMAN: OK.

JASPER FANNING: Thank you.

BOSTELMAN: Thank you. You-- can you tell me what's-- so we go back to the Sandhill occupation tax. What's owed yet that that's paying off?

JASPER FANNING: So the-- the numbers that I have in front of me, and-- and what I'll do is I'll get everyone on the committee an accurate summary. The numbers that I brought with me today is that the N-CORPE, the N-CORPE project owes about \$94.2 million on its-- that's its outstanding bond balance, I believe. And we as a district owe about \$15.5 million on Rock Creek. We-- N-CORPE has paid roughly \$51 million in payments, and Rock Creek's made about-- we've made about \$12 million in payments.

BOSTELMAN: So the-- we still have \$94 million remaining?

JASPER FANNING: Yeah, we have about \$94 million of the original, I want to say, \$120 (million), but I don't have that number in front of me. Again, I'll provide that to the committee.

BOSTELMAN: Okay. Thank you. Other questions?

JACOBSON: While we're talking numbers, what kind of revenues are produced by the occupation tax today?

JASPER FANNING: It depends on the district. In our district, we raise about--

JACOBSON: N-CORPE, how much is N-CORPE raising?

JASPER FANNING: How much is N-- N-CORPE doesn't have the authority to charge the occupation tax.

JACOBSON: I mean, I'm talking about for the bond repayment. How many dollars are being raised through the occupation tax to repay the bonds?

JASPER FANNING: Our-- our portion, our district's portion of the N-CORPE debt is a-- is an annual payment of roughly-- it varies from year to year depending on what other funding structures--

JACOBSON: [INAUDIBLE] we-- we've got-- you said there's 95--

JASPER FANNING: Ours-- ours is about \$1.7 million, so the total is going to be slightly less than four times that because of Twin

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

Platte's paid for part of their con-- additional construction part out of their own pocket and they didn't have the expense in the Republican, so it's roughly \$6 million.

JACOBSON: Let me restate the question. You have how much debt service-- I want to know what your debt service is of the bonds and I want to know what the total dollars throughout the properties that are being taxed come in to repay the bonds, how much is being collected to be able to pay those bonds off.

JASPER FANNING: And again, I'm going to only be able to speak to our district. We-- we have about 440,000 irrigated acres. We raise about \$4.4 million in annual occupation tax. We pay about \$1.7 (million) to N-CORPE and we just-- on-- on our Rock Creek debt, I can't think of the exact number. I'll get that for the committee. The remainder of-- of that we use for operations of the projects--

JACOBSON: Let me--

JASPER FANNING: --as well as retiring additional lands.

JACOBSON: OK, well, let me go back. OK, your role with N-CORPE is what?

JASPER FANNING: I'm-- I'm the general manager of one of the districts that is a partner of N-CORPE.

JACOBSON: So who's over-- who oversees all of N-CORPE in terms of payment of the bonds and management of the debt?

JASPER FANNING: Ultimately, that comes down to the board of N-CORPE, which is a representative from each of the four natural resources districts.

JACOBSON: But is there not someone in charge that the board re-- that-- that reports to the board?

JASPER FANNING: Sure. Kyle Shepherd's the manager of N-CORPE and he--

JACOBSON: Is he going to testify today?

JASPER FANNING: I don't believe that he is--

JACOBSON: OK, and--

JASPER FANNING: --but I don't know that.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

JACOBSON: And-- and so who does he report to?

JASPER FANNING: He reports to the board of directors.

JACOBSON: Directly?

JASPER FANNING: Directly.

JACOBSON: OK. You don't use any reporting through you.

JASPER FANNING: We communicate with him fairly frequently because he's managing a project that we rely on for compact compliance. But as far as direct oversight, no, he's not-- not someone that I have direct oversight of.

JACOBSON: And-- and-- and what would his role be? So what's-- what-- what does his job description entail?

JASPER FANNING: Generally speaking, he oversees the-- the general management of the project, makes sure the other employees are performing their maintenance tasks. He's the-- the primary person that-- that gets for the board the-- the bills payable and pays the bills and works with the accountants on behalf of the board between board meetings.

JACOBSON: OK. And his background is what?

JASPER FANNING: You'd have to ask him that.

JACOBSON: OK. There was discussion earlier about this hay situation,

JASPER FANNING: Sure.

JACOBSON: Can you fill me in on that?

JASPER FANNING: So N-- N-CORPE, during-- during the development of trying to get land back to native grasslands, we-- we had some areas that we leased for haying, and there was-- this is poor-quality hay. It's-- it's mostly to remove that organic matter off the top, to give the grass that we've seeded a chance to-- to get some sunlight and grow. Some-- some people hay-- you know, we got contracts. Some people came in and hayed that and removed it and-- and they got a share of the hay for that. We had areas that they didn't want to do that on. The-- the quality of stuff out there, we were basically paying somebody-- we ended up paying a contractor to come and hay it and bale it and stockpile hay. And this is-- to call it hay is a stretch. It's

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

weeds. It's-- I mean, it has nutritional value. You can grind it and feed it with distillers. So the hay issue that was brought up, the-- you know, I think one side of that story was told. Someone reported it to the Lincoln County-- County Sheriff. He came to a board meeting. He discussed it with us. He discussed it with the board in executive session. The board was aware that Kyle was selling hay. You know, the-- the part about it being advertised on social media is-- for sale was just to get it out there. The contact that I'm aware of that Kyle had had with this individual that involved any financial part of the transaction, the billing and etcetera, was-- was done through N-CORPE through our-- it was-- those transactions had been put into our financial system, so the facts of the matter are there weren't any charges filed because after the sheriff did an investigation, it didn't feel like there was anything to pursue. The board didn't take any action because they were aware and had authorized Kyle to sell the hay and there was no evidence that he had done anything improper monetarily.

JACOBSON: So to that point, did Mr. Shepherd, his wife or any relative, receive any of the proceeds from the sale of that hay personally?

JASPER FANNING: Not that I'm aware of.

JACOBSON: Are you certain of that?

JASPER FANNING: I'm certain of that--

JACOBSON: OK.

JASPER FANNING: --that I'm not aware of that, yes.

JACOBSON: All right. You're certain you're not aware of it?

JASPER FANNING: I'm certain I'm not aware.

JACOBSON: Is it possible that he did?

JASPER FANNING: I don't-- I don't believe that it's likely.

JACOBSON: If Sheriff Kramer were here testifying, what would he tell us?

JASPER FANNING: I believe he would tell you that he had no evidence that he did receive any-- anything from that.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

JACOBSON: OK. I do have a couple other questions then. I guess you said it's 75 percent leased. What about the other 25 percent? What's it's being used-- what--

JASPER FANNING: So-- so the other 25 percent are some-- some tracts that are not-- not yet fully reestablished and require a little bit more intensive management, some flash grazing, and aren't-- just aren't ready to be grazed as you would an established pasture. And so, you know, we're probably-- it probably varies on that 25 percent. Some of it, maybe we'll be ready to start long-term leasing in the next year or two, so that's kind of as that gets established, and Mother Nature has more to do with that than-- than anything.

JACOBSON: Also, when I look at future uses, okay, you're-- you're telling me you're leasing it for grazing?

JASPER FANNING: Yes.

JACOBSON: Are there plans to do something beyond agricultural purposes for that land?

JASPER FANNING: Well, I-- I think we've talked- we've talked a little bit about solar and wind. Given the location and Gerald Gentleman being a stranded asset of NPPD's, I think that controls whether there's ever that opportunity. And-- and the people that we've allowed to do studies on our land in terms of evaluating the potential for-- for wind and solar, what they've told us is other landowners are going to want to have to do a project like that in that area in order for them to be able to move forward, to have the right size, scope and scale of things. So I don't know the-- you know, really, we've-- we've said we're willing to explore it, but with what we've done and what we've been told, we're not the ones that make the final decision on that. Lincoln County and surrounding-- surrounding landowners are going to really have the final say in that.

JACOBSON: So my key question here is-- OK, you're managing the grazing today; by leasing this land out, you're managing the augmentation project.

JASPER FANNING: Sure.

JACOBSON: OK. Got that. If you go to wind and solar panels, would you lease that operation to someone who's in the energy business, or would you attempt to manage that through N-CORPE as well?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

JASPER FANNING: I think that's a question for the board of directors that I can't answer today.

JACOBSON: I-- I raise that question because I'm just trying to determine just how far outside the scope of water quality and quantity is the-- are the NRDs and N-CORPE willing to do.

JASPER FANNING: Well. I-- I think you need to look-- you know, you've named what are the two most common things that people think about with NRDs. But we have some other things that we-- that fall under our umbrella, as well, and, you know, some of the other things that we've work with Game and Parks on, the public hunting, and-- and open access for-- for hunting, as well as other species management things and activities that they've conducted out there. We've also opened up areas that are-- you know, when I say opened up, we allow them to ride their horse across part of the property for public access, things that they can't do maybe in-- in downtown North Platte or don't have access to. So there's some-- there's some other access things there. But the wildlife management piece of it is, you know, that's under our umbrella. It's not one of the things that we spend a lot of time on. It's probably one of the things that we underserve, even though they're small towns; you know, the people in our small towns, probably a little bit underserved. Things have changed a lot with private landowner-- ownership being leased out for hunting. People have a lot less places to go on private land to hunt today than they did when I was a kid. So we've-- we've done some things because we own the land that are under our umbrella. Now they're not the reason that we have continued to own the land or-- or-- or any of that. It's-- it's just an ancillary thing that we're able to provide for our constituents that we wouldn't be able to without the land.

JACOBSON: Yeah, and I appreciate that. Thank you for the answer.

JASPER FANNING: You bet.

JACOBSON: I've nothing else.

BOSTELMAN: Seeing no other questions, thank you for coming and your testimony.

JASPER FANNING: Thank you.

BOSTELMAN: Any other opponent? Anyone else like to testify in opposition to LB396? Seeing none, anyone like to testify in neutral capacity? Anyone like to testify in the neutral capacity on LB396? Seeing none, Senator Erdman, you're welcome to close. We did have four

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

opponent letters filed. With that, Senator Erdman, you're welcome to close.

ERDMAN: Thank you, Senator Bostelman. That was amazing. So I listened closely, and the last gentlemen testified that they pay about \$6.4 million a year towards indebtedness. I'm not an actuary like Rob Clements, but just back of the envelope figuring, so it's been ten years. So 10 times 6 is \$60 million. Take out a million a year for operations-- I think they said their operation's about a million a year-- that's \$50 million. And they've paid the debt down from \$120 (million) to \$94 (million). I don't know how your math works, your modern math, but if you subtract 50 from 120, it should be around 70. And when we had a hearing this summer, last-- last summer, Manager Shepherd said it should be paid off in-- in '33 or '35. At the rate they're going, they'll still have \$50 million in debt in '33 or '35. It doesn't take a rocket scientist to figure that out. Something's happening with the money. I don't know where it goes. Maybe they can provide that information. So we had NRD people. We had lawyers who were paid to come here, but the-- the poor people who are paying the taxes, they didn't come here. They're home, working, trying to pay their taxes. So that Supreme Court ruling also went on to say-- the attorney that stated about the Supreme Court-- it said 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 and to the extent prescribed by the public through its elected representatives. So if what they're saying separating the land and the water is against the constitution or it's illegal or it can't be done, explain to me-- explain to me about that purchase contract. How did that work? Explain to me about the deed that says they have separated the water from the land on the land that they did sell. Explain that. They all testified that that's illegal, it's against the law, it's against the constitution. The Supreme Court ruled against doing that, but they've already done that. They must have got the misconception. I never said that I was trying to eliminate the augmentation program of N-CORPE. I never said that. I was in support of that. I said it was a good idea. They should have done that. They did. They did the right thing. So I don't know how someone comes up here and says we're trying to stop them doing what they're doing, which would prevent them-- prevent them from pumping water on their property. That's not what I said. I really appreciate the fact that Farm Bureau was testifying against it because I thought maybe I got one by them that they didn't see. What they generally do is they look at the-- see who introduced it. No matter what it is, it says "Erdman," they come in and testify against. So I appreciate them coming in and keeping their records

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

intact. But the point is this. Here's the point. Either those people that bought that land from N-CORPE-- that person that bought that land in Bridgeport, violated the constitution. Something needs to be done about that. But they didn't. They can sell the land and retain the water rights or they can't. So when the Attorney General gives his Opinion we'll understand further and better how we go forward. But it's amazing that we have that many people spend that much time and come here and tell us what we should do and how we have to do it when in fact they've already proved that we can do what we said we're going-- we should do and they say we can't. Where were they when they did that? I'm sure they weren't there to testify against that. And Kansas is not concerned about how we do the augmentation. They're just worried that we do it. And don't let them come in here and tell you they're all scared about what we're going to do here. As long as we pump the water we're supposed to pump and we do what we said we're going to do, that's all they care about. So what they perceive to be true is true to them and there's nothing I can say or anyone else can say to change their mind, simple as it is. Thank you for your time.

BOSTELMAN: Questions from committee members? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Bostelman. Thank you. Senator Erdman. The numbers you ran off for the amount of debt service, I assume there's interest on this loan. Is that-- am I wrong about that?

ERDMAN: No.

J. CAVANAUGH: Did that math contemplate the interest on the loan, then, for the about being paid down?

ERDMAN: Fifty million.

J. CAVANAUGH: Well, see, so \$120 million, \$94 million, and they paid \$50 million?

ERDMAN: Yeah.

J. CAVANAUGH: So that essentially means they paid down \$26 million on the principal.

ERDMAN: Twenty-six million.

J. CAVANAUGH: So I'm just asking if that math included debt service.

ERDMAN: There could be. I don't know.

J. CAVANAUGH: OK.

ERDMAN: They-- they didn't tell us.

J. CAVANAUGH: All right. I-- I'm just trying to wrap my mind around the math that gets thrown around real quick. Do you have an answer to Mr. Fanning who said that they're paying the total amount in property taxes that the county's asking them? Did you hear him say that?

ERDMAN: Do I dispute what they're paying?

J. CAVANAUGH: Well, so Mr.-- oh.

ERDMAN: Well, they told-- they told us last summer, Senator, two summers ago, that was the amount that they told us they were paying. I don't have any reason to doubt that's what they're paying.

J. CAVANAUGH: But, well, I guess my question is-- you said at the beginning that they should be paying something around \$900,000, they're paying about \$100,000 and something? Is that-- did I remember that right?

ERDMAN: Right.

J. CAVANAUGH: So what's the diff-- discrepancy? Why is the county telling them the maximum amount they owe is \$100,000 and something, but you think they should be paying \$900,000?

ERDMAN: That was the information that we had put together a couple years ago when we were looking at what they should be paying in taxes. I'd have to go back and review how I got to that number.

J. CAVANAUGH: OK. Thank you.

JACOBSON: I got just one quick question. I-- I think that we need to clarify a little bit of-- of Senator Cavanaugh's question. I don't think we got the number-- I know Mr. Fanning told us that he didn't have this, that-- that Mr. Shepherd did all that. I see Mr. Shepherd's here but chose not to testify today, to really answer those questions about what are the total revenues that are coming into N-CORPE from all of the occupation taxes and what is the debt service requirement, principal and interest, on--

ERDMAN: Right.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 1, 2023

JACOBSON: --along with the in lieu of taxes and-- and consequently how does that all work out.

ERDMAN: Right.

JACOBSON: He also wasn't here to testify in terms of the sheriff's report, which I'd love to have had some answers to.

ERDMAN: Right.

JACOBSON: I know you visited with Sheriff Kramer.

ERDMAN: Right.

JACOBSON: Was your understanding any different than what Mr. Fanning told us?

ERDMAN: Yeah, not a-- I want to be clear. I didn't indicate that he was charged with anything.

JACOBSON: No, I know that.

ERDMAN: That's not what I said.

JACOBSON: Yeah.

ERDMAN: That was a report that I got from-- from Sheriff Kramer. He had talked to the lady in Kansas. The sheriff had spoken to her, and that's exactly what had happened. And they reimbursed her mileage through the N-- NRD checking account. The hay was advertised on Facebook. Those are the information that's in the sheriff's report. You can read that. The issue that you're allude-- alluding to or referring to, that you're going to get the information from Mr. Shepherd, what they owed and how much they paid, I tried that two summers ago when we had the LR. He didn't have a clue. And I went back and reviewed the whole testimony today and read it, and I asked those specific questions and I never got an answer from him. And he's the manager. I think he was the one who should have been able to answer that, but he didn't answer one of those questions. So you may try asking him privately. Maybe he now knows what it is, but at that time he knew nothing about it.

JACOBSON: Thank you.

BOSTELMAN: OK, that'll conclude our hearing on LB396. Thanks, everyone, for coming. Thanks, Senator Erdman.