

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

March 4, 2004

LB 962

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, I...a few minutes ago I had a discussion with Senator Jones about the whole idea of whether we create a new regulatory structure, or, given the principles that are in place, we just let the Supreme Court and the court system determine how the principles play out, that is, by letting individual litigants come together and resolve whatever little difference they have. And you know, even on a state to state basis, somehow we were content to let the Republican River Basin go to litigation and resolve that that way. Why did we do that? Well, I'd be disingenuous with you if I suggested that what I'm really proposing is that we go back to a system of litigation. I think we all recognize the need to put together something that integrates ground water law and surface water law. But I did want to bring out the point that Senator Wehrbein actually brought out. Idaho had \$100 million of litigation costs. Litigation costs are very, very significant, and if we can avoid them, we should, if we can structure the law in such a way that's fair and avoid all this litigation. But that enormous litigation cost, and the threat of litigation cost, and the curtailment or reconfiguration of operations simply because you think there might be litigation costs, the hiring of lawyers, all of those are expenses that normally one would say, perhaps, well, you just go out there and resolve it. But no, the state is going to set up this bureaucracy that will preclude all of these litigation costs which would normally be the expenses of the litigants, of the individual landowners. And in order to win this litigation, they would have to have scientific information to support their point of view, and that would be very expensive for them. Instead now the state is going to do all those scientific studies for the entire state and preclude the expense to the landowners of doing that themselves in the course of litigation. So the point is, this is another great added advantage to the irrigators themselves which justifies, in my mind, the idea that they should pay at least a part of the cost. And I want to make it clear, and I think it has been clear, that nobody has even advocated asking them to pay 100 percent of the cost, which is what we do for most regulated industries. Nobody has even advocated a completely fair, quote-unquote, system, and nobody has even advocated that they pay most of the cost. The proposition that will be presented to