

May 7, 1981

LB 252

Constitution says that it can't be denied except for this reason and it does not say anything about it being in the basin or out of the basin and that was the basis of the court decision last summer, that indicated transbasin diversion is, in fact, legal in the State of Nebraska, then I don't think it is incumbent on us to make a decision in statute that would treat the request for an application for an appropriation of water that would happen to be out of the basin, make them jump through different hoops if you will, than an application for an appropriation within the same basin. We have got an Attorney General's opinion coming on this, on that very question. We have not got it back yet but I happen to think that probably it is going to be unconstitutional. So what I am saying or suggesting is that we set an acre foot figure that every application over a certain amount, every application of over 5,000 acre feet and that would certainly not include any individual farmer or even a very large farmer for that matter that would file for an application would certainly be above that so it would always be irrigation districts or something of that nature that would be applying for that amount of surface water. Everybody that applied for an application for an appropriation of over 5,000 acre feet would have to follow the same criteria that we are setting down in LB 252. Now the argument has been made on this floor that if you take water out of the river that it affects the river downstream and that certain impacts might result and that is the reason for the language on page 6 of 252. That is also the reason for the language in the amendment that I am offering to you where it talks about economical and environmental and other benefits, adverse impacts, current beneficial uses of water and proposed beneficial uses and so forth. It seems to me that that same impact could be felt by the basin or by the river if the water was taken out of the river and kept out of the stream for a distance of one hundred to a hundred and fifty miles before it went back. Now the argument can always be made of course that you will have return flows from irrigation. Well lets assume that a new project will go in and I think as most of the new projects will all be in the future, most of them will be in lined canals or in pipes, therefore, the return flow to the river will not be felt near as quickly as it is nowadays. For instance, if the Tri-County system that is out there in central Nebraska was, if the main canal was a lined canal and the point that the water comes out of the river is just downstream from North Platte, Nebraska, the point where the actual irrigation out of that system starts, where the return flows if you will, that would be caused by the actual irrigation is not until you get down around Elwood, Nebraska. Now that is a period of several

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