

Dear Ms. Labenz,

In response to the questions you asked in your Sept. 22, 2008 email:

1. *Does the DNR consider the LRNRD liable for this \$2,223,260? (until the law suit is finished and the bonds issued to repay the State, and ultimately the taxes will repay the bonds)* Answer: DNR, as administrator of the source of the funds, Water Contingency Cash Fund established by LB 1094 the last session, and the state pursuant to LB 1094 consider LRNRD liable for repayment of the \$2,223,260. I have attached the Memo of Understanding acknowledging that obligation, signed by LRNRD prior to transfer of the funds. However parts of your parenthetical clarification are erroneous, “until...the bonds issued to repay the state...” etc; as outlined in the MOU, the state expects repayment to come from collected tax revenue on a schedule according to transfer of revenues from county treasurers to LRNRD. No bonds have ever been issued, nor need they be issued to repay the state under the MOU. The taxes have been collected since authorized by LB 701, 2007, and deposited with the natural resources districts. Prospective and collected revenue under LB 701 provisions were intended for surety for bond issuance. NRDs presumably are drawing interest on collected revenues.
2. *What happens to the NRD's that received this money if the lawsuit is determined to not allow the collectability of those taxes to issue and then pay those bonds?* Answer: As above, bond issuance is not required for repayment to WCCF. The already collected revenue is expected to return immediately to the state, once the lawsuit is resolved. These agreements were made prior to the District Court decision, now being appealed by the state in the Court of Appeals. I have attached a memo to the Coalition in response to their request for clarification of “resolved”. The legal question of whether, and under what conditions, a taxing entity must return revenue collected from citizens under an invalid authority is beyond my scope to answer. LB 1094 anticipated the possible invalidation of the LB 701 taxing authority (in fact was a primary reason the bill was passed) by explicitly stating that “loans” to the NRD were to be repaid, setting out an explicit schedule for repayment if the state wins the lawsuit and the taxation is saved, and an absolute deadline of repayment (by June 30, 2013) if the state loses the lawsuit. In the latter event, the law maintains the date certain of repayment and addresses the “how” by saying repayment will be “as determined by the Legislature”. Note that the 701 tax authority includes both property tax and occupation tax; only the property tax element was addressed by the original lawsuit, and I believe the Legislature expected that the occupation tax would remain on the table for reimbursing the WCCF in any event during development and passage of LB 1094. I suggest you read the enabling act, LB 1094 slip law, which you can view at the Legislature’s website (<http://nebraskalegislature.gov/web/public/home>) in order to get additional context.