

language like this in an intent section of a bill would have on judicial interpretations to date of what beneficial use means and I think far the wiser policy unless there is some specific purpose to putting it in, is to delete it from the bill and to proceed with our present structure as it is in place as we have taken it from our courts with regard to the interpretation of beneficial use in specific instances, rather than to throw a broad general statement in a statute like this and create confusion and problems. I'm sure that Senator Schmit will go along with this since he has long been an opponent of lawyer relief measures and if there is anything that is going to create business for lawyers it is this one because it will confuse the meaning and interpretations of the phrase "beneficial use." So I would ask you to delete it entirely from the intent section. Thank you.

SENATOR CLARK: Senator Kremer.

SENATOR KREMER: I expect this is a comment more than anything else but as I read this section, Senator Beutler, we are in the intent language just reaffirming what our law states today. Is this not right? It is a reaffirmation of Nebraska's actual water policy and our courts have long said about what we are saying here that...and then we get right back to ownership again. We discussed this many, many times but our courts have generally said, have they not, that the water below your land is there and you have a right to use it as long as you use it reasonably. That is the doctrine of reasonable use. Is that right?

SENATOR BEUTLER: That is right, Senator Kremer, and I am saying what is the point of putting it here in case some lawyer is going to get up and argue that it has a little different meaning based upon what the statute says.

SENATOR KREMER: I guess I just can't see the problem. We just thought we were reaffirming what our courts have said in the intent language.

SENATOR BEUTLER: Is this phrase, for example, does this do anything to the preference statutes that we have in place? This statement, for example, says that all will share equally. It doesn't say anything about preferences.

SENATOR KREMER: I think I addressed that point in my comments several moments ago when I said the...in the preference of use doctrine, I think we have reasonable assurance, more than reasonable assurance that domestic is always going to come first.