

April 16, 1981

LB 252

Therein lies the whole concept and problem we are trying to deal with. Transbasin diversion under the Constitution of Nebraska cannot be denied except when it is in the public interest. The state water plan which we have talked about before has a section in it and is funded to deal with the question of transbasin diversion. The Legislature did make plans to deal with it. But it was one of the last subjects which we intended to deal with and was not due to be done until 1984. But the Supreme Court decision now has changed that. We can no longer afford to wait for the state water plan because the Supreme Court has said that the applications can proceed for transference of water from one basin to another. Let me basically explain what is happening right now and what will continue to happen until and unless the Legislature passes LB 252 or a bill similar to it. Applications are made to the Director of Water Resources and there is a hearing on the application, and basically the Director takes in all of the evidence that he wants to let in. As I understand it, he has taken in all evidence, and on the basis of that evidence he makes the decision as to what is in the public interest and that is that, except, of course, that the Supreme Court of the State of Nebraska is going to have the last word on what is in the public interest. Since the Legislature has not spoken, the process right now is in the hands of an Administrative Director, of an Administrator in the Executive Branch and in the hands of the Nebraska Supreme Court. My very strong opinion is that it is the responsibility of the Legislature to set down the policy of the state with regard to transbasin diversion, that it is our responsibility to give direction to the Director of Water Resources on when denial should take place to set up for him the framework for determining what is in the public interest, and to give the Supreme Court guidance as to what is in the public interest in the opinion of the legislators of the State of Nebraska who represent...who are the directly elected representatives of the people of the state. So that is what this bill is all about. It is saying, Legislature, make the policy. If you don't pass a bill, whether it is a little bit pro diversion or a little bit anti diversion, if you don't pass a bill, you are leaving it in the hands of the agency. And the policy that I am asking you to formulate today will be formulated slowly, haphazardly, tortuously by interaction between that Director and the lawyers involved in cases and the Supreme Court. As the Supreme Court decides each case, it will tie down a little bit more and a little bit more as it is forced to do so the framework for determining the public interest. But that process will be long and it will necessitate a large amount of litigation. I am asking the Legislature to take decisive

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