

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

Natural Resources Committee  
April 04, 2007

---

[LB701]

The Committee on Natural Resources met at 12:00 p.m. on Wednesday, April 4, 2007, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on AM872 to LB701. Senators present: LeRoy Louden, Chairperson; Carol Hudkins, Vice Chairperson; Tom Carlson; Mark Christensen; Annette Dubas; Deb Fischer; Gail Kopplin; and Norman Wallman. Senators absent: None. []

SENATOR LOUDEN: Good afternoon. I'm Senator LeRoy Louden, Chairman of the Natural Resources Committee, and we're having this hearing today on LB701. We'll start and if some of the senators will get here as they are able to make it. Starting now on my right is Senator Tom Carlson from Holdrege. Next to me is Jody Gittins, our committee counsel. To my left is Senator Deb Fischer from Valentine. And next to her is Senator Mark Christensen from Imperial. The page today is Erin Frank from Bassett. And at this time, I'd ask that you either turn off your cell phones or put them on silent or whatever it is you do to keep them from disturbing anyone. And we will go from there. Our hearing this afternoon will be for two hours. We'll probably try and do about 45 minutes for proponent testimony and 45 minutes for opponent testimony. We will have some expert witnesses that will be given seven minutes to present their testimony. And those that testify after them will probably have about two minutes. I will stop you after that time. This year, we are using a computerized transcription program and it is very important that you complete a green sign-in sheet prior to testifying. They are on the tables by the door in the hearing room. The forms need to be completed by all people wishing to testify. When you come up to testify, place a form in the box by the committee clerk. Do not turn the form in before you actually testify. Please print and it is important to complete the form in its entirety. If our transcribers have questions about your testimony, they use this information to contact you for clarification. If you do not wish to testify but would like your name entered into the official record as being present at the hearing, there is a form you may sign. These are located on the tables by the doors. This form will become an exhibit from our hearing today and will be part of the official record of the hearing. If you do not choose to testify, you may submit comments in writing and have them read into the official record. Your comments will be an exhibit from our hearing and will become part of the official record of the hearing. If you want to be listed on the committee statement as a testifier at the hearing, you must complete a green sign-in sheet and actually testify, even if you just state your name and position on the amendment. The chair next to the witness table is the on-deck chair. As one person finishes testifying, the person in the on-deck chair should move immediately to the witness table and begin their testimony. As the on-deck chair is vacated, another testifier should move to that chair so we can keep the process moving. As you begin your testimony, state your name and spell it for the record, even if it's an easy name. Please keep your testimony concise and try not to repeat what someone else has covered. Again, I will limit each testifier to probably two minutes. If you have handout material, give it to the pages and they will circulate it to the committee. No displays of

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

Natural Resources Committee  
April 04, 2007

---

support or opposition to the amendment, vocal or otherwise, will be tolerated. And if you need a drink of water, why, please ask the page while testifying. Since then to my left is Senator Carol Hudkins from Malcolm, the Vice Chairperson of the Natural Resources Committee, has joined us. And to my right is Senator Gail Kopplin from Gretna that has joined us, a member of the Natural Resources Committee. With that, I would like to lay some of the, mention some of the remarks. I wanted to thank all of the participants in discussion that have taken place over the past two weeks and time beyond before that, and each participant's willingness to go forward with this amendment. I particularly want to thank the Governor and members of his staff; the Attorney General's staff, David Cookson and Justin Lavene; the director of Department of Natural Resources, Ann Bleed, and her legal staff; the Nebraska Association of Resource Districts, Dead Edson and the managers of the natural resource districts in the Republican River Basin; Speaker of the Legislature, Senator Mike Flood; Chairman of the Appropriations Committee, Senator Lavon Heidemann and his staff; Jeanne Glenn; Chairman of the Revenue Committee, Senator Ray Janssen, and George Kilpatrick; and members of the Natural Resources Committee and my staff, Jody Gittins and Barb Koehlmoos, for all the work behind the drafting of this amendment. Senator Mark Christensen has allowed the use of his priority bill to accomplish a comprehensive water plan that should carry us forward in creating solutions to our water problems. The bills that have been incorporated into this legislation and have had a hearing before this committee are: LB458, a vegetation control bill which is Senator Carlson's priority bill; LB314, which I introduced which classifies sand pits that are used for irrigation purposes as wells, which eliminates a loophole in the areas where there is a moratorium on new well construction. This was amended into LB295, which is on Select File. And LB295, which is a committee priority bill, contains language recommended by the Department of Natural Resources to deal with inconsistencies within their statutes. It is sort of a cleanup bill. The amendment also contains a portion of the Governor's budget bill regarding the funding for the Water Resources Cash Fund of \$2.7 million each year. And beginning on January 1, 2013, a half cent per bushel or hundredweight excise tax on corn and grain sorghum will be deposited in the Water Resources Cash Fund. LB33, which was advanced by the Appropriations Committee, contains this language. That describes the bills that are included. Other provisions that I would like to focus on this afternoon during the hearing are: number one, an extension of the current three cent additional tax levy and budget authority for basins that are fully or overappropriated until the year 2012. These funds are used to assist in the implementation of integrated management plans in those districts. Number two, a provision that would allow bonding for districts that are subject to an interstate compact consisting of three states or more and also have an irrigation district within their jurisdiction. Number three, a provision that would allow the districts to impose an addition ten-cent levy to pay for the bonds and to use a \$10 per acre occupation tax on the activity of irrigating agricultural lands. These are the key provisions but, as always, the devil is in the details and I will ask the committee counsel to go over some of those details. Also I want to mention that Senator Norm Wallman from Cortland has joined us, a member of the Natural Resources

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

Natural Resources Committee  
April 04, 2007

---

Committee. And Senator Annette Dubas from Fullerton, a member of the Natural Resources Committee, has joined us at this time. Jody Gittins, our legal counsel, will present the bill. [LB701]

JODY GITTINS: Good afternoon, Chairman Loudon, members of the committee. My name is Jody Gittins, J-o-d-y G-i-t-t-i-n-s, and I'm introducing this amendment as a collaborative effort on comprehensive water legislation for the 2007 Legislative Session. I'm not going to spend a lot of time reviewing what this committee has already done and accomplished, but focus on the new provisions of the amendment that do not reflect provisions of LB295, LB314, or LB458. AM872 has been changed or will be changed by the addition of a representative of the Department of Environmental Quality to the Riparian Vegetation Task Force and it will also allow any member of the Legislature to participate in the task force and not just the members of the Natural Resources Committee. Priority for grants shall be given to grant applicants whose proposed programs are consistent with the recommendations of that task force. These were changes that were recommended by Senator Don Preister. Beginning with Sections 5 through 13, we begin the process of allowing natural resource districts bonding authority. This authority is restricted to those districts that are subject to an interstate compact consisting of three or more states, which at this time is the Republic River Basin only, and that have within their boundaries an irrigation district, which excludes Tri-Basin Natural Resource District since it has a public power and irrigation district. In order to pay for the bonding proposals, the natural resource districts would be able to impose an addition ten-cent levy on all property located within the district and/or to impose an occupation tax of \$10 per acre on the activity of irrigation on agricultural grounds. The occupation tax would be based on irrigated acres certified by the natural resources district. The owner of the land would be able to go to the natural resource district and request that his or her land be removed from being certified as irrigated acres if the owner no longer wishes to irrigate his or her agricultural lands. This measure would remove those acres from the possibility of ever being irrigated in the district where there is a moratorium on the addition of wells or irrigated acres. The bonding authority is limited to four activities: first, for the acquisition and ownership of groundwater or surface water rights, including storage rights--this could be a permanent buyout or a lease for a specific number of years or other mutually agreed to terms; second, for the acquisition by purchase or lease, or the administration in management by mutual agreement, of the canals and other works constructed for irrigation from a river; third, for vegetation management; and fourth, for augmentation of river flows. A natural resource district would be allowed to acquire by purchase, lease, or mutual agreement project works undertaken by the United States or any of its agencies, or by this state or any of its agencies, including a reclamation district or an irrigation district. This amendment also give specific authority for natural resource districts to use interlocal agreements to form joint agencies for the purpose of river flow enhancement and to issue bonds for that purpose. The amendment would also allow any natural resource district to impose a 180-day temporary state on the construction of any new

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

Natural Resources Committee  
April 04, 2007

---

wells, as well as the addition of any new irrigated acres, without holding a public hearing prior to that imposition. It would also allow the Department of Natural Resources to impose the same types of stay on surface water appropriation and irrigated acres. However, both the district and the department would be required to hold a public hearing during that 180-day stay and would be required to issue a determination of making the stay permanent or imposing conditions or any other activities that they feel necessary for the construction of, any new construction or addition of irrigated acres within 45 days from the date of the hearing. Beginning on January 1, 2008, under the amendment the department is required to consult with natural resource districts on forecasting annually the maximum amount of water that may be available from the stream flow for beneficial use in the short and long term, in order to comply with an interstate compact decree or agreement. The amendment also allows the continuation of the additional three-cent levy for districts that have been declared overappropriated or fully appropriated or are subject to an interstate compact decree or agreement until the year 2012. It also gives them the corresponding budget authority for spending that three cents. The amendment incorporates that part of the Governor's budget bill that requires a transfer from General Funds to the Water Resources Cash Fund in the sum of \$2.7 million each year. It also includes the Governor's provision that creates a half-cent excise tax per bushel or per hundredweight on corn and grain sorghum to be placed in the Water Resources Cash Fund beginning on January 1, 2013. The amendment also gives the department the authority to undertake measures in fiscal year 2006-2007 to further facilitate compliance with interstate compact or decree stipulations. The purpose of this amendment is to give the department the ability to negotiate with irrigation districts and others to augment river flows necessary for compliance within their interstate compact. The amendment also contains provisions suggested by bond counsel necessary for this to go forward. That concludes my remarks. I will try to answer any questions you have but there are a host of experts after me that can go into great detail. The Department of Natural Resources with Ann Bleed will be testifying in the neutral position and available for questions. And the Attorney General's office, represented by David Cookson, is also planning to testify in the neutral position so that they'll be able to answer any questions that you may have. [LB701]

SENATOR LOUDEN: Okay then, we won't take questions from you, Jody. [LB701]

JODY GITTINS: Thank you. [LB701]

SENATOR LOUDEN: We'll fix that for your right now. May I ask how many proponents wish to testify? About, what, nine or ten. Okay then. I guess first proponent, please come forward and testify then. Now you'll be considered the expert on the part. We'll give you the seven minutes and the rest of them will be less or how do you want to do this? [LB701]

DAN SMITH: We can all, shake that out. We have three of us that want to testify from

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

Natural Resources Committee  
April 04, 2007

---

the basin and, you know, individually I think we can probably try and answer some of your questions, sir. [LB701]

SENATOR LOUDEN: Okay. [LB701]

DAN SMITH: (Exhibit 1) But you can limit me to as little as you want. (Laughter) My name is Dan Smith, D-a-n S-m-i-t-h. I'm the manager of the Middle Republican Natural Resources District in Curtis, Nebraska. I've also been asked to inform you that the Nebraska Water Coalition, which is made up of the Nebraska Water Resources Association and the Nebraska State Irrigation Association, would also be considered in support of LB701 as amended. Senator Louden, members of the Natural Resources Committee, as I mentioned, I'm here to testify in support of LB701 as it's currently amendment. There are many components in this bill, as been discussed already, and they can provide some of the valuable tools that this district needs to make the controls and the things in our basin work. Several months ago, the Republican River Basin NRDs activated a process that had been placed on hold through the primary general election and the permanent appointment of a director of Natural Resources. That process between the NRDs and the Department of Natural Resources is an ongoing process that was, for us, started in 2002. This process helps us determine what combination of controls, regulation, or other administrative actions best help Nebraska achieve compliance with the Republic River settlement. In December, the only options that seemed available were a significant reduction in irrigated acres with no method of compensation, if you will, or major reductions in allocations without the assurance that they would have a short-term impact sufficient to assure compliance. February bought runoff from the winter snow fall. Harry Strunk Reservoir was full and spilling. In Harlan County, which had been forecast by the Bureau of Reclamation as having no supply, now has over 20,000 acre-feet of water that could be delivered. Now it seemed possible, with the cooperation of irrigation districts, to lease some or all of those surface water supplies and make them available to Kansas. Our problem now was lack of money. This legislation, with the ability to enact that \$10 fee, would allow us to raise almost all of the funds needed, with the funds proposed for DNR. We have the opportunity to purchase water from four different irrigation districts and help Nebraska achieve its first year of compliance since the settlement was approved. This new authority to generate fund from bonds for a variety of groundwater management activities and some actions that will be relevant to compact compliance, along with our ongoing controls and regulations, can only be good for Nebraska. With the help of the Legislature through this authority, we can continue to respond at the local level with funding, water use participation, and continued regulation. Our controls will not be erased. This authority does not give us the ability to roll back to the good old days, if you will. The statutes require that the NRDs weigh the social and economic impacts of our controls. Purchasing already limited surface water supplies that has an impact on about 49,000 acres will minimize, not erase, the impact on over 200,000 acres served by groundwater wells near the river. Thank you for the opportunity to testify and thank

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

Natural Resources Committee  
April 04, 2007

---

you for all of those folks that have worked. Senator Louden, I'd like to echo, if I could, your comments at the beginning. There are a lot of good people involved in trying to pull these concepts together. There are 49 of you down here. You all have different opinions. We have 44 elected directors in the Republic River Basin. We have preferences in how things could be done. I think it's safe to say at this time, we really don't have differences in what needs to be done. [LB701]

SENATOR LOUDEN: Okay, thank you. [LB701]

DAN SMITH: Thank you, sir. [LB701]

SENATOR LOUDEN: Questions? Senator Christensen. []

SENATOR CHRISTENSEN: Thank you, Chairman Louden. Dan, thank you. Is it your understanding of this bill you can apply the \$10 per acre tax fee and on top of that to property tax? [LB701]

DAN SMITH: Yes. That's, I believe that's the way it's currently written. Our intent, I think, from our district was to have a combination of those two funds. And what some, a few pennies if you will, of taxing authority were put on the property tax and then the per acre fee to sort of balance the impact, if you will. It was our thought that all people in the Middle Republican benefit from a viable agriculture economy, even those in the communities. [LB701]

SENATOR CHRISTENSEN: Was it your understanding there was supposed to be a maximum placed on this, not to exceed what \$10 per acre would raise? [LB701]

DAN SMITH: Initially that's what our thought was. I think, and I'll defer to some experts later that understand this process much better than I do, that those two right now could be stacked. And I guess I don't have any other comment other than that we, the Middle Republican, preferred an opportunity to blend those two if possible. [LB701]

SENATOR CHRISTENSEN: Is it your understanding that you don't need both, that we could get by with the combination but not to exceed \$10 per acre? [LB701]

DAN SMITH: Under our current proposal, the current projects, if you will, that we're looking at, no, I don't think we need both. The ability to have both to respond on a short term may be necessary. [LB701]

SENATOR CHRISTENSEN: And is there a limit to the number of bonds that can be done under this? [LB701]

DAN SMITH: Senator, I don't know that. I don't know that. [LB701]

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

Natural Resources Committee  
April 04, 2007

---

SENATOR CHRISTENSEN: Okay. Thank you. [LB701]

SENATOR LOUDEN: Okay, Senator Kopplin. [LB701]

SENATOR KOPPLIN: Thank you, Senator Louden. Thank you, Dan. I'm just looking for an explanation of a word that was given to me, and I don't know who else to turn to. What is banked water? [LB701]

DAN SMITH: Banked water? Both the, and I'm sort of speaking for another district, but both the Upper Republican and the Middle Republican have a provision in our rules that say, for instance, in this cycle we had a three-year block of water that was made available our producers. If they did not use all of that, we had a provision in our rules that could carry a portion of that forward into the next year. Now while that's what we look at as banked water, there are also concepts that have been proposed several years ago. One of the charges to the Water Policy Task Force was to look at a water banking concept. But none of that has ever been pulled together. So in the basin, it's generally that opportunity to save a little bit of water when you don't need it and carry it forward into the next allocation provided, of course, that it's in the rules and regulations of the district. That would be an individual choice for those districts that use that in their rules. [LB701]

SENATOR KOPPLIN: Okay, thank you. [LB701]

SENATOR LOUDEN: Senator Carlson. [LB701]

SENATOR CARLSON: Senator Louden. Dan, this might be a difficult question and I'm not trying to throw a curve at you. But I'm concerned, I'm interested about this. In your looking at the various aspects of this bill, what aspects of the bill do you believe require specific action in 2007 and, let's say, up until the end of March in 2008? [LB701]

DAN SMITH: Well, nothing in the bill, I think, would require specific action. We're looking at a project that we would like to get up and running as soon as possible in 2007. Now there are provisions, of course, associated with the Water Resources Cash Fund, that if you're going to use that then you should note what your intents are. And there's two reporting periods, I believe July 1 and November 1 in there. But as far as if this legislation was passed today, it would not require any of us to take any specific action with regard to the bonding right now, other than that we have an ongoing project we'd like to get up and running. [LB701]

SENATOR CARLSON: I'll just ask one thing further then. Of the various provisions in here, what would you like to see action taken on before March of 2008? [LB701]

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

Natural Resources Committee  
April 04, 2007

---

DAN SMITH: The bonding authority, sir. We're looking at that ability to put together a project yet this summer. We have had quite a little conversation with several irrigation districts and we've got an opportunity to bring some water into the basin that's surface water. It's not a full supply for those districts, it would be limited supplies for them. But if we can put that water, purchase that water from them, lease that water from them this year, send it on down the river, we have a very real possibility of bringing Nebraska into compliance for this year, not for the entire time frame, but for this year. It's going to take a little help from Mother Nature and the producers in general, but it's a very distinct possibility. [LB701]

SENATOR CARLSON: And that would be a purchase of surface water for one year. [LB701]

DAN SMITH: Yes, sir. [LB701]

SENATOR CARLSON: Okay. And you don't see the action necessary for a possible permanent buyout on surface water required prior to the end of March of 2008? [LB701]

DAN SMITH: If we have this authority and this limits us in how we negotiate with the district. But if we have the bonding authority, we'd move ahead with that one-year lease as soon as possible. And I think we'd turn around then and start on a long-term proposal with many of those same districts to figure out what's available, to figure out what is the best way to do that. We don't want an irrigation district to disappear. Those districts provide a valuable recharge component to the Republican River Basin and we need those districts to be viable, whether it be as an irrigation district or whether that methodology that they use could be changed to a reclamation district. But we need that water available in the basin. So it's not the intent to make that water disappear and that it only go to storage in Harlan County so it can be used for Kansas each and every year. So we may want to look then at a long-term lease that would give us the ability to say, okay, we need X number of acre-feet of water this year. There's this forecasting ability that's in this legislation now, where we could look and have that ability to respond in an orderly manner, if you will, when we need water to divert and not go through this sort of panic that we've had to do this year and looking at what we need to do with regard to rules. [LB701]

SENATOR CARLSON: Thank you. [LB701]

DAN SMITH: Thank you, sir. [LB701]

SENATOR LOUDEN: Okay. Senator Fischer. [LB701]

SENATOR FISCHER: Thank you, Senator Louden. Welcome, Mr. Smith. Thank you for being here today. On your handout, the last sentence says "without sufficient funding,

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

Natural Resources Committee  
April 04, 2007

---

we will not be able to minimize the economic impact of the compact on the basin." Under this proposed amendment, NRDs are going to be given the power to have a levy increase, to do bonding, and to levy an occupation tax. This is kind of a follow-up on Senator Carlson's question. When the NRDs are given that power, what specifically are you going to do to minimize the economic impact of the compact in the basin, besides buying surface water? When you bring up an economic impact, I'm thinking about the people that live in that basin. And if they are going to be paying more because of the water situation, what are the benefits to them? [LB701]

DAN SMITH: Long-term "assurability," if you will, if we can stabilize the system with surface water leases, as I mentioned. This is a one-term, one-year initially that we're talking about. But we want to be able to have a long-term ability to balance, if we can, so they will get some stability. We need to be able to provide the producers with a four- or five-year allocation. Many of our producers like to rotate. They can come in with maybe irrigated wheat or they can go to soybeans and balance out that increased water that a corn crop may need in year two and three of a rotation. If we look at just controls that are available in the tool chest that the NRD has now, we are about limited to reduction in acres or reduction in allocation. Reduction in acres may or may not be possible because we raise that taking issue that is a concern. Reduction in allocation, that is going to impact, as I said, significantly more acres. The potential numbers that we've looked at this year varied from two and a half to seven and a half. And this has been in a variety of different discussions with the department over different situations. So I'm not saying there's any wavering there, there's just different things. But if we're going to look at...and because a number of the wells in the alluvium, those close to the river, are gravity systems. If we're going to go even to a seven and a half inch allocation, what we're looking at is saying to a producer, you have three acres, you can water one of them. So we're reducing 200,000 acres. That's an impact to main street and the producer. [LB701]

SENATOR FISCHER: And I agree with and I understand the connection with agriculture to not just rural communities but to the economic well-being of the entire state of Nebraska. But when you talk about minimizing the impact, you're just referencing the impact to producers and...just a minute. You're just speaking of the impact to the producers, to the irrigators. That's what I'm hearing. But the authority that the NRDs would get under this bill doesn't just impact the producers. It doesn't just impact the irrigators. When you get the authority to have an increase in your levying ability, that power, everybody within your NRD will be affected. So how would you address the concerns of people who are not directly involved in agriculture and in irrigating? Even corn farmers who are not irrigating their corn but yet there's some talk about increasing that, the corn checkoff, expanding that beyond the time. How would you address those people that see that they really aren't going to have a direct benefit by actions that the Legislature may give to you? [LB701]

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

Natural Resources Committee  
April 04, 2007

---

DAN SMITH: I apologize for not answering that first time. I misunderstood what you... [LB701]

SENATOR FISCHER: Try to be shorter on your answer than I was on my question. (Laughter) [LB701]

DAN SMITH: By minimizing the impact on the producer, we benefit the entire basin. That producer is buying seed corn, he's buying fertilizer, he's buying diesel, he's buying electric power, he's buying new trucks, he's buying clothing at the clothing store. So the community in general benefits from a viable irrigated...well, not necessarily irrigated, but from viable agricultural community. My board, once again, wanted to look at a blend of these. We weren't intending to go with the ten cents, but the opportunity to blend. There's a lot of issues made over the effects of conservation. The dryland wheat farmer that has terraces has an impact on the overall system and maybe should have part of the expense. You know, it's different when you get to the homeowner that works for the local gas station. What is their relationship to irrigated or any kind of agriculture? It's there. All of our communities have a relationship. We're not required, of course, to go with the ten-cent fee. It's there. Part of our thought initially because there are a variety of projects that could be considered. There may be a project that we implement that is more directly related to the individual property owner than just directly to irrigated agriculture. [LB701]

SENATOR FISCHER: Thank you. [LB701]

SENATOR LOUDEN: Okay. Thank you, Dan. [LB701]

DAN SMITH: Thank you, sir. [LB701]

SENATOR LOUDEN: Oh, one more question. Senator Hudkins. [LB701]

SENATOR HUDKINS: Thank you, Mr. Smith, for being here. I had a question. In the amendment, Section 24, which is found on page 45 if anybody cares, there is new language that talks about a checkoff on corn and grain sorghum. [LB701]

DAN SMITH: Yes, ma'am. [LB701]

SENATOR HUDKINS: Why do you suppose that that checkoff was just put on corn and grain sorghum rather than on sugar beets, soybeans, alfalfa, so forth? [LB701]

DAN SMITH: Senator, I can't answer that. As you know, that's the Water Resources Cash Fund, the Governor's proposal. We do support that, that funding at the very least. The checkoff doesn't come in, and please correct me if I'm wrong, until 2013. Is that correct, or '12, '12 or '13? So it's on down the road. But I think that the time that we were

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

Natural Resources Committee  
April 04, 2007

---

looking at, the Governor was looking at a funding source that would be available that could generate a few more dollars than could come out of General Funds. There's always been, of late, there's been that statement of, you know, agriculture needs to step up to the plate. I think this is one of the opportunities to do it. There are numerous other opportunities between now and 2012 or '13 that could maybe replace that or increase that or minimize that checkoff. [LB701]

SENATOR HUDKINS: And I would follow up on Senator Fischer's question. You're going to take away the water...not you, but it's going to be done. And you're going to add the ability of NRDs to levy an occupation tax. And they are going to have to pay for this and pay for that. And the yields won't be there. And yet, their property taxes go up. How does that benefit the people in that area? The property taxes are going to be higher. That supposedly helps the local entities of government. But if you don't have the irrigation, and we all know of course that there are certain areas of the state that have been under a drought for a number of years. How are they going to have the income to pay these property taxes without the water? [LB701]

DAN SMITH: One of the things that we could do with the occupation tax--while it is on irrigated acres, it's not directly a property tax. But it would allow us to minimize the impacts, the changes we'll have to make in rule and regulation. We can get a stable allocation, one that doesn't address the yearly fluctuations. And there is no requirement for yearly compliance in the Republican River compact. It's that five-year rolling average. You can be out of compliance in one year or two year or three years in a row as long as you catch up and maintain it over that five-year average. So if we can stabilize the allocations, I'm not saying we need to raise them, we're not going to turn them loose. We need to have controls in place. But we need to stabilize those allocations so that the producers can make those long-term plans on rotation. A number of our acres are rented. The lease, the landowner and the tenant need the opportunity to know what an allocation is going to be two years from now so you can determine what the rental rate ought to be now. And if we're facing a yearly, where we're a little bit short of water this year, you can only have six inches. We're just going to create chaos in that rental market, in the farm management market. So hopefully it will give us the stabilities, ma'am. That's our goal. [LB701]

SENATOR HUDKINS: And one final question. In the whole grand scheme of things, how important is the vegetation management? We all know that there are trees and bushes and so forth along the rivers and we all know that they take water. How important is it to reduce that usage of water by eliminating or reducing that vegetation? [LB701]

DAN SMITH: I wish I could quantify it for you. If you remember back when I testified on LB458, the Republican Basin NRDs have an ongoing project through a grant fund that was set up through DNR last year. One of the things that's not been done with

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

Natural Resources Committee  
April 04, 2007

---

vegetation management is an attempt to try to quantify the benefits. There's been a lot of work done. Some of the stuff you can say, well, sure, there's water flowing now, it must have been good. Our project will do some ET monitoring, evapotranspiration monitoring in there and try to quantify the benefit from if you clear-cut one acre of trees, what do you get from it. By doing that, we can make that determination if there is enough benefit to continue on with Senator Carlson's bill. And we've got 200 miles of river above Harlan County. We're not going to do it all at once. It's going to take a multiyear project. But if we can quantify some benefit there, then it will be a good viable thing for us to do. There are some overgrowth issues that come up in a channel because of the lack of flow and that have had some minor lowland impacts on flooding. And we could address that. [LB701]

SENATOR HUDKINS: Thank you. [LB701]

DAN SMITH: Thank you, thank you. [LB701]

SENATOR LOUDEN: Thank you. We move to the next testifier now. [LB701]

MIKE CLEMENTS: Good afternoon. Senator Louden and members of the Natural Resources Committee, my name is Mike Clements, that's M-i-k-e C-l-e-m-e-n-t-s. I'm the general manager of the Lower Republican NRD. I'm here today representing our board to testify in support of the amendments to LB701. First of all, I'd like to say thank you for the opportunity to testify before you today. And thank you for all of the hard work that you all have put into LB701. I'd especially like to thank Senator Christensen and Senator Carlson for your extra efforts. As members of this committee, you're well aware of the water challenges facing the state of Nebraska and, in the immediate future, the Republican Basin. In our basin in particular, the lawsuit and eventual settlement with Kansas has caused extreme hardship on producers, businesses, and our rural communities. We in the Lower Republican Basin are cautiously optimistic about the new terms of LB701. What we hope this committee and the Legislature learn through the process is that there has been a substantial amount of work in the Republican Basin to come in compliance with the compact and to further reduce the amount of groundwater use for irrigation. When we negotiated with the Department of Natural Resources our integrated management plan in 2005, we were told that pumping in our district should be limited to 230,000 acre-feet to maintain compact compliance. We not only complied with the department, but in 2005 and '06, the first two years of the three-year plan, we pumped 17 percent and 14 percent below our allocation. Our allocations along with EQIP and CREP are reducing consumptive use. Irrigators have spent their resources to ensure that they are monitoring their water usage, using irrigation equipment that would use the least amount of water, and using planting techniques that will reduce the need for irrigation. We are trying to farm in a responsible manner, yet trying to make a living to support our families and our communities. The problem lies in water-short years when management controls cannot react quickly enough to correspond with the system.

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

Natural Resources Committee  
April 04, 2007

---

By that, I mean that even when we pump less groundwater, the benefits don't reach the river fast enough for compact measurement. So when we need the water the most for farming, we also need the water the most for compact, for Kansas farmers. LB701 is a vehicle by which our district can enhance our existing management controls. The state has asked the Republican Basin to step up to the plate and be responsible for our water usage. LB701 gives us the authority and the tools to do just that. The occupational tax and additional levy authority have the potential to generate much-needed additional revenue to allow the basin or individual NRDs to pay off bonds, to lease surface water, manage vegetation, and augment river flows. The Lower Republican is willing to help solve the water use shortage problem by raising revenue locally to assist with a solution. We need, however, some state assistance. That is why we are pleased that part of the package would include the creation and, hopefully, the funding of the Water Resources Cash Fund to be administered by the Department of Natural Resources. This fund is necessary not just for the Republican Basin but for the entire state of Nebraska and is necessary to step toward finding solutions to Nebraska's water issues. We are particularly pleased about the riparian vegetation management provisions of the bill. It has long been a concern that the vegetation in the river bed is not only causing water depletions but also a potential for flood damage in the event that there is a rain of any consequence. These provisions of the bill will allow the NRD to apply for funding to remove such vegetation and to possibly add to stream flows as a consequence. We want to thank Senator Carlson for his efforts in this regard and for his continual support of the district. We also want to thank Senator Christensen for his hard work on LB701. We know that they, as well as all of you on the committee, are committed to finding a solution. I need to point out a few small concerns that we have about LB701. First, we are concerned that Section 19 of the bill that gives the department the duty to determine the amount of water a basin or sub-basin may deplete annually. This section has no appeal process when the department makes their annual determination. The appeal process is important as there have been instances in the past when additional information has been provided to increase an allocation or to show that a district has not consumed as much water as was first determined. We would ask that some process to have input as to the annual determination be added to the bill. We are also concerned with the wording in Section 28. That part of the bill states that the Department of Natural Resources may undertake measures in fiscal year 2006-07 to further facilitate compliance with interstate compact or decree stipulations. This wording seems to be a bit vague as to the department's intent. We would ask that the language be clear as to what is proposed so that everyone knows the committee's intentions up front. I hope the committee will take our concerns into consideration as you review the testimony. There is no simple fix for the issues facing the Republican Basin. LB701 does, however, provide additional tools that can be coupled with our existing controls that can be used to help us work towards compact compliance. We are pleased to be part of the solution and with the tools in LB701, everyone in the basin has the ability to be a part of the solution and to make strides in that direction. Thank you for giving me the opportunity to speak and I would be glad to answer any questions. [LB701]

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

Natural Resources Committee  
April 04, 2007

---

SENATOR LOUDEN: Senator Christensen. [LB701]

SENATOR CHRISTENSEN: Chairman Louden, thank you. Mike, thanks. Is it your plan to enter into long-term buy or lease of surface projects? [LB701]

MIKE CLEMENTS: Our board has not...all we're looking at right now is just 2007. I think that we would like to, we want to be able to consider all of our options. But the board has no intentions in doing that at this point in time. [LB701]

SENATOR CHRISTENSEN: I guess I struggle without a long-term solution that I want to put long-term funding into a bill for anything. I guess I look at it, if you try to do vegetation management, that's an ongoing endless deal that you'll never get long-term compliance because you have to spend money every year to continue spraying or dozing or whatever, keep it from growing back. That's not a solution. I look at augmentation as a year-on, every year expense, that even on a 20-year bond would not get yourself compliance. If we have one thing, that's long-term buyout of surface water. That was the intention of my asking for this bill. And I guess I struggle with authorizing this kind of fund without a long-term plan. How are we going to address this? [LB701]

MIKE CLEMENTS: Well, as I said, Senator, we're taking this one step at a time. Obviously with the time constraints that we're faced with right now, we are concerned with what's going to happen for 2007. If we have the opportunity to be able to lease up to 37,000 acre-feet of surface water, there is a possibility that if Mother Nature is kind to us (laugh) this summer, that we could be in compliance for 2007. I don't want to rule out the possibility. I mean, anything can happen. I can't predict into the future. I think the capability of having, or the ability to have the capability of a long-term option with the bonding is a good tool to have. Because if the surface water districts, number one, they have to be willing to do this. And so we have no control over how they're going to react to a long-term deal. If it could be worked out and if it's approved by the majority of the vote, I can't say that we would or wouldn't be a part of it. Our board hasn't addressed that. We're more concerned about what we need to do right now. [LB701]

SENATOR CHRISTENSEN: I guess I, again, I'll come back. Without a sunset in here of this long-term funding and a permanent solution, how do we get accountability from the NRDs that we're going to be in compliance? Because I guess I don't want to get a fee on and end up with four- or five-inch allocation cuts. I just killed my district. So how do I get the accountability from you guys that we're going to have a long-term plan? [LB701]

MIKE CLEMENTS: I think the accountability is going to come in the fact that we, I mean, we're going to be given an allocation for the basin and that's going to be divided up amongst the NRDs, the three districts. We have to do, each district has to be in compliance. We don't have the luxury of not being able to do that. And so we're going to

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

Natural Resources Committee  
April 04, 2007

---

do whatever we have to do to make sure that we meet those particular goals. I can't tell you for sure if, for the Lower Republican, it's going to be...I would like to see projects where we can work together with the other districts. I think that's our first main goal is to be able to work together with the Middle and the Upper Republican. But there could be certain other projects that the other districts, that each individual district might want to take on, too, if they have adequate funding. As Dan mentioned earlier, we're looking at an augmentation project right now. And with the vegetation, we've talked about short-term leasing of surface water. We've even taken a look at possibly doing a longer term lease of the surface water, like maybe a three-year or a five-year. I think there's a lot of options that are out there that the districts need to take a look at. [LB701]

SENATOR CHRISTENSEN: What kind of augmentation are you looking at; within the district or outside the district? [LB701]

MIKE CLEMENTS: As you know, we support interbasin transfers, our district does. We would wholeheartedly welcome that to happen. But we are also right now looking very seriously and we have an engineering firm that's been working on this for several months for us, about some augmentation projects within the Republican Basin where we would drill some well fields out further from the quick response area so the depletions would be very, very minimal and not be seen possibly for a considerable period of time. And we're in the middle of that process right now to evaluate what the cost-benefits ratio would be to do something like that. [LB701]

SENATOR CHRISTENSEN: Are we not setting ourselves up for, if we do inside the basin transfer, it's a timing issue and let's say it's to where it takes ten years to hit the stream and we hit another drought spurt like we are right now, you've just doubled your problem in ten years? [LB701]

MIKE CLEMENTS: Well, I think that's one reason why we're working with the department and with the modelers on this, to determine just where the best locations for these fields, well fields might be. It could be 10 years, it could be 15 years, it could be 20 years. And then the depletions might only be a very small percentage. So that's not the...there is not going to be any one single fix for the problem. But hopefully we can have enough tools in our tool box where we can be able to, with our existing management controls that we've got in place right now, be able to do some things to further help get us into compliance. [LB701]

SENATOR CHRISTENSEN: I can understand adding transfers in, but if you don't do the surface project buyout, you're setting yourself up for a Russian roulette game, to me, that is just setting up for a financial crunch on your constituents. [LB701]

MIKE CLEMENTS: Well, again, I mean we can't control what the surface water districts are going to do. If they're not willing to sell, we can't buy it. What I'm saying is, our board

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

Natural Resources Committee  
April 04, 2007

---

will look at all the options that are available. If that can be worked out and if our board agrees to it and the surface water districts agree to it, probably not a problem. But there's a lot of obstacles there. I wish I could be more specific but I don't know. [LB701]

SENATOR CHRISTENSEN: Thank you. [LB701]

SENATOR LOUDEN: Any other questions, quick ones? Senator Kopplin. [LB701]

SENATOR KOPPLIN: Yeah, mine is quick. I need help with definitions. I'm one of those Omaha guys that doesn't know anything about water. What is a satellite well? [LB701]

MIKE CLEMENTS: A satellite well, we don't have any in our district. And I think I would probably better to refer that to Jasper because that's where they exist, in the Upper Republican. [LB701]

SENATOR KOPPLIN: Okay, thank you. [LB701]

MIKE CLEMENTS: You're welcome. [LB701]

SENATOR LOUDEN: Senator Carlson. [LB701]

SENATOR CARLSON: For the record, I want to make a quick statement complimentary to the Lower Republican. Because in the last two years, they've had lower allocations than the other districts, and yet used substantially under those allocations with really no program in place as an incentive to do that. They were good stewards and I applaud them for it. And in discussion, I know that Director Bleed recognizes that good stewardship and I appreciate what you've done in that regard, Mike. I do have a question and I'm not driving for a difficult answer, yes or no would be fine. I'm wanting to bring out a point. As I understand it under current law, to buy out surface water, the irrigators in that surface water district are able to vote. And a surface water buyout is either all or none. And so it's a simple majority vote. Is this correct? [LB701]

MIKE CLEMENTS: That's my understanding. [LB701]

SENATOR CARLSON: And if this is done, are you uneasy with a long-term buyout on a simple majority vote? [LB701]

MIKE CLEMENTS: Well, Senator, that's a good question because there's a lot of, there's going to have to be a lot of difficult decisions made going forward. I can't tell you. You know, I think a lot would have to do with what the spread of the majority vote was. Was it 51 to 49 percent or was it, you know, 90 to 10? I can't answer that. [LB701]

SENATOR CARLSON: You've kind of illustrated my point. I'm uncomfortable with a

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

Natural Resources Committee  
April 04, 2007

---

simple majority vote and 90-10 is entirely different. Mike, how many members on your board? [LB701]

MIKE CLEMENTS: Eleven. [LB701]

SENATOR CARLSON: And if there is a taxing authority to go up to \$10 an acre, that could be implemented under current law by a simple majority of the board, correct? [LB701]

MIKE CLEMENTS: That's correct. [LB701]

SENATOR CARLSON: So you could have a \$10 taxing fee on all irrigated property by a six to five vote. [LB701]

MIKE CLEMENTS: That's correct. [LB701]

SENATOR CARLSON: Does that bother you? [LB701]

MIKE CLEMENTS: That's the way the system works. [LB701]

SENATOR CARLSON: That's a huge responsibility. I'm not trying to put you on the spot. It bothers me. [LB701]

MIKE CLEMENTS: I understand that and I can appreciate your concern. Unfortunately, I don't like the sounds of what some of the alternatives might be if we can't come up with some means to, some ways to raise some revenues to help us out with the situation down there. [LB701]

SENATOR CARLSON: Thank you. [LB701]

SENATOR LOUDEN: Okay. Thank you. [LB701]

MIKE CLEMENTS: Thank you very much. [LB701]

SENATOR LOUDEN: You bet. Next testifier? [LB701]

JASPER FANNING: Thank you, Senator Louden and other members of the committee. My name is Jasper Fanning, that's J-a-s-p-e-r F-a-n-n-i-n-g. I'm the general manager of the Upper Republican Natural Resources District. I'll try and move through my oral comments and reserve as much time for questions as I can. I think the point that we're kind of missing so far is that the ultimate decision that we're trying to avoid or the alternative that we're trying to avoid isn't how much irrigation we're going to have in this basin, but are we going to be able to irrigate in this basin. Should we fail to come up

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

Natural Resources Committee  
April 04, 2007

---

with a solution that works and Kansas sues and litigates, we could be looking at not irrigating in the entire basin, surface water or groundwater. That is what we're trying to avoid. And to avoid that, we can't tie our hands to the extent that we can't come up with a successful set of plans that will get us in compliance with the compact. What you have before you today is a legislative compromise. I say that because no one individual or party who worked on putting this package together got everything that they wanted. But everyone that was involved in that process got what they absolutely had to have to continue to support the package. And the local folks may feel that they're paying too much. The state may feel that they're paying too much. But at the end of the day, we have a plan that we feel can get us and keep us in compliance with this compact so that we can continue to irrigate in the basin. Numerous parties were involved from the Governor's office, the Speaker of the Legislature, Senator Loudon, obviously the senators from our basin, Senator Christensen and Carlson, other senators on this committee as well as the Appropriations Committee. We've developed a solution that can work for all Nebraskans. Everyone is sacrificing. Every party who worked on this package supports it because they got what they absolutely had to have. Again, no party got everything they wanted. We have a comprehensive plan that we're putting together that involves four major components. It's the long-term management of groundwater, as we've been doing for years in the basin. To continue the regulations and reducing water use as necessary to maintain compliance and maintain our depletions of groundwater to stream flow within an allowable amount over the long term. Because groundwater is a very inefficient means and the regulation of that reductions and uses, a very inefficient means by which to change stream flow during a short period of time, particularly drought periods. We have to look at other options in order to put water into the river when we need it for compact compliance. Those methods would include surface water leases. The biggest shock absorber, the one thing that's one the table that we want to move forward in the basin, all three NRDs have taken action saying that they want to move forward with the one-year surface water lease. I believe that there's a preference by my district as well as the Middle Republican Natural Resources District to look at long-term leases. But we're kind of getting the cart before the horse because we don't even have the authorities that we know that we would need, such as the funding to fund those things, so it's a bit useless to talk about the details of how that might work until we have the tools necessary through the funding mechanisms to actually be able to follow through and enter into arrangements with irrigation districts for the water-short period leasing of their water. A second thing that we're looking at is augmentation. Now we have an ongoing study. We have some preliminary numbers back on the costs of installing that infrastructure. The bonding authority with respect to both augmentation and vegetation management would be, you would fund the portion of infrastructure or, if you were looking at vegetation management, some large project that you were going to undertake that was going to have a significant up-front cost but pay for it over years. Bonding would not be a practical method to use for paying annual recurring costs such as the maintenance of vegetation control that had already occurred and keeping that clear, nor for the annual operation of an augmentation project. Those things would have

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

Natural Resources Committee  
April 04, 2007

---

to be paid for on an annual basis from more practical sources of funding than a bonding authority. As I mentioned, vegetation is one of the other four key components of a comprehensive plan we're working on with the department in putting together. But a fifth and final component of this is funding. Without significant amounts of funding available for use of these projects, we cannot stay in compliance with the compact during extreme drought periods without very significant, nearly eliminating groundwater irrigation in large portions of the basin if we don't have the funding available to put the surface water leases, the augmentation, and the vegetation control, those types of things, in place. So the funding is very critical. You can discuss what the fair share is between local and state until you're blue in the face. But at the end of the day, we need enough total funds available to pay the cost that it's going to take to keep us in compliance so that we can minimize the economic impact of the compact on the basin. And the Governor stepped up to the plate and took the first step toward funding this issue of the decade in a manner that will allow the state to begin addressing its critical water issues that are so critical to the state's number one industry. Furthermore, the local folks in the Republican Basin have also stepped up to the plate. We have not heard very much, if any, from irrigators who think paying a \$10 per acre fee is something that they would just assume we not do. When they look at purchasing surface water to stay in compliance, irrigators by and large support that. Even people on the street, business people that I talk to tell me that property tax isn't something that my business pays. That's something I pass on to my customers who happen to be the irrigated farmers in the basin. All of these components of this comprehensive plan, we have a legislative compromise where everybody is getting what they absolutely have to have but not everything they want. We're putting together a comprehensive plan that can keep us in compliance. And there's a significant local contribution. The folks in the basin, if they implemented up to a \$10 per acre fee this year to buy out surface water, we're looking at just short of \$9 million coming from local sources to buy out surface water in 2007. And that's in addition to the economic sacrifice that they've made by using less water and growing less crops with less water already and those that will likely continue in the future. Before you is a solution that works for all Nebraskans. I feel that everyone is sacrificing, that's evident. And I would ask that you not repeat the mistakes of the past in doling out the authorities necessary for the NRDs to deal with the problems that they've been asked to deal with and in doing that out of fear that local control will impose these authorities where they are not needed. And with that, I'll take any questions you might have. [LB701]

SENATOR LOUDEN: Questions? Senator Kopplin, did you know what to know about your satellite well? Here's the man. [LB701]

SENATOR KOPPLIN: Well, I've got a couple questions. Yeah, you can answer. What is a satellite well or pivot? [LB701]

JASPER FANNING: A satellite pivot is...in our district, we stopped the development and

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

Natural Resources Committee  
April 04, 2007

---

increasing the amount of allocation years before the compact required us to do so and the settlement agreement required us to do so, but because of the problems that we have locally within our district. And so rather than increasing the amount of water that an individual can pump, they were allowed to take the same amount of water that they were allocated and instead of using that on one pivot, to supply two pivots with the same well. In a lot of those instances, people may grow wheat on one pivot or a lower water use crop, some feed for cattle, and through their crop rotation, you know, move those crops around. [LB701]

SENATOR KOPPLIN: Kind of like two wells for the price of one? [LB701]

JASPER FANNING: No, it's still one well. They weren't allowed to drill another well so they had to take their existing pumping capacity and just spread that over more acres. [LB701]

SENATOR KOPPLIN: Okay. I had a different question because I picked up a sale bill (inaudible) and one of the big features on that sale bill says 200 inches of banked water. [LB701]

JASPER FANNING: There are those instances out there, you'll find... [LB701]

SENATOR KOPPLIN: Well, how can you control it if... [LB701]

JASPER FANNING: Well, that is a very good question. It's something that scared the department and the Attorney General's office when we were developing our first integrated management plan. We were able to demonstrate through our water use records that go back to 1978 that, on average, our district uses less than our allocation. During no full allocation period had we used more than what we allowed on an annual basis. The, what we call carry forward, is a powerful conservation incentive. Farmers are a conservative bunch of folks. And if you tell them that if you don't use an inch this year, you'll have it available for next year, they will actually plan such that they use less than the average allocation in their plan during normal times. And that water, you know, as our records show, doesn't get used. Now should that be...if we have to ratchet allocations down to the point where that incentive doesn't work, we will know that before anyone and we will have to take measures to prevent that from happening. [LB701]

SENATOR KOPPLIN: Okay, thank you. [LB701]

SENATOR LOUDEN: Senator Fischer. [LB701]

SENATOR FISCHER: Thank you, Senator Louden. Welcome, Dr. Fanning, glad to have you hear. I have some questions on some confusion I may have in the bill. It seems in this amendment that Department of Natural Resources will be able to determine what

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

Natural Resources Committee  
April 04, 2007

---

the maximum amount of water is that can be depleted from the stream flow. Do you think that infringes on the rights of the natural resources districts, yes or no? And also, how would the department determine that? What models do they use? How...I'll let you go on, thank you. [LB701]

JASPER FANNING: First of all, possibly it could infringe on the rights if we don't have the opportunity to scrutinize that we're using sound scientific methods for determining what it is. Second of all, the model that they would use would be the Republican River compact model as agreed to by the three states because that's what determines compliance for the compact as far as groundwater is concerned. The model basically has a water balance in it and assumptions go into this. And if the wrong assumptions are put in...for instance, you could put in a drought scenario and what you would find is that you would have to reduce pumping much more than if you put in a more normal rainfall pattern. And so the NRDs, I feel, should play a role in determining how, you know, setting the standards for how we develop a long-term plan. Now someone has to make the final decision and, you know, I mean I would think that the state agency would be the one to finally issue the decision. But certainly the NRDs being jointly involved in this entire process should be involved in determining how we go about planning for the future. [LB701]

SENATOR FISCHER: I would agree with you. I have a problem with that. First of all, if under this amendment we're giving you all sorts of power to tax in various forms and to bond, I would think you should have some input in this area as well. Because I think that makes you more accountable then. Would you agree with that? [LB701]

JASPER FANNING: Absolutely. I would agree with that. [LB701]

SENATOR FISCHER: Thank you. [LB701]

SENATOR LOUDEN: Senator Christensen. [LB701]

SENATOR CHRISTENSEN: Thank you, Chairman Louden. I guess it was under...my understanding, we had an agreement that this would read, the department in consultation with the affected NRDs on an annual basis, the maximum amount of water that can...sorry, the department in consultation with affected NRDs shall forecast available beneficial use from the stream. And it doesn't read that way. Would that be a better way than the way this is written? [LB701]

JASPER FANNING: Yes. That language that you just read would be my concerns, as long as we're involved in that process of forecasting so that we can plan within the basin for the long term. That would satisfy me. [LB701]

SENATOR CHRISTENSEN: The way this is written now, is there any type of appeal

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

Natural Resources Committee  
April 04, 2007

---

process? [LB701]

JASPER FANNING: In the...I'll defer that to Mr. Cookson later on if he's going to testify. He can better answer those legal questions than I could. [LB701]

SENATOR CHRISTENSEN: Okay. You kind of beat around the bush a little bit for me. Is it your intent of your board to do a long-term buyout of surface water if it's available to buy? [LB701]

JASPER FANNING: It is. [LB701]

SENATOR CHRISTENSEN: Okay. Do you believe that we need to watch the amount of conservation that comes into the district? Because as more conservation comes in, it reduces stream flow, makes you reduce allocations. Should there be a freeze on conservation, in your opinion? [LB701]

JASPER FANNING: Conservation has many good benefits, as well, and I'm not sure that we should freeze conservation from occurring, any additional conservation from occurring, Senator. I think that we need to get some good data and have some science behind making those decisions rather than making them out of, you know, making rash judgments on whether or not we should have additional conservation in the basis. [LB701]

SENATOR CHRISTENSEN: But do you agree it would affect the amount of water you could have for your constituents? [LB701]

JASPER FANNING: It does, in that if there's more surface water runoff into the river, Nebraska's allocation is larger, which would result in more water available for us to have and use. [LB701]

SENATOR CHRISTENSEN: And would more forecasts and model runs from the department be beneficial to you guys? [LB701]

JASPER FANNING: More good information is always better. [LB701]

SENATOR CHRISTENSEN: Okay, thank you. [LB701]

SENATOR LOUDEN: Senator Carlson. [LB701]

SENATOR CARLSON: Senator Louden, I wasn't going to ask a question, but I'll follow up. Senator Christensen asked one question, Dr. Fanning. If you pursue the long-term buyout of a surface water district, which means all or none, are you comfortable with a simple majority? [LB701]

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

Natural Resources Committee  
April 04, 2007

---

JASPER FANNING: I guess I feel personally that the bylaws of the irrigation district dictate that. No rule or regulation or anything that we have authority over dictates that. I'm not sure state statute at this time would even dictate that. That's an, you know, each irrigation district needs to decide how they want to do their business. And if they feel a simple majority is fine, I have no problem with that. [LB701]

SENATOR CARLSON: Thank you. [LB701]

SENATOR LOUDEN: Senator Wallman. [LB701]

SENATOR WALLMAN: Thank you. How far...you know, you kept good tracks, I want to commend you on that, on your aquifer. And it sounds like you tried to get on top of things early in there. How far did your aquifer drop in the last 15 years, any? [LB701]

JASPER FANNING: I can't tell you the exact number off the top of my head in the last 15. There are areas of our district that, since development occurred, where the aquifer has dropped as much as 50 feet. In a lot of those areas, the original saturated thickness was a little over 500 feet. So we've, you know, I mean we've got the majority of our district with 200 to 300-plus feet of saturated thickness. [LB701]

SENATOR WALLMAN: But you haven't let any wells drill for quite a while, have you? Or have you? [LB701]

JASPER FANNING: We stopped drilling wells by rule and regulation in 1997 by moratorium. We enacted very aggressive spacing regulations that we've...in '78, we started off with the state spacing and quickly increased that to a half mile and then to a mile spacing. So there were very limited opportunities to drill wells in our district where you weren't within a mile of an existing irrigation well. [LB701]

SENATOR WALLMAN: Thank you. [LB701]

JASPER FANNING: Thank you. [LB701]

SENATOR LOUDEN: Okay. I guess, seeing no others, thank you, Jasper. [LB701]

JOHN HEIL: Chairman Louden, members of the committee, my name is John Heil, J-o-h-n H-e-i-l. I'm an attorney with the Baird Holm Law Firm in Omaha. I'm here today on behalf of the Nebraska Association of Natural Resource Districts in support of the amendments to LB701. Your committee counsel has briefly and succinctly outlined the key provisions of the bill with respect to bond financing. That's the area in which I have worked on this matter. I really just want to keep my remarks very brief to address a couple of questions that have been raised to the other witness that were kind of

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

Natural Resources Committee  
April 04, 2007

---

deferred (laugh) on to me. The questions dealt with the stacking of the tax authorities. As you've noted, the local input here is either or/and a \$10 per acre per year occupation tax on irrigated lands on the activity of irrigation and a ten cent per \$100 levy. For purposes of bond financing, because the occupation tax on the activity of irrigation is a new tax, in and of itself it would probably not be sufficient because there's no track record upon which to base the financing. You need the general levy authority which has an established track record and is recognized by financing entities in order to do at least your initial financing until you're able to establish a track record for irrigated acres. And as you've heard other witnesses testify from the point of view of underwriting and bonding, the number of acres that may be irrigated could vary quite a bit over the years, just depending on how much water is available. So that's the reason for the mix. I would also emphasize that the decision here of how to do this, as the bill is established, rests with the local natural resource district boards from each area. Another question had to do with the limitation on the amount of bonds. What limits the amount of bonds you can issue is the amount of money you have available from whatever revenue source is there, be it the state grants or be it the occupation tax or be it the property tax levy, limits the amount of bonding you can undertake. I'm certainly available to answer your questions, gentlemen, ladies. [LB701]

SENATOR LOUDEN: Any questions for John? Senator Christensen. [LB701]

SENATOR CHRISTENSEN: Thank you, Chairman Louden. John, thank you for being here. Would it affect bonds if there was, say, a sunset of two or three years if they didn't have a long-term plan put in place? [LB701]

JOHN HEIL: There can be restrictions on the length of bonds in the legislation. And can you key that to, you know, what you're financing, in other words, in terms of what the length of proposal. Certainly you can do that. The way the bill stands now, it's within the discretion of the board, natural resource district board. [LB701]

SENATOR CHRISTENSEN: But that wouldn't affect you guys as long as any bonds that got put in were perpetuated, were paid, to stop any further if there's not a long-term solution? [LB701]

JOHN HEIL: No. Again, whatever bonds are issued are going to comply whatever restrictions are placed on the statute. Obviously the underwriters are going to look at, a little bit, at what you're financing. I recall your concern about financing something of a near-term expense and perhaps, you know, debatable long-term benefit. But ultimately they're looking at the revenue that's available within the restrictions that are placed on the amount of tax and how that tax is imposed. Once that tax is imposed and once the bonds are issued, of course, then you can't pull back the tax authority. [LB701]

SENATOR CHRISTENSEN: Right, correct. Is it correct in my understanding that since

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

Natural Resources Committee  
April 04, 2007

---

the fee sunsets when the bonds are paid off, but if they would, say, go have a 20-year bond at year 19, redo a bond, then it would never end? [LB701]

JOHN HEIL: That's correct, as long as the legislative authority was available to refund the bonds, for example, or to issue new bonds. It could go on as long as the Legislature allows that authority to continue. [LB701]

SENATOR CHRISTENSEN: Thank you. [LB701]

SENATOR LOUDEN: Other questions for John? Seeing none, thank you. [LB701]

JOHN HEIL: Thank you, Mr. Chairman. [LB701]

CURT FRIESEN: (Exhibit 2) Good afternoon, Mr. Chairman and members of the committee. I'm Curt Friesen. I'm chairman of the Upper Big Blue NRD and I'm here to testify on behalf of the board. The Upper Big Blue board supports the concept of LB701 and what it is trying to accomplish. We recognize that the state working together with the natural resources districts can accomplish the formidable task of solving the growing water issues that are facing us. We support the section dealing with vegetative growth along rivers and streams, as this will help restore these areas to their original habitat and remove this water-thirsty vegetation from the streams and banks. We also support, with some changes, the section allowing NRDs the ability to place immediate stays on new uses of water. Current language on page 30, starting on line 8, states that a district may impose an immediate temporary stay on the construction of any new water well for 180 days. One of our suggestions is we would suggest striking the words "construction of any new water well" and replacing it with the following language: any new water uses. This would also prohibit the expansion of acres and those kinds of things, even if they didn't drill a well. And I don't know if you're language spelled that out. I'd also like to see in there, I guess, the ability to grant some variances for industrial and municipal uses at that time also, in case there were some wells in progress. This section, it provides NRDs with the ability to implement moratoriums on a much shorter time frame and still maintain the hearing process that we need to go through to decide whether or not we need the longer term moratorium. We support in principal the idea of bonding certain expenses, but are opposed to implementation of an occupation tax on irrigated land to pay for these bonds. We feel a great caution should be used when authorizing bonds to purchase groundwater and surface water rights. These issues need to be studied carefully so unintended consequences are not felt in other areas of the state. We strongly oppose language on page 37, lines 8 through 18. And I realize some changes have already been proposed. But I think our opposition will still stand and we feel that the language should be removed. It gives the DNR the authority to determine the amount of depletion which will be allowed on certain rivers and streams and takes away their right to appeal such decisions. The DNR already has the authority to designate basins as fully appropriate. This language would not only consolidate regulatory

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

Natural Resources Committee  
April 04, 2007

---

authority to DNR, which in the past has not shown the ability or the willpower to stop the overappropriation of surface water. Much of the problem we are in today stems from the DNR issuing surface water permits based on stream flows that were not sustainable. We support, with changes, the formation of the Water Resources Cash Fund. We strongly oppose using the corn checkoff funds for this purpose. In the Upper Big Blue Basin, if water levels continue to drop in the next few years, we enter our allocation phase of our water management rules and regulations. This phase of our regulations could cost our district somewhere between \$15 million to \$20 million to implement. No dollars from the Water Resources Cash Fund would be available to help us with this cost. Irrigators in this basin have no more responsibility for what happened in the Republican and the Platte Basins than the average citizen living in Lincoln or Omaha. And yet, we are asked to step up to the plate to pay the bill. I for one, and the majority of my board, am more than willing to pay my fair share to help those areas of the state that have been under this severe multiyear drought, but I feel the state as a whole needs to bear more of the burden. We support your efforts to solve these extremely complicated water issues and we'll make every effort to assist you in any way we can. With the recommended changes, we would support LB701. [LB701]

SENATOR LOUDEN: Thank you. I might make the comment at this time that has been brought up about this corn checkoff, called corn and grain checkoff. This was part of LB30 of the Governor's package...LB33, yeah, of the Governor's package. And that had the hearing already so far. Did you testify for or against that at the hearing? [LB701]

CURT FRIESEN: We did not testify on that. [LB701]

SENATOR LOUDEN: Okay, but this was part of the Governor's package and that's the reason it is put in here. And the thinking was, at the time, there's going to be, what, five or nine sessions before this ever goes into effect. And so this is the reason this is in here. So if anyone wants to address questions at that, why, I would, for the sake of time I think this is probably a moot question because that was part of the Governor's package and it's already had a hearing. So any questions for Curt? Senator Kopplin. [LB701]

SENATOR KOPPLIN: Just a couple quick ones. Nebraska does have agreements with Kansas using the Blue River systems, do they not? [LB701]

CURT FRIESEN: Correct. [LB701]

SENATOR KOPPLIN: And from what you're saying, are we reaching the point where we're having, we will have a same kind of problem with Kansas? [LB701]

CURT FRIESEN: We don't feel that that agreement is in any trouble right now but we don't understand exactly where Kansas might head with that down the road. We have, I

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

Natural Resources Committee  
April 04, 2007

---

think, always been in compliance except for a few short times where flows were below the level required. But at no time have I had any inclination that there is a big problem there. The Blue Basin still remains not fully appropriated. And according to the reports from the DNR, we're still a number of years away from that. [LB701]

SENATOR KOPPLIN: Just a potential problem? [LB701]

CURT FRIESEN: Right, that's a potential problem. [LB701]

SENATOR KOPPLIN: Okay, thank you very much. [LB701]

SENATOR LOUDEN: Other questions? Senator Carlson. [LB701]

SENATOR CARLSON: Senator Louden. Curt, thank you for being here and testifying. Appreciate you bringing up the corn checkoff, and that would be something that I would certainly like to work on as an effort through the next several years to find another source. I would not like to see that hold this bill at this time. But this gives another opportunity, and speaking here probably to the choir, but you hear talk about the farmers and irrigators using 97 percent of the water, let them pay 97 percent of the bill. And the Governor had indicated this is a state issue. I believe it's a state issue. You mentioned that here in this paragraph. And not trying to be facetious, but I think that people need to understand and think, do I like to eat meat? Takes water to provide that. Do I like popcorn, do I like roasting ears, do I like corn products, do I like other products? It takes water to provide those to the people of Nebraska. And we hopefully need to keep that in mind as we move forward on this issue. But thank you for your testimony. [LB701]

CURT FRIESEN: If I might add a little bit to that, in our district, if I add up what an average irrigator, if we use 1,000 acres as a benchmark for a farmer in my district, if you add up the property taxes that they contribute to the NRD, those equal at least 94 to 95 percent of the funds that the NRD raises versus that of maybe the doctor living in the community paying property taxes. So I guess I feel that irrigators have, at least in our district, stepped up to the plate and are funding 94 to 96 percent of those funds. [LB701]

SENATOR LOUDEN: Senator Kopplin. [LB701]

SENATOR KOPPLIN: Just more comment than anything else. I would just ask everyone to remember that that road that you are hauling beef to town on is a two-way road and there is also dependence on the city for the farmers. Thank you. [LB701]

SENATOR LOUDEN: Well, seeing no more questions then, thank you, Curt, for your testimony. [LB701]

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

Natural Resources Committee  
April 04, 2007

---

CURT FRIESEN: Thank you. [LB701]

JOHN THORBURN: (Exhibits 3 and 4) Good afternoon, Mr. Chairman, Senators. My name is John Thorburn, J-o-h-n T-h-o-r-b-u-r-n. I'm the manager Tri-Basin Natural Resources District in Holdrege. In the interest of time, I'll abbreviate my written testimony which I'm providing copies of to you. I would simply say that I would like to affirm my district's general support of the water management controls and financial tools made available to NRDs in LB701. Even though new taxes are never popular, basin NRDs must raise substantial amounts of money in a short period of time to purchase the water that DNR estimates is needed to ensure compliance with the Republican River compact. Upper, Middle, and Lower Republican NRDs need this authority to issue bonds, raise property taxes, and tax irrigated acres. Given that we support the concepts embodied in LB701, I'd just like to point out a couple concerns we have about its details. First, we recognize that state funds for managing invasive riparian plants need to be prioritized to river channels in adjacent areas. We don't believe, however, that it is necessary or practical to statutorily restrict the use of riparian management funds to the stream channel in a 100 foot wide strip adjacent to it. We believe that we could attack riparian invasive plants much more effectively if we had the ability to use at least some portion of the funds outside of this 100-foot corridor but within the 100-year floodplain of rivers and streams. Second, we have concerns about classifying irrigation reuse pits and other ponds in high water table areas as irrigation wells. Open pits do not meet commonsense or regulatory definitions of wells. NRDs need to have the ability to regulate pumping from ponds and pits. But trying to artificially categorize them as wells just so that they can be registered and regulated seems to us to be an inappropriate way to resolve this problem because it creates problems for us in other areas of regulation, such as chemigation and well decommissioning. I would also point out that my board of directors had significant concerns about the amendment that was submitted into LB701 on page 37, lines 8 through 18, which has already been discussed, about DNR's determination of allowable stream depletions. As I understand from the committee counsel's presentation and from discussions with others, that has been revised in a way that I think would be acceptable to my board of directors. And so I won't belabor that point. In conclusion, the Tri-Basin NRD board of directors encourages state senators to advance LB701 to the floor of the Unicameral after revising it in the ways that we have requested. Thank you. [LB701]

SENATOR LOUDEN: Questions for John? Senator Kopplin. [LB701]

SENATOR KOPPLIN: You mentioned a word that jogged my mind a little bit. You said tools. There's a whole lot about money in this proposed bill. Is there anything that really requires anybody to do anything? [LB701]

JOHN THORBURN: Well, Senator, existing laws, interstate compacts, and our obligation to wisely administer and take care of our natural resources are what compels

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

Natural Resources Committee  
April 04, 2007

---

us to take the action to regulate and manage groundwater use. This bill simply provides additional ways for us to do that and for us to do that more effectively and efficiently. [LB701]

SENATOR KOPPLIN: So it's a money bill. [LB701]

JOHN THORBURN: I think at least in some respects it can be characterized that way, yes. [LB701]

SENATOR KOPPLIN: And local NRDs then can make their own decisions on how to use that? [LB701]

JOHN THORBURN: Yeah, which is of course consistent with Nebraska's tradition of local control. [LB701]

SENATOR KOPPLIN: Okay, thank you. [LB701]

SENATOR LOUDEN: Senator Christensen. [LB701]

SENATOR CHRISTENSEN: Thank you, Chairman Louden. John, thank you. Are you okay with Section 19 in this amendment, or with what I read? What was you referring to? [LB701]

JOHN THORBURN: As I understand it the language initially referred to a determination by the Department of Natural Resources of allowable stream depletions. That was not acceptable to us and was of great concern to us. As I understand it now, the intent is to have language that talks about a forecast being made in cooperation with the NRDs, and that I think is workable and useful for us. [LB701]

SENATOR CHRISTENSEN: But this does not say forecast. This just talks deplete. So you're more comfortable with what I said than what this says. [LB701]

JOHN THORBURN: Yes, sir. Yes. [LB701]

SENATOR CHRISTENSEN: Thank you. [LB701]

JOHN THORBURN: Much more so. [LB701]

SENATOR LOUDEN: Senator Fischer. [LB701]

SENATOR FISCHER: Thank you, Chairman Louden. Thank you for being here today, Mr. Thorburn. I don't want an answer from you now, but I do have a couple questions and I hope you will send me the answer... [LB701]

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

Natural Resources Committee  
April 04, 2007

---

JOHN THORBURN: Okay. [LB701]

SENATOR FISCHER: ...on the two areas that you were not comfortable with on the bill that you testified to. If you could elaborate on those, I'm a little confused on what your concerns were because you didn't go into them. So if you could elaborate, I'd appreciate it. [LB701]

JOHN THORBURN: Yes, Senator, I'll be glad to provide the additional detail on that. [LB701]

SENATOR FISCHER: Thank you. [LB701]

SENATOR LOUDEN: Seeing no other questions, I guess thank you, John. [LB701]

JOHN THORBURN: Thank you, Senator. [LB701]

ANN BLEED: Chairman Louden, members of the committee, I am Ann Bleed, that's A-n-n B-l-e-e-d. I'm the director of the Department of Natural Resources and I'm here to testify in favor of the amendment to LB701. I would like to thank all the people who worked so very hard on putting this together. I won't now take the time to name you by name, but I think you know who you are. I believe that passage of this bill will be extremely helpful in allowing the state and the natural resources districts to do what is necessary to comply with the Republican River Compact. Let me just touch on a few items in the interest of time. I support the concept of the riparian vegetation task force in what was formerly Senator Carlson's bill. I believe it does bring together the kind of know-how and the principal players to create a viable approach to managing channel vegetation, to preserve channel capacity for the conveyance of normal streamflows, as well as hopefully reducing consumptive use. The bill, in providing authority for the natural resources districts to issue bonds, fees, or property tax levies, will provide valuable and, I believe, necessary tools to natural resources districts so that they can fairly share responsibility for compact compliance. Using this funding to purchase surface water or otherwise augment streamflows during water short years will lessen but not eliminate the need to make further reductions in ground water pumping to ensure compact compliance. Developing and funding the Governor's Water Resources Cash Fund is critical to successfully implementing the state's new integrated water resources management law and helping the Republican and Platte Basins make the transition from being overappropriated, hydrologically speaking, to attaining a balance between water supplies and water use, and to comply with the interstate compacts on the Republican River and the Platte River recovery program on the Platte. I think it is fair to say at this point in the process that compliance is the primary concern, provides the urgency, and may be the central issue for those in the state or outside of the Republican River Basin. Therefore, I would like to offer an amendment to the

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

Natural Resources Committee  
April 04, 2007

---

amendment regarding the reporting requirements for use of the Water Resources Cash Fund by the natural resources districts. And Legal Counsel Jody Gittins has the specific language. This reporting requirement currently is essentially the only evaluative component required by the Legislature and it seems important to connect it directly to the funding intent. So in addition to providing an explanation of the controls and rules designed to carry out the activity being sponsored by the fund, I would suggest that the report also state how the planned activity will assure compliance with an interstate compact or decree or formal state agreement. The amendment also requires that for river basins that are fully or overappropriated, and also subject to interstate compact decree or interstate agreement, when necessary to ensure compliance the department shall, in consultation with the affected natural resources districts, forecast on an annual basis the maximum amount of water that may be available from the stream for beneficial use in the short and in the long term. This is important because, as you know, the director of the Department of Natural Resources is the state's representative on the interstate compacts, decrees and agreements, and is responsible for ensuring the state remains in compliance with these agreements and compacts. The director is also responsible for the state's technical hydrological decisions. Both of these duties converge in this new authority for an annual forecast that will help the state determine the maximum allowable streamflow depletion, and I believe this is essential for both compact compliance requirements and to facilitate effective local planning uses within the limitations of the compact. The amendment also creates a new authority for natural resources districts to put a temporary stay on construction of new wells prior to a public hearing, but pending a timely matter of reducing the...or a timely matter of having a hearing on the moratorium. This authority will be helpful in preventing the increase of well drilling that often occurs between the time a decision is made to consider a moratorium and the time the moratorium is implemented. I would like to also support the suggestion that this particular amendment should be amended in two additional ways. First, I would add language to a similar temporary stay...that a similar temporary stay be placed on the issuance of new surface water permits; and second, at the urging of several natural resources districts, I would also suggest that the temporary stay could be placed on either or both the construction of new wells and the expansion of the number of irrigated acres. In conclusion, I am very pleased the committee incorporated the DNR cleanup legislation in this bill with some appropriate changes. One final comment: I heard this morning from the Frenchman-Cambridge Irrigation District that they voted to agree to a surface water buyout for their district for 2007. Of course, whether or not the buyout can occur will depend on whether LB701 passes the Legislature. The district will--the irrigation district, that is--will need to establish terms of the buyout with their contractors on how water is to be distributed and how the money from the buyout will be distributed. They are hoping that they will have an indication from the Legislature that this bill will pass before April 11, and the reason for that short time frame is that they will be planting crops around April 16 and they need to know which crops to plant and how to treat those crops, and that depends on whether or not they are going to have irrigation water. So I would urge you to, if you are going to pass

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

Natural Resources Committee  
April 04, 2007

---

this bill that would allow the surface water buyout, to do it in a very timely fashion. With that, I'll try to answer any questions you may have. [LB701]

SENATOR LOUDEN: Questions for Ann? Senator Christianson. [LB701]

SENATOR CHRISTENSEN: Thank you, Chairman Louden. Ann, thank you. Are you going to encourage the Governor to contribute more to the...than the two years that's listed here in helping the basin come into compliance? Because this clearly is overburdening the local group. Are you going to get behind and support or encourage the Governor to support the basin more for all they're stepping up for? [LB701]

ANN BLEED: I believe the Governor has proposed a Water Resources Cash Fund that goes for much longer than the two years, and he has stepped out and provided funding for that cash fund and I certainly am extremely supportive of that funding and would continue to be. [LB701]

SENATOR CHRISTENSEN: But I guess my concern is the Platte needs some, too, and there could be other basins and that's why I'm asking, are you going to encourage him to help? Because this is asking a lot out of the people in my district. Everybody I represent is in this district. So are you going to step up and ask that they...the Governor does use them funds more for this district than the two recommended? [LB701]

ANN BLEED: Senator, I have already stepped up and asked the Governor to support funding for the Republican River Basin and I will continue to do that in the future. I do, however, represent the whole state, not just the Republican River Basin, and so I will have to...my encouragement will have to depend on the needs of the basin versus the needs in other basins. [LB701]

SENATOR CHRISTENSEN: Thank you. [LB701]

SENATOR LOUDEN: Senator Fischer. [LB701]

SENATOR FISCHER: Thank you, Chairman Louden. Thank you, Director Bleed, for being here today. Did I hear you correctly when you were, I believe, speaking to Section 19 of the amendment, when you said the department shall, in consultation with the NRDs, determine on an annual basis, you were in favor of having that language in the bill? [LB701]

ANN BLEED: Yes, I am. [LB701]

SENATOR FISCHER: It was brought up in earlier questioning then about the appeals process. Do you believe that if that language is in that section would we still need an appeals process put in that section? What is your opinion on that? [LB701]

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

Natural Resources Committee  
April 04, 2007

---

ANN BLEED: I think there is always an appeals process to any decision that the department makes. We are not supposed to, and I try very hard not to, make arbitrary and capricious decisions. If such a decision is made, I believe there is always an appeals process. At the same time, this is a forecast. If the natural resources districts either disagree with the forecast or in some other way determine that there's a difference of opinion with the Department of Natural Resources on the implementation of their integrated management plans, which we've developed jointly, there is an appeal process to the Interrelated Water Review Board and this certainly does not take that away. [LB701]

SENATOR FISCHER: If the department is working with the NRDs, is in consultation, whatever that may mean, why would we need an appeals process? Wouldn't the department...the department wouldn't be making the decision on their own. They'd be doing it with the NRDs. So if both groups are agreeing on what this process is, why would we need an appeal? [LB701]

ANN BLEED: Well,... [LB701]

SENATOR FISCHER: Do you think the department would have more input or more influence on what the decision would be? [LB701]

ANN BLEED: I think there are two issues to that. First of all, the integrated management planning process under which the NRDs and the DNR operate to come into compliance with the compact, is a joint planning and implementation process, and I take very seriously the word "joint." I think we are in this together. We need to work together, and we are working together. At the same time, the department, on behalf of the state, has to ensure compliance with the Republican River Compact, and so that produces perhaps a bit of a tension if the NRDs are...and I'm not saying they are, but if they should in the future move forward in ways that the department believes would not allow us to be in compliance with the compact, I think at that point it's important to have actually in the integrated management plan, and it is already in the law, that if the department believes we need to reduce consumptive use or need to take some action to be in compliance with the compact, and the law requires the IMPs be in...to take actions in compliance with the compact, if the department believed that was not happening, or vice versa, if the NRDs believed the department was doing something that was not in accordance with the integrated management law or not in compliance with the compact, our recourse is to the Interrelated Water Management Board. [LB701]

SENATOR FISCHER: Okay. Thank you for clarifying that. [LB701]

SENATOR LOUDEN: Senator Wallman. [LB701]

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

Natural Resources Committee  
April 04, 2007

---

SENATOR WALLMAN: Thank you, Chairman Louden. Thank you, Ann. In regards, do you know if there's any new wells dug in the Lower or Middle Republican? [LB701]

ANN BLEED: I don't know of any new ones that are dug, and if there are I'd like to know. (Laugh) I do not believe so, Senator. [LB701]

SENATOR WALLMAN: Okay. Ann, I think if we provide state funding, I think people have to realize, you know, like sooner or later the state is going to have more control. And that's all. Thanks. [LB701]

SENATOR LOUDEN: Senator Dubas. [LB701]

SENATOR DUBAS: Thank you, Senator Louden. Thank you, Director Bleed, for being here. We base a lot of our decisions or trying to collect information off of these various types of models, but it seems to me like maybe these models aren't always as accurate as we hope that they would be. I guess it would just help me if you could explain to me how much credence you put into these models and why we see such discrepancies at some...at times with the information that these models come back with. [LB701]

ANN BLEED: I will certainly try, Senator. The...when the special master in the Republican litigation stated that ground water pumping should count as a consumptive use to the extent that the pumping depletes streamflow, that set out the need for a ground water model. I don't know of any other way to determine, if a well is four, five, six miles from a stream, how much water is depleted from the stream except to use some kind of ground water model or an analytical model. I think the prevailing opinion in the technical community is that a numerical ground water model is the best way to determine what the depletion to the stream is from a well, and so we are using the best technology we can. The settlement of the litigation actually includes the specific ground water model, which is the Republican River Administration ground water model. That will be used to determine compliance with the compact, so that model is our standard of compliance. Is it perfect? No, it is not perfect. I will be the first one to tell you that. Is it one of the best tools that we can develop and have developed to this date? Yes. Are we continuing to look at that model to try to determine whether it needs to be improved? Absolutely, and in fact the compact administration has already made two changes to the model because we have discovered errors in the model. And I will guarantee you that as long as I'm involved the state will continue to be testing that model to make sure that it is as accurate as we can make it, because it is our standard of compliance and primarily because I don't know of any other way to determine depletions to streamflow from ground water uses. [LB701]

SENATOR DUBAS: This might be a question that you can't even answer, but if we are making decisions based on some of these modelings and they turn out to be less than accurate, and those decisions are taking us in the wrong direction, then what happens?

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

Natural Resources Committee  
April 04, 2007

---

[LB701]

ANN BLEED: Well, what happens is the state would bring the concern to the Republican River Compact administration, and as I've said, we've already done this twice and the compact administration then would look at our complaint. The technical engineering committee would examine that complaint and then there would be a determination made about whether the model needed to be corrected. Now that has to be done by unanimous decision by the compact administration, and so it would depend on agreement by the other parties. If the other parties did not agree and we felt that it was egregiously wrong to be using the model as it is, then there are other avenues to move forward to get that corrected. [LB701]

SENATOR DUBAS: Thank you. [LB701]

SENATOR LOUDEN: Senator Carlson. [LB701]

SENATOR CARLSON: Senator Louden. Director Bleed, I want to thank you for the work that you're putting forth in trying to help come up with an agreement that will work, and under very difficult circumstances that require hard decisions. You've sensed probably from the questions I've asked in a long-term buyout of surface water, where the irrigators vote, and it's based on a simple majority, or an NRD board votes to implement a significant tax, either property tax or occupation tax, on a simple majority, is that a concern to you? [LB701]

ANN BLEED: I think the key in both cases is that you have an elected board, and the board itself determines its own rules and regulations. And if sufficient citizens do not believe the board acted appropriately, I think the elective process is the democratic way to deal with those board decisions. And one of the board decisions, of course, is how they conduct business, and if the board is not conducting business in a fair way, I think that is also something that the electorate needs to deal with. Let me just say something about a long-term buyout. It's not easy to do. There are a tremendous number of regulations from the Bureau of Reclamation, as well as the National Environmental Policy Act, etcetera, that need to be dealt with before you can do a permanent buyout. These sometimes take five, six, seven, eight years. It's not something that can be done in two or three weeks. It would be my hope that throughout that process that in the end there would be sufficient information that it would be a very deliberative process and that the citizens and the board would be fully aware of who believes it is or is not an appropriate thing for the district. [LB701]

SENATOR CARLSON: Thank you. [LB701]

SENATOR LOUDEN: Other questions for Ann? Seeing none, thank you, Ann. [LB701]

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

Natural Resources Committee  
April 04, 2007

---

ANN BLEED: Thank you. [LB701]

SENATOR LOUDEN: Okay. How many more proponents are there that wish to testify as proponents? One, two, three, four. One back over there is five. Okay. Can we cut you down to about two minutes from now on, if that would be all right, so we can get to opponents? Go ahead. [LB701]

KEITH OLSEN: (Exhibit 6) Thank you, Senator Louden. I am Keith Olsen. I'm a farmer from Perkins County. I'm president of Nebraska Farm Bureau Federation. We are here today to give conditional support to amended LB701. The concern that we have deals with, first, the use of the checkoff fund for funding the Water Cash Fund. The checkoff funds have always been used to stimulate utilization and demand for the products that we in agriculture grow in Nebraska. To use these funds for another purpose has never happened before, and that raises a lot of concern. And will work with the Legislature to try to remove this from the bill before it takes effect, I think, 2012 or '13. On the last sheet of our handout we have two charts. The first chart is about the economic benefit of irrigation. This comes from a study that was done by Charles Lamphear for the Nebraska Policy Institute in 2005, and basically that chart indicates that the value of irrigation in 2003 was over \$4 million, and about 37 percent of that went to direct revenue to the producer. The remaining 63 percent went to other entities within the community within the state. So many people benefit from the value of irrigation. The second chart shows how the costs of implementing LB701, implementing the requirement to meet the Republican Compact in this case, would be distributed. The green are the costs to the producer. It amounts almost, to the benefit of the people who don't have the chart, almost...it's over 90 percent. This includes regulatory costs, and I think we aren't hearing enough maybe in the discussion what the regulatory costs will be to the producer. Dr. Ray Supalla, Department of Economic...agricultural economist at the University of Nebraska, figures at a minimum regulatory costs to a producer, a the Republican Valley irrigator, will be \$49 per acre, and so that's why the regulatory costs are so high. Forty-nine dollars an acre is over \$50 million a year, minimum, that it would cost the producers in the Republican Basin. So we feel that agriculture is really stepping up to the plate between the fee that we'll pay, the increased taxes, the regulatory costs, and we really feel that we are paying our share and, you know, it needs to be recognized that agriculture is at the plate. Again, we do support LB701 as amended, but we do have these concerns. Thank you. I'll take any questions. [LB701]

SENATOR LOUDEN: Okay. Questions for Keith? Seeing none, thank you, Keith. At this time I would like to mention that Senator Preister has AM914 that he wanted read into the record. (Exhibit 6) Go ahead. [LB701]

DALE HELMS: (Exhibit 7) My name is Dale Helms, D-a-l-e H-e-l-m-s. I'm a irrigator that has canal water and also surface water, and also ground water. Also have a main street business, and also consider my farm a business, even though it's not located on main

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

Natural Resources Committee  
April 04, 2007

---

street. I understand the emergency nature of the surface water buyouts to help us get into compliance with the settlement. Many surface water irrigators voted in favor of a one-year buyout because of this emergency nature. This proposed action has seemed to say that our surface water rights are for sale to the highest bidder. This proposed action has already caused many hard feelings and angry statements to be made. I'm against Section 7 on page 7 that would allow acquisition and ownership of surface water irrigation districts. This will allow our water to be sold to the highest bidder. While it solves the problem with the quickest results, it penalizes irrigators who have not caused any of the compliance issues. I am frustrated with the fact the state of Nebraska, DNR, and the NRDs can take action that results in legislation that makes it very difficult or impossible for me to meet the legally binding contracts that I have entered into. These contracts include grain contracts, rental contracts, contracts for inputs, and loan contracts. I feel the best solution is voluntary buyouts by the federal, state, or NRDs. Many irrigators wanted to go into CREP but could not because of the criteria. I also feel that DNR needs to address the model and work to find additional errors that it seems to have. I think an 8,500 acre-foot error on the mound credit and about a 1,500 acre-foot savings by using our actual metered pumping instead of estimated pumping by energy records have come about without spending any money. I feel the records and accounting of the input data to the RRCA needs to be audited to make sure that no errors have been made. I feel that the DNR needs to have outside sources review the model to see if it is giving the results it is intended to now that we are using actual metered pumping data. And also I have a question as to why hasn't the system operations study between the state and the U.S. been done so that the five-year running average can be revisited. And that is...was designated in the settlement, that that was the thing that was to be done. That's all I have. [LB701]

SENATOR LOUDEN: Okay. Questions for Dale? Senator Fischer. [LB701]

SENATOR FISCHER: Thank you, Senator Louden. Thank you for being here today. What was the last point you made? You said you had a question about what? [LB701]

DALE HELMS: Why hasn't the systems operations study between the states and the U.S. been done so that the five-year running average can be revisited? It's on page...you don't have this, but it's on page 24 of the settlement stipulation under Part E. Part D states where the compliance will be done on a five-year running average. Then in Part E it says that the states agree to pursue in good faith, in collaboration with the United States, systems improvements in the basin, including measures to improve the ability to utilize the water supply below Hardy, Nebraska, on the main stem. The states also agree to undertake in collaboration with the United States a systems operations study and after completion of the study the states will revisit the five-year running average set forth in subsection IV.D. [LB701]

SENATOR FISCHER: Okay. Thank you very much. [LB701]

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

Natural Resources Committee  
April 04, 2007

---

DALE HELMS: We're five years past 2002 and nothing has been done. [LB701]

SENATOR FISCHER: Okay. Thank you, Mr. Helms. [LB701]

SENATOR LOUDEN: Okay. Any other questions? Now are you a proponent or opponent? [LB701]

DALE HELMS: I'm in favor. I'm in favor of LB701, but I have a problem with the language... [LB701]

SENATOR LOUDEN: Okay. [LB701]

DALE HELMS: ...about the acquisitions. [LB701]

SENATOR LOUDEN: That's what I wanted to get straight. [LB701]

DALE HELMS: I'm not necessarily...I'm not against the, like, one-year buyout. I think the canal irrigators were willing to make that sacrifice to help get us into compliance. And as Senator Carlson asked several questions about the vote. Actually, when we had the meeting with the irrigation district and we were asked to do kind of a straw poll, we were more or less told that even though whatever straw poll was taken, the board of the irrigation district had the authority to make the decision, regardless of what that vote was, similar to like a school board. In other words, they maybe look at what the patrons of the district want to have happen, but they don't necessarily have to vote that way. [LB701]

SENATOR LOUDEN: Okay. Thank you, Dale. Next. Go ahead, Jay. [LB701]

JAY WOLF: Okay. Senator Louden and members of the committee, my name is Jay Wolf, J-a-y W-o-l-f. I'm president of the Nebraska Cattlemen and I'd like to speak in support of AM872. The Nebraska Cattlemen appreciates the inclusion of the invasive species clause. That was a priority for us. Next point would...was that we recognize that this is a state issue, and that both agriculture and the state General Funds need to contribute. So we understand that the corn and sorghum checkoff is an existing framework to place agricultural's contribution at this time, but our members are going to have concerns about that. But rather than oppose this needed legislation, we'll work with the other ag groups during the upcoming year to propose alternative ways for agriculture to contribute that are acceptable, equitable, and functional. One technical suggestion: 46-601.01(b) needs additional language to exclude livestock waste facilities. Feedlots need to be able to pump out their waste control lagoons, and I don't believe the amendment's intent is to regulate that activity in this bill, as there are already regulations that do that. Thank you for your hard work on this difficult but important bill,

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

Natural Resources Committee  
April 04, 2007

---

and I'll be glad to answer questions. Oh, one other thing I should mention is Senator Preister's amendment, AM914. Are we to speak to that now or some other time? [LB701]

SENATOR LOUDEN: It's laying right there. Is that it? Yeah, it's AM914. [LB701]

JAY WOLF: That prohibits use of pesticides? [LB701]

SENATOR FISCHER: Yes. [LB701]

SENATOR LOUDEN: Part of it is. [LB701]

JAY WOLF: Yeah, well, we'd be opposed to tying the hands of the invasive species plan. [LB701]

SENATOR LOUDEN: What about the part that asks for, I think, what, more people or someone from the Department of Environmental Quality and somebody else from the Legislature, something like that, people on the board, on that Water Policy Task Force or whatever they call themselves? You have any problem with that? [LB701]

JAY WOLF: I'm not familiar with that part of it so I won't speak to it. [LB701]

SENATOR LOUDEN: Okay. Thank you. Any questions for Jay? Seeing none, thank you, Jay. [LB701]

TOM SCHWARZ: Chairman Louden, members of the committee, my name is Tom Scharz, S-c-h-w-a-r-z, from Bertrand, here representing myself in support of LB701. I'll be real brief as I know your time is short. You know, the NRDs have been asked to ante up in this game, and they're not just anteing up. They're going all in here. I don't know that we can even afford this level in the basin, but it's a very bold step and I'm encouraged to see them taking it. This bill will allow us to change our management strategy in the basin. We're going to start to look at water from a conjunctive use perspective. We're going to manage ground water and surface water together, potentially, with the agreement of surface water users, for the benefit of compliance with the compact. That's not to say we won't be delivering surface water potentially to some of those acres over time, but certainly gives us the ability to do a better job of managing our water and hopefully put us in compliance with the compact. [LB701]

SENATOR LOUDEN: Okay. Any questions for Tom? Seeing none, thank you. Next testifier, next proponent. Oh, hurry forwards if you... [LB701]

DON ADAMS: (Inaudible) proponents or opponents? [LB701]

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

Natural Resources Committee  
April 04, 2007

---

SENATOR LOUDEN: Proponents right now. Okay, then seeing none, then we will go to opponents right now. How many opponents do we have to testify? One, two, three, four? Okay. [LB701]

DON ADAMS: (Exhibits 8, 9) Good afternoon, Senator Louden and members of the Natural Resources Committee. My name is Don Adams, D-o-n A-d-a-m-s, executive director of Nebraskans First, a statewide ground water irrigators' coalition, here in opposition to AM872. The state, not the NRDs, not the irrigators, signed off on the Republican River Compact 64 years ago. The state, not the NRDs, not the irrigators, signed off on the Kansas settlement agreement five years ago. AM872 to LB701 takes a problem that is the statewide responsibility and heaps it almost totally onto the backs of Republican River Basin irrigators and property owners. For the past several years the Republican River Basin NRDs and their irrigators have operated under extreme pressure and constant threats from Kansas and our own DNR. The stress this is creating for our producers is palpable. Already they have endured severe cutbacks in ground water allocations. In a tremendous effort and a commitment to do more than their fair share, they have actually used less water than allowed. They alone have sacrificed and have sacrificed enough. We cannot support any new taxes on irrigators. They are already paying through the gills. Property taxes on their irrigated land is double compared to dryland, and roughly three times higher than their Kansas counterparts currently pay. Today the Republican River is nowhere near the system it was back in 1943, when the compact was entered into. In 1943, there were no terraces, there were no dams. The river was free flowing, starting in northwest Kansas, where Beaver, Sappa, and Prairie Dog Creeks flowed into Nebraska unobstructed. When Harlan Dam was constructed over 50 years ago it was filled and sustained by free-flowing water from Kansas creeks: Beaver, Sappa, Prairie Dog. This free-flowing system changed dramatically when the federal government, in the mid-1980s, mandated and paid for conservation measures, primarily terracing. A 1985 Bureau of Reclamation water management study, which is one of your handouts, clearly stated that such conservation measures contribute the largest depletions to the basin's water supply, and since then the number of terraced acres has at least doubled. Now look at the aerial color photograph. It was taken about three weeks ago and shows where the water is in northwest Kansas and why it cannot get to Harlan. Right now there are roughly 500,000 acre-feet of water being held back from flowing into Harlan. There is no drainage anymore out of northwest Kansas into Nebraska. The river system can no longer flow and feed Harlan, as was the plan envisioned when Harlan Dam was constructed. Harlan has been rendered essentially useless due to the terracing in northwest Kansas. Because of this reengineering and manipulation of the system, Kansas has got us by the short hairs both coming and going. This unfair situation must be addressed and addressed quickly. The huge impact of conservation measures on Republican River flow from northwest Kansas into Nebraska must be acknowledged and fully and fairly accounted for. We implore this committee to wrap your arms around this issue and take whatever action necessary to have conservation measures fully

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

Natural Resources Committee  
April 04, 2007

---

accounted for before we ask more from our irrigators. AM872, while ignoring the impact of conservation measures, is a classic case of swatting a gnat and swallowing a camel. Even DNR Director Ann Bleed said several days ago in the Lincoln Journal Star, quote, this package will not get us to where we need to be. What's next? How much more will be demanded of irrigators? The tax burden and the risks and uncertainty certain to arise from adopting AM872, are just too great and disproportionate to any countervailing benefits which, other than appeasement, are speculative. Senator Carlson, we do support the riparian vegetation management part of the bill and wish it wasn't part of this amendment. [LB701]

SENATOR LOUDEN: We have to ask the questions. You just give us the answers. We'll ask the questions. You can't direct questions to one of the senators. [LB701]

DON ADAMS: Okay. [LB701]

(WOMAN): He didn't ask a question. [LB701]

(WOMAN): He didn't ask a question. [LB701]

SENATOR LOUDEN: Well, I thought he was asking Senator Carlson a question. [LB701]

DON ADAMS: We...okay, the statement was we support the riparian vegetation management part of the bill. [LB701]

SENATOR LOUDEN: Okay. [LB701]

DON ADAMS: And that concludes my testimony. [LB701]

SENATOR LOUDEN: You're ready for questions? Okay. Questions for Don? Senator Fischer. [LB701]

SENATOR FISCHER: Thank you, Chairman Louden. Thank you, Mr. Adams, for being here today. It seems like you only support one part of the proposed amendment, and that was Senator Carlson's part, with the vegetation. What do you propose we do? [LB701]

DON ADAMS: It is a statewide issue, a statewide responsibility, a problem the state got us in and a problem that the drought has compounded, and I think partially a problem of a poorly negotiated settlement. The burden should not rest on the irrigators and property owners in the Republican River Basin to solve that problem. Much like the Boyd County low-level waste facility problem, the Legislature didn't focus on those citizens alone to pay the \$140 million. LB775, when Omaha was in trouble with

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

Natural Resources Committee  
April 04, 2007

---

ConAgra threatening to leave and Union Pacific, the whole state came together, created LB775 and bailed them out. This is a statewide responsibility. [LB701]

SENATOR FISCHER: But...and how would you like us to respond then at the state level? What do you want us to do? [LB701]

DON ADAMS: Don't put the financial burden solely on the backs of irrigators and property owners in the Republican River Basin districts. [LB701]

SENATOR FISCHER: I don't believe the amendment does put it solely on the backs. There are finances coming, you know, they're coming from other areas too. But you would like the state to pay more. [LB701]

DON ADAMS: I am convinced and we have heard the Governor say it is a statewide problem, but the lion's share of this is being borne by irrigators and property owners in that district. And the Governor has stressed that Nebraska taxpayers are overtaxed, but apparently that's all Nebraska taxpayers except those taxpayers in the Republican River Basin, because he's willing to heap a pretty substantial new tax increase onto them. [LB701]

SENATOR FISCHER: Thank you. [LB701]

SENATOR LOUDEN: Other questions for Don? I have one, Don. This picture you showed there. Then your recommendation I would guess then would be to go in and either file a lawsuit against Kansas and try and open up that 1943 Republican River Compact and renegotiate or something like that. Is that what you're advocating? [LB701]

DON ADAMS: Well, certainly I would, if I were Governor, drag them kicking and screaming back to the table and get these conservation measures fully accounted for because Harlan, barring any precipitation event of biblical proportions, will never fill because the water simply cannot get there. And this was not envisioned when that compact was entered into. That's half a million acre feet. That would more than fill Harlan right now. [LB701]

SENATOR LOUDEN: How much water was supposed to flow out of Kansas into Nebraska prior to these terraces? [LB701]

DON ADAMS: I'm not sure of the amount, but it was a free-flowing river system when the compact was entered into. It started there, flowed through Nebraska, and ended up in Milford in Kansas at the other end. The system is impeded now. It cannot function as the 1943 compact envisioned it functioning. [LB701]

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

Natural Resources Committee  
April 04, 2007

---

SENATOR LOUDEN: Well, I agree with you that probably something else had to be done. But I wonder which is the best way to do it because the only way I would envision doing it is open up the compact again. And I don't know if we can negotiate from a point of weakness right now when there hasn't been that much water going down there. So if we open that up, we may be wide open for real lawsuits. That was my thinking on that. And I'm wondering if that's the way you're thinking that we should go ahead and go to court come hell or low water I guess. (Laughter) [LB701]

DON ADAMS: All I'm saying is there's no way we can comply with the terms of the compact by regulating ground water irrigation or even eliminating it. The picture is where the problem is. That's half a million acre feet that is being impeded from flowing into Harlan. That's the problem, not regulating ground water pumping. [LB701]

SENATOR LOUDEN: Okay. Thank you. [LB701]

DON ADAMS: Thank you. [LB701]

SENATOR LOUDEN: Any other questions for Don? Thank you, Don. Next testifier. [LB701]

BARRY RICHARDS: Hello. My name is Barry Richards, B-a-r-r-y R-i-c-h-a-r-d-s. I'm from Hayes Center, Nebraska, right smack in the middle of the district we're talking about. I do not irrigate. That's a choice I made. We all make choices. I'm one of those that, I don't know, when we was back in kindergarten and the teacher told us to raise our hand to be called on, believe it or not, I raised my hand. And time after time teachers would go ahead and answer the kid that was already crawling up the cabinet to get the cookies. And the guy that did it the right way, he didn't get anything good out of it. I mean he continued to do good, but the teacher kept calling on the guy that was causing the pain. I know this kind of gets us back to the squeaky wheel. I'm proud to be a dryland farmer. I don't...I'm here today because I kind of think there's a false premise going around. You have to forgive me if I get a little passionate because we're talking about my life. The premise seems to be we all use to get along with irrigation. My family, we have cattle, dryland wheat, dryland corn, we get along. The system could handle some irrigation. But beyond, you know, events beyond my control or yours, people move in and things happen and people are not married to the and anymore and there's a mind-set out there that I can do anything that I can dream up and I just pump enough water to do it. And it's insane. I'm here to tell you it's insane. Please absolutely do not fund, as a state, do not fund this problem. As a state, do not allow the NRDs to tax me to try to put money on the table to get out of this problem. The problem is too much water is being used. It's kind of funny, I mean, we are talking about the government. One time they're building terraces and the next time they're going to pay you to tear them down. I mean it's kind of a circus but we try. That's all we can do. There may not be, I mean, I'm not going to call anybody misinformed up here, but as a person living in

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

Natural Resources Committee  
April 04, 2007

---

that district, a person that would love to depend on irrigated cornstalks and feed for my cattle, I'm going to go home to disgrace because I stood up against irrigation. I have stood for irrigation all of my life because I wanted it to be an asset to everybody. But this mind-set, this mind-numbing mind-set that we can pump endlessly and tirelessly to acquire whatever it is that we're out there to acquire and now we finally have \$4 corn and we don't have enough water to get it. We pumped and we pumped and we pumped and we pumped for \$1.75 and \$2 corn. People, I don't know what the answer is. I heard somebody, one of the ladies asked the question to Don Adams, what would you do. Personally, folks, if you got to shut the irrigation off to grab people's attention, you have the power to do that. You don't need to spend any time. You don't need to spend any money. Just shut them off. Bring them to the table. Bring them to their knees. The same man that was on the front...people in my district know of a few gentlemen that moved in here from other states that followed the water. It's kind of like following the money. They came into our state and one of them made the front page of the Omaha here not...a little less than a month ago. And he was pictured on there talking about the Niobrara. I don't know how many of you have been on the Niobrara with a tube or a canoe or anything like that. It is a very nice natural place. And when I read that article about that gentleman on the feeding into the Niobrara, wanting to just pump and pump and pump and place more and more wells, I come to you, please put a statewide moratorium. Place it. Stop this insanity and get people's attention. And when I say that, I'm not trying to fool you. I'm thinking of my kids and my grandkids. I live in a small community. There's only 500, 600 registered voters in the whole county. And we went through a school merger thing. We went through...I know this ain't the time or the place, but it just reminds me so much of other things that go on that are beyond my control. And to get it back to where it belongs, a statewide moratorium would grab people's attention. The person that was on the front page of the Omaha, he does need his wings clipped. People need to be married to this land. People need to be able to raise their family there. People do not need to be taxed out of their home. It was mentioned by one of you today, how in the world do you pay more and more tax when you have less and less? I think that's the problem right there. We all think that money is the answer. I'm not a big conservation guy. I remember when I went to the faucet as a little kid and let the water run till it was cold and my mom would slap me and say, you've got to conserve that water. You don't have the right to turn that water on and waste a couple of glasses of water. And here we are trying to water the whole state of Nebraska sort of. Those people that came into our county, bought that grassland, it was no fault of yours or mine. But what happened, they bought the grassland at an exorbitant amount, but they didn't leave it as grassland. They took it up to irrigation. Right now in Hayes County you got irrigated land that's only taxed on \$720. You got dryland, and I'm talking about the best irrigated land and I'm talking about the best dryland, and the dryland is up over \$500. There's hardly a \$200 difference between irrigated and nonirrigated. And enter the last ten years of drought, let me tell you even if irrigators got one inch they sure beat the daylight out of a dryland farmer. Having said this, that guy that bought that grassland inflated my property taxes on my grass that through a moratorium I no longer

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

Natural Resources Committee  
April 04, 2007

---

had that word "pivot potential" on the bank statement to go to my banker and say my land is worth this. I need this much money. That was taken away. I don't mean to be whining. I'm trying, I guess, just to cut to the chase. Please don't give in to whiners. Make them come to the table. Make them have real solutions. The solution is not money. And this gentleman is very much right when he says if we ask you for money for our troubles, you will control our water. You do now to the extent that you could put on a statewide moratorium. That's more than enough control. I know I went on here and I'll give it over, but I really appreciate this opportunity and I wish you well. [LB701]

SENATOR LOUDEN: Questions for Barry? Thank you, Barry, for testifying today. [LB701]

BARRY RICHARDS: Thank you. [LB701]

SENATOR LOUDEN: Next testifier. [LB701]

STEVE EBKE: (Exhibit 10) Yes, just briefly, Mr. Chairman and members of the committee. My name is Steve Ebke and that's spelled S-t-e-v-e E-b-k-e. I'm here today representing the Nebraska Corn Growers Association. And you've already made a statement relating to the checkoff. We're opposed to the bill because of that particular issue. It's in our written testimony. We've registered that as we testified on LB322 so it's just to have it on record again that we are opposed to using a checkoff which was a self-help thing. And we're opposed to having that used to fund this sort of a project. Also at the conclusion of our written testimony, we are more than willing to work with everyone else to find a more balanced funding solution for this problem. So thank you. [LB701]

SENATOR LOUDEN: Okay. Questions for Steve? Seeing none, thank you, Steve. [LB701]

STEVE EBKE: Thank you. [LB701]

SENATOR LOUDEN: Next testifier. [LB701]

JIM TIERNEY: (Exhibit 10) My name is Jim Tierney. I'm from North Platte. I'm speaking kind of neutral to expand on what you're trying to do here. It seems... [LB701]

SENATOR LOUDEN: Now you want to give opponent...are you opponent or neutral testimony? [LB701]

JIM TIERNEY: I said I'm neutral, more of an opponent. (Laughter) [LB701]

SENATOR LOUDEN: Go ahead, just be quick. [LB701]

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

Natural Resources Committee  
April 04, 2007

---

JIM TIERNEY: You have most of this built around federal laws and the new NRD power and the Republican River. And as the man said, the whole state...all the water belongs to the whole state. And we're running water down the Platte River eight months out of the year it's just going to the Missouri River. If you look into Colorado or Wyoming, they have six or eight reservoirs in Colorado and Wyoming for irrigation and on the South Platte there's 400 miles going through Nebraska and you run the water through it eight months out of the year. You don't have any reservoirs to store it. But we're going through all these hoops and little technicals and all of this stuff to try to tax people and do everything and we don't conserve any water. We don't have any reservoirs. And I can't see it. So my idea is that if it's all of the state's water, we should have, I call it Catch-22, 2 cents on a bottle of water, 2 cents on your water bill, 2 cents on your electric bill, 2 cents on your sewer bill, 2 cents on any industrial water. All water should have a surcharge on it so that everybody has a vested interest and there's some checks and balances on what's happening so it doesn't all impact on one area. You put out a fire over here, pretty soon you're going to have one over here. Pretty soon you're going to have one down on the Blue River. You've got to work on an all-state basis in that. And as far as the irrigation, my idea on the other part of the two is \$2 on an acre of water that you use for a month. And if you had a 1,000-acre farm, that would be \$2,000 for a month of using that water. If you had to irrigate a 1,000-acre farm for four months, that would be \$8,000. But that's my idea of how you can do it. Make it statewide. Make it equitable for everybody. And I can't understand how we're just concentrating on hurting the people that got caught up in a compact that is really the emperor has no shoes. You go up from McConaughy or any of these reservoirs, you can see 20-foot trees. That takes 20 years for those trees to grow. The growth that's in these things, where I come from when there's growth, they clean out all of the growth on all of the irrigation ditches all of the time, every year. You go around to these reservoirs and there's 20-foot trees in those. And who's responsible for that? Maybe the electric power people, the Central, NPPD which are more of your government entities, more of your bureaucracy and it's not happening. [LB701]

SENATOR LOUDEN: Okay. Are... [LB701]

JIM TIERNEY: I had one other. There's one other point on that Republican River. People keep saying you can't transfer water. My understanding from a man from the Middle Republican NRD is 10,000 acre feet is being credited to the Republican River that's coming out of the Platte River. So a precedent has already been set that you can transfer water. I just wanted to make that point. Thank you. [LB701]

SENATOR LOUDEN: Okay. Any questions for Jim? Seeing none, I do like your idea of 2 bucks an acre on all irrigated land in Nebraska. That would be quite a revenue source. I think we're worth... [LB701]

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

Natural Resources Committee  
April 04, 2007

---

JIM TIERNEY: Well, and you could build some reservoirs and do something. [LB701]

SENATOR LOUDEN: (Exhibits 11, 12, 13) Yeah. We'll take it under advisement. Thanks, Jim. Next. Any more opponents? If not, we're ready...okay. We've got a letter to read in. We got a letter from a Wayne Madsen from Trenton and also from a Steven Smith from Scottsbluff as opponents. Now we'll go to neutral testimony. We have a letter from Verlon Barnes from Bellevue in the neutral position. Go ahead. [LB701]

DON KRAUS: My name is Don Kraus. I'm the general manager of the Central Nebraska Public Power and Irrigation District. Central supports the establishment of the riparian vegetation management task force with funding to address noxious weeds and invasive species. We've had extensive weed growth and we've heard mention of the growth above McConaughy and, yes, we are working on a plan to try to work on that. But this would be an important help we think. New bonding authorities that are made available with the NRDs in the Republican Basin are an important option to consider in addressing funding issues. They've been discussed extensively since LB962 was passed in 2004. In addition, the funding from the state is firmed up to address a state share. And we can argue and debate percentages, but I guess from my perspective we need certainty, from a water user perspective we need certainty as we plan for the future. The delegation of authority to the Department of Natural Resources to annually establish the amount of water depleted from ground water wells is a new concept. And it may be something that would be very helpful to reach compliance with compacts, decrees, and interstate agreements. However, we are not sure the bill gives the authority to the department that's needed to achieve that compliance. The process outlined in LB962 has been underway since 2004 and there have been few, if any, reductions in ground water use to benefit stream flows in the Platte Basin. For 2007, Central's irrigators will receive an allocation of 6.7 inches per acre. This is the third year for allocations for Central while allocations of 14 inches are still in place for ground water users in the Pumpkin Creek Water Shed and no allocations for ground water wells in the remainder of the North Platte NRD above Lake McConaughy. While we support parts of LB701...the revised LB701 as a step forward, we do not believe it goes far enough to address conflicts between ground water users and surface water users, particularly in times of drought. While this is primarily a bill to address issues in the Republican Basin, we hope the committee does not forget we have issues in the Platte Basin that need to be addressed also. Thank you for your time. [LB701]

SENATOR LOUDEN: Any questions for Don? Senator Carlson. [LB701]

SENATOR CARLSON: Senator Louden. Don, thank you for your testimony. The statement about 10,000 acre feet going from one basin to the other, does that have something to do with Elwood Reservoir? [LB701]

DON KRAUS: I think it would be more the mound. The ground water mound in Central's

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

Natural Resources Committee  
April 04, 2007

---

area is going to provide underground recharge to the Republican Basin and so there is a transfer, underground and uncontrolled, from water created through the mound in the Central area. Elwood would be a part of that. [LB701]

SENATOR LOUDEN: You'll have to spell your name, Don. We didn't catch that early on. [LB701]

DON KRAUS: K-r-a-u-s. [LB701]

SENATOR LOUDEN: Okay. Other questions? Senator Fischer. [LB701]

SENATOR FISCHER: Thank you, Chairman Louden. Thank you for being here today. There's no agreement or an official transfer of water, though, between basins, is there? [LB701]

DON KRAUS: No, that's correct. [LB701]

SENATOR FISCHER: That's just a natural... [LB701]

DON KRAUS: It's recognized... [LB701]

SENATOR FISCHER: ...seepage of water from one basin to the other, correct? [LB701]

DON KRAUS: Correct. [LB701]

SENATOR FISCHER: Thank you. [LB701]

SENATOR LOUDEN: Senator Christensen. [LB701]

SENATOR CHRISTENSEN: Is there not some surface water moves in the Republican off of... [LB701]

DON KRAUS: Our irrigation system? [LB701]

SENATOR CHRISTENSEN: Yes. [LB701]

DON KRAUS: We do deliver and I'm going to probably be wrong, but it's in the 700, eight, to about 700 acres in the Republican Basin from our surface water delivery system. That authority was granted by the department in, I'm going to say the mid-nineties. And there were a few acres that we do. We had to go through a special proceeding to allow transfer of surface water out of basin so it was a very special proceeding we had to go through to get that authority to move surface water from the Platte into the Republican. So there are a few acres, yes. [LB701]

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

Natural Resources Committee  
April 04, 2007

---

SENATOR CHRISTENSEN: Thank you. [LB701]

SENATOR LOUDEN: Seeing no other questions, thank you, Don. [LB701]

DON KRAUS: Thank you. [LB701]

SENATOR LOUDEN: Next testifier. I guess you're it, Dave. [LB701]

DAVID COOKSON: Chairman Louden, members of the committee, my name is David Cookson, D-a-v-i-d C-o-o-k-s-o-n. I'm special counsel to the Attorney General. I want to briefly address a couple of issues for the record to establish a legislative record of the...some of the legal aspects of this amendment and the package that's been pulled together. First, I wanted to address Mr. Helms' question about the system operations study in the Republican River settlement agreement. Upon Supreme Court approval of that, Congressman Osborne introduced a bill to start that system operations study. For the Bureau of Reclamation to participate, they have to have congressional authorization or authority to do it. We have been unsuccessful since 2003 in getting that passed. Last year we thought we had a better chance and, in fact, I testified before the House Subcommittee on Natural Resources on that very bill and its importance. We also had the support of Kansas and Colorado in introducing that. Unfortunately, as with all water projects last year, the Congress recessed without taking up the water issues. Unlike you, they can walk away without having to address those issues. So again, Congressman Smith has, I believe, introduced that, or is going to introduce it, so we're continuing to fight that battle to get that system operation in place, sort of to check the plumbing and see if we can use the water more efficiently. Now to the bill: There are a couple of things I want to address so that we address some potential constitutional issues that might be raised. First, while everyone has talked about this applies to the Republican River and in fact the three--the Lower, the Middle, and the Upper Republican--Natural Resources Districts are the only ones that currently qualify, this is, as written, an open class. All it takes is for the state to negotiate a compact with two other states over water in order for this provision to then apply...to have that apply to them. That's potentially the South Platte, the North Platte, the Missouri River are all potential candidates, so it is an open class and satisfies the constitutional prohibition against special legislation. But to paraphrase Senator Wehrbein in a debate over the Southeastern Dairy Compact a couple of years, no Legislature in its right mind would ever enter into a compact again in this day and age. So I think, while it is an open class, I think we're confident it will be a Republican River that benefits from this. The second thing is the local NRDs have specific statutory obligations and duties imposed upon them by LB962 and LB1226, both passed by this Legislature. Those obligations require local action and so the authority for the bonding, both the occupation tax and the property tax levy, particularly the property tax levy, is being instituted for a local purpose, because to meet those local obligations, and the language in the amendment

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

Natural Resources Committee  
April 04, 2007

---

that comes out of the committee will reflect that. Finally, there...and Roger Patterson used to say this all the time when we talked to folks in the basin, there's two ways to comply with...actually, three ways to comply with the compact. You can regulate, you can use money for incentives or retirement of irrigated acres, and you can augment flows. The authority to regulate either irrigated acres or the amount of water that's applied by an irrigator has already been statutorily created. The state has provided funding for retirement of irrigated acres or for surface water leasing, but there is no local funding mechanism. This amendment provides that funding mechanism. And the ability to augment, whether it's through vegetation control or whether it's through transfers, has not been altogether clear, and this amendment again provides a financial ability to do both of those, which is very important. So we have now closed the loop and provided the NRDs and DNR with the tools, as we've talked about before, to figure out the best way to comply with the compact and still maintain a vibrant economy in southwest Nebraska. And so with that, I'll take any questions. [LB701]

SENATOR LOUDEN: Any questions for Dave? Senator Christensen. [LB701]

SENATOR CHRISTENSEN: Chairman Louden, thank you. Dave, thank you for being here. Augmentation from the district basically is a timing issue, correct? [LB701]

DAVID COOKSON: It could, yes. Primarily...the practical reality is yes. Primarily, it's a timing. There are a few places where it wouldn't be a timing because you're so far away that you're not affecting streamflow at a later date,... [LB701]

SENATOR CHRISTENSEN: So... [LB701]

DAVID COOKSON: ...but the cost to do that is prohibitive. [LB701]

SENATOR CHRISTENSEN: So there's areas we could have unlimited pumping; it'd never affect streamflow then? [LB701]

DAVID COOKSON: Well, right now, under the terms of the settlement and under the terms of the integrated management plan, we have areas in the mound that Don Kraus talked about where pumping is not regulated because the contribution of the mound far outweighs whatever water they take out. [LB701]

SENATOR CHRISTENSEN: Correct. But if a entity was going to put in a intrabasin transfer then there's areas they could do that that wouldn't ever have to be made up with streamflow? [LB701]

DAVID COOKSON: Are you talking inter or intra? [LB701]

SENATOR CHRISTENSEN: The intra,... [LB701]

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

Natural Resources Committee  
April 04, 2007

---

DAVID COOKSON: Okay, intra. [LB701]

SENATOR CHRISTENSEN: ...inside the basin. [LB701]

DAVID COOKSON: Right. Potentially in the mound, but it really depends on the specifics of the area. When we were doing the settlement, we looked at some areas where we could create, for instance, reregulation reservoirs or small reservoirs that would capture mound water that we could subsequently put down. Given where we were at in the settlement, that effort was sort of put off to the side and I believe the NRDs, as Jasper Fanning testified, have been doing a study of some well sites where they might accomplish the same thing. [LB701]

SENATOR CHRISTENSEN: So basically you're saying if we went up, drilled in the mound, put it in, like, Spring Creek, for an example, that would be a area we wouldn't have to replace? [LB701]

DAVID COOKSON: Yes or no, it depends on the specifics of where you do and what the ground water model tells you the impact is on streamflow. So it's...I can't give you a definitive answer because it depends specifically on the site, its characteristics, its relationship to a tributary, and the cost of transporting the water from the well field to where you're going. [LB701]

SENATOR CHRISTENSEN: So I guess, you know, I'm just concerned about playing a Russian roulette game. [LB701]

DAVID COOKSON: And that would be the primary thing you would want to do is to make sure that you're not pulling the trigger with a loaded bullet in the chamber. In other words, you don't want to do something now that's going to make it twice as bad down the road. [LB701]

SENATOR CHRISTENSEN: Amen. [LB701]

DAVID COOKSON: That's a legitimate concern. [LB701]

SENATOR CHRISTENSEN: Thank you. [LB701]

SENATOR LOUDEN: Any other questions for David? Seeing none, thank you, David. [LB701]

DAVID COOKSON: Thank you, Chairman, members of the committee. [LB701]

CLAUDE CAPPEL: (Exhibit 14) Senator Louden, members of the Natural Resources

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

Natural Resources Committee  
April 04, 2007

---

Committee, my name is Claude Cappel, C-l-a-u-d-e C-a-p-p-e-l. I'm testifying for parts of the bill, but I have concerns with the others, so testifying neutral. The bond is probably the way to go to buy out irrigation districts for this year and paying for it with an occupational tax on irrigated acres. I feel this occupational tax should be statewide on all irrigated acres for the following reason. When the Upper Republican Natural Resources District finally got authorization in '75 to put on a moratorium, the process was delayed by DWR. In 1982, when LB375 was passed, it was allowed to deplete the aquifer, and I have quotes below which I won't read now from the legislation. In the past, whenever water legislation came before this Legislature, or the Legislature, irrigators, suppliers, water groups, farm organizations opposed it if it limited irrigation. Legislature up to now has targeted the whole state, not an area. If legislation ever did get passed, it was watered down. Now that we have a basin in trouble because of previous or lack of whole state legislation, only irrigators in the basin are being required to pay the bill. When the compact agreement was made December 16, 2002, the surface water was already virtually gone in the basin. Until that time there was nothing an individual irrigator, an NRD...or NRD could do to stop the aquifer depletion. DWR contented surface water and ground water were not connected until a judge ruled otherwise in 2002. The Attorney General had put a stay on doing anything that could show a sign of weakness from 1997 until an agreement was made. My question is, why is the basin being singled out basically to go it alone? I feel if this bond is passed for any procurement after this year by the board, there should be a mandate of sustainability or equal sharing of the water of the aquifer while meeting the compact requirements. If sustainability for each NRD isn't mandated, it's money down the drain for two reasons. Unless we go sustainable and cause Kansas to sue, we could be paying bonds, and be shut off from irrigation by a judge. The other is, if we are not sustainable, the aquifer will continue to decline in the already overdeveloped areas, headwater areas, causing less streamflow and continued drying up of the wells. It allows the taking of one's water for the benefit of another irrigator. Once this tax is put on to pay the bonds, I don't see any exclusion for an area that will get a reduced or no allotment, or wells that lose either part or all of its water supply because it's not...we are not sustainable. It looks like irrigators who could lose their water still have to pay the tax even though they have a reduced supply of water or no water. This way...this is a way surface water irrigators are required to do by state law who haven't received any water since 2001. Mandates need to be put on so irrigators share equal in shortages, without proving which individual well is causing what percentage of the depletion. The definition of sustainability and how it is administered within an NRD needs to be clarified, if it's ever done in the statutes. Section 9(1)(d), 10 cents tax per \$100 is not a fair tax to impose on property owners who do not derive any benefit from the money irrigated farmers get by pumping the water. The overdevelopment should have been regulated by the NRDs with legislation needed to mandate. I'm sorry. The overdevelopment should be regulated by the NRDs, with legislative mandates if needed. You already have people moving out of our area because of property tax, water, sewer, trash costs in towns in the basin. They're already paying their share of property taxes to support the NRD. Some of the people who would

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

Natural Resources Committee  
April 04, 2007

---

be paying the additional tax have already lost value in their businesses because of overpumping. Overpumping has caused the lakes and rivers to go dry, which is losing a quality of life and recreation in the basin, which has a price. Most legislation (sic), DWR, and ground water irrigators and NRDs were not concerned enough to do something to save the aquifer when this was happening. This tax will hurt many individuals to the benefit of a few. If there's an additional tax that affects people who don't irrigate, it should be voted on by the people of the basin to have the tax applied. Thank you. [LB701]

SENATOR LOUDEN: Any questions for Claude? Senator Carlson. [LB701]

SENATOR CARLSON: Senator Louden. Claude, thank you for your testimony. I simply would indicate I agree with your printing here that correlative rights and in times of difficulty we share and share alike. Thank you. [LB701]

CLAUDE CAPPEL: Thank you. [LB701]

SENATOR LOUDEN: Senator Christensen. [LB701]

SENATOR CHRISTENSEN: Yeah, thank you. You made the statement that not everyone benefits from irrigation in the state. Four out of five jobs is based upon agriculture. I look across McCook and I can't think of a job that doesn't get impacted by irrigation one way or another. Whether it's primary or secondary, there's a benefit to the whole economy. There's a benefit to everyone. I don't care if you're the mayor, you got irrigated people shopping in your town or living in your town. I guess a follow-up of that statement, I can't understand that. [LB701]

CLAUDE CAPPEL: They're already paying I think the 3 cents per \$100 now. I guess I'd relate back to when--it's kind of the same scenario--back years ago they used to have a 4-H calf sale in our community every year. Every year the farmers expected the businesses to buy out them 4-H calves from them at an awful high premium. Most of them farmers can buy and sell any business in town, most of the farmers had the money and stuff. I didn't ever feel that was fair. I don't feel it's fair to put more of an additional tax on the people who are already paying for the NRDs. It's really an irrigators' problem. We benefit from the income. If the tax is too much we can quit irrigating, we can sell our right or something like that. The people in town would have no choice. [LB701]

SENATOR CHRISTENSEN: I guess I look at conservation being a huge part of this decreased flows, you know? Don Adams showing the picture and the testimony, and even Director Ann Bleed mentioned at a meeting one day up to 63 percent is due to conservation. I guess I don't see how you can say this is all irrigators' problem. [LB701]

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

Natural Resources Committee  
April 04, 2007

---

CLAUDE CAPPEL: To me, conservation has been probably more of a benefit than it's been a detriment, by no till, etcetera. I know when I was down here last time the terraces in our yard was full; when we got home they were empty. Once the frost went out, it didn't even kill the wheat. So the water goes down into the aquifer. Conservation has allowed us to...I'd say right now in this next coming year we can raise as much corn with, say, even six inches of water than we could raise in '92 without conservation on irrigation, by our technology and LEPA systems, etcetera, etcetera. [LB701]

SENATOR CHRISTENSEN: Well, I agree with you totally, but that's because we're using the water and it's not getting soaked down to recharge the aquifers because we're holding it there and using it. [LB701]

CLAUDE CAPPEL: There's a reason. The Republican River, the Frenchman River is a ground water fed river, especially the Frenchman, and probably most of the Republican. When we got all this rain and snow and stuff, even though after the rain goes by and even back in the fifties there was a 500,000-some acre-feet that flowed to Kansas every year, you know, and that was after all the irrigation canals took their water out along the way. The water does go down into the aquifer. I...you know, until we know the actual facts, but I feel the water goes into the aquifer and it soaks back out. In our area there you can see that the recharge, just from the soaking in, in the valleys and stuff, is actually contributing quite a lot of water to the river. The river is fairly full, full as I've seen it for probably seven years. [LB701]

SENATOR CHRISTENSEN: Well, I'll make one final statement. You know, we could break all the dams in the district, farm ponds and Trenton and all those, just evaporation off them would solve our problem, you know? So it is everyone's probably because if you look in the pastures, all the dams and things that hold water, the evaporation off of them, it is...it is everyone's problem. It's a statewide problem, first of all. [LB701]

CLAUDE CAPPEL: In my area I haven't seen much full in the last seven years, so the lakes have water in them, but there's a quality of life. I mean I lived in that area when we had no dams except Hayes County had a dam. I want to see a river. I want to see dams and stuff. That's a quality of life. That's got a value. [LB701]

SENATOR CHRISTENSEN: Well, I agree it's a value, but it's also a cost to the district. Thank you. [LB701]

SENATOR LOUDEN: Any other questions for Claude? Seeing none, thank you for testifying. [LB701]

CLAUDE CAPPEL: Okay. Thank you. [LB701]

SENATOR LOUDEN: This the last testifier? Okay, one more. [LB701]

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

Natural Resources Committee  
April 04, 2007

---

STEVE SMITH: (Exhibit 15) Hello. My name is Steve Smith, S-t-e-v-e S-m-i-t-h. I represent WaterClaim, which is an association of ground water irrigators and businesses which rely upon ground water. First, I'd like to say that we support the concept of surface water purchases as a method of compliance. At the same time, I agree with everything that Don Adams had to say and that the ground water irrigators and the things that are happening in the basin are not within the control of irrigation. They did everything that was within the law. At the same time, if we adopt the approach that he suggests we will probably die and we'll lose everything. Therefore, that solution of just waiting it out is not acceptable to us. The farmers that I represent are willing to pay a tax. They are willing to pay a sizeable contribution of an occupation fee, a property tax, or whatever that turns out to be, towards resolving this problem. They think it's grossly unfair. They think it is very inappropriate. And the reason we're willing to do it is because what we gain is worth far more than what we lose if we don't do it. At the same time, we have many concerns about LB701 as written. And I've talked with each one of you prior to this. I've handed out a piece of paper that lists those concerns. And if you can address those concerns, I believe that you can make this a good bill. I believe that this is a bill which, as I say, even though it's distasteful, may allow the basin to stay in compliance, and that is of great value to us. And the reason I'm here as a neutral position, we don't believe it's fair. We believe that some of the suggestions we've made are essential and required, but if you can make those then we can support the bill. Thank you. [LB701]

SENATOR LOUDEN: Questions for Steve? Seeing none, thank you, Steve. Go ahead. [LB701]

MATT HARRISON: Good afternoon, senators. My name is Matt Harrison, M-a-t-t H-a-r-r-i-s-o-n. I'm a farmer, rancher. I'm a certified ground water well irrigator and a surface water irrigator with the Bostwick Irrigation District in Nebraska, located just below the Harlan County Dam. I'm testifying in the neutral position today because I am for and against parts of LB701, mainly having to deal with Section 7. First of all, I would like to say that I am for Section 3, or subsection (3), the vegetative management bill that Senator Carlson has introduced. I commended Senator Carlson for this bill. Living close to the river, I was able to watch firsthand the Bostwick release last year and how much of that water was not reaching Kansas because of the vegetation in the rivers holding it back. It was unbelievable. Under my estimation and from what I gather, there was...it looked like...what looked like 1,200 acre-feet was actually 400, so a third of it. I'm also for Section 4, which is the augmentation of river flow, whether that be intrabasin or interbasin transfers. The portion that I am...part of the bill that I am concerned about is the bonding authority, even if it is just the authority for the permanent purchase of surface water irrigation districts. That is with Section 1 and 2, if I...parts (1) and (2) of Section 7: Acquisition and ownership of water rights in accordance with Chapter 46, Article 6, Chapter 46, Article 2, including storage water rights, with respect to a river or

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

Natural Resources Committee  
April 04, 2007

---

any of its tributaries, and acquisition by purchase or lease of the administration and management, pursuant to mutual agreement, of canal and other works, including reservoirs constructed for irrigation from a river or any of its tributaries. I'm against that portion of the bill. I feel that there are two studies out there that are not complete yet. There's a conservation study between the three states that I would...and there's a riparian habitat study that's in conjunction with local natural resources districts and the Department of Natural Resources. For good, for bad, I feel that we need to know the answer to those studies before we can make a decision of such magnitude. Once again, the permanent purchase is just too final. I am for a yearly purchase of surface water, if available, willing buyer, willing seller, but I am not for the permanent purchase of surface water. [LB701]

SENATOR LOUDEN: Okay. Questions for Matt? Senator Christensen. [LB701]

SENATOR CHRISTENSEN: Thank you, Chairman Louden. Matt, thank you for coming. Does it bother you if we done a year-to-year buyout at rates paid, seven years would equal a long-term buyout? Does that bother you, that you just have...perpetuate forever a tax on the basin? [LB701]

MATT HARRISON: Well, thank you, Senator Christensen. I don't know if it's as much about money as it is about people, because we're counting out people that are surface irrigators also that are...that would be...they are missing out on an income. I don't have the actual answer to that, I guess, but, you know, it's not...even if it costs a little more for a yearly basis, you know, it might not be needed every year. [LB701]

SENATOR CHRISTENSEN: Well, that's correct, but on this they can turn around and sell it back to the people that they buy the rights from. [LB701]

MATT HARRISON: The surface water right, correct? [LB701]

SENATOR CHRISTENSEN: Yeah, the one that buys surface water rights, if there's excess water they can turn and sell it back to you. [LB701]

MATT HARRISON: Okay. [LB701]

SENATOR CHRISTENSEN: That's not prohibited. [LB701]

MATT HARRISON: Well, I just don't feel that the permanent purchase is a good idea. [LB701]

SENATOR CHRISTENSEN: And that's fine. That's... [LB701]

MATT HARRISON: But that's... [LB701]

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

Natural Resources Committee  
April 04, 2007

---

SENATOR CHRISTENSEN: ...fine to have that your view. [LB701]

MATT HARRISON: Yeah. Thank you. [LB701]

SENATOR CHRISTENSEN: Thank you. [LB701]

SENATOR LOUDEN: Other questions for Matt? Seeing none, thank you, Matt. [LB701]

MATT HARRISON: Thank you. Thank you very much for the opportunity to testify today. [LB701]

SENATOR LOUDEN: You bet. Any more testifiers? (See also Exhibit 16) If not, then we'll close the hearing on LB701 or AM701, AM872, or whatever it is. What is it? [LB701]

(WOMAN): AM872. [LB701]

SENATOR LOUDEN: AM872. And we will go into Executive Session, so we'd ask that you hurriedly clear the room. [LB701]