

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

Appropriations Committee
February 01, 2013

[LB185]

The Committee on Appropriations met at 1:30 p.m. on Friday, February 1, 2013, in Room 1003 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB185. Senators present: Heath Mello, Chairperson; John Harms, Vice Chairperson; Kate Bolz; Danielle Conrad; Bill Kintner; Tyson Larson; John Nelson; Jeremy Nordquist; and John Wightman. Senators absent: None.

SENATOR MELLO: Good afternoon and welcome to the Appropriations Committee. My name is Heath Mello, Chair of the committee from the 5th Legislative District in south Omaha. Our committee members, while a few of them today are going to be out of the committee, in and out because of legislation, I will do a quick introduction of the committee members. Starting on our far left, Senator Bill Kintner from Papillion, Senator Jeremy Nordquist from downtown and south Omaha, Senator John Nelson from midtown Omaha, Senator John Harms from Scottsbluff, and to my immediate right is Senator John Wightman from Lexington, Senator Danielle Conrad from Lincoln, Senator Kate Bolz from Lincoln, and Senator Tyson Larson from O'Neill. Our committee clerk is Anthony Circo, and our page is Jacob. We'll be hearing bills in the order that they are listed on the agenda. We'll begin each bill by hearing from the introducer of the bill, followed by those in support of the bill, then those in opposition, and finishing with those that are in the neutral position. Those wishing to testify on a bill should sit towards the front of today's room and be ready to testify as soon as the previous testifier is finished. In order we are keeping the bill's hearing and today we'll only hear one bill, LB185. I would ask that you please sign the yellow sheet and please bring it up today with you when you testify and hand it to the clerk. Please print your name legibly on that sheet because they're being used for transcribing the official record of today's hearing. When you testify, we'll ask that you begin by saying and spelling your first and last name, again for accuracy in transcribing your testimony for the record. For the senators on the committee, I ask that you speak in turn and not over each other so the transcribers can clearly you and your remarks for the record. In the interest of time, we will ask that you keep your testimony concise and that you try not to repeat what other testifiers have already covered. We will be using the light system today. You'll have five minutes for your testimony. The green light will indicate that your time has started, and when you are down to one minute the yellow light will turn on, and a red light means that your time is up and we ask that you try to finish the thought that you were on. If you do not want to testify but wish to indicate your support or opposition to a bill, you can do so with the sheet on the table, the introduction table. There are also...you can also submit written comments that will be entered into the official record. Please be aware, however, that only those that testify will be listed on the committee statement. At this time, I'd ask that you please take a couple seconds to look at your cell phones and make sure that they are on the silent mode or turned off. With that, we will open today's hearing with LB185 by Senator Christensen.

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

Appropriations Committee
February 01, 2013

SENATOR CHRISTENSEN: (Exhibit 1) Thank you, Mr. Chairman. Members of Appropriations Committee, I'm Senator Mark Christensen, M-a-r-k C-h-r-i-s-t-e-n-s-e-n, represent the 44th Legislative District. I'm here to introduce LB185. LB185 would provide state assistance in the form of a loan to the natural resource districts with an integrated management plan that's described in subsection (1) of Section 2-3226.01 and that have entered into contracts to construct or implement streamflow enhancement projects. This bill is similar to LB1094 in 2008 which loaned \$9 million to the NRDs to pay water right holders who agreed to lease and forgo water use to assistance in meeting state compliance in the Republican River Compact because the NRDs had...were unable to use their bonding authority to pay their water right holders due to a lawsuit. This loan will be paid back by June 30, 2013. In the same way, LB185 would loan \$40 million to the NRDs who have entered into contacts to construct streamflow enhancement projects to assist in state compliance with compacts and agreements who currently cannot proceed with their bonding authority to pay for the project until a current lawsuit is settled. The \$40 million would be transferred to (sic) the Cash Reserve Fund to the Water Contingency Cash Fund, where the Department of Natural Resources would then loan the funds upon request by the NRDs. I think it's key to sit back and sometimes observe what is happening right now in the United States, and I'm speaking of the drought. Oklahoma...or, sorry, Texas had three years before they got a break, and it looks like they're going back in; Oklahoma has had a three-year drought; Kansas had two; we've had one. It just seems to be moving north. No one can guarantee that it's going to continue the pattern and not break, but if it does, makes it even more important that we have the tools that was set up clear back in 2007 with LB701 to allow the NRDs to locally use occupation tax, their current property tax levies to manage the situations in their districts as they see fit. But they're also taking care of what is the state's obligation, because if we fall out of compliance, as we're just finishing a lawsuit from 2005-2006, the obligation falls upon the state. So it's very important that we have the tools or the ability to go forth with the projects that are needed. Al Dutcher spoke between Christmas and New Year's to the...my son serves on the ag advisory team out of the colleges, and to Ag Director Greg Ibach, and when he was speaking he talked about, you know, typically you can see after a major drought, like we had this year, you might even have a year of average rainfall. But he was speaking out at North Platte and he said, you know, if you got an annual rainfall of 20 inches and your ground is 8 inches to the deficit, that's the same as getting a 12-inch rainfall, even if you get an average rainfall. So he says the chances of being able to get 28 inches, 8 to make up from where you're at and 20 for the annual rainfall, is next to impossible if you follow what's happened in previous droughts. So what the N-CORPE is four entities that have went together--that's the Twin Platte NRD, and the Upper, Middle, and Lower Republican NRDs--formed this group because there was a land sale that had 115 pivots on it in Lincoln County, and they purchased this ground and converted 115 pivots from irrigated land to dryland and using the water for augmentation. And their plan is why we're here. After purchasing the land, they were going to put in the infrastructure to build pipes to the Platte up near Lake Maloney south of North Platte and also down to Medicine Creek

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

Appropriations Committee
February 01, 2013

Dam or into Medicine Creek and dump water to the Republican. In building this, they'll be able to, for the Republicans, use the other programs they have, from dry lease programs to another augmentation project to other land conversions, be able to come together and meet their obligations to make sure Nebraska stays in compliance in the three-state compact and we don't end up in another lawsuit with Kansas and Colorado. That's the intent of this. Well, they have the land purchased. They got land loans on it. They've got it set up to go and they can manage it with the occupation tax and their current property tax levy. What has happened, when we had a lawsuit filed January 2, now they can't bond so they can't put in the infrastructure that will work towards a cooperative agreement, making up the water that the Twin Platte needs to on the Platte River, or the Republicans to make sure that we're in compliance and don't end up where we owe another penalty to Kansas. And if we end up in court again owing money, we might end up with a water master, which would shut off acres permanently and could hurt the economic stability of the state and specifically my region. So there's a lot of additional costs that could come if we can't get this loan and get this project moving forward. In the settlement of the three-state compact with Kansas, Colorado, and Nebraska, it talks about augmentation. There's basically just two requirements in that. Says there can be no new use or increased use in any year or long term, and that's why the NRDs have went forth with this. The lawsuit does not touch the occupation tax, what would be used to repay this loan. So I think we can safely say the NRDs can repay this loan as soon as they can bond to get the \$40 million that it's going to take to build this project. So if this lawsuit would get dropped six months from now and we approve this loan, you could be paid back in six months. But if we end up in court for three or five years, then it's going to take three or five years. That's why I asked for five years in this deal because last couple lawsuits have got drug on for several years. You know we got, what, sued in 2007; we're just finishing it. So I maybe didn't put enough time on it, but I'm hoping that we can get this settled and we can get this accomplished so we can immediately bond, pay the state back, and get this project...keep this project moving forward and have the state paid back. You know, when you look back at this in history, I may go down as one of the best senators or one of the worst senators because I took on a challenge that nobody else has wanted to do. Everybody that preceded me from my district and Senator Carlson's district in the Republican has always said it's a state issue, let the state take care of it and manage it the best we can locally. I've taken a different approach. Senator Carlson has been with me all the way or we've worked together on it. I don't want to say I; we've worked together on it and we set up LB701, which allows an occupation tax, which allows us to raise the money to take care of the situation of meeting compliance. That led to the new IMPs that all the NRDs have signed on to that says they take responsibility. Now they've taken the responsibility and it's the second time a lawsuit has come along that's prohibited them from being able to do what they need to. First one, 2007 lawsuit prevented them from buying the surface water, which gratefully the Legislature gave us a \$9 million loan to buy that surface water in 2008, kept us in compliance. So the only time we were short was 2005 and '06, and we're just finishing that lawsuit. Well, now they've bought this land and now they

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

Appropriations Committee
February 01, 2013

need the infrastructure, so that's why we're here again, because of that lawsuit. So I think it's real important to remember the occupation tax is not being sued. It's been tested. It's been found legitimate tax, so I think the state can rest at ease they will be paid back. I just can't tell you by when. That's the difficult part. I think we have set up, by the payments we have met on time, we've got a good record, good credit rating of living up to our obligations, and you've got our commitment that we're going to work with that again. Another thing I think you can be proud of, they've worked with everything up-front, honestly between willing buyers, willing sellers, and brought people in locally to solve this issue, and been done in a way that I'm very proud of. No one has been stepped up and been hurt in the process. There's always some minor areas that are difficult, but no one likes to see some land converted in their area, though there has been some through all three districts, converted irrigated to dryland. I want to thank you specifically for this early hearing and explain why I feel it's very important that we get this loan and we get this passed up on to the floor, get it passed and moved on. We're probably looking at four to five months of construction time. I think there's people behind me that can answer that better. But if we don't get this passed quickly and allow us to get this construction done, then we're not going to be able to get water into the stream and could end up out of compliance for this year. The projections do not look good, if we have another dry year, for where we're going to end up in a two-year average. We're in a water-short year. Won't be fully determined till June 30, but we'll...it looks like we're definitely going to be in a water-short year. Means we're in a two-year average in the Republican on this, and even though we had some surpluses last year, we have another drought like this last year, usage remains high, we're going to have a hard time without this project. I'd hate to see the Republican River district not be able to meet their compliance because we...every time we turn around we get sued, and we can't implement the tools that were set forth by this Legislature in 2007. Again, I want to thank you for your time. I'll remain here and take questions at the end. I'll take questions now and then I think Senator Carlson is probably here to follow me, and then there's probably four or five people that I've lined up to follow behind that. So if there's questions, I'd be glad to take it. [LB185]

SENATOR MELLO: Thank you, Senator Christensen. Senator Wightman. [LB185]

SENATOR WIGHTMAN: Thank you. Senator Christensen, thank you for being here. I think the bill is a good bill and I want to support it. But the amount, as it does everybody, I think probably bothers them somewhat. And I know you've talked about it being approximately 10 percent of what our Cash Reserve would be for the whole Legislature at the end or at the time we made the loan probably. And I don't know what that figure is. I think it's between \$400 million and \$500 million somewhere that's our total Cash Fund, so obviously this becomes somewhat important, particularly if we would fall into a recession or whatever it might be during the next year or two. I have several questions. My understanding is and I think it was something like \$62 million that the NRDs paid for the land. Am I...is that figure...? [LB185]

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

Appropriations Committee
February 01, 2013

SENATOR CHRISTENSEN: Yeah, \$63 million is the number I got in my head, but you could be right. [LB185]

SENATOR WIGHTMAN: Now was any of that money borrowed? Was that paid for in full by the NRDs or... [LB185]

SENATOR CHRISTENSEN: No. [LB185]

SENATOR WIGHTMAN: ...was it bought on a contract or...? [LB185]

SENATOR CHRISTENSEN: It was put on land contract or purchased through local banks. [LB185]

SENATOR WIGHTMAN: So how much, how much was borrowed of that fund, not borrowed but delayed under the land contract? Do you know? [LB185]

SENATOR CHRISTENSEN: I don't know what the number is but I would say most of it is on a contract. [LB185]

SENATOR WIGHTMAN: Now there's a lawsuit pending and that's why you're bringing this bill before us is because you can't borrow it from other sources I guess. Would this lawsuit, if the NRDs lost this lawsuit, would that have any effect on your ability to repay the money that was loaned to you or either lengthen it or affect your ability at all even to pay us back? [LB185]

SENATOR CHRISTENSEN: It won't affect the ability to pay back at all from being able to get it back. I think there's guys behind me can answer how quickly because occupation tax was not sued. We have the ability to raise \$12 million a year just off occupation tax, besides the property tax. So we still have our funding source secure. It is just whether we can...when we can bond, once we put this project in, to pay you guys back. [LB185]

SENATOR WIGHTMAN: Now as I understand it there's, what, three or four NRDs that are included in this, four. [LB185]

SENATOR CHRISTENSEN: Four. [LB185]

SENATOR WIGHTMAN: So four would be paying it back, I assume. That's kind of the normal effect of a loan like this that all of them would pay part of it back. I assume it's not all the same. It differs maybe from one district to the other or does it, NRD district? [LB185]

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

Appropriations Committee
February 01, 2013

SENATOR CHRISTENSEN: Well, there's 25 percent of it is the Twin Platte, so there's really more dollars in that, that can be raised per year. The Republican can raise \$12 million. I don't know the exact acres that the Twin Platte has. I'm sure they can answer that question in what they can generate. But then they also have...I don't believe anybody is at their maximum on their property tax levy either, so there is a little bit of wiggle there. Even though some of them are close, there's still a little bit of wiggle there for security reasons. [LB185]

SENATOR WIGHTMAN: Senator Christensen, you may have told me this, because I've visited with you on two or three occasions with regard to this bill, but right now if you were able to get the loan, say the litigation was ended and you were able to get the loan, how quickly could you possibly pay us back? [LB185]

SENATOR CHRISTENSEN: Well, if it ended today, it's just a matter of how long it would take Ameritas to offer the bonds out and get it completed. I've never done a bond so I can't tell you if it takes three months, six months, what that is, but there's people coming up from Ameritas, I believe, behind me that can answer that question. So there's the potential of having this back, if the lawsuit ended, within whatever that time frame is, three months to a year. [LB185]

SENATOR WIGHTMAN: Okay, now that would happen if the lawsuit was dismissed. If the lawsuit is not dismissed, how long are we looking at? And you may have said this before I got in here. [LB185]

SENATOR CHRISTENSEN: Well, I put five years in here, not knowing, since the lawsuit not only includes state DNR, the N-CORPE, but it also includes the Bureau of Reclamation. Well, in doing that, I don't know, will federal courts slow this down further, longer than what it has been? The other cases, like I said, when we got sued, wasn't it 2008, we're just finishing that one five years later, so that's why I got five years in this. Again, I don't know what the magic time frame is and I don't think anybody knows, but I just assume it's going to take some time. [LB185]

SENATOR WIGHTMAN: I know if the time...if the economics for the state stay as we hope it would, we'd never have any problem. But obviously, obviously 10 percent of what we have right now in funds available to the state of Nebraska to meet a downturn in our economy doesn't mean much right now but it could mean an awful lot a year or two down the road. And so that is I think the big concern that any of us would have is using 10 percent of the funds for one single project. Now you had one that we did the same thing on four years ago or six? Six years ago... [LB185]

SENATOR CHRISTENSEN: 2008. [LB185]

SENATOR WIGHTMAN: 2008. [LB185]

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

Appropriations Committee
February 01, 2013

SENATOR CHRISTENSEN: We got \$8.7 million. [LB185]

SENATOR WIGHTMAN: That's the better part of five, huh? And do you remember what the amount of that was? [LB185]

SENATOR CHRISTENSEN: \$8.7 million. [LB185]

SENATOR WIGHTMAN: So... [LB185]

SENATOR CHRISTENSEN: And we have one payment left. I think it was broke into five payments and there's one due June 30. [LB185]

SENATOR WIGHTMAN: But it's pretty small compared to what we're talking about now at \$40 million. [LB185]

SENATOR CHRISTENSEN: Just a portion, yes. [LB185]

SENATOR WIGHTMAN: (Laugh) It would be small...it wouldn't be small in my book. It's pretty large. Thank you. [LB185]

SENATOR MELLO: Senator Harms. [LB185]

SENATOR HARMS: Thank you, Senator Mello. Thank you, Senator Christensen, for coming. I just have a couple questions I want to ask you. In regard to the bonding portion of it, when you have that bonding, will the bonding companies allow you to pay that off before the end date that you've established? And if they do, is there going to be any penalty to that? Sometimes there are penalties attached to those. Is that an open-end bond or not? [LB185]

SENATOR CHRISTENSEN: I cannot answer that. [LB185]

SENATOR HARMS: Okay. In regard to the \$40 million that you would like for us to give, okay, do you have a budget for that? I mean to come...I, as you know, I have supported everything we've ever done on the water issue because I think it's extremely important and I understand it. But the question I have is, do you have a budget? And attached to that budget, do you have a long-range plan and benchmarks so that we can honestly say we could check in with you folks, say have you reached this benchmark or where are you in this planning process? Do you have anything like that established or will you have anything established before this decision is made? [LB185]

SENATOR CHRISTENSEN: The gentleman following me, unless Senator Carlson follows me, Jasper Fanning is the president of the N-CORPE, I'm sure has them details.

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

Appropriations Committee
February 01, 2013

And also the bonding company is here. And so I believe the answers can follow.
[LB185]

SENATOR HARMS: Okay. Let me ask you then the question about this project in itself. Where will this water come from? You're building the pipes and you are concerned about the drought, you're concerned about meeting the guidelines that were...what we've established with Kansas, the laws. Where will this water actually come from then?
[LB185]

SENATOR CHRISTENSEN: Okay. Lincoln County. The very, very southern edge of Lincoln County and very, very northern edge of Frontier County. The 25 percent of it is in the Twin Platte and 75 percent of this is in the Republican River district, and that's the way it's split there. And this project is large enough that basically it took the four NRDs to make this work. [LB185]

SENATOR HARMS: Will this come from...this won't come from any dams, will it, or...
[LB185]

SENATOR CHRISTENSEN: No, this is underground water. [LB185]

SENATOR HARMS: (Inaudible) I know it (inaudible). [LB185]

SENATOR CHRISTENSEN: The amount that the pivots pumped previously is the amounts that they can pump and place into the stream. [LB185]

SENATOR HARMS: So have we measured in research in regard to the amount of where that aquifer is? We've had a drought and we've pumped a lot of water out of that. Do we know for sure what's in that and what's left in there and when you're going to drain that thing dry? [LB185]

SENATOR CHRISTENSEN: This is actually in a mound area that has been recharged and above what it would have been at preirrigation times, but I know there's guys that can probably better answer that. I may have a map that I could read off of also. I thought we stuck in here. Maybe I missed it. But there...yeah, you guys got one there. And see this is...if you find Lincoln County on there, it's the very southern edge and then there is a northern edge of Frontier County. So basically, I don't know if that map shows Highway 183 on it or not. It does not. But if you see the red drawing around the areas with the depletions... [LB185]

SENATOR KINTNER: We've got this one too. Does that got it better? [LB185]

SENATOR CHRISTENSEN: No, this is the one I need. And then you've already got that big square is Lincoln County and this is...you see where it says Hugh Butler Reservoir,

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

Appropriations Committee
February 01, 2013

and so if you go basically straight north of that where it says Hugh Butler Reservoir into the southern edge of Lincoln County, northern edge of Frontier County, you're in that white area that is in neither increase or decrease area. [LB185]

SENATOR HARMS: Senator, were you done? I don't mean to... [LB185]

SENATOR CHRISTENSEN: Yes. [LB185]

SENATOR HARMS: Okay. What is the actual...I guess what I'm trying to come to grips with in my own mind is what is the depth of that mound we're talking about drawing all this water out of, and do we have a historical review of that measurement of how much water comes out of that, how much then is recharged, regenerated each year? And then if we're going to project on a drought aspect over the next couple of years, I know it's hard to probably qualify it, but can you give us some suggestion or some idea what might happen to that mound, because I don't know. I don't understand any of those things and I'm just asking for clarification in my own thoughts about this issue. [LB185]

SENATOR CHRISTENSEN: I don't know if I can answer that. I assume the gentleman behind me can. If not, I'll get you them answers. [LB185]

SENATOR HARMS: That's fine. Thank you very much. [LB185]

SENATOR MELLO: Senator Wightman. [LB185]

SENATOR WIGHTMAN: Senator Christensen, can you tell me...and you may have covered this before I got here, but will the well be removed or will they be continued to pump water into some source that will take it? Well, it's going to become groundwater, I guess, mostly, isn't it? [LB185]

SENATOR CHRISTENSEN: It is all groundwater. [LB185]

SENATOR WIGHTMAN: So you're not really intending to keep the pumps and the irrigation wells all in place. [LB185]

SENATOR CHRISTENSEN: No, they won't keep them all in place. There is...they'll use some of the old and put in some new wells to pump into this pipeline to move it to the Platte and to the Republican. And the reason of piping it is to get it to where they want. Like going south to the Republican, they want to get to where the creek is wet before they dump it so it's not being lost. And going north, they have to get north a ways before they can dump it into something that would take it towards the Platte. [LB185]

SENATOR WIGHTMAN: Will you have or will the various groups that are purchasing, will they have pumps that can be sold and some irrigation equipment that can be sold or

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

Appropriations Committee
February 01, 2013

not, do you know? [LB185]

SENATOR CHRISTENSEN: Yeah, there's 115 pivots that can be sold and then there would be probably about equal number of pumps, motors, and things that way. There's hog shed facilities. There's grain bin facilities. There's a number of different things that could be sold or...and even the ground, once it's planted to grass, could be resold without the water rights going with it. And of course, have the easements to the wells and to the pipelines and things that way, which are all workable things. I can't answer how they're planning on doing that for sure, but I know there's gentlemen that can answer that one. [LB185]

SENATOR WIGHTMAN: Okay. I'll wait and maybe take my questions to some of those later. [LB185]

SENATOR MELLO: Senator Nelson. [LB185]

SENATOR NELSON: Thank you, Senator Mello. Senator Christensen, thank you for coming. Is this \$40 million covering infrastructure only or is some of that money going on your land contract payments? [LB185]

SENATOR CHRISTENSEN: Infrastructure. [LB185]

SENATOR NELSON: And we talked about the piping and maybe new wells, all that, so that's what the money is going for. Okay. The fiscal note indicates, you know, with a loan of \$40 million, we're not getting \$800,000 of interest at 2 percent that would go into the General Fund. Are you going to cover that in the amount being paid back or just the \$40 million? [LB185]

SENATOR CHRISTENSEN: Well, I guess that's something that can be worked out either way. It's not that we can't cover that interest. I guess I would throw the question at you this way: It's something that I'm not going to argue over. The loan is more important to keep the project and keep the state of Nebraska in compliance. The alternative thought on it is if we don't do this project, you'll keep your \$800,000 interest and what's it going to cost you in lawyer fees and penalties to Kansas? [LB185]

SENATOR NELSON: Well, we've been pretty successful against Kansas so far, but, you know, as you say, with the drought and things like that, we need to be in compliance. Just in a few words, what's the lawsuit about? Is this to stop this project? [LB185]

SENATOR CHRISTENSEN: Basically, part of it is what has happened here is the state DNR has passed the surface water through the dam projects, trying to meet state compliance on the Republican side now. And I farm part of that so I'll just identify quickly

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

Appropriations Committee
February 01, 2013

that we stored water in like Medicine Creek, where they would be dumping the water to the Republican, through January 1. And then the order went out that they could no longer store water for irrigation, and that's done by DNR. Well, so instead of having 8 inches to irrigate with--I've had 8 inches or more for as long as I've owned the ground--I will get 4 this year. My irrigation district, Frenchman-Cambridge, says I get a 30-day delivery period. Makes it very difficult to raise anything, a 30-day delivery period when I need from 60 to 90. But because of the efficiency that they got to maintain so that we get the 4 inches, they have had to shrink that irrigation period. And that's why, when I visited with the Governor and with Brian Dunnigan, and Senator Carlson was there, I made the point, I said what DNR has done is a very good thing for the state compliance but it has now pitted surface irrigation against groundwater irrigation. Because if this augmentation system is up and running, I'm most likely going to get my 9-inch allocation in the Lower Republican. That's where my ground is. But I'm only going to get 4 out of the surface. And if they pass this water through the dams all year, I'm not likely to have a supply for 2014. [LB185]

SENATOR NELSON: Are the people that filed the lawsuit, are they in the same position as you're telling us about? Is that why they filed? [LB185]

SENATOR CHRISTENSEN: They are the ones. Frenchman-Cambridge Irrigation District as well as Bostwick are the ones that filed. [LB185]

SENATOR NELSON: Saying that they're not getting enough water and... [LB185]

SENATOR CHRISTENSEN: Correct. [LB185]

SENATOR NELSON: Okay. [LB185]

SENATOR CHRISTENSEN: And, see, they're giving up half their supply this year and, the way Mark sees it, probably 100 percent of it for 2014 if it's another dry year like this, which there is where the rub comes in between surface and groundwater. And that's why if this augmentation system isn't going, we can see the groundwater deplete considerable. Now I think you'll hear a difference in opinion from the surface people to the groundwater people of whether there's a benefit to the surface. If I understand it correctly, and I asked the question in the Governor's Office with Brian Dunnigan there and Senator Carlson there, I said can they store any of this augmentation water. As long as there's not a two-year average going on, in other words a water-short year, then they can store that water. Since Frenchman...or Medicine Creek typically fills every year, it would just allow them to fill up quicker and it would be water passing through the reservoir to get to Harlan, where our water-short year is measured. That's the objective is getting water to Harlan County and staying out of a water-short year. So I think there's some benefits potentially on both sides, but there's some extra harm to the surface guys when you take the irrigation supply and potentially don't the groundwater supply when

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

Appropriations Committee
February 01, 2013

you're in that water-short year. And that brings this rub, brings this lawsuit, and the very difficult situation we're sitting in. [LB185]

SENATOR NELSON: Thank you. [LB185]

SENATOR MELLO: Senator Larson. [LB185]

SENATOR LARSON: Senator Nelson really started to touch on it and I'll try to be just a bit more direct, Senator Christensen. Does this help the state of Nebraska stay in compliance? [LB185]

SENATOR CHRISTENSEN: Absolutely. [LB185]

SENATOR LARSON: And in future lawsuits with Kansas, this could possibly be a difference maker in helping us stay in compliance. And this \$40 million spent now, essentially, what I understand you saying, not only \$40 million spent now but essentially with a good repayment plan, could save the state of Nebraska much more out of our Cash Reserve in the future that will never be repaid to the state of Nebraska. [LB185]

SENATOR CHRISTENSEN: Very well put. And if you go back and look at the arguments that was presented to the federal judge, this was one of the projects that was used to say that we're going to be able to be in compliance, you know, is the fact that we can do augmentation. We have Rock Creek down in Dundy County operational and this is one in Lincoln County, and so this is one of the tools. If you remember right, in LB701 we set up four tools the NRDs could use the occupation tax on. One was vegetation management, one was purchasing surface water, one was augmentation. What did I forget? [LB185]

SENATOR LARSON: Buying. [LB185]

SENATOR CHRISTENSEN: I always forget one. (Laughter) But anyway, there was four things. And we've been doing vegetation and this is augmentation that we're starting. We've been buying surface water out at different times. That was 2008. So them three have been done and that's just the tools that the Legislature set up in LB701 and is what the NRDs were doing to keep Nebraska in compliance. And I think, Senator Larson, you hit the nail on the head that, if we don't do this, it could cost us equal amount not be repaid. [LB185]

SENATOR LARSON: Well, I definitely...I understand Senator Wightman's concerns when he talks about this being possibly, you know, nearly or a little over 10 percent of our Cash Reserve. And I think we as members of Appropriations have to be very mindful of that when we're looking at we don't know what's coming up in the future, and it's something that I try to be very mindful of. But I think the same can be said as, though

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

Appropriations Committee
February 01, 2013

we don't know what's coming up in the future, we know we've had a past with the state of Kansas and they have a history with the state of Nebraska with the Republican River. And I wouldn't...I don't think it would be farfetched to guess that history may continue on into the present with their water litigation issues moving forward. And I think we as a committee have to be very mindful of what has happened in the past and make sure we're making the correct investments now to ensure that we as a committee don't have to appropriate, whether it's \$70 million or \$100 million, in the future to the state of Kansas that will never be repaid. So you know, I'll continue to listen to the testimony, but I appreciate you coming in, Senator Christensen. And I guess those are my immediate thoughts right now but will continue listening. I thank you. [LB185]

SENATOR MELLO: Senator Wightman. [LB185]

SENATOR WIGHTMAN: I don't want to keep you all day, Senator Christensen, but could you tell us a little bit about the lawsuit and what effect it might have on your ability to repay the loan. [LB185]

SENATOR CHRISTENSEN: Should have no effect because the lawsuit doesn't touch the occupation tax or property tax that we will use to pay this back. It might have...say we lose everything in the lawsuit. Then either they can restart the wells and let the pivots irrigate, resell the land and have money, or they can leave it converted as dryland, get a benefit out of that and we'll still have the occupation tax to work towards paying you back. And so once the lawsuit ends, we can bond and we can pay you back. [LB185]

SENATOR WIGHTMAN: I think I've heard, I don't know it now, how much your taxing authority is compared to what you're charging now. [LB185]

SENATOR CHRISTENSEN: Well, we...everyone in the Republican is charging \$10 an acre, I believe, which is the maximum, and that allows us to raise \$12 million a year, on top of the property tax that the NRDs are allowed to raise, and I can't tell you how much that is, but...and then the Twin Platte. I don't know how many irrigated acres they have so I can't tell you what they can generate, but I know they've run their numbers and know that they can handle their fourth of this project. [LB185]

SENATOR WIGHTMAN: Okay. I happen to have some land in the Platte, probably none that's in the...or the Platte, Platte River but in the Republican River would. Right now you're charging, you said, \$10 an acre. Can you tell me, will this increase that amount that's being paid? It will, won't it? [LB185]

SENATOR CHRISTENSEN: The amount being charged? [LB185]

SENATOR WIGHTMAN: Yeah. [LB185]

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

Appropriations Committee
February 01, 2013

SENATOR CHRISTENSEN: No, because \$10 is the max. I wrote a bill to move it to \$20 but did not introduce it. And it was one of those very tough decisions: Do you bring that forth and allow people to try and pay things off faster in the good economic times that we've been having, or do you leave it right where it's at and just keep it spread over more years? And that was a difficult thing and I know how people hate additional taxes. And I've already, as I said, I'll probably be either one of the best or worst senators there's ever been in perception of people because I put the largest tax increase on their own people anyone has ever done. But got reelected... [LB185]

SENATOR WIGHTMAN: And you still got reelected. [LB185]

SENATOR CHRISTENSEN: ...because the people understood the need of it and what it would cost our local economy if we didn't have it. Without the occupation tax, we would have a major shutdown. And it wouldn't only affect the local area and the jobs and land values, but it would affect the state's income. If I can take the time, I've got a real estate license, give you a quick example of what has happened. There was a chunk of ground sold south of Cambridge. It did not have a good well on it. It had went bad. It was gravity but capable of having a pivot. Sells for over \$8,000 an acre, about \$8,400 an acre. Just north of that about five miles some Frenchman-Cambridge irrigation surface water, it was gravity also but also could have a pivot put on it. But knowing we're going down to 4 inches this year and not knowing what the following year, it brings \$5,000 an acre. So what will that do to your school districts? What will that do to your area if some ground starts getting \$3,000 an acre hit? And I used the same analogy for the Wallace School District where this 115 pivots was purchased. I said if you got 40,000 acres in that district, every \$1,000 an acre is a \$40 million decrease in valuation. This project has took \$63 million out of your valuation. But I said without this project we could take \$120 million out of your valuation. I said I know it don't make you feel better but it gives you a different perception. That's what will happen to land values if we don't have the occupation tax that I put on my own people, as well as this tool of augmentation to make sure that we have good irrigation supplies, we stay in compliance, and that we be able to keep land values high. Because if we don't, schools will be hit as well as the economics of the area, and push people out of the area. This is, unfortunately, very necessary to keep the economics strong in my area. [LB185]

SENATOR WIGHTMAN: I'll agree with you. A \$3,000 drop in land prices is probably small compared to what would happen if this was on a permanent basis. It might be \$7,000 an acre out of the \$8,000. I have other questions I could ask you, but I'll wait. I've taken up too much of your time now. [LB185]

SENATOR BOLZ: Could I? [LB185]

SENATOR MELLO: Senator Kintner. [LB185]

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

Appropriations Committee
February 01, 2013

SENATOR KINTNER: Senator Christensen, I'm trying to wrap my arms around the ramifications of doing this and the ramifications of not doing it, and I did the reverse of what Senator Larson just said. If we don't do this, would that be used in court if we got hauled back into court and they're saying, well, they could have done this but they didn't do this, they didn't think? I mean would that be held against us if we didn't do this? [LB185]

SENATOR CHRISTENSEN: Well, I think if we end up in court again where augmentation is one of the projects that we were attempting to do and have one project done and if we didn't find another one, basically the alternative, if we don't have this, is shut the allocation way down. And I had...you know, it's going to be the same argument when I put on the occupation tax. People would call me. They were unhappy: I don't want to pay 10 bucks an acre on this; it's not right. And I said the alternative is this. It was 3.6 inches instead of 9 in the Lower, it was 4.8 versus 12 in the Middle, it was 5.9 in the Upper versus 13. If we'd a had 5.9 inches this last year in the Upper or 3.6 in the Lower, we'd a grew zero bushels, we'd a wasted all that money and zero income. We'd a had crop insurance. [LB185]

SENATOR KINTNER: So... [LB185]

SENATOR CHRISTENSEN: And the alternative is ugly. Same scenario you're giving, it could be used against us because we said we were going to do this. I agree with you. I took a roundabout way of getting there of illustration, but I think it could be but I'm not a lawyer and I don't know how that all works. But I would think when you say you're going to do X, Y, and Z, and you don't, it may sure have a perception to it. [LB185]

SENATOR KINTNER: You did go roundabout it a little bit, so the short answer is you think so, yes. [LB185]

SENATOR CHRISTENSEN: Yes. [LB185]

SENATOR KINTNER: Okay, thank you. [LB185]

SENATOR MELLO: Senator Bolz. [LB185]

SENATOR BOLZ: So as I understand you, your hands are tied as far as bonding authority because you currently are engaged in a lawsuit. [LB185]

SENATOR CHRISTENSEN: Yes. [LB185]

SENATOR BOLZ: But you think that lawsuit could be wrapped up in six months or so perhaps. [LB185]

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

Appropriations Committee
February 01, 2013

SENATOR CHRISTENSEN: Well, I doubt it because I don't see the DNR changing their decision to pass water through, and I'm not sure that answers all the questions that Frenchman-Cambridge and Bostwick have, because they're actually going in, I believe, as I read the lawsuit, challenging whether augmentation is a retiming and should be allowed, because they feel like that it is taking the future's springs to run into the creek. And augmentation is retiming. I come back and say this. If they hadn't bought these pivots, they would be running, so the same amount of water would be pumped whether it's done as augmentation or whether it's put on a crop. I don't think their end of it is going to change either way, far as Frenchman-Cambridge, but... [LB185]

SENATOR BOLZ: So simply put, it's unclear how long the lawsuit will take. [LB185]

SENATOR CHRISTENSEN: Correct. [LB185]

SENATOR BOLZ: Should you settle the lawsuit, is it possible that another lawsuit would subsequently come? [LB185]

SENATOR CHRISTENSEN: There's always that possibility. [LB185]

SENATOR BOLZ: Thank you. [LB185]

SENATOR CHRISTENSEN: It only takes one person to sue. [LB185]

SENATOR BOLZ: Thank you. [LB185]

SENATOR MELLO: Senator Nelson. [LB185]

SENATOR NELSON: My perception is this isn't a lawsuit that's going to be settled or...it's got to be resolved by a court decision (inaudible). [LB185]

SENATOR CHRISTENSEN: I believe so. [LB185]

SENATOR NELSON: Okay. [LB185]

SENATOR MELLO: Senator Christensen, I guess a lot of my questions were answered. But one question that kind of sticks out for me, and it's just more of a process question to kind of make sure that it's on the record, and I think Senator Bolz was trying to get at it as well. What guarantee can you make to this committee and to the Legislature as a whole that any amount of money that would be appropriated, let's say, for LB185 will get repaid regardless of any potential further litigation or lawsuits against the districts involved? [LB185]

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

Appropriations Committee
February 01, 2013

SENATOR CHRISTENSEN: I believe that can be done because the occupation tax is not part of the lawsuit. The property tax we'll have is not part of the lawsuit. And literally, we can take what we'd be paying on the bonds and be paying to the state every year. But it's not going to get you paid off in five years, as I wrote in the bill, without us bonding. And we just can't bond until the lawsuit is finished. So I think you can rest assured you'll get paid because we've got a history of paying you guys since 2008. It's just a matter of the way I've structured this one and planned this one is as soon as the lawsuit is done, we can bond, and we can pay you in one lump sum instead of making payments like this last one. But, you know, I don't think there's any doubt we can pay it because our payment authority is not challenged. It's just the augmentation, retiming, and the passing of water through the dam and things this way, procedural things that's being challenged. [LB185]

SENATOR MELLO: Okay. Senator Wightman. [LB185]

SENATOR WIGHTMAN: You talk about repaying it. And one thing that I'd add, what is your total mill levy you're allowed to charge? [LB185]

SENATOR CHRISTENSEN: I cannot answer what the NRD levy is... [LB185]

SENATOR WIGHTMAN: Okay. Well, I'll ask that question of someone else. [LB185]

SENATOR CHRISTENSEN: ...but behind me they will. [LB185]

SENATOR WIGHTMAN: Okay. [LB185]

SENATOR MELLO: Any further questions? Seeing none, thank you, Senator Christensen. [LB185]

SENATOR CHRISTENSEN: Thank you. [LB185]

SENATOR MELLO: Next proponent. Good afternoon, Senator. [LB185]

SENATOR CARLSON: Good afternoon, Chairman Mello and members of the Appropriations Committee. I am Tom Carlson, spelled T-o-m C-a-r-l-s-o-n, senator from District 38 here to support LB185. I'm going to go over just a little bit of water management in the Republican Basin history. In the '50s, '60s, and most of the '70s, there were no controls and there was nobody that saw any reason for any controls. Bankers were telling people, put a well on that piece of land, make it more valuable and farm it, because we thought the supply was unlimited. And it hasn't been too many years ago that that perception began to change, and everybody knows better than that today. But not too many years ago we thought the supply was unlimited. No one really encouraged conservation and...but irrigation turned a dust bowl into a food oasis, and to

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

Appropriations Committee
February 01, 2013

a degree irrigated agriculture made Nebraska into a leading food-producing state. As I said, lenders encouraged drilling wells for irrigation. Crop yields have made an amazing increase, which of course helped increase profits. Irrigation expanded and with good reason. Forty years ago the NRDs were formed to manage our resources and to encourage conservation. Now pre-1979 in the Republican Basin, there was no limits on what could be pumped for irrigation, but in 1979 the Upper was the first NRD to put on an allocation limit on how much water could be pumped, and that limit was 22 inches. Since then, it's gone down to 18 inches, down to 13 inches, and by testimony heard in the Supreme Court and their integrated management plan, by 2015 that's going to go down to the area of 11 inches. The 18 to 13 to 11 has not taken place over a long period of time, and whenever I have an opportunity I'm after them and all the NRDs in not only the Republican Basin but many others now, you've got to cut back further, we've got to cut back on groundwater pumping. But they're doing it, and it's difficult but they are doing it. The Middle started not too many years ago with an allocation of 13 inches, and they've gone down to 12, and in their integrated management plan, by 2015 it will be down in the area 9 inches. The Lower had...was at 12 inches, went to 11 inches, now is at 9 inches, and by 2015 will be down in the area of 8 inches. In the recent meeting in front of the Supreme Court, the outcome was favorable to Nebraska. And the water master was complimentary on what Nebraska was doing in the basin in reducing irrigated acres; in reducing groundwater pumping and having no new irrigation development; in the efficiency of irrigation; and, putting in a plug for me, the removal of invasive vegetation from the streambeds of the rivers, and he mentioned that as a support for what Nebraska is doing. And of course, this land purchase has been mentioned with 115 pivots involved and it's a total of about a \$120 million deal. Now the purpose is so that the basin can consistently stay in compliance in our compact with Kansas, and over time I believe that there's going to be less groundwater pumped in each of the three NRDs if this project can go through. I believe that this gets us closer to sustainability in the Republican Basin, which would be a condition where we're not using any more water per year than what we have coming in and what we have recharged and what we have available, and that's a tough challenge but that's what we need to do long term. Water is life, but we've got to manage it well. Now the other thing is that I just don't want you to forget that's going to be different, I've got another bill that will not be heard in here but we're going to talk about water challenges in the state of Nebraska on an ongoing basis and we're going to be asking for money. This is a loan that's going to get paid back, and that's a big difference, and it's going to be done with the occupation tax. So this is a five-year loan from the Cash Reserve and not a grant request. And so it certainly is a help to the Republican Basin and to the Platte Basin. It helps the state for tax revenue and it helps agriculture fulfill its mission, which I've told many groups is a mission second only to the church, and that is feeding the world. So it is an important project. It's important that this portion of it be done in the year 2013 so that we can stay out of trouble. And as has been mentioned, it's not setting a precedent because the loan was done in 2009. That was my bill, LB1094, to pay back farmers who didn't use water in 2007. Had we not done that, and under the circumstances of the lawsuit that was filed

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

Appropriations Committee
February 01, 2013

to try and stop the occupation tax, had we not done that, those farmers still wouldn't have been paid. Well, they would have been paid but it would have been a couple years ago. So we did the right thing and helped the farmers that cooperated. So I just really ask for your support and I'd be glad to try to answer questions that you might have. [LB185]

SENATOR MELLO: Thank you, Senator Carlson. Any questions? Senator Kintner. [LB185]

SENATOR KINTNER: Thanks for coming out. It looks like most of the western senators are on board. Is that correct? All of our senators from the western part of the state are on board with this. Is that correct? [LB185]

SENATOR CARLSON: I don't want to speak for them. [LB185]

SENATOR KINTNER: I guess I could ask Senator Christensen. [LB185]

SENATOR CARLSON: I hope so, but I can't speak for them. I hope that we all understand how important this is to the state, not just for the Republican and Platte Basins. So if you want a vote count, I don't have it. Maybe... [LB185]

SENATOR KINTNER: Okay. I was wondering. [LB185]

SENATOR CARLSON: Okay. [LB185]

SENATOR KINTNER: Yeah, I'll ask Senator Christensen when he comes back up. Thanks. [LB185]

SENATOR CARLSON: Okay. [LB185]

SENATOR MELLO: Senator Conrad. [LB185]

SENATOR CONRAD: Thank you, Senator Carlson, it's always a pleasure, for that brief overview from a historical perspective and your perspective moving forward. Senator Christensen mentioned it briefly, or at least contemplated it in his opening, but I want to ask you a more general question about whether or not the Cash Reserve was really intended to facilitate this kind of specific activity, that broader policy question. And if and when we look to another economic downturn, if we move forward with this legislation we automatically weaken our position and our ability to meet all state obligations. So if you'd like to respond to that, if you'd like to visit about that on the record, I'd appreciate hearing your thoughts. [LB185]

SENATOR CARLSON: I view the Cash Reserve as a rainy day fund that is to be used

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

Appropriations Committee
February 01, 2013

when there's a real issue and a real need somehow in the state of Nebraska, and I think that fits. And I understand the concern about it being a pretty good percentage of the Cash Reserve, but I guess I'd encourage you to tighten the screws on the people that follow me about how quickly that could be paid off, and I think that's an important factor: I think you do believe that the occupation tax is a legitimate tax, and if this is that important a project to get done, then how quick can you pay it back. And I think that's a good question. [LB185]

SENATOR MELLO: Senator Larson. [LB185]

SENATOR LARSON: Senator Conrad brings up a point, you know, whether or not, you know, the Cash Reserve should be used for this. And I think you countered that well in terms of, you know, a rainy day fund or something that needs to be done for the state. As a senator, obviously you're involved with the budget. And you've been here a lot longer than I have. If we were to lose a \$70 million lawsuit to Kansas, where do you think we as the Legislature would go to get that money? You think we'd try to dig through our General Funds and cut things such as TEEOSA or Medicaid funding or do you think we'd probably look towards the Cash Reserve for a lot of that, to absorb cuts in other places? [LB185]

SENATOR CARLSON: I think that probably no doubt that a good portion of that fine would be paid out of the Cash Reserve and then we'd be hoping to rebuild it again. But that's why I think it's really...it's one factor if you know there's a problem in some area of the state and you don't see anybody wanting to do anything about it. That's not the case here. They're wanting to do things and they're willing to pay for it. And that's a whole lot different, in my view, as to how you consider using the Cash Reserve than somebody that's got their back to the wall and you're having to tell them, you got to get this done. These people are saying, we're going to repay it but we need your help. [LB185]

SENATOR LARSON: Thank you, Senator Carlson. [LB185]

SENATOR MELLO: Senator Conrad. [LB185]

SENATOR CONRAD: Thank you, Senator Carlson. And just to be clear for the record, sometimes when we start talking in these big numbers it can be kind of confusing, particularly for those who aren't sophisticated with the budgetary process. But say, give or take, we have about \$400 million or something in our Cash Reserve. This represents roughly 10 percent. You're also aware, as I think most members of this body are, that it takes a considerable amount of resources within the Cash Reserve just to keep the lights on with our existing obligations in state government. So it's not as if having a significant balance is...couldn't...it couldn't be depleted fairly quickly if an economic downturn did in fact occur. And I've always appreciated the fiscal discipline this body has demonstrated in ensuring we have a strong Cash Reserve for that very purpose. So

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

Appropriations Committee
February 01, 2013

I am just...wanted to revisit that point to be clear. [LB185]

SENATOR CARLSON: Could I respond to that? [LB185]

SENATOR CONRAD: Sure. Absolutely. [LB185]

SENATOR CARLSON: I agree with you. I agree with you. This is another opportunity for me to say something I didn't say with Senator Larson's question and that was that if we get a fine in a future lawsuit and it involves the Kansas situation, that's a state obligation. It will be the state that repays that fine. And that's different than the basin saying we want to do this and we're going to pay it back. [LB185]

SENATOR MELLO: Any further questions? Seeing none, thank you, Senator Carlson. [LB185]

SENATOR CARLSON: Thank you. [LB185]

SENATOR MELLO: Next proponent. [LB185]

JASPER FANNING: Thank you, Mr. Chairman, members of the committee. My name is Dr. 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, as well as the former chairman of the N-CORPE interlocal agency that was formed by the districts. We've had other members that are elected officials of our districts take over the executive officer positions, but we sort of spearheaded this project. I would first like to start with thanking the committee. I recognize that you are holding this hearing at a particularly early date compared to what most legislative bills might be heard, and I truly do appreciate that. Senator Carlson and Senator Christensen both touched on a lot of items that I might have spoke about, but I think it's important to recognize that the Legislature mandated natural resources districts to ultimately act as the arm of the state, jointly adopting plans with the state's Department of Natural Resources to carry out integrated management and to manage groundwater and surface water jointly throughout the state. And the statute specifically requires us to manage it such that we comply with the state's interstate agreements and compacts. And I think that that, in and of itself, shows that we are essentially doing what is a state obligation through these projects and for good reason, good reasons both locally and for the state, to keep the state in compliance with those to avoid future liabilities and ultimately to manage the resources in a way that optimizes the value of that resource locally, which trickles back up to the state. And if we had to shut off 100,000 or so irrigated acres of groundwater irrigation and regulate surface water for compliance without these other types of projects, what that ultimately means is if we look back at the most recent drought, 2002 through 2006, you would have started regulating surface water, you would have shut off those groundwater wells in 2002, and for all practical purposes you would have turned them back on in about 2008. And so it's

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

Appropriations Committee
February 01, 2013

not like it's a one year here or one year there that we're talking about. What these projects have the ability to do is to allow us to manage the groundwater resource for the long term and ultimately time the flows in the stream with projects that you can manage with a flip of the switch. And it's very important, because if we don't have those tools, what we're essentially required to do is to do what Kansas asked us to do--manage groundwater as if it never rains again so the state is in compliance in the driest of dry times. And what that does is it means that when it is wet and there's all sorts of extra allocation, we can't tap into it and it flows on to the state of Kansas, tens of thousands, if not hundreds of thousands, of acre-feet of water which are so precious and so valuable and will only be more so in the future that this state wouldn't be able to utilize. Those 200,000 acres of irrigation represent probably \$5 billion worth of value in the basin in terms of the economy. We're not talking about small numbers. The number of irrigated acres that we have in the basin, as it's been mentioned before, roughly 50,000 acres of surface water or so that don't have a groundwater well. So when we talk about surface water users and groundwater users, most surface water users are also groundwater users. Unfortunately, if you're regulating away someone's surface water, if they farm in that area they probably also own the wells that we're going to shut off as well. So those folks are going to take a double whammy. And I think it's important that we recognize that's maybe the social obligation that we have here, as natural resources districts, to try and do these types of projects because in our communities it's not really equitable to shut off just those uses next to the stream and have those individuals bear all the burden. And that was never our intent. We put those regulations in place so that we didn't have to put in place Draconian regulation districtwide so that we couldn't ever tap into that valuable resource, because we always plan on bringing these projects on line. And I don't want the committee to think that we were here in 2008 and we're back again because we're going down this path of short-term solutions time and time again. The surface water leases in 2008 were a drastic and immediate, almost panic response. We paid too much for the water but we're lucky that we did because the state certainly is benefiting from that. And I think we should note that there's been lots of questions about our ability to repay. I think we can structure our obligation so that we can guarantee that we can repay \$40 million in five years with our existing \$10 occupation tax. We'll just have to bear that in mind. That's, to me, not an insurmountable obstacle. The tax impacts of the project locally, we're taking essentially 16,000 irrigated acres out of production so that we don't have to take a couple hundred thousand out of production in the Republican Basin whenever it's dry and so that the Twin Platte Natural Resources District doesn't have to take 50,000 acres out permanently. That demonstrates, in and of itself, the economic feasibility of this solution. The other thing that I should note is that any state management plans that we have jointly adopted with the Department of Natural Resources, that it's not just one thing. It's not just these projects. As Senator Carlson mentioned, we're already reducing groundwater pumping by 25 percent, from where it was when Kansas sued us the first time, by 2015. That in and of itself is a significant economic hit to the water users. That's what we need to do long term, and that's going to change from district to district, but I happen to manage a district that has

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

Appropriations Committee
February 01, 2013

groundwater declines. We had 35 feet of declines before the first Groundwater Management Protection Act was ever passed. In the time since then, we've had about that amount of decline again, so we've slowed that rate of decline fairly considerably and will continue to work towards that in the future. And I see that I've run out of time here so I will wrap up very quickly and answer some questions. But I think the most important thing that we're trying to do is minimize the economic impact of complying with the state's obligations on behalf of the state and to the benefit of our local district. And so with that, I would certainly take any questions that the committee might have. [LB185]

SENATOR MELLO: Senator Wightman. [LB185]

SENATOR WIGHTMAN: (Exhibit 2) Thank you for being here and for the information you've given us. I'm looking at a letter here that we received from Brad Edgerton, manager of the Frenchman-Cambridge Irrigation District, and I thought maybe you could respond to some of that in that they're opposed, as you probably know, to this. And among other things, they say Senator Christensen, LB185, is seeking \$40 million in tax dollars from the state to fund N-CORPE. Apparently N-CORPE is not credit worthy to fund to lenders in the commercial setting. And then he goes on, discusses the part of the constitution that he's referring to, said it would violate Nebraska construction, the construction--I think that's in error, I think it should be constitution--Article XIII, Section 3, which provides. I think that perhaps Senator Christensen covered this. What is the ability to pay in the event this was considered unconstitutional what you're doing? I know you're not at the top of your levy that you could have. I don't remember. It seems to me what is the top levy you can have is point...can you tell me that? [LB185]

JASPER FANNING: Our max levy is 8.5 cents... [LB185]

SENATOR WIGHTMAN: 8.5. [LB185]

JASPER FANNING: ...as far as our levy. [LB185]

SENATOR WIGHTMAN: What are you at now? [LB185]

JASPER FANNING: We're at about 7 cents roughly, and other districts are maybe lower than that. I think the occupation tax is not being challenged here and that raises far more money. That raises, from my district alone, about \$4.5 million per year. [LB185]

SENATOR WIGHTMAN: The 7 percent does? [LB185]

JASPER FANNING: The occupation tax does. [LB185]

SENATOR WIGHTMAN: Oh, the \$10... [LB185]

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

Appropriations Committee
February 01, 2013

JASPER FANNING: The 7 cents only raises about \$1.2 million in our district. I'd like my district to be in Omaha, that would be a different number, but (laugh) for that reason only. I think, you know, this brings up a very unfortunate point to see that they're opposing this. I think this comes back to some misunderstandings about what we're doing. Our Rock Creek project, which is what we're going to utilize in 2013 to meet the deficits that the Department of Natural Resources has forecasted, my district is going to be short about 10,680, about, 10,680 acre-feet, according to the forecast, because of the extreme drought that we had last year, and we're going to put 16,000 acre-feet in to replace that. And that water is going to run down the stream and into Frenchman-Cambridge Irrigation District's most upstream reservoir. Now to the extent that the department has a call on the river for compact compliance, passing water to Kansas, that water is going to flow on through. But once the volume that the department has forecasted needs to reach Kansas and they are no longer bypassing those irrigation districts, our pumps are going to continue to pump water into the stream and ultimately that water is going to be captured by those irrigation districts and utilized. Now I'm not telling you that it's going to be perfect because our projects aren't distributed all the way around the basin perfectly, but in aggregate their water that's regulated away is going to be replaced. And it may take some time for the understanding in the basin to get there and to get all the projects in place that we need to, but the project that we have on Rock Creek has a maximum capacity of about 20,000 acre-feet. The shortest that my district has ever been has just been a little bit over 10,000 acre-feet through the drought of '02 through '06 under our forecasting procedures. Quite honestly, I'm not sure exactly how I should put this, but the only reason we're involved in the N-CORPE project was to make it happen. It was an opportunity this state had that would have been missed and probably never had that opportunity again, and we made an offer on the property and approached the other districts and presented that to them. And we're participating as an insurance policy for our district. There are some things with Kansas that are yet to be worked out in terms of how augmentation is credited. We have the capacity in our existing project to take care of our district's needs, but we saw value in the entire state being in compliance, not just our district, because if the entire state is not in compliance, our district is still in Nebraska. And so, unfortunately, these irrigation districts have taken a lose-lose position. And Mr. Edgerton, I pause a moment because this troubles me a bit, but he was one of Kansas' witnesses in the case against Nebraska and testified for the state of Kansas, against the state of Nebraska, to assist Kansas in getting the \$70-some million they were asking for, a Special Master to take over water management in the state of Nebraska, and ultimately to shut off 300,000 irrigated acres, again, because they thought the benefit of water, maybe more water in the future, to their 45,000 acres that they irrigate, approximately, was more valuable than the other 1.1 million acres in the basin. And that's unfortunate. And this litigation, I don't know how it all relates, but the litigation to stop this project is putting the state at some risk of noncompliance in the future and that's exactly why I support this legislation and our board supports this legislation, so that we can move on and keep Nebraska in the right

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

Appropriations Committee
February 01, 2013

place. [LB185]

SENATOR WIGHTMAN: I wasn't sure I heard your answer as to how much your...right now, what you were taxing the individuals that are pumping within the district, how much that came to a year. Did you say 7? [LB185]

JASPER FANNING: The tax that the irrigators pay in the form of the occupation tax is \$10 an acre. We charge the max to...because we have the other project. Our Rock Creek project was a \$15 million project and we were actually paying it off in the construction without bonding at that time, just hadn't had to issue bonds. [LB185]

SENATOR WIGHTMAN: I was more interested in how much you're getting from the tax levy that you're... [LB185]

JASPER FANNING: Oh, of the 7 cents? [LB185]

SENATOR WIGHTMAN: Right. [LB185]

JASPER FANNING: That's about \$1.2 million that the 7... [LB185]

SENATOR WIGHTMAN: So raising it to the full amount is not going to increase (inaudible). [LB185]

JASPER FANNING: It's going...well, we could probably raise another \$120,000 or \$150,000. So the bulk of our repayment has always been the occupation tax. That's why we supported it when Senator Christensen introduced it because it raises enough money that we can actually do something with it. [LB185]

SENATOR WIGHTMAN: Now somebody...and I don't know whether it was Senator Carlson or Senator Christensen that gave us this information that indicated that you would be able to repay this amount even. I guess my concern here is you also talked about reselling if you had to. If you were to resell, would you resell as irrigated acres or dryland acres? [LB185]

JASPER FANNING: Well, of course, I can't speculate as to how the litigation would be resolved. I would anticipate that we would sell out to the Twin Platte Natural Resources District and maybe some other, Platte Natural Resources District. The Platte River still needs the water. If the litigation doesn't impact their ability, quite honestly, that's where it would go. In fact, I think a portion of our share of that project, you know, while I said it was an insurance policy, some of our share likely will often, most likely, go to the Platte and the other Republican districts when they need it as well. [LB185]

SENATOR WIGHTMAN: I'm assuming if you resold it, you wouldn't get very much. As

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

Appropriations Committee
February 01, 2013

unirrigated acres, you wouldn't get very much of the \$62 million that you paid but...
[LB185]

JASPER FANNING: Well, yeah, and I'll correct the record. We paid \$83 million. [LB185]

SENATOR WIGHTMAN: Eighty-three, okay. [LB185]

JASPER FANNING: It appraised for \$86 million. We might be the only people that have bought ag land in the last three years where it appraised for more than they paid for it. But we financed \$76 million. We put down 10 percent. The four districts, we don't have large cash reserves, much like the state. We're cognizant of the need for maintaining a cash reserve. But we put our \$8 million, \$8.3 million that we scraped together collectively to make the deal happen because we couldn't afford to miss the opportunity.
[LB185]

SENATOR WIGHTMAN: My questions are aimed at what's your ability to repay. And you don't have to answer this, but so that everybody else... [LB185]

JASPER FANNING: Well,... [LB185]

SENATOR WIGHTMAN: ...understands my concern, what's your ability to repay if you lose the lawsuit and it was held that it was unconstitutional? [LB185]

JASPER FANNING: If we're...if we...well, I think that letter points out one thing--and I'm not the attorney, I know you have your own legal counsel--but you can't pledge the credit of the state. And we're not asking you to pledge the credit of the state in any fashion. We're asking that you actually give us credit. So I don't think you're pledging the credit of the state, as that letter asserts. I think you're actually providing us cash and, thereby, giving us credit. [LB185]

SENATOR WIGHTMAN: Thank you. [LB185]

SENATOR MELLO: Senator Larson. [LB185]

SENATOR LARSON: Real quick, Jasper, does this enable you, you meaning the district, for the most part, does this enable you to continue pumping water in your district and ignore groundwater declines in the future by any means? [LB185]

JASPER FANNING: It...not at all. I think I mentioned that before, you know, our districts had groundwater declines and that's why we lobbied the Legislature. We, well before my time, former board members lobbied the Legislature in the late '70s to create groundwater management areas and authorities. The Legislature would never really give them the authorities that they asked for, wouldn't even let them stop drilling wells.

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

Appropriations Committee
February 01, 2013

They used the authorities that were granted to come up with some pretty creative ways to stop drilling wells through well-spacing requirements. And they started putting those allocations on and ratcheting them down. I think their intent has always been to continue ratcheting that down because the people that live in our area, I'm a fifth generation guy, we want people in our families to continue to live there in that area. And so I think, you know, nobody (sic) wants to preserve the aquifer so there's always enough water there, and you'll see our district continue what it's done since 1978 and '79 and ratchet those allocations down in a way that leaves enough water available to meet the future needs, even though it would be valuable to use it today. [LB185]

SENATOR LARSON: And touching on Senator Wightman's questioning in terms of your ability to repay, and you mentioned real quick that should you lose the litigation currently in court that the most likely buyer would be...did you say the Twin Platte? [LB185]

JASPER FANNING: The Twin Platte Natural Resources District, which they're already obligated for 25 percent. [LB185]

SENATOR LARSON: Yeah. Yeah, and they're already obligated in the project. So the assumption would say that they're probably a pretty worthy buyer at this point if you lose litigation. And you mentioned that we have water obligations on the Platte. Is that the compliance issues with Wyoming and Colorado that they're really working towards complying with that this could help as well? [LB185]

JASPER FANNING: The Platte Cooperative Agreement, of course, involves Colorado and Wyoming and Nebraska, and they have target flow requirements aimed more at the endangered species on the Platte and meeting those requirements. And the neat thing there is that the Twin Platte can put water in when it's needed for the species with a project like this. And Kent Miller will talk more about that, I'm sure. [LB185]

SENATOR LARSON: So essentially, whether it's you guys splitting the water, some going to the Platte, some going to the Republican. Or even should you lose the lawsuit and Twin Platte buys it, they're going to be pumping the water back into the Platte in the end anyway to help us stay in compliance. Whichever compact we're in, we're going to...we're working to stay in compliance with this project but we need the money now, essentially, to make sure that we're staying in compliance, whether it's with Kansas or whether it's with Colorado and Wyoming. [LB185]

JASPER FANNING: That's correct. In fact, it was a fight to keep the Twin Platte at 25 percent. They wanted half the project off the bat. [LB185]

SENATOR LARSON: I appreciate the questioning and I think that goes a long ways to saying that this really is about making sure we as a state stay in compliance with all the compacts that those before us have come with us. And we have to be very mindful as a

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

Appropriations Committee
February 01, 2013

Legislature because I know that the Platte River Compacts, we have...by 2020 I think we have to be at the 1990 water levels or somewhere around there. [LB185]

JASPER FANNING: There's a 1997 requirement approaching. And again, Kent Miller is the expert on that. He can give you more details on that. [LB185]

SENATOR LARSON: So I think it...I mean we have to be very mindful of that as a Legislature. If we fall out of compliance there I think, and he can correct me if I'm wrong, but we lose federal license for something such as Kingsley Dam and Gerald Gentleman Station if we fall out of compliance with that compact, I believe, and I may be wrong on that. [LB185]

JASPER FANNING: I believe you're correct on that. And actually, this project is in that area and taps into a water resource that those Platte River surface water projects, which include NPPD and CNPPID, their mounds fill this area with water that leaks from their canals. And in fact, in the area of this project, groundwater levels have risen 40 feet and there's 400 to 600 feet of saturated thickness in the Ogallala Aquifer there. And we're not creating a new use. So this is in an area where the water supply is as infinite as it can be and, even under existing conditions, doesn't have a shortage or we're not approaching one. [LB185]

SENATOR LARSON: And I think, like I said, I think that's the huge thing that we as a committee have to understand as we're trying to decide whether or not you guys can repay it is the Twin Platte is ready to step in at any point because they need the water for their compliance as well. And I think that, I would hope, would ease some minds on the committee because we do have compacts to stay in compliance with. And I'm sure we'll have questions for him as well when he steps up. [LB185]

JASPER FANNING: Thank you. [LB185]

SENATOR MELLO: Senator Kintner, did you have a question? [LB185]

SENATOR KINTNER: Do not. [LB185]

SENATOR MELLO: Okay. Any further questions? I have one, Dr. Fanning. Just looking from the handout that we received, there's the last page that went over a preliminary opinion of construction costs for the N-CORPE project, and I think the total amount equated to \$40,895,000, and that did not include dam renovations and engineering fees. Is there...LB185 obviously requests \$40 million. Where would the remainder of that \$895,000, of dam renovations and engineering fees would...is that...do you and... [LB185]

JASPER FANNING: We would have some additional monies that we could utilize to

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

Appropriations Committee
February 01, 2013

cover those... [LB185]

SENATOR MELLO: Okay. [LB185]

JASPER FANNING: ...those contingencies. [LB185]

SENATOR MELLO: Okay. Okay. Any further questions? If not, thank you. [LB185]

JASPER FANNING: Thank you for your time. [LB185]

SENATOR MELLO: Next proponent. [LB185]

KENT MILLER: Mr. Chairman, members of the committee, my name is Kent O. Miller, it's Kent, K-e-n-t, middle initial O., the last name Miller, M-i-l-l-e-r. I am general manager of the Twin Platte Natural Resources District and I thank you for the opportunity to appear before you today and to support LB185 and to promote this N-CORPE project. This is a...in my mind, this is a history-making project in that this brings together the Platte and the Republican River Basins to work together on the best use of water in the state of Nebraska. As was talked about, the location of this project and the opportunity to buy these lands was a once in a lifetime opportunity. And it's in an area, as Jasper indicated, of 400- to 600-foot-thick aquifer. There are not declines occurring in that area, and the stream depletion factors are less than 10 percent. It's in a perfect location to be able to change the water that was being used for irrigation to pump to the Platte River and to the Republican River and to be able to time it. By turning a switch on and off, you get the best use out of the water. Now I want to talk about the Platte side because there's significant differences. On the Platte side, we have the integrated management plans that was required by LB962 in 2004. That was because the Platte River basically west of Kearney was designated as overappropriated. We also have the Platte River Recovery Implementation Program and that is a three-state agreement with the state of Nebraska, Wyoming, and Colorado, and the federal government, and it is in regard to endangered species, to protect endangered species, and to allow projects, as you indicated, like Central Nebraska Public Power and Irrigation and projects along the front range in Colorado and Wyoming to be able to move forward and continue on. In regard to the integrated management plans, on the Platte side we have an annual requirement because we're putting water back into the river to meet the shortages of surface water users that was caused because of groundwater irrigation development. When LB962 was approved in 2004, moratoriums were put in place--no new irrigated acres in the Platte Basin. When we were managing and looking at groundwater and we did not have declines in our district, we thought that was the worst management scenario we'd ever get to, and literally almost overnight we had moratoriums in our entire Twin Platte NRD. Since those moratoriums have been put in place, through education, economics, and efficiency, pumping has been reduced. Directors tell me and I've observed it also that back in the '70s road ditches ran full. We used to have reuse pits on most irrigated

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

Appropriations Committee
February 01, 2013

fields. You don't have those today because the water is being used efficiently. We have to, with our integrated management plan, we have to return to 1997 conditions in our first increment. Then we have to ultimately work to get back to fully appropriated. For the Twin Platte NRD, that's 7,700 acre-feet. This N-CORPE project and our one-fourth ownership of that project will meet that requirement for our integrated management plan. And that will prevent us from having to dry up approximately 50,000 acres in our NRD if we weren't able to work with an N-CORPE project in this location and be able to run pipelines and put the water in the river when it's needed. So essentially we'll be drying up 5,000 acres in our district with N-CORPE versus 50,000 if we didn't have this project. And, you know, remember that irrigators are paying for this. This is not coming out of our property tax levy. It's not coming out of state General Fund money. This is being paid for by irrigators. And in our district we have 350,000 acres irrigated. This will be approximately \$5 to \$6 of our occupation tax. Fortunately, we'll have another \$5 to \$6 so we can start working to get back to fully appropriated. We've talked about the Platte River Recovery Program. It's not a coincidence that the state's requirement in the Platte River Recovery Program is to get back to 1997 conditions and that same first increment was required in LB962 of our integrated management plans. That wasn't a coincidence; that was on purpose. So consequently, by the NRDs having to get the river back to 1997 conditions, we're meeting the state's requirements for the Platte River Recovery Implementation Program. So for us to put that 7,700 acre-feet in to work with N-CORPE, that's a state need, a huge state need. Okay. What are the benefits to the Platte for this? Surface water users will be returning to whole. Habitat will be improved with the Platte Recovery Implementation Program. And there will be benefits throughout the Platte River Basin all the way to the Missouri River. You'll see benefits for the Omaha and Lincoln well fields. Lincoln last year had rationing because they were concerned about the flows in the Platte River of their well fields. Water that we can put in the Platte River out west, it works its way down. Whether it's used for surface water irrigators that were shorted or whether it's used for habitat, it works its way down and that benefits the municipal well fields in eastern Nebraska. It's been mentioned several times, and I see my light is on but I just want to reaffirm, because this question has been asked numerous times this afternoon, what if N-CORPE loses this lawsuit? What if the state loans N-CORPE this \$40 million and this lawsuit is lost? As Jasper said, and I want to reiterate that, the Twin Platte NRD wanted 50 percent of this project if we could have had it from day one. We can fund 50 percent of this project. We want that water because then we can get beyond going to '97 and work to getting to fully appropriated. And again, we'll be putting more water into the Platte River Basin. Our occupation tax initially will be \$5 to \$6 with this project. That leaves us another \$4 to \$5 to work on additional projects. Okay. I said that we could fund...take over half this project. We can do that with the Twin Platte NRD. I think we'll find partners in the Platte Basin to pick up the rest of it, but if we don't, there's an asset down there with this property that's being purchased. That property has certified irrigated acres. It's not going to go down in value. It's going to continue to go up in value. It's too bad we couldn't have purchased it four years ago. So, you know, if that worst-case scenario comes, because I want to continue

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

Appropriations Committee
February 01, 2013

the relationship with the Platte and the Republican, but if we have to pump to the Platte doing it, we can do that and the state will be paid back. [LB185]

SENATOR MELLO: Thank you so much for your testimony. Senator Wightman. [LB185]

SENATOR WIGHTMAN: Thank you, Mr. Miller, for your testimony. I don't want any of you to think that because I'm asking a lot of questions, it's a lot of dollars. And so while I think right now I certainly would favor the legislation, I think there are items of income and expenses that we almost have to know to give an educated answer on what we're being asked to do here today. Can you tell me, and you could probably on your NRD, and yours is Twin Platte, is that correct,... [LB185]

KENT MILLER: Yes. [LB185]

SENATOR WIGHTMAN: ...how much revenue and expenses your normal annual... [LB185]

KENT MILLER: Our normal budget? [LB185]

SENATOR WIGHTMAN: Right. [LB185]

KENT MILLER: Okay. I'm going to talk on the revenue side, because that's what I wrote down. That's what I heard you guys talking about. We currently are levying 6.9 cents for... [LB185]

SENATOR WIGHTMAN: Six point nine out of the eight... [LB185]

KENT MILLER: Six point nine cents is what we're levying for our property tax. [LB185]

SENATOR WIGHTMAN: Right. [LB185]

KENT MILLER: Six years ago the Twin Platte NRD had the lowest levy in the state. Today we're right at the top, if not at the top, levy of the NRDs in the state and that was because of the passage of LB962 and having to do this integrated management plan, which in turn, you know, benefits the Platte River Recovery Program. So from that 6.9 cents, we raise \$2.75 million. From the occupation tax, we have 350,000 acres irrigated in the Twin Platte NRD, so we potentially could raise \$3.5 million from the occupation tax. Now initially, with the N-CORPE project, we're looking at approximately half, 60 percent of what we can get from the occupation tax. But the increase that the Twin Platte NRD board of directors put in place on the property tax side was directly because of LB962, directly because of our integrated management plan. We have not increased any other program in our NRD. And if it wasn't for the requirement and the fact that the Twin Platte NRD board understands the value of ag economics in this state, we'd be still

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

Appropriations Committee
February 01, 2013

one of the lowest levies in the state. That changed because of the demands to deal with the water issues to keep the Platte River Basin whole and which will benefit clear downstream to the Missouri. [LB185]

SENATOR WIGHTMAN: Let me explain what I think almost anybody's concern here would be. That is we're talking about paying back \$40 million over a period of five years. [LB185]

KENT MILLER: Uh-huh. [LB185]

SENATOR WIGHTMAN: If we took \$6.25 million, which apparently is your current income, obviously \$6.25 million will not pay that off in five years. It would have difficulty in paying it off in eight and particularly by the time you added interest on. So could you tell me a little more about how your income would go upward in order to pay this off just under... [LB185]

KENT MILLER: Well, you know, I... [LB185]

SENATOR WIGHTMAN: Of course, you're talking about just your district, that \$6.25 million. [LB185]

KENT MILLER: I'm talking about just mine. Yeah, I'm talking... [LB185]

SENATOR WIGHTMAN: So it could be approximately four times that. [LB185]

KENT MILLER: That's right. [LB185]

SENATOR WIGHTMAN: Is that what you're saying? [LB185]

KENT MILLER: If we can keep everybody together, be approximately four times that. That, you know, that is correct. But you know, I believe whether it's two months, three months, two years, this lawsuit is going to be resolved. Now, no, you can't guarantee there won't be further litigation, but what the legal counsels have told us so far is that there's a high likelihood it will be dismissed. If it's not dismissed, the long term is two years to get through this. And so then the bonding authority will come in at that point. In talking with the bonding counsel, within 90 days of the lawsuit being resolved, however it's resolved, the bonding funds can be available. And the folks from Ameritas are here, but I just asked that question when we were having lunch today, and the answer is 90 days at the longest because they've already put in place a lot of the things that they need to put in place. Ninety days from resolving it, we can have money available. And then we would have money available to pay off this loan. [LB185]

SENATOR WIGHTMAN: One more item of concern I would have, and you're...I think

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

Appropriations Committee
February 01, 2013

you're assuming that you're going to win the lawsuit. [LB185]

KENT MILLER: Well, I don't know. Maybe we'd like to lose and take all of it to the Platte, but, no, we want to preserve this... [LB185]

SENATOR WIGHTMAN: (Laugh) No. [LB185]

KENT MILLER: ...this partnership. [LB185]

SENATOR WIGHTMAN: But what happens if you lost that lawsuit? What would be your ability to repay? [LB185]

KENT MILLER: The lawsuit is not against the Platte. The lawsuit is against the Republican side, you know, and there's no lawsuit against the Platte side, is my understanding. [LB185]

SENATOR WIGHTMAN: And then one more item: Not only are you looking at repaying us but you're looking at annual payments, and I assume all four districts are repaying in the \$62 million...I think you said \$62 million was what was left or approximately that. By the time we add the two together, we're probably talking about real money, I would assume, because you're going to have...you're going to have a substantial payment between what you're paying on the land and what you're paying us back. That's a little bit of a concern too. [LB185]

KENT MILLER: It is. But the purchase of the land was \$83 million. Okay, there was \$8.3 million of earnest money paid down. There was interim financing for \$66 million. Okay. The plan is... [LB185]

SENATOR WIGHTMAN: When you say earnest money paid down, that's the total price of the land. So you haven't paid that. [LB185]

KENT MILLER: No, we bought... [LB185]

SENATOR WIGHTMAN: That's not the earnest money. [LB185]

KENT MILLER: We paid \$83 million for the land. [LB185]

SENATOR WIGHTMAN: Right. [LB185]

KENT MILLER: Okay. We had...we paid 10 percent, when I say 10 percent, in cash; the other 90 percent we have interim financing for. Okay. The plan is, when we can bond, is the bond funds will pay back the interim financing, will pay back the 10 percent the NRDs paid down, will pay for the construction so that...and then that will be then repaid

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

Appropriations Committee
February 01, 2013

over a 20- to 25-year period. The bond funds will be probably around \$110 million to \$120 million will be bonded. And then when that bonding is in place, then we have the money available to pay back the state and to pay back our interim financing. [LB185]

SENATOR WIGHTMAN: Okay. Understand, I'm not trying to be opposed at all. [LB185]

KENT MILLER: I understand. Yeah. [LB185]

SENATOR WIGHTMAN: If there's anybody in this group that has more to gain maybe from doing it, I may be the one that has the most. At the same time, I don't think we can dare take something that is too highly at risk, as far as the state of Nebraska, as far as our ability to receive that money back because all of us kind of remember when the last recession or depression--always depends on how much you're affected by it in person, I guess--took place and how much we were looking at in trying to come up with state funding at that time. So that's my concern here... [LB185]

KENT MILLER: Sure. [LB185]

SENATOR WIGHTMAN: ...is that we are very likely to have a period of time in the next two or three years, considering how long we've been with getting out of the last recession, if we're out of it yet, that all of that money could be gone and we're having a special meeting to try to figure out how we're going to come up with money to continue to operate the state of Nebraska. So that's my biggest concern here, of course, and I'm sure you understand that. [LB185]

KENT MILLER: Oh, absolutely. I mean we're all Nebraskans. You know, I'm a native Nebraskan and obviously been here a long time with the white hair. But you know, we're all Nebraskans and we understand your position. And we're just...we think that we have an opportunity here to better manage the water resources and we think we should be able to pay back the state in a very short period of time. [LB185]

SENATOR WIGHTMAN: And I realize irrigating agriculture pays an awful lot of money into the state, and in the form of profits... [LB185]

KENT MILLER: Right. [LB185]

SENATOR WIGHTMAN: ...a lot of years, but in the form of income. [LB185]

KENT MILLER: Sure. [LB185]

SENATOR WIGHTMAN: And so I appreciate your answers. [LB185]

SENATOR MELLO: Senator Harms. [LB185]

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

Appropriations Committee
February 01, 2013

SENATOR HARMS: Thank you, Senator Mello. Welcome, Kent. [LB185]

KENT MILLER: Hi. [LB185]

SENATOR HARMS: It's been a while since I've really had a chance to visit with you. [LB185]

KENT MILLER: Yeah. [LB185]

SENATOR HARMS: Good to see you. [LB185]

KENT MILLER: I've known John a long time. [LB185]

SENATOR HARMS: Yeah, we go back a long ways, when I was much younger. [LB185]

KENT MILLER: Only he was, (inaudible). [LB185]

SENATOR HARMS: Kent, you know, as I've listened to everything, everyone talk here, and it doesn't seem to be a big issue on the part of everyone that you could pay all this back. If that is of...and I don't question that. I mean if you're saying you can do it, I will assume you can do it. Why is it that we can't sit down with a lead bank and have a big bank involved in this to bring other banks in to actually finance this? I've seen this done with other projects. You get one large bank, one lead bank which will be the lead bank, then contacts all the other smaller banks and to bring it in as a package to finance this. You can make arrangements then when, if the lawsuit is over, kick it over to the bonding company and you're on your way. I think you have a lot...I think you have other options here. I'm just asking that particular question. Or what would happen if we said to you, we can give you \$20 million but you got to finance the other amount some other way? I don't know. I think there are just different options and I have a...it's not that I'm not supporting this. I agree with Senator Wightman that if this drought continues, which we think it probably is, where agriculture is today is going to come back around that cycle. I know for a fact that people where I live who do the flood irrigation have had to borrow on their this year's appropriations. They're not going to have that water in a drought. And what I'm seeing now may be the possibility of that income coming down. We may not be as strong as we think we are in the economy. We might find ourselves in a situation that the \$400 million that we have could go away really quickly for us. This is a big operation. It's not that I don't want to do it, but I would hope that you would start thinking about, you know, other options because I think that there are other options there. I guess that's... [LB185]

KENT MILLER: Let me respond to the other options. And actually, I'm an engineer and you should have asked Jasper the question about other options, because he's the

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

Appropriations Committee
February 01, 2013

economist. And if you really want to get a good answer, you should have him come back up here. But we have been looking at other options and we wouldn't have been here if we would have found another good option. The need is more urgent on the Republican side than it is on the Platte side. You know, we don't need to flow water in 2013 or 2014 because we have...we have temporary water that protects us through 2014. So we've got a little bit of leeway. But we're looking at an urgency on the Republican side. We're looking at developing...you know, there's a question asked how many wells are going to be used, how are you going to develop those wells. We are planning to develop 30 wells. We're going to use the existing holes but you have to put in different pumps. You have to put in what they call pitless pumps. You have to develop a collection system for that water. And then we're looking at a 42-inch pipeline going north and going south. And you don't simply walk in to a pipe supplier and say, I'd like to buy 42-inch pipe. There's a lead time to get that purchased. So the majority of that \$40 million that you're going to loan...would loan to us will go to develop the wells, develop the collection system, and move water to the Republican side. And it may take all of it and if it does then that's where the priority will be placed. But we want to have the pipeline in place next...you know, 2014 on the Platte side. And so the question is, yes, we've looked at alternatives and, you know, basically the interim financing is 90 percent of the value of the land. Banks seem to want to loan only on what they can return from the value of the land, so I think you run into issues there. [LB185]

SENATOR HARMS: You know, it would seem to me, on a banking side, that's pretty important to their economy and if you guys get into trouble there, you know, the economy, they're going to get themselves into trouble pretty quickly. It would seem like to me that they would want to step up to the plate and be a part of this, but that's just (inaudible). [LB185]

KENT MILLER: Well, and you know they did that with this interim, and this interim financing that we got, \$76 million, that's a group of banks. That's not just one bank. That was a group of banks working together. But I would...I don't know whether your procedures would allow you to have Jasper come back, but he can much better answer your question than I am. [LB185]

SENATOR HARMS: Well, thank you very much. Senator Nelson. You don't want to be on next, Senator Nelson? [LB185]

SENATOR NELSON: Oh, I'm sorry, I didn't understand. Yes, thank you very much, Mr. Vice Chairman. It may have been explained in this information here on N-CORPE, but in looking at the map here (Exhibit 1), I saw the line going north to the Platte and the line going south to the Republican River. And I think I was wondering is what goes to the Platte, does that have anything to do with the compact, I mean involved there? [LB185]

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

Appropriations Committee
February 01, 2013

KENT MILLER: It absolutely has to do with the Platte River Recovery Program because... [LB185]

SENATOR NELSON: The Platte River Recovery Program,... [LB185]

KENT MILLER: Right. [LB185]

SENATOR NELSON: ...but the compact with Kansas. [LB185]

KENT MILLER: No. The compact with Kansas, that's the line going south. And there's a line going... [LB185]

SENATOR NELSON: Okay, so...and you just indicated it might be necessary for most of the water to go south. [LB185]

KENT MILLER: Well, no, three...you know, the Republican side owns three-fourths of this project, okay? [LB185]

SENATOR NELSON: Okay. All right. [LB185]

KENT MILLER: And they need water on...not necessarily every year. On the Platte side, we need water every year... [LB185]

SENATOR NELSON: Okay. [LB185]

KENT MILLER: ...but it...basically, we each have one-fourth ownership in this farm. [LB185]

SENATOR NELSON: All right. So...but you're flexible enough so that it's going to go...we're talking about the Kansas compact and keeping ourselves out of trouble there. And so that's kind of the first priority? [LB185]

KENT MILLER: No. [LB185]

SENATOR NELSON: No? [LB185]

KENT MILLER: Not from my standpoint. [LB185]

SENATOR NELSON: Not from your standpoint. (Laugh) [LB185]

KENT MILLER: You know, but we're working together. [LB185]

SENATOR NELSON: Okay. [LB185]

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

Appropriations Committee
February 01, 2013

KENT MILLER: The point of it is that if they don't need water every year, we're not going to take their share. They can store it underground. They just don't pull it out. [LB185]

SENATOR NELSON: Okay. All right. And this is where the 30 wells are, right here. [LB185]

KENT MILLER: The 30 wells are in...and the ownership of the land that basically straddles the NRD boundary there. [LB185]

SENATOR NELSON: And if I heard Senator Christensen right with the...as far as the purchase of the land and the pivots here, that's on a land contract but that goes more than five years, doesn't it, the land contract? Did I hear ten maybe or at least as far as paying that, paying that off? [LB185]

KENT MILLER: We own the land. We purchased the land. [LB185]

SENATOR NELSON: But it's purchased on land contract and 10 percent down, as I understand it. So you've got to make... [LB185]

KENT MILLER: We don't...we purchased the land and I don't fully understand the term "contract" because we purchased the land. We purchased the land from the owner. We have interim financing with a bank. Now that interim financing was to be in place until we got the bond money. But we do not have any contract with the former owner. We own that land. [LB185]

SENATOR NELSON: Well, I may have misunderstood that. [LB185]

KENT MILLER: Yeah. [LB185]

SENATOR NELSON: Thank you. [LB185]

SENATOR HARMS: Thank you, Senator Nelson. Senator Larson. [LB185]

SENATOR LARSON: I'm going to try to help you wrap some things up and clarify some questions, as I try to understand this. And there's a question in terms of, you know, working with other banks. And from the hearing, and correct me if I'm wrong, Ameritas has pretty much said that once the litigation is over...because there was a question, you know, well, why don't we just wait till the litigation is over and then you could fund it. Ameritas has pretty much said they will bond you once the litigation is over, correct? [LB185]

KENT MILLER: That's correct. [LB185]

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

Appropriations Committee
February 01, 2013

SENATOR LARSON: But it's also my understanding that there's a very large or a very urgent matter in terms of making sure...the reason that you're coming in now for the \$40 million, instead of waiting until the litigation is done, is there's an urgency on the Republican side to make sure that we can have these pipes essentially in and ready to go to pump water down to the Republican River in case there is a water shortage. [LB185]

KENT MILLER: Right. [LB185]

SENATOR LARSON: That is why you're here today. Otherwise, if it was just, let's say, the Platte River, if it was just you without the Republican side, that it might have been...you might have been able to wait. Well, actually, you probably wouldn't have had litigation to begin with so you would have already been bonded. [LB185]

KENT MILLER: Right. [LB185]

SENATOR LARSON: (Laugh) So...but therein lies the urgency of doing it right away to make sure that we can stay in the compact with the Kansas side right now kind of. [LB185]

KENT MILLER: That is correct and that's for 2013. We both want water in 2014, if needed. [LB185]

SENATOR LARSON: Yep, of course. Of course. And so there is definitely an urgency here but, like I said, from my understanding, you have worked with banks and you had this backup plan to make sure that once the litigation is over, the financing will be there. [LB185]

KENT MILLER: That's correct. [LB185]

SENATOR LARSON: Real quick, I'm going to...one more question, then we're going to go through some numbers. And John brought it up, you know, and this is not only are we dealing with the Republican River Compact, we're dealing with the Platte River Compact as well. And I'm going to focus on the Platte River Compact since you're the one that I have up here instead of the Republican River. This will be, as I stated before, this will be beneficial to both compacts in terms of water usage. [LB185]

KENT MILLER: Correct. [LB185]

SENATOR LARSON: I know my priority bill my first year down here was LB229. I worked hard with Senator Fischer and a number of us worked with that bill, and that dealt a lot with the Platte River Compact. [LB185]

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

Appropriations Committee
February 01, 2013

KENT MILLER: That's right. [LB185]

SENATOR LARSON: How much would it cost the state if we fell out of compliance with the Platte River Compact? If you didn't get...this is obviously going to help share your...put your acre-feet in. If the state of Nebraska fell out of the Platte River Compact, just not the Republican River Compact, how much would it cost the state? And I'm under...I'm guessing when I say cost the state, relicensing Gerald Gentleman, relicensing Kingsley Dam, what are the economic costs to the state? [LB185]

KENT MILLER: You know, I don't have the dollars for that, but you hit the two big ones, Gerald Gentleman and Central Nebraska Public Power and Irrigation, because they would be out of compliance with...and with the Federal Energy Regulatory Commission. And so that's the big dollar cost. I can't tell you an exact dollar cost. [LB185]

SENATOR LARSON: I can't remember what it was exactly. I remember...I know it was two years ago I knew and, you know, some...the record might be corrected eventually, but when LB229 was my priority, I believe that the number was, if we fell out of compliance with just the Platte side, it would be anywhere between \$400 million and \$500 million to relicense Gerald Gentleman and Kingsley Dam. [LB185]

KENT MILLER: I've... [LB185]

SENATOR LARSON: Are we in the ballpark probably? [LB185]

KENT MILLER: Yeah, I've heard those figures. [LB185]

SENATOR LARSON: Between \$400 million and \$500 million. [LB185]

KENT MILLER: Absolutely. [LB185]

SENATOR LARSON: So essentially if we don't get water to the Platte River, the state could be on the hook for another \$400 million to \$500 million just to relicense these projects. [LB185]

KENT MILLER: That's right, huge dollars. [LB185]

SENATOR LARSON: All right. Huge dollars. It makes our litigation with Kansas look small. [LB185]

KENT MILLER: It could. It could. It could. [LB185]

SENATOR LARSON: We'll start there, and I kind of, you know, being from an ag district

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

Appropriations Committee
February 01, 2013

and my family is involved in ranching, not necessarily corn farming, but I'm familiar with the profits that can be had in agriculture at times. And I know farmers, we've had a few good years. Last year wasn't as good. But I looked recently on the...what old corn is being sold for and right now it's about \$7.50 a bushel, right around there. And often...and I'm obviously using averages here. And average inputs are probably right around \$4.50 to \$5.00 a bushel, but for ease sake we're going to say that the average corn farmer is making \$3.00 a bushel. And I run that...and if we don't do this, not only are we going to, you know, essentially you've said that your NRD is going to shut down 50,000 acres and the... [LB185]

KENT MILLER: Republican. [LB185]

SENATOR LARSON: ...Republican is going to shut anywhere just about 200,000 acres down in their districts. And in terms of straight profits for those individual farmers that are going to be losing these irrigation...or these irrigation permits, that's about \$30 million in profit in your NRD and about \$120 million in profit in the Republican River Basin. And I think we as a committee are concerned about the, you know, the repayment or we can be concerned about, you know, what happens if we hit a downturn. And I think we need to remember that the way the Cash Reserve fills up is when we go over our revenue estimates. When we have more sales tax and income tax revenue than projected, it goes into the Cash Reserve. And when you're starting to lose anywhere...when you lose about \$150 million that's going to go into these small economies, and obviously that money will get rolled over and over and over because we're talking about small businesses that these are going to be going into, I think we have to concern ourselves of what would be worse. And we can always...we play what-ifs all the time, but I think not doing this, you'll see an impact to our Cash Reserve if we don't because we're not going to be hitting our estimates. We're not going to be hitting our targets, because these are crucial things into the economy. And let's not...and then we can really get into, you know, if we're shutting down these irrigated acres, all of a sudden you're going to see land prices drop significantly in the area. And once land prices drop significantly, correct me as I'm wrong, the values will...the valuations will drop. And once your valuations drop, all of a sudden these districts, and for the Omaha and Lincoln senators, all of a sudden their land values aren't as much so they'll become...from unequalized districts, they'll actually be going into equalized districts, therefore, taking more money from Omaha and Lincoln schools that are currently equalized. So there's massive budget repercussions here for the state of Nebraska that I think we really have to look at. When we're looking at just, like I said, \$150 million just from the irrigated acres that are going to be taken out, that's not including the restrictions that are going to be put on irrigators. Going from 12-foot to 5-foot, you know, how many bushels are they going to be growing? We're talking billions of dollars to the state. We're talking billions of dollars not only to our Cash Reserve but just...I mean it can go into land values, it can go into our state aid funding, it can go into all our social programs, that it really does show that agriculture is the number one driver

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

Appropriations Committee
February 01, 2013

in this state. And when we're talking about this size or this portion, we have to be very careful. And I think we have to be mindful of, you know...and you did really good when you were talking about, you know, you have the bonding ready, the litigation just needs to end. But we haven't taken a broad look at the economic implications. And we can do...we can do static, you know, static fiscal notes, as our Fiscal Office does, but when we really start looking at the dynamic modeling, this is huge for the state of Nebraska in terms of economic repercussions. [LB185]

KENT MILLER: That's right. [LB185]

SENATOR MELLO: Any further questions? [LB185]

SENATOR CONRAD: Was that a question? [LB185]

SENATOR MELLO: Thank you so much for your testimony. Can I get a quick show of hands how many left are here to testify in either proponents, neutral, or opposition? Okay. All right. Welcome, Senator. [LB185]

SENATOR HANSEN: Good afternoon. My name is Tom Hansen, T-o-m H-a-n-s-e-n. I represent District 42 in the Nebraska Legislature. This sounded a little bit like Judiciary Committee today with all the suing going on. But if you truly have heard it, truly remember it, Mark Twain said that whiskey is for drinking and water is for fighting, and we are certainly in that mode now. (Laughter) That phrase came from west of here in the big states that had water problems, and then they just all migrated down here. We didn't get into these water problems overnight. It took a long time. And when Les Sheffield used to work for the university in the 1960s, he said something is coming. These big circle things are going to get out there and we're going to raise a lot of corn, so the cattle people better be ready because we're going to have an expanded value-added market very soon. And it did, it came. We were feeding as many cattle in Nebraska as Texas fed. Texas had about 800 feedlots; we had about 8,000 feedlots. So it's value-added in every community where cattle were raised. When you take North Platte and Sutherland and Ogallala and Omaha and Lincoln out of...off the map, there's about 96 percent of Nebraska left, so that's rural Nebraska. I mean we've got a lot of rural out there. There's a lot of rural going on and this is what we're talking about. If you can at least listen to these producers that are coming up after me, you know, \$44 million is a lot of money. That's sticker shock when we saw that. We opened up the paper and it was \$83 million for the water, for a water project. It's a big thing. I think we're used to the big numbers. It costs a lot to stay in agriculture anymore, and this is one way. The way I looked at it, I had as much sticker shock as anybody, but the more I studied this it looked to me like it was a once in a lifetime opportunity. These 117 wells are in one area. They are in the original Prudential Insurance irrigation thing that they tore up some Sandhills and people complained about and they were blowing, and over the years they've irrigated them. They've got a little bit of topsoil in them, but it will raise potatoes,

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

Appropriations Committee
February 01, 2013

it will raise wheat, it will raise corn. So it's good land but it's certainly not the best land and even in my district. This project is in Lincoln County. It is in the southern end of my district, so I wanted to come here today and certainly stand as a strong proponent of this. You're going to have some...there will be some, you know, people come out and say this is not a good idea, but it's going to cost a lot of money to take care of this Platte River Implementation Recovery Program. There's two projects we're talking about. The one in the south, in the Republican River, is a quantity problem. It's a quantity of water that has to be delivered into Kansas every year. Drought, wet, it doesn't really matter, it has to go to Kansas. They demand it. That's what we're in court about. The Platte River Recovery Program is about three endangered species, two little birds and a fish in the mouth of the Missouri River. State...the Platte River starts in Colorado and some of it goes through Missouri. It all comes together in my district from the North Platte and South Platte, and forms the Platte River and that certainly ends up in Omaha. And if we can't use that water, it's gone. And we're waiting for the water cycle to come back into operation this year and hopefully get some rain and get all those recharged. But that's about all I have to say, but I do think that it is a worthy project. It's expensive. I know that 10 percent of the Cash Reserve is a huge amount. We spent some out of the Cash Reserve last year for some university projects and I don't know if any of those have been built. They haven't been built but they're still getting some of that money together. But I do know it's going to be a stretch but, boy, if we don't spend this. I think Kent did a good job in discussing what are the options. When Senator Harms said, well, why don't you go to a bank, I think they've been to the bank. They've got to get...they've got some collateral there. They have irrigated ground. As soon as they start taking those pivots off and seeding it back to grass, that land is going to lose a lot of value and so they do have problems there, but I think it's something we can work through. I would...I think the Appropriations Committee ought to consider this seriously and see if we can come up with some money, some short-term money. Five years and \$44 million is not a huge long loan. So any questions? [LB185]

SENATOR MELLO: Thank you, Senator Hansen. Senator Harms. [LB185]

SENATOR HARMS: Senator Hansen, welcome back to the war room. (Laughter)
[LB185]

SENATOR HANSEN: Thank you. [LB185]

SENATOR MELLO: Any further questions? Thank you, Senator. [LB185]

SENATOR HANSEN: Thank you. [LB185]

SENATOR MELLO: Next proponent. [LB185]

BRUCE LEFLER: Members of the committee, Bruce Lefler, senior vice president of

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

Appropriations Committee
February 01, 2013

Ameritas Investment Corp in Omaha. That's B-r-u-c-e L-e-f-l-e-r. I would, I guess very briefly, try to explain where we were retained through an RFP process in December by N-CORPE to be the underwriter for the proposed financing for the entire project that they are looking forward to do. Since that time, we've been working with N-CORPE, as well as bond attorneys, to draw the necessary documentation and information that's necessary to take bonds to the market, with the anticipation that we would be looking at a time frame that was probably in a March, March to April time frame in getting some bonds done and putting funds in place to work this project out. Obviously, at this time N-CORPE's ability to access the taxes at bond market was impaired by the lawsuit that's been laid against them for this particular project. That gives them, as I said, it impairs their access to the marketplace because investors certainly don't want to see pending litigation in any bonds that they're looking to purchase. And for that matter, it's kind of been delayed. Now I would say that that would be the case for any municipal issuer, not just N-CORPE but any municipal issuer that has bonds that they're contemplating or putting in place and a lawsuit should come up. We basically take a step back and we've even been in a situation where the day before we were to settle the bond issue to actually get the funds in hand, a lawsuit came up so we had to stop that particular issue and wait until the lawsuit got pending. The marketplace that we deal with, for the most part individuals, mom-and-pop if you want to call it that, certainly we don't expect them to be sophisticated enough necessarily to be able to take on the liability of what the lawsuit means and doesn't mean. The other point I would make here is there's no analysis necessary to whether the lawsuit is valid or not or what the intended outcome of that lawsuit should be. The fact that the lawsuit got filed, in and of itself, puts them in a position where they don't have access to the tax-exempt marketplace as they would normally. I would...I know there was a couple questions that came up that have gone around through some of the other testimonies. The bonds that we're looking at and the security that would be behind the issuance of any bonds for the particular project, we would be looking at the occupation tax that the districts have the ability to levy upon the irrigated districts within each NRD. The payment of that occupation tax is the sole source that would be used to repay any debt that would be issued for these particular projects. As Kent, I think, mentioned, the timing that we would be looking at, should we see a resolution of the lawsuit in some near term, midterm, long-term future, the reality is the documentation that we would put in place would kind of just kind of sit on the shelf until it was necessary to bring it forward, and upon resolution of those bond issues...or, excuse me, the lawsuit, excuse me, we could be prepared to get into the marketplace for the bond issue that would be necessary to either pay for the project itself or repay any monies to the state that was necessary. There's probably a 45- to 60-day time frame window from the time we start doing the bond issue until we get the authorization done by the issuing entity, in this case N-CORPE, and then there's a 30-day time period from that period of doing the bonds till you actually settle the bond issue and the funds come up. So, as Kent mentioned, the 90-day time frame is kind of consistent in what we look at from the process of the bond process itself. I think there's...kind of been talked around and I've heard a question a

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

Appropriations Committee
February 01, 2013

time or two here, the anticipation that we've been working with N-CORPE on would be a 20-year amortization of bonds. There would be...for the most part, they have the ability to issue the bonds on a tax-exempt basis so that the investors would receive income from the bond debt service that would be exempt from both federal and state income tax. And so it's an advantage to the issuer to be able to borrow the money at those particular interest rates. The bonds, as they would be issued, would be on a fixed-term basis over the 20-year period, which means at the time of issuance the debt service would not change over that period of time, and we would always include within the bond documents authorization for redemption or call early by the district or by the issuer should they choose to do so. So they would have the ability to do that either by other funds or, quite frankly, as we work with many municipal issuers in the state, refinancing. So with that in mind, I think that's pretty much covered the basic 101 on bond issuance for N-CORPE on this particular project. And I'm certainly available for any questions you might have. [LB185]

SENATOR MELLO: Senator Wightman. [LB185]

SENATOR WIGHTMAN: Thank you. I guess one of the questions I have, and I know these interest rates could change... [LB185]

BRUCE LEFLER: Yes. [LB185]

SENATOR WIGHTMAN: ...a lot between... [LB185]

BRUCE LEFLER: Yes. [LB185]

SENATOR WIGHTMAN: ...what you would have loaned that money for today and what you may loan it for five years from now. Can you tell us... [LB185]

BRUCE LEFLER: Well,... [LB185]

SENATOR WIGHTMAN: ...what it would have been if you'd loaned it today as far as the interest rate? [LB185]

BRUCE LEFLER: Yeah, if we were looking at the interest rates in today's environment on a 20-year financing for the N-CORPE's project, and contingent upon that we are looking to actually within this process take these bonds to the rating agencies so that they can get a national rating on them, and we would anticipate that, you know, an A category hopefully on the issuance. In today's environment, I think we'd be looking at an average interest cost over the 20 years of between 3 percent and 3.25 percent interest rates over that 20-year period of time. Now within a bond issue you have maturities that come due in the 1st year, you have maturities that come due in the 20th year. You may have interest rates that will run from .5 percent to .6 percent in those first couple years

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

Appropriations Committee
February 01, 2013

out to, you know, maybe it's a 3.50 percent, 3.60 percents in the longer years. But over an average, you're talking 3 percent to 3.25 percent in today's environment. If I could tell you where the rates will be five years from now, I'd have a better job (laugh) than I have today. [LB185]

SENATOR WIGHTMAN: Right. [LB185]

BRUCE LEFLER: But that's always the risk of taking a longer period of time is interest rate risk as the environment goes on. We know, you know, we know where rates are in today's environment. [LB185]

SENATOR WIGHTMAN: I was going to suggest, if you could tell us what (inaudible) five years from now... [LB185]

BRUCE LEFLER: Well,... (laughter) [LB185]

SENATOR WIGHTMAN: ...you probably are the smartest man... [LB185]

BRUCE LEFLER: (Inaudible). [LB185]

SENATOR WIGHTMAN: ...in the United States or maybe a greater area. [LB185]

BRUCE LEFLER: I understand. [LB185]

SENATOR WIGHTMAN: But I would assume you couldn't tell me that. [LB185]

BRUCE LEFLER: Yeah. Yeah. But we are... [LB185]

SENATOR WIGHTMAN: But I'm still not assuming that you may not be the smartest man in... [LB185]

BRUCE LEFLER: There we go. There we go. I will be able to admit at least that we are in one of the lowest interest rate environments that we have been in for some amount of time. I don't usually like...you know, I don't want the tail to wag the dog. I don't want somebody to borrow money just because rates are low, but it is an (inaudible) opportunist. [LB185]

SENATOR WIGHTMAN: Say you made that loan and you add 3.5 percent interest... [LB185]

BRUCE LEFLER: Yeah. [LB185]

SENATOR WIGHTMAN: ...and it's over 20 years did you say? [LB185]

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

Appropriations Committee
February 01, 2013

BRUCE LEFLER: Twenty years, correct. [LB185]

SENATOR WIGHTMAN: What are you talking about for an annual payment? [LB185]

BRUCE LEFLER: About \$2.6 million, \$2.7 million annually for the \$40 million piece. [LB185]

SENATOR WIGHTMAN: I know that we didn't really ask this question about what annual amount the districts were intending to pay us, but obviously at \$2.6 million it would take an awful long time to pay off \$40 million. [LB185]

BRUCE LEFLER: Right. Right. [LB185]

SENATOR WIGHTMAN: And that's assuming that we had no interest there. [LB185]

BRUCE LEFLER: Right. I think in just basic conversations with the N-CORPE members, out of the...in order to repay \$40 million back over a five-year period of time, and I think I heard some numbers kicked around here, you're talking about maybe \$5 of that \$10, maybe \$5.50 of that \$10 would be necessary to put on each and every year to pay back over that five-year period of time. Now... [LB185]

SENATOR WIGHTMAN: But we're already at the limit on that, as I understand it, the \$10 there. [LB185]

BRUCE LEFLER: Well,...well, except that what they're...that's their limit that they put in place already and they're using those funds as they come in. But they would be...turn around and pledge those funds then for repayment here and not use them on other projects that they've used. [LB185]

SENATOR WIGHTMAN: So that \$10... [LB185]

BRUCE LEFLER: So it's not...I would say that \$10 that they have in place right now is not necessarily obligated elsewhere but it's being used. [LB185]

SENATOR WIGHTMAN: That \$10 could all be used in the repayment of this fund? Is that your understanding? [LB185]

BRUCE LEFLER: In theory, I'd say yes. Yes, it could. [LB185]

SENATOR WIGHTMAN: And it would only... [LB185]

BRUCE LEFLER: But I will, you know, I think as the conversation has gone around the

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

Appropriations Committee
February 01, 2013

table, the intent certainly is for N-CORPE, at the termination of the lawsuit, whenever that would be, in their favor or, quite frankly, I think in a case not even not in their favor, the situation, they would be looking to then access the bond market to borrow, whether it's \$40 million, whether it's \$20 million, whatever that number was. But they would access the bond market at that particular point in time in this to a repayment directly to the state for those funds when it was appropriate to do so. [LB185]

SENATOR WIGHTMAN: Thank you. [LB185]

BRUCE LEFLER: Yeah. [LB185]

SENATOR MELLO: Any further questions? Seeing none, thank you. [LB185]

BRUCE LEFLER: That was easy. Thank you very much. [LB185]

SENATOR MELLO: Next proponent. [LB185]

JOEL VANDERVEEN: (Exhibit 3) Mr. Chairman, Senators, my name is Joel VanderVeen. I am counsel to N-CORPE for bond and finance matters, Joel, J-o-e-l V-a-n-d-e-r-V-e-e-n. My purpose here in particular is to offer a clarifying amendment to the language in the bill. And let me get my cheaters here so I can read in particular what it is. And I'll tell you what it is that we intend to do. On page 3, line 11 and 15, after the word "of" insert the words "financing secured by." And then on page 3, line 17, strike the word "Legislature" and insert "agreement with the department." I'll offer that here. The purpose for that clarifying change is really the intent expressed here by the other speakers that the \$40 million would be repaid from the proceeds of a financing secured by the occupation tax as the first intent rather than directly by the occupation tax itself. We've talked about the amounts of the occupation tax that are currently available, but...and then...and so the bill itself refers to proceeds of the occupation tax and, again, I think the intent is that it's proceeds of a financing secured by the occupation tax. So that's the first item. The second item, replacing the word "Legislature" with "agreement with the department," the thought is that there will be some discussion regarding what happens, as the questions have been raised here, in the event that if financing is not able to be done within the five-year period. And the thought is presumably that an agreement can be made with the department regarding the portions of the occupation tax that can be committed and consistent with managing the other projects and the other uses for the occupation tax. So that's what I have to offer and I'm more than happy to answer any questions. [LB185]

SENATOR MELLO: Any questions? Seeing none, thank you. [LB185]

JOEL VANDERVEEN: I will leave this here in the event that it's useful. [LB185]

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

Appropriations Committee
February 01, 2013

SENATOR MELLO: Next proponent. Good afternoon. [LB185]

JOE ANDERJASKA: (Exhibit 4) Good afternoon. Senator Mello and members of the Appropriations Committee, I'm Joe Anderjaska, J-o-e, Anderjaska is A-n-d-e-r-j-a-s-k-a. I am president of the Nebraska Association of Resources Districts, presenting testimony today in support of LB185 on behalf of the Nebraska Association of Resources Districts. I am also presenting testimony on behalf of the Middle Republican NRD, of which I am a member of the board. I am a fourth-generation rancher, farmer in Hayes and Frontier Counties. My oldest is fifth generation. He is moving back presently to be a part of our operation. Earlier this week at the NRD legislative conference, the voting delegates for all 23 NRDs unanimously supported LB185. They recognized this as the most important issue for the NRDs this season...this session because the completion of the augmentation project keeps Nebraska in compliance with the Republican River Compact. It protects the local economy and protects the state taxpayers. I want to stress that we are not asking for a handout but, rather, a hand up by asking for a loan to be paid back by the irrigators in the area through an occupation tax on irrigated land. In fact, we would not even be before you today had not this lawsuit been filed to stop the financing of the water augmentation project. As the Republican-based NRDs develop what we refer to as our third-generation integrated management plan, we realized that to keep Nebraska in compliance we were going to have to take steps at the local level that would impose significant restrictions on groundwater use in about every third year. We recognize this responsibility in our plans but also recognize that through management actions taken by the NRDs the impact of our regulations could be minimized. We have permanently and temporarily retired irrigated acres. We have reduced our pumping with allocations. The Middle Republican NRD purchased a small irrigation company and made those waters available to all users in years when they are not needed by the state for compact compliance. The Upper Republican also purchased 3,260 irrigated acres, converted them to an augmentation project referred to Rock Creek. These actions keep Nebraska in compliance in normal years. However, when we get into a water-short year additional projects are necessary. Last fall, the Twin Platte, the Upper, Middle, and Lower Republican NRDs formed the Nebraska Cooperative Republican Platte Enhancement Project, or N-CORPE, to purchase over 16,000 acres of irrigated land from one owner to use as an augmentation project for the Platte and Republican Rivers. When the N-CORPE property became available the four NRDs took the challenge to address compliance issues in two basins. Never has a project of this scale been implemented by NRDs in Nebraska. We obtained the interim financing and purchased the project. We have hired engineering firms and are at the point where bids could be let and construction started. We had begun the process of issuing a bond that would replace the interim financing and provide the funds needed for construction when a lawsuit filed against the Governor, Brian Dunnigan, Department of Interior, the Bureau of Reclamation personnel, and the N-CORPE and Rock Creek augmentation projects. This lawsuit prevents us from obtaining the necessary financing needed for construction. We are confident that this lawsuit will be rejected by the courts, but we

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

Appropriations Committee
February 01, 2013

need a helping hand to get our project underway. This \$40 million loan from the state will allow us to complete construction, have the project up and running by fall, and help to ensure that the state of Nebraska maintains compliance with the compact. We can repay this loan. The occupation tax has met the constitutional challenge. We could complete this project over a period of five to six years with the occupation tax, and this need...and not need this loan being considered, but we need this project now. A compact call year has been designated by the state. While we can get through the 2013 crop year, additional actions may have to be taken in 2014. With the help of the Legislature through this loan, we can take this action that will keep Nebraska in compliance. I've heard some people say that this project is not necessary and this just allows groundwater to continue to be pumped with no restraints. That is not true. With our IMPs, we have said that we will impose the restrictions necessary. While we could impose enough restrictions to keep Nebraska in compliance, the economic and social impacts would be significant. I am also president of our local school board. It is the only school in our county. Six years ago we received almost \$1 million in state aid. This year we will receive \$14,000. We have 115 kids, K through 12. We really don't have any other options but to pay through the nose to educate our kids. And if we have to cut our allocations back and lose half of our irrigated acres, it's not going to be possible. This project can provide economic and regulatory stability for both groundwater and surface water. If Nebraska has the ability to stay in compliance, the need for curtailment of surface water will be less likely. You know, I would just like to, in closing, say that as a producer and as a board member locally and with the state association that I think a lot of times people don't understand how hard the people in my district back home have worked to be in compliance, the amount of money that they've spent, you know, the machinery they've had to buy, the changes they've had to make. And you know, I guess I for one am very proud of my people back home in the step that they have taken, and I guess I would like to see the state be able to willingly help us out again so we can stay in compliance. I'd have any questions. [LB185]

SENATOR MELLO: Thank you for your testimony. Is there any questions? Senator Bolz. [LB185]

SENATOR BOLZ: I do admire the work your community has done to make all of this come together, and I have heard, forgive me, I had to step out to do another bill, but I have heard some of the impacts this would have on ability to irrigate and on keeping in compliance with the contract. But I'm curious, what would happen to the efforts that you've done so far if this isn't approved? Will you sell back the land? Will you sell back the irrigation company? Is there any thought to what would happen if... [LB185]

JOE ANDERJASKA: You know, the irrigation companies we would keep because we still have to be in compliance. You know, we have told the state that we will be in compliance and we will. You know, our only other option is to drop our allocation back to a point that is, you know, 4 inches, which is about two-thirds less water than what we

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

Appropriations Committee
February 01, 2013

need. So we shut off two-thirds of our irrigated acres. And you know, the economic and social side of that is terrible. I was on Senator Carlson's Republican River Task Force, Sustainability Task Force, and you know this is one of the things that we talked about that we needed to do. And you know, it's a once in a lifetime opportunity that shouldn't be passed up because the other ramifications are terrible, not only for the people in our district but it's going to be felt statewide. [LB185]

SENATOR MELLO: Any further questions? Seeing none, thank you again. [LB185]

JOE ANDERJASKA: Okay. Thank you very much. [LB185]

SENATOR MELLO: Next proponent. [LB185]

JOHN SCHARF: Good afternoon. Thank you, Senator Mello and everyone. My name is John Scharf, J-o-h-n S-c-h-a-r-f. I farm and ranch south of Curtis, Nebraska, and I'm here representing myself. I also serve on the board of directors from McCook Public Power District and...which also has a major stake in what happens here, as in this past year the revenue from McCook Public Power District, 40 percent of the revenue came from irrigation. The power district does have a large investment in the infrastructure and the employee base, which is built into the rates. And so if this does not go through, we don't irrigate as much as we have projected, why, it will have a big impact on the power district and possibly the employee base. We could have stranded investment there that would have to have the rates picked up by other rate classes. This N-CORPE project will make a big difference in the production and economics to satisfy the end user demand and maintain the compliance with the compact. Without it, it will have a negative impact, not just on my farm with my employees but it could on the power district, large co-ops, truckers, seed dealers, machinery companies. There's a lot of people that do derive their income from revenues from irrigation. Land values in our area of course would be greatly impacted, which could reduce further the funding for schools. Farmers, including myself, we have made a large investment in energy efficient and water efficient irrigation systems and used...gone to strip till machines and...for greater efficiency and better use of fertilizer and root development. There's new seed genetics that we've made use of which includes drought genes and better nitrogen efficiency. The seed corn used to cost \$80 a bag; now it's \$350 a bag. We've made all these investments all to improve the efficiency and try to stretch what water we have and make it more productive. This N-CORPE project is taking place on a place where it's maybe not quite the most productive land but it is over a large aquifer. It's a situation that looks like a no-brainer to me. It really could help out the state's economy as well as the entire area, keep us in compliance with Kansas and our IMP. In closing, there is one thing, too, that hasn't been spoken about, but this is an excellent...and this is coming from the power district side, but this would be again an excellent site for a windfarm, which would help Nebraska's need for green energy in the future. That's all I have. Is there any questions? [LB185]

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

Appropriations Committee
February 01, 2013

SENATOR MELLO: Thank you for your testimony. Is there any questions from the committee? Senator Wightman. [LB185]

SENATOR WIGHTMAN: I just wanted to mention that Scharf is a lot easier name for me than Anderjaska. (Laughter) [LB185]

SENATOR MELLO: See no further questions, thank you so much. [LB185]

JOHN SCHARF: Thank you. [LB185]

SENATOR MELLO: Next proponent. [LB185]

MIKE CLEMENTS: Yes, good afternoon, Chairman Mello and members of the committee. My name is Mike Clements, that's M-i-k-e C-l-e-m-e-n-t-s, and I am the general manager of the Lower Republican NRD. We're actually based in Alma, Nebraska. And essentially--I know it's getting late, I'm not going to take a lot of your time--I wanted to bring up a couple of quick points that weren't mentioned earlier and then just make myself available to answer any questions if you had any for my particular district, since we're 25 percent owners in this project. One thing that hasn't come up today is the surface water districts that are suing us. Frenchman-Cambridge and Bostwick have...a lot of their surface water irrigators have wells. Roughly 50 percent of those irrigators have wells. And so a lot of their very own users and customers are going to be, if they would happen to win this lawsuit, they're going to be amongst the first people that are going to be shut off and regulated the most severely, those wells. Because if we don't have projects like the Rock Creek project and the Lincoln County project, for my district all I've got is regulation, and regulation means severely cutting back allocations on wells or, worst-case scenario, shutting wells off. And the wells that will be shut off are the ones that are closest to the river and those are the people that have surface water. So I wanted to point that out because I'm not really sure that everybody understands that. The other thing that I wanted to point out was the fact that if we would lose the lawsuit, and falling back to my district, I had to fall back on regulation, if we don't...if I don't have this Lincoln County project I could be looking at shutting off 47,000 acres to come up with an equivalent amount of water. So it is huge to the...it has a huge economic impact on the area. So those were really just the two things that I wanted to point out. I'd be glad to answer any questions the committee might have for me. [LB185]

SENATOR MELLO: Thank you, Mr. Clements, for your testimony. Senator Larson. [LB185]

SENATOR LARSON: Mr. Clements, real quick, and I think you hit home in terms of these irrigation districts that are suing you and many of their users have groundwater

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

Appropriations Committee
February 01, 2013

wells as well. And maybe you can't speak for Mr. Edgerton or these...or the irrigation districts, but do they believe that shutting off the groundwater wells will...and restricting that and testifying for Kansas and that such, do they believe by doing that they're going to be able to pump endless surface water? [LB185]

MIKE CLEMENTS: I think that they truly believe, because Mr. Edgerton actually, as it was pointed out earlier, has taken, with the approval of his board, the position that Kansas took in the Supreme Court lawsuit and that was to actually see 300,000 acres shut off in the Republican Basin permanently. And I think that they feel that if you did that, would there be more flows, surface water flows? Well, if it was a permanent shut off of 300,000, I heard Jasper say actually it might even be closer to 500,000, yeah, (laugh) it is going to increase the river flows but it's also going to be overkill and it's going to severely hamper the economic viability of the region. [LB185]

SENATOR LARSON: So essentially they wouldn't be able to pump endless surface water acres because it would only...the increase wouldn't be enough. [LB185]

MIKE CLEMENTS: Well, I think it's a selfish idea. [LB185]

SENATOR LARSON: Uh-huh. [LB185]

MIKE CLEMENTS: I think it's a case where you're looking at 67,000 surface water acres holding about 1.1 million groundwater acres hostage when you bring frivolous lawsuits like this. [LB185]

SENATOR LARSON: So this is what's best for everybody in the end. [LB185]

MIKE CLEMENTS: Yes. Yes. [LB185]

SENATOR LARSON: The best result for everybody as far as everybody is concerned, 60,000 versus 1.1 million acres. [LB185]

MIKE CLEMENTS: That's the way I do the math. [LB185]

SENATOR LARSON: Appreciate that. Thank you. [LB185]

SENATOR MELLO: Any further questions? Seeing none, thank you. [LB185]

MIKE CLEMENTS: Okay. Thank you for your time. [LB185]

SENATOR MELLO: Further proponents. [LB185]

DAN SMITH: Chairman Mello, members of the committee, my name is Dan Smith,

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

Appropriations Committee
February 01, 2013

D-a-n S-m-i-t-h. I'm the general manager of the Middle Republican Natural Resources District and we are in support of LB185. You know why we're here, but why we're here is because we ran out of other places to look. We purchased the ground. We were able to put together interim financing. Because what we bought had value, the collateral is there. There's not a whole lot of improvement for that property because of the pipeline, what we want to do. A bank can't loan us money on that because there's nothing there to loan it on. You know, it's not like we're running a business. We didn't buy this land to be able to farm it. We didn't buy it to be able to generate an income from it. We bought it to be able to generate compact compliance, which in my mind has a value much greater than any product that ever came off it. But consequently, there's no vehicle there. We explored with our engineering companies of looking at the possibility of them floating a loan through the construction process. We're here because we need to be here. This is sort of the last resort for us. You know, we can do it over time but we need it sooner than that, and probably the only way we can do it is with your help. So I don't want to bore you with a whole lot of repetitive testimony. I would try to answer any questions that relate to my district or that got missed through the afternoon, so... [LB185]

SENATOR MELLO: Thank you for your testimony. Any questions? See... [LB185]

SENATOR WIGHTMAN: I have one. [LB185]

SENATOR MELLO: Oh, Senator Wightman. [LB185]

SENATOR WIGHTMAN: Is your district...is one of the four districts that's buying it. [LB185]

DAN SMITH: Yes, sir. [LB185]

SENATOR WIGHTMAN: Okay. Okay. [LB185]

DAN SMITH: Yes. [LB185]

SENATOR WIGHTMAN: That's all I had. [LB185]

SENATOR MELLO: Thank you. How many other people are planning to testify? This will be our last testifier, it looks like then. [LB185]

NELSON TRAMBLY: I'll probably be the last one. [LB185]

SENATOR WIGHTMAN: At least proponents anyway. [LB185]

NELSON TRAMBLY: Nelson Trambly, N-e-l-s-o-n T-r-a-m-b-l-y, Lower Republican. I didn't have any prepared statement or anything, but I just wanted to say I've been on

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

Appropriations Committee
February 01, 2013

the board for 15 years down there and we've never had a project that looked economically sensible to us. This is the very first one that I've really been in favor of. We had Olsson and Associates, an engineering firm out of Omaha, look at a lot of running streams that we have and thought about putting dams on them to store the water and stuff. And in Kearney, about this fall, we was there and my first question was, if everything was a go, how long would it be before we could use the dam. Ten years. Well, we don't have a problem ten years from now. We got it today. And this project would fix us up right now. So...and another thing I kind of would like to say, now I don't know if I'm speaking out of turn or not, but the Bostwick area is from the Harlan County Dam going east. And I visited with a lot of the people on that Bostwick thing and I'm not real positive that the people that are on that Bostwick thing or the majority are really in favor of this lawsuit, because I don't think they realize they will lose their surface water and their groundwater, and that's a big risk to take. So is that short enough? [LB185]

SENATOR MELLO: It is. [LB185]

NELSON TRAMBLY: Okay. [LB185]

SENATOR MELLO: We appreciate your testimony. [LB185]

NELSON TRAMBLY: Thank you. [LB185]

SENATOR MELLO: Questions? [LB185]

SENATOR KINTNER: Where are you on this map here? [LB185]

NELSON TRAMBLY: Clear at the bottom, and Webster and Franklin, from the dam going east. [LB185]

SENATOR KINTNER: The dam. [LB185]

NELSON TRAMBLY: Yeah, there's a reservoir where...that's Harry Strunk. [LB185]

SENATOR KINTNER: Okay. [LB185]

NELSON TRAMBLY: Well, you know, we got a better map than that. [LB185]

SENATOR KINTNER: That's all right. (Inaudible). [LB185]

NELSON TRAMBLY: Well, anyway, it's hard to tell. It's from...oh, there's the map, right there. [LB185]

SENATOR KINTNER: (Inaudible). [LB185]

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

Appropriations Committee
February 01, 2013

NELSON TRAMBLY: Yeah. [LB185]

SENATOR KINTNER: Okay. [LB185]

NELSON TRAMBLY: That...our area goes up here to Cambridge, but we're from there down to... [LB185]

SENATOR KINTNER: But you could spit on Kansas, can't you? [LB185]

NELSON TRAMBLY: Yeah. [LB185]

SENATOR KINTNER: All right. All right. Thank you. [LB185]

NELSON TRAMBLY: But could I add one more thing I just happened to think of? [LB185]

SENATOR MELLO: Yes. [LB185]

NELSON TRAMBLY: We got a compact gauge at that Harry Strunk Dam and if we did do an augmenting program in the Lower Republican anywhere, the water would not get accounted for until it hit the Guide Rock diversion or across the state line at Hardy. And that compact gauge, in my opinion, is a key thing because that water gets counted there. We don't have to worry about the stream loss and all that for several miles. So thank you. [LB185]

SENATOR MELLO: Any further questions? I see none. Thank you. Are there any further proponents? If there are no further proponents, we have a letter of support from the Nebraska Water Resources Association (Exhibit 5), a letter of support from the Nebraska Cattlemen (Exhibit 6), and a letter of support for LB185 from the Nebraska Farm Bureau Federation (Exhibit 7). That will lead us to any opponents. Do we have any opponents? We have no opponents. We do have letters of opposition from the Frenchman-Cambridge Irrigation District (Exhibit 2), as well as a letter of opposition from the Nebraska State Irrigation Association (Exhibit 8). Do we have any testifiers in the neutral capacity? Seeing none, Senator Christensen, would you like to close? (See also Exhibit 9.) [LB185]

SENATOR CHRISTENSEN: First of all, thank you. I appreciate the many questions. I think it's been a very good hearing. I don't see Senator Nelson here. I apologize, I did use the term "land contract" and it's mortgage, so didn't mean to mislead him. The proposed amendments are good with me that were put in here to correct this language. And I want to make sure I didn't misquote. Senator Hansen set it straight, but all the land is in Lincoln County but it does split between the Republican and the Platte River

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

Appropriations Committee
February 01, 2013

Basin. I might have said that wrong. I'm not positive. But anyway, Senator Larson was asking some questions here towards the end that...about whether the irrigation district could expect to see a very fast return of water to the stream. Well, you've got to look at the whole situation of what has caused decreased streamflow. Has irrigation pumping affected it? Yes. But what else has done it? I'd like to mention the terraces that were put in, government payment, great conservation, the dams, no-till farming all have reduced the flows worse or greater than anything else that's been done, and nobody wants to go back there. When I talk to many different constituents that had concerns in the past about these projects and maybe that...especially when there was more property tax in here, people would say, well, I don't want to have to pay for that. And I would just look at them and said, why don't we go back to 1943. If we take everything back to then there wouldn't be an issue, would there? And they say, no, that's fine. I said, good, now get your moldboard plow out and go plow every acre. Remember, you got to summer fallow every other year. And they're saying, we can't do that. I said, remember that's where the compact was signed. Technology has brought us a long ways, but the technology of saving water, holding it so we can raise larger crops, be able to raise crops every year instead of every other year or two out of three years, depending upon where you're at, has reduced streamflow, but that's great conservation. Nobody wants to take that out. But that brings us to the problems that we have now. So I just want to again thank you for all the questions, thank all the people who came in and testified. And if there's additional questions I can answer, I'd be glad to and go from there. [LB185]

SENATOR MELLO: Senator Conrad. [LB185]

SENATOR CONRAD: Senator Christensen, I just want to thank you for judicious use of the committee's time. I know that we had a chance to visit off mike earlier this morning about the many constituents who expressed an interest in coming down today and I know that you had a lot of work to do to manage the hearing today and it was well done. And so I want to thank you for that and give you a chance to respond on that topic, if you'd like to. [LB185]

SENATOR CHRISTENSEN: Well, I do appreciate that. And I'm positive I could have put 200 people in this room. If you go back, clear back to LB701, I think they had two hearing rooms and 1023 over here. So I could rally the people, which, as I told Senator Conrad, I said, you know what, I need to get that many people here for the press because that makes attention to the issue and makes people understand. But the difficulty is I respect your time and I wanted to bring a few experts in to support it because of how I understand the pressure you guys are under. Again, I can't emphasize I thank you enough for an early hearing and I hope I have...had enough people explain why this is important to do quickly and why I asked for the early hearing. I'm going to ask for the advancement with the amendment to the floor so we can have an early debate and try and get this situation handled quickly to protect the state, protect the economics of the area in my district. Thank you. [LB185]

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

Appropriations Committee
February 01, 2013

SENATOR MELLO: I only have two questions, Senator Christensen, and one is a question that this committee traditionally asks with every piece of legislation that comes in, in front of us, is we know that there's a dollar amount or an appropriation amount that everyone requests but ultimately we're always limited in regards to the resources that are available to the state in some way or another. So the question is, does the bill, let's say, does the bill have to stay at \$40 million? Does it if...could the state possibly be a partner at \$20 million or at \$10 million, or does this have to be at \$40 million? [LB185]

SENATOR CHRISTENSEN: I say we have to stay at \$40 million. I think the first time that we talked about this, Senator, I said, do you want fluff in here? I will throw it wherever you need to. A year ago, you know, I worked with this committee on Final Reading of bills and actually took a cut about three times a year ago asking...in funding and was willing to work with it because it was in the best interests of the state. I believe this year the best interests of the state is stay at the \$40 million. I know it's a lot. It's too much to ask. But at the same time, the cost to the state in economics in the taxes that's going to be paid and the costs of potential litigation with Kansas forces us to stay at this number and go forward. And on top of that, it's not only that side with Kansas but we're looking at the cooperative agreement and the amount that has to be done. This doesn't solve the whole cooperative agreement problem. This is just a very small start. And unfortunately, there's more things got to be done. I know several districts are working very hard, using different tools that they have to try to get to their allotments, what they need to do to hit the 1997 levels and things this way. It's very important though, as Senator Larson brought out what it would take to relicense Gerald Gentleman and Lake McConaughy or Central Public Power and Irrigation system. It's not a cheap, easy fix. And unfortunately, I wished I could say, yeah, let's do \$20 million this year and \$20 million next year, I'm afraid we'd just put the state in further obligation and problems that we better stay right here and go. [LB185]

SENATOR MELLO: Senator Wightman. [LB185]

SENATOR WIGHTMAN: Senator Christensen, I say this maybe a little bit in joking but not much. You scare me when you say this may not be the last issue and...that you're going to have to come before the Legislature on, although you didn't say you were going to come before the Legislature but only one of a number of issues that you need to address. Do you see yourself coming to the Legislature for more funds any time in the next few years? [LB185]

SENATOR CHRISTENSEN: No, I don't. What I meant was speaking about the cooperative agreement, there's a number of things that have to be done yet and there's a number of issues to be handled. A number of them are working aggressively at doing it, and they're doing it in different ways, from land retirement to this augmentation project and things this way. I didn't mean that I was going to be back asking for money

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

Appropriations Committee
February 01, 2013

again. If you asked me that in 2008, I probably said I won't have to come back. Here I am. I apologize if I did say that in 2008, but at the same time the same situation that put us there in the 2008 lawsuit, it's the same issue that we're back this time. I apologize it's a larger amount, but the risk is probably higher now than it was before. [LB185]

SENATOR WIGHTMAN: Could you give us any promise you wouldn't come back in before (laughter) this amount is paid back? [LB185]

SENATOR CHRISTENSEN: I won't come back again before next year. (Laughter) And after that, I'm term limited. [LB185]

SENATOR WIGHTMAN: And after you won't be back at all. [LB185]

SENATOR CHRISTENSEN: There you go. (Laugh) [LB185]

SENATOR WIGHTMAN: Okay. Thank you. [LB185]

SENATOR MELLO: I have one final question and it's maybe...I stepped out momentarily when someone else may have asked this question. But, Senator Christensen, as you know, the Legislature has a process for our appropriations process in regards to when other appropriation-related bills or bills that ultimately take funds from the General Fund are usually delayed till after we're done with our budget process and we release a final budget for the entire Legislature to consider. The question I have is, why would we need to move on this issue as a committee now in comparison to waiting and being able to move on it later in session and have it be part of the overall broader budget conversation? [LB185]

SENATOR CHRISTENSEN: Two reasons. First of all, this is not in the yearly budget. It's coming out of the Cash Reserve, which we all know we got to protect. And if we wouldn't have had it, we'd a seen much harder cuts and problems in the past. I think Senator Carlson said it very well when...it's a rainy day fund and it's to take on the immediate emergencies that we need. The reason I've asked for this hearing early and advancement out of the committee early and for a quick debate on the floor is the fact that we need water in the stream in the Republican before the end of the year. And I don't think anybody else addressed it behind me but I mentioned in my opening, we're looking at four to five months of construction. The problem is, we have to go order that pipe. We have to have the funds available and go order that pipe, because it's not a size...42-inch is not a normal size of pipe that's kept. So we have to go order that. They got to go make it for us before we can come in and dig it in, get it going. So if we're looking at four to five months, say we're done by middle of February, first of March, you add five months, we're...August, maybe September, having very little time to making sure we're not out of compliance for 2013. And that's my rush, is to make sure that we don't put the state in an obligation that we have to take money out of the Cash Reserve

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

Appropriations Committee
February 01, 2013

that won't be paid back. [LB185]

SENATOR MELLO: Okay. Thank you. Senator Kintner. [LB185]

SENATOR KINTNER: Oh, my one question was, are all the Senators, all of the western Senators on board on this that you know of? [LB185]

SENATOR CHRISTENSEN: Well, I don't know that I can answer that 100 percent. I've tried to watch questions and reactions right here, even on this committee. And you know, I can repeat what Senator Wightman says. He's in...I don't know if you'd say guarded favor or in favor of the bill but concern of... [LB185]

SENATOR KINTNER: I'll find out in a few minutes where he is. (Laughter) [LB185]

SENATOR CHRISTENSEN: ...how he put that. But I think you can say Senator Carlson and Christensen and Schilz and Hansen are all in favor, and that's most of the west ones. You got Senator Davis up there and... [LB185]

SENATOR LARSON: Appreciate that. (Laughter) [LB185]

SENATOR CHRISTENSEN: And, Senator Larson, I think you can easily say. And my next question is, when you asked in the west, are you talking west of 48th Street in Lincoln or are you talking...where do you define west? [LB185]

SENATOR CONRAD: Because that's me. [LB185]

SENATOR KINTNER: West of 48th Street. [LB185]

SENATOR CHRISTENSEN: There's a lot of different definitions of west in this state. [LB185]

SENATOR KINTNER: Yes. Okay. Thank you. [LB185]

SENATOR MELLO: Senator Bolz. [LB185]

SENATOR BOLZ: Forgive me if this is territory that has been covered, but what if we are out of compliance? I understand that that is bad, but what will happen and do we have any projections about just how far we would be out of compliance for this year, given your rush? [LB185]

SENATOR CHRISTENSEN: Well, I think the biggest things is I think you heard one of the testifiers say, you know, there's another option. They can severely cut allocations this year but we'll take the economics clear out of the area. If you want...we're having

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

Appropriations Committee
February 01, 2013

enough people leave western Nebraska and move to Lincoln and Omaha. And this would be the biggest way to drain my district, which is ten counties already, and Senator Carlson's district that had several more in the Republican, be a quick way to have a lot of exiting of young people and farmers because it takes so many more acres dryland to make a living on than it does irrigated. Some of this ground, like what was purchased here in this contract, will be converted to grass because it can't convert to dryland, too much sand. Without the water, it won't grow a crop enough that people would want to farm it. And when you go to grass, it's going to be...require less people around again. And so you're going to see a movement of people even worse, whether they move east or out of state. It's economically a serious deal. If for some reason we overshoot and pump too much water and end out of compliance with Kansas then, where the...we'll end up with another lawsuit and at that point in time what can happen is a water master, that Kansas asked for this last time, could be assigned and he could step up and say, you know what, there's nothing going to be irrigated within two miles of the rivers and streams. Now the surface is all gone. You've heard that mentioned. Now the best oldest irrigation is all gone and that's all converted to dryland, and there will still be a lot of people move. There would be a fine to the state, you know, and the last recommendation was \$5 million, which will end up being paid by the state. But if the NRDs hadn't done everything they've done since 2007, with the purchase of water in 2008, we would have seen a much larger fine, much more restrictions, and a lot larger economic hit on the state of Nebraska. I think Senator Larson has done a very good job with his numbers and presenting it. So it's really hard to say how bad it would be, but I think the judge has kind of left the indication that I don't expect to see you back here. [LB185]

SENATOR BOLZ: Okay. [LB185]

SENATOR MELLO: Senator Harms. [LB185]

SENATOR HARMS: Mark, I think you have to really think through the strategy of this carefully. Would you be better off having this thing rolled into an overall budget or coming out and standing on its own by itself? I mean I think that's what you have to think about. I think you're better off, personally, by, you know, rolling this thing in just as one budget process that's rolled in, we move forward, it's part of the package. But to separate it out by itself, I think you're going to really open yourself up for a battle. But I don't know. That's my observation. As long as I've been on this thing, I found the best way is if you can tuck it into the budget, I think we did that...well, I guess on the last one. Did we do that with an A bill trailing? I can't remember. But it was tucked into our budget. We put it in there so... [LB185]

SENATOR CHRISTENSEN: Yes. [LB185]

SENATOR HARMS: I think that's...you need to think about the strategy and that aspect,

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

Appropriations Committee
February 01, 2013

where you think is the best, and then line yourself up as you look at the body itself. You know, we don't have as many in rural Nebraska as we used to have. [LB185]

SENATOR CHRISTENSEN: Right. [LB185]

SENATOR HARMS: Okay? So that means we got to have our urban senators join us and is it easier when you're looking at the whole budget rather than individually? Because the question is going to come up for us individually as well, you know, I've got these projects coming on; well, how will this be...how would this impact me if I wanted to maybe touch, you know, the reserve to get through with this aspect? It's just so much easier, that's been my experience, when you roll it in as one package, and then we're battling the one package and we don't let them pull that stuff out. You start pulling that stuff out, you'll have nine lights go on. That's what you have to think about, the strategy. I don't know what the right answer to that is, but I'm... [LB185]

SENATOR CHRISTENSEN: I 100 percent agree with you and Senator Lavon (Heidemann) has worked with me, whether it was on NCTA, other water funding stuff, and tied it in. And I don't even want the battle that I'm asking for because I'm trying to exempt the rules and go quickly. I'm asking a favor and Senator Mello gave it to me for an early hearing. I know I've got to get 33 votes because of the E clause. I know the battle I'm up against. But if we wait till June 1, say we got the budget done and June 1 they get their go, you add five months to get the construction done, you're at December 1 before it's done. We will not have enough water pumped, so do have to ratchet back allocations severely and... [LB185]

SENATOR HARMS: I just think your battle will be easier... [LB185]

SENATOR CHRISTENSEN: Oh, I know it would. [LB185]

SENATOR HARMS: I mean I just... [LB185]

SENATOR CHRISTENSEN: I know it would. [LB185]

SENATOR HARMS: That's what...it's the strategy that I'm thinking about and I think it's going to be tougher when we pull this thing out and go individually. I don't know, do you think I'm wrong? [LB185]

SENATOR MELLO: (Laugh) No. [LB185]

SENATOR HARMS: So that's my biggest concern is that can we do this. I think when you roll that big budget out, it's just so much easier. So I don't know, you think...you guys are going to have to think about this and see which way you want to gamble, because it is going to be a gamble if you do it individually, personally. [LB185]

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

Appropriations Committee
February 01, 2013

SENATOR CHRISTENSEN: I agree. And that's why I hope we've been compelling and can get a 9-0 vote out of here. [LB185]

SENATOR HARMS: Well, you're compelling enough but you're not on (inaudible) all of the people out there that don't understand this. I don't mean this in a negative sense. The people I think in the rural will step up. It's just that we have other folks who have other bigger...big projects also. I don't know what the strategy...you'll have to think of that strategy and see which is the best way you want to go and whether or not you help yourself differently. But that's all I would say, so... [LB185]

SENATOR CHRISTENSEN: I appreciate that. I will definitely visit with the group behind me in my office, as we leave here, and strategize because the complications of waiting are severe. The complications of going ahead of the budget are severe. And I appreciate you bringing that up, Senator Harms, because I am 100 percent in agreement with you. If this came out within your budget, it would be a fantastic thing. And I wanted to make sure this did get handed out. [LB185]

SENATOR MELLO: Uh-huh. Yeah. [LB185]

SENATOR CHRISTENSEN: I thought it did. Okay. [LB185]

SENATOR HARMS: See, it might be the difference between winning or losing, and that's the gamble. [LB185]

SENATOR CHRISTENSEN: Yeah. So again, I'll visit with them. And I thank you for everything you've done. You guys have gave us a lot of time and it's not going unnoticed. [LB185]

SENATOR MELLO: Thank you, Senator Christensen. And just...it's maybe more just for the record, for the audience and for the legislative record, that it was mentioned earlier that our Fiscal Office produces static fiscal notes, which that is not the case. Our Legislative Fiscal Office does produce dynamic fiscal notes that take in a variety of considerations in their process. So I want to make sure to clarify that for the record. But beyond that, thank you, Senator Christensen, for LB185. [LB185]

SENATOR CHRISTENSEN: Thank you. [LB185]

SENATOR MELLO: That concludes today's testimony. [LB185]

SENATOR WIGHTMAN: Do we have an exhibit that you didn't mention last time? [LB185]

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

Appropriations Committee
February 01, 2013

SENATOR MELLO: No, no, no, I did. I mentioned that. That was, yeah. [LB185]

SENATOR WIGHTMAN: The one that was handed out later? [LB185]

SENATOR MELLO: Yeah. [LB185]

SENATOR WIGHTMAN: Okay. [LB185]