

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee December 3, 2021
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BOSTELMAN: OK, good morning, everyone. Welcome to the Natural Resources Committee. I am Senator Bruce Bostelman and I'm from Brainard, and I represent the 23rd Legislative District. I serve as Chair of this committee. Today, we're here to discuss LR23, introduced by Senator Erdman and Senator Briese. This LR is a resolution to study the progress of natural resources districts in fulfilling their originally intended purpose relating to flood control, soil erosion, irrigation, runoff and groundwater quality and quantity. The testimony we receive today will be through invited testifiers only. I ask that you abide by the following procedures to better facilitate today's proceedings. Please silence or turn off your cell phones. I will ask each testifier to come up, give their prepared testimony based on the questions asked of them beforehand. Once they are done, the senators will be given a chance to ask questions. When you come up to testify, please remove your mask, if you have one on, and speak clearly into the microphone. Tell us your name and please spell your first and last name to ensure we get an accurate record. The committee members today will include Senator Erdman, who is introducer of the bill, of the LR, and he will introduce and the committee will introduce themselves starting on my left with Senator Erdman.

ERDMAN: Thank you, Senator Bostelman. My name is Steve Erdman, I represent 10 counties in the Panhandle of Nebraska.

GRAGERT: Good morning. Tim Gragert, northeast Nebraska, District 40.

AGUILAR: Good morning. Ray Aguilar, District 35: Grand Island.

BOSTELMAN: And to my right, Senator Groene.

GROENE: Senator Mike Groene, District 42.

J. CAVANAUGH: Hey. John Cavanaugh, District 9: midtown Omaha.

MOSER: Mike Moser, District 22.

BOSTELMAN: To my left is committee legal counsel, Cyndi Lamm. And to my far right is committee clerk Katie Bohlmeier. Our page for this morning is Thomas. Thank you for being here today, appreciate that. The list of testifiers, the three of them we'll be hearing is, I believe is out posted at the door. And with that, I would invite Senator Erdman, if he has a couple of comments you'd like to make before we get started, please do.

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Rough Draft

ERDMAN: Thank you. Thank you, Senator Bostelman. I appreciate that. The purpose for the hearing today is the NRDs were put in place back in 1972. And as far as I can tell, no one has done a review of what exactly they have been doing, whether they've met the statute requirements that they were required to do. So today, our job, my job, I think, is to analyze what they've been doing and see if that meets with the statutes, as well as this has started and brought me, brought to my attention the many things that the NRD is doing. And my thought today is to make sure that they're staying within the scope of what they're supposed to do. So hopefully we'll be able to get some answers. I am sure that all the questions I have won't be answered today, so I look forward to questions in the email going forward.

BOSTELMAN: OK.

ERDMAN: Thank you, Senator Bostelman, for having the hearing.

BOSTELMAN: OK, with that, we will have Mr. John Winkler, Missouri-Papio NRD, to be our first testifier. Please come up to the table. Good morning and welcome.

JOHN WINKLER: Morning. How are you, Senator Bostelman?

BOSTELMAN: I'm fine. How are you?

JOHN WINKLER: Oh, good. And members of the committee, thank you. And Ms. Lamm, appreciate you being here as well. My name is John Winkler, J-o-h-n W-i-n-k-l-e-r, I'm the general manager of Papio-Missouri River Natural Resources District. Again, thank you for the opportunity to testify to the committee today in relation to Senator Erdman's LR23. Four specific questions from the committee were forwarded to my attention on November 16 of 2021, and therefore I'll answer those questions first and then obviously answer any questions that you have. The Papio NRZ-- NRD comprises all or a portion of six counties of northeast Nebraska, which contains 42 percent of the state's population. It is home to the only metropolitan class city and encompasses the fastest growing county in the entire state of Nebraska, which is Sarpy County. The first question was how and why was the decision made for an emergency declaration of flooding in the Papio-Missouri River NRD? During a natural disaster situation, such as the historic flood of 2019, the Papio NRD has a responsibility to work with other local, state and federal agencies in a coordinated disaster-fighting effort. The Governor, in consultation with Nebraska Emergency Management Agency, issued an emergency declaration effective March 12, 2019, in anticipation of severe weather and potentially

Rough Draft

historic flooding. During the devastating and quickly evolving flood of 2019, all three major rivers in the Papio NRD district, the Missouri, Platte, and the Elkhorn, including their tributaries, were experiencing record flows. Most of our levee systems were overtopped or breached, and mass flooding was occurring. For example, the city of Valley was completely inundated, as well as Offutt Air Force Base, a major national security facility; the city of Omaha's Papillion Wastewater Treatment Plant, which treats 65 million gallons of raw sewage a day. In light of the March, 2019, flood conditions and the up close and firsthand witnessing of rapidly deteriorating conditions, the general manager requested the district to issue an emergency declaration to be issued pursuant to district policy 15.4. And I've included that as exhibit 1 for NRD directors to consider and be signed by Chairman Jim Thompson. Per policy 15.4 of the emergency declaration requires concurrence of six directors and written authorization by the chairperson. After receipt of confirmation of the concurrence from the first seven directors contacted, Chairman Thompson signed the emergency declaration on March 21, 2019, after it was glaringly apparent that a majority of the board approved. The remaining four directors were conferred with a short time later, as there were multiple emergency response demands that required immediate attention due to the fact that district personnel were in the middle of a historic flood fight and multiple calls for assistance from local, congressional, military and Army Corps of Engineers interest. In addition, the full NRD board considered and approved the emergency declaration at the next regularly scheduled board meeting. The approved meeting minutes for the April 11, 2019, board meeting are also attached, which is exhibit 2, which confirms the NRD board approved the emergency declaration by a vote of 9 yea, 1 nay. Question number two, the Bennington Lake Reservoir appears to require third parties rather than the NRD to pump water into it. Please discuss why the NRD constructed the project. This project was constructed over 20 years ago. I've celebrated my 15th anniversary with the district December 1, so I, a vast majority of my staff or directors, have really no personal knowledge of the project. However, I do, we do have fact sheets and things like that which I have provided. I've attached a fact sheet, exhibit 3, of the project and what I was able to learn from staff and directors that were at the district over two decades ago. Bennington Lake, constructed in conjunction with Newport Landing by Horrigan Development Company, was a public-private partnership. It was a 50-- or it was a \$58 million flood control project in which the private sector contributed \$53 million and the public sector \$5 million, of which the NRD contributed \$3 of the \$5 million. The Horrigan development wanted the lake to be larger than the watershed

Rough Draft

could support. Consequently, Horrigan development constructed a weir for intake in the Big Papillion Creek and a pump house to fill the lake during times of the year that experienced low water levels. The NRD did not contribute to the construction of the weir or the pump house, nor does it contribute to the additional cost of the pumping to increase the lake size or the operation and maintenance of the pump house. In fact, the surface water right is issue to Horrigan Development Company permits A-17667, A-17665, A-17666 and A-17668 to pump and store water in Newport Landing. It appears the lake is managed by the homeowners association, but Newport is still an SID. As a result of the project, the SID donated 220 acres to the NRD; which in turn the NRD donated 39 acres to the Bennington School District to build a new school, 40 acres to the city of Bennington to expand park, and the district used 42 acres to construct a wetland recreation facility for public use, I believe the intent of this partnership was to get the reservoir and the subsequent flood control benefits associated with it built for the most economical way possible. It was estimated if the NRD went it alone, it would have cost the district \$20 million to construct the reservoir instead of \$3 million. The NRD has not constructed another project using this financing model since Bennington Lake was, was done. Question three, for what purposes are additional reservoirs built in the Papio-Missouri River Natural Resources District? According to the National Inventory of Dams, in 2021, there are over 92,000 dams in the U.S., up 10,000 from 2011. The eastern part of Nebraska, and specifically the Papillion Creek Watershed, are extremely susceptible to flash flooding due to intensive urbanization. It is estimated 1,800 to 2,400 single-family homes are constructed in the Greater Omaha metro area every year. Historically, billions of dollars in damages and the loss of life has occurred throughout the area due to flooding. Reservoirs have been and are constructed for flood control, which is their primary purpose. Although there are many ancillary benefits to reservoirs, including recreation, creation of wildlife habitat, greenspace, water quality, groundwater recharge, stream degradation mitigation, soil and erosion control. However, the main benefit is flood control. The Papio NRD deploys a holistic approach to flood mitigation. Please review exhibit 4 for a more detailed explanation of the environmental and recreational benefits of NRD reservoirs. Technically, most experts believe that flood control reservoirs, in conjunction with good conservation practices on farmland, channel improvements and creeks and streams, levees and sound floodplain zoning and management by cities and counties is the best approach to reducing the threat of flooding. Over the last 50 years, every one in three years, area reservoirs provided flood mitigation and prevented millions of dollars

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in damages from occurring. In addition, this infrastructure was in place to mitigate the worst-case scenario 100-year, 500-year rain event and ensure the worst case flood damage from those events would not occur. I have attached an excellent article that appeared in the April 2019 Omaha World-Herald after the historic floods, which clearly illustrate how and why the majority of the Omaha metro area was spared from the historic flooding in '19. The most recent evaluation of flood control in the Papillion Creek Watershed was put into final form in June 2021, and is currently under review by the United States Army Corps of Engineers headquarters. The purpose of the study and the many, many before it are to properly address flood risk issues in order to reduce loss of life and property destruction in the watershed according to the most current U.S. AC-- U.S. Army Corps of Engineers study, the Papillion Creek and Tributaries Lakes Nebraska General Reevaluation Report USAC 2021. Based upon updated flood mapping, there are approximately 4,100 structures which are homes and businesses in the 0.2 percent annual exceedance probability floodplain, with an approximate total investment value of \$4.5 billion and expected annual damages of over \$14 million. There are three correctional facilities, 13 emergency services facilities, 6 schools and 1 airport that lie within the floodplain, as well as tens of thousands of citizens who remain at risk of flash flooding. Prior flood risk studies of the Papillion Creek Watershed were first initiated in 1946 by Congress, and in 1949 the first survey was authorized for the Big Papillion Creek and Tributaries. And I listed the subsequent flood risk studies. They started April 1961, April of 2019 and then obviously, the last one in 2021. As you can see, those have occurred throughout history from '61 all the way to 2021. Question four, the Papio-Missouri River NRD was granted general obligation bonding authority by the Legislature and signed by the Governor in 2009 in order to construct flood control and water quality enhancement infrastructure. The Legislature reauthorized the bonding authority in 2019 for a period to sunset in 2025. Over the last 15 years, the district has utilized this authority to construct or speed up the construction of two levee projects, five reservoirs, two water quality basins and respond to constituent and landowner demands to further compress the time frame of right of way acquisition for the construction of six future priority reservoirs. The district has voted a total of \$99,690,000 over 12 years, with \$84,890 still outstanding. As a result of appropriate fiscal management and the advantage of historically ultra-low interest rates, the district's average interest cost is less than 2 percent and debt service utilizes six-tenths of a cent of the district's 3.5 cent property tax mill levy. As a result of the ability to issue bonds and secure the necessary capital upfront, the NRD was

Rough Draft

able to construct over \$170 million of flood control and water quality enhancement projects. These are infrastructure projects that are in the ground, functioning as designed, and providing protection to our citizens and their property. Without binding authority, these projects would have taken 35 years or more to complete, especially considering an average of 6 to 10 percent annual increase in project and land acquisition costs. One more note. The Papio NRD spearheaded the rehabilitation effort of the Missouri River levee system that protects Offutt Air Force Base Bellevue and Omaha's Papillion Creek Wastewater Treatment Plant from Platte and Missouri River flooding. The NRD, in partnership with the city of Omaha, city of Bellevue, Sarpy County and the state of Nebraska designed, permitted and is constructing a \$30 million levee upgrade project which ensured the Department of Defense and the Air Force invested in the \$180 million runway replacement project at Offutt ensured the 55th Wing, the metro area's largest employer, responsible for \$1.3 to \$2 billion in annual economic impact to the state of Nebraska, remained at Offutt Air Force Base for the foreseeable future, ensured the DOD and Air Force will invest more than \$1 billion in post-2019 flood damage repair to the base and position the base to be assigned future new missions and to ensure Offutt Air Force Base is the most sustainable and resilient military installation anywhere in the world. I am proud to report that this week the entire levee project is substantially complete. The only remaining tasks are seeding, installation of a concrete trail on top of the levee and minor punch list items. The project is to be fully complete in June of 2022, so we look forward to having you at the ribbon cutting. Once again, thank you for the opportunity to provide testimony to the committee. We look forward to working with the Legislature to continue to ensure we are adequately protecting our natural resources and protecting life and property. If you have any questions, I'd be happy to answer them and we would like to invite not only the committee, but any other senator that would like to take a personal tour of our district so we can show you the firsthand challenges that we face. Thank you, and I'd be happy to answer your questions.

BOSTELMAN: Thank you, Mr. Winkler, for your comments to start with. Are there questions from committee members? Senator Groene.

GROENE: Thank you. This Bennington project was approached to the NRD by a private developer, right?

JOHN WINKLER: Yeah, again, so I wasn't-- I wasn't--

GROENE: That's fine.

Rough Draft

JOHN WINKLER: --at the district, so I'm assuming that it was-- like I said, it was a public-private partnership.

GROENE: That's fine.

JOHN WINKLER: And they may have approached them or we-- I don't know.

GROENE: What's the policy now? I hear secondhand that you guys are considering more development, economic development than flood control on some of your latest projects.

JOHN WINKLER: So--

GROENE: Is there a housing development planned on every one in the lakes you build?

JOHN WINKLER: No. So when we purchase a right of way for a project, you know, and most of the time it's ag land, obviously. But so we only purchase what is necessary for the project. And typically that's the reservoir. And then it's what we call the flood pool, which the flood pool becomes the park area. But we don't control anything outside of that area. And, and most of the time, the landowners will, will develop around the lake. Now we-- all of our projects have 100 percent public access, except for that one. And so we no longer do that type of model. And so all of our projects have 100 percent public access and we only purchase what we need. Obviously, private property rights outside of that, they can either continue to farm it or they can sell it to a developer or they can do whatever they want. It used to be when I first started, Senator Groene, we would approach landowners to say, hey, you know, we have a project here and, you know, we need to purchase this property. That's not the case anymore. Omaha and the, the surrounding communities are experiencing such development that we actually have landowners that are approaching us. In fact, we had a list of like 15 that we just approved. They're saying, hey, you know, you have a project here, and they may have been producers that, you know, the land was their, their retirement plan--

GROENE: I guess my point is--

JOHN WINKLER: And so yeah, so--

GROENE: --I like the Bennington model. If a developer wants to build a housing development--

JOHN WINKLER: They should pay for it.

GROENE: --they should come through and they should share--

JOHN WINKLER: Right.

GROENE: --the cost of the lake.

JOHN WINKLER: Yeah,

GROENE: The taxpayers shouldn't build the lake so that they can profit from the development.

JOHN WINKLER: Yeah, we, we--

GROENE: But you ask for cooperative payments from the developer when you do these things?

JOHN WINKLER: No, because they're not, they're, they're for flood control. If development occurs around them, it's similar to when somebody builds a golf course, pave a road, all those types of things. You create amenity and then development occurs around it. So our infrastructure is no different.

GROENE: Omaha was protected, switched gears on you. Omaha was protected and the area. You guys in the past have done a good job with your job as flood control. Why do you need more--

JOHN WINKLER: Well--

GROENE: --dams if Omaha-- if a 100-year flood came and things work just fine?

JOHN WINKLER: Right. So actually--

GROENE: So why are you expanding your flood control dams?

JOHN WINKLER: So if you look at the latest analysis from the corps who came in and did the 2021 study, and I listed all of those facilities and all those homes and businesses that are still in the floodplain. So we're not done. We'll never have 100 percent flood protection, but obviously the more we produce, the better. So, so the vet in 2019, although it was a 100 year event in other parts of the state that, that obviously the tributaries ran to our part of the district Omaha didn't experience. It wasn't a hundred year event in Omaha. And--

GROENE: The Missouri River didn't flood like--

Rough Draft

JOHN WINKLER: The Missouri river didn't even flood like in '11, in our area.

GROENE: Omaha usually floods when the Missouri river does.

JOHN WINKLER: Yeah. And so the Missouri River wasn't the problem. It was the Platte and the Elkhorn that caused the major problem in '19, yeah. So, so it wasn't a hundred year--

GROENE: That's your purvey, is those rivers, not the Missouri River.

JOHN WINKLER: The corps manages the Missouri, correct.

GROENE: That leads me to my last question, though. You mentioned Offutt Air Force Base, you have nothing to do with that, do you? That's the federal and the corps building those levees.

JOHN WINKLER: No. So actually, the corps built the levees in the 70s, but the corps then turns them over to a local sponsor. And so after the-- Sarpy County was the original local sponsor after the corps built them. Then when the NRDs were formed, the NRD became the local sponsor. So we are responsible for the operation and maintenance of those levees according to the federal agreements, federal law. So we are responsible for it.

GROENE: But the improvements were designed and contracted by the federal government through the corps?

JOHN WINKLER: No, we, we designed and we paid for with our partners and we are constructing the improvements to those levees because, because we are the local sponsor.

GROENE: You're contracting the work on the levees--

JOHN WINKLER: Yes, sir.

GROENE: --along the Missouri River.

JOHN WINKLER: Yes, sir.

GROENE: In that area?

JOHN WINKLER: Yes, sir. Yes. We're-- and we're, and we're almost done.

GROENE: But that's federal money.

Rough Draft

JOHN WINKLER: No. The-- no, not one dime of federal money was in there. It was NRD, city of Omaha, city of Bellevue, Sarpy County, and the state of Nebraska.

GROENE: So the federal government didn't, the corps didn't believe the levees needed to be raised?

JOHN WINKLER: No, the corps required-- the corps and FEMA required the levees to be raised to meet their current standards. However, in the wisdom of the federal government, there's no money to do that as federal appropriations.

GROENE: There is now.

JOHN WINKLER: Well, there wasn't when we started. I understand, though. But yeah, we, we begged everybody and we had to put together what we did.

GROENE: Thank you.

JOHN WINKLER: Yep.

BOSTELMAN: Senator Moser.

MOSER: I think the gist of Senator Groene's testimony is that we wonder whether some of these adjacent properties get windfalls from the construction of these structures. And is there any way to get some income back for this improvement that, you know, you may now have oceanfront property where before they had whatever?

JOHN WINKLER: So how the project is, you know, in some, in some areas we will build a reservoir where there's no houses around it. How it, how it is now, though, is there are actually houses around the reservoir site before we even get there. Because development, I mean, we have a, we have a real issue of working with our partners, our, our partners in the cities and counties that have zoning jurisdiction to reserve those spots for us. We've actually lost a site because development occurred in the flood pool before we can even get there.

MOSER: And the flood pool is the maximum collection of water.

JOHN WINKLER: That's correct.

MOSER: You got a likely level of the lake. And then you have enough of the bowl to get your maximum flow contained, is that--

Rough Draft

JOHN WINKLER: Yes, sir. And so that is-- so we, we have a permanent pool. And then you have the flood pool if you have a 500 year event and then that, that would encompass the rest of the project. Now anything outside of that area, I mean, it's private property. They can do what they want.

MOSER: There's no buffer around the, the flood total?

JOHN WINKLER: No, the flood total is the buffer between the permanent pool. I mean, there's a little bit. So we're not flooding any, any development outside of that. So what happens is the, as-- if it gets close to the flood pool, then the structures have what we call an auxiliary spillway and then that water starts heading out.

MOSER: Overflow.

JOHN WINKLER: So, so it doesn't-- yeah, it doesn't get as high.

MOSER: Like if you don't shut off your tub?

JOHN WINKLER: Right. And so, yeah, so the problem now is we're trying to build reservoirs that the area is already developed. And one thing that we have implemented, and this was a number of-- probably since 2009, is we call it a-- the local jurisdictions have implemented an impact fee, basically an impact fee. And so each lot that's developed pays a certain portion of that to the municipality or to the county, which in turn sends out to the NRD to help pay for these reservoirs. So in fact, they are contributing. And that will, that will stay in perpetuity. So once we're done, we can only have so many projects that we can build. Once we're done, that fee will continue to go on and we'll continue to collect those moneys and recoup those private dollars to go toward building these projects. So and in, in fact, they are paying for them.

MOSER: So are those in-- separate from the water and sewer amounts and paving and all those other things that SIDs have to, to do?

JOHN WINKLER: Yes, sir. It's paid per lot and it's based on a single-family home or a multi-family home or commercial. For example, Facebook, when they built that data center, they contributed 800,000-some fees to the NRD. But the unfortunate thing about that is they're not in the Papillion Creek Watershed, they're in the South Sarpy Watershed. So that money had to go into that, that watershed's account, not the Papillion Creek, which most of the reservoirs are in. So, so yeah, they're, they're, the developments and they're paying,

Rough Draft

you know, they're paying a portion of it. We kind of divide up two-third, one-third is--

MOSER: OK. All right, thank you very much.

JOHN WINKLER: Yep.

BOSTELMAN: For the record, Senator Wayne has joined the committee. Are there other questions? Senator Gragert.

GRAGERT: Thank you, Chairman Bostelman. Thank you for your testimony.

JOHN WINKLER: Thank you, Senator.

GRAGERT: I just want to get into a little bit of the watershed and the design of your lakes. And are you able to completely cover the watershed by top to bottom the tributaries into these, into these lakes? I understand, you know, when you build a lake down below and you account for that sedimentation, that's going to increase the size of the lake without putting in those smaller dams up in the top of the tributary.

JOHN WINKLER: So how it used to be is the-- when the corps built, the corps built four structures in the [INAUDIBLE] and they, they, they failed to put in water quality basins. They failed to capture the sediment. Well, so we learned, we learned from that. Now every reservoir we build, we incorporate the water quality structures in that project right away. In fact, we built two of the water quality basins that I mentioned in my testimony for Zorinsky Lake, because there was a huge amount of development sediment was, was filling that lake. So we constructed those two, which the corps should have done back when they built it 30, 40 years ago. But to-- so to account for that, we do, we build those water quality structures for that sediment control. And once that the, the area is developed, those water quality basins will most likely fill with sediment and they'll become wetlands. So we don't dredge them out, and they'll continue to do their job of filtering water and all those things. If you look at the, the, the attachment on the environmental benefits of our reservoirs, so every reservoir we build, we have to go through the federal 404 permit. And as part of that, they do a study to make sure that again, that you are not creating harm to the physical environment, to habitat, things like that. And there's a lot of misnomers, especially nationally, when we talk about we build reservoirs and people always think of the Hoover Dam, they think these big monstrosity structures of concrete and that we're prohibiting aquatic habitat from maybe

Rough Draft

migrating and things like that. And it's like, no, if you really looked at these things, they are creating a huge environmental benefit and wildlife benefit, especially for aquatic habitat, in a metro area that if that reservoir wasn't there, it would most likely be rooftops and driveways. And you would continue to have sloughing streams, you would continue to have all those problems that you have, erosion, sediment control because there's no controls. This actually serves as a control. So I hope that answers your question, Senator.

GRAGERT: Kind of. Are you at the top of the watershed? Is the, is the watershed completely addressed as far as dams above--

JOHN WINKLER: Yes.

GRAGERT: --all the small tributaries that come into this lake down below?

JOHN WINKLER: Right? So the-- no, because the, the Papillion Creek Watershed goes all the way from Washington County to one spot, it empties in one spot south of the base end of the river. There are no reservoirs planned in Washington County, and that's because there's just, there's no interest from the county or from the folks up there to put them there. So they have been on the drawing board in the past. But, you know, we've got several others that need to be built and dug, you know, the upper reaches of Douglas County and Sarpy County to control what we can. So no, there, there's, there's-- not the whole watershed is covered, but for those areas that demand them and want them, they're, they're covered.

GRAGERT: What percentage of the watershed is in cropland?

JOHN WINKLER: The Pap-- I don't know that off the top of my head. I would have to get that for you. I know, you know, most of Douglas County is pretty developed. I think there's like 9 percent of the, of the zoning jurisdiction the county has. Washington County is still pretty rural. South Sarpy is pretty rural still. But you know, now they're talking about sewerage that area. And so that will quickly fill with development. So I don't know, but I can find out what that number is for you.

GRAGERT: Did you do an assessment then of, of if you had those types of small ponds in the pastures and whatever up above, how would that, how would that lessen the size of the, of the lake you had to build down below to address the sediment load coming into that lake for a 50-year lifespan?

Rough Draft

JOHN WINKLER: Right. So our products are designed for 100 years. And when, when they design, when they do the hydrology and hydraulics, they, they, they anticipate that the watershed is fully developed. So they're-- we're accounting for rooftops and driveways to be throughout the entire watershed when we develop a structure so that, that guides its size. We do have smaller NRCS structures and things like that. We also originally looked at what they call max low-impact development, where you build all these little, these little structures all over everywhere. But there was like 1,600, I think, was the total, and there was all kinds of issues with maintenance and who's responsible for them. Another thing, too, is FEMA does not recognize them as flood control. So even if you constructed them, your floodplain maps wouldn't change. When the new floodplain maps come out in February, we'll actually see where we have tributaries that have a lot of control, a lot of reservoirs. We'll actually see a reduction in the floodplain and actually some elimination of it. I think we're taking 3,000 structures out of the floodplain. And so those are folks that don't need to carry flood insurance anymore if they have a mortgage. You're talking \$300 or \$400 a month to a family that don't have to pay FEMA, you know? And so that's, that's serious, serious money to some folks so.

GRAGERT: Thank you.

JOHN WINKLER: Yep.

BOSTELMAN: So I have a couple of questions and then we'll move to Senator Erdman next. When I look at the projects, help me understand from the ones we got listed since '61 to the present, since the watershed starts up in Washington County or the crick comes there, how much of the, of this construction, the stuff that you're doing is, is mostly in Omaha metro?

JOHN WINKLER: It's Sarpy County, Omaha metro--

BOSTELMAN: [INAUDIBLE].

JOHN WINKLER: --Douglas County. Yeah, the Omaha metro-- the city limits have just continued to keep stretching and stretching.

BOSTELMAN: So, so we have people in four counties being levied paying for the construction, basically in those two, those two areas,

JOHN WINKLER: Actually, as part of the one, of the one of the, of the flood control structures I did mention was in Dakota County. And so that was a fairly significant sized project for them. And actually, if

Rough Draft

the NRD wasn't-- I mean, they would never have been able to pull it off by themselves. So we do have structures in other counties. And bonding authority did pay for the Dakota County structure, so they're not all in, in Omaha and Sarpy.

BOSTELMAN: I understand. Reading through the documents that you had given before and looking at some of the things, it kind of seems like Omaha has become its own main driver for flood control. And maybe I'm just kind of curious, not that you need to answer, just thought, is that maybe that needs a separate district for itself. So that you can address it there. My question to you would be it sounds like we're, we're building structures or allowing structures to be built in a known floodplain. Is that true? And if so, who has the authority to stop that? Because why are we continuing to build in floodplains? And then we're going to turn around, we're going to take the land away from people to do that. Seems to be, I think, other cities, other counties recognize that, and they kind of say, you cannot put structures in these areas.

JOHN WINKLER: Yeah. So, so we're part of the Papillion Creek Watershed Partnership, which includes Omaha, most the communities in Sarpy, Papillion, Gretna, Bellevue, Sarpy County, Boys Town. There's a number of them in there. And as part of that watershed plan, all of those entities have adopted strict floodplain development regulations, probably-- and they're even more stricter than FEMA's. And so since 2008, you know, 2009, they've really curtailed that a lot. My understanding is back in the 50s and 60s, the federal government would give incentives to develop in the floodplain. And so we're kind of paying for the sins of our fathers, right? And so I would say that all of our municipalities are doing a very good job of following those floodplain regulations. We get plats at the district from each one of those, if the city of Omaha has a subdivision they're platting, and we will analyze that for its impact on the floodplain. And we will coordinate with the city of Omaha or city of Bellevue, whoever that may be, to make sure that we're not putting people in harm's way. So those regulations are in place and they're being followed. In fact, it's part of their NFIP program. So if they violate those, the federal government could come in and basically boot you out of the flood insurance program. And nobody wants that for their citizens. So we're doing a very good job of controlling that. Except, you know, we're 100 years behind. Omaha had 100 years of development before we showed up. And now you're trying to protect things that have been in there for a long time.

BOSTELMAN: How often do you use eminent domain?

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Natural Resources Committee December 3, 2021

Rough Draft

JOHN WINKLER: Oh, that was a good question. And so since, and it's-- so I went back as far as I've been there. We have not used eminent domain to acquire property on a reservoir in 15 years, since I've been at the district. We have used it, I think, in 2007 for a trail project and there was a couple of small what we call, I think the NRC's, the smaller structure rehabs that we used eminent domain to make sure that we could bring them up to high hazard standards. But so reservoir projects, we have not acquired one parcel by eminent domain to go through the entire proceeding.

BOSTELMAN: OK, thank you. Senator Erdman.

ERDMAN: Thank you, Senator Bostelman. Thank you for coming. We had requested information from all 23 NRDs and we did receive that. Of the information we received, your budgets and your financial information was the most thorough and, and detailed. I appreciate that.

JOHN WINKLER: I thank my accountant for that.

ERDMAN: Well, whoever, it was very good. So we looked through all that. But talking about that Newport Landing project, if you would, a minute. You sent another flier with that when you sent me the information. And in your testimony, you commented that 53 million was private dollars. But in the slide you sent me or the folder you sent me, it said the Papiro NRD is \$3 million, Hogan [PHONETIC], Hagan [PHONETIC], however you say that.

JOHN WINKLER: Horrigan

ERDMAN: Horrigan Corporation, \$30 million. SID, \$23 million.

JOHN WINKLER: Right.

ERDMAN: And then other, question mark, \$2 million. So are you considering that SID \$23 million private?

JOHN WINKLER: Yeah. Yes, yes. Because, well, they-- it was Horrigan's SID, so that's why it-- and again, I'm only going off what I can read before and who was around. But yeah, we're considering that part of the \$53 million that didn't come from the NRD. And again, so those will be paid by the ratepayers in that SID so.

ERDMAN: OK.

JOHN WINKLER: Yeah.

Rough Draft

ERDMAN: So then on the back, it was pretty small print, I couldn't see it. But that is the-- this is the map of--

JOHN WINKLER: Yeah, that's the map of it.

ERDMAN: So there's a ball field on the side, is that what I see?

JOHN WINKLER: Yeah, and I-- that might be the water quality basin. Yeah, so once they-- my understanding is once they develop that, then I think some of that was left over land they donated to like--

ERDMAN: OK.

JOHN WINKLER: And then we donated to Bennington and the city of Bennington and the public schools. And so again, I'm only-- I can only tell you what I, I heard or read. I wasn't involved.

ERDMAN: All right. So talking about your bonded indebtedness, if you would a minute.

JOHN WINKLER: Yes, sir.

ERDMAN: You made a comment that your current bonded indebtedness is \$84.9 million. What's the mill levy you collect to pay those bonds? Do you know?

JOHN WINKLER: It's, it's six-tenths of one cent. And that's included in our 3.5 cents. And so how the statute was written, the, the Papio NRD cannot exceed 1 cent of its, of its 4.5 cents for bonds. So we're at six-tenths of a cent. And I did check with our with our bond council, D.A., Davidson, and then also Baird Holm to get make sure we get the proper interest rate. And, and it is less than 2 percent. We've refinanced some bonds, the original ones over the years, and we saved like \$6 million by taking advantage of the lower interest rates.

ERDMAN: Can you give me a brief description of what those bonds are for?

JOHN WINKLER: Yeah. So according to the statute, they have to be for flood control or water quality enhancement.

ERDMAN: So for dams you've built?

JOHN WINKLER: They're for reservoirs, they're for floodplain buyouts, they're for levees, they're for water quality basins. Things like that we can, we can bond for.

ERDMAN: And how long do-- how long do these bonds go?

JOHN WINKLER: Twenty years.

ERDMAN: Twenty years? So your, your provision now is you can go to 25 for bonding and then--

JOHN WINKLER: Until 2025.

ERDMAN: And then it sunsets, right?

JOHN WINKLER: Yes, sir.

ERDMAN: Right. So tell me how you put a bond in place. Is it a vote of the people? How do you do that?

JOHN WINKLER: No. So the way the statute written is a supermajority of our board of directors. So you have to have 8 out of 11 board members to approve a bond issue. There's also a provision in the statute that if you wanted to exceed that, that 1 cent amount, then you have to go to a vote of the people.

ERDMAN: OK, OK. And you haven't exceeded that. So is any of that bonded indebtedness involved in the land you own that you're going to put in the development of the project that I'm going to talk about next over at the industrial park?

JOHN WINKLER: No, we can't. No, that would-- it would not be appropriate.

ERDMAN: OK. All right, well, thank you for that. I appreciate the information you sent, it was very thorough. After we had sent that information out, I received information on the project you're trying to develop, you're trying to develop a industrial park there in Omaha.

JOHN WINKLER: So it, it's an old industrial site that has been-- it was abandoned in 1998 by a foreign corporation that moved all the production over to Trinidad because of lax environmental laws, and I think because of cheaper natural gas. They used to make nitrates and nitrogen. There is-- and so we worked with the city of Bellevue, Sarpy County, a number of entities that-- private sector that have, you know, looked at that site to redevelop it. It's just an old-- it's an eyesore, basically, and it has all kinds of environmental issues. And so, so we wanted to form, and the city of Bellevue and our other partners wanted to form up a public-private partnership where we could, we could assist in, in purchasing the site. There's about--

Rough Draft

it's a, it's a roughly 800-some acre site. About 300 acres of that, maybe 350 is kind of what you would call developable land, commercial industrial site. The rest of it, it's just it's, it's old ox, Missouri River oxbow. And when they channel the river, they-- it was, it's about a 10 to 12-foot difference in elevation. So it's really, it's not even good, it's not even good for farming. It's, it's wet all the time. There's a lot of wetlands in that area. And so it's, it's not conducive to anything but what we would like to do, and that would be to create, you know, create some recreation, because we're going to build that concrete trail around there and some wildlife habitat. It could be pollinators, it could be-- obviously we won't create any bird issues because of the base is right there. And so it's a great, it's a great public-private partnership because you can't-- you can't pull it off by yourself. So you're not going to get a development company to come in that's going to buy the whole site, because they can't make it work. They can't get their money back. In fact, they had someone that tried to and it did, it fell apart. So we thought if we could get the, what I call the land that we like, the green space habitat, and they could purchase that and then develop, then, you know, Bellevue could have their industrial commercial spot and then we could obviously get some, some passive recreation, things like that. So that's where it came from.

ERDMAN: So the very first part of that presentation had a two-page document that talked about the partnership.

JOHN WINKLER: Uh-huh.

ERDMAN: Did you write that?

JOHN WINKLER: Uh-huh.

ERDMAN: OK. So and I've seen all the letters of support that have been addressed to you. There were several of them.

JOHN WINKLER: Yes, sir.

ERDMAN: So you guys are the developer. So you say here: As the greater Omaha metro area expands, the open space currently surrounding the historic confluence of the rivers lost-- will be lost to urban development unless action is taken soon to prevent the loss. You're considering urban development as a loss. What is your, what is your reasoning for saying that?

JOHN WINKLER: And so if you look at history-- well, if you look at just the confluence of two rivers around the country, expect-- we can

Rough Draft

always go look at St. Louis, I mean, their confluence of the river is completely-- it's, it's urbanized, it's, it's got a lot of old buildings, factories, things like that. That particular area, obviously, with just the, the, the history of the confluence of the Platte, the Missouri, Lewis and Clark and all those types of things, it would be, it would be great to have kind of that green, green space, that green core there. There's also some floodplain issues there, because that area always when the river comes up, the groundwater always pushes water in there. It would be a great area for storage, for ponding and to help flood control there, help the floodplain. So it's got a lot of good features for us, not for obviously putting a building there. So that, that's where that came from.

ERDMAN: So you talked about 863 acres.

JOHN WINKLER: Uh-huh.

ERDMAN: But in, in the map on the slide presentation that I've seen, there's 1,349 acres.

JOHN WINKLER: Yeah, we're only, we're only considered the 800 and some. We actually--

ERDMAN: So where do you get the 863? I don't see any parcel on there that adds up to 863.

JOHN WINKLER: We could show you. Well, how that parcel is divided is not entirely accurate. We can give you the exact kind of--

ERDMAN: So how much, how much of that land do you currently own?

JOHN WINKLER: None.

ERDMAN: It says right here, it says in the thing that you own certain part of that land.

JOHN WINKLER: Not that parcel, but-- well, so we do own some land that where our levee system is we had to buy for right of way so we could put seepage and various things. So we do own some of it. But it's for the levee project, we don't own anything else.

ERDMAN: How many acres do you own?

JOHN WINKLER: I don't, I'd have to look, I don't know off the top of my head. But so the, actually the 863 that's left probably is already

Rough Draft

taken off. The site was about 915. I think we got the 863 because we removed some of the areas that we needed to buy for the levee. So we, again, we probably don't own any of the 863.

ERDMAN: And you also said in your statement, you said the property of the former nitrogen plants once stood in the former floodplain. What changed? Why is it no longer in a floodplain? Did you--

JOHN WINKLER: Well--

ERDMAN: --build a levee or something?

JOHN WINKLER: No. So actually the, the levee system that we've-- that everything behind the levee that we just completed is out of the floodplain. However, when FEMA is going to remap that area as a result of our project, the portion of that site will be mapped as internal ponding flood-- it will have some designation of internal floodplain or internal ponding. So the portion of that low site that we would be of interest, that's going to be designated as, as an internal ponding area or have some designation that you can't build there.

ERDMAN: So in your, in your information you talked about 170 acres of wetlands and there's already 42 acres of wetland there. And, and the reason that no one would want to develop this because of 404 permitting would be costly to bring the elevation up to where you get above the floodplain. I understand all that.

JOHN WINKLER: Yeah.

ERDMAN: So who owns that land now?

JOHN WINKLER: The, the corporation, Nutrien.

ERDMAN: OK, so they were the ones that moved the plant to [INAUDIBLE]?

JOHN WINKLER: Well, actually it was, it was Arcadia. And then PCS Nitrogen, acquired them through mergers and acquisitions. And then PCS was just acquired by Nutrien a few years ago, and they're both Canadian corporations.

ERDMAN: OK, so this next question is something that I've tried to figure out listening or reading those letters of support. They're all addressed to you. Why is it that the Papio NRD is the developer of this site? Why isn't it a private entity?

Rough Draft

JOHN WINKLER: So we're not the developer. The reason that we wrote those letters of support is because we put in an NET application which, which we wrote to, to acquire the, what we call the, the floodplain or flood pool area. So we're not, we're, we're not developing anything. We are working with, in coordination with those partners. They-- the city of Bellevue could have just as easily had them addressed to them. And so we did it because it was our application to the NET. That's why I had them addressed to me. We're not developing anything. We're just trying to secure that area for the things that we're, we're charged to do by statute, by statute. We create habitat, create recreation, protect floodplain, protect, you know, keep, keep development out of the floodplain. I mean, that, that was a good question by Senator Bostelman, is that what we're supposed to do is keeping things out of the floodplain. And that would do that because we could control that area so.

ERDMAN: As I read through those letters, it sure left me with the impression that it was your job to develop this project.

JOHN WINKLER: No, sir. We're just simply trying to, to put it-- we're simply trying to be a partner to, to get that part of the property and then to turn it into a productive site for not only Bellevue and Sarpy County, but the state of Nebraska. If you look at some of that, I mean, they've actually had-- from the economic development standpoint, it's really a travesty because they've had 1.2 billion of, of capital investment that's looked at that site and it's left because it wasn't available. And so there's no way to do it. If you, if you don't do with the public part, there's no way to do it. It will sit there in, in its current state forever.

ERDMAN: So why can't the public, why can't public-private developers do it?

JOHN WINKLER: Because they won't divide the site. So the private developers would not only have to buy 350 acres of developable land, they'd also have to buy 500 and some acres of nondevelopable land. And they can't, they can't pencil-- they can't sell, they couldn't sell the developable site for enough to cover their cost. They're going to have to put in roads, they're going to do other infrastructure. It would be like trying to swim with a 500 pound weight on your leg. They just can't get above water if they have to buy the whole thing.

ERDMAN: OK, so what you're saying is not economically feasible for a private investor, but the government can do that?

Rough Draft

JOHN WINKLER: No, it's economically feasible for the private developer to buy what they could, what they could develop. And it's, it's-- so it's if you could divide the site into two, great. They would take their part. We or somebody else could get the other part. But, but that's, that's, that's not how the company wants to sell. They want to sell the whole thing. So you, so you can't do it, you can't do it without each other. And so that, that's, that's the whole point of the public. You can't get to the end. If we, we couldn't buy the whole site, why would we want 350 acres of developer land that we can't do anything with? [INAUDIBLE].

ERDMAN: So how many acres are you, is the NRD contributing?

JOHN WINKLER: How many acres?

ERDMAN: Uh-huh.

JOHN WINKLER: Oh, I think we said five something of the eight-- whatever it was.

ERDMAN: You own those now?

JOHN WINKLER: No, those, those-- it's the company still owns those, those.

ERDMAN: So you said the NRD was going to contribute land to the project.

JOHN WINKLER: No, we contribute to buy that, that part. So it'd be basically, it would be a kind of a three way deal. It would be the you'd buy that part, we'll buy this part and--

ERDMAN: OK. And the twelve statute responsibilities that I have here in my hand, where does your involvement in this economic development project fit into those twelve?

JOHN WINKLER: It's not an economic development project for us. It's just one of the ancillary benefits of if we could in fact partner with these folks to get this done. Our only benefit is to the land that we would use for recreation, habitat, all those things that I stated. We, we have no business in the economic development, that, that would be up to--

ERDMAN: I agree with that.

Rough Draft

JOHN WINKLER: Yeah, so but, but we need to be-- if it's going to happen, if it's not us, maybe it's the city of Bellevue, whoever, there needs to be some, some type of assistance-- and maybe it isn't us, to get that done. And so that, that's where that's--

ERDMAN: So who's the lead dog on this end? Who's going to-- who's the one organizing and putting this together? Are you the one?

JOHN WINKLER: No, I'm just--

ERDMAN: Who is?

JOHN WINKLER: I'm just-- I put in an application.

ERDMAN: Who's putting the project together?

JOHN WINKLER: The city of Bellevue, Sarpy County, the developer they're working with. I-- we're just one cog in the wheel. We're not, we're not leading anything. The only reason our name is on the letter is because it's our application for that property. We don't care what happens to the other 350 acres, well, we do, but we don't want them to put some type of environmentally disastrous thing there. But that's up for the zoning jurisdiction to decide. We're just trying to get the property that we think would be, you could use-- that we could use for our purposes.

ERDMAN: Who's going to clean up the environmental issues?

JOHN WINKLER: So what would happen is the, the developer would enter into a, the voluntary cleanup program and they would enroll that with the DEE and they would do all the steps necessary to receive a letter of no further action. And then my understanding is once that's received, then the EPA, since our, our environmental thing is a little more stringent than theirs, they basically send a letter and say, you're done. There's also been a phase one and phase two brownfield study done by the county. Sarpy County did that at their own cost, and they cleaned up a lot of the stuff already. But there's still some things that need to be done. But so that, it would clean up the site, it would take it off the, you know, the contamination issues and then it could be a great project.

ERDMAN: So the land you currently own, you pay property tax on?

JOHN WINKLER: Again, we don't-- no, we-- no, we don't own any of the, any of-- we don't own any of the site, just what we bought for our, our levee project. We have told the county, you know, if you feel that

Rough Draft

you need to, you know, for this project, you feel you need to an in lieu fee or something like that or whatever, we would work with them, but they, they don't take property tax from us.

ERDMAN: Thank you.

BOSTELMAN: Senator Moser.

MOSER: Thank you, Mr. Chairman. When you build these projects, do you have public meetings--

JOHN WINKLER: Yes.

MOSER: --to inform the public what's going on?

JOHN WINKLER: Yes, sir. Any time we acquire property, we have public. We have to have a public hearing per statute.

MOSER: Sure. And typically, the people who show up are the ones that are against it?

JOHN WINKLER: Oh, no, not necessarily. We've had a lot of folks that, especially the last few meetings when we had that kind of that list of people, hey, you got to move, you got to buy this property that showed up in favor. And some people show up that are opposed. Some people just are opposed to reservoir, I mean, just the project in general. But I think most of our meetings now have been people in favor because they want us-- they want to move, they want to move on.

MOSER: Do you document who's there and, and whether they're for it or against it?

JOHN WINKLER: Yeah, it's all in our minutes.

MOSER: Have you ever not done a project based on feedback from the public?

JOHN WINKLER: Oh yeah. In fact, we took one off the map, the dam site 1N3C [PHONETIC] that was supposed to be built in Washington County, kind of touched Washington County in Douglas County, the [INAUDIBLE] just opposed to it. And so it used to be on a map. It was a little core dam that, you know, that was in the original study. And when I came on, I said, why, why are we, why are we trying to do this? It's just no one, I mean, they don't want it. And so we eliminated it from the map.

Rough Draft

MOSER: What's the public's remonstrance, if that's the right term, if the project is moved ahead even after the hearing and, and they're not happy with the result of the hearing? Do they have any recourse?

JOHN WINKLER: Well, they can always, you know, I mean, they have an elected representative on the board. They can always approach them. They're elected throughout the district. There's also legal processes that they can follow, as laid out in statute.

MOSER: They can sue the--

JOHN WINKLER: Sure.

MOSER: NRD. At their expense probably.

JOHN WINKLER: Yeah, I'm assuming. But yeah, I mean, so our board is, you know, I'd say our board is very since-- obviously, they represent those, those folks and, and so-- and I say we are as well. And so they do everything they can to try to accommodate everyone's needs as much as possible. Obviously, you can't do that, but, but they, they bend over backwards to [INAUDIBLE]. And again, there's all legal remedies that they can follow so.

MOSER: It seems like the ones that like the projects don't call us.

JOHN WINKLER: Yeah, well, yeah.

MOSER: And the ones that don't like it are the ones that contact us.

JOHN WINKLER: Yeah, well, well, I liken it to our budget hearings. You know, we, we have a budget hearing and we get, you know, we've got 800,000-some people in our district and we get two to three to show up. It's kind of like I'm, I'm president of our school board. It's kind of the same thing there. I get, we get two people show up to our budget. It's that. And so we need more, we need more participation across the board. But you're right, you probably hear more from people that don't like it.

MOSER: Thank you.

BOSTELMAN: Senator Groene.

GROENE: First, I'd like to follow up with Senator Erdman, 800 and some acres the cooperative purchased with a private developer for 300 and you take 500. Have you negotiated the who pays what? I mean, the prime

Rough Draft

real estate land is going to sell by a square foot, the swamp, but there's going to be one price to Nutrien.

JOHN WINKLER: Right.

GROENE: All right.

JOHN WINKLER: Right.

GROENE: So you going to pay the same price an acre as the developer does?

JOHN WINKLER: No. So we, so we have a-- we engage a private assessor or appraiser, and the property we're buying is far less. I think it's in the application, but it's, you know, it's appraised that flood, flood, floodway--

GROENE: Fishing land type?

JOHN WINKLER: Yeah, it's just, yeah, it's far less than. I think how it worked out is they'll pay more than two-thirds of the entire thing.

GROENE: What's that?

JOHN WINKLER: They'll pay more than two-thirds.

GROENE: Two-thirds. And then--

JOHN WINKLER: And it will probably be more than that.

GROENE: You mentioned something about you're going to make it a wetlands, but you can't have ducks around or geese because of the Offutt.

JOHN WINKLER: Yeah, actually, it's actually it's already wetlands. There's a number of wetlands that are there.

GROENE: [INAUDIBLE] gotta be ducks in there.

JOHN WINKLER: Yeah. Well, no, there's no standing water. There's no, like a lake. And so what happens is when the, when it rains, you know, it'll get water, but then it'll seep in; or when the river's high, it'll come up, but it doesn't stay consistent. So, you know, to-- if you have to mitigate those, I think it's, you know, three to one minimum. But yeah, it doesn't, it doesn't stay consistent. And we can do some things too to help that you're not creating a, a consistent place for waterfowl to-- there's techniques you can do. I think most

Rough Draft

of we're looking to is, you know, pollinator habitat is a huge thing. And this would be a great, a great spot for, for that.

GROENE: Not to change subjects on you. Back to the levees around Omaha that were built by the corps.

JOHN WINKLER: Uh-huh.

GROENE: You say now you're responsible for them.

JOHN WINKLER: We're responsible for the levee system that goes probably from Bellevue's Hayworth Park, then it goes around Offutt up the Papillion Creek, and then on the other side of Papillion Creek, it goes and it wraps around the Platte back to Highway 75.

GROENE: But you don't have the 13 miles [INAUDIBLE]?

JOHN WINKLER: No, the city of Omaha would be responsible for those.

GROENE: And the corps, corps isn't.

JOHN WINKLER: No. So the corps builds them and hands them off, and then they look at you and say, you need to operate and maintain them.

GROENE: So when the Missouri River broke out, I can't remember the year, 2019, the last Missouri River flood and a lot of land got, anyway--

JOHN WINKLER: Yeah.

GROENE: --and the levees broke.

JOHN WINKLER: Yeah.

GROENE: Who paid for that?

JOHN WINKLER: The corps paid for the repairs, except for

MOSER: 80 percent.

JOHN WINKLER: So we-- yeah. Well, yeah, there you go. He's right.

GROENE: What?

JOHN WINKLER: 80 percent, yeah. Except for one, there was one breach that was on our levee system and we paid for it because the corps couldn't get to it quick enough. And our big fear was that any breach

Rough Draft

we wanted to fill as quickly as possible in case there was more flooding. So we paid for that ourselves. But they, they paid for most of it.

GROENE: Remind me of the circumstances. Was the Offutt flooding off the Missouri because of those levees or because of the flooding--

JOHN WINKLER: It was because--

GROENE: --of the tributary?

JOHN WINKLER: It was because, it was because the Platte. The Platte came basically from over the Platte River levees and went from south and pushed north. And then when the Missouri and the Platte collided, it backed up the Missouri. The Missouri was three feet below 2011 flood.

GROENE: So the levees you're fixing are the Platte River levees?

JOHN WINKLER: They're Missouri and Platte. They're both, that's all one system. We treat [INAUDIBLE].

GROENE: And then I read here the NRD, in partnership with the city of Omaha, city of Bellevue, Sarpy County, state of Nebraska designed and permitted constructing \$38 million levee upgrade project. How much of that \$38 million came from the state of Nebraska?

JOHN WINKLER: \$13.7, sir

GROENE: Of the--

JOHN WINKLER: Yeah, and then it was--

GROENE: Money from the Governor.

JOHN WINKLER: Yeah, it was \$3 million from Omaha, \$3 million from Bellevue, \$3 million from Sarpy County, \$13.7 from-- and then the rest has been ours.

GROENE: All right. Also, it seems that-- I understand it's part of the, if you read the fine print of the statute said economic development or could be interpreted into that, your mission. But Papio Watershed has been developed at a rate of three square miles per year for agriculture and urban use since its historical flooding, 75 square miles. It seems like your biggest emphasis now is still economic development, is now economic development.

Rough Draft

JOHN WINKLER: Well, it isn't. And the reason, I mean, is and obviously flood control and all the statutory things are our main issue, it's, it's you really can't separate. And I liken to any time we build a project, if it's a levee, if it's a reservoir, if it's a trail, those are, those become amenities and development just follows them. It's, it's, it's a-- it's like I said, if they open a golf course--

GROENE: Well--

JOHN WINKLER: --what happens? They build around it. They open a park, what happens? They build, they build a school, they build around it. And it's, we're just, we're no different.

GROENE: Well, but then you talk, talked about the Washington County project.

JOHN WINKLER: Uh-huh.

GROENE: The people didn't want it.

JOHN WINKLER: Uh-huh.

GROENE: You don't build a flood control dam for the people around it. You build it for the people downstream.

JOHN WINKLER: Exactly.

GROENE: So the people downstream that were getting flooded didn't want it?

JOHN WINKLER: Well, they wanted it.

GROENE: Well, those are the people you should be concerned about, flood control, not who wants it around the lake?

JOHN WINKLER: Well--

GROENE: Isn't that your mission?

JOHN WINKLER: Yeah. But so how do you, how do you build a structure that you have to have the county to agree to close roads? You have to acquire property, you want us to acquire it all by eminent domain. So I mean, those are all sensitivities that, you know, should we be protecting the people downstream? Of course. But, but at the same time, then we get beat on the head about, well, you're using eminent domain, you're taking property. And so you have to balance those things. It's a fine, it's a fine balance. And that's why we have an

Rough Draft

elected board to try to navigate those things and say, you know, hey, the, these communities and these particular landowners want this. And so those, those are things that we need to focus our resources on. Do we want to spend, as Senator Moser kind of alluded to, in court for who knows how long trying to build a project that no one wants and it's just a waste of resources.

GROENE: Historic flood, nobody's seen anything like it.

JOHN WINKLER: Uh-huh.

GROENE: The existing flood control on the Papio worked just fine. Why are you building more dams if it isn't just for economic development?

JOHN WINKLER: It was the Omaha-- interior of the Omaha metro area was not as affected by the tributaries, and so there was not as much rain and snowfall in the interior of that system. It wasn't-- so for example, we received a lot of our water from the Loups, the Elkhorn, and that just all came downstream. And that was, you know, to the Elkhorn in the Platte Rivers. There was nothing that fed the Papio system except for the internal watershed. So it was kind of isolated, although we did have very high readings on all of our gauges and levees, I mean, they were right at the top. So it worked for that event. But it wasn't, it wasn't a 100-year event that all of these studies or 500-year event that all of these studies determined the flood risk for the watershed.

GROENE: When was the last time the Papio flooding caused appreciative damage?

JOHN WINKLER: Probably the 70s.

GROENE: And how many dams have been built since then?

JOHN WINKLER: Quite a few. I don't know off the top of my head, but I mean, I could--

GROENE: So it seems to me you have that under control, the Papio flooding.

JOHN WINKLER: Well--

GROENE: I just can't see the necessary of building more dams.

JOHN WINKLER: And so that's why we do these studies consistently, to, to-- and I learned something from all the pilots I work with. You have

Rough Draft

to constantly evaluate your situation, analyze where you're at, you know, all the time. And so that's why we have these studies done, this general reevaluation study. And that way they can come and say, hey, where are we? Where are the dangers? What are we doing good, where do you need to improve? And so that's why we do that. So are we there? Not yet. And it's, and it's, it's in the, it's in the studies. But once we do get there-- and like I said, we'll never get 100 percent. But I can tell you what we've done has done a great job. It's not, it's not there yet. It's not to the best it can be. It will never be perfect. So that's why we continue to do that.

GROENE: How much are your budget of flood control is on maintenance, the dredging old ponds and fixing the dams?

JOHN WINKLER: Yeah. So our maintenance budget, again, I don't know off the top of my head. We don't dredge our, our water quality basins because they're made to fill in. I'm trying to think the last time we-- I don't know that we've ever dredged a reservoir that we've constructed. The corps has had to because they didn't construct the water quality basins. We buy a lot of rock though on channel maintenance and, you know, as the, the streams in our district slough and the elevation drops, you know, we're getting a lot of sloughing and we're getting a lot of-- and some of these are old. These levees are, you know, 50 years old.

GROENE: So if they fill in you're forced to build another dam?

JOHN WINKLER: No. So how it's constructed is the reservoir itself is protected from filling in by water quality basins. Those fill in and then they're just left, they're left as water quality basins. And we don't dredge those. And the city, in fact, the city of Omaha has a rule now, they don't dredge them either, because that's what they're--

GROENE: They're using-- losing capacity?

JOHN WINKLER: No, once they fill in, the area is fully developed then there's very little soil and erosion runoff then. So once they fill in, they're done. They, they'll continue to capture some. They're very good for filtering water, water quality as far as pollutants. And so they remain a wetland that, that's what they do.

GROENE: Thank you.

JOHN WINKLER: Yeah.

BOSTELMAN: How many board members do you have?

Rough Draft

JOHN WINKLER: 11.

BOSTELMAN: And how are they-- you have six counties.

JOHN WINKLER: Yes.

BOSTELMAN: So are they evenly distributed between the six counties?

JOHN WINKLER: So there's [INAUDIBLE] subdistricts. The last redistricting, they represent 75,000 each. So, so District 1 encompasses the more rural counties, and actually even comes down into Douglas a little bit to pick up the, the population. So we're on one person, one vote, less than 5 percent error ratio in that. So the rest of them are scattered out through Sarpy and Douglas Counties.

BOSTELMAN: So, so a rural person has one person represented out of-- that represents them out of 11.

JOHN WINKLER: That's right. That's, yeah, that's how it's done.

BOSTELMAN: So it would be on the board, I guess it would be pretty hard for a one board member to, to make many changes to that, especially if you're talking about plan being taken up that's farm ground or a person's livelihood. That one person has a pretty small representation on your board of all those others.

JOHN WINKLER: Right.

BOSTELMAN: Are there other questions? Senator Moser.

MOSER: A couple of the thoughts I had, and I apologize. But the first testifier gets the most questions.

JOHN WINKLER: That's fine, I'm here all day.

MOSER: I don't want to be here all day. I'm about 80 percent.

JOHN WINKLER: Yeah.

MOSER: Eighty percent here today. We had a ice jam on the Loup River. I represent Columbus. And I think it was in 93 and it came within inches of overtopping our levee. And along there somewhere FEMA suggested or demanded that all the levees be certified. I don't know if that was later. Was that?

JOHN WINKLER: Well, yeah. So if they, if, if they were going to provide a level of flood protection, then they must be certified.

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Natural Resources Committee December 3, 2021

Rough Draft

There are levees that aren't certified that obviously provide protection. But if you're going to take credit and take land and structures out of the floodplain, they have to be certified and that's by FEMA.

MOSER: Yeah. So anyway, it was dangerously close. So they, we hired an engineer and they checked the whole levee for elevation and turned out it was 18 inches too low in some places, and the bottom of the river wasn't as slick as they thought or whatever the right engineering terms. What do they call-- stiction, what do they call the, the--

JOHN WINKLER: I know you're talking about, but--

MOSER: Yeah, the flow of the river. Anyway, we had all kinds of hearings for that.

JOHN WINKLER: Right. Right.

MOSER: And so the engineers said, well, you ought to be able to do that for less than \$2 million. So and I think at that time, the NRD was going to contribute something to it, but the city was the lead agency. So then as we get started, you know, getting closer to taking bids on it, the Corps of Engineers got wind of it and they said: Listen, if you develop this or improve it or modify it substantially without our approval, then when you have subsequent losses, we're not going to come back and pay the 80 percent. That's how I knew the 80 percent was--

JOHN WINKLER: Yes, that's correct

MOSER: --there. So then we had to get FEMA involved and the Corps of Engineers, and between the two of them, when you have to persnickety agencies picking at each other, it just-- costs just ballooned and went from-- the engineer's estimate went from like 1.6 or 7. And I think when it's all done, I think it was-- or when it was all done, it was 3.4 or 3.5.

JOHN WINKLER: Yeah.

MOSER: And, and all they did is added 18 inches in some places and then fix the slopes where that made the slopes too great of an incline.

JOHN WINKLER: [INAUDIBLE], yeah.

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Natural Resources Committee December 3, 2021

Rough Draft

MOSER: And so while we cursed the NRD and the FEMA and the corps, they did provide a service or we've got a good product when we're done.

JOHN WINKLER: Right.

MOSER: But what about McDonnell's bill to build reservoirs for economic development stuff? Will that cost the NRDs money?

JOHN WINKLER: We don't have anything in our budget for it. I-- that's Senator McDonnell, I don't-- we've not been approached to pay for--

MOSER: I'm blaming him because he was the guy that thought of it, but he's got a lot of compadres that have signed on to it.

JOHN WINKLER: Well, we, we have a lot of projects that, we have a lot of things that we need to do. I can't imagine our board diverting resources to do something extra so.

MOSER: I might have been the only one that voted against that.

JOHN WINKLER: So that, Senator McDonnell can answer that.

MOSER: Yeah.

JOHN WINKLER: But what, I mean, just on our Missouri River levees, when you talk about the corps and FEMA, I mean, we-- it took us eight years to get a permit, \$6 million, eight years to get that permit. And the most ironic thing is the original design, when we submitted, it didn't change over the eight years when they approved it. And so there you go.

MOSER: The only thing we found different is the corps required us to do a little more testing, and they found some toe drains were clogged. The ones that kind of let water seep out of the levee--

JOHN WINKLER: Right.

MOSER: --so it doesn't melt and collapse. And so that was an improvement so.

JOHN WINKLER: Right.

MOSER: Thank you.

BOSTELMAN: Senator Cavanaugh.

Rough Draft

J. CAVANAUGH: Thank you, Chairman Bostelman. Thank you, Mr. Winkler, for being here, and I wasn't going to ask any questions because I think Senator Groene and Senator Erdman did a real nice job of asking a lot of questions that I wanted to. But I kind of-- so Senator Groene mentioned that we haven't had any flooding since the 70s in Omaha and we continue to build. The city of Omaha is not the same that it was in 1970. There's an increase in perme-- nonpermeable surfaces as the city progresses west and we have more of those rooftops which don't absorb the water, right?

JOHN WINKLER: Correct.

J. CAVANAUGH: And so that's, I mean, that's got to be one of the reasons we have to continue to build, right?

JOHN WINKLER: Yes.

J. CAVANAUGH: My question and concern is we build these levees, are there more cost-effective ways to address the increased amount of runoff and water and necessity to mitigate these flows than building reservoirs?

JOHN WINKLER: Yeah.

J. CAVANAUGH: And is this project kind of that Senator Erdman was talking about down in Bellevue, where you leave land out of development, is that one such less-costly option?

JOHN WINKLER: Yeah. So, so throughout our, throughout the Papillion Creek Watershed we have, we have areas that are like, like what we're talking about that, that project where it's-- we call it pooling, pooling area, where it will just stay consistent greenspace farmland. So we have those throughout the whole, the whole watershed, especially toward the bottom. You know, we've looked at, we've looked at, you know, building-- again, I kind of mentioned those, those smaller little water or low-impact development sites. And there was like I said, like 16 under some throughout the watershed. And the problem is, you know, it may be cheaper upfront, but then the maintenance is just, you know, you talk to the cities and counties and that have to maintain them and they're like, you know, they collect trash they-- you got [INAUDIBLE], I mean, it's just things that go along with them.

J. CAVANAUGH: Those are lower-cost engineered solutions.

JOHN WINKLER: Right, right.

Rough Draft

J. CAVANAUGH: My question is, are there lower cost, basically inaction? And when I, when I see things you talk about in federal environmental regulation, one of the questions you have to ask in terms of any federal-lead project is, is the impact-- what's the impact of no action?

JOHN WINKLER: Right. Right.

J. CAVANAUGH: And so I guess that's my question, is that something that the NRDs consider, is like this project we're talking about up in Washington County, decide not to build that, you're not putting people's livelihood and lives at risk by not building that project, you're choosing to pursue a different avenue of--

JOHN WINKLER: Yeah. So every project we look at, we go through a-- part of the permitting process you go through an alternatives analysis is what's the least impactful. You know, so we do a holistic, it is a holistic approach. It is, it's not reservoir, it's not solely reservoirs. It's reservoirs, levees. It's internal ponding areas. It's, it's rules and regulations that keep people out of the floodplain. It's terracing. It's all of the above. It's encouraging permeable pavement. It's encouraging collection of, you know, there's a requirement that all developments have to retain the first half-inch of runoff on site, which is very good for water quality, helps flood control a little, but not tremendously. So there's all these, there's a whole host of what I call arrows in the quiver that we can use to, to, you know, help with flood control. So we're just not out running willy-nilly just, hey, build this, build reservoirs and forget about the rest. It really is a focused effort to try to take every tool we have available. We even have a buyout program that we work with FEMA, so we buy out repetitively flooded properties and try to get them out of harm's way. Now it's all voluntary, so we can't go in and say, hey, we're, you know, we're going to, we're going to eminent domain the whole area, you have to leave. That's not how it works. It has to be all voluntary if they, they want to leave the floodplain, floodway area, we have a program to help them do that. I think we are the only entity right now that we're trying to fix levees that were damaged during the-- private levees, quote unquote, during the, the '19 flood that have never been fixed. And, and they provided a certain level of protection. But they, they just, nobody knows the owner. The owner has transferred, you know, transferred. Some people built houses in them and they collapsed. And Senator Bostelman has done a great job trying to, you know, to get attention to that and trying to get an inventory and all those things. When we, a lot of them, we don't even know that

Rough Draft

they were a levee. And so it really is all of the above, and it has to be. We can't just focus on one.

J. CAVANAUGH: Thank you.

JOHN WINKLER: Yep.

BOSTELMAN: Are there any other questions from committee members? Seeing none, thank you very much for coming.

JOHN WINKLER: All right. No, thank you.

BOSTELMAN: Really appreciate it.

JOHN WINKLER: Have a good weekend.

BOSTELMAN: Next testifier we have is Mr. Mike Sousek from Lower Elkhorn NRD. Good morning and welcome.

MIKE SOUSEK: Good morning, Senator Bostelman.

BOSTELMAN: Go ahead, sorry.

MIKE SOUSEK: All right. Good morning, Chairman Bostelman and members of the Natural Resources Committee. My name is Mike Sousek, M-i-k-e S-o-u-s-e-k, and I am the general manager of the Lower Elkhorn Natural Resource District. Our district office is located in Norfolk, Nebraska, and our district encompasses all or parts of 15 counties in northeast Nebraska. First, I'd like to thank the Natural Resources Committee for inviting me to testify this morning concerning LR23. While I'm confident that this committee understands the fact that climate cycles have caused in the state of Nebraska, I want to highlight a few facts from northeast Nebraska. The Elkhorn River Basin provides 32 percent of all the water reaching the Missouri River during the summer season. The Loup River Basin provides 46 percent and the Lower Platte Basin provides the final 22 percent of water reaching the Missouri River. Over the last 12 years, we have had watersheds experience 100-year storm on average every four years. Some of these storms eclipsed the 100-year threshold and even the 500-year storm, with the most recent 500-year storm occurring in 2019 during the March bomb cyclone. It may come as a surprise to this committee, but during that event, the city of Norfolk had as much water in the bypass channel running through the city that usually flows in the Missouri River. That amount of water stressed the diversion channel to its limit, and the only reason it survived was due to an NRD dam structure 15 miles upstream, which held back 18,000 acre feet of water or 5.8

Rough Draft

million gallons. Willow Creek Reservoir has a normal conservation pool of approximately 700 acres, but during the event, swelled to over 12,000 acres-- 1,200 acres, excuse me. Which is how it was designed, and helped to significantly alleviate downstream flood impacts, most notably to the communities of Pierce and Norfolk. Think of that. A tributary of the Elkhorn River, two hours west of Omaha, became the size of the Missouri River as it was flowing and gaining volume, navigating and destroying the region from the Elkhorn River to the Platte River and ultimately ending in the Missouri River. On the opposite side of the spectrum. During the same 12-year period, we've experienced the most extreme flash drought in the last seven years, which occurred in 2012. This extreme drought brought to the forefront the vulnerability in our agriculture system that has such a reliance on groundwater for irrigation. The spike in demand from all groundwater users, most notably from municipal irrigation, livestock and domestic well owners, provided evidence that the natural system has limits, and in-season groundwater shortages are documented throughout the district. Should that drought have lasted another year or more, as has occurred in other parts of the United States, catastrophic environmental and economic ramifications would have been realized. The extremes we are experiencing in weather cycles is unprecedented. For example, this flash drought followed two years that were plagued with flood, flooding along the Elkhorn River. This sets the stage and needs to be kept in context as I continue with my testimony. The Lower Elkhorn NRD, in cooperation with the federal government, local communities and property owners, has undertaken two planning exercises to address the flooding concerns and 2 over 21 watersheds. Those watersheds are the Maple Creek Watershed in the Battle Creek Watershed. The method the board has chosen to evaluate and plan for these areas is through a program with our federal partners USDA through NRCS. Through their WFPO program, which stands for watershed flooding prevention operations, the district submitted a proposal for grant dollars to be used for an evaluation and plan. This is 100 percent financially covered within our CS moneys, which we successfully secured. Once the evaluation and planning process is complete, the plan will be presented to the board for approval. By utilizing this effort, we will then be eligible for moneys to go to individual landowners to place flood prevention measures on their properties, to work on projects that are acceptable within the watershed, and to help communities with their flood prevention needs. The major point of going through this exercise is to provide both flood protection and property tax relief. The property tax relief comes by securing federal, federal dollars, rather than raising local property tax dollars to do the same work that has been tasked to us by

Rough Draft

this Legislature. NRCS provides 100 percent of the financial requirements for design and construction of projects within the plan. As requested by Chairman Bostelman, I will briefly discuss each plan and give a brief update on current progress. First, two questions were asked about how big is the Maple Creek Watershed project and what are the expansion plans for the Maple Creek Watershed project. There is a very important clarification that I would like to make here in my response. There is no Maple Creek Watershed project. No projects have been determined to date. We are currently evaluating what projects are technically and economically feasible and equally important, socially acceptable. The district is currently working through the elements spelled out by NRCS for the WFPO plan, and we just passed the 30 percent completion threshold. I currently have staff working with individual landowners in the watershed, having conversations on what they would like to see for flood protection. More importantly, the conversation is also about what they are willing to do to help with flood reduction. While not everyone is interested in doing something, we do have individuals that are expressing their willingness to play small flood control structures on their property, whether it be a small wet dam, detention cell, wetland development and even redesigning terrace systems to work with modern day agricultural equipment. These measures are being documented and integrated into the WFPO plan to help the board of directors determine what level of flood control we are willing to tackle and to help us secure the dollars needed to implement the approved plan. The second component of the Maple Creek WFPO plan is our continued commitment to help communities in the watershed attain flood reduction also. The district has been working with the village of Clarkson now for over 10 years, with the most current interlocal agreement being signed in June of 2020. The community has been struggling to find necessary money to bring their levee system to standards for accreditation, which is a common situation for other rural Nebraskan communities. To remedy this situation, the district has provided communities with 50 percent of the local cost to accomplish such projects by incorporating this project into our WFPO plan, neither the village of Clarkson nor the NRD will need to use valuable financial resources because the federal government will cover 100 percent of this costs. The village of Nickerson is situated at the bottom end of the Maple Creek Watershed and subsequently receives excess flows from accompanying flood events. This community has continually asked for our help for flood reduction, and we are incorporating a project to redesign or remove altogether a bridge that seems to be a bottleneck in the system. This project would also be covered under this plan. Moving on to the question of what are the needs and considerations concerning the proposed Battle Creek

Rough Draft

Watershed project. While the board has yet to formally approve any project, we are currently working through a similar WFPO process to secure federal funds that can be used to complete a project. To provide context to current discussions, a look at the history of the planning in this watershed will help. It experienced extreme flooding, documented flooding from the 1940s to today. In 1964, the U.S. Corps of Engineers completed a planning effort in the watershed. In 1975, the Madison County Comprehensive Plan proposed flood control structure in the Battle Creek Watershed. In 2007, the city of Battle Creek master plan focused on internal drainage improvements. February of 2009, Battle Creek flooding evaluation identified and evaluated multiple alternatives, which included a diversion channel, levee and reservoir. November of 2009, the survey of a dam site, size of dam, cost estimates established for that alternative. In 2011, a preliminary geotechnical investigation for alternative modeling downstream impacts and investigation into NA-- NARDF grant assistance. In 2012, a hazard mitigation grant application to do a cost-benefit analysis [INAUDIBLE] was denied due to ineligible elements, mainly bridges. 2014, the diversion channel explored once again with detailed modeling of downstream impacts and environmental assessments of alternatives. After the 2014 study, the board continued discussions with the city of Battle Creek. They tasked the city council to prioritize a specific project and to identify the amount of financial contribution the city would provide to pay for such project. In May of 2019, after yet another flooding event in the community, the city council voted to ask the NRD for assistance with construction of a dam to help, to help protect the community of Battle Creek from future flooding. This action was subsequent to an internal community vote by the residents of Battle Creek, which provided direction to the city council. See the attachments of the city, city of Battle Creek regular city council meeting from May 13, 2019. The NRD board then instructed me to develop a plan and financial strategy to pay for such a project with lead, which leads us to present day activities. The current WFPO plan has just completed the 60 percent threshold, and we hope to be completed with said plan early to mid-2022. To address considerations being made by this board for such a project, multiple responsibilities of the NRD have been discussed. This singular project could address flood control, drought mitigation, water quality and recreation opportunities for the immediate area, and provides regional benefits to address the same concerns in eastern Nebraska. On the subject of water quality, while this aspect often gets overlooked, a dam structure brings water quality to the forefront and is addressed in design and implementation of a project. Large reservoirs improve water quality immensely because they do it both above and below the

Rough Draft

reservoir. The large reservoir and the in-lake structures, such as water quality basins built with it, will allow sediment from the watershed above to settle out and keep it from being transferred downstream. The creation of a reservoir allows us to focus on the contributing watershed in order to improve water quality and aquatic habitat function and fisheries in the reservoir. Through the reservoir design process, we assess sediment loading to the reservoir and by focusing on opportunities to improve water quality in the reservoir, can partner with NRCS, EPA and other agency stakeholders to use funding, such as EPA's Section 319 funding and NRCS's numerous conservation practices to improve water quality above the reservoir. Often NRCS can identify the watershed as a priority watershed and further reduce landowner project cost-share and improving upstream water quality. Flood protection. Downstream of the potential Bear Creek Reservoir, there are 190 structures, 168 urban residences and 22 businesses in the 100-year floodplain, with an estimated value of \$11.2 million. If the dam was constructed, it would remove all of the, all of them from the 100-year floodplain. Additionally, there is 1,169 total [INAUDIBLE] acres in a two-mile stretch between the reservoir and the Elkhorn River in the floodplain, with an estimated annual crop value of \$219,000. The dam would remove 698 acres, or \$120,000 of potential damage to crop value. These values do not account for any savings downstream once the water reaches the Elkhorn River.

Infrastructure such as highway, bridges, rail lines and agricultural ground continue to see benefits downstream with the water being held back in the flood pool of the reservoir. The potential flood risk reduction project would provide \$500,000 in annual flood damage avoidance in the project area, in addition to a savings of approximately \$450,000 annual in required flood insurance premiums for a total of approximately \$1 million annually. Drought mitigation. One of the proposed projects' water supply pool sits at 1,671 feet above sea level. The conceptual Battle Creek Dam would provide 12,205 acre feet, or 1,033 surface acres of water. If this structure is to be used for streamflow augmentation, water could be released for 13.8 days using a release rate of 400 CFS and assuming an initially full reservoir. This, in conjunction with potentially other reservoirs, could supply the MUD and the Lincoln water system during a flash drought to keep their wellfields functional. These types of projects bring resiliency to a system that currently has none. If the water is kept in the reservoir, it also provides resiliency to the agricultural demand on irrigation. This site is ranked as high potential for aquifer recharge. It will provide water to the Elkhorn River through its connection with groundwater and keep the local aquifer recharge providing water at a time when it will be needed most. Recreation. A

Rough Draft

reservoir at this site could provide recreation opportunities in an area of Nebraska that is lacking such quality of life benefits. The economic benefits to the local economy and its attractiveness to bring people to northeast Nebraska cannot be understated. One of the recently constructed reservoirs in eastern Nebraska has shown annual average benefits of \$700,000. This proposed site, which would be twice the size, I believe it is safe to say, could provide a minimum of similar amount of benefit. Current estimates have identified \$782,437 of recreational benefits from this Battle Creek project. I would be happy to answer any questions the committee may have, and thank you once again for this opportunity.

BOSTELMAN: Thank you, Mr. Sousek, for your opening comments for today. Are there questions from committee members? Senator Groene.

GROENE: Thank you. I'm getting emailed, I think a lot of us are, about your flood survey on the Maple Creek. Is that correct, you're--

MIKE SOUSEK: Yea, we're doing that WFPO. We're going through that process currently.

GROENE: I got one of those because I own, my family owns land in Cuming County. That whole creek goes through our land. That would be a tributary of the Maple?

MIKE SOUSEK: Yes, I believe so.

GROENE: All right. So you're looking to put flood control in that area to control the flooding on the Elkhorn?

MIKE SOUSEK: We're looking for flood control to control flood control on the Maple Creek.

GROENE: And what communities flood?

MIKE SOUSEK: It starts with Leigh, Clarkson, Howells and Nickerson would be the four communities in that, along that creek.

GROENE: Isn't there a pretty good sized lake now by Leigh?

MIKE SOUSEK: There was one constructed 2010-11.

GROENE: That was by you?

Rough Draft

MIKE SOUSEK: That, so that part of the watershed is not part of our current evaluation. That part of the watershed upstream from there we're considering treated. So we're looking at it from that point--

GROENE: Downstream.

MIKE SOUSEK: --from that point downstream. Yes.

GROENE: But doesn't the dam protect downstream, not upstream?

MIKE SOUSEK: Well, yeah. But it's not part of-- we're not looking at doing anything more--

GROENE: Upstream.

MIKE SOUSEK: --upstream of that dam, correct.

GROENE: After that dam, you're looking at flood control further down.

MIKE SOUSEK: Yes, we still have, we still have issues along Highway 91 from Clarkson, Howells and Nickerson.

GROENE: I grew up in that area and I never remember a flood.

MIKE SOUSEK: Oh, well.

GROENE: On 91.

MIKE SOUSEK: Yeah, especially down on the bottom there by Howells. There's that bridge. I don't know if it's gone over the highway there, but that--

GROENE: Not highway, down in the city itself. That's down in the floodplain.

MIKE SOUSEK: Yeah. And then Clarkson, too, has a levee around it.

GROENE: I know their park and then all the [INAUDIBLE] has flooded a few times.

MIKE SOUSEK: Yeah.

GROENE: And that's never been fixed?

MIKE SOUSEK: No. Not to a point where it needs to be.

Rough Draft

GROENE: And you're looking at more containment ponds, not a big lake in that area?

MIKE SOUSEK: Yeah, we-- there is a lot of-- I'm assuming the phone calls you're getting are about we're going to build this grandiose large structure. And that's not the case. We-- I currently have staff, as I mentioned, working with individuals to do things on their own property where it's not going to affect their neighbors. So if they're willing to put in a small, small dam, either wet or dry, detention cells, wetland development, we've even had producers say we'd-- I'd like to get rid of these terraces and put in different terraces to use with modern day equipment. So we're looking at everything that we could possibly do without having to do a large structure.

GROENE: So how small a structure, how small a project acrewise you can go and how large?

MIKE SOUSEK: Well, it depends on the, the landowners. I mean, if they have 20 acres and it's along the creek and they can do something, we're trying to work with individuals right now to identify what, what are the possibilities?

GROENE: Thank you.

BOSTELMAN: Senator Moser. Excuse me, Senator Moser.

MOSER: I just have a couple of questions about the objections that I received, calls and emails about said that the project was going to be as large as Branched Oak.

MIKE SOUSEK: There-- well, no, that's not true.

MOSER: Is that possible? Isn't Branched Oak like a square mile or more of water?

MIKE SOUSEK: I believe Branched Oak is maybe around 1,400 acres, 1,200, 1,400, somewhere there. I'm not, I'm not really sure. There is no--

MOSER: 1,400.

MIKE SOUSEK: We're evaluating-- there is no project, Senator Moser. We're evaluating what can be done. And so the, currently the board, we are inventorying all these individual little things that we can do and to present that to the board saying we can, we can, just by doing

Rough Draft

these things, we can provide maybe protection against the 25-year storm.

MOSER: Well, maybe there's not a project, you know, if you want to say that semantically, but you've sure gotten the attention of some landowners there.

MIKE SOUSEK: Oh, I realize that. I, I-- we had a public hearing, not a public hearing, an open house at the ballroom in Howells, and we had probably 300 people there. And I try to explain to them that this is not something that-- they tried, the Corps of Engineers back in, I believe, the 1970s looked at the watershed, proposed a bunch of dams. I tried to assure these people that's not what we are currently looking at doing. We're looking at working with individuals to do things on their own property that's not going to affect their neighbors, or if they're willing to, if their neighbors are willing to work with them, you know, maybe it could be a little bigger. But we are not proposing large, Branched Oak-type of structures.

MOSER: So their fears of eminent domain taking their property are not legitimate?

MIKE SOUSEK: Well, the board, I don't know the full history. I've been at the district now for seven years. We've never used it. I believe there was one, one case, they used it at the structure at Leigh. I believe there was one eminent domain there. But it is a, it is a power and authority that the board doesn't-- they take it very seriously. And there is no interest from what I am sensing that I have any board members that are that anxious to enact something like that. And, and the board members are telling the public, too, the same message. We're, we're not trying to build large dams, we're trying to see what we can do to provide any type of flood reduction.

MOSER: The lake at Leigh is on the same watershed that you're trying to fix--

MIKE SOUSEK: Yes.

MOSER: --that's close by Howells?

MIKE SOUSEK: Yes. And that, from what I, from the history and the people I've talked to, that project came about because of the village of Leigh. They, they came to the NRD and, and requested it and asked for it. And that's what started that whole process.

Rough Draft

MOSER: Yeah, I got some negative feedback from some of the people whose land were involved, lands were involved in that project. And I think that's part of the objection to the potential one at Clarkson--

MIKE SOUSEK: Yeah.

MOSER: --or wherever you're considering it.

MIKE SOUSEK: Senator Moser, I understand, I understand the concern and the fear and the emotions that are involved with that. And everyone that I'm talking to, I'm trying to relax those. But currently we don't have a project. We are just doing an evaluation to see if, is there something we can do? And if there is, we have a, we have access to money to do it where we won't have to use property tax dollars. One of these projects is with the village of Clarkson to get their levy recertified or accredited. Everything I've seen, this pro-- their project will fit into our plan where they won't have to pay for it, we won't have to pay for it. But the NRCS will be able to use those dollars to finally get something resolved, which has been on the table for about 10 years now.

MOSER: Yeah, I'd say congratulations on getting 300 people to the Howells ballroom.

MIKE SOUSEK: Well, I had about 100-plus at my last board meeting and I brought my chairman today. And it's, it's, it's stressful, but it's understandable. It's just trying to get something done.

MOSER: Thank you.

BOSTELMAN: Senator Wayne.

WAYNE: So one of the things that stands out to me is obviously technology has changed. A lot of things have made it easier for people to communicate and make decisions across wider areas. People are farming at a larger rate with less people. Structurally, why do we need 23 NRD boards too?

MIKE SOUSEK: On a, a larger picture just across the state we're-- all 23 districts are dealing with almost 23 different scenarios of what the needs are. The geology, the water, the farming practices, the livestock. As you go across the state, it changes all the time. So we're dealing, we're dealing with different things. As far as the flood control structures, being a, being a strong proponent of local control, the people that are living in that area are making the decisions for the what is being done. That would be one of my more

Rough Draft

stronger arguments for why we need 23 NRDs, so people that are not, say, in western Nebraska are making decisions for people in eastern Nebraska.

WAYNE: Yeah, I'm just thinking about we have, I think, seven or nine members on the State Board of Education at the university, but we have 23, 23 different boards. How big is your board? What stuck out to me is there some people who have 17-- 21 board members.

MIKE SOUSEK: Yeah. So each, each board, to go back to the issue with the 23 districts, you know, they're not based-- they're based on watersheds. That's, that's what defines the shape of them. So you're, you're, you're doing things for a particular watershed, and one watershed is completely different than the watershed right next to it. So that, that would be another reason why you would need multiple NRDs, because you're focused on treating the whole watershed.

WAYNE: So let me stop right there, I'm gonna ask you a question, why, why you said that. So you're in the Lower Elkhorn, right?

MIKE SOUSEK: Yes.

WAYNE: Is Battle Creek project in the Lower Elkhorn?

MIKE SOUSEK: Yes, sir.

WAYNE: And where would that be?

MIKE SOUSEK: It would be on the western or eastern-- no western side along Highway 275, probably 10 miles west of Norfolk is the city of Battle Creek.

WAYNE: And that's where for your-- you're looking at that for your whole watershed? Because you're trying to--

MIKE SOUSEK: Our river basin, I-- we, we manage the, the groundwater from Tilden, Nebraska, which is on the westernmost-- most side, down to roughly Nickerson to the Elkhorn River. Everything that drains into the Elkhorn River in that, that area.

WAYNE: Do all your board members get reimbursement?

MIKE SOUSEK: They, there is a per diem, I believe, it's \$70 a day max. And I want to say it's \$2,500, \$2,700 a year. I have 15 board members. There's-- they're elected by subdistricts, and I have seven

Rough Draft

subdistricts. Each subdistrict has two board members and we have one at-large board member.

WAYNE: So the city of Omaha has-- well, Douglas County has roughly a million people and we have seven board members, is that correct, Cavanaugh? Seven Douglas County Board members?

ERDMAN: Eleven. Eleven.

WAYNE: No, no, Douglas County.

J. CAVANAUGH: It's the Douglas County Board. Yeah, seven.

WAYNE: Seven. And you have 15. I'm trying to understand the balance of the, of the ratio of representation to, to area and how that creates a little of what I would think waste. I guess I'll just do some more research with Senator Erdman on this because I-- so on your Battle Creek project, who's going to own the land potentially around there? And I'll preface it by saying I have a fundamental problem within Omaha, everywhere they build it's an SID, which doesn't allow for affordable housing. It doesn't allow for people who look like me, who are working people to go out there and live. Homes start at roughly \$230,000 or above. So is this going to be a project where the rich can nice-- have a nice beachfront property or who's going to own the land around it?

MIKE SOUSEK: Well, as the NRD will own the property that is needed for the structure itself, for the dam structure and the flood pool. There's a conservation pool and there's a flood pool, so the NRD would own that property. Outside of that, we are not interested in owning any more property than we need, mainly do the management of it, but we like to keep it in production.

WAYNE: So an-- so have you been in contact with SIDs or homeowners associations to, to form one?

MIKE SOUSEK: There's no-- the area where we're looking at is, is all agricultural ground. There's no SIDs, there's no homeowners, there's individual rural residents on farms.

WAYNE: And I appreciate that. So was Finnegan Lake and so was Bennington, but there's million dollar homes all the way around them.

MIKE SOUSEK: Yeah, I-- what the landowner does with their property, if they, if they have the money to build a big home, they can, but

Rough Draft

they're not going to be up on the lake. The lake itself and the surrounding area will be owned by the NRD.

WAYNE: Thank you.

BOSTELMAN: Senator Gragert.

GRAGERT: Thank you, Chairman Bostelman. Thank you for your testimony. I'm going to-- most of the morning, a couple of hours now, we've been hearing about flooding, and very important. And I'll ask one question and just follow up on Senator Wayne's. In the Maple Creek at Battle Creek, are you at the very top of that watershed? Or does that extend on into Upper Elkhorn NRD?

MIKE SOUSEK: OK, I'm just going to clarify. You said Maple Creek and then you went to Battle Creek.

GRAGERT: Well, what creek are we on here?

MIKE SOUSEK: Well, Senator Wayne was talking about Battle Creek, I believe.

GRAGERT: I am, too.

MIKE SOUSEK: OK, so what--

GRAGERT: Where is that watershed? Where is that watershed? Are you at the top of it or does it extend on into--

MIKE SOUSEK: I believe the majority of the watershed is in the Lower Elkhorn. The very top tip might cross over into the Lower Elkhorn [SIC], but I don't-- I'd have to look at a map. But the majority of it is in Lower Elkhorn.

GRAGERT: OK. Well, I'm going to switch up on this flooding and I'm going to move into something now. It's probably not going to surprise you or three of the other general managers up in northeast Nebraska. But I want to talk some groundwater quality issues that we have in northeast Nebraska.

MIKE SOUSEK: Yeah.

GRAGERT: And oftentimes I hear that the nitrate issue, nitrate in our waters, is caused by the practice of 50 to 60 years ago. And I would like to, I'd like-- I would be interested in hearing your perspective of our, our nitrate issue and how it came about and where it's at.

Rough Draft

MIKE SOUSEK: All right. I was prepared for this, Senator Gragert, and I have included some information in the, in the folder there for you guys. On the groundwater quality front, it's no secret that the Lower Elkhorn NRD has areas that are negatively impacted by elevated levels of nitrate concentrations that exceed the EPA maximum contaminant level for safe drinking water. However, the district has responded by establishing groundwater management areas delin-- delineated for water quality purposes and has recently elevated the controls for any existing management area and has been discussing the possible delineation of a new management area. In 1998, the LE NRD established its first phase two area in Pierce County, which was expanded to other locations in Pierce County in 2006, and was again modified to a phase three area in 2018 and also added portions of Madison County as a phase two area, all in an attempt to address water quality. The district has recently devoted additional time and human resources towards ensuring 100 percent compliance with the enacted controls. An additional baseline sampling was conducted in 2021 to monitor the impact of existing, the existing controls. The trend lines are still discouraging, but it's becoming increasingly evident that this problem cannot be solved by the efforts of the natural resource districts and will require the mutual cooperation of other federal, state and local agencies, including producer organizations. The trend lines are still discouraging. The trends are still going up. We are still leeching nitrate as we attempt to grow corn on soils that are sensitive. There is a legacy issue, I'm not, I'm not here to argue that there weren't sins of the past to say, but we have not mastered growing corn yet on some of these sensitive soils. And from the results that we're seeing, it's still happening today. I have a professor coming to my board meeting next week who is going to talk to us about isotope sampling to really get to the source of where this nitrogen is coming from. Whether it's a commercial fertilizer or manure. Part of that discussion, he's also doing vadose core sampling for us, where they look at the whole profile from the, from the root zone down to the water table, and are testing what kind of low nitrogen load is in that profile. From initial results that I've seen, it's, it's still happening. There's still stuff happening in the top five, ten feet, which means it's happening now, today, not 30, 40 years ago. Does that answer your question?

GRAGERT: Yeah, it does. And I was-- a couple of follow-up questions, and you answered that already because I was going to ask you to cover the current trend of nitrates and you, and within that answer you've done that. I want to talk, I want to talk and about the

Rough Draft

responsibilities tasked that the Legislature gave the NRDs back when the NRDs were formed, what in '64?

MIKE SOUSEK: The, the bill was passed in '68 and the NRDs actually didn't start their day of business till 1972.

GRAGERT: OK, so in your-- you provided us a handout here on page 25. And I'll just read the last paragraph on page 25. Within the Lower Elkhorn NRD, citizens rely on groundwater as a primary source of water for all uses. Maintaining safe drinking water source is one of the most important priorities of the Lower Elkhorn NRD. I'm wondering of the task, the 12 tasks that the Legislature has requested or required that the 23 entities, in each NRD do you prioritize those 12 responsibilities?

MIKE SOUSEK: Well, the makeup-- yes, they are prioritized, and the makeup of the board is who sets, who sets these priorities. And I'm speaking for my district, flood control, water quality and soil erosion tend to be the top three and they, they sometimes, depending on what is happening at that moment in time, trade places. But water quality, from what I can tell, and for sure in the last seven years, has been a high priority for our board.

GRAGERT: So could you, could you give us just a little bit of how you become phase one, two and three or how a piece of ground becomes--

MIKE SOUSEK: Yeah.

GRAGERT: --the different levels and what those levels are?

MIKE SOUSEK: In your, in your packet, there's this Lower Elkhorn Natural Resource District triggers and phase area requirements. It really spells out what, what needs to happen to, to-- that triggers a phase. So if we were going to go into a phase, the whole district is considered in a phase one. If we're going to go into a phase two, we have to have 20 percent of the wells test 50 to 90 percent of the maximum contaminant level. So that's five to nine parts per million. Once the, once the levels get to that rate, the districts in the, in the Groundwater Management Plan spells out what we're going to do. And those phase two requirements are listed out there. I could read them for you if you like or they're there, but then it goes into-- on the back page, it goes into phase three. And that's when the majority of wells, 50 percent of the wells are at nine parts a million or greater. The controls then step up and there are more of those. Recently, we've been working and Cuming, Colfax and Dodge County for over a year now,

Rough Draft

to address water quality concerns. I believe I have some maps, colored maps of that area, and I have on those maps the average nitrogen level in the township. You can see some of them are 13, 10, 17. This is the area we're looking at of starting a phase two area, that the board has been discussing now for over a year. There's a lot of, a lot of resistance, a lot of phone calls similar to flooding and dam structures of regulations. And so the board is, the board is wrestling with that. We have things spelled out of what, what the board is going to do, but we're, we're going through that process right now. I have a feeling come the beginning of the year, this will be on the agenda again, especially after this report that we're going to get this month, which is kind of what we've been waiting for to really have more evidence that it's either livestock, manure or commercial fertilizer as the source of the contamination.

GRAGERT: Thank you, and I don't, I don't want you to read every phase one, phase two and phase three. But as I understand it in phase one, it's just education.

MIKE SOUSEK: It's education in all the phases. But yes, that's mainly all it is in phase one.

GRAGERT: As, as we step up the phase two, as you say, it's in all three of them, but as you step up to phase two, there's more requirements.

MIKE SOUSEK: Yes. Yes.

GRAGERT: And then as you step up to phase three, there's more requirements.

MIKE SOUSEK: Yes.

GRAGERT: And education isn't actually voluntary. It's, it's to a point to where all producers they with-- they have to get so much education on nitrogen application--

MIKE SOUSEK: Yes.

GRAGERT: --for one thing?

MIKE SOUSEK: Yes, any anyone that would be responsible for either applying or managing a property that would be growing crops that need nitrogen would need, need to take the required hours of classes.

GRAGERT: Does that include urban?

MIKE SOUSEK: Currently, no.

GRAGERT: OK. I'm going to move on. Thank you for that. I want to move on to some of the best management practices that are utilized, you know, and for instance, no-till. No-till caught on pretty, pretty well in your NRD, correct?

MIKE SOUSEK: I believe so. I'm guessing we're north of 85 percent, probably, of producers doing that practice. Yes.

GRAGERT: What, what does no-till do for water quality?

MIKE SOUSEK: Well, if one thing, it helps retain the water in the field so that the runoff, the sediment, you know, phosphate or whatever's on the surface isn't leaving that field. It helps in that aspect. Over time, if, if you don't disturb it, you'll start building the organic matter in the soil profile, which would then help capture the nitrogen. It would help lock it up for longer, a longer period of time. But it's just one of, one of many things that are-- needs to be done to master this.

GRAGERT: Yes. Like no-till alone doesn't do a whole lot for water quality, but we have other conservation practices, starting with soil testing, nutrient management, irrigation, water management.

MIKE SOUSEK: Yes.

GRAGERT: And cover crops.

MIKE SOUSEK: Yes.

GRAGERT: Each one of them alone doesn't do as much as if you, as if you worked with a combination of three or more.

MIKE SOUSEK: I would, I would say almost all of them are needed. And then I would also add a split application of fertilizer, rather than putting out all of the needs of the crop on the field at the beg-- when you plant it, to actually maybe not even put any on when you plant it and start spoon feeding it when the crop actually needs it. The longer that nitrogen is sitting out in the field and either through mother nature or irrigation, once that water touches it, it starts moving. And with the soils we're dealing with, it's moving through prett-- it's moving through faster than what the crop can capture it.

Rough Draft

GRAGERT: And you mentioned the vadose zone. That's the zone where you're no longer able to capture, recapture any nitrate, nitrogen that escaped the cash crop, if you will.

MIKE SOUSEK: Correct.

GRAGERT: And the only way, the only way to really pull that out is if you had somebody irrigating, they'd be able to pull that nitrate out with the groundwater and take credit for that?

MIKE SOUSEK: Yeah. And that's part of our, one of our requirements, is to do a report of your field to take credits for the nitrogen that's already out there, whether it's in the soil. We cost-share on water sampling, we cost-share on soil sampling to test how much nitrogen is in the soil or the water. And when you're calculating your crop and how much nitrogen you're going to need, we are through education, through filling out this report, it should pencil out that you have so much nitrogen already sitting out there. You don't need to add any more. So if we're going to go down the route of we need more irrigation wells to clean up the nitrogen contamination, it's only going to work if we're not putting any more nitrogen on the field. If there's nitrogen sitting on there and we're pouring water on it, we're just continuing the, the cycle.

GRAGERT: Point of diminishing returns.

MIKE SOUSEK: Yes.

GRAGERT: Yeah. But we're, you know, the soil structure, you know, where no-till helps build the soil structure, we've got the physical, the chemical and the biological to get to that soil health or the healthiest soil possible, which will help water quality, correct?

MIKE SOUSEK: Yes, it should.

GRAGERT: And you just hit on a, on a little bit of incentive payments that are paid for each one of these conservation practices. And I hit on, no-till. You're telling me 75 percent are using that practice?

MIKE SOUSEK: I would guess it might be higher than that. But yeah.

GRAGERT: So what about cover crops?

MIKE SOUSEK: Oh. We have, Larry-- a very low percentage of individuals. They will, they will do it when we're paying them. If we're, we're paying the producer to do it through our cost-share

Rough Draft

program, they'll do it. But as soon as a payment goes away, unfortunately, the practice seems to go away too. People that have kept with it, I'm guessing 15, 10, 15 percent of our producers will continue after the payments stop. It's not being adopted at a, at a rate that's going to help the cause with cleaning up the nitrogen.

GRAGERT: And you're saying, what's the biggest, what is the biggest reason people won't, won't come in and take the incentive payments for a particular conservation practice?

MIKE SOUSEK: You would have to ask those individuals. I've heard, I've heard through the NRCS process, we, we encourage people to go to them first, to sign up for EQIP so we don't have to use local property tax dollars. There's a fair amount of paperwork, and I believe individuals find it invasive of the questions that get asked or the checkups that come with accepting that money, whether they are need to be in compliance, they don't want the federal government or the NRD on their property to inspect things. I'm not sure what every individual's reason is, but those are some of the reasons I've heard.

GRAGERT: And one last question. Groundwater quality, and it's on page 26, about two-thirds the way down, high nitrate levels in your drinking water could pose health risk and your family and-- and your family, and they are on the rise in, in portions of your in your NRD, Cuming, Colfax and Dodge County. Could you, could you give me or give to the committee some of the facts that you've obtained from individuals at UNMC--

MIKE SOUSEK: Yeah, I--

GRAGERT: --any actual--

MIKE SOUSEK: --I have attached some handouts in your packet, too, that these are things that we hand out at our open houses. They have a blue, blue label on them here. I think one of them does address health issues. But through some of the work UNMC is doing, and we're currently partnering with them to test domestic wells for nitrates and pesticides. Some of the statistics they're putting out there are just scary, to say the least. I don't know how to talk about this without seeing-- seem to be a negative thing. But our birth defect rates, nationwide it's at 3 percent, 3.3 percent, I believe. In the state of Nebraska, it's 5.8 percent. I have counties in my district that are experiencing a 14 percent birth defect rate. And from what the doctors are telling us, it's-- it's tied back to nitrogen, the environmental things we're drinking, and other ag chemicals. But I-- there's current

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Natural Resources Committee December 3, 2021

Rough Draft

studies going on. There are studies have been done and the work is still happening. But to really get into the weeds on the health thing I would-- I would recommend you-- you would contact UNMC and talk to them directly.

GRAGERT: All right.

MIKE SOUSEK: I just-- this is what they give us is the papers I see. We did create a website. It's called nitrateinwater.org, and we have papers that have been published on that website that talk about these things. We talk about how all of us are contributing to this problem, whether it's urban or rural. We're not pointing the finger at anybody; just here-- here are the facts. Here's what the doctors are telling us, and here's the reality of the situation so.

GRAGERT: I had a career with the Natural Resource Conservation Service for 31 years, and this has been an issue prior to me even coming to northeast Nebraska. And as you-- comment you made what we're currently doing isn't keeping up with the nitrate levels that the trend-- it continues to increase. Could you tell me what you are prepared to change to-- to possibly get a handle on going forward on nitrate, high nitrates in our water?

MIKE SOUSEK: Well, the only thing, Senator, that I am prepared to change is what my board allows me to change. I'm working for a board of elected officials and those decisions and those discussions are happening at the boardroom table, but it goes back to my comment of collaboration. This isn't something that the NRD is going to be able to do on its own. We're going to need support from state agencies, their role in all of this, the University of Nebraska, UNL. We need-- we need some research. We need some guidance from them on what we can do that what will work; this Legislature. I mean, we're all in this. It's-- it's a state problem. It's not just Lower Elkhorn. This is happening across the state, but it's going to take the ag groups, cattlemen, Farm Bureau. We're trying to work with those and it's going to take individual producers to understand the problem before I believe change will happen.

GRAGERT: And this is my last question. Thank you. And before I ask it, I think you know my-- I've been to your board meeting and I am all about local control and no mandate.

MIKE SOUSEK: Yeah.

Rough Draft

GRAGERT: But what can the, Mr. Sousek, what can the Legislature do towards getting the buy-in by the interests-- interested parties on moving the needle toward healthier soils and improve water quality in Nebraska? So what can-- and I don't know if you can answer that today, but I would-- if you want to think on that question, you could-- you could definitely get back to me. But I'd be interested in what can the Legislature do to again move that needle towards healthier soils and water quality?

MIKE SOUSEK: Well, I would go back to everything-- everything that you guys have power over. The only powers the NRDs have are what's been granted to us by this body. The-- the encouragement for other agencies that you guys are part of, whether it's Department of Ag, Department of Environment and Energy, UNL, this is going to take a combined effort with all of us to get this addressed. And so conversations would be a big first step on figuring out how can we work together than maybe some of the things we're working against each other on.

GRAGERT: OK, thank you.

BOSTELMAN: Senator Groene.

GROENE: Thank you. Follow up on Senator Gragert, is there a direct relationship to nitrate levels in irrigated farming? Your samples, I'm looking at these samples, are those all irrigation wells that sample?

MIKE SOUSEK: Yes.

GROENE: Do you do any sampling on dryland farming?

MIKE SOUSEK: No, there's-- there's nothing to sample on a dryland farm.

GROENE: What do you mean? They put nitrates on.

MIKE SOUSEK: Well, we have-- we do have monitoring wells. We have a dedicated network of monitoring wells and there's 40-- 40-some different sites with a total of about 80 wells. Some wells are different depths, so we have clusters of wells. But no, but they-- part-- if they're in one of our phase areas, they are doing the soil samples.

GROENE: What I'm asking you, I'm looking at this map where your area is high in nitrate, a lot of red dots.

Rough Draft

MIKE SOUSEK: There's-- there's a correlation-- there's a correlation between--

GROENE: [INAUDIBLE] your irrigation.

MIKE SOUSEK: There's a correlation between the development of irrigated ground and nitrogen. They're tied together. The water-- the water and the nitrogen, you have to address both because the water is what's carrying it. And so--

GROENE: But they also put high rates of nitrogen on because they're irrigated farming.

MIKE SOUSEK: And there's, yes, and potentially it's high rates of nitrogen in the water that they are already applying to the field.

GROENE: Maybe, maybe it's coincidence, but I have a list of percentage of farm ground-- of total area that's irrigated in each NRD.

MIKE SOUSEK: Um-hum.

GROENE: Out of 23, you're one, two, three, four, fifth most.

MIKE SOUSEK: I believe we have close to 670,000 acres of irrigated ground [INAUDIBLE].

GROENE: 67.1 percent, it says 641.

MIKE SOUSEK: That's-- that's through pivot. Then the 670 is through surface water.

GROENE: All right. But it's kind of maybe a coincidence, but if you follow the path from north to south of where we have nitrate problems,--

MIKE SOUSEK: Yes.

GROENE: --it's Lower Elkhorn, Tri-Basin, Little Blue, Lower Loup, Central Platte, and the Upper Big Blue.

MIKE SOUSEK: Yes.

GROENE: They by far have the highest amount of irrigated farm.

MIKE SOUSEK: Yes.

GROENE: And that's where the nitrate problems are.

Rough Draft

MIKE SOUSEK: There's--

GROENE: I know Tri-Basin is big.

MIKE SOUSEK: There's a geology-- there is a geology component to this. And so through irrigation, we were able to develop more--

GROENE: I understand. I'm pro--

MIKE SOUSEK: --more ground [INAUDIBLE]

GROENE: I'm pro-irrigation. I'm--

MIKE SOUSEK: And so are-- so am I. So is our board, but it comes back to the management. It comes back to the management of the water.

GROENE: Yes, I understand that. But you-- I believe some NRDs have put a limit on when nitrogen can be applied and how much at one-- have you done that?

MIKE SOUSEK: Yes. If you look at those triggers and what the requirements are, that is currently what the board is discussing is not allowing fall application of anhydrous ammonia. And with the general public, that is not a very popular--

GROENE: I understand that.

MIKE SOUSEK: --popular thing. And so--

GROENE: Have you looked at total amount can be applied over a five-year period to encourage rotations?

MIKE SOUSEK: No, I haven't--

GROENE: [INAUDIBLE] corn on corn on corn?

MIKE SOUSEK: I haven't--we have-- I have not been in any of those types of discussions.

GROENE: But I'm just curious that it follows the irrigation, and I'm pro irrigation. That seems to be--

MIKE SOUSEK: You need a lot of irrigation to grow corn on sand, and that's some of the profiles we're dealing with.

GROENE: And then back to the flooding. You're looking at-- Scribner floods all the time on the Elkhorn, and that's part of your area.

MIKE SOUSEK: Yes.

GROENE: Will these upstream tributary retention help that problem? That area between West Point and Scribner floods all the time. I think that town finally got taken out we used to--

MIKE SOUSEK: Crow?

GROENE: --buy bait at when we'd fish in the Elkhorn.

MIKE SOUSEK: Yeah. No. If you're talking about Maple Creek, no, it won't have an effect on that.

GROENE: And that's your emphasis right now you're looking at [INAUDIBLE]

MIKE SOUSEK: We're looking at Maple Creek and the Battle Creek. Those are the two watersheds we're focused on.

GROENE: And one last question, tiling. Do-- do people who tile their land have to get a permit through you?

MIKE SOUSEK: No, they do not.

GROENE: Why not? You're affecting flows of groundwater. It's-- I mean, it-- it accelerates the flow into the streams.

MIKE SOUSEK: It drains-- it drains fields perched aquifers to say. But no, we don't have any-- we do not do anything with tile drains. And it's becoming more of an issue, getting phone calls about it all the time.

GROENE: About somebody tiles and increases flows or they want to tile.

MIKE SOUSEK: It's-- it's affecting landowners downstream with the water that is being-- going through a ditch or going across a field or whatever.

GROENE: I'm just curious now. All right. Understand. I appreciate that you're staying on mission and you're doing-- looking at more flood control and natural resources than the economic impacts. Economic impacts take care of themselves, but we got to take care of nature.

MIKE SOUSEK: It is-- it is something, though, that is part of the consideration of any decision the board makes, whether it's positive or negative economic impact on--

Rough Draft

GROENE: Thank you.

MIKE SOUSEK: -- our constituents.

BOSTELMAN: Senator Erdman.

ERDMAN: Thank you, Senator Bostelman. Thank you for coming today. The information you sent us earlier talks about your financial budget. Your annual budget for fiscal year '18-19 was \$7.5 million; for 20-- '19-20, it was 10.5; and for '20-21, it was 13 billion-- million. Can you tell me what was the increase there? Was that grants you received or what?

MIKE SOUSEK: Yes.

ERDMAN: What were the grants?

MIKE SOUSEK: Well, two of the grants were for these the Maple Creek and Battle Creek WFPOs.

ERDMAN: For the survey?

MIKE SOUSEK: Yeah, the-- the evaluation plan. Both of those were, I believe, in the budget for \$750,000 each. We also received grant funds for-- we're working on a project with the village of Randolph. That's a \$13 million project. There was some money in there for that. So we have sinking funds that we know are projects coming up. We start saving for it. So when the project gets there, so when we transfer that to when it's going to be an expense, it then shows up in the budget as an expenditure.

ERDMAN: So in two years, your budget almost doubled.

MIKE SOUSEK: Well, that's--

ERDMAN: Your budget went from 7.5 to over 13 in two years; '19-- from '19 to '21, it went from 7.5 to 13 million.

MIKE SOUSEK: I'd have to go back and look.

ERDMAN: Did you raise your taxes?

MIKE SOUSEK: No. Our tax levy has been going down.

ERDMAN: So you must have got significant in grants.

Rough Draft

MIKE SOUSEK: That's what I try-- that's what I specialize in is finding money.

ERDMAN: OK. All right. So I-- the information you sent also described what was happening there with the Leigh Dam. And you went on to say in 2011, you guys built the Leigh Dam. And the original part of the series was the 28 dam Maple Creek watershed project in the 1980s.

MIKE SOUSEK: I believe that that was in the 1970s.

ERDMAN: OK, whenever it was, it was 28 dams. And now today you're considering it's 27 dams today, right, because you built one?

MIKE SOUSEK: We're not considering any dams. We're doing that evaluation.

ERDMAN: But the survey is included.

MIKE SOUSEK: That was for-- we took previous studies of the Maple Creek watershed, and there's not many so that Corps of Engineers study from the 1970s is about the only one that's out there. And so we-- we looked at what was done in the past.

ERDMAN: So that included 28 dams.

MIKE SOUSEK: If that's what it says, yes.

ERDMAN: That's what you wrote. So now what's left?

MIKE SOUSEK: We haven't built any. We've built one of those. And what I-- what I tried to express here today is the board isn't interested necessarily in building fixed dam structures. We're interested in working with individuals on their private property to do what they are willing to do.

ERDMAN: You mentioned in your testimony, Nickerson. Explain Nickerson's problem for me a little better, if you would.

MIKE SOUSEK: Well, they sit at the very end of the creek at the end of the watershed, where-- right before it dumps into the Elkhorn River, so all the water from the whole watershed ends up there. They have a couple of railroad bridges that I'm not sure who the owner was, Union Pacific or Burlington Northern. There's a bottleneck there and it gets plugged up and that causes a lot of problems. The water backs up. Their sewer treatment plant is lower. That gets affected more than the

Rough Draft

community itself. But there are times when it's significant enough that it gets into the community, the flood waters.

ERDMAN: OK, so how are you going to fix the railroad dam?

MIKE SOUSEK: Well, that's-- I don't believe the-- the tracks are being used anymore. So we are currently looking into how do we either remove the dam or change the structure that it's sitting on? You know, if it still needs to be there, maybe there's something we can do with the bridge itself to alleviate the bottleneck.

ERDMAN: So then your goal is not necessarily to build a dam by Nickerson.

MIKE SOUSEK: Oh, no.

ERDMAN: OK. You know, you mentioned several times the board is working on this, the board is working on that. I have served on more boards than I want to admit. And every time as a board member, I made decisions based on what management brought to me.

MIKE SOUSEK: Yeah.

ERDMAN: Right? And so most of the time, what management brought me was things that they wanted me to know so I make the decision they wanted me to make. So I don't know if that happens in your NRD, but it happens in all the boards I served on. And so once I begin to understand that the information I was receiving wasn't all of it, I had to do some research on my own. Now let me just caution you a minute about ever using eminent domain. In 1999, the railroad tried to condemn a bunch of property in my community. They started with four different routes that they were going to put their rail. It affected 120, 130 landowners. Everybody was fired up about it. The railroad said that's a lot of people. So what they did is they narrowed it down to one single line. They said, this is the one. It affected 40 of us instead of 120 or 130. The other 80 or 90 said, wow, thank God it's not me. They all went away. Nobody tried to help us fight the railroad on the eminent domain. Using eminent domain has got to be one of the last sources you-- you turn to. That is a very negative thing. It draw-- it drew divisions in our community that still haven't healed up. So I'm just cautioning if you're going to ever think about using eminent domain, be very careful.

MIKE SOUSEK: Senator Erdman, if I haven't gotten that point across, it's exactly what I was trying to get across.

Rough Draft

ERDMAN: Well,--

MIKE SOUSEK: It's very--

ERDMAN: --what you've told us today and the information that I've been getting from the people who have been calling me, your message about not building dams and your message about not using eminent domain is not getting through. So whatever you told me today isn't the same thing those people are hearing. So I don't know what your message-- how it needs to change, but I'm just telling you what I'm hearing from the public is not the same thing you're telling me. So you use that information however you want, but that's the facts.

GROENE: I have one quick question.

BOSTELMAN: Senator Gragert.

GRAGERT: One quick question I forgot. Thank you, Senator Bostelman or Chairman Bostelman. I just have one other concern and this is not going to be anything new to you. But I want to get it on record is the-- the increasing water bottles-- bodies of water, our lakes in Nebraska are coming down with blue green algae. And I understand, you know, that's a couple chemicals that are associated with it is phosphate, which attaches to the soil, which we go back to soil erosion. And the other one is nitrate, nitrogen. We have a-- we have a lake up in our northeast Nebraska, Willow--

MIKE SOUSEK: Yes.

GRAGERT: --that has been closed down. There's been lakes around here Lincoln's been closed down, you know, swimming. And when you-- when you're going to design, like you say, another lake at-- at Battle Creek, is that taken in consideration? You know, this is what I-- this is what I'm trying to get to is at the top of the-- the tributary and the erosion is controlled, that will actually control our lakes being polluted basically and then shut down for blue green algae.

MIKE SOUSEK: Yes, that is-- that is a consideration that is going into things. The Willow Creek Reservoir and the Willow Creek watershed is made up primarily of sandy soils. And we've studied this thing multiple times and spent a lot of money studying what's happening there. So Willow Creek itself is providing the majority of the nitrogen that's getting to the lake, and the north "trib" of the Willow Creek Reservoir is providing the majority of the phosphate, and it's meeting at that point. We have projects that we have-- have on the books to address either one, the phosphate or the nitrates. But it

Rough Draft

goes back to voluntary, getting people to voluntary we change their practices. And then it's tied together with this nitrate issue and the water quality. They're-- they're the same issue. Until we can figure out how to grow the corn without leaching the nitrogen, we're going to have to do something manually to stop either the phosphate from getting in the lake which would then the blue green algae wouldn't be able to grow or stop the nitrogen [INAUDIBLE]

GRAGERT: Is Willow Creek, that's within Pierce County.

MIKE SOUSEK: Yes, sir.

GRAGERT: And all of Pierce County is going to phase three.

MIKE SOUSEK: A majority of it is, yes.

GRAGERT: Majority is. And is there anything in phase three that's going to be restrictive, more restrictive and maybe address the issue of blue green algae in the lake?

WAYNE: What's phase three? While you're explaining--

MIKE SOUSEK: Yeah, there's a-- there's a handout here, and I'll just pull it out so we can all reference it.

WAYNE: Sorry I just--

MIKE SOUSEK: No, you're all right.

WAYNE: You're about to give an answer and I have no idea what the answer is talking about.

MIKE SOUSEK: So the phase three requirements: deep soil sampling in all fields planted to corn--

WAYNE: OK.

MIKE SOUSEK: --regardless of the crop rotation. So in phase two, if it's just corn on corn, that's when you have to do the deep soil sample. Phase three, you're doing it every year. A nutrient management plan is required in phase three. It's not required in phase two. Irrigation scheduling that is acceptable to the NRD. Now that irrigation scheduling is tied to the nutrient management plan. They're kind of one and the same. It goes back to the water and the nitrogen have to be managed together. And then annual irrigation water sampling [INAUDIBLE] In phase two, I believe it's one sample every four years

Rough Draft

to know what the nitrogen is. So that's-- that's the difference. Now this is all based on honesty. This is-- the regulations are made. But it's not like I-- we have nitrogen police out there that are-- that are doing this. We require producers to fill out reports and that's what we're going by whatever's on that report. And that's-- that's done by the producer. And sometimes, most times it's not done enough by the producer. It's done by the co-op or an agronomist or someone else that they've hired to work with them.

GRAGERT: And so in phase three, then it's every year they got to have a nu-- the nutrient management plan instead of every four years in phase two. And that nutrient management plan, is that based on UNL recommendations?

MIKE SOUSEK: Well, yes and yes, it is. What we encourage people to do is go through NRCS again. They provide cost share for that and they-- they are the experts on that that can help. But their-- NRCS is also tied to the UNL recommendation. They can't deviate from that.

GRAGERT: So you mentioned there is no cops out there. Well, then if they go through the NRCS, the NRCS does-- does status reviews on-- on any kind of conservation practice that they're paying. So I mean, they're not checked every year, but maybe in phase three, they ought to be. [INAUDIBLE] the NRD. I don't know how many producers we're talking about. As has been stated, you know, more and more producers are leaving and smaller producers sell. It isn't to a new producer.

MIKE SOUSEK: Right.

GRAGERT: It's to a bigger producer. But anyway, I guess-- I guess what I'm saying as far as policing it, I think there are ways. You know, I don't think you can check everybody every year. You don't have the manpower for that. But a random 5 percent could be doable just so they know when you may-- when you may or may not show up that year and possibly the requirement of-- of that paperwork on the nutrient management it went to you.

MIKE SOUSEK: Yeah, I have staff currently working on the nutrient management plan of the phase three area. Until recently, the compliance record was-- was not that great of people submitting the proper paperwork, whatever. Since last few years, the board has taken, taken action and instructed staff to start issuing cease and desist orders, whether it be on the irrigation well or the purchase of fertilizer, until the- till they come back into compliance. So the last two years we've had 100 percent compliance on the reports and

Rough Draft

we're starting to work on the nutrient when-- nutrient management plans to make sure that they are following, they have one in place, but we are not there yet.

GRAGERT: Right. OK. I'm good, thanks.

BOSTELMAN: Senator Groene.

GROENE: Question, do you have a moratorium on your irrigation wells?

MIKE SOUSEK: We-- we have areas where we don't allow development. I would-- I don't know if it's a moratorium.

GROENE: So in your entire NRD, you still allow irrigation wells.

MIKE SOUSEK: We approved just over-- just over 5,000 acres this last-- this year.

GROENE: Is that on average every year?

MIKE SOUSEK: Pretty much, yes. We're targeting-- we're trying to irrigate the best ground possible. So this phase three area where we're having serious [INAUDIBLE]

GROENE: Sandy soils and highly irrigated [INAUDIBLE]

MIKE SOUSEK: That-- that is shut down right now from irrigation, new irrigation.

GROENE: But you're still allowing new wells.

MIKE SOUSEK: In areas that can support, yes. In areas where we're not having--

GROENE: 5,000 acres is a lot of new wells.

MIKE SOUSEK: What's that?

GROENE: 5,000 acres is a lot of new wells [INAUDIBLE]

MIKE SOUSEK: We have 2,500 in a-- in the 10-50 area and then 2,500 outside that area. We're also working with DNR in the Lower Platte Basin Coalition on managing water for--

GROENE: Another question. I-- looking at Cuming County it's white on the test on groundwater management area test wells. Is that due to very few irrigation wells or because of the heavier soils? And-- and

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Rough Draft

can I conclude from that with the number one cattle feeding county in the state that our nitrogen problem is not from cattle yards, it's from irrigation?

MIKE SOUSEK: I'm trying to find where--

GROENE: That county over from--

MIKE SOUSEK: --what map you're looking at there, Senator Groene.

GROENE: These.

MIKE SOUSEK: OK.

GROENE: Leaching and water quality data came from a sampling
[INAUDIBLE]

MIKE SOUSEK: So you're looking in those two counties that are blown up, that's actually Pierce County and Madison County.

GROENE: Yeah, but if you look two counties over on a bigger map, which is Cuming, it's white.

MIKE SOUSEK: Yeah. We've had most of these wells are taken from the clearinghouse. And over the last three years, we have started-- we've sampled 500 wells in that Cuming, Colfax, Dodge area, where the other map was. So that information may not have been on this map.

GROENE: In 2017. So--

MIKE SOUSEK: Yeah.

GROENE: It wasn't a hot spot so it was not--

MIKE SOUSEK: There was-- there was

GROENE: [INAUDIBLE]

MIKE SOUSEK: --very minimal testing being done. And so over the last three years, we have focused on that area to test the groundwater.

GROENE: [INAUDIBLE] a lot of pivots in Cuming County.

MIKE SOUSEK: Yeah, there's-- there's pIvots, yeah.

GROENE: There's pivots, but not-- not like Madison or Pierce.

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Natural Resources Committee December 3, 2021
Rough Draft

MIKE SOUSEK: No, not-- not like that, no.

GROENE: Anywhere around my property, there's no pivots, I know that..

MIKE SOUSEK: But there is-- there's a heavy livestock presence.

GROENE: Yeah.

MIKE SOUSEK: I believe we have 1,800 CAFO permits in my district.

GROENE: I guess what I'm saying is, are you trying to correlate where the problem is coming from the nitrate or are you going to just blame [INAUDIBLE]

MIKE SOUSEK: No. The-- the problem is coming from all of us, Senator Groene. This isotope sampling that I referenced earlier, I hope to get a better idea of is it 100 percent manure or is it 100 percent commercial.

GROENE: 80/20 or whatever.

MIKE SOUSEK: Yes. But I'm assuming as we get closer to feedlots, the manure side will bump up a little. But it's-- it's a problem we're all contributing-- and people in the cities, too, golf courses

GROENE: Pretty good sized feedlots in Cuming County.

MIKE SOUSEK: Oh, yes,

GROENE: I'm just amazed there isn't any wed lot-- red dots on that.

MIKE SOUSEK: Well, there will be, just hasn't shown up yet.

WAYNE: Interesting.

BOSTELMAN: You're done.

GROENE: Yeah.

BOSTELMAN: Senator Gragert.

GRAGERT: Thank you. Just a follow up to Senator Groene's question there, though. Could you explain point source pollution and nonpoint source pollution when it comes to feedlots?

MIKE SOUSEK: Well, yeah, the point source is when you know exactly-- exactly where the pollution is coming from. So if it's an underground

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Natural Resources Committee December 3, 2021

Rough Draft

gas tank that's leaking, you know the point of contamination. Nonpoint source you're not-- you can't really point your finger at any one particular piece of property and say, that's the problem. It's nonpoint. It's-- it's coming from a lot of different places. So it's--

GRAGERT: But-- but also that when the manure gets hauled off of the feedlot onto the cropland, it changes hands, basically.

MIKE SOUSEK: Yeah.

GRAGERT: Now it's your-- now it's the NRD's issue.

MIKE SOUSEK: It goes back to collaboration between agencies and NRDs on, you know, Department of Environment and Energy are responsible for providing permits for CAFO livestock. They're following the regulations that says this is what we do and that's what they do. And then once that manure leaves the feedlot and gets spread out, it then becomes the NRD's nonpoint problem. And so that's kind of what I'm talking about of getting-- getting all of us working together and understanding the issues out there to better address it for-- for the state of Nebraska.

GRAGERT: Cooperation, coordination.

MIKE SOUSEK: Yes.

GRAGERT: I'm good, thanks.

BOSTELMAN: All right. Senator Wayne.

WAYNE: Which goes back to the first question I asked. I'm still baffled that there are so many moving parts and different structures. And what I'm hearing is-- you guys are supposed to, I mean, you guys-- it seems like you don't have a lot of enforcement mechanisms to enforce the issues of nitrates and everything else, pollutants.

MIKE SOUSEK: The only enforcement issues-- the only enforcement tool we have is a cease and desist order.

WAYNE: And who can you serve that on?

MIKE SOUSEK: Individuals that are-- that we knowingly or can prove that are not following the regulations.

WAYNE: What regulations?

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Natural Resources Committee December 3, 2021

Rough Draft

MIKE SOUSEK: The regulations that the board of directors has set in their groundwater management plan.

WAYNE: And how do those regulations work with the NR-- the whoever the state agency is? I just drew a blank.

MIKE SOUSEK: They're two different separate things that are not currently are not meshing together, I guess.

GRAGERT: NDE.

WAYNE: So they're not actually meshing together, which--

MIKE SOUSEK: Well, DEE has their own regulations that they're following and the NRD has their groundwater management plan. But I'm saying if-- if something's happening with our plan, it doesn't enact-- it doesn't change anything over here on the DEE side. So they can-- they can still-- we can still continue to develop livestock facilities when the NRD is over here trying to address a water quality issue. And the water quality issues coming from commercial fertilizer, manure, it's coming from all of us.

WAYNE: If this is such a major issue, I guess, why aren't we having one agency in charge of all of it?

MIKE SOUSEK: Because this is the-- this is the way it was set up. It's--

WAYNE: I know, but I'm looking at progression and it's not going in the right direction. So I'm going to-- I mean, right now what I'm gathering if we say why things are going bad, we can't continue to say all of us are the problem. If I want a solution, I want to be able to point to somebody and hold them accountable to why it's not getting better. And to me, it seems like when it comes to this water quality issue, we have different factions all over the place.

MIKE SOUSEK: Yeah.

WAYNE: Is that a fair statement?

MIKE SOUSEK: And that's exactly what I was saying is we need to have a collaboration between all of us if we want to address this issue. The NRD itself cannot do this by ourselves.

WAYNE: Thank you.

Rough Draft

BOSTELMAN: OK, now it's my turn. I have a few questions for you. One, I appreciate the comments you made about looking at multiple opportunities as far as like in the Maple Creek area or others because I think that's really the best answer we have. What we seen, I think historically with the major flooding and stuff we had before was we have large impoundments, lakes or whatever. But unless you've lowered that water, unless like what we saw in Missouri, unless upstream up in South Dakota they were releasing water ahead of time, you know, we're at dire straits. And the same type of thing happens now was, I think, as in our larger lakes we develop. If we develop those with multiple entities providing funds to that, then we no long-- we lose the-- the-- the purpose of the lake for being flood control. Now it's going to be habitat creation, how it's fish, it's wildlife, it's whatever and we lose that flood control portion. And where I'm going to this is a couple of things. LB406 last report we had from the contractor or the consultants doing the work, they had a number, a number of dams on the Loup and Elkhorn and that was bothersome to me. And I-- and I've spoke to that with the committee since because the challenge we have with that and especially, I mean, Battle Creek, you've been before the committee, I think three years ago, four years ago, it was with a bonding issue trying to do some things. But we also heard from the landowners there that are opposed to it. We've heard significant email, telephone calls from people with the Willow Creek, I'm sorry, Maple Creek area, their concerns. And I've-- and in your report you're talking about 27 dam sites. But the reason I'm really hesitant on-- on-- on-- on doing, looking at dam sites for flood control is because your soils, because your soils are sandy soils. And we're already running into problems with two dams that we know of, Willow Creek Dam, you have a seepage study. You've got a seepage area because it's sandy so the water is going underneath or liquefying. That's what it says, sandy soil is what your report said. You have-- you have a Willow Creek Dam seepage study going on right now. That's in your report. And I know there's another dam that's been built that has sand boils coming up underneath of it. So when we build dams on sandy soil, I'm not so sure that's the best course of action to take. And the thing is, I'll come back again to what I said before, I'm glad to hear where you said they're looking at other things other than building dams, because the more we can slow down the water through terracing, through cooperation with landowners, drier wet-- wet structures we'll call them, not large lakes or impoundments I think that's going to do us far better good. Because what we see, I think, in our dams is they really don't provide the flood protection that we're seeing because I can tell you below in my county, in my district, I hear from the farmers that aren't happy because they're still getting flooded after

Rough Draft

Wanahoo Dam was built. I had a call just two days ago from one: So hey, what's this? What's your LR about? What's your hearing about? So my question comes back to your comment that you're not looking at doing major dams, but LB406 had input from the NRDs, your NRD and Papio. And now we're seeing six, seven, eight, I don't know number it was dams on Elkhorn and Loup. So which-- what are we actually doing?

MIKE SOUSEK: Well, we're talking about two different watersheds.

BOSTELMAN: Right.

MIKE SOUSEK: So on the Maple Creek watershed, we were looking at these individual small projects that we can do. The Battle Creek watershed, we're-- we're looking at constructing a dam. That's what the direction the board gave me. That's what the community has asked for. The soil types are completely different than the Willow Creek Dam. The seepage study on the Willow Creek is not necessarily the seepage of the water going through the dam. It's the pressure of the aquifer that sits under-- underneath the lake. The-- the level of the lake has very little bearing on the pressures that the dam is experiencing from an aquifer that is below-- below the lake. And so we're installing some relief wells. One-- one was drilled last week. It kind of went bad, so they're going to do it again this next week. But it's not necessarily-- the seepage study is not necessarily a function of the dam, the storage of the water in the dam. It's coming from the pressure of the aquifer in that area.

BOSTELMAN: Right. But you're going to have the same pressure on similar soils in similar areas in these other if you have a large--

MIKE SOUSEK: The Battle Creek-- the Battle Creek area is completely different soil structure than Willow Creek. And I would-- I would argue that the Maple Creek is completely different than the Willow Creek watershed too.

BOSTELMAN: OK. Appreciate that. So the 27 dam sites that you mentioned in the report with Maple Creek, that's talking about the small structure. It's in the report. I'd have to find it, but it talks about there's 27 dam sites that would be small structures you're talking about, something you're working with the landowners on.

MIKE SOUSEK: No. The only time I can recall seeing that number is through that study that was done in 1970 by the Corps of Engineers. We don't-- we don't have a current report. That's what we're currently working on. And they incorporated that study into our current

Rough Draft

endeavor. It's not saying we, the board has not adopted that, has not approved that. It's-- if you want 100-year flood protection, these are the things you're going to need to do. If you want a 50-year flood protection or 25-year or 10-year, these are the options. This is the menu of things that can be done. And we're looking at whatever we can get people to do. That is what we're trying to get accomplished.

BOSTELMAN: Understand. I appreciate that. And that's why I said before I appreciate the comments made before. But there were 27 dam sites in there. The-- the other question I guess I have is Battle Creek we heard from the landowners that's affected there and they weren't supportive of it. Has that changed?

MIKE SOUSEK: Since I've-- since I've been there the last seven years, of the conceptual dam, I believe there was 12 or 13 properties, homes that were going to be inundated. I've only heard from two-- two of those landowners and one of them is currently sitting on my-- my board. I was-- I was in Wahoo at Lower Platte North when Wanahoo went in. I saw-- I saw the resistance there. My family, actually our homestead farm is under that lake now. I mean, I-- I understand the emotions and the sacrifice that was made to get that structure built through my own family. I haven't seen any of that on the Battle Creek Reservoir. I've seen-- there-- there are some landowners that are against it. But I have not seen the resistance that I've seen at Lake Wanahoo or that I've seen at Maple Creek. And Maple Creek's not even, I mean, that's not even happened. I mean, that's just--

BOSTELMAN: I can tell you we're getting a number of emails and phone calls on it.

MIKE SOUSEK: I'm sorry.

BOSTELMAN: One question I guess with that, I guess part of it is, and I appreciate, sorry to cut you off. You said you had the open house at Howells. Are you going to have others that landowners can come and talk to the board, talk to you on or talk to the FIRA [PHONETIC], folks? Is there going to be more opportunity for landowners to do that?

MIKE SOUSEK: Yeah. Yeah. It's part of-- part of our reasons why we hired FIRA was the public participation. I mean, that was one of our goals was to get them involved.

BOSTELMAN: So does FIRA have a plan out there so-- so we could see or people can see on this day, this month we're going to do this or?

Rough Draft

MIKE SOUSEK: Well, I don't know if they have a timeline spelled out by dates.

BOSTELMAN: OK.

MIKE SOUSEK: But we do have a website that is open to the public. We have all our documents on there. We have an advisory board that-- that meets. Then yes, there will be other opportunities for the public to comment when it gets back on the board agenda.

BOSTELMAN: OK, thank you. In the report also, if you could provide us or provide me, maybe Senator Erdman specifically, you mentioned a pallid sturgeon study in there on the Platte. So if you could provide that study to us, I would like to see what that pallid sturgeon study is, what it says. I think Senator Erdman would probably want to see that as well.

MIKE SOUSEK: Is that the one where they couldn't find pallid surgeons?

BOSTELMAN: I don't know. It just-- I just-- I don't know what it is. It just says there's a pallid surgeon-- sturgeon study on the-- on the flap. I have no idea--

MIKE SOUSEK: Senator, I'll look--

BOSTELMAN: I have no idea what-- what that would be or how that would affect it. I guess a comment or a concern I have with when we're looking at flooding. So we're talking-- I'm talking specifically about stormwater drainage. So the 25th Street storm water drainage, we're moving water quickly out of Elkhorn and it's coming-- Pilger-- Pilger's the same thing. Other towns are same thing. We see where we're moving water out because it's coming out of the hills. But we're moving it out of-- we're moving it out of town quicker into the rivers, but that's really something we shouldn't be-- we shouldn't be doing. We should be slowing that water down, if you will, so that when it does come through town, it's not going to cause us our flooding waters downstream. Because the quicker we move water out of towns, that's a problem we have in Lincoln when we talk about Ashland. Ashland or Lincoln continues to move water out of town, you know, more and more [INAUDIBLE] people out of flooding. They're moving more water into Ashland much quicker and it's causing flooding down there because of that amount of water. So we're doing that same type of deal. Is there an opportunity with storm water drainage that landowners can become cooperating to do something with that, either through terracing or other type opportunities? Because in there said there's no--

Rough Draft

there's not significant financial benefit to storm water drainage for landowners. But I guess here again, what I see is we're moving water out of cities faster and just creating a problem. How can we slow that down? How can landowners perhaps get it and be a part of that storm water drainage program?

MIKE SOUSEK: Well, other than a community developing a retention cell where the storm water drains into and slows it down, like you're saying, part of that Battle Creek watershed proposal projects alternatives. One of the alternatives was a bypass channel, and one of the reasons why the board did not go in that direction was for that very reason. We were just going to cause more problems downstream. So we're trying to keep the water where it's-- where it lands, where it falls.

BOSTELMAN: Well, I appreciate it. It just seemed like as I was reading we were moving water out of town quicker. So if we're moving water out of town quicker, we're putting it into the Elkhorn or whatever river so we're just creating problems. So the storage within that facility-- within those communities would help to-- to mitigate, you know, moving that water out of town that much faster. I mean, we've got to hold it somewhere. If we're going to-- if the problem as-- as Mr. Winkler said, the problem is, is where the Platte dumps into the Missouri, it's all backing water up there, but we continue to move water out of towns quicker and quicker to get down to that point, I guess that was part of my bill. The whole purpose of my bill a couple of years ago is how one drainage affects the next drainage. And if we continue to move water out of our cities and towns quickly, we're just adding to the problem. We're not-- we're not-- we're not helping it so.

MIKE SOUSEK: Yes, I agree.

BOSTELMAN: OK. The last-- the last comment, I guess I have one thing that we're looking at or Senator Erdman's looking at the thought of as we talk about recreation. And really, it's not for a question or that, but when we see things like ball fields and playground equipment and trails and those type of things, I think we're going to go back to the original legislation on this and what-- to define recreation. I think that would help out you and help us out a lot in understanding what recreation really is and how that-- how-- what your play is, what your-- what your responsibility is there.

MIKE SOUSEK: You want my comment on that?

BOSTELMAN: Sure.

Rough Draft

MIKE SOUSEK: Well, we're-- most of the recreation activities that my district is involved in, we go through a yearly proposal where communities, churches, schools, organizations can request dollar amounts that we would cost share on recreation type of things. It's called our urban rec program. The reason that's in place, I believe it was in the late '80s, maybe the early '90s, the taxpayers within the communities were-- were feeling they were paying taxes. But all that, all the money was going to rural, going to producers for various conservation measures. And to try to help alleviate that balance, the-- this is the program that we came up with. They can apply. We don't spend a lot of money doing it. But one of our-- one of our responsibilities is recreation. And so if we have a project like a dam structure that is going to have a body of water, it's an easy way for us to incorporate that into the design and take care of that responsibility.

BOSTELMAN: OK. Thank you. Senator Erdman.

ERDMAN: So I wasn't going to ask any more questions. Thank you, Senator Bostelman. But this brought to mind so the recreational comment-- comments, so what is your relationship with Game and Parks? Do you work with them when you-- when you do this structure, you build it and it's going to be a recreational facility? Do you allow them to be the manager? How does that work? Do you manage those?

MIKE SOUSEK: Well, on our-- on our Willow Creek Reservoir in Pierce County, we-- we have a I think it's a 100-year lease for a dollar where they run the park. They control the park. They take care of all the recreation. We do partner with them on some things when, say, we need a new restroom or something. We'll-- we'll give money towards-- towards those types of projects, but they're in charge of day-to-day operation of that park. Yeah, I would-- we have relationships with Game and Parks on the Cowboy Trail that-- that the trailhead is in Norfolk. We-- we operate the first two and a half miles and then it transfers to Game and Parks from there. But we do things in collaboration with them. A lot of the issues that we run into is financial constraints that we are being told Game and Parks has. And so if we do have something that we think this is, this should be you, but we can't-- there's a lot of we can't do that because we don't have the financial resources. And so they want us to pay for it. If we're going to pay for it, we might as well just--

ERDMAN: Do you have an annual review with them, sit down and you all talk about what you want to do?

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Natural Resources Committee December 3, 2021

Rough Draft

MIKE SOUSEK: Yeah, yeah, we do. I don't know if they were happening as frequent in the past, but we are trying to get back into that schedule.

ERDMAN: It seems kind of peculiar to have two agencies in the state both working on recreation.

MIKE SOUSEK: If-- if they want to help us develop recreation, I'm, like I said, I like looking for money, but they usually don't have any so.

BOSTELMAN: Thank you for your time. You've been most gracious in answering questions and that and appreciate your time for being here. Thank you.

MIKE SOUSEK: Thank you, guys.

BOSTELMAN: Next, does the committee members want a break? Do you got to go? We have one testifier left so. OK. Next testifier we'll have, our last one is Mr. Kyle Shepherd of N-CORPE.

KYLE SHEPHERD: Thank you. I'm Kyle Shepherd, K-y-l-e S-h-e-p-h-e-r-d. I'm the manager of the Nebraska Cooperative Republican Plant Enhancement Project, otherwise known as N-CORPE. So I had provided you guys via email, or I did Katelyn, some flow charts and graphs of our overall wells. You guys did ask three different questions, and I'll just read the question and give you the answer. First question was how-- how does the creation of N-CORPE fit into the statutory duties of natural resources district under 2-3229? As you know, 2-3229 establishes a broad purposes which-- which NRDs were created. Each of these purposes are further explained by authorizing statutes. For instance, 2-3229(5) states: natural resource districts shall develop and execute plans, facilities, works, and programs for water supply for any beneficial uses. This purpose was amplified in 2-3233 and 2-3242, which further grant NRDs the power and authority to develop water projects for any beneficial use purpose. N-CORPE was created to exercise these powers to provide augmentation water to the Platte and Republican Rivers. In the case of argumentation water, the Platte River, Twin Platte NRD has determined that this is the most efficient and least intrusive way to meet the obligations created with the passage of LB962 in 2004. In the case of the Republican River, augmentation water offsets the surface water depletions so that producers continue to irrigate in years when they had otherwise be shut down to avoid violating the Republican River Compact. The public benefits of augmentation projects were found by the Nebraska Supreme

Rough Draft

Court to be within the statutory authorizations of natural resources districts in both the Estermann and Rock Creek cases. In addition, the Supreme Court noted the other benefits of augmentation projects such as soil conservation, fish and wildlife habitat management, and recreational facilities. Second question was does N-CORPE derive income from the land it owns? If so, how much per year and what is done with revenue? Yes. Like cities, counties, and other political subdivisions, N-CORPE derives income from secondary uses of the land it owns. The amount of revenue varies from year to year, but last year, totaled a little over \$379,000. N-CORPE uses this income for its operations, which helps offset some of the occupation tax burden to irrigators in all of N-CORPE's NRD counties-- NRD member counties. The third question was what are N-CORPE's future plans with the land it owns? N-CORPE is governed by a board of directors who determines the future of the land it owns to the state. The board has indicated that it intends to continue to use the property for the purposes for which it was acquired and has not taken any action to alter its course of operations.

BOSTELMAN: OK, thank you. Are there questions from committee members? Senator Erdman.

ERDMAN: Thank you, Senator Bostelman. Thank you for coming today. The first question I have is, did you write this annual report, this one pager?

KYLE SHEPHERD: Yes, sir, yep.

ERDMAN: So I've never seen an agency that has the authority to deal with millions of dollars not have a financial statement that looks more detailed than this. So do you have an annual budget that you present and you have people-- do you have a budget hearing and people come and look at your budget and talk about what you're spending your money on? Do you do a budget process?

KYLE SHEPHERD: Just clarify, that's our annual report that's required by statute. So that just basically gives a summary of-- of our operations throughout the year. It's separate than, yes, we have financial statements we present to the board. We have a budget. We go through a budget process and that budget is approved through our board.

ERDMAN: Did you not send that to us? We-- I think we requested to see your budget. We never seen any of that.

Transcript Prepared by Clerk of the Legislature Transcribers Office

Natural Resources Committee December 3, 2021

Rough Draft

KYLE SHEPHERD: The only thing that was requested from-- from me were these three questions and that flow chart. Now, if you requested NRD budgets, I'm sure the individual NRDs--

ERDMAN: No, I got the NRD budgets.

KYLE SHEPHERD: Yeah.

ERDMAN: I'm looking for the N-CORPE budget.

KYLE SHEPHERD: I have the N-CORPE budget, but that was not requested.

ERDMAN: OK, that will be a request now.

KYLE SHEPHERD: Sure.

ERDMAN: Make sure I see that I. So let's talk about what you wrote on this one-pager. OK, so you have an annual budget. You have-- do you open that to the public, they come and have input when you're doing your budget?

KYLE SHEPHERD: Yes, all of our meetings are public-- public meetings so they can come and give input at that time.

ERDMAN: So it's-- put a notice in a paper you're required by the Open Meetings Act to do those kind of things?

KYLE SHEPHERD: Yeah, yeah. All of our meetings are noticed.

ERDMAN: Well, let's back up a little bit and let's talk about how N-CORPE was formed. I seen the information that you sent. And let me-- let me read this so I get this right. It said that in 2011-12, it looks like the Department of Natural Resources came and suggested that you, as a four-group NRD, start what we call N-CORPE today. And so in 2012, you formally presented the NRDs with an idea of the augmentation plan of Lincoln County and learned there was a large block of land that were for sale. This was September of '12. And then by December of '12, you had made a purchase agreement, you had signed a purchase agreement or you owned the land by December. How did-- how did N-CORPE-- how did N-CORPE become incorporated, or is it a memorandum of understanding, a local-- interlocal agreement? How did N-CORPE start? How did it-- how was it formed? Do you have bylaws and articles of incorporation, all that? Do you have that stuff?

KYLE SHEPHERD: Yes. Yeah. We are an interlocal between the four NRDs. And yes, we do have bylaws.

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Natural Resources Committee December 3, 2021

Rough Draft

ERDMAN: OK. Tell me how N-CORPE started.

KYLE SHEPHERD: I am-- that was before I started working there. I've been working there for six or seven years, but it's my understanding that the NRDs got together, created an interlocal and created N-CORPE, created their bylaws and their governing structure. And I think our first meeting was late in 2012.

ERDMAN: It had to not be too late because they bought land in December.

KYLE SHEPHERD: Right.

ERDMAN: So if '12, it was in December-- September of '12 it was suggested you start N-CORPE and by December, whatever the date was, you were already formed and had purchased the land, that is pretty significant quick turnaround. But that's amazing.

KYLE SHEPHERD: Um-hum.

ERDMAN: So, OK, so N-CORPE has a board of directors?

KYLE SHEPHERD: Yes.

ERDMAN: And those board members are NRD board members from those four NRDs.

KYLE SHEPHERD: Correct.

ERDMAN: So you have eight or how many do you have?

KYLE SHEPHERD: We have four, one from each NRD.

ERDMAN: OK, so I think I've seen somewhere on the file there was eight-- eight names listed. Was that--

KYLE SHEPHERD: Each NRD has an alternate board member in case that primary board member is not-- not able to attend. So then they'll attend in their-- in their place.

ERDMAN: OK, so the NRD owns the land, and I think I read somewhere that you had been in front of TERC and TERC said or agreed that you didn't have to pay taxes. Would that be a fair assessment?

KYLE SHEPHERD: Yes.

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Natural Resources Committee December 3, 2021

Rough Draft

ERDMAN: And then I think it also went to-- did it go to the courts as well?

KYLE SHEPHERD: I don't remember the exact procedure that, but yes, they ruled in-- in our favor on that.

ERDMAN: So you started-- you started with 19,500 acres in-- in '12.

KYLE SHEPHERD: Yes.

ERDMAN: You still have 19,500 acres?

KYLE SHEPHERD: No, we've sold some of our acres, but we're still at about 19,000.

ERDMAN: OK. And those were sold for what? Why did you sell some acres?

KYLE SHEPHERD: We sold some of our acres that weren't attached to the main part of the property.

ERDMAN: OK. They weren't adjacent. They weren't--

KYLE SHEPHERD: Yeah, it didn't fit our management mission I guess. It didn't benefit us.

ERDMAN: So and in this one-pager you say the amount of revenue gained from land leases in '18 was 421; \$97,000 from crop leases; \$3,000-- \$306,000 from grass leases; and \$17,000 from facility leases. You must lease out some buildings or something.

KYLE SHEPHERD: Correct.

ERDMAN: So that information is for '18.

KYLE SHEPHERD: Um-hum.

ERDMAN: That's three years ago. What is-- what's the current information?

KYLE SHEPHERD: Our total-- our revenues in the last year were a little over \$370,000.

ERDMAN: OK.

KYLE SHEPHERD: So I think you might be-- that might-- you may have been provided the outdated report. There should-- there should be a--

ERDMAN: This says at the top 2019.

KYLE SHEPHERD: Right. So there's a '20-- there's a 2019, 2020 that
[INAUDIBLE]

ERDMAN: Goes on to say that you pay \$145,000 in lieu of taxes. How did-- how did you arrive at that amount?

KYLE SHEPHERD: The county provides us with that amount.

ERDMAN: Based on what?

KYLE SHEPHERD: So just the amount of acres that they-- they just assess it just like property tax, and so they'll send us a bill and-- and we'll pay them. There's some of our acres that are-- we still pay property tax on, but these are in lieu of acres or in lieu of tax acres.

ERDMAN: There are some acres you pay taxes on?

KYLE SHEPHERD: Yes.

ERDMAN: Why is that?

KYLE SHEPHERD: The county feels that some of our acres aren't for public benefit, so they go ahead and charge us property tax.

ERDMAN: Must be an insignificant acreage because your taxes is only \$145,000 on 20,000 acres.

KYLE SHEPHERD: Yeah, I don't know the exact numbers. But yeah, the majority of it is paid in, in lieu of taxes.

ERDMAN: I would assume that if this land was on the tax rolls as it should be, if it were not exempt, that tax amount would be four or five times that much.

KYLE SHEPHERD: If it was in irrigated cropland, possibly. But that in lieu figure is based on pasture.

ERDMAN: So when you-- when N-CORPE made the transition from irrigated to dryland,--

KYLE SHEPHERD: Correct.

ERDMAN: --the goal was to return it to native grass. Is that correct?

KYLE SHEPHERD: That was the outcome of that, yes.

ERDMAN: OK. So did they leave the center pivots in place for that first year to get the grass started before they removed that and- and discontinued pumping?

KYLE SHEPHERD: On a majority of acres, no.

ERDMAN: Is that why there's so many tumbleweeds growing out there?

KYLE SHEPHERD: We had-- several years ago we had a large tumbleweed crop. The last several years, we've had minimal amounts of tumbleweeds.

ERDMAN: OK. So you started out with \$120 million and this project cost \$120 million. Is that similar to what--

KYLE SHEPHERD: You're in the ballpark, yeah.

ERDMAN: So today we're-- the court-- well, this is-- this is old information, but in '19 you're saying you had \$88,000-- \$88 million left on the \$120 million. So I didn't-- I didn't do a real deep dive into that, but I figured out you have about 1.4 million acres of irrigated land in those four NRDs. Would that be close?

KYLE SHEPHERD: I'd have to check but you're probably in the ballpark.

ERDMAN: OK. So \$1.4 million, I did the math and-- and \$10 an acre, that's \$1.4 million, 10.4 or 10.4 million-- \$14 million. And so your income is only ten. So there must be some of these local-- these NRDs that aren't charging \$10. That's my assumption.

KYLE SHEPHERD: That's correct. I think the majority of them collect a smaller amount. They'll also use those occupation tax funds for different projects, not just N-CORPE.

ERDMAN: Repeat that if you would.

KYLE SHEPHERD: They'll collect those occupation taxes and they'll have other projects that they-- they may use those funds on.

ERDMAN: So the occupation tax that's collected is not necessarily just to pay down the debt.

KYLE SHEPHERD: No. I mean, each-- each NRD will collect their occupation tax and use it however they see fit, I guess.

Rough Draft

ERDMAN: So at the current rate that you're paying off the bonded indebtedness, how many years is it going to take?

KYLE SHEPHERD: I think we-- 2033, 2035, those come-- they'll be paid off.

ERDMAN: That's another 13, 14 years.

KYLE SHEPHERD: Yeah.

ERDMAN: And you've been at it nine years.

KYLE SHEPHERD: Right.

ERDMAN: So what is your annual contribution to the debt?

KYLE SHEPHERD: N-CORPE's is zero. The NRD pays that directly.

ERDMAN: OK. What is the NRDs' contribution to the debt?

KYLE SHEPHERD: I think that that's an individual NRD question. I think they vary a little bit depending on the different cash contributions they made over time.

ERDMAN: You're the manager of the NRD, right?

KYLE SHEPHERD: Correct.

ERDMAN: N-CORPE.

KYLE SHEPHERD: Yes.

ERDMAN: And you don't know how much a payment is on the bonded indebtedness the organization has?

KYLE SHEPHERD: I don't have that information in front of me, no. But the NRDs do pay their debt directly,

ERDMAN: So is that also in your report, your operating expenses were \$1,364,000? What's all included in your-- in your operating expenses? I would assume that's from N-CORPE, right?

KYLE SHEPHERD: Yeah, that's N-CORPE's operating expenses, correct. That includes-- I thought I had that prepared somewhere. Give me one second. It includes things like bond issue expenses, land remediation expenses, employee expenses.

ERDMAN: [INAUDIBLE] numbers for those

KYLE SHEPHERD: Yeah. Yeah. Utilities, tax and in lieu.

ERDMAN: Can we get a copy of that?

KYLE SHEPHERD: Yeah, I can provide that.

ERDMAN: Good. Go-- continue. What-- what else you got there?

KYLE SHEPHERD: Let me write myself a note here. But yeah, just the operation expenses, everything to operate the project, our electricity usage, payroll, that includes tax and in lieu payments, land remediation, includes some bond issue expenses. We've refunded our bond several times over the years so.

ERDMAN: So the 19,000 acres owned by N-CORPE--

KYLE SHEPHERD: Correct.

ERDMAN: --which is a government, local unit of government.

KYLE SHEPHERD: Correct.

ERDMAN: So that land is available for hunting and recreation? Or how does that work?

KYLE SHEPHERD: Yeah, we have about, oh, about a third of it that's open for public hunting, public access.

ERDMAN: And the other two thirds is?

KYLE SHEPHERD: They're closed to public use.

ERDMAN: For what reason?

KYLE SHEPHERD: It's just our area inside our well field that the boards can-- the board's made the decision to keep that closed. It'd be similar to like NPPD that doesn't allow access to their power plants.

ERDMAN: So I have a chart here. I think this-- didn't you give this to us?

KYLE SHEPHERD: Yeah.

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Natural Resources Committee December 3, 2021

Rough Draft

ERDMAN: All right. So how many acres does this chart involve? You know, from one end of the well field to the other, how many is-- how many miles? Is that a couple miles?

KYLE SHEPHERD: Across that well field?

ERDMAN: Yeah.

KYLE SHEPHERD: It's going to be about eight miles.

ERDMAN: Eight miles. OK. So eight miles wouldn't be 13,000 acres. So if you have 19,500 acres, one third is open to the public, two thirds is not. You're keeping two thirds of 19,500 acres to protect this well field?

KYLE SHEPHERD: Correct.

ERDMAN: For what reason would that be?

KYLE SHEPHERD: The board's just decided that that's access areas that they don't want the public to have access to, control the-- control the access. It's a-- it's a remote area. I mean, there's no-- there's very few roads that go into that area.

ERDMAN: Wow. OK. That's amazing. So you said you raise cattle there?

KYLE SHEPHERD: Correct.

ERDMAN: You have some row crop. Is it dryland?

KYLE SHEPHERD: No. We have one pivot that is-- it was irrigated beans this year. It's on a five-year lease and once it expires, we'll retire those acres also and plant-- plant native grass in there.

ERDMAN: And then-- and most your lease-- most your lease money comes from grass leases?

KYLE SHEPHERD: Correct.

ERDMAN: Do you hay any of this property?

KYLE SHEPHERD: Yes.

ERDMAN: And what do you do with the hay?

KYLE SHEPHERD: It's hayed in two different ways. We'll have some of our producers that lease it for-- for ranching, the hay portions of

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee December 3, 2021

Rough Draft

it. They'll pay us per ton for that hay. There's other parts of the project that we have not leased that we're establishing grass. One of our management techniques has been to hay that-- that ground. And then N-CORPE will just sell that, advertise and sell it.

ERDMAN: Where do you advertise and sell hay at?

KYLE SHEPHERD: The price per ton?

ERDMAN: No, you say some of that hay you advertise and sell?

KYLE SHEPHERD: Yes.

ERDMAN: So how do you do that?

KYLE SHEPHERD: Currently, it's in four different newspapers. It's advertised on our website.

ERDMAN: You ever sell any on Craigslist?

KYLE SHEPHERD: I think we've advertised on Craigslist, yeah.

ERDMAN: You ever sell any through Craigslist?

KYLE SHEPHERD: I don't know that we've sold hay through Craigslist.

ERDMAN: OK. So you have an annual audit, I would assume, right?

KYLE SHEPHERD: Yes.

ERDMAN: And who does that?

KYLE SHEPHERD: R J Meyer and Associates out of North Platte.

ERDMAN: Can you send that to us as well?

KYLE SHEPHERD: Yes.

ERDMAN: I think that's all for now.

KYLE SHEPHERD: OK, thank you.

ERDMAN: Thank you.

BOSTELMAN: Senator Groene.

GROENE: Thank you. Follow-up on Senator Erdman's about-- in a couple three years ago, I passed-- passed LB148. And because of your

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Natural Resources Committee December 3, 2021

Rough Draft

uniqueness and \$14 million budgets that you-- anything under 2-3226.05 had to have a budget hearing and also send a budget to the Auditor. You did not. And the Auditor contacted me because apparently your legal-- whoever does your legal advice told you you didn't have to because of a loophole, because you do not have a property tax levy. Is that correct?

KYLE SHEPHERD: No. No, we contacted the State Auditor's Office and asked them how to fill out the budget forms and if we needed to have a budget hearing. They said we were exempt. We filled out the exempt forms and that was--

GROENE: Let me read this from the Auditor. I'm reaching out to you to bring up what I think Senator Groene will find a problem. He wrote it to my staff. We think LB148 in 2020 was intended to make N-CORPE turn in a budget to our office. We contacted them to tell them that we have not received their budget, and they said they didn't need to turn one in because they do not set a levy. Are they lying to me?

KYLE SHEPHERD: I don't know the date of that letter.

GROENE: It's an email.

KYLE SHEPHERD: Or email.

GROENE: It was dated July 16, 2021.

KYLE SHEPHERD: They did con-- they did contact us.

GROENE: And you said you didn't have to because you did not set a levy.

KYLE SHEPHERD: I asked them how to fill out the budget form since we did not have a levy, correct.

GROENE: So you decided as a public servant that you didn't need to send them a budget. It wouldn't be collegial to the taxpayers for transparency that you wouldn't go ahead and send them a budget?

KYLE SHEPHERD: No, the State Auditors told us that they would not be--

GROENE: No, they would have accepted it. They would have accepted your budget if you'd have sent--

KYLE SHEPHERD: I've not had that--

Transcript Prepared by Clerk of the Legislature Transcribers Office

Natural Resources Committee December 3, 2021

Rough Draft

GROENE: [INAUDIBLE] public entity. Is it against the law for a public entity to send the Auditor their budget?

KYLE SHEPHERD: I guess I haven't been requested the budget from them and they have not reached out.

GROENE: They said they contacted you and requested the budget. You said you would not send it because by state law, you didn't set a levy. There was a loophole. That's what they told me.

KYLE SHEPHERD: I guess I can send the committee the correspondence where we sent them the forms that they requested.

GROENE: So to clarify, would you come in and testify in favor of that when you changed the parameters that says anybody who receives-- sets of levy or has their funding from an occupation tax from an NRD must have a levy, must have a budget hearing and must present a budget to the-- to the Auditor? Would you agree with that as a public servant?

KYLE SHEPHERD: I think if that would clarify the language in there that would give us more direction, absolutely. We're not against--

GROENE: I'll bring a bill next year so you will be there and testify in favor of that.

KYLE SHEPHERD: I'll take my legal counsel's advice, but I have potential I could be here.

GROENE: So if I asked you for your budget, would you send it to the committee?

KYLE SHEPHERD: Sure.

GROENE: The most recent budget.

KYLE SHEPHERD: Yes.

GROENE: How much was it, by the way?

KYLE SHEPHERD: Our most recent budget?

GROENE: Round figures. You don't have to be-- you should know that.

BOSTELMAN: Senator Groene, a question for you. Who's that letter addressed to? Is it to the NRD or is it to?

GROENE: Russ Karpisek.

Rough Draft

BOSTELMAN: I'm sorry.

GROENE: It was from Russ. It was an NRD email

BOSTELMAN: Who was it addressed to?

GROENE: --from the-- from the Auditor, State Auditors. I'll get you a copy of it.

BOSTELMAN: My question-- my question is--

KYLE SHEPHERD: Sure.

BOSTELMAN: --as he's asking, it seems like it's-- I just really don't know who this-- he's referring to a letter, you're referring--

KYLE SHEPHERD: Yes.

BOSTELMAN: --to correspondence. So I'm not really for sure where-- where his letter comes from and where yours and how those come together.

KYLE SHEPHERD: Yeah, I was a--

BOSTELMAN: We'll look at that.

KYLE SHEPHERD: Absolutely.

BOSTELMAN: Appreciate that

GROENE: I'll give this to the Chairman. And then if you would give your correspondence with the Auditor--

KYLE SHEPHERD: Sure.

GROENE: --we'd appreciate that. Senator Erdman had implied basically your 30 wells sits on 4,800 acres, pretty much lined up, but you have 19,000 acres. It's been pretty clear from legal advice I have received and from reading court cases, the Sorensen case in the Upper Elkhorn and the Erd-- Estermann case, that they have declared the augmentation project a public purpose. Is that not true? It's public purpose, a government public purpose, like a water--

KYLE SHEPHERD: Sure.

GROENE: --field for a city. Is that true?

KYLE SHEPHERD: I believe so.

GROENE: And then Sorensen case and the Estermann case, they made it clear that since it was a public purpose, that no-- the common law, a beneficial use over the-- over the land was a factor that a farmer has to live by.

KYLE SHEPHERD: Sure.

GROENE: Then why do you need an additional 14,000 acres when the courts have made it clear that you're not bound by owning associated land to the amount of water used? I mean, what advice have you given as a management-- I can't blame you for the decisions, but as a manager, what advice have you given that board about the necessity to shred 14,000 acres and hire kids to run shredders?

KYLE SHEPHERD: What advice have I given the board on that? I don't know that I've given any advice on the board how much land we should own or retain. I think some of that comes from legal counsel. It comes from the individual NRD boards.

GROENE: And so basically what you need, according to the courts, for public purpose is no more than 4,800 acres, actually less than that. You could have a half-acre well site. Anyway, we'll pursue that further, but I am bringing a bill to give you a heads up to clarify that you need to have a separate public-- that's a good question. Did you have a separate public hearing or did you combine your budget into a-- into an action on a regular meeting?

KYLE SHEPHERD: For our budget that was accepted in-- for our 2021 fiscal budget, we had a hearing.

GROENE: You did this last one.

KYLE SHEPHERD: Yes.

GROENE: A separate hearing besides your normal monthly meetings.

KYLE SHEPHERD: Correct. I mean, it fell on the same day before the board meeting.

GROENE: Could I get the minutes from that meeting?

KYLE SHEPHERD: Sure.

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Natural Resources Committee December 3, 2021

Rough Draft

GROENE: Could the committee get the minutes from that meeting, that budget hearing?

KYLE SHEPHERD: Sure.

GROENE: Could I also get the-- that it was posted in the newspapers or that-- the posting you had that you were planning to have a budget hearing?

KYLE SHEPHERD: Sure.

GROENE: I appreciate that. Thank you. That's all I have.

BOSTELMAN: Senator Gragert.

GRAGERT: Thank you, Chairman Bostelman. Thank you for your testimony. I just got a couple of questions, clear some stuff up for myself if nothing else, 19,000 acres and 4,800 of it is well field, correct?

KYLE SHEPHERD: Approximately.

GRAGERT: So how many-- how many acres do you graze hay and crop out of these 19,000 acres?

KYLE SHEPHERD: Next year 2022 growing season, we will still have the entire property leased out primarily for grazing.

GRAGERT: So leased out, then how do you do that? Do you take bids?

KYLE SHEPHERD: We do. Yep.

GRAGERT: And I don't know, I guess I see the NRDs as a nonprofit organization, you know, to compete against private industry. You don't feel like the grazing land you graze out that somebody could be doing, you know, if you sold that to a producer that he could graze that, you know, land instead of competing with the government?

KYLE SHEPHERD: I think there's some opportunities for local guys to lease our property out probably the same way as it would be privately owned, but it's just a management decision that the boards made.

GRAGERT: I just, again, clarify the NRDs, I think when we were-- when the Legislature put the NRDs out there, it wasn't meant for the NRDs to go out and make money, was it?

KYLE SHEPHERD: I can't answer that question, but I don't think the board, our board looks at the grazing leases as an income. They're not

Rough Draft

leasing that land to produce the maximum amount of income they can. If-- if that was the case, we would use the land for other purposes.

GRAGERT: Whether it is or not, you're competing against somebody that could potentially own that land and as private, graze it themselves or lease it out themselves.

KYLE SHEPHERD: Sure.

GRAGERT: So how many acres then you say we don't want anybody in where your well fields are at as far as hunting.

KYLE SHEPHERD: Sure.

GRAGERT: That's only 4,800. And you said only a third of it is open to hunting.

KYLE SHEPHERD: Right.

GRAGERT: They're not even close to your well fields, are they, if you opened up another third. It looks like, well, that'd be one third is well field, not even, of 19,000 acres.

KYLE SHEPHERD: We have about 8--

GRAGERT: [INAUDIBLE]

KYLE SHEPHERD: We have about 8,000 acres that's in the public access. About 11,000 of it's closed to public access.

GRAGERT: OK. Yeah, I just-- thanks for the clarification.

KYLE SHEPHERD: Sure.

GROENE: Another question.

BOSTELMAN: So as-- as a manager of N-CORPE, you don't set policy.

KYLE SHEPHERD: Correct.

BOSTELMAN: That's your board's decision. So the board makes the decisions. You carry out decisions, instructions of the board, correct?

KYLE SHEPHERD: Yep.

Rough Draft

BOSTELMAN: So you don't make the decision as to what land you own or you don't own or what you do. Could you tell me the decision on how the wells work itself because there's a flow chart in there.

KYLE SHEPHERD: Sure.

BOSTELMAN: Could you explain to me your role in that portion of it?

KYLE SHEPHERD: Well--

BOSTELMAN: Is it-- is it something that--

KYLE SHEPHERD: It's--

BOSTELMAN: --because I know you-- because if--

KYLE SHEPHERD: Sure.

BOSTELMAN: --my memory serves me correctly, is that you forecast out, not you specifically, but it's forecasted out a year in advance of what-- how much rain we may or may not get through that drainage. And then you augment by running wells to provide water and to meet the compact needs.

KYLE SHEPHERD: Yeah, not to get too far into the weeds and answer simply, you know, the forecasts are different between the Republican and the Platte River, and we operate the well field and pipelines kind of in two different ways. But on the Republican side, they'll request a certain amount of water be pumped in a certain amount of time, maybe 5,000 acre-feet, and we need to get it delivered in a timely fashion. The Platte River is a little bit different. They'll look at different amounts of water in the river. DNR will send a request to the Twin Platte NRD, and at that point we'll make the decision which wells to run. And-- but DNR sets that amount of water that they want to enter the river at a certain time.

BOSTELMAN: OK, thank you.

GROENE: I have a question.

BOSTELMAN: Senator Groene.

GROENE: You're the manager. Now maybe I'm confusing your responsibilities to a manager at an NRD, which Senator Erdman said they bring policy to you. They bring programs to the board. So I'm assuming you do the same thing. The Tri-Basin NRD and they can send a

Rough Draft

committee-- they disagree with me, has an augmentation project, but they own no land. They lease the well from a farmer and they pump. I understand the Lower Republican has purchased some city wells that had nitrate problems that were abandoned for future use to probably augmentation. They don't own any land. Have you investigated that and come back to the board and said, listen, I think we could be good public servants and following the court cases, we could sell off this land and help lower the debt and help lower the occupation tax and get rid of your operation costs? Have you looked into any of that?

KYLE SHEPHERD: We've looked into that from day one, whether we should own the land.

GROENE: [INAUDIBLE] apparently the Tri-Basin decided they didn't need to.

KYLE SHEPHERD: I think that'd be a question for Tri-Basin to answer why they don't own land.

GROENE: And you've got to own some land. The Sorensen case said half acre or whatever [INAUDIBLE]

KYLE SHEPHERD: Sure.

GROENE: --for a public purpose. Also the wells, are they turned on and off by you or are they done at the Twin Platte by a phone or whatever? They're all-- they're electronically run and monitored, aren't they? You don't go out there in the old-fashioned way and start the diesel engine and run the well, do you?

KYLE SHEPHERD: We turn them on on-site, either in our office, which is on-site or we go to the well site to turn them on.

GROENE: Turn them on manually.

KYLE SHEPHERD: Correct.

GROENE: Not by-- and they're monitored by--

KYLE SHEPHERD: We have a SCADA system similar to what a municipality would have for their well.

GROENE: So then practicality like a farmer, those wells could be turned off by the Middle Republican or the Twin Platte NRD and have a ditch rider go out there and just check to see if they're operating practical using technology? That could work, wouldn't it?

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Natural Resources Committee December 3, 2021

Rough Draft

KYLE SHEPHERD: Sure. And we currently use that technology.

GROENE: So then why do we need a staff at the NRD at the N-CORPE that costs us what, half a million a year, the taxpayers million a year? Why do we need that staff?

KYLE SHEPHERD: To operate the project. It's a very large project that's important to the NRDs and they've made that decision to staff.

GROENE: How many-- I talked to a young man who had a summer job out there running a tractor all summer long, running a shredder to kill the tumbleweeds. How many of those do you run and operate?

KYLE SHEPHERD: I don't know who that individual would be. We don't have kids that run our equipment.

GROENE: I know him personally. It wasn't hearsay. He worked out there and he ran a shredder all summer long.

KYLE SHEPHERD: H'm.

GROENE: All right. Anyway, I'll get-- I'll get the Chairman--

KYLE SHEPHERD: Sure.

GROENE: --documentation from the young man. Anyway, thank you. You know, we differ. And I look after my county and the taxpayers, and I'm just still looking for that thank-you from the Upper Republican and Lower Republican to Lincoln County and that's not you--

KYLE SHEPHERD: Sure.

GROENE: --the sacrifice we've done in Lincoln County to bail them out of misuse of their groundwater.

KYLE SHEPHERD: Sure.

GROENE: Thank you.

BOSTELMAN: Senator Moser.

MOSER: Do you know the date of this photo? Is that 1984?

KYLE SHEPHERD: I think that photo is from maybe 2014, 2015.

MOSER: It says something in the legend down below: WGS 1984 Web Mercator Auxillary Sphere. Anyway, the reason I'm asking is I don't

Rough Draft

know what time of year this picture was taken, but that ground looks pretty sandy and kind of not real well covered by vegetation. Is some of it still pretty bare?

KYLE SHEPHERD: I think that-- that's a photo probably from-- probably while it was still being farmed. We've had some pretty good success on our-- our reestablishment of grasses. I mean, we just like any rancher, I think there's some areas that need some work, but we have some blowouts. But for the most part, it's very successful replanting.

MOSER: You can't water the grass in this area.

KYLE SHEPHERD: You probably could. We haven't. Very limited scale have we watered any of our grass.

MOSER: But I mean, I thought the whole purpose of your area was not to use any water so that you could augment the flow of the streams.

KYLE SHEPHERD: That's correct. We've sold the majority of our pivots off the property.

MOSER: And it's around 20,000 acres. Are there more areas than what are shown on this map?

KYLE SHEPHERD: There are. There's about 5,000 acres that are about 10 miles south there.

MOSER: Yeah, I was going to say I kind of--

KYLE SHEPHERD: And we only provided that map for the flow charts for the well field area.

MOSER: Oh, yeah. [INAUDIBLE]

KYLE SHEPHERD: So it wasn't for reference to the whole property.

MOSER: Yeah. I was multiplying out the acres and there were 8,000 acres missing.

KYLE SHEPHERD: Right. Yeah. Yeah. And there's some further to the east there also.

MOSER: Thank you.

KYLE SHEPHERD: Yep.

BOSTELMAN: Senator Erdman.

Transcript Prepared by Clerk of the Legislature Transcribers Office

Natural Resources Committee December 3, 2021

Rough Draft

ERDMAN: Thank you, Senator Bostelman. So I'm going to make an assumption here: these maps, this map you sent me with the numbers on it, the-- the numbers first are the section and then there's a number of the well in that section. Would that be correct?

KYLE SHEPHERD: That's correct.

ERDMAN: So these people above here, these circles, are they still irrigating?

KYLE SHEPHERD: Yes.

ERDMAN: What has their-- what has their static water level done since you've been pumping there?

KYLE SHEPHERD: While we're pumping, just like an irrigation well, it'll drop.

ERDMAN: Does it drop while they suck air?

KYLE SHEPHERD: No, no. We've had some issues with some of our neighbors' stock wells, you know, that were drilled fairly shallow years ago that we've cost shared with those folks to get them down a little bit lower so they don't have any problems. We haven't had any problems with irrigation wells.

ERDMAN: OK. So you said there's other land besides this, what shows on this map?

KYLE SHEPHERD: Yeah, there's some to the east and some to the south.

ERDMAN: Is it contiguous?

KYLE SHEPHERD: No. The stuff to the south it's separated by several miles.

ERDMAN: Why would the NRD need to own land that's not connected with where the wells are?

KYLE SHEPHERD: They've retired that land from irrigation. It's-- the boards decided that they need to hold that for-- for the water credit that came off of that [INAUDIBLE]

ERDMAN: OK. In Morrill County, which is near Wyoming--

KYLE SHEPHERD: Sure.

ERDMAN: --there was an ethanol plant built there in 2007 or '08.

KYLE SHEPHERD: OK.

ERDMAN: And they weren't real astute to what they were doing. They bought a quarter of ground had a well on it, irrigation well. And they just made an assumption that they could use the well. But it wasn't adjudicated to that, never used it. And they got ready to start making ethanol '08 or '09, and they had no water. So what they did is they bought water from a quarter on the north side of the lake, of the river and transferred that water to the ethanol plant. They don't own anything. They don't own any of that land on the north side. They got a specialty warranty deed that transferred that water from that quarter to the quarter where they have the ethanol plant. You don't need to own the land to be able to pump the water. That's the point I'm trying to make, and it happens all the time. And so I don't comprehend why you would want to hold that 9,000 or whatever that acres is that's not adjacent to this property. Why would you want to hold that? When you want to protect where the groundwater wells are, that's all the ground you need is 4,800 acres. That-- this-- this whole thing is not adding up, is not making much sense to me that you've taken all this land off of the tax rolls. You pay one fourth as much taxes as you should pay, so everybody else is paying more. Not only are these farmers paying an occupation tax, they're paying more property tax because this has been taken off the rolls. Does that make any sense?

KYLE SHEPHERD: I think there's-- I don't think the board wants to hold that much land. I think they feel they need to.

ERDMAN: I didn't say, Does the board want to? I asked you, does that make sense to hold that land that's not adjacent to this land that's not even close to the well field? There's no purpose to hold that land. Why don't you sell the land at least that's not connected to this parcel?

KYLE SHEPHERD: I think we feel there is a purpose to hold that land. And I think it's been proven a couple of times by the Nebraska Supreme Court, the Estermann case and the Rock Creek case. But I'm not legal counsel, so I hate to go too-- too far in the weeds on that.

ERDMAN: All right. Thank you.

GROENE: Need to clarify.

BOSTELMAN: Last time, Senator Groene.

Transcript Prepared by Clerk of the Legislature Transcribers Office

Natural Resources Committee December 3, 2021

Rough Draft

GROENE: Last time, I understand. I want to clarify Senator Erdman. The N-CORPE board did not decertify those irrigation acres. The Twin Platte and the Middle Republican NRDs who control, who are responsible for that groundwater, not the Upper, not the Lower Republican within their IMPs, decertified that irrigation, those irrigation acres. Is that true?

KYLE SHEPHERD: I don't know if that's true or not.

GROENE: And since they've been decertified, there's no groundwater that can be allocated to the N-CORPE project because irrigation acres and water use no longer exist in those two NRDs. Is that true?

KYLE SHEPHERD: I-- that would probably be better answered by one of the NRD managers.

GROENE: So an argument, well, I would figure as a manager, an expert in his augmentation--

KYLE SHEPHERD: I just don't want to answer somebody else's question.

GROENE: So when the Supreme Court said it was a public purpose, then it no longer common law beneficial use over the land did not imply, what relationship does owning land have to do with owning a public well, a public purpose?

KYLE SHEPHERD: State that question again.

GROENE: Since it's no longer-- the Supreme Court made it clear it's a public purpose, augmentation is a public purpose, just like a city well, city of North Platte owns-- owns a quarter, does not own 10,000 acres to justify the common laws use over the public purpose over-- over the land because it's a public purpose. So have you had a discussion why the board believes that you need to own that land when it's a public purpose because of the common law relationship of how much water you use to beneficial use over the overlying land does not apply to a public purpose.

KYLE SHEPHERD: Not to be disrespectful, but I think that's a great question for our legal counsel to get into common law and so forth.

GROENE: I just wanted it on the record And for another argument for another bill. Thank you.

BOSTELMAN: Seeing no further questions, appreciate you coming in today. As the general manager for N-CORPE, I think you answered

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee December 3, 2021

Rough Draft

questions as best you could. Some of the questions were more directed towards our NRDs than yourself, but thank everyone for coming in today. Thank you for all the directors and board members and landowners, other interested parties being here today. This will end our hearing on LR23. Thank you very much. Have a good day. Merry Christmas.

KYLE SHEPHERD: Thank you.