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Natural Resources Committee
February 07, 2018

[LB1123 LB1124 CONFIRMATION]

The Committee on Natural Resources met at 1:30 p.m. on Wednesday, February 7, 2018, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1124, LB1123, and a gubernatorial appointment. Senators present: Dan Hughes, Chairperson; Bruce Bostelman, Vice Chairperson; Joni Albrecht; Suzanne Geist; Rick Kolowski; John McCollister; Dan Quick; and Lynne Walz. Senators absent: None.

SENATOR HUGHES: Welcome, everyone. It's a little...1:30, so we will go ahead and get started; wanted to make sure everybody had a chance to make it in the door. We do have an overflow room available if needed and that's 1023, but it looks like we've got some...plenty of vacant seats, so that's good. Welcome to the Natural Resources Committee. I am Senator Dan Hughes; I am from Venango, Nebraska, and I represent the 44th Legislative District. I serve as Chair of the committee. The committee will take up bills in the order posted. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on the proposed legislation before us today. The committee members might come and go during the hearing. This is just part of the process as we have bills to introduce in other committees. I ask you to abide by the following procedures to better facilitate today's proceedings. Please silence or turn off your cell phones. Please move to the reserved chairs when you are ready to testify; these are the first two chairs on either side of the center aisle. Introducers will make initial statements followed by proponents, opponents, and neutral testimony. We may make a little change, we may go three proponents, three opponents, and we'll see how far we get. And if one side runs out, then we may ask the neutrals to kick in at that point. How many people are planning to testify today, if I could just get a show of hands? Okay, very good, very nice, okay. So we'll do three proponents, three opponents until we run out of one side or the other, then we will ask the neutrals to fill in there. And we will be using the light system. I will get to that in a second. Introducers will make initial statements followed by proponents, opponents, and neutral testimony. Closing remarks are reserved for the introducing senator only. If you are planning to testify, please pick up a green sign-in sheet. That is the one on the table at the back of the room, either door. Please fill out the green sign-in sheet before you testify. Please print, and it is important you complete the form in its entirety. When it is your turn to testify, give the sign-in sheet to the committee clerk or to a page. This will help us make a more accurate public record. If you do not wish to testify today, but would like to record your name as being present at the hearing, there's a separate white sheet on the tables that you can sign in for that purpose. This will become part of the official record of the hearing. If you have handouts, please make sure you have 12 copies and give them to the page when you come up to testify and they will be distributed to the committee. When you come up to testify, please speak clearly into the microphone. Tell us your name and please spell your first and last name to ensure we get an accurate record. We will be using the light system for all testifiers. You will have three minutes to make your initial remarks to the committee. When you see the yellow light come on, that

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means you have one minute remaining. The red light indicates your time has ended. Questions from the committee may follow. No displays of support or opposition to a bill, vocal or otherwise, is allowed at a public hearing. The committee members with us today will introduce themselves starting on my left.

SENATOR KOLOWSKI: Good afternoon, I'm Rick Kolowski; District 31 in southwest Omaha. Thank you.

SENATOR GEIST: Hello, Suzanne Geist; District 25 which is the east side of Lincoln and also includes the towns of Walton and Waverly.

SENATOR QUICK: Hi. I'm Dan Quick; District 35, Grand Island.

SENATOR WALZ: I'm Lynne Walz; District 15, Dodge County.

SENATOR HUGHES: And on my right.

SENATOR ALBRECHT: Hi, I'm Joni Albrecht from northeast Nebraska; District 17--Wayne, Thurston, and Dakota Counties. Welcome.

SENATOR BOSTELMAN: Bruce Bostelman; District 23, Saunders, Butler, and majority of Colfax Counties.

SENATOR HUGHES: To my left is committee legal counsel, Laurie Lage; and to my far right, is committee clerk, Mandy Mizerski. Lee-Ann Sims from Lincoln is our page today; she is a junior at UNL, studying political science and global studies. So with that, first thing on our agenda we have an appointment to the Environmental Quality Council. Would invite Mr. Rodney Gangwich to come up. Welcome. Just give us a little bit of background of...I see it's a reappointment, a little bit of background about yourself and what we can expect from the Nebraska Environmental Equality Council. [CONFIRMATION]

ROD GANGWISH: (Exhibit 1) Thank you, Chairman Hughes and members of the committee. My name is Rod Gangwish, that's R-o-d G-a-n-g-w-i-s-h, and I gave the clerk some bio information on myself. I grew up on a farm and graduated from UNL with a bachelor of science degree in agronomy. I worked for several years after graduation and then returned to the farm in 1974 and I've been self-employed since that time. I've farmed for over 40 years at Shelton at a family operation. We raise corn, soybeans, and seed corn, and spent part of that time in livestock business, as many farmers have. I've been active in farm organizations in the state; served on

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several boards and committees in the area, both in the state and nationally. And I served on the Environmental Quality Council for a couple of terms and would be happy to continue that service if you would approve my appointment. I know you're busy and I don't talk about myself very well, so I'll let you peruse my bio if you choose. And I'd be happy to answer any questions. [CONFIRMATION]

SENATOR HUGHES: Are there questions for Mr. Gangwish? Just give us a little bit of background on the Environmental Quality Council, what you do, how often you meet, where you meet. [CONFIRMATION]

ROD GANGWISH: The council meets about...from three to four times a year and we don't have any authority to make rules or make laws. Our job is to visit the regulations and interpret them as they affect the people of the state of Nebraska. I should have mentioned that my position on the council is to represent crop production. I'm a farmer and I was asked to represent more than about 20 different sectors of our state. And crop production is one of those sectors. Livestock production is another, heavy equipment is another, state government, local government, there's 20 different sectors of our...I should have made a list, I could have told you what they are. But anyway, I represent crop production and I guess the people that I was asked to represent I look out for the kinds of things that might impact production agriculture and try and be sure that we're not...that production agriculture isn't impacted in a negative way to the extent that we have the ability to do that. And most of the laws and regulations that have to do with the Nebraska Department of Environmental Quality are also written in federal statute. And so we see how those go and make recommendations and the council doesn't have any authority to make or change law, but it has to go through the council...and I'm sure as you noticed, before it can come to the Legislature and the members of the Legislature actually make the law and change the statute of our state. [CONFIRMATION]

SENATOR HUGHES: Okay. Are there other questions? Seeing none, thank you, Mr. Gangwish. We appreciate you coming and your willingness to serve the state. [CONFIRMATION]

ROD GANGWISH: Thank you. Thank you, Senators. [CONFIRMATION]

SENATOR HUGHES: Is there anyone who wishes to speak in support of the reappointment of Mr. Gangwish? Is there anyone who wishes to speak in opposition to the reappointment of Mr. Gangwish? Anyone who wants to give neutral testimony to the reappointment of Mr. Gangwish? Seeing none, that will close that portion of today's proceedings and we will proceed to LB1124. Senator Groene. [CONFIRMATION]

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SENATOR GROENE: Thank you, Chairman Hughes and the committee members. I'm going to ask you guys to do something that I fought really hard against you guys doing last year. On LB1124, you can IPP it. Senator Hughes and I worked together on...I cosponsored it, he did the work, on LB758. His staff, basically, took my last year's LB218, the language in there that concerned this matter, cut and pasted it into the new bill, and improved it actually. As we all know, LB758 has got through General File and is now on Select and we'll be hearing it tomorrow. So I actually took a marker and marked all the language that was in LB1124 that's in LB758 and it's 90 percent of it. So this bill is not needed. So I'd ask my friends who are testifying to...if they want to practice on the next bill they're speaking to you, they can do it, but otherwise there's no need for this bill anymore. (Laughter) All right? [LB1124]

SENATOR HUGHES: (Exhibits 1 and 2) Thank you, Senator Groene. Are there questions for Senator Groene? Seeing none, is there anyone who wishes to testify as a proponent of LB1124? Seeing none, is there anyone who wishes to speak in opposition to LB1124? We do have a couple of letters in opposition. One from Mike Murphy, Middle Niobrara NRD; and Vanessa Silke representing the Nebraska Water Resources Association. Anyone wishing to speak in the neutral position on LB1124? Seeing none, that will close our hearing on LB1124. And we will move on to LB1123. Senator Groene, welcome back. [LB1124]

SENATOR GROENE: (Exhibits 1 and 2) Thank you, Chairman Hughes and the committee. Bear with me, it's not real long, but it needs to all be said. I will not go into the history of Nebraska Cooperative Republican Platte Enhancement Project, N-CORPE, and the burden that 30-square-mile project has put on Lincoln County's tax base, increased taxation in agricultural economy. There are many citizens here today that will expound on that topic. I first wish to speak on the present language of LB1123. We have two goals when we crafted this bill: first, to protect the state of Nebraska and the NRD's augmentation project. Citizens of Lincoln County have broad shoulders. As one of our county commissioners has stated, we thought that the Republican River Compact was an agreement between Nebraska, Colorado, and Kansas; but we now understand it is an agreement between Lincoln County, Kansas, and Colorado. Second purpose and the main purpose, it is to give relief to Lincoln County taxpayers to create economic activity by giving the NRDs involved in N-CORPE the ability to sell land. To make it clear, they can do it. I happen to believe you can already do it, but this will clear it out. When crafting the legislation, we took into consideration that N-CORPE with the legal advice of the law firm Blankenau, Wilmoth, and Jarecke had in April, 2014, already sold 313 acres of irrigated land to Lowe Investment. The packet that was handed out to you, of information, has the deed that was created at the county courthouse where it was sold to Lowe Investment, LLC, where they had included in the deed a reservation granting to itself all rights to the use of groundwater at pertinent to the property and to use of such groundwater at its sole direction. Basing their deed reservation on Nebraska Statute 46-691 which allows transfer of groundwater for agriculture under the Environment Protection Act and groundwater remediation plans. The problem is that augmentation projects is

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not allowed by the law which they're using it for. Therefore, we decided to accomplish our goal of selling the land by aiding N-CORPE to fix the bad legal advise they received from the law firm by constructing the legislation around allowing the sale of the land by adding the groundwater use reservation in the property deed. We have since heard from many of our friends associated with farm organizations, Attorney General's Office, and Nebraska Department of Natural Resources, that they have concerns about creating another exception to common law that allows for separation of land ownership and the right to use the groundwater under the land. Yes, my friends who don't believe this, state statute 46-691 already allows for that separation that is an exception to the common law. So creating another exception for NRDs and augmentation projects would not have been the first time it had been done. But we don't need that fight. We don't need to take our friends on. Most everybody I talked to think we ought to sell the land and find a way to do it. And as I said earlier, our goal is to protect the augmentation project and to create law that would allow the sale of the land. Therefore, we have decided it better to pursue accomplishing our mission without any need to separate the groundwater rights from the land with amendment, AM1819. And the committee should have a copy of that which will replace the language of the bill. And I would appreciate it to become a committee amendment. The committee has a copy...or should have. AM1819 that follows present law 46-715, section (3), created by LB962 in 2004, which included the power of NRDs to create augmentation projects. Section (3) of AM1819 takes into consideration the integrated management plans, IMP, in place by the fully-appropriated designated Middle Republican and the fully-appropriated designated Twin Platte NRDs where the N-CORPE project lies in the upper county. You might hear from some people from the Lower Republican and the Upper Republican, they have not one acre of land in their jurisdiction in Lincoln County, but they are a part of the N-CORPE. So those two NRDs have put into place restrictions of regulation not within their IMP, but a regulation that they can only pump so much water. And IMP...AM1819 does not endanger the state's Republican River Compact Agreement because in 46-715(4)(b) it states: IMPs must be sufficient to ensure that the state will remain in compliance with applicable state and federal law and with applicable interstate water compacts. I don't have a copy of the amendment. So I was going to read it, but I'll get to it when I get a copy. You received some handouts. There's been...let me get to the amendment which I just stated. This is what the amendment says, it strikes the original language: Section 1. Each natural resources district has the power and authority to develop river flow augmentation projects as described in subdivision (3)(e) of Section 46-715 and to acquire real property for such river flow augmentation projects. What we are doing there is reaffirming what they already did...what they already did, just reaffirming that. After a river flow augmentation project has been developed, the owner or owners of such project may sell the real estate and continue to pump groundwater for the land...from the land for augmentation purposes. It all lines up, what you'll hear from an attorney later with 46-715. And because we are unique in western Nebraska with our overappropriated and fully appropriated. In eastern Nebraska, an augmentation project could be started by just punching a well in the ground and pumping water in the creek because there is no restrictions on how much you can pump. The only thing that

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would restrict them is the common law that you could not affect your neighbor. But somebody could have...you can buy 10 acres, the NRD could, and start pumping water. But what we have in the overappropriated and fully appropriated is that we have allotments, that we are limited on how much water we can pump. So the only reason the NRDs bought that 19,200 acres is because they had an offset...they felt they had to offset the augmentation by buying and eliminating 15,800 acres of irrigation. And that's been the whole process so far. That's been one of the arguments. Are you pumping more than what the farmer would have, so that we stay in compliance with the Republican River Compact? That's the only reason they bought the ground...and it's a big reason. What we are doing here is to turn it back into an augmentation project where the NRD, now that they've retired 15,800 acres, that they can pump the water into the river because the NRDs control the water. The Lower Republican the other day caught somebody messing with the meter and they jerked his water. NRD owns it. They took away his water right because he messed with the meter. So anybody who claims they own the water; they do not. What the NRDs did was accurate. What we are doing allowing them in statute to use the water under the land for the augmentation project. It would be no different if they punched the well in the corner and started pumping because they've already eliminated the 15,800 acres to offset it. They don't need to own the land, and this statute will put that into place. So...and it ties it into the augmentation plan. The Middle Republican and the Twin Platte put restrictions now on the N-CORPE project of 160,000 acre feet over a ten-year period. That's not part of the augmentation plan, but it probably will end up being in to the IMP. They've already done it. And the statutes says you got to comply, N-CORPE, under that. Now, I've got a legal opinion that said, well, that might put restrictions on the state's ability to fulfill the compact. No. I stated it earlier, in 46-715 it says--no IMP can risk a compact, Section (4)(b). That trumps the IMP. Then the IMP will trump N-CORPE. It works. There have been a scare tactic being spread too, because you might hear about that, that LB1123 would threaten the bondholders agreement. First, LB1123 has a "may" in it--may sell it, just like a private individual. You have a contract with a bond company or the mortgage company, you have to follow that. But this gives them a "may." Down the road, might be five years, might be ten, might be tomorrow, might be able to sell one section of it, one quarter of it. And by the way, they already did it, you know. And by the way, in that packet is a release of the bondholder of the mortgage, the mortgage company...the bond company has done it once already, released mortgage on part of the land. It does not make the sale mandatory. It only give a tool to the local NRDs to sell the land if they see fit...local control. In the handout package, in Appendix G of the March 24, 2017, Ameritas Investment Corp, N-CORPE bond prospectus, and I have a copy if you want to see the whole thing, I might have e-mailed it to you guys. In it, it states, under the section--Release and Sale of Property: the mortgagee shall release, without the consent of any of the owners of the bonds, any of the property subject to the bond receipt of the following five conditions as listed, five conditions...it's in the handout...which includes the proceeds will be applied either to acquire additional real estate, equipment, or equivalent value, or to redeem the bonds. As long as those...that's what we want. We want them to sell the land and then reduce the bond debt. Common sense, lower the

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taxes on the farmer. It will not mandatory...and also its says--will not mandatory adversely affect the operation of the issue of the ability to comply with the bond documents. LB1123 solves that problem because we protect the augmentation. That the release will not result in the default under any of the bond documents. Passage of LB1123 would alleviate any concerns that it would adversely affect the operations and also the payment. I've heard a rumor that well what happens if they retire some acres and they don't have enough money to make the bond payment? In the handout, you will see that the bond payment over the life of the bonds to 2039 never exceeds \$7.9 million...never exceeds that. That's the highest payment. And there are 1.394 million acres of irrigated acres in the four NRDs, do the math. At \$10 an acre occupation tax, that would generate \$13.9 million in tax revenues. I don't think their ability to make the bond payment with the occupation tax is at risk. They would have to lose almost half their total acres to not be able to come up. Other testifiers...I mean, some of the proponents will start asking why are they at \$10 an acre? They only need \$7.9 million, they don't need \$13.9 (million). What are they doing with the money? But that's another question. That's local accountability. I understand that the committee has received 162 signed letters of support from residents of southwest Nebraska. I haven't talked about this with the chamber, but I was going to give them a jab in the ribs, it will take the Chairman a while to read those names into the record as is customary in respect of citizens who took the time to contact the committee. Many more of those individuals will testify in support of LB1123. So what I ask is you're going to hear testimony...I tried to circulate the amendment to what I could to those concerned, so if you have testimony about the original language of the bill with the amendment, that doesn't exist anymore. I tried to be nice. I tried to help them with their disaster on the 313 acres of low investment and to center the bill around it. They didn't want it. And my friends in the agriculture community do not want a risk that we put into statute that we start separating water from land in deeds; this is a better answer. So thank you. Any questions? [LB1123]

SENATOR HUGHES: Any questions for Senator Groene? Senator Albrecht. [LB1123]

SENATOR ALBRECHT: Can I just ask you again where on this map is the location? [LB1123]

SENATOR GROENE: Lincoln County. Right in the heart of the county. It's...right in the heart of the county and it's right at 7 percent of our total irrigated acres. You'll hear from testimony about how they saved 300,000 acres of irrigation on the backs of Lincoln County and we need to not sell the ground. Lincoln County took 7 percent...lost 7 percent of our irrigated acres. [LB1123]

SENATOR ALBRECHT: Correct, but you had mention of some other...the Lower Republican, Middle Republican, and Upper Republican? [LB1123]

SENATOR GROENE: And the Twin Platte. [LB1123]

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SENATOR ALBRECHT: And the Twin Platte. [LB1123]

SENATOR GROENE: They're pumping...they got two pipelines. One goes into the Platte, one goes into the Republican and they're pumping the groundwater out of the...they haven't started on the Platte one, the pipeline is built and there's problems there too because the number of acre feet has quadrupled of what we had thought. [LB1123]

SENATOR ALBRECHT: Okay. [LB1123]

SENATOR GROENE: But we're going to let them use our water. Like I said, they can use our groundwater to save the state. A heck of a county, isn't it? [LB1123]

SENATOR HUGHES: Any other questions? Senator Groene, are you aware of any other augmentation projects that are in place... [LB1123]

SENATOR GROENE: This would help... [LB1123]

SENATOR HUGHES: ...to comply with Kansas and Colorado? [LB1123]

SENATOR GROENE: There's the Rock Creek one that the Upper Republican did on their own. That was the first one in the state of Nebraska. This would help them also be able to sell land, put it back into production and lower the \$10 an acre. The Upper Republican is maxed out at \$10 an acre and they're also maxed out at their levy. They're paying for that one up there themselves. And if they could sell that land, put it back into...it belongs in ranch land. Some of this ground, if you put it in private hands, the farmers is always better than government. In N-CORPE it's \$71, \$72 an acre management cost; \$1.4 million divided by 19,200 acres, you couldn't get \$20 an acre rent for that. But some of that ground will be improved by farmers and used for dryland crops, which would increase the valuation, which would help the tax base, and help the fertilizer and seed sales, but Rock Creek is another one, 3,000 acres...4,000 acres. Thank you for reminding me, Chairman. [LB1123]

SENATOR HUGHES: Any other questions for Senator Groene? I'm assuming you'll stay to close? [LB1123]

SENATOR GROENE: This is fun. [LB1123]

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SENATOR HUGHES: Okay, thank you, Senator Groene. So we will open it up to proponents. We will take three proponents and then three opponents. Welcome. [LB1123]

LARRY DIX: Good afternoon, Senator Hughes, members of the committee. For the record, my name is Larry Dix, L-a-r-r-y D-i-x; I'm executive director of the Nebraska Association of County Officials appearing today in support of Senator Groene's bill. Very, very briefly, I'll be very, very brief, the folks behind me have much more issues in this than I. I just got a couple of other committees I'm going to try to run to and get testimony in. NACO board looked at this; we've talked to Senator Groene on the amendment. NACO's issue...or involvement in this comes from a tax-base issue. And for many of you that have been around for a number of years, NACO is always involved, always at the table, so to speak, when we are talking about the tax base. What Senator Groene is proposing, we believe has the potential to add to the tax base. And over the years, of course, all of you know, all state aid has been eliminated from counties. And so primarily we always have to look to the tax base for our revenue. So when bills like this come up, I appreciate being in front of this committee, because I'm very rarely there, I'm typically on tax base across the hall talking to Revenue, which I'm headed to after this. But that is NACO's position, solely, we don't have any position on the water issue, but we are very, very interested in the tax base. And with that I would be happy to answer any questions that you may have. [LB1123]

SENATOR HUGHES: Thank you, Mr. Dix. Are there any questions? Seeing none, thank you for your testimony. [LB1123]

LARRY DIX: Thank you. [LB1123]

SENATOR HUGHES: Next proponent. Welcome. [LB1123]

RANDY ROBINSON: (Exhibit 3) Thank you. My name is Randy Robinson, R-a-n-d-y R-o-b-i-n-s-o-n. Chairman Hughes, members of the committee, I appreciate you hearing our testimony today. The passage of LB1123 is very important to southwest Nebraska. The state of Nebraska entered into the Republican River Compact with Colorado and Kansas in 1943. But in recent years, the burden of staying in compliance with this compact was put onto the shoulders of the local NRDs. Their answer to the issue is the current N-CORPE project. I certainly support the augmentation project, as farming and ranching in this area makes me well informed on the importance of staying in compliance in order to keep thousand of other acres irrigated. However, we must remember that water is the needed resource of the project, not the surface land. Lincoln County has taken the majority of the economic loss of the project. LB758, that Senator Hughes has worked on, is attempting to address the property tax issue. However, it appears to me that paying in lieu of property tax with the occupation tax dollars is only a beginning. It is a shift in

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taxes, albeit to a larger group of taxpayers. LB1123 is an opportunity to fix some big problems. Looking at N-CORPE, as it is my neighbor and we farm and ranch on both sides of it, we are still looking at huge amounts of wasted tax dollars and poor management of the land. The amount of money being spent to manage the property is astounding. According to the final report of Economic and Property Tax Impact of the N-CORPE Augmentation Project in the Republican Basin and Twin Platte Natural Resources District dated January 10, of this year, prepared for N-CORPE by the Bureau of Business Research Department of Economics at UNL, under the direction of Dr. Eric Thompson, other operating costs based on the 2018 N-CORPE budget, excluding the demand and usage charges for wells and other well costs, is \$1.39 million per year. That means considering 19,500 acres, their other operating costs is \$71.28 per acre. That's incredible. If they were to pump their full allocation, that would all be \$696,000, or \$47 per acre. LB1123 would assure that the local NRDs may sell the surface land while maintaining the water to meet compact compliance. This results in paying down the bond; stopping interest; good management practices; stopping large operating budgets; saving local tax dollars, and we all agree that property tax is a hot topic in Nebraska. The property tax burden is back on private enterprise where it belongs; and we have better stewardship of the surface land with private ownership. It's been suggested by some that are against selling the surface land that the bond mortgages would prevent the sale of the land. This seems quite doubtful when we consider that they have already done a partial release on the 313 acres. Also, the grain bins, pivots, and other related equipment would have also had to be released from the mortgage. It also seems unrelated to LB1123 as it says it "may" sell the land. After that clarification is in statute, then the local entities can work with the bond companies if they should decide to sell the land. Lincoln County will always have the burden of loss of irrigated tax value and the lost economic stimulus of taking those acres out of irrigated production. Lincoln County will also be the source of water, our most precious natural resource, which is used to keep Nebraska in compliance. It seems to me that we should, as a state, be thrilled to have LB1123 to utilize or help lessen the burden on the local area that has given so much. Thank you for your assistance in passing LB1123.
[LB1123]

SENATOR HUGHES: Thank you, Mr. Robinson. Are there any questions? Seeing none, thank you for your testimony. Next proponent. Welcome. [LB1123]

RYAN McINTOSH: (Exhibits 4 and 5) Good afternoon, Mr. Chairman. My name is Ryan McIntosh, M-c-I-n-t-o-s-h, and I'm here on behalf of Landowners for a Common Purpose. Previously, I prepared two legal opinions which are going to be circulated to you. The first of which was in response to a letter that was sent to Lincoln County landowners from N-CORPE. Those two memorandums are addressed to the Twin Platte NRD, the Upper Republican NRD, the Middle Republican NRD, and the Lower Republican NRD, which are the four NRDs that make up the N-CORPE board. I believe our legal opinion dispels the legal issues, concerns that were raised as part of that letter that was sent out. However, as we traveled around and spoke to

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all the four NRD boards, the same concern kept coming back that you cannot sell this land as defined by Nebraska common law. LB1123 is a simple solution to those fears. There are two Nebraska appellate cases that are directly on point here that deal with whether N-CORPE is legally required to own the land in order to continue the augmentation project. First is Springer v. Kuhns, which is the 1997 Nebraska Court of Appeals case. The key holding in that case was the affirmation of a deed transferring land expressly reserving the right to pump their groundwater on that land for use on an adjacent parcel. The second case is Estermann v. Bose, which came out just last year and specifically addressed the N-CORPE project. The key holding as it relates to this matter is that N-CORPE and other similar augmentation projects do not constitute transfer of water and did not require any transfer permits. What LB1123 does is add a very narrow statutory exemption to the common law to protect the N-CORPE augmentation project. To be clear, this bill does not open any sort of Pandora's Box, rather it adds clarity and boxes in, it sets left and right limits, under the Nebraska common law and specifically answers the questions that were left open by the Estermann opinion. Although groundwater started off being entirely governed by common law, it has been statutorily abrogated by the Legislature on numerous basis. The basis of the common laws in the 1933 case, Olson v. City of Wahoo, where the Nebraska Supreme Court established that the owner of land is entitled to the appropriate subterranean waters found under his or her land. Since then, the Nebraska Legislature has added numerous exceptions to the common law, including transfers for agriculture irrigation, environmental projects--municipal and rural; domestic uses, and even for industrial uses. LB1123 simply adds NRD augmentation projects to that list. In doing so, it protects the current augmentation project and the state of Nebraska's obligations to Kansas. In Estermann, the Nebraska Supreme Court noted: the authority for NRDs to operate such an augmentation project is through the integrated management plans specifically citing to a Nebraska Revised Statutes Chapter 46, Section 715, sub(3)(e). Here in Section 3 of the amendment, therefore sets forth the volume of water that may be pumped to be set in accordance with integrated management plan. This has already been accomplished by both the Twin Platte NRD and the Middle Republican NRD whereby N-CORPE situated which both recently adopted allocations specific to N-CORPE. By doing this, control and management of pumping volumes is done by the local NRD board, which is actually affected. And I'll just finish up with one sentence: As noted by Senator Groene, the language here is "may" not "shall." This requires nothing of the natural resources districts, but does give them that authority and affirms and protects the augmentation project. Thank you for your time and attention with that. I'd be happy to answer any questions.

[LB1123]

SENATOR HUGHES: Thank you, Mr. McIntosh. Are there any questions? Senator Kolowski.

[LB1123]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Ryan, thank you very much for your testimony today. And is there any possible interpretation that might be different than what you've

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written here that the con side would come forward and say--I think this is lacking and we have a chance in court to take this to the next step and go from that direction? [LB1123]

RYAN McINTOSH: Are you referring to the memorandum I passed out? [LB1123]

SENATOR KOLOWSKI: Right, this. [LB1123]

RYAN McINTOSH: There is, there certainly is. There is certainly grounds...and that's the whole purpose of why Senator Groene brought LB1123 is that it carves out that narrow exception. So there's no statute that specifically authorizes such augmentation projects. You have in Chapter 2 that says that NRDs can issue river flow...or stream flow augmentation bonds. And you have in 46-715 that says NRDs when implementing integrated management plans may consider...or identify augmentation projects. There's no specific statutory authority to do so. And in the Estermann case, the Supreme Court looked at that specific statute and said when read all together, we believe that it is clear that the Legislature intended that they go and do such a project. This just puts into statute and allows it and protects it. And I think under the language that's in the amendment, it makes it far more solid than what it would be just operating under the common law. Does that answer your question? [LB1123]

SENATOR KOLOWSKI: Yeah, that helps. There's also the aspect of the compact, of course, with the three states and meeting our obligation there and the difficulty of that all hitting back on Lincoln County, of course. Would there or could there be something that the state could assist Lincoln County, because they're doing...they're pumping most of the water into the rivers to meet the compact which is a three-state deal that was set up, and that would give them the chance...give the state the opportunity to pay directly to Lincoln County for the taxes lost because they're assisting the state, but it's not spread out over the whole state, it's very compact within the Lincoln County boundaries for the most part. Would there be a chance that could come about in the future? [LB1123]

RYAN McINTOSH: So that would alleviate some of the impact. As as Mr. Robinson testified, a proposal for an in-lieu of taxes spreads it from Lincoln County onto the four NRDs that are covered by that occupation tax. Certainly spreading it over the whole state to meet a statewide obligation would widen that burden, and the folks all come and testify after me, I think, could probably speak better to it. But the idea is it's just a tax shift. So it's a tax shift of state tax dollars back into here. And that does not account for the economic impact that goes on with seed, fertilizer, cattle industry in the area. [LB1123]

SENATOR KOLOWSKI: Sure. [LB1123]

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RYAN McINTOSH: That would certainly be a benefit. But it doesn't answer all the questions here, Senator. [LB1123]

SENATOR KOLOWSKI: Okay, thank you, appreciate it. [LB1123]

SENATOR HUGHES: Any other questions? Senator Bostelman. [LB1123]

SENATOR BOSTELMAN: Thank you, Chairman Hughes. Mr. McIntosh, the N-CORPE case...the Supreme Court case that you reference here, is it Estermann? [LB1123]

RYAN McINTOSH: Yes, Senator. [LB1123]

SENATOR BOSTELMAN: Is there other augmentation cases on the Supreme Court or that...do you know of, that would refer to a similar augmentation process that's been challenged in court? [LB1123]

RYAN McINTOSH: As far as I'm aware, Estermann is the only augmentation project case where this has been tested. And that came out of, I believe, April, 2017; so very recent. I'm not aware of any cases challenging any of the other augmentation projects. [LB1123]

SENATOR BOSTELMAN: Okay, thank you. [LB1123]

SENATOR HUGHES: Any additional questions? Seeing none, thank you, Mr. McIntosh. [LB1123]

RYAN McINTOSH: Thank you, Mr. Chairman. [LB1123]

SENATOR HUGHES: So we will switch to opponents; if you wish to offer opponent testimony. Three people, step up. Welcome. [LB1123]

TOM SCHWARZ: Thank you. Senator Hughes, members of the Natural Resources Committee, my name is Tom Schwarz, T-o-m S-c-h-w-a-r-z. I'm a farmer from Bertrand and here today on behalf of the Nebraska Farm Bureau Federation in opposition to LB1123. I'm also here on behalf of the Nebraska Farmers Union, the Nebraska Soybean Association, the Nebraska Corn Growers Association, and the Nebraska Cattlemen in opposition to the bill. I apologize for reading this because I am representing other organizations, I want to be as accurate as I can. Just a bit of background on myself. My family and I raise organic crops and livestock in Gosper County,

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Nebraska. Gosper County is southwest of Kearney and is in the heart of many of the water issues facing the state. As such, I found myself involved in many of the state's water issues. I've served on the Central Nebraska Public Power and Irrigation District board, Central Water Users board, Governor Johann's water policy task force, Board of the Nebraska Water Users. I'm currently on the board of the Family Farm Alliance working on water issues across the west. In addition to leadership positions...that's in addition to leadership positions in Farm Bureau. In other words, water issues are important to me. We applaud Senator Groene for advocating the interests of his constituents in Lincoln County. Senator Groene has shared with us his amendment and we are certainly appreciative of that and believe that it is an improvement over the underlying bill. But at this point we still have question on the bill and the amendment. The changes proposed in the bill would not only apply to N-CORPE, but projects across the state, and we believe due diligence is needed to make sure there are no unintended consequences. Most of my comments will be on the underlying bill. Here are a few of the comments we have with the bill. By allowing NRDs to sell land connected with augmentation projects and retain the groundwater rights attached to the land, the bill would fundamentally change Nebraska groundwater law. Present groundwater law is based on the principle that the groundwater belongs to the public and the use of the water is attached to the ownership of the overlying land. In effect, LB1123 would undue this basic principle of law and allow the creation of a separate right for groundwater, much like a mineral right. We recognize LB1123 is permissive and the decision to sell land remains with the NRDs. But the bill would still put the Legislature on record authorizing a change in groundwater law and would open the door for possible expansion. While serving on the water policy task force, we spent countless hours discussing physical transfers of ground and surface water, transfers of allocations, and transfers of certified irrigated acres. In fact, much of the current law governing such transfers emerged from these discussions. However, the idea of separating the groundwater from the overlying land and creating a separate right, while discussed briefly, was quickly dismissed. Another concern is that the legal questions surrounding LB1123 could place the use of N-CORPE project as a Republican River Compact compliance tool at risk. Given the importance of the project to Nebraska's compliance efforts in protecting the irrigated agricultural economy in the basin, we must be certain that the land...if the land is sold the legal questions are addressed. We certainly understand the frustrations and concerns of the citizens in Lincoln County. That's why we are strong supporters of LB758. Philosophically we agree government shouldn't own property unless it's truly necessary to achieve... [LB1123]

SENATOR HUGHES: Sir, your red light is on, could you wrap it up, please. [LB1123]

TOM SCHWARZ: Okay, I can just drop it there, that's fine, Senator. [LB1123]

SENATOR HUGHES: If you have final thought, go ahead and (inaudible). [LB1123]

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TOM SCHWARZ: No, that's okay, that's good enough. [LB1123]

SENATOR HUGHES: Okay, thank you. Senator Albrecht. [LB1123]

SENATOR ALBRECHT: Thank you, Chairman Hughes. I would like to understand the questions, because you have...you said the Corn Board, Soybean Board, and the Cattlemen, and the Nebraska Farmers Union. [LB1123]

TOM SCHWARZ: Correct. [LB1123]

SENATOR ALBRECHT: So tell me again their concerns, just quickly, wrap it up. You were going to add a few more things. [LB1123]

TOM SCHWARZ: Well, you know, I think the bottom line here is every one of these organizations understands the concerns that the people and the citizens of Lincoln County have on this. The idea that any one school district or entity within an area takes the brunt of the impact just isn't fair. We understand that. And I think we need to work that out. In developing the Platte River program, I was one of the people that developed the Platte River program. I was adamant that when we do augmentation projects or if we buy land for environmental purposes, if we're going to take that out of one school district, we need to be paying property taxes or in lieu of taxes to those people. It's not fair for any one district to take the whole hit, especially with property taxes being the issue they are today. And so I don't think we're...I mean, we're definitely in sympathy with this issue. The problems comes... [LB1123]

SENATOR ALBRECHT: But if it was...okay, go ahead. [LB1123]

TOM SCHWARZ: No, no...well the problem comes from the fact that we theoretically, at least, can throw our whole water system that we spent years...those of you who remember, we spent years redeveloping our water system. It's already complicated because we have correlative rights for groundwater, prior appropriation for surface water, it's complicated right from the outset. And as you get into these details, it's extraordinarily complicated. I think we just need some time to work this thing out is where everybody is at. I don't think we're dead set against what Senator Groene and the folks in Lincoln County want, it's just we need some time to deal with this. Is that... [LB1123]

SENATOR ALBRECHT: Well, it's just...it's perplexing subject at best. But thinking about...these are your folks, these are your corn growers, these are your cattlemen, these are folks that are really struggling to find ground as it is, but to be able to work something out between both

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entities, I mean, I haven't heard from all the opposition, I'll find out if N-CORPE is actually on line and wanting to do this with these folks. I'm hoping that they are, because that's all we've heard about in the last year that I've sat here and part of this year. So, I just would think that the folks that they are hoping that would be in their backyard and helping them out would be there. But I can't imagine that the people that you represent would not...whether you feel their pain or not, it's not like you're supporting the fact that they're trying to put that back into production. [LB1123]

TOM SCHWARZ: Sorry, I didn't hear that. [LB1123]

SENATOR ALBRECHT: That they're trying to put it back into production. [LB1123]

TOM SCHWARZ: Right. I absolutely believe in private ownership of land. And I absolutely agree we need to have that land in private ownership if there's a way for us to do that. I just don't want to throw Nebraska water law under the bus in the process. [LB1123]

SENATOR ALBRECHT: Thank you. [LB1123]

SENATOR HUGHES: Other questions? Senator Bostelman. [LB1123]

SENATOR BOSTELMAN: Thank you, Senator Hughes. Thank you, Mr. Schwarz. You mentioned Platte River augmentation projects. Can you speak a little bit more to that? What are those? [LB1123]

TOM SCHWARZ: Well, actually a part of N-CORPE will be used for Platte River augmentation as well. And I think we're looking at a possibility of more of those kind of projects as we hope we move into the second phase of the Platte River program. We've not met the goals yet of the first phase of the Platte River program, so it's likely going to require us to do some things in the future. It's possible some of those things could be additional augmentation projects. What we're doing there is not really providing new water as much as retiming it off it. Because one of the things I...and I worry about this with N-CORPE to some extent, we can't rob Peter to pay Paul ultimately. At some point, we've got to be right on our water usage. But this is an important tool of what we're using. Now, in the Platte program, I mean, it's pretty clearly stated that if you take land out of production, you know, you've got to make that right with the entities. And I had an real knock down drag out personally with Central Nebraska Public Power here recently when they were proposing the J-2 reservoirs, because that land would have been taken out of production. And that all came out of Bertrand school district. And I argued rather hard that that...that they couldn't do that. [LB1123]

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SENATOR BOSTELMAN: So looking at...we have a map, and I know you don't have this map, it's one Senator Groene handed out, and it has the South Platte, North Platte, Twin Platte, Central Platte, and Tri-Basin, primarily, as showing as being overappropriated. [LB1123]

TOM SCHWARZ: Correct. [LB1123]

SENATOR BOSTELMAN: So if I hear...then do I understand you correctly in saying that in all of those areas that there potentially could be additional augmentation programs? [LB1123]

TOM SCHWARZ: Yeah, I think at least in the Platte River system and in the Republican River system there certainly is that possibility, um-hum. [LB1123]

SENATOR BOSTELMAN: But there's nothing to plan...because I understand there's a long process you're working on the Platte River to ... [LB1123]

TOM SCHWARZ: Yes, very long process. [LB1123]

SENATOR BOSTELMAN: ...right, and I just wondered if that's already something that's being discussed and talked about augmentation for those...to help meet the requirements of... [LB1123]

TOM SCHWARZ: I think there's a possibility there will be other people following me that would be in a better position to talk about specific augmentation projects. But I know that there's discussions along those lines. [LB1123]

SENATOR BOSTELMAN: Okay. Thank you. Thank you. [LB1123]

SENATOR HUGHES: Okay. Any additional questions? Seeing none, thank you for your testimony. Next opponent to LB1123? Welcome. [LB1123]

TERRY MARTIN: Good afternoon. My name is Terry Martin. I've been here for the LB758, so my pedigree hasn't changed much since then. I am the chairman of the board of the N-CORPE project. I'm chairman of the board of the Rock Creek project. I've been chairman of the board on those since their inception. [LB1123]

SENATOR HUGHES: Mr. Martin, would you spell your name for us, please. [LB1123]

TERRY MARTIN: Yes. I will. Terry Martin, T-e-r-r-y M-a-r-t-i-n. [LB1123]

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SENATOR HUGHES: Thank you. [LB1123]

TERRY MARTIN: (Exhibits 6 and 7) I've spent about 16 years of my life working on N-CORPE...I mean, on NRD projects and I'm here to testify in opposition to LB1123 on behalf of the N-CORPE board. First of all, let me just say the N-CORPE project is working very well, so is the Rock Creek project. I don't think you're going to hear anybody say we should throw those on the scrap heap and get rid of them. They are giving the people in the southwest Nebraska, the 16 counties in southwest Nebraska, a great deal of assurance that they will be able to continue to pump approximately the same amount of water that they've pumped in the past. And like any of us who ever worked for a pay check, you know it's really great to know what the next pay check is and the next pay check so you can plan for your future. And that's exactly what these people have at this point in time. We're opposed to this because the bill undermines the assurance that we have created for the people in southwest Nebraska. And it can jeopardize the project; and it can jeopardize their investments that they've made in their farms and in their lives. Let me just talk about the investments that these farmers have made...these irrigators have made in the N-CORPE project. In the last five years, from 2012 to 2017, each one of them has spent approximately \$60,000 in occupation tax to support the N-CORPE project. There's been many other lawsuits in the Republican Basin and it's our belief that if we do separate the water from the land, as Senator Groene wants us to do, there will be a lawsuit in some fashion and that could very well jeopardize the assurance that we've given these people in southwest Nebraska. We appreciate what Senator Groene is doing for us, giving us the option of doing it rather than telling us we have to do it. But as the last speaker said, this bill actually is a change in the way the water law is managed in the state of Nebraska. The separation from the...the Legislature has been very unwilling to decouple water from the land. And even though Senator Groene's bill may pass and become law, it doesn't mean that it's still constitutional. We know some bills...some laws have been declared unconstitutional after they've been passed. And it's our...we just can't take that chance. We want to hold onto the land for that very reason. The letters that I circulated around are from Union Bank and from Ameritas. They both address the tie that the bond company has on the land at this time and how much of a change it would have to be incorporated into rebonding this if we did sell the land. So the only thing I can say to you is the project is working well. What we need is LB758 to go forward. And then we need someone to sit down and talk long and hard about a change in Nebraska's water policy and how it is managed. And if that's what the state wants to do, then we want to be a part of that conversation. I see I'm out of time here. But that concludes, basically, what I have to say. [LB1123]

SENATOR HUGHES: Okay, thank you, Mr. Martin. Are there questions? Senator Geist.
[LB1123]

SENATOR GEIST: Thank you for your testimony. And I apologize if I'm the slow one on the committee that just needs a little more explanation of what you're saying. [LB1123]

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TERRY MARTIN: Sure. [LB1123]

SENATOR GEIST: Or what...I'm specifically reading Union Bank and property consisting of more than 25 percent of the appraised value cannot be sold without written consent from the...so you would have to have consent of Union Bank as well to sell this land. Is that what this is saying? [LB1123]

TERRY MARTIN: It's whoever holds the bonds. That's their (inaudible). [LB1123]

SENATOR GEIST: Oh, it's the bond holder. Okay, not the issuer, the holders. [LB1123]

TERRY MARTIN: Yes. They gave us the latitude to sell a little bit, buy a little bit, move some land around, but we can't just sell all of it off and be done with it because they have a tie to that land. So...and we have an attorney here that can probably address that a little more clearly than I can. But the bottom line is, they want their money back. And if we have to reissue those bonds, when they don't as much security, the interest rate is going to be higher, and we have to charge more tax on our people, and we don't see that that's necessary at this time. We'd like to see LB758 get into position and work well for us and go forward from there. [LB1123]

SENATOR GEIST: Understood. Thank you. That helped. Thank you. [LB1123]

SENATOR HUGHES: Okay. Senator Albrecht. [LB1123]

SENATOR ALBRECHT: Thank you, Chairman Hughes. So, Mr. Martin, you chair the N-CORPE project, that's your deal. [LB1123]

TERRY MARTIN: Um-hum. [LB1123]

SENATOR ALBRECHT: So you have sold off a portion of it, is that correct? To Lowe Enterprise (sic-Investment), is that what we read about earlier? [LB1123]

TERRY MARTIN: I guess I'm not understanding. [LB1123]

SENATOR ALBRECHT: Have you sold any of the property yet to anyone? [LB1123]

TERRY MARTIN: Say this again now. [LB1123]

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SENATOR ALBRECHT: Have you sold any of the 19,000 acres? [LB1123]

TERRY MARTIN: We sold two...one small tract really early on, we sold that. [LB1123]

SENATOR ALBRECHT: And why did you do that? [LB1123]

TERRY MARTIN: Because it was a long ways away from the rest of the project. It wasn't going to do us any good and it was, you know, all the rest of the property is in one place and it's where we needed it to be. [LB1123]

SENATOR ALBRECHT: Okay. So let's just say that this did pass today. Who would decide whether you would sell any other portion of the ground? Who are the...is it the board that decides? [LB1123]

TERRY MARTIN: The N-CORPE board would make that decision. [LB1123]

SENATOR ALBRECHT: So you may sell it, you may not. [LB1123]

TERRY MARTIN: Yeah. But here's a point, when we sold that land, that money had to go back to the bond holders; we couldn't hold it, we couldn't keep it ourselves, it had...because we had less assurance of them paying it back...the money went back to the them and not to N-CORPE. [LB1123]

SENATOR ALBRECHT: But surely if you were to sell any...if this were to pass, it would go to the bond company as well. Right? [LB1123]

TERRY MARTIN: Yes, that's my understanding. The attorney may want to address that more clearly for you. [LB1123]

SENATOR ALBRECHT: Okay. Thank you. [LB1123]

SENATOR HUGHES: Senator Bostelman. [LB1123]

SENATOR BOSTELMAN: Thank you, Senator Hughes. Mr. Martin, who...remind me again, who all sits on your board that would make that decision. [LB1123]

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TERRY MARTIN: I am Terry Martin, I'm from the Upper Republican Natural Resource District. The Middle Republican Natural Resource District is Benjie Loomis. The Lower is Nelson Trambly; and from the Twin Platte is Jerry Weaver. And each one of those people is a member of the board of directors of each NRD that owns the N-CORPE project. The four NRDs own the project. And then we have one board member come in as an N-CORPE board member, so there's four of us. [LB1123]

SENATOR BOSTELMAN: And when the land was originally purchased and this developed, was it the same...was all the boards come together or was it similar representative from each of the NRD boards that came... [LB1123]

TERRY MARTIN: There was a representative from each board. Two of us have changed; two of us are still there. I've been there a continuous time...I've been there continuously and so has one of the...Jerry Weaver has been there continuously, yes, from the Twin Platte. [LB1123]

SENATOR BOSTELMAN: Okay. All right. Thank you. [LB1123]

SENATOR HUGHES: Other questions? I've got just a couple. In some of the earlier testimony, talking about LB758, attempting to address the property tax issue, it was stated that occupation tax dollars are paying the property tax now, is that true or are there lease payments that are...? [LB1123]

TERRY MARTIN: That's a...there's a fine line of distinction there. We're paying under protest and we can't do that. So, yes, it is occupation tax. It was collected from all 16 counties routed through N-CORPE and we're paying the county...giving that money to the county assessor. So right now... [LB1123]

SENATOR HUGHES: So that's the only income that N-CORPE is receiving to pay their property taxes is from occupation tax, there's no lease payments coming to pay property tax. [LB1123]

TERRY MARTIN: That is correct. There may be a little bit of lease payment, but it's offsetting our rehabilitation of the grassland, so that's kind of wash thing. So, no, there's no significant funds coming into that except the occupation tax. [LB1123]

SENATOR HUGHES: Okay, thank you, Mr. Martin. Any other questions? Seeing none, we have room for one more opponent before we go back to proponents. No more opponents? Welcome. [LB1123]

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KURT BERNHARDT: Thank you, Senator Hughes and Natural Resources Committee for allowing me to testify in opposition to LB1123. My name is Kurt, K-u-r-t, my last name is Bernhardt, B-e-r-n-h-a-r-d-t. I'm a farmer in western Chase County. I'm just here representing myself. And I want to just speak in to opposition on LB1123. My greatest concern right now is if the overlying land is sold off and the water below it stays with the augmentation process, and this was brought up earlier in testimony, I'm concerned about future lawsuits. We've been in so many lawsuits already in the Republican River Basin between other irrigation districts in there and also with the state of Kansas. And my feeling is that we have something that's working really well right now with this augmentation project and also the Rock Creek one in Dundy County. And what their obligation to Kansas that we have to meet for the delivered amount of water, I hate to see that be in jeopardized in any way. And I'm afraid LB1123 could do that. My other concern is they talk about bringing this land back into production; and I haven't been to this project myself, but I've been in that part of Lincoln County and I know that land up there is what I would consider probably a Valentine sand-type soil, which is really sandy. And to have that brought back into production for dryland with no irrigation, I'm really concerned that there could be a lot of erosion and abuse of the land if it's just not properly farmed right. It's been established back to grass right now and it can and will be for future grazing purposes, which I think is the best situation. And then for the NRDs to be able to hold onto this land, there's an opportunity for many people to be able to rent this land for grazing purposes and not just one group of people. And I guess in closing, I'd like to say this property was for sale publicly. These NRDs just didn't go and buy out from anybody, so this group of people that's opposed to it, they had the opportunity to buy it when it was for sale. And I think that's something that needs to be taken into consideration, too. [LB1123]

SENATOR HUGHES: Okay, thank you, Mr. Bernhardt. Any questions? Seeing none, very good job; thank you for your testimony. Okay, we will switch back to proponents. Welcome. [LB1123]

MARVIN KNOLL: (Exhibit 8) I'm Marvin Knoll, M-a-r-v-i-n K-n-o-l-l. I farm and ranch on both sides of N-CORPE property. I'm supporting LB1123, and I also support the augmentation project because we have pivots on both sides and I understand the importance of the compliance. The N-CORPE project took 7 percent of Lincoln County's irrigated land out of production and converted it to grassland. The county would have received probably \$730,000 last year in tax money as irrigated and they received \$196,000 in tax revenue. And the Wallace and Maywood school districts took the biggest decrease and that is where most of my property taxes are. I did not dispute that because it has kept us in compliance as a Republican Platte compact and allowed us to continue to irrigate. I also believe that Senator Hughes' LB758 helps relieve part of the problem with the property taxes. I do not believe that N-CORPE needs this land. Everyone is interested in lowering property taxes. And if we're going to lower property tax, we have to stop the waste. According to a study conducted by the UNL Bureau of Business Research for N-

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CORPE's operating budget, not including the \$696,000 pumping costs, which they did just use on the years that they pump, but it was \$1.39 million directly tied to the operation of the land, even on the years they don't pump. The increase in grazing income for this was supposed to be \$200,000 a year, or \$750,000 over the next five years. To me, that looks like a million dollars a year or better of waste. And another reason I'm in favor of the sale of land, I'm on the Wallace fire board and in it's current state it looks like it's a fairly high fire hazard. [LB1123]

SENATOR HUGHES: Thank you, Mr. Knoll. Are there any questions? Seeing none, thank you for your testimony. [LB1123]

MARVIN KNOLL: Thank you. [LB1123]

SENATOR HUGHES: Next proponent? [LB1123]

STEVE MOSSMAN: Good afternoon, Chairman Hughes, members of the committee; my name is Steve Mossman and it's M-o-s-s-m-a-n. I'm an attorney here in Lincoln with the Mattson Ricketts Law Firm, but I'm here today representing Landowners for a Common Purpose. Most of my day-to-day legal work is for the very farmers and ranchers who belong to the groups that Mr. Schwarz testified for in opposition. And I just state for the record that I would never advocate for anything that could jeopardize my client's most precious resource, their water. With that I'd like to just point out that most of the testimony that I've heard in opposition today deals with the original language of LB1123 and not the amendment, AM1819 that Senator Groene has offered today. And in looking at the amended language, it's very simple; it's just got three parts to it. It makes it very crystal clear that the law only applies to augmentation projects...actually only applies to augmentation projects that are sponsored by a natural resources district. And the Estermann case that my colleague, Mr. McIntosh, talked about makes it very clear that the Supreme Court, that the highest court in our state, has already found that what the N-CORPE project is is an augmentation project, not requiring permits from either the state or either of the two natural resources districts that it's in. But more importantly, with the amendment, AM1819, it explicitly does not sever the water from the land, it only provides that the NRDs can continue to pump groundwater for their very important augmentation projects, both in the Republican Basin and in the Platte River Basin. And looking at that language, having studied the Estermann case at some length, I see zero risks as a water law practitioner in the state of any unintended consequences for this narrowly crafted language. And again, I'd like to just make sure the committee is focusing on the amendments and not the original language of LB1123. And with that I'd be happy to answer any questions that the Chairman or the committee has for me. [LB1123]

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SENATOR HUGHES: Okay. Thank you, Mr. Mossman. Are there any questions? Senator Geist. [LB1123]

SENATOR GEIST: Yes, thank you, Mr. Mossman. I have that in my pile here somewhere, but I can't reference it right now, so maybe you can just shortcut it and tell me, would this also include any future augmentation project? [LB1123]

STEVE MOSSMAN: It would...any future augmentation project that is...that the sponsors or the owners of are an NRD. [LB1123]

SENATOR GEIST: Okay, thank you. [LB1123]

STEVE MOSSMAN: So it's a very, very narrow language. And actually the reason this came about, I can elaborate on that a little bit, as Mr. McIntosh said, we did make presentations to all four of the NRD boards that are associated with the N-CORPE project. I was out at the Upper Republican NRD and when our proposal was presented to them, the response was--well, our lawyers won't let us do that. And at that meeting, what I said was--if there is a concern about the legality of this, this was in November, I said the Legislature is going to be meeting again in January, I'm sure that if we worked together, meaning the Landowners for a Common Purpose and N-CORPE, we could certainly craft language that would allow them the opportunity, and again, it's a "may" not a "shall" in the proposed bill as you know, that would provide a clear framework in Nebraska law to allow the land to be sold if N-CORPE or another project sponsor decided to do that. This language has been out here and nobody is negotiating any language as far as I know, they're just here today in opposition. And I think that's sort of unfortunate. [LB1123]

SENATOR GEIST: Thank you. [LB1123]

SENATOR HUGHES: Additional questions? [LB1123]

STEVE MOSSMAN: Thank you, Senator Geist. [LB1123]

SENATOR HUGHES: Senator Bostelman. [LB1123]

SENATOR BOSTELMAN: Thank you, Mr. Mossman. Can you explain to us...or to me, maybe, when we're talking about cities using water, they pump it from a different...some of it's, maybe, out of the Platte River, like Lincoln and Omaha does, or when you go into a rural water districts or we're pumping water into a bunch of different towns, it's not augmentation process and it's

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different so it could be covered differently. Could you explain to me a little more in how that's allowed? [LB1123]

STEVE MOSSMAN: Absolutely. Thank you. That's a very good question. The Nebraska common law only allowed water to be used on the overlying land. And the Nebraska Legislature, your group, has made a number of exceptions in statute over the years, there was an exception, the first one, I believe, was the one that allows municipalities in rural water districts to withdraw water from somewhere other than where it's going to be used, and get a permit from the Department of Natural Resources to transfer that for use somewhere else. That's now been...industrial can do that; you can transfer groundwater out of state. I had a case that was decided by the Nebraska Supreme Court in the early 1990s that upheld the constitutionality of Nebraska's statute that allows groundwater to be withdrawn and used in another state. There was also an exception added for agricultural and environmental remediation purposes that's a specific act so there's this notion out there that what we're doing here is something new and unique. And it's really not at all. There's been groundwater that has been allowed to be used somewhere than the overlying land that the Legislature has put in place for many years; withstood court challenges in Nebraska Supreme Court and has been upheld to be constitutional. So it's been going on for years. [LB1123]

SENATOR BOSTELMAN: Could you also explain to me...my understanding, land out there, the 19,000, plus or minus acres, that are out there that are in the project now, some of it was irrigated and some of it...and now it's been retired. But yet, we're still pumping water through the augmentation process. How does that...because I would buy that land if it would come up for sale; I can't irrigate because it's been retired. So how is it that the NRDs can use that water then? [LB1123]

STEVE MOSSMAN: And that was part of the challenge that was contained in the Estermann decision. And what the Nebraska Supreme Court said is that N-CORPE was not a transfer of groundwater. It was...they described it, again, as an augmentation project which is consistent with the Nebraska Rev. Stat. 46-715, that both Senator Groene and Mr. McIntosh talked about. So it really, kind of, in a class by itself already by the Supreme Court's decision. And frankly, when looking at, as Senator Groene said, when looking at the amended language for LB1123, this actually, probably, protects...not probably, it does protect N-CORPE more if this was adopted than it's protected right now because it specifically is legislative authorization saying that an NRD can do an augmentation project like the N-CORPE project. [LB1123]

SENATOR BOSTELMAN: Thank you. [LB1123]

STEVE MOSSMAN: Okay. [LB1123]

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SENATOR HUGHES: Any additional questions? Thank you, Mr. Mossman. [LB1123]

STEVE MOSSMAN: Thank you. [LB1123]

SENATOR HUGHES: One more proponent and then we'll switch back to opponents. Welcome back, Mr. Nelson. [LB1123]

CONRAD NELSON: Well, thank you. [LB1123]

SENATOR HUGHES: Good to see you again. [LB1123]

CONRAD NELSON: (Exhibit 9) Conrad Nelson, C-o-n-r-a-d N-e-l-s-o-n. Yeah, thank you, Dan, and the committee for giving us the opportunity from the Wallace school district, again, to speak a little bit. I'm vice president. I do have Lila Koop with me today; and our superintendent, Tom Sandberg, could not make it. He's headed to Minneapolis with his wife for surgery. You should have a copy of our written letter. The Wallace Public School District we like...would go on record today as being in support of LB1123. We were here the other...a while back in support of LB758, as Dan mentioned. The water augmentation project known as N-CORPE took 11,700 acres out of production in the Wallace school district which resulted in an 8 percent loss of value to the district. Other taxpayers in the district then are making up the difference on this. The annual tax revenue received from this property prior to N-CORPE's purchase was approximately \$200,000. That grassland value this ground provides approximately \$50,000 a year to our school district. N-CORPE is currently paying their taxes even though they prevailed at TERC. And if N-CORPE continues to prevail in the appeal process, the Wallace school district will need to pay back the taxes the district has been receiving. And that would amount to, I think, around \$54,000. LB1123 provides the opportunity for a long-term remedy to this problem as it will take away N-CORPE's argument that it cannot sell the ground. So these 11,700 acres need to be paying their own fair share and LB1123 allows for that to happen over time. So we feel that the best immediate remedy for the Wallace Public School would be a merger of LB758 and LB1123. And you see the board members signatures there and our superintendent. Thank you, appreciate it. [LB1123]

SENATOR HUGHES: Thank you, Mr. Nelson. Are there questions? Seeing none, thank you for your testimony. [LB1123]

CONRAD NELSON: Thank you. [LB1123]

SENATOR HUGHES: We will switch back to opponents. Welcome. [LB1123]

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RUSSELL CALLAN: (Exhibit 10) Thank you. Good afternoon, Chairman Hughes and senators. My name is Russell Callan, R-u-s-s-e-l-l C-a-l-l-a-n; and I'm the general manager of the Lower Loup NRD in Ord. The Lower Loup NRD recognizes the importance of the Nebraska Cooperative Republican Platte Enhancement Project, N-CORPE; also it's value to the state of Nebraska to meet the needs of the Republican River Compact. We also recognize the importance of the tax base and the farm and ranch land that is part of the N-CORPE project. However, we would caution the committee that separating the water from the land would be a definite change in how water is managed in Nebraska. The concept that water is owned by the state and tied to the land has served the state well. We don't have to look very far to our neighboring states to see the negative impacts of treating water like a mineral right. The N-CORPE NRDs and the Department of Natural Resources have developed a project that keeps the local irrigation economy intact and the irrigation tax base while serving the state's compact requirements. We would have to...sorry, I would hate to see that we think as a major change of thinking that could deal with water management throughout the state. I would be glad to answer any questions. [LB1123]

SENATOR HUGHES: Okay, thank you, Mr. Callan. Are there any questions? Seeing none, thank you for your testimony. Next opponent. Welcome. [LB1123]

TY WALKER: (Exhibit 11) Thank you. Good afternoon, my name is Ty Walker, T-y W-a-l-k-e-r. And I'm a rancher in Arthur County which is northwest of North Platte about 60 miles and I'm in the Twin Platte NRD. And I just want to clarify real quickly, I'm not in Lincoln County, but I face the exact same occupation tax as Lincoln County because I'm in the Twin Platte NRD, so for all intent...it's pretty much the same. What I do know about N-CORPE is it protects the way I irrigate on my ranch. I irrigate a little differently. I don't have row crops, I use it for hay for my cattle operation. Particularly because our Sandhills region which is made up mostly of range land is removed from the Platte and Republican Valley's intensive farm ground, many of my fellow Sandhillers are not overly crazy about the occupation taxes associated with N-CORPE. However, I see it as a necessary investment in our state's economy, as well as an investment in the environment and therefore it is in the collective best interest in our great state's future. I believe LB1123 could likely jeopardize the way N-CORPE operates. I want to say N-CORPE is located on the very southern edge of the Nebraska Sandhills and the nearly 20,000 acres of poor farmland is in the process of being restored to native range land thus making it the largest grassland reclamation project in Nebraska history. Because this was likely poor farm ground to begin with that can be returned to its native state and used for the better suited purpose of grazing, I see this as a step forward in environmental conservation. I want to be clear here too, that this ground is not suited for dryland farming. This is Sandhills ground that is probably better suited for grazing. Just a couple extra quick points I might call out, Senator Groene stated in the opening statement, and it's been said a couple of times, they've emphasized the word "may" as in they wouldn't be required to sell it, but I think it's pretty obvious the sale of the land is the end

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goal here. So I don't see that as being...and then, I guess finally, I just want to say that maybe most importantly water is becoming increasingly a valuable commodity. I believe in the upcoming century we're likely to see it become more so. I'm afraid that we risk setting a dangerous precedent if we were to start allowing the trading of groundwater rights without the overlying land ownership. I would be very hesitant to allow policy that would open the door for outside or absentee investors to begin to buy water as speculators. Thank you. Any questions? [LB1123]

SENATOR HUGHES: Thank you, Mr. Walker. Are there any questions? Seeing none, thank you for your testimony; very good job. Okay, one more opponent and then we'll be back to proponents. Welcome. [LB1123]

NELSON TRAMBLY: (Exhibit 12) Senator Hughes, Natural Resources Committee, my name is Nelson Trambly, N-e-l-s-o-n T-r-a-m-b-l-y. I'm from Campbell, Nebraska. I would like to thank you for allowing me to speak to the Natural Resources Committee in opposition of LB1123. I'm 37 years old and have been part of our family farm near Campbell my entire life. However, the real work for me began in 2005 when I came back from college and started farming with my dad, Nelson F. Trambly, who some of you may know. The passion I have for farming is the same as many other farmers in Republican River Basin. I grew up on my family farm, have returned, and am raising my three children, my wife, on the farm. I'm here today to protect my farm so that my children and grandchildren have the same opportunity I have been given to farm in the Lower Republican Natural Resource District utilizing groundwater irrigation which provides me with the best possible return on my land. The opportunities that irrigation creates for my farm in the economy in the entire Republican River Basin are endless and need to be protected for this and future generations. Irrigation is vital to keeping the local economies in the 16 Republican River Basin counties prosperous. Irrigation in the Lower Republican NRD is still possible as a direct result of the N-CORPE project. If the N-CORPE project had not been successful, I can guarantee that myself and many other farmers would not have had the opportunity to come back to our family farms. Dryland farming is not as profitable as irrigation, thus limiting the number of families that can be supported by each individual farm. There are approximately 1.1 million acres in the Republican River Basin. I feel that a project that is able to sustain irrigation on all those acres while protecting the state from lawsuits from Kansas, like the \$80 million and the shut down of 500,000 acres that they recently sought, is a success. We've used the occupation tax in a way we were asked by the state. I think this bill has the potential to compromise the project. The NRDs in the Republican River Basin should be proud of what they have done and I want to personally thank them for all their work and commitment for our opportunity to irrigate. To my understanding, the property taxes have been paid by N-CORPE, disbursed and spent by the appropriate recipients, including the school district and counties every year on those 19,000 acres in the past. In the past, it has been ruled there is not really a legal way to maintain paying those taxes, but they have continued to do so to the benefit of the school district and counties that

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are affected by the N-CORPE project. I believe there's another bill which is currently under consideration, LB758, that will allow N-CORPE to continue paying these property taxes and provide a way for Lincoln County to keep the taxes which have already been paid. I have been told the N-CORPE board and the individual NRD boards support LB758 and I trust this will solve the issue that some folks in Lincoln County have talked about in the past few months and today. Furthermore, I have read a letter from the United States Department of Interior signed by Mrs. Ann Castle, addressed to Mr. Brian Dunnigan the Director of the Department of Natural Resources for Nebraska, at that time, dated September 30, 2014. I understand that my time is about up, but I would like to continue if I may. [LB1123]

SENATOR HUGHES: Briefly. Wrap it up, please. [LB1123]

NELSON TRAMBLY: The letter states that federal reclamation projects in Nebraska are assets which not only benefit the residents in Nebraska, but also enable reclamation to carry out its responsibilities and legal mandates under state and federal law. Mrs. Ann Castle also states: I have urged that hydrologically connected waters in the Republican River Basin be managed so that surface and groundwater users equitably bear the burden of the Nebraska's compact compliance in water-short years. I feel that the N-CORPE project specifically addresses this statement by Mrs. Castle, as it benefits not just the Republican River Basin, but the entire state of Nebraska. N-CORPE has been a valuable tool which provides certainty to keep farmers in this state, like myself, growing irrigated crops. More than anything else, I simply do not agree with setting the precedence of separating the water from the overlying land. The unforeseen consequences of LB1123 in the future, such as legal challenges or legislative changes, make it very easy for me and my friends to oppose such a bill. It is a dangerous road to travel down and the risk is not worth it in my opinion. The N-CORPE has proven its value to irrigators like myself and the state of Nebraska for interstate compact compliances. Any action such as legislation like LB1123 which may put N-CORPE's future as risk are actions I do not want to see carried out. I would like to thank you again for the opportunity to share my point of view on LB1123. I urge you to vote in opposition to that bill. Thank you for your time. Any comments, please. [LB1123]

SENATOR HUGHES: Thank you, Mr. Trambly. Are there any questions? Seeing none, thank you for your testimony. Okay, we will switch back to proponents. If there are three proponents would like to come up and get into the queue, that would be great. Welcome. [LB1123]

TRACY OLSON: Thank you. My name is Tracy Olson, I'm from Lincoln County and I'm here to read into testimony a (inaudible) Mike Jacobson from North Platte. And if you...so he...this is as follows and I think you've all got a copy. [LB1123]

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SENATOR HUGHES: Ms. Olson, would you please spell your name, please. [LB1123]

TRACY OLSON: (Exhibit 13) I'm sorry. T-r-a-c-y O-l-s-o-n. Okay, Chairman Hughes and the members of the Natural Resources Committee, my name is Mike Jacobson. I am president and CEO of NebraskaLand National Bank. I am writing to you today to offer support for LB1123. I want to make it clear that I have been a supporter of the N-CORPE water augmentation project from the beginning and fully recognize the importance that this project has on the economic vitality of the area. I am also a longtime supporter of NRD system and the need for local control of these organizations. My concerns however are focused on the fact that nearly 20,000 acres of land are now held in public hands and have been removed from the tax rolls. This has had a devastating impact on the local property tax base and the taxing authorities impacted from this loss of property tax base. Although it was necessary to purchase the land in the beginning, it seems that the build out of the augmentation project is now complete and the ownership of the land is no longer necessary to sustain the project. As a result, it now seems appropriate to develop a plan to systematically return the land to private hands. I believe that LB1123 provides the necessary authority to allow the N-CORPE board to dispose of the land without jeopardizing the augmentation project. After reviewing the bond documents, it also seems clear to me that there nothing that would restrict N-CORPE from selling the land or any of the improvements as long as the issuer is in compliance with all the bond terms and are current with their payments. In fact, N-CORPE as indeed sold some of the land and chattel the assets and the trustee for the bond has executed the proper conveyance documents to transfer ownership to private parties. So any concerns regarding compliance with the bond issue seems to be unfounded. It should also be noted that although legislation has been introduced to provide an in-lieu payment of property taxes to the local taxing authorities by N-CORPE, this should not be the long-term solution. In its current state, the land is at its lowest possible use for taxing purposes. If the land were in private hands, some of the acres could certainly be placed back to dryland farming production, thus increasing the economic activity and increasing the tax assessed value. Further, the occupation taxes assessed on the irrigated acres in the four NRDs could be reduced if the in-lieu taxes were not required in addition to paying the operating costs and debt service on the bonds. I would urge the committee to move this bill out of committee and allow the full Legislature to consider the merits of providing the N-CORPE board with clear authority to sell the land should they choose to do so. In the end, this bill provides no mandate, but simply spells out the authority for the board to sell the land. Thank you for your consideration. [LB1123]

SENATOR HUGHES: Thank you, Ms. Olson. Are there any questions? Seeing none, thank you for your testimony. [LB1123]

TRACY OLSON: Thank you. [LB1123]

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SENATOR HUGHES: Next proponent. Welcome. [LB1123]

MARCIA OLSON: (Exhibit 14) Thank you. Senator Hughes, members of the committee, I am Marcia Olson, M-a-r-c-i-a O-l-s-o-n. I'm here today on behalf of Julie Stenger, the Lincoln County Assessor in North Platte, Nebraska. I am reading her letter in support of LB1123. Dear Senators, I am Julie Stenger, Lincoln County Assessor, and as an elected county official, I do strive to do what is in the best interest of my taxpayers in Lincoln County. I wish I was able to attend this hearing, but unfortunately, I am unable to do so. However, I am sending this brief letter to go on the record as my testimony. With this letter, I would like to point out a few items of concern about the N-CORPE water augmentation project in Lincoln County which was implemented by the collaboration of four local natural resource districts. First, I want to say...to start by saying that I am not opposed to the water augmentation project itself and after speaking and meeting with many of the concerned taxpayers, most of them are not opposed to the augmentation project either. The majority of the concerns are with the way the project was implemented, the lack of transparency and accountability, and the way the project has been handled and managed from the beginning. I do appreciate that Senator Hughes and Senator Groene have recognized legislation needs to be written and clarify the limits of the natural resource districts. LB758 would somewhat help the political subdivisions within Lincoln County keep tax dollars on the tax rolls with the suggestion of an "in lieu" of tax for augmentation projects. However, the NRD's only source of income is through levying taxes or implementing an occupational tax, which, in turn, these taxes levied and occupational taxes implemented, are "footed" by the local Lincoln County taxpayers. The taxpayers of Lincoln County deserve a better solution. LB1123 is a bill that would allow the NRDs to do their augmentation projects by decertifying the water rights from the property and the NRD retaining these water rights for the water project, without actually having to own the surface land. They may then sell the land, or maybe would never even have to own the land in the first place. Augmentation projects could be implemented by the NRD separating and retaining the water rights from the surface land in areas where an augmentation project is needed. This would be a much better solution. The NRDs should not be landowners, taking property tax off the tax rolls and land out of production, without causing enormous impacts on already heavily taxed Nebraskans. The surface land is not being used for any public purpose, and N-CORPE did stipulate to this fact during the TERC hearing, so why do the NRDs need to own this land? The Twin Platte NRD is already separating, selling, and even moving water rights to different properties and across county lands, which occurs numerous times throughout the year. Legislation that states it would allow water projects to separate the water rights from the surface land, would allow the N-CORPE project to sell the land back to the local farmers and ranchers and get the land back on the tax rolls. [LB1123]

SENATOR BOSTELMAN: Ms. Olson, your red light is on. Could you please conclude your testimony for us, please? [LB1123]

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MARCIA OLSON: Well, I will conclude then, "Respectfully, Julie Stenger." [LB1123]

SENATOR BOSTELMAN: Thank you very much. That's very good. Do we have any questions from the members of committee? Seeing none, thank you, ma'am. Thank you very much for the testimony. [LB1123]

MARCIA OLSON: Thank you. [LB1123]

SENATOR BOSTELMAN: Next proponent, please. One more proponent. Is there any other proponents wish to testify? This is the third proponent, so then those who would like to testify in...as an opponent, please be ready. Welcome. [LB1123]

BECKY ROBINSON: (Exhibit 15) Welcome. Thank you, committee members, today. My name is Becky Robinson, B-e-c-k-y R-o-b-i-n-s-o-n. I'm here today for Sheri Bourne, owner of Gateway Realty in North Platte, reading her letter in favor of LB1123. My name is Sheri (Sharon) Bourne, and I would like to testify in favor of LB1123. Coming from a strong farming/ranching background and now having ownership of both interests located in Lincoln County, Nebraska, I have strong concerns about the lack of private ownerships of the surface land of the N-CORPE project. I also am a business owner in North Platte, Nebraska. The N-CORPE project has financially impacted our family as my land is in the Middle Republican Natural Resource District. Understanding the need for the augmentation program, in my opinion, it would be a very wise business decision to sell the surface land of the N-CORPE project back to private ownership while N-CORPE continues to control the groundwater for this project. N-CORPE must have oversight and accountability to not only the state of Nebraska, but also to the counties their decisions impact. This is imperative that the occupation tax dollar collected be directly applied immediately to the bond principle with minimal occupation tax dollars going for limited administrative duties. Additionally, the dollars earned from the sale of the surface land to private ownership should also significantly reduce the bond debt. There is no need for N-CORPE to exist for 30 years just to pay off the bond debt. That would be very self-serving. Agriculture is the backbone of financial stability in Nebraska because of the sound business practices of our hardworking Nebraska farmers and ranchers. Please put the surface land of N-CORPE back into the hands of private enterprise. Respectfully, Sheri Bourne. [LB1123]

SENATOR HUGHES: Thank you, Ms. Robinson. Are there any questions? Seeing none, thank you for your testimony. Okay, we will switch back to opponents. We will take three opponents. Welcome. [LB1123]

DEAN LARGE: (Exhibits 16 and 17) Good afternoon, Senator Hughes and committee, Natural Resources Committee. My name is Dean Large; that's D-e-a-n L-a-r-g-e. I gave the clerk a letter

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that was submitted by Steve Facka of Hershey and I am not going to read it. I was just present...I was just given it to present to the committee, but I will be testifying on my behalf. Senator Hughes, members of Natural Resources Committee, my name is Dean Large, farmer/rancher in Chase County, as well as a retail chemical and fertilizer salesman in southwest Nebraska. I've served on the Upper Republican NRD board for 27 years. Over those years I have attended well over 150 meetings dealing with Republican issues going back to what...before Kansas filed its first lawsuit in 1998. And I also serve as an alternate voting delegate or board of director on the N-CORPE board. The biggest thing I've probably learned about water management and compact compliance is that results of the rules and regulations are slow to be seen. To get desired amount of water to a certain place by a certain time is very hard to do without overregulating by rules, by some 200-500 percent and maybe even more, so we needed to find an alternative in the Republican Basin. The first time I remember discussion on augmentation project was in a parking lot at a board retreat in Ogallala with then-DNR Director Roger Patterson. For several years leading up to the development of Rock Creek project in Dundy County, "aug" projects and sites were researched throughout the Republican Basin. Since then, accounting questions have been answered, agreements have been made with Kansas, and two augmentation projects have been built. But the importance of getting a specific amount of water to a specific place at a specific time has not changed. The N-CORPE and Rock Creek augmentation projects demonstrate that Nebraska and its irrigators are serious about staying in compliance in the future, not only on the Republican but also on the Platte. These projects are paid for by the irrigators. It is protected. These "aug" projects are governed by local people that are irrigators or represent irrigators that own these projects. The irrigators in all 16 counties that are paying for these projects need a very strong assurance that their investments will hold up over time. Continued ownership is the only thing that can give them that. Thank you. [LB1123]

SENATOR HUGHES: Thank you, Mr. Large. Are there any questions? Seeing none, thank you for your testimony. [LB1123]

DEAN LARGE: Thank you. [LB1123]

SENATOR HUGHES: Next opponent. Welcome. [LB1123]

DON BLANKENAU: (Exhibit 18) Good afternoon, Mr. Chairman, members of the committee. My name is Don Blankenau. My name is spelled D-o-n, last name B-l-a-n-k-e-n-a-u, and I'm an attorney in Lincoln, formerly with what was then the Department of Water Resources, and now in private practice for a number of years. And I'm providing testimony this afternoon on behalf of the Nebraska Association of Resources Districts, or NARD. And I think as most of you know, NARD is comprised of all 23 natural resources districts in Nebraska and those natural resources districts are elected bodies that are responsible for the management of groundwater across the

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state. NARD opposes LB1123 and the newly offered amendment primarily because that legislation and the amendment create confusion as to the nature of landowners' rights and their access to groundwater. And by now you have heard a wide variety of legal theories associated with the nature of landowners' access to groundwater. And I don't doubt that before this day is out, you'll hear additional theories. The range of these divergent legal theories, however, illustrates the concerns that NARD has that there really isn't a clear answer here. For instance, the group Landowners for a Common Purpose have offered legal opinions as to the severability of the right to use groundwater from landownership. The theory that is behind that position is based on a Court of Appeals case, Springer v. Kuhns. We submit that the case does not address the issues as suggested by counsel and merely skates around the very issue. But more importantly, even if it did address that issue, it is a Court of Appeals case. It has very little precedential value. The Nebraska Supreme Court routinely reverses the Court of Appeals. This case was never reviewed by the State Supreme Court. It is, therefore, we submit, a very, very thin read upon which to rest \$120 million project and the state of Nebraska's continued compliance with the compact. What we do know, though, with real certainty, is that there's been a great deal of litigation in the Republican River Basin brought by both landowners and irrigation districts, each of whom is represented by capable counsel and that capable counsel had legal theories that they based their lawsuits on. Indeed, one of these cases, Cappel v. DNR, was brought by the counsel that offered the legal opinion for the landowners. Those, all of those suits, though, were fortunately found to be meritless. And both the trial court and Supreme Court found in favor of the NRDs, N-CORPE, and the state. At the end of the day, though, we see that there are two really important points here. One is that there are Nebraska parties who would make efforts to undo years of progress that the state has made to achieve compact compliance. And number two, with every change in the law that is made, we open the door to new legal challenges, and that's really what's at issue here. This legislation and the amendment create a new pathway for additional challenges by any one of a number of groups who have, in the past, attempted to undo Nebraska's ability to comply with the compact. And that's really what we're facing here today. And I see that I'm out of time. [LB1123]

SENATOR HUGHES: Thank you, Mr. Blankenau. Are there any questions? Senator Albrecht. [LB1123]

SENATOR ALBRECHT: Thank you, Chairman Hughes. You've been in this a lot longer than I have, so hopefully you can help me follow the time line. So this appeals with Springer v. Kuhns,... [LB1123]

DON BLANKENAU: Correct. [LB1123]

SENATOR ALBRECHT: ...was that before or after N-CORPE sold land to the Lowe? [LB1123]

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DON BLANKENAU: That was long before that was... [LB1123]

SENATOR ALBRECHT: Long before that. [LB1123]

DON BLANKENAU: I want to say, Senator, that was probably in around 1990. [LB1123]

SENATOR ALBRECHT: Okay, so if that was in 1990, there were no lawsuits, everybody thought it was just okay to sell off a little piece of their ground at that time? [LB1123]

DON BLANKENAU: That's the only case that was...that ever even approached the issue and we would submit it didn't deal with that issue directly. Rather, it was access to a well and the ability to move groundwater off the overlying land, much like Estermann. Unlike the others who studied that case, we actually litigated it, and Estermann simply stood for a similar principle and that is, to the extent this body chooses, it can allow for the movement of water off the overlying land, which it did in the case of augmentation projects. [LB1123]

SENATOR ALBRECHT: And so your position, you do represent the N-CORPE and the NRDs yourself right now? [LB1123]

DON BLANKENAU: Correct. [LB1123]

SENATOR ALBRECHT: Okay, so if we were to move this forward and the legislative body approved it, would you consider allowing them to sell the land, or would you... [LB1123]

DON BLANKENAU: That would not be a decision for me to make. That's solely for the board. [LB1123]

SENATOR ALBRECHT: Certainly they would just seek legal counsel whether they should or shouldn't. [LB1123]

DON BLANKENAU: Well, I...my position is that it is a risky proposition to allow for the transfer of the land at this time. There may be a way to get there, but right now I think there are too many questions associated with that. [LB1123]

SENATOR ALBRECHT: But knowing that, I mean, I'm looking at this project, and I wish I would have gone on the trip with you all but I didn't, but it just appears, with 19,000 acres, do

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you already have all the wells that you need to have drilled for that project or do you see yourself drilling more on that 19,000 acres? [LB1123]

DON BLANKENAU: There may be additional wells drilled, yes. [LB1123]

SENATOR ALBRECHT: But knowing that you would still be able to have complete ownership of those wells, you wouldn't consider entertaining letting go of... [LB1123]

DON BLANKENAU: Well, again, I think the safest approach at this point in time is the one that's tried and true, one that the Supreme Court has reviewed, and that is the more land you own, the more water you can pump. And that's really the need that N-CORPE sees for owning these acres, because their water-pumping needs are substantial... [LB1123]

SENATOR ALBRECHT: Correct. [LB1123]

DON BLANKENAU: ...and so the more land they own under the common law, the more they should be able to pump. [LB1123]

SENATOR ALBRECHT: Thank you. [LB1123]

SENATOR HUGHES: Senator Bostelman, you had a question? [LB1123]

SENATOR BOSTELMAN: Yes. Thank you, Chairman Hughes. Thank you, Mr. Blankenau, for being here. A couple questions, one comes to mind with the recent testimony from our...that was submitted from Julie Stenger and it says, and I'll quote from what it says, "They may," and this is part of her paragraphs, "They may...sell the land, or maybe"--here's the part that interests me--"would never even have to own the land in the first place." I'm looking at this amendment, and could you comment to that? Do you see that if this would pass, would the NRD have to own the land or not or could they do develop it without having...in other words, maybe move onto someone's property and develop it, with or without their permission, and then augment, use the wells to augment whatever project they have? [LB1123]

DON BLANKENAU: Senator, your question is a good one and it really highlights the uncertainty. I don't think that's a clear...the answer to that question is clear from that amendment. The amendment, as I read it, simply says you may pump water from the land in accordance with the IMP. Well, an IMP is nothing more than a planning document. It doesn't create any independent legal rights or obligations. So whether that means you can pump water from beneath

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your neighbor's land for this project pursuant to an IMP or whether or not you would be required to buy additional land, it just...it really isn't clear to me. [LB1123]

SENATOR BOSTELMAN: Okay. [LB1123]

DON BLANKENAU: And I think really that's the heart of the issue here. [LB1123]

SENATOR BOSTELMAN: Okay. Another question, the testifier earlier said, I believe, and maybe I just didn't understand, do the NRDs already have authority to do some type of water pumping outside? I mean, is this needed or does the authority already exist? [LB1123]

DON BLANKENAU: Well, the authority already exists for them to sell the land. There's no obligation upon them to retain it. So they could sell it tomorrow if they chose to do so. But again, the reason they have chosen not to do so is because from the common law, the more land you own, the more you can pump as a matter of right. And what the Supreme Court said in the Estermann case is you don't have to use it on the surface, as an augmentation project you may transfer it off the overlying land. But nowhere did the court say you could buy a small piece of land and pump as much water as you wanted pursuant to an IMP or any other process. [LB1123]

SENATOR BOSTELMAN: Okay, thank you. One more, one final question I have, public purpose, that was part of the TERC proceeding, hearing and that. Could you...how is it that it's found as a public purpose? And if it's not found, the land found, as a public purpose, could you then...my understanding is public purpose is what's driving NRDs not have the ability to pay the tax where if it was not for public purpose, then they could pay the tax. Is that correct? [LB1123]

DON BLANKENAU: That's correct. [LB1123]

SENATOR BOSTELMAN: And could you explain to me the...how public purpose was...if it has been determined or defined by the TERC in this situation? [LB1123]

DON BLANKENAU: Certainly, and it was found to be a public purpose in the Estermann case, that is, the ability to condemn land has to be for a public purpose. The Nebraska Supreme Court concluded that N-CORPE's acquisition of land, at least with respect to Mr. Estermann's property, was for a public purpose: to move water through compact compliance. And related to that, in TERC, they concluded--this is Tax Equalization and Review Commission--was that the primary purpose for acquiring and using that land was to access the underlying groundwater. And it was that access to and use of the underlying groundwater for the augmentation that meant the entire project was for a public purpose. [LB1123]

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SENATOR BOSTELMAN: Okay. Thank you. [LB1123]

SENATOR HUGHES: Other...Senator McCollister. [LB1123]

SENATOR McCOLLISTER: Yeah, thank you, Mr. Chairman. And welcome. Thank you for your testimony. [LB1123]

DON BLANKENAU: Thank you, Senator. [LB1123]

SENATOR McCOLLISTER: When that land was purchased, was eminent domain utilized to perfect that purchase? [LB1123]

DON BLANKENAU: Not the purchase itself, no. There was a portion of property that was not part of that purchase that needed to be acquired to run the water to Medicine Creek and that's the Estermann case. [LB1123]

SENATOR McCOLLISTER: Okay, thank you. [LB1123]

SENATOR HUGHES: Any additional questions? Seeing none, thank you, Mr. Blankenau. [LB1123]

DON BLANKENAU: Thank you. [LB1123]

SENATOR HUGHES: (Exhibits 19-22) Okay, one more opponent. Are there any additional opponents? No more opponents? Okay, then we will go back to proponents. We will take three proponents and then I've got letters. We will take three more proponents and then we will take three neutral testimonies. We have letters for the record from opponents: Patrick O'Brien from the Upper Niobrara White NRD; Steve Facka from Dickens; Mike Murphy, Middle Republican...or Middle Niobrara NRD; and Vanessa Silke, Nebraska Water Resources Association. So we're back to proponents. Welcome. [LB1123]

ASHLYN ROBINSON: Thank you, Senator Hughes. My name is Ashlyn Robinson, A-s-h-l-y-n R-o-b-i-n-s-o-n. Chairman Hughes, members of the Natural Resources Committee, thank you for taking my testimony in favor of LB1123. I hope to be the fifth generation of my family to farm and ranch in southern Lincoln County. I believe it is important to be able to sell the surface land while maintaining the water for the augmentation. The sale of the land will pay down debts, stop huge operating expenses, and ensure economic prosperity for the area. These factors will help to

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ensure opportunities for myself and others who wish to pursue production agriculture in the future. There has been talk of how this land is not suitable for dryland farming. With today's technology and future improvements in technology and genetics, dryland farming in this area is viable and will improve in the future. Thank you for helping in improving the future in southwest Nebraska. [LB1123]

SENATOR HUGHES: Thank you, Ms. Robinson. Are there any questions? Seeing none, thank you for your testimony. Very good job. [LB1123]

ASHLYN ROBINSON: Thank you. [LB1123]

SENATOR HUGHES: Next proponent. Welcome. [LB1123]

JIM SMITH: Yeah. Jim Smith is my name. It's J-i-m S-m-i-t-h. I'm a lifelong resident of Wallace, Nebraska. I've owned my own business there for the last 40 years selling insurance and investments. I'd also like to state that four generations of our family have attended the Wallace school. My parents graduated from there, my seven brothers and sisters, my seven children, and I have some grandchildren attending there now, so it's very important to me that that Wallace school stay there. And as many of you know--Senator Hughes, you're from a small town that lost their school--it's devastating when a town loses their school. And when this project first came about, one of the NRD managers, I don't know for sure what his title is, Mr. Miller from North Platte, went on the local television station and was quoted in the local newspapers that he was going to make this right with the Wallace school district for the shortfall that it's caused our taxpayers over there. At this point, they've done nothing to make it right with the Wallace school district. In fact, they went to court to get exempt from paying taxes on it and now we're forced (sic) with possibly having to pay back two years of taxes, which is a lot of money for anybody to pay back but it's certainly a tremendous amount of money for the Wallace school district. So I'm in support of them selling that land. And I don't have all the expertise, the legal opinions, state all that, but it just seems to be common sense to sell that land and put it back on the tax rolls. And the people that stated that they feel our pain, why don't the other 77 counties that aren't paying that occupation tax, why don't they pony up and pay part of that to pay for this project? I think you asked that question. There's an example. If every acre of farmland in this county paid \$1 an acre, it seems like there would be a tremendous amount of money to pay off that bond issue that they've created. And if the local homeowners want to pony up another dollar for every home in the state of Nebraska, or \$1 for every business that's owned, we'd have the money to pay this off. So that's all that I have. Thank you. [LB1123]

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SENATOR HUGHES: Thank you, Mr. Smith. Are there any questions? Seeing none, thank you for your testimony. One more proponent and then we'll switch to neutral testimony. Welcome. [LB1123]

RON SABATA: (Exhibit 23) Thank you. My name is Ron Sabata, spelled R-o-n S-a-b-a-t-a, and I'm here today to present a letter that was submitted by Jerry Remus, a member of the Lincoln County community. Hello, my name is Gerald Remus and I would like to testify in favor of LB1123. As the business owner of two automotive dealerships in North Platte, and manager of several irrigated pivots in Lincoln County which is in the Middle Republican Natural Resource District, the N-CORPE project has hit me on both sides. While I understand the importance of the augmentation project to ensure our ability to irrigate, the lack of common business sense of this project is extremely upsetting to me. It is well known that the production of agriculture is one of the strongest backbones of our Nebraska economy. That is why it's so important to pass LB1123 and sell the surface land back into private hands. We will never have the benefit to our local economy, of the irrigated land that we once had; however, this would at least put it back into private enterprise and production agriculture and allow those dollars to multiply as they are spent in our local community. From a sheer business standpoint, selling the land and paying down the bonds, while freeing up the other operating expense budget of \$1.39 million to help pay down the bond only makes sense. I feel that N-CORPE needs some supervision as to its decisions. It is critical to the local economies to see to it that the bond is payed off as quickly as can be. All monies from selling off the land must be applied to the bond. Thank you for your time and let's do what is right to support Lincoln County and southwest Nebraska. Thank you. [LB1123]

SENATOR HUGHES: Thank you, Mr. Sabata. Are there any questions? Seeing none, thank you for your testimony. Okay, we will invite neutral testimony now. Is there anyone wishing to provide neutral testimony? Welcome. [LB1123]

ANTHONY SCHUTZ: (Exhibit 24) Good afternoon. My name is Anthony Schutz. I'm with the University of Nebraska College of Law, A-n-t-h-o-n-y S-c-h-u-t-z, and I'm here to testify in a neutral capacity on LB1123 as well as AM1819. Has AM1819 been filed of record yet? Is it before the committee? Okay. So I've got some written testimony that I can distribute after I speak. It explains in more detail things that I can't feasibly explain in three minutes. The general thrust of my view of this particular legislation is that the amendment helps solve one of the problems that exists with LB1123. One of the main problems that exists with LB1123 is this purported severance of a water right from something called a surface estate. Both of those terms are completely foreign to Nebraska water law and, in my opinion, shouldn't be introduced to it, and that's really why I got involved. I study water law. I study state and local government law. And so when I saw this bill utilizing those terms, I said, we really need to step back and try to figure out what exactly we're going to do. And I think there's been a number of different

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opponents who have testified to that. The amendment seeks to deal with that problem by being simpler, by simply saying that an NRD and, by extension, any interlocal agreements that it's created or any interlocal entities it's created, could continue to pump even if they sell the land. I mean that was the whole thrust of the severance of estates anyway, so why don't we just say what we mean and mean what we say and do that? That also doesn't, I don't think, in any...I don't think raises a big prospect of some large severance between the ability to pump and land ownership. It only, by its terms, applies to those entities that have already created a water augmentation project. Going forward, an entity would still have to, under this amendment, buy a big chunk of land, develop their project, and then sell it. And so that's the way that I view the amendment. Subsection (3) of the amendment provides for a means of setting a volume limit. That's one of the difficulties post-Estermann and under the current state of affairs is we're not entirely sure how much water N-CORPE can pump as a result of Estermann, and that's why when Mr. Blankenau was up here, he said the more land that you have, the more you can pump. That's probably the best way of encapsulating the state of affairs post-Estermann. This bill is trying to solve that uncertainty by providing a means of setting that volume limit, that volume right for somebody like N-CORPE or, you know, another project that comes in the future. This amendment, subsection (3) proposes to set that volume limit in an integrated management plan. Whether or not that's the best place to house that limit, is an interesting question and something that deserves further attention, frankly. I think it's one possibility because it involves, IMP development involves both the Department of Natural Resources and the natural resources districts. That, I think, is an important aspect of setting a volume limitation. But other folks could reasonably differ on that there would be other means of setting that volume limit. So I'm out of time. I'd be happy to answer any questions. [LB1123]

SENATOR HUGHES: Thank you, Professor Schutz. Are there any questions? [LB1123]

SENATOR GEIST: I do have. [LB1123]

SENATOR HUGHES: Senator Geist. [LB1123]

SENATOR GEIST: Yes, thank you. And thank you for your testimony. So am I clear in understanding that you think that this amendment does not cover any future augmentation projects? [LB1123]

ANTHONY SCHUTZ: It could cover future augmentation projects that take the same path as N-CORPE. That's my reading of it. [LB1123]

SENATOR GEIST: That buy large land masses... [LB1123]

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ANTHONY SCHUTZ: Buy a large chunk of land, develop the augmentation project under the existing authorities and the statutes. That's Article (sic: Chapter) 2, section (sic: article) 32, 28, or whatever it was, as well as 46-715(3)(e), use Estermann as your support, develop the project, and then this bill would allow it to continue to pump, sell the land, and set that volume metric limitation through the IMP. But it's, I mean, it's kind of a, I mean, frankly, it's a Band-Aid fix for a one-off problem, really. I mean the whole thrust of this is so that N-CORPE can sell the land, right? So this is dealing with N-CORPE and its ability to sell the land. The hope is it doesn't have larger ramifications. My concern was that subsection (2) of LB1123 had a really big potential to have larger ramifications, and so that's why I got involved and tried to help with that, with the language. The volume limitation, though, it's a big uncertainty after Estermann, and so there needs to be some mechanism for doing that. The IMP process is one option. Another option would be to create a permit mechanism along the same lines as what we use for other transfers of water off of the overlying land. [LB1123]

SENATOR GEIST: Thank you. [LB1123]

SENATOR HUGHES: Could you expand just a little bit on the larger problems that this would create or potential problems this could create? [LB1123]

ANTHONY SCHUTZ: That this could create? [LB1123]

SENATOR HUGHES: Yeah. [LB1123]

ANTHONY SCHUTZ: So the amended version? [LB1123]

SENATOR HUGHES: Yes. [LB1123]

ANTHONY SCHUTZ: Well, one problem that it could create is, if the IMP is not the proper place to house this volume metric limitation, that could cause a problem. The way it could be sort of improper would depend upon the way in which we've used IMPs in the past. The status of an IMP has been somewhat amorphous ever since the Groundwater Management and Protection Act was amended with LB962. We have a planning process and we have integrated management plans and then we implement those plans through the use of controls. Those controls are usually set up through rules and regulations of some sort. Early on when we were developing integrated management plans, folks didn't have a very strong distinction between those two things. And so some integrated management plans actually have regulations within them, and so it's really an open question as to whether or not the IMP is a great place to house that. If this says thou shalt do it in the IMP, that could pose problems for NRDs that have been out there treating IMPs

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differently. And I'm not entirely sure of the status of the IMPs in the Middle, Lower, and Upper Republican. Also there's a basinwide management plan that could have an impact as well. But the point is there needs to be some way of setting a volume metric, and I shouldn't even say limit, a volume metric right for N-CORPE, so that it has the assurance that it can pump the volumes it needs to pump. I think that amount should be set in conjunction with the Department of Natural Resources in part because that water is going to be used for stream augmentation. So this would be one way of doing it, not the best way. Perhaps a permit mechanism along the lines of what we do for transfers of groundwater for environmental purposes and agricultural purposes would be the way to go. [LB1123]

SENATOR HUGHES: Okay. Did you have a question, Senator Walz? [LB1123]

SENATOR WALZ: I...yeah. Thank you. I wanted to expand on Senator Geist's question and maybe you answered it and I didn't catch it. So if the land is sold and more water was needed,... [LB1123]

ANTHONY SCHUTZ: Sure. [LB1123]

SENATOR WALZ: ...is there something in this bill or this amendment that says it has to be allowed to... [LB1123]

ANTHONY SCHUTZ: Sure. So it's not entirely clear. I mean this is the sort of project and permitting that, I mean, frankly, it requires a larger statutory apparatus and it always has. The statutory apparatus that currently exists for N-CORPE was a stretch. And Estermann was a really good outcome for N-CORPE. I mean they were on, to some extent, thin ice with regard to that project, but Estermann fully validated it. The problem is, even post-Estermann, we don't have much of a statutory apparatus for the project, so we don't know how much it can pump and how much it could expand its pumping in the future, because it's all based on, like, this common-law, amorphous thing. This statute tries to provide a bit more robust statutory apparatus by placing the volume limit in the IMP, the volume right in the IMP. If it can be housed there, and that's an open question, then IMPs can be modified. And through that amendment or modification process, that could be one way of adjusting the volume right that we would have for N-CORPE based on the needs that they have under the compact and all of that. And of course, compact compliance, conjunctive management, all of those things, are fully within the scope of the IMP process. So it helps but it doesn't necessarily solve all of the problems. Even if they continue to own the volume of land that they own, there's still open questions as to how much they can increase pumping and even increase pumping beyond the allocations that are in place as a result of their current regulations. So N-CORPE has a lot of uncertainty and I think Mr. Blankenau was right in his assessment of where they are. To me, that means we would do well to write some

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statutes that help alleviate that uncertainty. To me, it's a reason for statutory intervention, as opposed to a reason for no statutory intervention. But that's only the case if the statutes make things clearer, as opposed to more uncertain. [LB1123]

SENATOR HUGHES: Senator Geist. [LB1123]

SENATOR GEIST: As a follow-up to that, then, to test whether the IMP is the place to house that water volume, are there two solutions, you can write it or you and take it to court and find out? [LB1123]

ANTHONY SCHUTZ: So you probably write it and then take it to court and find out. [LB1123]

SENATOR GEIST: So both. (Laugh) [LB1123]

ANTHONY SCHUTZ: And of course N-CORPE doesn't want further litigation. I don't blame them. They had a lot of litigation already. It's a large project. They spent a ton of money on it. They borrowed a lot of money and all of those sorts of...so the prospect of litigation sort of always hangs over one's head. I'm not sure, though, that doing nothing further insulates them from any further litigation in the future. I mean there's always a litigious person out there that could perhaps pursue it. But opening the can does create that risk. But they've been successful so far in weathering the storm of litigation. They just don't want any more of it. I don't blame them but... [LB1123]

SENATOR GEIST: Yeah. [LB1123]

ANTHONY SCHUTZ: But I train lawyers, so on the other hand (laughter)... [LB1123]

SENATOR HUGHES: Other questions? [LB1123]

SENATOR GEIST: Thank you. [LB1123]

SENATOR HUGHES: Senator Bostelman. [LB1123]

SENATOR BOSTELMAN: Yes, thank you. So why not just write the statute for this specific instance and say you can sell the land and you can pump the water, end of story? [LB1123]

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ANTHONY SCHUTZ: If we identified N-CORPE in the legislation, it would be special and that would be unconstitutional, so you as a body are statute...are constitutionally obligated to speak in broader terms. That's kind of the answer. When we attend to individual situations in the Legislature, we have to translate those into broader standards that are applicable to similarly situated folks. And so we really do need to speak to water augmentation projects that involve groundwater pumping more generally than just N-CORPE. That's the reason why we have that constitutional limitation, because it is very tempting to simply say, hey, why don't we just deal with N-CORPE, right? A bill for the relief of Anthony Schutz that gives me, I don't know, some chair at the university would be nice, but you can't do that, right? [LB1123]

SENATOR BOSTELMAN: Thank you very much. [LB1123]

SENATOR HUGHES: Okay, so I guess just so I'm clear, if the Legislature wanted to pursue the opportunity to separate land from water for augmentation projects, there's a lot of different pieces that we would need to examine and it would take considerable amount of time. Would that...a fair statement? [LB1123]

ANTHONY SCHUTZ: Yeah. It's a fair statement. There are a couple of different ways of responding to it. The large-scale separation of water rights from land ownership and making that sort of a separate property interest that can be bought and sold and all of that sort of stuff, is one thing. Doing it for everybody and allowing all of that, that would require...we need to...I mean think in terms of all of the legal apparatus we have for the sale of land. [LB1123]

SENATOR HUGHES: I don't think we want to go there at all. [LB1123]

ANTHONY SCHUTZ: Yeah. So we would need to create a similar apparatus for the sale of water. And also water is all about time and it's a usufructuary right and so it gets messy. So all of that is there if we did it generally. If we did it only for augmentation projects, that narrows, to some extent, the scope of things that we need to deal with, but not entirely. We still need to deal with the impact that changing the use of this water has on adjacent landowners, has on available supply going forward. We'd be worried about the public interest. We'd be worried about lots of different things. [LB1123]

SENATOR HUGHES: Okay, thank you. Are there any additional questions? [LB1123]

SENATOR McCOLLISTER: Yeah. [LB1123]

SENATOR HUGHES: Senator McCollister. [LB1123]

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SENATOR McCOLLISTER: Yeah. Thank you, Chairman Hughes. Are water rights in Nebraska different than mineral rights in Nebraska? [LB1123]

ANTHONY SCHUTZ: They are, and both of those terms or sort of so broad that they don't really tell a lawyer much. Mineral rights themselves have different parameters to them in different places. Oil and gas is different than coal is different than other things. And they're largely regarded as severable in the sense that an individual...I mean so think of this way. You can't just take all of the interest that you have in oil under one's land and take it somewhere and move it. Right? So when we talk about separate estates, separate interests in land, we're talking about simultaneous ownership of the same geographic area, and what we're trying to do is just figure out a way to order those various interests. With mineral rights, one thing you often have to worry about is access to the mineral rights. So that severed estate is really one way of figuring out to what extent does the surface owner have to accommodate those who want access to the minerals? Also, we allow the mineral interests to be bought and sold to encourage development of the resource and things along those lines, so lots of things we think about in the mineral estate arena. In the water arena, the notion of a water right for groundwater in Nebraska is a terribly amorphous subject that I think is largely misunderstood by the public. My father farms out in the Republic Basin. He wanted to sell. They've got a chunk of land that they're...his father left to them and they want to...he called me and said, hey, can we sell the water rights on that? I said, Dad, I don't know what you're talking about. I said, you can go to the Tri-Basin NRD and you can ask permission to transfer your certified irrigated acres to another landowner who doesn't have certified irrigated acres and, in conjunction with that request, you can pay the other landlord...or, I'm sorry, the other landowner can pay you to get you to go do it. Do we call that a transfer of water rights? The public seems to think yes. I look at it and say you have the opportunity to go to the NRD and get a right that you don't otherwise have and, in conjunction with that, you can pay the other person to do it. All right. So they're vastly different and there's good reasons for that. Right? Management of water is a much different enterprise than developing oil and gas resources or other sorts of mineral resources. [LB1123]

SENATOR McCOLLISTER: Thank you. [LB1123]

SENATOR HUGHES: Senator Albrecht. [LB1123]

SENATOR ALBRECHT: Thank you, Chairman Hughes. Since we have you in the hot seat and you're an attorney and we don't have to pay for your time, hopefully,... [LB1123]

ANTHONY SCHUTZ: Well, I work for the university and I think there's another bill that has something to do with that. (Laughter) [LB1123]

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SENATOR ALBRECHT: So when you...you previously sent a letter to all of us. It was on our desk, right? [LB1123]

ANTHONY SCHUTZ: I did provide you with written testimony beforehand. [LB1123]

SENATOR ALBRECHT: Okay. Okay, so that was just you bringing that to us, not being requested by (inaudible)? [LB1123]

ANTHONY SCHUTZ: Yeah, so I agreed to...I didn't agree. I decided to come down and testify to clarify my support. [LB1123]

SENATOR ALBRECHT: And I appreciate it. [LB1123]

ANTHONY SCHUTZ: Yeah. [LB1123]

SENATOR ALBRECHT: And I think it's all great and good. So you had touched on the fact that they can't name just one person in this amendment. They have to say all future, anybody that decides to do an augmentation project. But how do you feel and what...where do you see the...this occupational tax? I'm sitting here listening to this and I keep on thinking of just the people that have to pay for this when it's a state problem... [LB1123]

ANTHONY SCHUTZ: Sure. [LB1123]

SENATOR ALBRECHT: ...because we have to share the water with the compact. And so where would you see any relief coming? If this should pass and if they don't choose to sell the ground, where do you see any relief coming to Lincoln County or any of the others who could lose their schools or whatever? [LB1123]

ANTHONY SCHUTZ: So there's another bill, I think LB758, that deals with some payments from the NRD for some of the costs that were visited upon Wallace Public Schools and that sort of...and Lincoln County. If the land is sold, it'll put, I think, roughly \$17 million worth of property back on the tax rolls. So that amount of money, the revenue generated from that will go to the typical places it goes. But I think the property, when it was originally purchased, was worth a heck of a lot more than \$17 million, so there's still a big amount that has come off of the tax rolls as a result of the project. The idea, I think, is to try to replace that revenue through LB758, that funding that comes from...because the money doesn't come out of thin air, right? The money that the NRD uses to pay will be occupation tax money. That occupation tax money is paid by all of those farmers in the area that own irrigated acres, and so...and those folks also

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pay property taxes on the school, and so they're paying for a lot of different things. I suppose theoretically the best way of thinking about that is those who in large part, or at least in some part, created the need for the augmentation project, are having to fund the augmentation project. Those paying the occupation tax are those pumping groundwater. And those pumping groundwater are the ones that increase the consumptive use in the basin beyond the compact's tolerance levels, beyond the compact right, I guess, and so now we need an augmentation project in order to solve that problem, is one way of envisioning that. Now compliance with the compact doesn't (inaudible) to the benefit of the state and the reason why we can't use a property tax for this project is because you can't utilize property taxes for state purposes. And there was a case called Garey v. NRD that restricted the ability to use property taxes for compact compliance purposes. So there is a large amount of authority for the notion that this does benefit the state as a whole. Whether or not, normatively speaking, the state should pay for it, is a question for this body. I can spin a good argument that you should; on the other hand, I can spin a good argument that you should not, so. [LB1123]

SENATOR HUGHES: Senator McCollister. [LB1123]

SENATOR McCOLLISTER: Yeah. Thank you for your testimony. So as I understand your testimony, you're advocating for the amendment but against the bill? [LB1123]

ANTHONY SCHUTZ: For the amendment. The bill needs...the bill, in my opinion, needs work. That subsection (3) is the low-hanging fruit. Trying to figure out whether the IMP is the right place to put the volume right or limit is something that needs some attention. The Department of Natural Resources and those folks could speak more to how IMPs are developed and whether or not that's a good place to put them. The better approach in my opinion would be to do a permit mechanism that creates a right for NRDs to pump groundwater for stream flow augmentation purposes and goes through a process that involves the Department of Natural Resources and the NRDs, takes into account all of the interests of those who have a stake in it, including those who pump water nearby, including the public interest, including environmental concerns and those sorts of things, much like we do in 46-691.03 and similar statutes. [LB1123]

SENATOR McCOLLISTER: Thank you. [LB1123]

SENATOR HUGHES: Okay. Any additional questions? Seeing none, thank you, Professor Schutz. [LB1123]

ANTHONY SCHUTZ: Thank you. [LB1123]

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SENATOR HUGHES: Additional neutral testimony? Welcome. [LB1123]

JACK RUSSELL: (Exhibit 25) Hello. Thank you, Senator Hughes and the members of the Natural Resources Committee. My name is Jack Russell, J-a-c-k R-u-s-s-e-l-l, and I'm the manager of the Middle Republican Natural Resource District. I've been the manager there for about four years. I started about the time water started running out of the N-CORPE project to help Nebraska meet the compact. And I'm here to testify neutral for LB1123 and also the amendment. I do have to say there's enough lawyers in the room and we've heard enough attorneys talk that I'm a little bit nervous what I'm going to say that I don't cause a lawsuit or bring something in on either N-CORPE or the Middle Republican, so take what I have for what it's worth as far as testimony here today. I do have to...I won't repeat a whole lot of what already been said. We have, the Middle Republican has about \$40 million invested in it. Our bond payments are right at \$2 million a year. And so this project is too important to risk having something happen. I believe we do think that if there is a responsible and legal manner to be able to sell the land, I think that's a desirable objective. We also think that an option of something like this would help reducing the cost of the management of the project. If you got it down to where you were running 30 wells, is basically what we're running out there and kicking that water whenever we need to for compact, that that would...the management of the rest would be...might be better off in private hands if it gets to that point. I do have to say the...right now we do have a moratorium on wells. We have a moratorium on there's no new irrigated acres that are allowed. We have had programs in the past, we're looking at potential programs in the future for land retirement, retiring those irrigated rights. And on whether it's with leases or permanent retirements, you would think with the abilities we have now, that you'd think that there would be some manner or method that we should be able to do that would help us make this a legal option that we may be able to sell the land. There's a whole lot of other things already that's available to us. You would think that would be available. I know it was mentioned earlier about a lot of it's an interpretation. What just came out was as far as...and this is where I'm going to be a little bit nervous about as far as causing some legal stuff. When they talked about volume limitation and N-CORPE, the Middle Republican and Twin Platte has put an allocation on the augmentation wells out there. So we believe that the...a right to allow how much water can be removed is...lies within the NRD system through the Groundwater Protection Act on...I know when I said I've been here four years, I'm still pretty green at all the water law stuff, but that there...that we already have that ability. We have an allocation on there based on...we set the allocation based on historic use and what was used there in the past. But going forward we're going to be looking at what actually happens to the water resource out there. We'd be nervous to set an allocation and then you pump and after awhile we have 100-foot declines. Vice versa, you'd hate to set an allocation and then if you have ten-foot inclines at, hey, what did we limit ourselves to, so we have a two-year review process that the Twin Platte and Middle Republican is going to review every year what that allocation is, see what's been pumped, see how it's being managed. And I see my time is up, so thank you. [LB1123]

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SENATOR HUGHES: Thank you, Mr. Russell. Are there any questions? Is N-CORPE probably going to have to pump? Are they pumping now? [LB1123]

JACK RUSSELL: No. With the resolution that was reached between Kansas and Nebraska for this year, we are in a compact call year but we don't have to make any compact deliveries, the earliest may be October, so right now there's...there are no compact activities that's taken place. [LB1123]

SENATOR HUGHES: So when was the last time N-CORPE was pumped, how long ago? [LB1123]

JACK RUSSELL: It was pumped last year. I think it was...I think we were done pumping in the spring last year, so it's been almost a year now. [LB1123]

SENATOR HUGHES: Okay, and you don't anticipate that it will have to pump maybe until October? [LB1123]

JACK RUSSELL: The earliest would be October. [LB1123]

SENATOR HUGHES: So it could be 18 months that it would... [LB1123]

JACK RUSSELL: Yes. [LB1123]

SENATOR HUGHES: ...sit idle and not be necessarily... [LB1123]

JACK RUSSELL: Yeah. Right now we are seeing a lot of rebound in the wells out there that we monitor. [LB1123]

SENATOR HUGHES: Yeah. Okay, any... [LB1123]

JACK RUSSELL: So that's starting to look pretty good. [LB1123]

SENATOR HUGHES: Any additional questions? Seeing none, thank you, Mr. Russell. [LB1123]

JACK RUSSELL: Thank you. [LB1123]

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SENATOR HUGHES: One more neutral testimony and then we'll be back to proponents. Welcome, Director Fasset. [LB1123]

JEFF FASSETT: (Exhibit 26) Good afternoon, members of the committee. I'm Jeff Fasset, J-e-f f F-a-s-s-e-t-t. I am the director of the Department of Natural Resources. I'm here, present today, just to give some brief testimony in a neutral capacity on LB1123. LB1123, as you've heard all afternoon, would permit the sale of lands owned by a natural resource district for a water supply augmentation project with the ability to attain the rights and the volume authorization to operate. One of the questions that we got early on was it was asked of us to evaluate whether the state of Kansas, who, of course, is our compacting neighbor, has raised any concern about this particular bill. In 2017, the state of Kansas actually sent a letter to Senator Hughes and members of this committee, about a year ago, stating their interest in cooperatively working with the state of Nebraska in water management under the Republican River Compact. I provided that letter again because I suspect that is lost in the shuffle of lots of paper. Last week I was asked to go ahead and follow up with the Kansas Department of Agriculture--they're the counterpart agency to mine who represents Kansas on the water issues--to ask if they'd had any concerns about this bill and an official again just affirmed Kansas' interest really relies in our ability to comply with the compact. Their issue is their...don't have any particular issues of concern other than our compliance. Long as we're complying, the state of Kansas is pleased. They don't have any particular authority to ask us to comply in a certain manner. They're just looking for the overall compliance. We've gone a long ways in developing resolutions that have been adopted among the states. We've gone a long ways in developing and finally approving all the detailed compact accounting that occurs between the states that make clear the handling of water from N-CORPE and many of the other water management activities that natural resource districts do to comply and help the state comply in the compact. As long as the issues related to the land are not disruptive to the certainty provided by the water supply that is achieved from N-CORPE, Kansas confirmed with us that these are matters of Nebraska's laws and really not of any concern to the state of Kansas. I wanted to point out I think I'm the only in the room that doesn't have a lawyer here, but I am represented by lawyers. Attorney General's Office and myself have had the opportunity to meet with the sponsor of the bill, express some of the concerns that the Attorney General's Office has. I think the amendment, as you've heard, is touching on some of the concerns that were raised, but there really is sort of an ongoing discussion there. And so my...I have been advised as the department director by the Attorney General's Office that there are still some remaining concerns that have not yet been fully addressed. I want to be clear, though, the Governor has met with the various parties involved with this. He's expressed his support for finding a solution that will permit the sale of the land. He agrees with the prospect that government should not be owning large chunks of land. It's necessary. He's encouraged both sides to work together. Obviously the state has a very strong interest in the water project itself and he's looking for some sort of compromise, some sort of solution that can be worked out amongst the parties, because, as a matter of concept, I think he believes that finding a solution

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that might allow the sale of the land to not be held in government hands on the long term, should be appropriate. Mr. Chairman, I think I'll just stop there and answer any questions you may have. [LB1123]

SENATOR HUGHES: Okay. Thank you, Director Fassett. Are there questions? I've got a couple. So should this committee move forward and pass legislation that would allow the sale of the land? And it goes to court and we find out we can't pump the water that we need, what happens in the Republican River Basin if we can't utilize the augmentation projects that are available to us today? How does Department of Natural Resources and the NRDs address that question? [LB1123]

JEFF FASSETT: It would become a mess, Mr. Chairman. Compliance is clear now. Twenty years ago, when Kansas first brought actions, there was uncertainty as to the details of how our water use across the entire basin in Nebraska was to be accommodated. Those issues are completely clear today and the court had spoken very clearly about what our obligations are. N-CORPE is just one of a number. It's obviously the biggest, most significant volume of water amongst a variety of water management actions that the NRDs have implemented. We have lots of different programs that are helping us either put water in the streams or reduce our use. And N-CORPE is a big part of that as it is clearly a valuable water asset to help us comply. Without that asset, then we're going to have to find an equivalent amount of water that is required in a very variable manner, as you pointed out in a prior questioner. Some years, we don't need to replace any water; other years, we have to replace an enormous amount of water. And it's that variability in trying to maintain our compliance, because the water supply in the basin is variable and our share of that is variable. We don't have a fixed quantity. The quantity adjusts to the supply that's available. So what we owe and how we can comply is also variable. So a project like N-CORPE, like Rock Creek, other management actions, NRDs often have acquired water where they can immediately respond to the timeliness and the timing and the requirements under the compact very powerfully. Without that tool, there's no doubt that there's going to have to be some very significant regulatory actions by both my department and the natural resource districts, on the water users all across the basin, to make up for the amount of water that's required for compliance that would not be available if this project was somehow limited. [LB1123]

SENATOR HUGHES: Okay. So if the goal of the Legislature or the N-CORPE, Rock Creek board were to sell the property to get out from underneath the management, yet retain the water, the ability to pump that water, what...who are the stakeholders that we need to bring to the table to discuss what that would look like? Professor Schutz, you know, talked pretty extensively about, you know, the challenges. There are several different things. In your opinion, what would be the major hurdles that we'd better look at very closely before we head down that path? [LB1123]

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JEFF FASSETT: Well, I wish my lawyer was here, Mr. Chairman. (Laugh) It's a little hard for me to sort of surmise... [LB1123]

SENATOR HUGHES: Okay. [LB1123]

JEFF FASSETT: ...off the top of my head as to what the parties and all the different elements of that. We've...I came here. We inherited a system that is working. We've made great progress on a variety of fronts. I think I've heard consistently today from almost everybody that there is great support for the water and the water project, and the concern is, does anything that the Legislature do somehow create more uncertainty than we have today? But we don't have anybody coming up to this table saying we don't like this water project. They understand the value for both the Republican and the Platte River, quite honestly. So we just have to be very careful about...and I think that's the concern you're hearing and that I have been advised of by my own lawyers. It just...they are simply concerned. It isn't that somebody is trying to jump in front of the not selling land. They're concerned about how it affects the water project. [LB1123]

SENATOR HUGHES: Okay, thank you. Any additional questions? Seeing none, thank you, Director. We appreciate it. [LB1123]

JEFF FASSETT: Thank you. [LB1123]

SENATOR HUGHES: Okay. That's three neutrals. Let's go back to proponents. How many more people wish to testify today? Okay, we've probably got six, eight. I will stay till everybody is done. If my colleagues need to go, you know, by all means, but we will stay to hear everybody who wants to talk. Welcome. [LB1123]

MICK MARGRITZ: (Exhibits 27 and 28) Thank you, Senator Hughes. My name is Mick Margritz, M-i-c-k M-a-r-g-r-i-t-z. I am...N-CORPE is a neighbor of mine. I farm directly across the fence from them. And the reason that I am here is to why I think the land would be better off in private ownership has to do with the mismanagement of the land that has created an infestation of tumbleweeds. Tumbleweeds from the N-CORPE land have packed into nearby cornfields, making them unharvestable. They've packed into fence lines and have created natural fire hazards. N-CORPE should, in my opinion, have no choice next spring but to spend thousands of tax dollars to spray agricultural chemicals to control the weed infestation. In turn, this is creating an additional expense to neighbors like myself by causing us to spray extra chemicals to combat the continued...continuation or the continuing resupply of the seed bank. We've already talked about the operating budget of \$1.39 million to manage this property. In my opinion, I do not see where they are spending the money to manage this property. And by the pictures that I am showing you, I don't see much progress, at least in my part of the area where

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the grass has been very successful. Lastly, I'd like to offer you a study done by Jeff Nichols. This study shows that only 1,200 acres have been inspected as to the seeding of native grasses out of the 19,500. Even within those 1,200 acres, they found that there are large areas that are void of growing vegetation and that second piece is a copy of that study. With that, I have no other thing and... [LB1123]

SENATOR HUGHES: Thank you, Mr. Margritz. Are there any questions? Seeing none, thank you for your testimony. [LB1123]

MICK MARGRITZ: Thank you. [LB1123]

SENATOR HUGHES: Next proponent. Welcome. [LB1123]

DAN ESTERMANN: (Exhibits 29-30) Thank you. My name is Dan Estermann. I am Estermann in Estermann v. Bose. I'm not an attorney. That case was primarily about a condemn... [LB1123]

SENATOR HUGHES: Could you spell your name, please? [LB1123]

DAN ESTERMANN: Yes. Dan, D-a-n, Estermann, E-s-t-e-r-m-a-n-n. That case was primarily about permits and the right of N-CORPE to do eminent domain. We don't need to get into that too far, but one of the permits was a permit by the Department of Natural Resources for in-stream flow. The other permit that we thought that N-CORPE had to get was the agreement for Kansas on this project. It's not been said a lot of times, but I had a permanent easement put...condemned on my place and the agreement with Kansas is annually renewing and can be revoked with two years' notice. Kansas has the hands on the plug of this project. And one of the problems with this project is that there are physical constraints to the amount of water that they can pump. One of the items I sent out to you is a brochure that Lynn Frederick, a farmer on the opposite side of the property from myself, put together. And it has well reports on his property that were taken by the NRD. And I had a well that...on a pasture that I rented that we had to redrill because the water table dropped below the level of the bottom of the well. I'm not sure that you're well informed that seven out of the 30 pumps of N-CORPE's failed when they were pumping at their hardest. And nobody has ever given a lot of explanation for that. The company that made those pumps was not sympathetic to N-CORPE's claims that they should all be under warranty. We think it was probably because they were pumping from lower levels. There are physical constraints that limit this project. I'd like to address what Mick Margritz said about the thistles. I live southeast of the project and on some of those days when we had 30-mile-an-hour winds and thousands of tumbleweeds coming at us, and I go through the N-CORPE property to check pastures, and one of those thistles was up in the power line between the transformer and the wires up high on the pole. I didn't sleep well that night. I have traveled in Sonoma and Napa

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Counties in California, I had friends in Santa Rosa, and if they can't stop a fire out there, we don't stand a chance in southern Lincoln County. That's 20,000 acres of thistles out there and they say that they...it was just a bad year for thistles. I traveled north of North Platte up in the Stapleton...between North Platte and Stapleton this past weekend. That's farming and ranch country up there, just like same soils, similar soils, and they didn't have the thistles there in the fence rows. Seeing my time is up, if you have any questions... [LB1123]

SENATOR HUGHES: Thank you, Mr. Estermann. Are there questions? Seeing none, thank you for your testimony. Okay, we're on neutral. Are there additional neutral testifiers? Seeing none, we will continue on with proponents of LB1123. Welcome. [LB1123]

BILL HENRY: (Exhibit 31) Thank you, Senator Hughes. My name is Bill Henry, B-i-l-l H-e-n-r-y. I am a Lincoln County commissioner. I want to thank you for allowing me just a few minutes here. Senator Groene, thank you for the work that you have put into this effort, and the expertise. And understand, even though I am a county commissioner, I'm speaking as an individual, but I do want you to know how important and I want you to know that the majority of my working life has been spent in agriculture. I think it's important you understand the impact on Lincoln County losing 18,000 acres right out of the heart of the county, and acres are only part of the loss. But my goal here is not to repeat numbers and figures. Others present can do that a lot better than I. One item that I wanted to discuss, unbeknownst to me, the two before me have discussed this, but it's very important, this huge problem we have with the kochia or tumbleweed or Russian thistle. The damage to neighboring farmers and ranchers was huge. You have just heard that. The Lincoln County Roads Department, as well as the weed department, is also affected. And because kochia is not a noxious weed, we're very limited on how effective we can control. But the problem with kochia, with tumbleweeds, it's not a noxious weed so we can't control how they take care of it, but it's a troublesome, costly weed. It's resistant to most herbicides, and the effective way of controlling the weed is with good horticultural practices, which is not happening. And you have already heard that. You crowd a bad plant out by planting and fostering good plants. And it's essential that these acres be returned to those that are good stewards of the land, that care for the land and treat it accordingly. Lincoln County will never have any more acres than it does now and we absolutely can't afford to lose those 18,000 acres to our base, right in the heart of Lincoln County, not only the tax base but the productivity that the land now is not doing. I urge you to support the bill and help return this land to its intended use. Thank you. [LB1123]

SENATOR HUGHES: Thank you, Mr. Henry. Are there any questions? Seeing none, thank you for your testimony. Next proponent. [LB1123]

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JIM BECKER: My name is Jim Becker, B-e-c-k-e-r. My 13-year-old granddaughter is going to be a fifth-generation farmer and rancher. I farm out of Lincoln County south of Sutherland, Nebraska, and I'm here to ask for your help. You've heard all the highs and lows on both sides of this equation and it's...it can be complex to be sure. All I would ask is that...the taxation issue is real in the two counties. Mr. Groene stated when we started it. When we got into this, we didn't realize that two or three counties in Nebraska were going to be held responsible for a treaty that Nebraska signed back when to make the water rights right. We thought everybody was going to be part and parcel to this. You haven't heard anybody come up here and whine about carrying their share of the load, paying their \$10 a month, nobody...or \$10 an acre. Nobody likes it. It's a fact of life. We're moving on. However, with the shift in state funding for the schools, specifically Sutherland, Nebraska, in 2008-2009, the state paid 47 percent, contributed 47 percent of the budget to the school. In 2017 here, they're paying 7 percent. The local district is paying 89-some-odd percent. When we take \$20-30-40 million out of the local district that's no longer in that tax district, some of our schools are close to catastrophic failure. You've heard from the Wallace supervisor. I think you're going to hear from Sutherland. And I'm just here to ask for your help. I know it's a complex issue but I would urge you to consider passing this bill. There's a lot of white noise involved. I understand it's terribly complex. But there are some people in these counties that really need help and they're good, hard-working people, and that's all. I just wanted to thank you for your time. [LB1123]

SENATOR HUGHES: Thank you, Mr. Becker. Are there any questions? Seeing none, thank you for your testimony. Next proponent. Welcome. [LB1123]

KENNETH KENNEDY: Chairman Hughes and committee, thank you for letting me speak. I concur with Mr. Becker to begin with. Oh, it's Kenneth Kennedy, sorry, K-e-n-n-e-t-h K-e-n-n-e-d-y. To start with, I concur with Mr. Becker about the tax issues that this kind of...this somewhat brings on to us. I spent 12 years on the Sutherland School Board so I can relate to what he's saying. But I'm here to support Senator Groene's bill, LB1123. This would protect the water rights of the NRDs that need to comply with Nebraska's stream augmentation project. This would also allow the land to return to private ownership and restore over \$700,000 in property taxes being paid on that land to the schools, counties, and NRDs. None of the N-CORPE land ownership proponents have answered the core question that taxpayers are asking: If the land can be sold without harming the river augmentation project, tell us then your reasoning of why you persist in government ownership of the land. NRDs should not be landowners, in my opinion. This legislation would allow the water augmentation project to separate the water rights from the surface land by allowing N-CORPE to sell the surface to local farmers and ranchers. This will put the land back on the tax rolls. This is not only...this not only benefits the political subdivisions levying for taxes, it would also not put the burden of pay an "in lieu of tax" on all the taxpayers in Lincoln County. The taxes would be paid by the actual landowners. This brings economic benefits back to Lincoln County. Thank you for your time. [LB1123]

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SENATOR HUGHES: Thank you, Mr. Kennedy. Are there any questions? Senator McCollister. [LB1123]

SENATOR McCOLLISTER: Yeah. Thank you, Chairman Hughes. And thank you for your testimony and the long drive here. Let's assume that the bill passed. What would the landowners do with that property that they acquired or reacquired? [LB1123]

KENNETH KENNEDY: Off of N-CORPE? [LB1123]

SENATOR McCOLLISTER: Yeah. [LB1123]

KENNETH KENNEDY: I would assume that the amount of land that is suitable for dryland farming could be dryland farmed. But I would, in my opinion, I think that the majority of it would go back to range land, graze cattle on it, kind of that sort of way. Of course, it would all be dryland, so it would either be farmed or grazed in livestock production. [LB1123]

SENATOR McCOLLISTER: Yeah. Thanks again. [LB1123]

SENATOR HUGHES: Any additional questions? Seeing none, thank you, Mr. Kennedy. Additional proponents? Welcome. [LB1123]

MATT HASENAUER: Yep. Hello. My name is Matt Hasenauer, M-a-t-t H-a-s-e-n-a-u-e-r. Thank you for letting me say a few words in support. I had some prepared statements but I'm going to make this a lot shorter than that, since I know we're late in the day. I guess a comment I'd like to make is I sell seed and I farm in this area, so obviously I'm negatively impacted when there's fewer acres to sell seed on. So the economic impact is real for me. I guess I talk to a lot of farmers and I don't think you're going to find very many farmers who are opposed to the N-CORPE project. Everybody understands the benefit to Nebraska and the benefits to producers. I think one thing you'll find in common if you think about who you heard from today, you have people who are a long distance away from Lincoln County who are benefiting. They don't see the challenges. They're scared to touch this whole situation because Nebraska water law is scary. You know it's difficult. We have multiple, you know, lawyers or attorneys up here with differing opinions on the same cases. So I guess I just want to thank Senator Groene for having the courage to tackle a bill that even touches water law. But I guess I would encourage you guys not to kill the bill just because of the vagueness or the difficulties, because for the people of Lincoln County, it is a real issue and it impacts...you know, I graduated from Wallace school district, so it impacts the school that I went to, the county that I live in, and the people that I work with. So please don't kill the bill just for simplicity's sake. So thank you. [LB1123]

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SENATOR HUGHES: Thank you, Mr. Hasenauer. Are there any questions? Seeing none, next proponent. Welcome. [LB1123]

GREG WILKE: Thank you, Senator Hughes. My name is Greg Wilke, G-r-e-g W-i-l-k-e. I am a resident of Lincoln County and I'm in favor of the LB1123 bill as amended. I think I have maybe a unique perspective that hasn't been offered. I've lived in five different NRDs throughout the state. I've done business in eight different NRDs. Some of the people that voted...or that talked about in opposition are actually neighbors from where I grew up in another NRD, and I think that's the problem, when it's out of sight, out of mind, so maybe you don't think about the impact to the local tax base and the economy. And for North Platte and Lincoln County, this is a big impact and I think the point of us trying to get a bill debated here is to allow a narrow avenue where the land can go back onto the tax roll and benefit the county and not destroy what's been done for the water augmentation and the Republican watershed. So I urge that you support this and move it out of this committee. [LB1123]

SENATOR HUGHES: Thank you, Mr. Wilke. Are there any questions? Seeing none, thank you for your testimony. Additional proponents? Welcome. [LB1123]

CHANCE SCHILLING: Welcome. Thank you very much. My name is Chance Schilling; that is C-h-a-n-c-e S-c-h-i-l-l-i-n-g. I'm in support of the bill. I just wanted to hit on a few things that I think has been hit on a couple times, but as a taxpayer in Lincoln County I find it very important. This project took 7 percent of Lincoln County's irrigated ground out of the tax base and converted it to grassland. The same acres would have received around \$730,000 in property tax revenue just last year alone. However, it only generated \$196,000. And I think you guys have heard that before but I think that's a huge, huge point to make. The next thing I feel incredibly strong on is no one takes better care of their land than America's ag producers. And that's all we're asking. To me, if land goes back into America's and, most importantly, Nebraska's ag producers, you're going to see a lot better use of that land, no matter what's being done with it. These guys out here, they're the ones that know how to take care of the ground. That's all I have. Any questions? [LB1123]

SENATOR HUGHES: Thank you, Mr. Schilling. Are there any questions? Senator Walz. [LB1123]

SENATOR WALZ: Thank you. Could you just clarify the 7 percent? Did you say 7 percent of irrigated farmland? [LB1123]

CHANCE SCHILLING: Yes, yes, that is the stats I have. [LB1123]

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SENATOR WALZ: Thank you. [LB1123]

CHANCE SCHILLING: Thank you. [LB1123]

SENATOR HUGHES: Additional questions? Seeing none, thank you for your testimony. [LB1123]

CHANCE SCHILLING: Thank you. [LB1123]

SENATOR HUGHES: Additional proponents? Welcome. [LB1123]

CHRIS KLAASMEYER: (Exhibit 32) Hi. I'm Chris Klaasmeyer, C-h-r-i-s K-l-a-a-s-m-e-y-e-r. I'm Hershey Rural Board, Fire Board president. The fire board economically governs the rural volunteer fire department. As a board we oversee taxpayer dollars generated from property taxes that are used to protect residents and property in our fire district, as well as providing mutual aid to other fire districts in Lincoln County and surrounding counties. I, as fire board president, am concerned about the loss of tax dollars that have impacted rural fire districts surrounding the N-CORPE property. From the reduction in tax from irrigated values to grassland values, the districts affected by this tax loss due...negatively impacted their budgets. Surrounding the...surrounding districts such as Hershey provide mutual aid to the volunteer fire departments that are in the districts that contain N-CORPE properties. The Hershey fire district would also be negatively impacted by the N-CORPE reduction in property value. Expenses in providing mutual aid to the districts affected by loss in taxes in event of potential fires of significant size on N-CORPE property will have adverse effects. Due to poor conservation, stewardship, by taking this property out of crop production, this 30-square-mile area has become the recipe for a disaster. A fire fueled by uncontrolled weeds, drought, 100-degree days, winds, and human error is inevitable. A fire in this 30-square-mile area could be comparable to the wildfires seen on the West Coast over the past several years. A sizable fire fueled by weeds, and no good way of stopping it, will have a devastating impact on the budgets, loss of property, and the potential risk of loss of life with the volunteers, as well as residents in the surrounding area. Thank you. [LB1123]

SENATOR HUGHES: Thank you, Mr. Klaasmeyer. Are there any questions? Seeing none, thank you for your testimony. Additional proponents? Welcome. [LB1123]

DEWEY SCHAFFER: Thank you for letting me speak. I'm Dewey Schaffer, D-e-w-e-y S-c-h-a-f-f-e-r. I'm a landowner in Lincoln County. And I'm somewhat selfish on this. If we don't...if we're not able to do something with this property and get it back on the tax rolls, consider it if

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was in your hometown, what are you going to do to come up with the money to support it? You're going to tax somewhere else. And I don't think that we need to be taxing somebody else when we have the property to be taxed. I think it's not in good business to let the NRDs own land. I think that they need to manage their water and they don't need to be landowners. That's all I have. [LB1123]

SENATOR HUGHES: Thank you, Mr. Schaffer. Are there any questions? Thank you for your testimony. Welcome. [LB1123]

SUZANNA KLAASMEYER: Thank you. My name is Suzanna Klaasmeyer, S-u-z-a-n-n-a K-l-a-a-s-m-e-y-e-r. I'm a Lincoln County resident and a property...irrigated landowner, property owner in Lincoln County, Keith County, and Perkins County, and an occupation taxpayer. I have in front of me a stack of letters of over 160, people have signed letters that are in support of LB1123 and I want these people to be assured that their names have been read and acknowledged in their support. I could go ahead and waste your time reading all these...if you want me to start... [LB1123]

SENATOR HUGHES: You have three minutes. [LB1123]

SUZANNA KLAASMEYER: (Exhibit 33) Okay. All right. Kendra Strommen, Sidney, Nebraska; George Deitlein, Grant, Nebraska; Kate McClintock, Elsie, Nebraska; Kasandra Pelster, Elsie, Nebraska; Corinna Fleming, (phonetic) Elsie, Nebraska; Jill Kennicatt, Elsie, Nebraska; Kate Robertson, Elsie, Nebraska; Scott Kennicatt, Elsie, Nebraska; Traci Lee, Madrid, Nebraska; Bridgett Knoll, Madrid, Nebraska; Stephanie Lundvall, Helen McConnell, all of...and Edwin Hahn (phonetic) of Wallace, Nebraska; Jennifer Ledbetter, Wallace, Nebraska; Jonathan Ledbetter; Jim Gartrell, Wallace, Nebraska; Mitzi Gartrell; Donna Hahn, Wallace, Nebraska; Kathryn Fowler; Duane McClintock, Susan McClintock, Wallace, Nebraska; Benjamin Pelster, Casey Lundvall, Krystal Sauser, these are all Wallace, Nebraska; Thomas Sandberg, Larae Buresh, Stephanie McConnell, Denise Maline, Randy Maline, of Wallace, Nebraska; David Lempke, Wallace, Nebraska; Clayton Carpenter, Wallace, Nebraska; Loretta Artz, Wallace, Nebraska; Michael Sullivan, Teri Sullivan, Douglas Sullivan, Travis McConnell, Wallace, Nebraska; Becky Materi (phonetic), Pat Kelley, Wallace, Nebraska; Linda Gier, Cathy Smith, James Smith, Deb Jameson; Cassie Hoffman of Sutherland, Nebraska; Tory Copeland of Sutherland, Nebraska; Alex Willard, Ross Dinwiddie, Shannon Rotert, Brian Rotert, Jay Lengreen (phonetic); Lynn Frederick, Dickens, Nebraska; Kathy (phonetic) Grauerholz, Richard Grauerholz; Andrew Olson, Hershey, Nebraska; Suzanna Klaasmeyer, Traci Messersmith, Chris Klaasmeyer, Kurt Remus, Scott Christian, David Carr, Wellfleet; Ralph Merrit, Wellfleet; Rae Parshall, Maxwell; Robert Heessel, Randy Ray McNitt (phonetic), Howard Haythorn, Maxwell;

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Nick Klosen, Stapleton, Nebraska; Michele Needs, Stapleton; Jennifer Nicholson, Stapleton.
[LB1123]

SENATOR HUGHES: Ma'am, your time is up. [LB1123]

SUZANNA KLAASMEYER: Okay, thank you. [LB1123]

SENATOR HUGHES: Do you have a statement to wrap up with? [LB1123]

SUZANNA KLAASMEYER: No, just that these are in support and that they urge you to support Senator Groene's LB1123 which clarifies NRDs ability to sell land associated with river flow augmentation projects while reserving the groundwater rights associated with the land. They're not in favor of public ownership. [LB1123]

SENATOR HUGHES: Thank you. Are there any questions? Thank you. [LB1123]

SUZANNA KLAASMEYER: Thanks. [LB1123]

SENATOR HUGHES: Additional proponents? Welcome. [LB1123]

ANDY OLSON: Senator, my name is Andy Olson, A-n-d-y O-l-s-o-n. And I'm here in support of Mr. Groene's LB1123 bill. And I'm here, I guess, on occupation tax. I know we have to have it and I'm not against it. The part that I am against is we're collecting the occupation tax at the rate...at the maximum rate, \$10 an acre. But we're paying off the bond as slow as we can. We've collected in four years...we've collected \$70 million in occupation tax and we've paid \$7 million upon the bond. Now, I see today as an eye opener that we're going to pay this thing off in 2039. I'm going to be 99. (Laughter) There's a pretty good chance I'm not going to make that and I'm paying somewhere...right now in the four year I'm in somewhere \$300,00...\$350,000 on a tax that I had absolutely no vote in having outside of being an irrigator, which I am. And I understand we got to pay our bills, but I don't think the NRDs...I don't think anybody told the NRDs to keep \$6 (million), \$8 (million), \$10 million in their checking accounts just for a slush fund. I think when they collect the occupation tax, I think it ought to go towards the bond. That's how it is supported. But just to horde this money, they got \$30 million stuck around like in different NRDs, and they said--well, we got other projects. Well, I think one of the main projects would be to pay the damn bond. That's all I got to say. [LB1123]

SENATOR HUGHES: Thank you, Mr. Olson. Are there questions? Thank you for your testimony. Anybody else want to testify, we're ready. Welcome. [LB1123]

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KIRK OLSON: (Exhibit 34) Good afternoon, Senators. My name is Kirk Olson, K-i-r-k O-l-s-o-n. I had a prepared statement that I was going to present and I chose to go a different way after listening to the testimony here today. It gets a little bit repetitious hearing the same statements over and over again. But the few points that I did, as I was sitting here in the audience today that I wanted to bring up and have some little bit of clarification on today because in my mind sitting in the crowd it was a little bit distraught. Senator Kolowski brought up a fair point earlier today, he says where is all the water and the land...and the point is, it's all in Lincoln County, the land that all the water is being pumped from Lincoln County. And that's why the large draw from Lincoln County here today why we're here. All the water is coming out of Lincoln County. Secondly, the taxation of \$700,000 coming out of Lincoln County prior to...during irrigation was \$700,000. Today on grassland, the assessment is less than \$200,000. So Lincoln County is picking up an additional \$500,000 a year in taxation. We lost that from irrigated rate to grazing rate. So that's \$500,000 that's lost. Okay. Now in occupation tax, as my father alluded to, we've, in the five years, we've paid in about \$350,000. That occupation tax, I don't think anybody is whining about it. We want the augmentation project. We want that to happen. We want to go ahead and continue being irrigators. I don't think anybody here is disputing that. And LB1123 amended is strictly for an augmentation project. It didn't say anything about the land. This is strictly commonsense bill; we're looking for commonsense legislation. Thank you very much. [LB1123]

SENATOR HUGHES: Thank you, Mr. Olson. Are there any questions? Seeing none, thank you for your testimony. [LB1123]

KIRK OLSON: You bet. [LB1123]

SENATOR HUGHES: (Exhibit 35) Anyone else wishing to testify? Anyone else wishing to testify either proponent, opponent, or neutral? We do have one letter, a proponent that has not already been addressed from Donna Tryon from North Platte, Nebraska. Senator Groene, you're welcome to close. [LB1123]

SENATOR GROENE: Thank you. I want to...appreciate the folks that came down. What you met and seen were individuals, the heart, the generations, the base of our county. Some of those guys could buy and sell everybody in this room three or four times. I can't, but I'm one of them. That's why I don't like wearing a tie, they don't; they don't need it. People in Lincoln County know who they are and what they represent--the backbone of Lincoln County, the agriculture. They would not be down here, and 161 people could not be here, if they need action now. I heard "alludements" so let's do a report. I can see you guys going into Exec and we're going to do a report. We're going to get a committee together and we're going to study it. We don't have time. Professor Schutz, I sat in my office with him and that amendment him and I worked it out. I want

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to remind you, he came here in support of that amendment, not of the bill, of the amendment. I want to remind you that the AG Office said Part A and Part B looked good, it's only C. We can do that. We don't care what you do. We're not here because we're going to nitpick over how we allow us to sell the ground. I will sit down with Justin Lavene in the AG's Office, Professor Schutz, I would like Senator Hughes in the room, and we'll come with a clear bill. Professor Schutz, when I walked out...when he walked out, I said, with that bill...that amendment pass, would it do any harm? He said, no, it would do some good. Where we are now it's cowboys and Indians. When that bill, LB962, was passed and augmentation was put in there, I've talked to some of the senators that were there, nobody dreamed anybody would drill wells and pump water in a creek. When they put augmentation in there, they thought it would be damming Medicine Creek and holding the water and releasing it; taking flood waters off the Platte River. The idea of pumping water into a creek...groundwater...was not anticipated. That's fine; legally they did it. I'd also like to remind you, Estermann versus...N-CORPE brought up, that was only about easements. It was the easements that N-CORPE did to put a pipeline to the Medicine Creek through his land. It was not about the ownership of the land. The case had nothing to do with who owned the land and N-CORPE had it...there was points towards that, that had nothing to do with it. But Estermann case aids the bill, because if they sell the land, Estermann case already put into place that N-CORPE has easements on that land. They can go anywhere. The can go on Estermann's land; they can go on whoever buys that land's land. It's already been settled. But easement is important for them to access the wells. They could move the wells. In groundwater, NRDs are king. They are king. We heard examples just the other day in the Middle Republican, somebody was cheating on their meter. They just lost \$5,000 an acre in valuation of their land. They pulled the allotment on them because they were cheating; and they should have. You have no right. It's what Professor Schutz said about rights, there's is no really a right to water. NRDs control the water and they control the augmentation. The trying to tie personal rights of land and allotments that you might perceive you have to what public good...the Estermann case was about a public good project...so with government. That's what Senator Bostelman mentioned about cities. Cities can dig a well; pump it down 10 miles. This is similar. But we have this problem out in western Nebraska, overappropriated water. The reason they bought the land, is because you have to offset. They believe they had to offset; and they did, they offset it. And just selling the land would allow them to do it. We don't need to study this. We need to frame this in so when the lawsuit does come, and there will be lawsuits. You think these guys here are going to sit back if you don't do something and not sue? There's individuals who lost their domestic wells. You know what the law says...common law says--domestic first, agriculture second, government third. They sue over their domestic wells because they're mad, they'll shut that program down, the Supreme Court will. So don't worry about this will cause lawsuits. The fact that we do them at...we can either define this by lawsuits or we can define it by us doing our work and create legislation, period. We can even make that choice; lawsuits going to keep coming. The weeds? They paid N-CORPE had been putting out fires...talk about fires, every time somebody's well goes down, they go out and pay to put a new one in so they don't

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sue. The tumbleweeds in the cornfields, they paid for the custom harvesters...special harvester to go harvest that corn. Went from \$200-some bushel an acre to \$60 or \$70. You don't think there's a lawsuit waiting there...happen there? It's going to happen. Leading questions to Jeff Fassett that if we lost this, what would happen to Kansas? That's hyperbole. That could happen anyway. I travel Kansas in my business. Those farmers there are just as mad as these guys. They live off that N-CORPE...that groundwater too and they're not happy. Kansas could come back in and say, as Mr. Estermann said, no, we don't think this is good for the whole aquifer. You guys drain an aquifer that also...as part of our aquifer is not a good idea and pumping it in a creek going to eastern Kansas is not good for western Kansas. You can't find one western Kansas farmer who thinks this is a good idea. They elect people, too. Nobody sat down and said the augmentation project was a bad thing. Nobody also said selling the land was a bad thing, did they? They just worried about the augmentation. Those two, everybody is in agreement with. Keep the augmentation; sell the land. Our job is to do it, to define what N-CORPE already did. A couple of other points--young man made a good point and so did...I can't think of his name, all of the people testified against this bill don't live in Lincoln County. They benefit from Lincoln County. Those people in the Lower Republican, when they did LB962, they fought it...the thing they're praising now. Governor Heineman walked in the room and told them either you accept LB962 or I will create one NRD. The people from the Upper Republican fought all of this, everything that we've ever done here, unless it's in their advantage. That's just human nature. Lincoln County is paying the bill; Lincoln County is taking care of it. We like it; we can irrigate. We want relief. That's all we want. You can pump our water. We want relief. Bogeymen, remember, Professor Schutz said Part A and B are fine. Also defining a narrow area, this basically only covers augmentation projects, which is the only time you're ever going to have it, is in the overappropriated and the fully appropriated. You've got the Rock Creek in Senator Hughes' and you got the one in Lincoln County. The settlement with the Platte River is coming down hard on us, big numbers, there will be attempts for other augmentation projects. We need to put in place how the North Platte NRD handles one if they create one. My amendment...our amendment, because I had a lot of people working on it, Senator Bostelman or somebody made it clear this is very defined. It says: the river flow augmentation project as described in subdivision (3)(e) of Section 46-715, which is in statute, and they acquire real property, they have to buy the land. That is a mechanism they have to have in an overappropriated or fully appropriated district to acquire the irrigation allotments. Once they buy the land, then the NRD controls those allotments, they can retire them, and then they can use that for their augmentation. They know once they...they're basically buying the irrigation allotment, that's what they're buying. And then when they have that, they can use that for their augmentation, they no longer need the land because we can only pump so much. Either you can put it in the augmentation or you can use it for irrigation. That's what this is all about. Once they acquire the water, the allocation from the farmer, it's just a different way they're doing it now. They're going out and paying farmers \$4,000, \$5,000 an acre in the North Platte for the water rights, for their allocation. They keep the land, they use it, and then they tell the Platte compact that here's so many acre feet of water

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we've retired. This is just another way of doing it. What we're trying to do with augmentation is catch up with what from years back where the...actually the Platte is local people, it's the NPPD and stuff and we're...that need the water for their power plants and ditch irrigators, but the Republican is with Kansas. Anyway, Mr. Blankenau just amazes me, but he's good; he gets paid well. When he was talking about Springer v. Kuhns, it was his law firm that used that case to put the grantor deed, the reservation, the very thing the court described as into the deed when they sold the 313 acres. It was his law firm. And to sit there and tell you the appellate court has no authority, that it's meaningless, did you catch that? That wasn't a county court; that wasn't a district court. That's the appellate court. And if the Supreme Court didn't hear it, it's because they thought the appellate court did a good job. You're smarter than that, weren't you when you heard that? Do you know, originally I started this saying we'll help N-CORPE with their problem with that grantor's deed on that 313 acres, and that grantor deed, the last line is they can release it. They can release it. They can just take it off the deed. That's what they need to do. The amendment, AM1189, (sic-AM1819) would allow them to do that and still account that water acres for their augmentation. It would. And then they would get off with that lawsuit, because if I was that farmer who bought that land for \$900 an acre and he heard about all this and he heard Mr. Blankenau say at a meeting that that reservation is not right, that his law firm screwed up. I would sue. I would tell a lawyer, any lawyer out there, a bounty hunter, I'll give you a thousand dollars an acre if you sue and you win that case and you take that grantors deed off of there, that reservation. Because now you've got 313 acres that you've got invested a thousand-dollar lawyer, \$900, you got irrigated ground, that's worth \$6,000...\$5,000. That lawsuit is going to come if the guy is smart. We have open range here, law being set by actions by the NRDs and a lawsuit here and there like the Estermann case. And they say--everything is just fine. We need to have statute put in place. We need relief now; we need to get that \$10 an acre down. We need those guys out of our county. We need to manage our land, our NRDs. Middle Republican and the Twin Platte need to take care of what we are doing; not the Upper Republican and not the Lower Republican making decisions about our land. One last thing, I hope, the Governor wants us to sell the land. As long as Kansas is happy, I've got friends in Kansas that are close to the politics of it, they don't care. Just make sure that you keep your promise. So Kansas isn't going to sue. Why would they? They just want the water. It's going to be one of us suing. You think these folks are going to go away if you just tell them they're going to have a report and you're going to have a group of guys sitting around with...what's the term...stakeholders deciding what to do? Yeah, they'll fund every candidate against you. I would. I want five votes out of here. I will work with Senator Hughes and the AG. I'll bring the professor in. I will bring Mr. Mossman in. And those are the people who should be around the table. I'm tired of talking to the NRDs who have fought every change, every time over the last 50 years that the body did. Do you know why we're in this mess? Because in 2003, we set, this body, set restrictions on new wells. You know what those folks at the NRDs, many of the same folks did? They issued well permits and said you have two years to put them in. That's why we're in this mess. They overappropriated. Some of the farmers sitting here did it. I don't blame them, I would have too. You got a dryland quarter and the

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NRD...the powers that be said go ahead and put a well in for the next couple of years. And now they sit here and fight again. And every time it's been this body that had to step in, every time. NRDs never did it. We had to step in and we need to do it again. We need to define this issue to make sure it is boxed in, this Pandora's Box they opened about transferring water off the land and close it. I will work with Senator Hughes to do it. A lot of those letters came from his district because we're right up against each other on this thing. Any questions? [LB1123]

SENATOR HUGHES: Any questions for Senator Groene? Seeing none, thank you. That will close our hearing today on LB1123. [LB1123]

SENATOR GROENE: (Inaudible). [LB1123]

SENATOR HUGHES: I appreciate everybody coming and staying. [LB1123]