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Appropriations Committee
March 12, 2007

[AGENCY 29]

SENATOR HEIDEMANN: Is there any other testimony on this agency's budget? Seeing none, we will close up the public hearing on Agency 72 and open up the public hearing on Agency 29, the Department of Natural Resources. Welcome. [AGENCY 72 AGENCY 29]

ANN BLEED: (Exhibit 10) Thank you. Good afternoon, Chairman Heidemann and members of the Appropriations Committee. My name is Ann Bleed; that's A-n-n B-l-e-e-d, and I am the director of the Department of Natural Resources. First, I want to voice my support for the Governor's recommendations for the department funding for 2007-2009 biennium, and also express my appreciation for the Appropriation Committee's continued commitment to our funding needs and program activities. The funding we have received has helped us improve our services to the state. As part of LB962 implementation work, the department has proceeded with analyses to determine which basins in our state are fully and overappropriated, and to work cooperatively with the natural resources districts to jointly develop plans for conjunctive management of our surface water and hydrologically connected ground water. To the extent possible we have stretched these dollars by using them as a match for grants and programs from the Natural Resources Conservation Service, the Farm Service Administration, the U.S. Geological Survey, and other federal programs, or have worked with the university to optimize the use of their expertise and scientific resources. We learned many things in this process, but perhaps the most important lesson was how very, very important it is to have good science in making water management decisions that have significant impacts on so many people. The funding you provided over the last two years has allowed the department to appoint an integrated management coordinator, hire six more staff including a geo-hydrologist, three groundwater modelers, two water rights permits and adjudications staff, and an attorney. These sources have been extremely valuable in enabling the department to further refine and validate our modeling capabilities. The state's participation in the Conservation Reserve and Enhancement Program,

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commonly known as CREP, and the Environmental Quality Incentive Program (EQIP), has resulted in significant leveraging of state dollars to obtain federal funds to reduce the consumptive uses of water in overappropriated basins such as the Platte River and the Republican Basin. The state committed \$5 million for the CREP program, and in return we got \$153 million from the federal government to retire irrigation on up to 100,000 acres, and plant those acres to grassland for wildlife habitat. This was the first program in the United States in the CREP to retire acres specifically the conservation of water. There is a chart attached to the handout, indicating the contracts signed to date. We have over 44,000 acres signed up in the CREP program and we have 9,000 acres in applications that we're still processing. The program is continuing and we request that the remaining funds in that program be reappropriated. The EQIP programs have resulted in the retirement of over 9,900 acres in the Republican Basin for four years and the permanent retirement of about 5,000 acres, half of which are in the Republican Basin and about half in the Pumpkin Creek watershed in the Panhandle. Last year, the Legislature created the Interrelated Water Management Program and provided \$2.5 million to fund this program. This grant program is intended to facilitate the work of the natural resources districts in carrying out their duties under the Ground Water Management and Protection Act and to help offset costs incurred in performing those duties. This program is administered by the Department of Natural Resources based on recommendations from the Natural Resources Commission. Each year the commission develops guidelines describing the requirements and priorities for the use of these funds. NRDs must submit an application to the Natural Resources Commission stating what they're going to be doing with the funds, and they almost must provide 20 percent of the total project cost from local funds. There is a list attached of the funds of the projects we have funded so far. We have funded projects for most than \$2.4 million to 14 different projects, and there were 22 different NRDs participating in those projects. Twelve of these projects are projected to continue for one or two more years. Based on the applications so far, it appears likely that the requests will exceed the funding we have requested in this budget year. It should be highlighted that contrary to our previous budget, the department's budget request for 2007 and 2009 does not include

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pass-through funds of \$400,000 to the natural resources districts in the Platte Basin to help developing the Platte River Recovery and Implementation Program. I would like to stress that one of the top priorities of the department is to continue our efforts to develop, through much greater uses of our database, more efficient business processes for recording and evaluating water rights applications. Efforts to date have resulted in significant time savings in processing applications and more accurate and accessible databases and water rights records. Further savings will be realized from other changes, both planned and in progress. To this end we appreciate the committee's direction to consolidate several of the department's programs under our primary program. Consolidation will provide the department with the flexibility that we need to optimize the use of our personnel and other shared costs. We will however establish separate subprograms to assure that the investment in each of these program areas can still be highlighted and measured. I want to comment briefly on the committee's proposed changes in funding for two of the department's programs. First is the elimination of funding for the Soil Survey Fund. Work currently underway by the UNL School of Natural Resources to resolve differences in survey data at county boundaries is scheduled to be complete in December of this year. If funding ends in June, as recommended by the budget you proposed, the work will stop prior to completion. We believe some limited additional effort would provide data valuable to the department as well as other state and local agencies. To complete this work I would ask that you consider appropriating \$72,000, which is about half of one year's request. The second is the reduction of the Nebraska Resources Development Fund. My intent here is simply to help assure that the committee is aware of the fund activity and the implications of a funding change. We have seen significant increases in total costs of proposed projects and related requests for funding from the NRDF fund over the past several years. Program funds are no longer sufficient to allow all eligible projects to be approved. For this reason, the Natural Resources Commission is currently working through a process to define in a much more structured way a ranking criteria for use in comparing competing project proposals to help decide which proposal should be approved. Coupled with the increase in the cap for approved but as yet unfunded projects granted

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in last year's appropriation bill, the lack of fund has lengthened timeframes for fully funding approved projects. The committee's proposed reduction will further lengthen the funding timeframe and may potentially deter sponsors from proposing water and soil resource management initiatives that would provide significant value to the state and to the public. Finally, I would like to comment on and urge you to advance LB322, the Governor's bill which creates the Water Resources Cash Fund. LB322 states that the funds shall be expended by the department to aid compliance efforts regarding the reduction of consumptive uses of water in regards to programs dealing with the natural resources districts which are deemed to be overappropriated or are bound by interstate compact or decree. For this year, we would like to use any funds appropriated to the Water Resources Cash Fund to lease surface water in the Republican River Basin to assist the state in achieving compliance with the Republican River Compact. In the future, we would use these funds to assist in complying with both the Republican River Compact and the Platte River Recovery and Implementation Program, which Governor Heineman has just signed with the states of Colorado, Wyoming, and the U.S. Department of Interior. We believe that this fund will benefit the states' ability to find a common solution regarding our issues with the consumptive use of water. I also want to highlight the importance of the funding streams recommended for this fund. With the support of \$2.7 million in general funding each year and with grant awards of \$300,000 from the Nebraska Environmental Trust Fund, the cash fund will be poised to aid in reducing consumptive use, making better use of water that is available, and when and where possible, augmenting streamflow in water-short years. The extension of the corn checkoff is another vital aspect of the fund. With additional funding provided by the checkoff beginning in 2012-13, long-term viability of the fund can be achieved in order to meet future needs. The third component of the Water Cash Fund concept, a component critical to the success of the fund, is the reduction of consumptive use through regulation. While outside of the fund, if we are to attain sustainability in overappropriated basins and achieve compliance with our interstate compacts and agreements, regulation of water use will be a necessity. With proposed revenue streams of \$3 million from the state sources, and an additional checkoff funds, and cash

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equivalent regulatory practices, the Governor's recommendation ends up at \$128 million by fiscal year 2018-19 in cash and cash-equivalent regulation. Each revenue source is vital to the viability and sustainability of the fund and of the economies that depend on the water resources in these overappropriated basins. The proposed statute does not, however, establish priorities for the use of the fund. The department is currently working with the funding subcommittee of the Water Resources Task Force to develop a process to determine priorities for future uses of the Water Resources Cash Fund. We are hopeful that the task force will finalize their recommendation at its March 19 meeting. In general, the process being discussed would start with a review of what is known about the hydrology and water uses of each of the state's river basins. Stakeholders in each basin would be asked to identify their water management issues and priorities. This information would be compiled into an annual report and submitted to the Water Policy Task Force for their review and recommendations. These recommendations would then be forwarded to a committee consisting of the Governor or his or her appointee, the chairs of the Natural Resources Committee and the Appropriations Committee, and the director of the Department of Natural Resources, and one or two representatives from the water community. This committee would look at each of the basin's funding priorities and make a recommendation to the Legislature from a statewide perspective on how the funds of the Water Resources Cash Fund should be allocated for the next two and ten years. Thank you for your time and consideration. I am happy to try to answer any questions you may have. [AGENCY 29]

SENATOR HEIDEMANN: Are there any questions? Senator Synowiecki. [AGENCY 29]

SENATOR SYNOWIECKI: Thank you for your testimony. I'm trying to conceptualize all this. We have \$5 million appropriated to the CREP program. [AGENCY 29]

ANN BLEED: Um-hum. [AGENCY 29]

SENATOR SYNOWIECKI: We've got \$2.5 million in the Interrelated Water Management

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Resource Program. [AGENCY 29]

ANN BLEED: Right. [AGENCY 29]

SENATOR SYNOWIECKI: Another additional \$2.5 million requested for the Water Resources Cash Fund... [AGENCY 29]

ANN BLEED: Right. [AGENCY 29]

SENATOR SYNOWIECKI: ...to the Governor's new program...that's a new program. [AGENCY 29]

ANN BLEED: Um-hum. [AGENCY 29]

SENATOR SYNOWIECKI: Help me understand all this, and then we have Senator Kopplin who introduced LB594 which was a proposal, a legislative initiative to take a time-out, a two-year time-out on new well drilling in the state of Nebraska, which from a public policy perspective, given the level of general fund appropriation, seems very reasonable to be, that as we begin to sort this thing out we get a time-out period here so we can figure out where we're at and where we're going, this enormous amount of resources going to this program or these various programs. Help me to understand why we can't have the LB594, as Senator Kopplin has introduced to the Legislature, that would simply provide a two-year time-out during extreme drought conditions in our state, why that doesn't represent viable public policy, especially as you consider the enormous amount of general fund appropriations going to this problem. [AGENCY 29]

ANN BLEED: Well, I'm not going to comment on the pros and cons of Senator Kopplin's bill, but what I would point out is that LB962, which became law in 2004, did establish a process through which the Department of Natural Resources determined which basins are or soon will be fully or overappropriated. And I think this process is working well. We

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are being very conservative in trying to determine a basin if fully appropriated before rather than after it becomes fully appropriated, and I would simply say there are some areas of the state where we are not fully appropriated. I think there is room for further development and I think the process I'm outlining would have, you know, would allow those areas to develop. Having said that, I understand your frustration, Senator; I have the same frustration and I've heard many people across the state throughout the Upper Republican Basin, as well as the Platte River Basin, saying that we should have something like LB962 long before 2004 because we are overappropriated in the Platte and Republican basins. [AGENCY 29]

SENATOR SYNOWIECKI: Okay. By categorizing...again, I'm trying to comprehend this as best I can. By categorizing a particular basin as overappropriated, does that in and of itself not allow any drilling to take place in the basin? [AGENCY 29]

ANN BLEED: Yes. The minute we declare a basin either fully appropriated or overappropriated--minute is a little bit of an exaggeration--but within days of the final determination, there is a moratorium put on the drilling of new wells and the issuing of new surface water permits and the expansion of irrigated acres. [AGENCY 29]

SENATOR SYNOWIECKI: Under LB962? [AGENCY 29]

ANN BLEED: Under LB962. [AGENCY 29]

SENATOR SYNOWIECKI: It's explicitly in state law? [AGENCY 29]

ANN BLEED: That is explicitly in the statute. [AGENCY 29]

SENATOR SYNOWIECKI: Okay. Do we know how many wells have been drilled in the last, say, three to five years, in the overappropriated basins? Do we have that data? [AGENCY 29]

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ANN BLEED: We have that data and I certainly can get that for you, Senator. [AGENCY 29]

SENATOR SYNOWIECKI: Has there been drilling done within those overappropriated basins within the last three years? [AGENCY 29]

ANN BLEED: There have been no new wells drilled in the Republican Basin since 2003, and then the Republican Basin, the moratorium went on in 2004. And, no, there have not...there have been replacement wells drilled. There have been some new wells drilled but only if other uses have been retired, because they cannot increase the consumptive use. So, for example, you could have an ethanol plant drill a new well, but in many cases, in most cases those plants will have to buy out an existing well before they can put in their new well. [AGENCY 29]

SENATOR SYNOWIECKI: So the CREP program, these other programs, we are essentially either paying the agricultural community to not till land, not farm it, or we're appropriating general funds to not utilize any water on the above-ground situation. The...what got us into this situation...I understand the drought played a role, obviously, and so forth, but the water utilization problems, was that, for the most part, agriculturally driven? [AGENCY 29]

ANN BLEED: Agriculture accounts for the largest consumption of water. Over 90 percent of the water consumed is through agriculture. So, yes, agriculture is a big part of the water use and is driving a lot of the issues in the basin. [AGENCY 29]

SENATOR SYNOWIECKI: Now, this new Water Resource Cash Fund, there seems to be a lack of direction within statute on explicitly what it can and can't be used for. [AGENCY 29]

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ANN BLEED: Um-hum. [AGENCY 29]

SENATOR SYNOWIECKI: Can you give us some language that perhaps would more narrowly define what this additional \$2.5 million could be used for? It's very general and very open-ended. [AGENCY 29]

ANN BLEED: It is very general and open-ended, and right now it's to be used for overappropriated basins and basins that are restricted by an interstate compact or an agreement. And that's partly because the state obviously has a great deal at stake if we do not comply with our interstate compacts and agreements on both the Platte and the Republican. There is a tremendous amount at stake there, so that would be the first priority for use of those funds. As we go down the road, I think what I tried to outline from the subcommittee the Water Policy Task Force is working on would be a good way to figure out exactly how these funds would be used. And again, that would be through an annual reporting to a committee which would be basically the decision makers who decide how funds are used in the ~L--the Legislature and the government. [AGENCY 29]

SENATOR SYNOWIECKI: I would be interested: Did the department testify on LB594? [AGENCY 29]

ANN BLEED: No, we did not. [AGENCY 29]

SENATOR SYNOWIECKI: Not even in a neutral capacity? [AGENCY 29]

ANN BLEED: No. [AGENCY 29]

SENATOR SYNOWIECKI: Thank you. [AGENCY 29]

SENATOR HEIDEMANN: Are there any other questions? Senator Harms. [AGENCY

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SENATOR HARMS: I'm having trouble understanding this subcommittee on the Water Policy Task Force. Could you explain that to me? And who is going to be...who is on that committee? [AGENCY 29]

ANN BLEED: Well, the Water Policy Task Force, as you probably know, is 50 members from all over the state. [AGENCY 29]

SENATOR HARMS: That's LB962? [AGENCY 29]

ANN BLEED: That developed LB962. And the subcommittee, the funding subcommittee, consists of task force members and--some of the task force members. We've divided up into subcommittees to look at various issues: surface water rights, groundwater rights, and administration, and in this case, funding. It consists of mostly subcommittee members, but a few ad hoc members who have been trying to figure out what is the best way to get funding for the technical needs which are incredibly expensive, but I believe extremely important if we're going to make wise decisions in water uses, and then to get funding to implement some of the projects and other programs that will get us into compliance with our compact, as well as back to a fully appropriated state. The problem we have in the overappropriated basins, in my view, and as I said before we probably should have put brakes on the system 20 years ago. The state didn't. The irrigators did what an irrigator will do, a farmer will do. They'll figure out what is the best legal way to make a profit from their farming operations. And so everything they did was legal. The state, very frankly, was somewhat slow to give the natural resources districts the authorities they needed to really put a moratorium on. Until not too many years ago, putting a moratorium on new wells was a regulation of last resort. You had to try everything else first before you could do that, so we ended up in this situation. Hindsight would be great. We shouldn't have done what we did, but we are here now, and the question is, how do we move forward without causing extreme

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hardship to the economies in these basins? [AGENCY 29]

SENATOR HARMS: Is this subcommittee dealing directly with the Republican River and the Platte Basin, or just the Republican? [AGENCY 29]

ANN BLEED: Actually they're dealing with the whole state. [AGENCY 29]

SENATOR HARMS: Okay. [AGENCY 29]

ANN BLEED: The subcommittee agreed that to begin with we need to deal with the Republican and the Platte. But the long-term goal, as I said, is to look at annual...do an annual report of all the river basins in the state, and have those...it's a bottoms-up process. So each river basin, working with the natural resources districts and the stakeholders in the basin, would identify what their needs are, and then the task force would look at it from a statewide perspective, and then finally this committee--the Governor and the Chairs of the legislative committees. [AGENCY 29]

SENATOR HARMS: Who appointed these committee members (inaudible)? [AGENCY 29]

ANN BLEED: The task force committee members? [AGENCY 29]

SENATOR HARMS: Task force, yeah. [AGENCY 29]

ANN BLEED: Various...they were appointed in various ways. Essentially, for example each river basin in the state has as a surface water irrigator and a groundwater irrigator. Most of those folks were appointed by groups within the local area. We got folks together and said, okay, who should represent you on the Water Policy Task Force? The same thing happened with the environmental interests. The municipal interests were appointed by the League of Municipalities. The NRDs were appointed, interests

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was appointed through the natural resources districts; power districts, likewise.

[AGENCY 29]

SENATOR HARMS: Could you share a list of the people who are on those task forces?

[AGENCY 29]

ANN BLEED: Certainly. [AGENCY 29]

SENATOR HARMS: I'd like to look at those if I could. [AGENCY 29]

ANN BLEED: Absolutely. [AGENCY 29]

SENATOR HARMS: Thank you. [AGENCY 29]

SENATOR HEIDEMANN: Are there any other questions I have one quick one; I hope a quick one. In your testimony you put it, the third component of the Water Cash Fund concept, a component critical to the success of the fund is the reduction of consumptive use through regulation. I was wondering how that's going and where it's headed.

[AGENCY 29]

ANN BLEED: Well, the DNR...I'm assuming you are looking at the Republican Basin for the moment. [AGENCY 29]

SENATOR HEIDEMANN: Yes. [AGENCY 29]

ANN BLEED: The DNR and Republican River NRDs have been working together to try to come to an agreement on what kind of regulations we need to put into place, as well as to try to ascertain whether there are augmentation programs that could assist in providing water to the basin so that the regulations would not have to be so severe. However, in my view, we are going to have to reduce our allocations in the basin if we're

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going to be in compliance with the compact. And the sooner we get started on that reduction, the better off we're going to be. I don't think we can do it without further reductions in our allocations. So we're still working on it, Senator Heidemann. [AGENCY 29]

SENATOR HEIDEMANN: But it won't happen this year? [AGENCY 29]

ANN BLEED: The NRDs have agreed with their stakeholders that they would not make reductions in their allocations this year, which is why we're looking at potentially raising funds to have a surface water buyout. And even with that buyout, that alone is not going to get us into compliance with the compact in the next year or so. [AGENCY 29]

SENATOR HEIDEMANN: Exactly why couldn't we kind of make the regulations go a little bit faster to maybe start the process? [AGENCY 29]

ANN BLEED: Well, I think we can for the years 2008 and on, we do need to make restrictions. I think the problem has been, is that the natural resources districts told their constituents that they would not be changing the allocations for three years, and they did not want to go back on their promise. [AGENCY 29]

SENATOR HEIDEMANN: Senator Wightman. [AGENCY 29]

SENATOR WIGHTMAN: I don't know whether it's LB700, I think it is, the (inaudible) bill. [AGENCY 29]

ANN BLEED: LB701? [AGENCY 29]

SENATOR WIGHTMAN: LB701, that provides that the Legislature would set the appropriations in the Republican River Basin right now as opposed to the NRD which has set it in the past. And obviously there are arguments, certainly, against the NRD,

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but do you think it would be a sensible solution that have the Legislature set those allocations with no expertise in the area? Or maybe I'm only speaking for myself, but.
[AGENCY 29]

ANN BLEED: (Laugh) Well, I think that it's very important when you set the allocations to have a good, sound technical basis for those allocations. You are taking the right to pump water, you are eliminating that. Or you the right to divert water, you're making limitations on that. And I don't think you want to be in a position where you are making an arbitrary and capricious decision. The department works very hard when they work with the NRDs to establish what allocations should be to have a good, sound technical basis for that. The other aspect of it is that I think in order to be responsive to changes in water conditions and the changes in the water conditions in the Republican Basin, they can change virtually overnight. I can say that three weeks ago we expected to have absolutely no water available for irrigation out of Harlan County Lake. And within two weeks, because of rains and snows, we're now looking at a potential of 24,000 acre-feet being available out of the lake. Those kinds of quick changes are something that you would want to be able to respond to a little bit faster than the Legislature usually works.
[AGENCY 29]

SENATOR WIGHTMAN: I agree with you. You think we would be having a lot of special sessions of the Legislature if we were to implement (inaudible). [AGENCY 29]

ANN BLEED: I would be delighted if you want to take that responsibility. No, I'm being somewhat facetious. I do believe that it is important for the Department of Natural Resources to provide the technical basis for such decisions. [AGENCY 29]

SENATOR HEIDEMANN: Senator Synowiecki. [AGENCY 29]

SENATOR SYNOWIECKI: I wonder if I heard you correctly. I think you were talking about the Republican Basin and that they are not in agreement to do voluntary

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reductions. And then... [AGENCY 29]

ANN BLEED: No, not voluntary. They have asked their irrigators to do voluntary reductions, and the irrigators have been doing a lot of voluntary reductions. What the NRDs have been reluctant to do is change the allocation for this year. [AGENCY 29]

SENATOR SYNOWIECKI: Okay. And because of their reluctance to change the allocation, there is an assumption that the state will move in with these funds? [AGENCY 29]

ANN BLEED: Not on my part. But... [AGENCY 29]

SENATOR SYNOWIECKI: Well, I mean implicit within what you're saying is, to the NRD the Lower Republican will not rectify the appropriation pursuant to what is going on relative to the situation with water. And then there is an assumption that the state will come in and essentially buy those water rights out. [AGENCY 29]

ANN BLEED: I don't think that's the prevailing assumption of the natural resources districts. I think they do understand they have to maintain regulations and probably lower their allocations. [AGENCY 29]

SENATOR SYNOWIECKI: So we can...we could, under...we could send a message that we're not going to come in and bail out, and that they would have to change allocation. I mean, won't that be...rather than going to the, excuse the pun, but the general fund well, wouldn't it be more economically feasible to change the appropriation rather than to come to one of these funds to bail them out? [AGENCY 29]

ANN BLEED: I think there needs to be a combination of both, Senator. You've probably seen the statement that we cannot resolve the compact compliance issue by regulating wells alone. I don't agree with that statement. I think we certainly can do that and we do

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it in a relatively short period of time. However, we cannot do that in the next year or two because of the tremendous inertia in ground water and how it behaves. If we shut off all wells in the basin this year, we would not be able to be in compliance with the compact this year. In a few years down the road, we would be sending way more water than we need to, to Kansas, but this year we could not do it. So I think what people are looking for is some help this year to get us closer to compact compliance, to show our good faith to Kansas that we are trying to comply with the compact. But I agree with you, that it does need to be coupled with a very definite commitment to get into long-term compliance with the compact so that we would not be going to the well every year. I see this as a transition to help the basin through this very difficult period. The drought is not helping that. But once we get through that transition, I would hope that we would not be going back to the state for surface water buyouts. I would hope that the basin itself would figure out mechanisms to deal with the variety, of the variability of the water supply. [AGENCY 29]

SENATOR SYNOWIECKI: You mentioned the liquidity, if you will, of the situation, and then what if we do buy out surface water rights, and then there is an enormous amount of rainfall this coming year? [AGENCY 29]

ANN BLEED: That's a good question, and if there is an enormous amount of rainfall, one of the things that would happen is we would get Harlan up to where it should be, to be out of a water-short year. We have 24,000 acre-feet in Harlan County Lake but the definition of a water-short year in that lake is 119,000 acre-feet, and the normal supply is 130,000 acre-feet. So I would love that scenario and I still think we would be able to capture the water. [AGENCY 29]

SENATOR SYNOWIECKI: I'm trying to conceptualize this on an individual farmer basis, which is a business in our state, is it doesn't prohibit them from planting crops. It just prohibits the use of surface water. [AGENCY 29]

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ANN BLEED: Right. [AGENCY 29]

SENATOR SYNOWIECKI: Now, crops could be planted like they always are, and we could receive above normal or a sufficient amount of rain... [AGENCY 29]

ANN BLEED: Um-hum. [AGENCY 29]

SENATOR SYNOWIECKI: ...for a relatively attractive yield on those crops, and yet we'll be using general fund money to buy out the surface water rights... [AGENCY 29]

ANN BLEED: Right. [AGENCY 29]

SENATOR SYNOWIECKI: ...for that individual farmer. [AGENCY 29]

ANN BLEED: Um-hum. That's the concept in order to make sure that we can provide some water to Kansas this year, which would help us in compliance and also provide them with some water that they can use and potentially limit any potential damages that they could claim. [AGENCY 29]

SENATOR SYNOWIECKI: But doesn't that strike you as, you know, in terms of public policy, does that strike you as fair and equitable public policy, that we buy out surface water rights but yet don't prohibit the planning of consumptive crops and so forth? [AGENCY 29]

ANN BLEED: Well, the compact itself does not include in its calculations the consumption of water from dryland crops. So in that sense it does strike me as good public policy for the short term. We do need to do whatever we can to achieve compliance with the compact. I think it's very important for the whole state that we get there as fast as we can. By not applying irrigation water to these crops, not applying the surface water, we can get some water to Kansas. They still can grow a dryland crop

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which does not count as part of the compact calculations. And to me, in the short term, it could be a win-win situation. In the long term however, we have got to take steps to get into a balance between supply and use, not only for the compact but for the sustainability of agricultural interests in the basin in the long term. And that's going to take restrictions on the amount of consumptive use we have. [AGENCY 29]

SENATOR HEIDEMANN: Senator Wightman. [AGENCY 29]

SENATOR WIGHTMAN: As a practical matter, these farmers don't plant the same amount of seed corn and they don't use the same amount of fertilizer if they know they are going to be limited or completely shut off on their water. So they won't produce the same amount or very likely wouldn't if they scale back because of no irrigation water available. Is that a correct statement? [AGENCY 29]

ANN BLEED: That would be correct. That's definitely correct. [AGENCY 29]

SENATOR HEIDEMANN: Senator Nantkes. [AGENCY 29]

SENATOR NANTKES: Thank you, Director Bleed. Just listening to your testimony here this afternoon and you having briefed this committee at a prior meeting, and having heard from the Attorney General's Office and other people with a stake in these water issues, which in reality is everyone in the state of Nebraska, it seems that you are indicating to us that there is a top priority amongst the department and for the state to focus on compact compliance. [AGENCY 29]

ANN BLEED: For this year, yes. [AGENCY 29]

SENATOR NANTKES: For this year. And I guess what I'm wondering is, and maybe it's far too simplistic, but if that is in fact the top priority for this year, looking at the overall appropriation for the department, it's over \$20 million. Instead of proposing a new

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funding source, instead maybe couldn't the department and the state look within to try and find that kind of financial resource within the (inaudible) appropriations? [AGENCY 29]

ANN BLEED: Not without legislative changes. Most of our funding is going to things like the Natural Resources Development Fund or the Small Watersheds Funds, and so forth, which are, by statute, essentially pass-through money and they don't go into the department's budget per se. In terms of our budget, we have a limited amount of money for the interstate compacts and decrees, and to be honest with you, most of that money goes toward technical work to make sure that we are getting fairly treated by the compact, to make sure that the Republican River model is, in fact, working properly, etcetera. [AGENCY 29]

SENATOR NANTKES: Thank you. [AGENCY 29]

SENATOR HEIDEMANN: Senator Wightman. [AGENCY 29]

SENATOR WIGHTMAN: (Inaudible) question. On CREP and EQIP funds, is there any federal funding of that or is it all done by the state? [AGENCY 29]

ANN BLEED: Well, on the CREP, there is \$153 million of federal funds, and we put up \$5 million. We got a very good deal on that. The later CREP programs for other states are very envious of the match that Nebraska got. On the EQIP program, it varies a little bit more depending on whether it's a four-year temporary buyout or a permanent buyout. We've been working very closely with the Natural Resources Conservation Service to try to use our money for permanent buyouts of irrigation rights with the EQIP program, figuring that down the road that will get us closer to where we need to be and be a better use of funds. [AGENCY 29]

SENATOR WIGHTMAN: Than you. [AGENCY 29]

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SENATOR HEIDEMANN: Are there any other questions? I think we've got a situation out in parts of western Nebraska that are very delicate when we talk about irrigation, and I realize how important irrigation is to that area of the state because I was out there, I think in 2005. And the farm ground that wasn't hit with irrigation, that was in July, the corn was a lot shorter than what I was, and getting brown, and I'm not the tallest person in the world so I know it wasn't going to yield very much, so. [AGENCY 29]

ANN BLEED: It's a tremendously important issue for the state, and I would really hate to see the economies in the western part of the state and in the Republican Basin suffer. I think what we need to do is to help those producers through this transition period and then make sure that in the future they can stand on their own to be in a more sustainable position. But right now they need some help. The double whammy of the drought and the compact, etcetera, is creating real problems. [AGENCY 29]

SENATOR HEIDEMANN: Will we ever get to the point where we know what's sustainable as far as pumping? [AGENCY 29]

ANN BLEED: Yes, and it's...I mean... [AGENCY 29]

SENATOR HEIDEMANN: Are we there? [AGENCY 29]

ANN BLEED: We can develop that in terms of a water budget, and, yes, we can do that. Of course, what is sustainable depends on the water supply, and I haven't been real good at predicting what the water supply in the state is going to be from one year to the next. I'm not a very good weather man. But, yes, we can do that on the long term, more or less. One of the big issues that I'm worrying about right now is global warming and the impact that might have on our water supplies. The predictions I've heard do not look good. It looks like a potential 17 percent reduction in stream flow is one prediction in the western part of the state, by 2039. So I think we've got a major challenge in front of us. I

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wish I knew more about the impact of global warming on the state, but. So the answer is yes and no. In the short term, yes, we can, through a water budget. But trying to predict what it's going to do in the future is very difficult. [AGENCY 29]

SENATOR HEIDEMANN: Thank you for your testimony. [AGENCY 29]

ANN BLEED: Thank you. [AGENCY 29]

SENATOR HEIDEMANN: Is there any other testimony on Agency 29? [AGENCY 29]

JASPER FANNING: (Exhibit 11) Since you asked Director Bleed some of the questions that maybe you wanted to reserve for myself, I'm Jasper Fanning. I'm the general manager of the Upper Republican Natural Resources District. I'm testifying today on behalf of Dean Edson for the Nebraska Association of Resource Districts also. In fact, he is in Washington, D.C., right now, and sends his regrets. But he is working on some of these very same funding issues at the federal level with some of the federal agencies that we have been partnering with the CREP and the EQIP program. And my name is spelled F-a-n-n-i-n-g. It seems from some of the questions that you asked Director Bleed, I won't read my testimony. I'm sure that you are all quite capable of that. But to get at some of the underlying questions that you were asking Director Bleed, we're trying to develop, in the basin, and have made great strides in doing so, that developing a long-term plan to comply with the compact and still deal with some of our local problems that each district has. This long-term plan that we're trying to develop we recognize needs to be able to deal with short-term drought periods such as what we're in right now. We all wish that once that compact were signed and the ink were dry, we didn't hit into the extreme drought that we did so that the state had some time to evaluate what we were going to be able to do and what we were going to need to be able to do into the future to stay in compliance with the compact. Unfortunately that was not the case, so we dug a big hole as we moved through the drought, and now we're trying to figure out how to climb back out of that hole, so to speak. Frankly, to deal with

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the short-term problem, we can regulate ground water to essentially nothing, and that's not going to allow us to comply with the compact under the time lines in the compact for the settlement agreement. If we shut off all the groundwater irrigation in the basin, it's going to take a number of years before we get into compliance on an annual basis. And frankly, we are going to be out of compliance with the settlement agreement and with the compact before we get into compliance on an annual basis by regulating groundwater use alone. In fact, the natural resources districts aren't the only ones that recognize this. Here recently within the basin, the surface water irrigators and the irrigation districts stepped forward basically realizing that they held, if you will, title to the only water in the basin that could get us into compliance on an annual basis, and they offered that as part of the solution not to extort money from the state or from the other local folks in order to reap a windfall, but offered it essentially at a price that's not yet been fully negotiated but at a price that would compensate them for their lost economic opportunity for giving up that water. Within the basin and within the state, I think that the best way that we could proceed to move forward would be to try and get the maximum beneficial use out of the limited amount of water that we have available to us. And I think, as we try and put all these pieces of this puzzle together to comply both in the long term and in the short term, I...Director Bleed mentioned that we're going to have to regulate ground water. We have been doing that in my district, going on the thirty-first year, right now; have slowly been trying to ratchet that allocation down and keep the economic viability of the region going while managing the amount of water that we have available left in the water supply out there. You know, I'll be the first to tell you that we have a declining groundwater table in that area, and that was from overdevelopment back in the early '70s, late '60s, that happened before the NRDs were even formed, and folks in my area were the ones that were lobbying the Legislature to create the NRDs, and then later on to give them the authorities necessary to try and get a handle on that problem. Director Bleed correctly pointed out that it was LB962 that finally put a moratorium as an equal control that, you know, you didn't have to jump through all these other hoops before you could get there. So the other areas in the state will be able to benefit from that, not having to make the same mistakes, so to speak, that were made

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in our area in the past. Legislation has improved the (inaudible) that, that regulation of ground water works with respect to its impacts on surface water. And I think that the other areas of the state will be much better off as we move forward. However, to develop the most economically efficient plan that we can for the basin, and thus for the state, the things that we have to have available in the short term to deal with the drought situation are tools that allow us to have an immediate impact on stream flow and/or the allocation. Hence, those surface water buyouts and leases are the most appealing because that water can be made available for compliance in the year that it's not used. With ground water, you're talking...if you are right next to the stream, it's two, three, four, five, maybe even more years, depending on how far away from the stream you move, before those impacts are realized. And so just the terms of the settlement itself and how ground water works, take ground water regulation and make it a very inefficient tool for trying to come into compliance during a short-term drought period. It is the most efficient tool for managing a long-term problem, and that's what we have always been trying to do and will have to continue to do so. We have to continue to regulate such that the impacts from ground water don't continue to increase over time so that we reserve enough surface water in the basin so that we're always able to comply during the drought by using the surface water and these other shock absorber-type mechanisms during drought periods. Outside of that, you know, the other thing that I think you should be quite aware is this is probably the last place we would like to be. I know you've all heard comments or seen newspaper articles where one individual from their view of the world, from their back porch, has said that the state is one the hook for this and we can't let them off, or something of that nature. That's truly not the case. In fact, the local folks out in our area are supportive of increasing property taxes and/or per acre irrigated fees so that we can raise the local dollars to deal with this problem because we recognize that we have a significant contribution to make in coming up with a solution. The fact of the matter is, though, that it takes about a year and a half before we can get legislation to approve local funding mechanisms and generate the dollars necessary to deal with this problem, and we have an opportunity before us this year that we didn't have available last year. If we buy out essentially the surface water that's available, that

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would provide an impact in 2007, the last numbers I saw were similar above 30,000 acre-feet that we could make up. That, coupled with the department's discovery of a correction in the accounting process, would have us in compliance during the 2007 year if we were able to do that. We could do that locally in a couple years after we get some funding mechanisms set up. And just to give you some details on that, we're currently working, you know, within the rules of the Legislature to get some amendments put on particular bills such as LB272 so that we could have bonding authority within the basin, because as we move forward in doing these types of surface water buyouts, we can see the writing on the wall that we're going to need these surface waters in the future during drought periods, and we're well aware that buying them on an annual basis as needed, could be much more expensive in the long term, and we would be more financially responsible to look at those as long-term investments. And if we have...get the per irrigated acre-fee or an increase in property taxes, we could have a local funding mechanism that could take care of that. The only thing that we could possibly need from the Legislature this year would be some assistance in getting us through that stopgap that we have a year or so, essentially one year as it reflects in your budget, to help us get those up and going (inaudible). And I guess I would leave you with, you know, this isn't necessarily something that we're looking for a handout. From the state perspective, I think it can be viewed as an investment. You could invest a little bit in a solution for Nebraska in complying with this compact, and potentially save yourself a lot of money should be not find that solution and end up out of compliance with the compact. And with that I'll field any questions, Mr. Chairman. [AGENCY 29]

SENATOR HEIDEMANN: So you're thinking about taking your local sources of revenue, whether it be property taxes or fees on irrigated acres, and to pay off a bond that you're going to use the money to... [AGENCY 29]

JASPER FANNING: Yes. I believe that we...that is where we need to go long-term to be able to deal with these short-term water-short periods. [AGENCY 29]

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SENATOR HEIDEMANN: Okay. Senator Wightman. [AGENCY 29]

SENATOR WIGHTMAN: Your area of the state probably more than any other area has experienced the cutbacks. As you said, you started 31 years ago. Could you tell us what the effect has been on the area as far as crop production as you cut back on the...? [AGENCY 29]

JASPER FANNING: Well, we have taken...as we have dealt with this in the past, it hasn't been for compact compliance purposes up until 2004, so we were able to cut back water use at approximately the same rate that advances in technology allowed. And there were folks before you today talking about investing in technology. Certainly you could even go so far as to say that crop production has increased in our district even though the amount of water use has decreased. But we're always...I mean, within our district, our farmers are pushing that envelope right to the edge already. And, you know, I mean, there are a number of promised technological advances on the horizon, but until those are actually delivered, further reductions would result in a significant loss in production at this time. [AGENCY 29]

SENATOR WIGHTMAN: Have you looked at hybrids--I'm assuming you have--that are more drought resistant in your area of the state than perhaps someone else, some other areas of the state have? [AGENCY 29]

JASPER FANNING: Yeah. Well, I don't know that we've looked at them more, but they are certainly selected more, even under irrigation, people in our area look for varieties of corn that they can stress, because we're...at the allocation we have right now, there is a lot of deficit irrigation where they're not providing the full amount of water necessary to grow a maximum yield-type crop. So they are certainly selecting varieties that will produce the most on the least amount of water. [AGENCY 29]

SENATOR WIGHTMAN: On your allocation of property tax, if you were allowed to

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increase them by legislative action, what would be the allocation of that between the farms and the residential? [AGENCY 29]

JASPER FANNING: That's a very good question, Senator. [AGENCY 29]

SENATOR WIGHTMAN: I assume that's an issue. [AGENCY 29]

JASPER FANNING: In my district, about 85 percent, I believe the last number I saw of our valuation, is on ag land. So the...and nearly every farmer in our district is an irrigated farmer. Or course, there are dryland acres out there but there are very few dryland-only people producing. [AGENCY 29]

SENATOR WIGHTMAN: Would an increase in the tax lid, would it apply equally to the residents, the people that are living in towns and the folks...? [AGENCY 29]

JASPER FANNING: You know, that is how it's proposed. And within our basin it's very important to note that everyone benefits. There aren't many jobs that aren't at least indirectly related to irrigated agriculture, and certainly, you know, the funding situation is quite dynamic. It's not as simple as, you know, give money or not give money. If we're forced to overregulate for the short term with respect to the long-term problem, land values in our district would decline. You would see lower valuations, lower property tax collections by schools, and everyone else that relies on property taxes and those valuations. And, you know, given the state aid formulas, you would see more money going from the state here out to our area. So it's not as simple as send money or not send money in one form or the other. But, you know, again, I want to reiterate the commitment on the local people to come up with a funding mechanism, and I'll just note that a \$10 per year irrigated acre fee in my natural resources district alone would raise about \$4.5 million. To raise that amount via property tax, we would need to increase, an increase of about 33 and a third mills, and we're currently capped at eight and a half. So you can see what kind of drastic property tax increase that would be with respect to the

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NRD's portion of the property tax. And I certainly...my board has, in the past, supported the \$10 per acre fee, but other people in the basin think that since everyone benefits, that the property tax is the way to go. And I'll leave that up to the Legislature to decide. The more critical issue is that we get some sort of local funding mechanism because as it is, if we're forced to do...get into compliance through regulation alone, we're going to be forced to overregulate or regulate disproportionately. It's not a matter of surface water or ground water. It's how soon do your impacts show up in the river. And so we're going to be regulating more severely those people who farm and live next to the river. And they're going to be carrying a disproportionate amount of burden for the rest of the people in our district or in our basin, and the only way to find some sort of equality in that is through compensation. And our local folks out there recognize that and are willing to come up with some sort of a funding mechanism so that we can find a solution that works, essentially for all Nebraskans, and in an equitable and fair fashion.

[AGENCY 29]

SENATOR WIGHTMAN: When we talk about buyouts, are we talking about the difference between the irrigated land and dry land, or if you do it on a short-term basis, on the lease difference? [AGENCY 29]

JASPER FANNING: Well, the short term would be such that there is the decrease in the rental value to the landowner. There is also the lost profit, if you will, to the irrigator. And in our discussions, it's very clear that the price of corn is directly related to the value of water, and last year when corn was at \$2, it would have been relatively cheap to buy water compared to when it's at \$4. But also there is no time like right now, when corn is at \$4, that the farmers can afford to pick up their share of their burden. [AGENCY 29]

SENATOR WIGHTMAN: I guess the question I've been getting at, when you do the buyout is there any configuration given to the high risk of that land right now, that it may not be able to be irrigated for indefinitely? [AGENCY 29]

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JASPER FANNING: I think that when those prices are established, that that, I guess, valuation of risk, should be accounted for in the price of those lands as they are selling in the marketplace today. [AGENCY 29]

SENATOR WIGHTMAN: Thank you. [AGENCY 29]

SENATOR HEIDEMANN: Any other questions? One quick one from me. You talked about that the department had found a correction as far as the model for what we get credited down there. Does Kansas recognize that correction? [AGENCY 29]

JASPER FANNING: It has, I understand it, it's not been approved by Kansas. That is something that will have to go back to the compact, but the department has assured us everyone that they have talked to about that has agreed that the new method in which they have found is the correct method that should have been used. And that gets...I mean, it really is a huge discovery because that gets rid of what people had, you know we had been over by 30,000-some acre-feet, on average, in the last few years, and we know off 8,600 fee of that, that's 25 percent of the problem just went away because of a miscalculation, if you will. I would like for the department to find a couple more of those, but I'm not sure they are out there. [AGENCY 29]

SENATOR WIGHTMAN: One thing...go ahead. (Inaudible.) [AGENCY 29]

SENATOR HEIDEMANN: I was just going to talk about the NRDs for just a second. Do you feel like they are working pretty good together now that they've got a common focus? They're all working good and they're all about at the same level? Or do you think...? I don't want to get you in trouble, but. [AGENCY 29]

JASPER FANNING: Well, I'll say that I've been employed by the Upper Republican for about three years now. And since I've come on board, we're working more closely together here in the last six to nine months than we were over the couple years before

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that. I think we're, as far as the base in policies and how we need to proceed, that we're in complete agreement on how that needs to happen and that's what I've represented today. Now, there are always going to be differences in the resources that each district has or what each district...you know, to meet its other obligations outside the compact, how they think things should best be handled, and those really are irrelevant as far as compact compliance, but. With respect to what we're working on at the basin level where, as far as I'm concerned, in 100 percent agreement on how we need to move forward and what we need to do, and the people in the basin are supporting the types of things that we're talking about now. [AGENCY 29]

SENATOR HEIDEMANN: Senator Wightman. [AGENCY 29]

SENATOR WIGHTMAN: I believe when Ann Bleed visited with us months earlier, she talked about the fact that Kansas had some things that they wanted...that they thought hadn't been interpreted quite correctly in the formula that might offset some of the 25 percent that you talked about. Is that...? [AGENCY 29]

JASPER FANNING: Well, there is always room for negotiation. But in the past the three states have worked together in a very open-minded fashion, and they have attempted to adopt only what sound science would support, and have tried to leave that, you know, I guess gaming, if you will, or strategizing as to who gets one up on the other one, away from the...of course, everyone is always looking for something like that, but they've tried to stick to adopting things that can only be justified through sound science, so.
[AGENCY 29]

SENATOR WIGHTMAN: Thank you. [AGENCY 29]

SENATOR HEIDEMANN: Seeing no further questions, than you for coming in today.
[AGENCY 29]

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JASPER FANNING: Thank you for the opportunity. [AGENCY 29]

SENATOR HEIDEMANN: Is there any other testimony on this agency budget? Seeing none, we will close up the public hearing on Agency 29 and open up the public hearing on Agency 52, the State Fair Board. [AGENCY 29]