

SPEAKER BAACK: Senator Beutler, would you respond, please.

SENATOR R. JOHNSON: Senator Beutler, I know you're catching questions from all different directions, but I'd like to be a little more specific. Can you explain to me what new provisions or protections that, for example, the City of Lincoln would gain under this bill that they don't presently have or the Constitution does not guarantee?

SENATOR BEUTLER: Senator, basically the Constitution gives them no mechanism to provide for or to protect their quantity of water when that quantity of water is dependent upon surface water and what this bill would do would be to give them the connection that parallel...a legal connection that parallels the hydrological connection that exists and says that they will have a right, like any other surface water right, to seek to protect their interest through the appropriation of the water.

SENATOR R. JOHNSON: Okay. My second question would be, well it's not a question. I guess to put it in layman's terms, could you basically walk me through how a city would go about getting an instream flow and appropriation of the water? What procedures do I have to follow under this bill to protect my right to the water along the Platte, for example? Where is the burden of proof I guess? Under this bill is the burden of proof to show some form of a hydrological connection on the city or on the irrigator or who would have the responsibility of proving their case before Mr. Jess?

SENATOR BEUTLER: Senator Johnson, as you know the basic procedure is to have a hearing before the Director of Water Resources who is currently Mr. Jess and he would make the decision based on the criteria shown in Section 8 of the bill on pages 8 and 9 which you can read, as to whether they had a right to the water, to the instream flow right. And currently, under current law it is my understanding the burden of proof for any kind of instream flow is always upon the applicant and we are not changing anything with regard to the current law in that regard although a previous, as the bill was previously constructed and under a previous amendment, the city would have had a presumption, but that has been eliminated and so it would be, in fact, the municipal supplier who would have the burden of proving the hydrological connection.

SENATOR HABERMAN: Senator, the major concern that I guess I