

I think I'd like to have the record made clear by Senator Schmit on his last amendment which is now a part of the bill. I read the amendment earlier this morning, Senator Schmit, because it was on my desk and I noted a couple of things about it and I'd like just to have your comments on it. At this time our law allows the Department of Water Resources to divert public surface water outside of Nebraska to another state. Thus, we could divert it from Nebraska to Colorado or from Nebraska to Kansas or from Nebraska to South Dakota or from Nebraska to Missouri or from Nebraska to Iowa, but your language of your amendment allows for that diversion to any other state, not just an adjoining state, so, therefore, it could be diverted to Arkansas or it could be diverted to some other state, a la, through a coal slurry pipeline. Can you explain why you wanted to allow for the diversion of our water to any state, not just an adjoining state?

SENATOR SCHMIT: Mr. President, Senator Vard Johnson, in reading the 1982, U.S. Supreme Court decision, it became clear to myself and to attorneys with whom I conferred that it was not possible for Nebraska to deny or to demand reciprocity or reciprocal agreements between states, therefore, the Supreme Court decision did not say that only the adjoining states could have water. They said, in effect, that unless we can show irreparable harm, that we have to allow the water to move and the State of Nebraska has not one whit to say about it. So what I am trying to do with 146 is to put some language in the statute that does give the Director of Water Resources some reason for denying a transfer. At the present time, there is none, but the court decision, and again, I may be wrong, but the attorneys with whom I have conferred have told me the court decision does not say only adjoining states but any other state may, in fact, have Nebraska water, much to my chagrin.

SENATOR V. JOHNSON: Secondly, you've got a variety of factors set out for the Director of the Department of Water Resources to consider in determining whether or not to allow the diversion of Nebraska water to other states, but the bottom line is, the bottom line is, it says, "The application for the diversion of water shall be deemed in the public interest if the overall benefits to Nebraska are greater than the adverse impacts to Nebraska." What do you mean by the overall...what do you think is meant, Senator Schmit, by determining whether the overall benefits to Nebraska are greater than the adverse impacts to Nebraska?