

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

[LB798 LB799 LB800 LB801]

The Committee on Natural Resources met at 1:30 p.m. on Wednesday, February 6, 2008, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB798, LB799, LB800, LB801 and AM1629 to LB801, and gubernatorial appointments. Senators present: LeRoy Louden, Chairperson; Carol Hudkins, Vice Chairperson; Tom Carlson; Mark Christensen; Annette Dubas; Deb Fischer; Gail Kopplin; and Norman Wallman. Senators absent: None. []

SENATOR LOUDEN: Good afternoon. We'll start the hearing now on the Natural Resources Committee. I'm Senator LeRoy Louden. I represent the 49th District and I'm chairman of the Natural Resources Committee. With that, I will introduce senators now. The one senator on my far right is Senator Wallman from Cortland; next to he is Senator Tom Carlson from Holdrege; and then next to he is Senator Gail Kopplin from Gretna; next on my right is Jody Gittins, legal counsel for the committee; to my left is Senator Carol Hudkins, vice chairman, and she's from Malcolm; and next to her is seated is Mark Christensen from Imperial; and on the end is Barb Koehlmoos, committee clerk. We have our page, is Kristen Erthum, she's from Ainsworth and she's a sophomore at Doane College. Turn your cell phones or whatever on the silence so they don't disturb anyone and then those wishing to testify on a bill should come to the front of the room when that bill is to be heard. As someone finishes testifying, the next person should move immediately into the chair at the table. If you do not wish to testify but would like your name entered into the official record as being present at the hearing, there is a form by each door that you can sign. They will be a part of the official record of the hearing. This year we're using a computerized transcription program and it is very important that you complete the green sign-in sheets for testifiers prior to testifying. They're on the tables by the doors and need to be completed by all people wishing to testify, including senators and staff introducing bills and people being confirmed. If you are testifying on more than one bill, you need to submit a form for each bill. When you come up to testify, place the form in the box by the committee clerk. Do not turn the form in before you actually testify and please print and it is important that you complete the form in its entirety. If our transcribers have questions about your testimony, they use this information to contact you. As you begin your testimony, state your name and spell it for the record even if it is an easy name. Please keep your testimony concise and try not to repeat what someone else has covered. If there are a large numbers of people to testify, it may be necessary to place time limits on testimony. If you have handout material, give it to the page and she will circulate it to the committee. If you do not choose to testify, you may submit comments in writing and have them read into the official record. No displays of support or opposition to a bill will be tolerated, vocal or otherwise. If you need a drink of water, please ask the page while you are testifying and with that we will begin the first part. It will be the confirmation hearing on Ron Zeiger to the Environmental Quality Control. Mr. Zeiger, will you please come forwards and tell us a little bit about yourself. At this time I want to mention that Senator Deb Fischer from

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

Valentine has joined the committee as a member of the committee. Go ahead.
[CONFIRMATION]

RON ZEIGER: (Exhibit 1) I'm Ron Zeiger, Z-e-i-g-e-r. I'm from Syracuse. I'm a member of the Environmental Council and I'm here for reappointment. I'd be glad to answer any questions anybody wants to ask. [CONFIRMATION]

SENATOR LOUDEN: Questions for Mr. Zeiger? Senator Fischer. [CONFIRMATION]

SENATOR FISCHER: Thank you, Chairman Louden. Welcome. How many terms have you served on the council? [CONFIRMATION]

RON ZEIGER: Just a partial term. [CONFIRMATION]

SENATOR FISCHER: A partial term. [CONFIRMATION]

RON ZEIGER: Like three years and... [CONFIRMATION]

SENATOR FISCHER: And why would you like to be reappointed? [CONFIRMATION]

RON ZEIGER: Well, I think it's... [CONFIRMATION]

SENATOR FISCHER: What do you feel you add to the council? [CONFIRMATION]

RON ZEIGER: Well, I think it's a worthwhile council. I spent my entire business life in the conservation work, grading and conservation work. I've got a real appreciation for taking care of the land. I wasn't so much at the time worried about the air and the water but I can see now, and mostly being on the council, that we need to be good stewards of all three, the land, the air and the water of this state. And I think, you know, being on the council, it's been good for me and I think I've tried to do a job, you know, representing the municipalities on the council. [CONFIRMATION]

SENATOR FISCHER: Okay. Thank you. [CONFIRMATION]

SENATOR LOUDEN: Senator Carlson. [CONFIRMATION]

SENATOR CARLSON: Senator Louden. What kind of issues on the council with the experience you had, do you feel like you're best equipped to handle and contribute toward? [CONFIRMATION]

RON ZEIGER: Well, it comes up a lot like wastewater issues for municipalities, feedlots containments. I've did a lot of that work. I understand, you know, the laws and the reason that there...the regulations are in place. I understand the language and I think as

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

a...that we do a good job. I think the environmental or DEQ does a great job in this state and we should continue to operate like we're doing right now. And take these issues and really hammer them out, you know, when they want to change something, so that, you know, we've got to be real zealous about taking care of the environment but on the other hand, we don't want to just do an overkill. And so there's got to be a fine line in there some place. [CONFIRMATION]

SENATOR CARLSON: So you feel like you can identify with the position of the feeder as well as the...as DEQ since you've worked on these projects? [CONFIRMATION]

RON ZEIGER: Probably more so with the feeder than the DEQ, yeah.
[CONFIRMATION]

SENATOR CARLSON: Okay. Thank you. [CONFIRMATION]

SENATOR LOUDEN: Other questions? Senator Hudkins. [CONFIRMATION]

SENATOR HUDKINS: Mr. Zeiger, thank you for being here today. Do you have anything to do with stormwater runoff, or your council? [CONFIRMATION]

RON ZEIGER: Oh, yeah. Yeah, it's... [CONFIRMATION]

SENATOR HUDKINS: All right. Well, maybe you're familiar with the fact that the federal government has said that various cities in the state of Nebraska have to control their stormwater runoff and Douglas County, Lancaster County, Sarpy County and then there's individual towns too. Let's just for fun, take Lancaster County. How should that be funded so we can pay for stormwater runoff? [CONFIRMATION]

RON ZEIGER: Well, can I back up a little bit and answer? [CONFIRMATION]

SENATOR HUDKINS: Sure. [CONFIRMATION]

RON ZEIGER: Some of what we do on the council is a rubber stamp. If the feds come down EPA, they say you've got to do, you know, we, as a council, don't have any authority to change it. And unfortunately, a lot of what comes down from the feds is mandated and there isn't a good way to pay for it, you know, but... [CONFIRMATION]

SENATOR HUDKINS: So how would... [CONFIRMATION]

RON ZEIGER: My personal opinion, or the council opinion, we don't worry on the council about where the funding is coming from to do this, we... [CONFIRMATION]

SENATOR HUDKINS: Just get it done. [CONFIRMATION]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

RON ZEIGER: ...just get it done to a point. Now, and if it get's...if somebody comes and testifies and says that we got to go way beyond where we're at right now or way beyond what the EPA says you've got to be at, then it's time for us to kick in and say, now, wait a minute here. You know, you're talking about...where is this money coming from. [CONFIRMATION]

SENATOR HUDKINS: Well, we're having a discussion amongst the members of the committee that perhaps this should come from property taxes. Just, you know, just add some more to the property tax for this stormwater runoff and others are saying, well, if you are a contributor to the problem, i.e., big lots, big roof lines, then you should be able to pay. [CONFIRMATION]

RON ZEIGER: I think if it come to something where I had to make a decision, I would say the person or persons contributing to the runoff problem, I would lean that way. I own several farms. I don't need any more property tax if we can help it. But that's...you know, if I'm contributing, if I'm part of the cause, if something I'm doing on my farm is causing it, then I would listen to them and I would pay my share. [CONFIRMATION.]

SENATOR HUDKINS: Thank you. I appreciate your remarks. [CONFIRMATION]

SENATOR LOUDEN: Senator Wallman. [CONFIRMATION]

SENATOR WALLMAN: Thank you, Chairman Louden. Thank you for being here. Appreciate your reapplying. This stormwater issue, I picked up on there where she's taken off and property tax, I'm a farmer, too, so that's an issue. But the NRDs have the ability to tax, as you realize. Do you think it ought to be hooked in with a co-, you know, maybe, hooked in with the NRDs for retention ponds and basins like south Lincoln here? They built water retention basins and they keep the water, you know, from going down the stream real quick. [CONFIRMATION]

RON ZEIGER: Well, I think that's really important to have basins like you're talking about. The NRDs are the best thing that's ever hit Nebraska as far as I'm concerned. You know, because it's just...I think a lot of people don't understand the NRDs but there may be, you know, in a process they help with conservation, they help with recreation. Maybe they could help some with this type of deal but I'm not going to put a formula on it and say how of it.... [CONFIRMATION]

SENATOR WALLMAN: Sure, sure, I understand that. Thank you. [CONFIRMATION]

SENATOR LOUDEN: I have a question. What part of the council do you represent, construction or... [CONFIRMATION]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

RON ZEIGER: Municipalities. [CONFIRMATION]

SENATOR LOUDEN: Pardon? [CONFIRMATION]

RON ZEIGER: Municipalities. [CONFIRMATION]

SENATOR LOUDEN: Municipalities. Okay. [CONFIRMATION]

RON ZEIGER: I live in the town of Syracuse. I was on the city council for eight years, I was a president six years, currently on the economic development board there. I'm an unpaid consultant for the council, I guess, to help build the new park down there and... [CONFIRMATION]

SENATOR LOUDEN: I see. You still on the city council? [CONFIRMATION]

RON ZEIGER: No, I'm not on the city council right now. [CONFIRMATION]

SENATOR LOUDEN: Okay. Thank you. Other questions for Mr. Zeiger? Seeing none, thank you for your testimony. [CONFIRMATION]

RON ZEIGER: Thank you. [CONFIRMATION]

SENATOR LOUDEN: Are there those wishing to testify in favor of Mr. Zeiger's appointment? Are those wishing to testify in opposition to his appointment? Those wishing to testify in neutral? With that we close the confirmation hearing on Ron Zeiger. From that, we'll go to LB798. [LB798]

JODY GITTINS: Good afternoon, Chairman Loudon, members of the Natural Resources Committee. My name is Jody Gittins, J-o-d-y G-i-t-t-i-n-s. I'm committee counsel for the Natural Resources Committee and introducing LB798 on behalf of Senator Loudon. The purpose of this bill is to provide a mechanism in statute that accurately reflects the intent of the exemption through time from surface water and groundwater use for irrigation water reuse pits. The bill primarily seeks to change the definition or language that's used to be more current with what is currently being used in the field of hydrology. The bill strikes "headwater segment" and inserts language that describes the hydrological conditions and impacts as ephemeral. The bill describes a portion of a natural stream in which water flows only after precipitation event or when augmented by surface water runoff caused by the pumping of groundwater as an ephemeral natural stream. Ephemeral stream has water flowing only during and for short duration after precipitation event in a typical year. The bill allows the Department of Natural Resources to investigate an ephemeral natural stream identified as such on the most recent USGS topographic quadrangle map to determine whether such stream is perennial or intermittent subject to permit requirements. If the department determines

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

the natural stream is, in fact, an ephemeral natural stream, the water reuse pit located with such stream is exempt from the permit requirements. One of the concerns that the department has had is that it's been informed by the USGS that it will no longer be updating the intermittent stream features on its topographical maps because of lack of funds. The map...the current map that's used is over 50 years old. There are many inaccuracies when maps are this old and the classification as an intermittent stream is a feature likely to have changed over 50 years. Director Bleed is here to further explain the bill and why it's important to the department that this change be made. [LB798]

SENATOR LOUDEN: Questions for Jody? Seeing none, thank you, Jody. First testifier then for as proponent for LB798. [LB798]

ANN BLEED: Thank you, Senator Louden, committee. My name is Ann Bleed, that's A-n-n, capital B-l-e-e-d, and I am the director of the Department of Natural Resources. And essentially this bill was accurately described by legal counsel, Gittins. The reason for the change is really to change the definition of when a bill is exempt. The existing law does already exempt pits and streams so there's no change in that aspect of the law. The problem we had, as Jody Gittins' explained, is when we went to the USGS and asked them to update their topographic maps that we were using as the basis for this bill they said, well, we don't have enough money to do it and we had an outdated map, some of which as Ms. Gittins explained are over 50 years old and they're out of date. So what this bill does, is essentially say that we're going to use those topographic maps as the basis of what pits would be exempt from streams at this point in time. However, if our field staff determines or if there are other people who complain that lead to a field investigation and they determine that in fact the pits are not in an ephemeral stream, then we will have the ability to go ahead and change the definition of where the stream does become ephemeral and we are required to develop rules and regulations on how we make that determination. The other concern from our attorneys is if we rely entirely on the USGS maps, they were concerned that we were delegating state authority to a federal government, and that is not something we are inclined to do. So that is the reason for the change. I'd be glad to try to answer any questions if there are any. [LB798]

SENATOR LOUDEN: Questions for Ann? Senator Christensen. [LB798]

SENATOR CHRISTENSEN: Thank you, Chairman Louden. Thank you, Ann. Now if I got this right, this is...this ephemeral... [LB798]

ANN BLEED: Ephemeral. [LB798]

SENATOR CHRISTENSEN: There you go, is the stream that don't run all the time, only after rains or runoff and them are exempt from the rules? [LB798]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

ANN BLEED: The concept is that there are many places in the state, particularly in the Upper Big Blue Natural Resources District, where there are...there's quite a bit of runoff in these streams due to runoff from groundwater pumping. The groundwater pumpers would like to be able to recapture that water for reuse on their fields so that it doesn't have to go downstream. So the existing law allows those folks to be able to dig a pit in the stream to pump back out of that pit without requiring a surface water permit that would be regulated first in time, first in right if downstream uses are short of water. So that basic exemption is what is in the existing law. The only problem we had was in dealing with this problem with the USGS maps not being kept up to date and that's the only change we're making. [LB798]

SENATOR CHRISTENSEN: So they're wanting the reuse pit in the stream rather than on the edge of their field and having to berm to control it and things that way? [LB798]

ANN BLEED: Right, right. [LB798]

SENATOR CHRISTENSEN: Okay. Thank you. [LB798]

SENATOR LOUDEN: Senator Fischer. [LB798]

SENATOR FISCHER: Thank you, Chairman Louden. Thank you, Ann, for being here. Does this just deal with irrigation or could it affect any water source, stream, whatever that doesn't have water in it for most of the year? Because in the Sandhills we have subirrigated meadows and they only flow for a month or so every year and when they drain, there's certain areas then that have water in them for just a short period of time. Would this bill affect that? [LB798]

ANN BLEED: Well, in fact, one of the reasons that I suggested we take out the word "headwater segment" of a stream is thinking exactly of some of those areas of the Sandhills where we have subirrigated meadows that turn into springs which eventually turn into a stream. And this...we did not want those areas to be affected by this bill so that's one of the reasons that I changed or suggested the change from "headwater segment" to an ephemeral stream. And the idea again, is that in these streams the bulk of the water in the summertime when irrigation is occurring would be from groundwater runoff and this would enable those irrigators to reuse the groundwater they themselves had pumped. [LB798]

SENATOR FISCHER: So subirrigated meadows and the streams that may be formed by those during springtime usually, are not regulated and will not be regulated? [LB798]

ANN BLEED: Well, I don't think you can go that far. This bill does not affect that...those subirrigated meadows. To the extent that a spring, a subirrigated meadow, what have you, does turn into a stream with a defined channel, then the Department of Natural

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

Resources has the responsibility and authority to regulate diversions out of that channel. We do not regulate diversions out of the meadow itself so it gets a little bit dicey about how you would actually determine whether this is a diversion from the stream or somebody dealing with a wet meadow. [LB798]

SENATOR FISCHER: All of our wet meadows run into streams and rivers, so how are we going to address that? [LB798]

ANN BLEED: Well, that's an interesting question and I'd be glad to talk with you about that sometime, Senator. This bill, I don't believe affects that. [LB798]

SENATOR FISCHER: Will not affect that. So we have that on record anyway. [LB798]

ANN BLEED: As far as I can see, this bill will not affect that issue. That is a separate issue which might need some more discussion. [LB798]

SENATOR FISCHER: Okay. Thank you. [LB798]

SENATOR LOUDEN: Other questions? Senator Wallman. [LB798]

SENATOR WALLMAN: Thank you, Chairman Louden. Yeah, thank you, Ann. You know I live in the Lower Blue and they still gave out...that's going to affect that some, isn't it, stream flow? [LB798]

ANN BLEED: Yeah, it could affect it and the idea is that this would not affect natural stream flow that is there not because of groundwater irrigation. [LB798]

SENATOR WALLMAN: And I know Kansas is keeping track, so how far are we...are we pretty well, plenty good on that stream flow leaving our state or not? [LB798]

ANN BLEED: Well, luckily on the Blue River compact we've been in pretty good shape with Kansas. We've had a few dry years when we've had to do some creative management to make sure that we met compact compliance but we're in pretty good shape on that stream. [LB798]

SENATOR WALLMAN: Okay. Thank you, Ann. [LB798]

SENATOR LOUDEN: Other questions? Senator Christensen. [LB798]

SENATOR CHRISTENSEN: Thank you, Chairman Louden. Ann, just for the record, wouldn't a farmer be wiser for the future to have the reuse pit on his own land and had a berm to control it just for safety? You know, just so you don't lose it in the future or it's not mudded in by storm rains and things that way. I just think...I don't understand why

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

you'd want it in the stream. [LB798]

ANN BLEED: Well, Senator, I'm probably not the best person to ask that question of. The easiest situation for us is to have the reuse pit at the corner of the field but very often due to drainage and the shape of the field it is easier for the irrigator to have it in the stream itself and there may be others who would...I see, John Turnbull is here. He might be a better person to ask that question. [LB798]

SENATOR CHRISTENSEN: Okay. Thank you. [LB798]

SENATOR LOUDEN: Other questions for Ann? Seeing none, thank you, Ann, for your testimony. [LB798]

ANN BLEED: Thank you very much. [LB798]

SENATOR LOUDEN: Next testifier for LB798. [LB798]

JOHN TURNBULL: Afternoon, Chairman Louden and members of the committee. I'm John Turnbull, J-o-h-n T-u-r-n-b-u-l-l. I'm the general manager of the Upper Big Blue Natural Resource District at York. We worked on this reuse pit issue some years ago and worked with the department to come up with the original definition that Ann Bleed has described to you today. And we think we got an administrative problem worked out for the better for the field people that have to deal with administering surface water rights. We've talked with the department about this new definition that's before you in LB798, and we think that this is a workable solution that use the existing maps and then have the department field check it where necessary. It makes a lot more sense than having the department try to check all the streams in the state and define each stream. There isn't time or money to get that job done. I'll be glad to answer your questions. [LB798]

SENATOR LOUDEN: Questions for John? Senator Christensen. [LB798]

SENATOR CHRISTENSEN: Thank you, Chairman Louden. John, thank you. Why are they putting these in the stream? Can they hit groundwater that they can actually add with it or are they...I guess I don't understand why you would want to be in that stream. [LB798]

JOHN TURNBULL: No. These particular pits we're talking about are not in an areas where they're connected to the groundwater. Those are covered under a bill that was passed last year or the year before where they're actually treated as surface water rights. That's a whole separate situation. Many of these reuse pits were built in the 70's and 80's, a few of them in the '90s. We don't see very many new ones being built now because of the center pivots replacing gravity irrigation. In a lot of our area, when you

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

drive west going home you probably go around through York and Hamilton Counties. It's pretty flat along the interstate. Well, that's the typical topography where they pits are located in so they're really more in draws than they are in an actual defined stream channel, per se, although there are some in those situations. And it was a case of where the department had to administer surface water rights on the Blue River to meet compact requirements with the state of Kansas or to administer rights to protect the senior surface water rights for the pumpers. And so the letters would be sent out to three or four hundred reuse pit owners to curtail their use of that water and they'd immediately call us and say, all that's in there is groundwater coming off my well. How come do I have to stop using this? By the time all the paperwork would get to them, and they would physically quit pumping that water, then the administration order would be lifted because the flows at the Kansas line at Barneston would be sufficient to meet terms of the compact. And so the field people were constantly chasing this problem trying to administer it and it was difficult for everybody and we felt it was better just to get them off the books and treat them under the groundwater act rather than under the surface water statutes. [LB798]

SENATOR CHRISTENSEN: Thank you. [LB798]

SENATOR LOUDEN: Further questions for John? Seeing none, thank you, John, for your testimony. [LB798]

JOHN TURNBULL: Thank you. [LB798]

SENATOR LOUDEN: Next proponent for LB798. [LB798]

RON BISHOP: Senator Louden, members of committee. My name is Ron Bishop and I'm general manager for the Central Platte Natural Resource District appearing today in support of the bill. It's one that makes sense to us and not only does Central Platte Natural Resource District support it, but the Nebraska Water Resources Association and the Nebraska State Irrigation Association. Their legislative coalition committees have taken a position in support of this bill. Unless you have some questions, I'll move on. [LB798]

SENATOR LOUDEN: Questions for Ron? I think you got them all covered. Thank you, Ron, for your testimony. Next proponent for LB798. Okay, then, are there any opponents on LB798? Anyone wishing to testify in the neutral? If not, then we close the hearing on LB798 and from there we go to LB799. [LB798]

JODY GITTINS: Good afternoon, Chairman Louden, members of the committee. My name is Jody Gittins, J-o-d-y G-i-t-t-i-n-s. I'm introducing LB799 for Senator Louden. This bill was brought to Senator Louden by the Water Policy Task Force. It's one of their recommendations, as are the next two bills after this bill. The purpose of this bill is to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

facilitate expedited transfers of surface water rights. Normally to obtain a right to transfer the location or use of a water right, notice of the transfer must first be given to other appropriators and a hearing on the transfer could be required. Under an expedited transfer, which is restricted to situations in which a surface water appropriator wants to make a minor change in the location of an irrigated field being irrigated under the permit, there are no notice requirements and transfer can be accomplished expeditiously. Current law states that a transfer cannot be considered as an expedited transfer if there is any, even a minor change, in the point of diversion of water from the stream. The proposed change would allow small changes in the point of diversion to occur under the expedited transfer process. Use of this process saves money, time and effort for both irrigators and the department. Again, the department Director Bleed will speak after me. She attended the meetings for the Water Policy Task Force where this was discussed and acted upon. [LB799]

SENATOR LOUDEN: Questions for Jody? Seeing none, thank you, Jody. First proponent for LB799. [LB799]

ANN BLEED: Senator Louden, members of the committee. My name is Ann Bleed. That's A-n-n, capital B-l-e-e-d and I am director of the Department of Natural Resources and also co-chair with Senator Louden for the Water Policy Task Force. This is a Task Force bill and my testimony essentially would reiterate what Jody Gittins has just said so I will stop there and ask if there are any questions. [LB799]

SENATOR LOUDEN: Any questions for Director Bleed? Seeing none, thank you for your testimony. [LB799]

ANN BLEED: Thank you very much. [LB799]

SENATOR LOUDEN: Next proponent for LB799. Are there opponents to LB799? Are those wishing to testify in the neutral? [LB799]

RON BISHOP: Senator Louden, Ron Bishop with Central Platte Natural Resource District. The Nebraska Water Resources Association and State Irrigation Association is generally in support of this concept. I recognize that it is something that was proposed by the Water Policy Task Force and those members also support the concept. We're testifying in a neutral position today primarily because of the wording on page 3 and are failing to understand what is intended on subpart 3, line 7, "the proposed point of diversion is not above or below a tributary stream or a constructed river return". We're a little confused as to how you could have a point move and not have it either above or below a tributary and so I think there's probably some words missing in that part. And that's...because of that confusion, they determined that we should not probably testify in support or opposition, but more in a neutral position and see if somebody can explain that wording to us or maybe determine what word or words were left out of that. But

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

generally, we support the concept of what's trying to be done with this and think that it makes sense, provided we have the right words there. [LB799]

SENATOR LOUDEN: Okay. Questions for Ron? Seeing none, thank you for your testimony, Ron. Anyone else wishing to testify in neutral? Seeing none, this would close the testimony on LB799 and from there we go to LB800, LB799 and a half. [LB799]

JODY GITTINS: Good afternoon, Chairman Louden, members of the Natural Resources Committee. My name is Jody Gittins, J-o-d-y G-i-t-t-i-n-s. I'm committee counsel for the Natural Resources Committee and introducing LB800 on behalf of Senator Louden. This is the second of the three bills that was presented to Senator Louden by the Water Policy Task Force and is their recommendation. This bill changes the age requirement of a project in order to be eligible for application for a permit for intentional underground storage of water. It removes the limitation on existing projects to enhance intentional groundwater recharge capabilities and allows more flexibility in order to convert existing direct irrigation projects to intentional recharge projects. This would enable a more efficient use of existing water supplies in conjunctive benefits to both groundwater and surface water users. Currently, a permit for an underground storage associated with a project that wasn't in existence on August 26, 1983. By removing that language brings more people in, more flexibility in to dealing with this issue of the groundwater, intentional underground storage of water. Again, Director Bleed will come after me as a member of the Task Force and co-chair of that to explain further those discussions that took place and why they felt that this bill was an important addition to LB962 work that has been done by the Task Force. [LB800]

SENATOR LOUDEN: Any questions for Jody? Seeing none, thank you, Jody. First proponent for LB800. [LB800]

ANN BLEED: Thank you, Senator Louden, committee. My name is Ann Bleed. That's A-n-n, capital B-l-e-e-d, and I am still the director of the Department of Natural Resources. This bill again is another Water Policy Task Force bill and essentially what this is doing is taking a restriction out of the law that would restrict the ability of anybody who wanted to use a facility that was existing August 26, 1983, as an intentional recharge project. The problem here is that as we look at trying to conserve water in our basins, both in the Republican and the Platte River, we are looking at taking some of the existing surface water irrigation districts, and figuring out ways to manage that water more efficiently so we can use more of the water more efficiently without wasting it. And one of the ways to do this is to transfer the water used from a direct flow irrigation use where you deliver it directly from the canal to the field to an intentional underground recharge project. Essentially the water will be put into the canal to recharge the groundwater and then you allow groundwater irrigators to pump the water from the groundwater reservoir itself. This allows a lot more flexibility to irrigators because they can turn on the well at the time they really need it as opposed to waiting until the ditch

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

rider comes and turns on the ditch or allows them to divert out of the ditch. And at the same time, in many areas of the state simply going to groundwater and retiring the irrigation ditch does not work because it's the seepage from that irrigation ditch that is in fact providing the water for the wells in that area. And if that surface water irrigation ditch is retired, the recharge to the groundwater is not sufficient to support the wells. So this allows the transfer of projects for intentional recharge. Well, I'm sorry, I'm sorry, the bill itself...the law itself allows that to happen. What this would allow is that the people operating the ditch for intentional recharge could recover some of the cost of that operation from the groundwater users who are benefiting from the existence of that ditch. Without that, there would possibly be problems on how to fund and maintain the ditch if it was strictly for intentional recharge. With that, if there are any questions I'll try to answer them. [LB800]

SENATOR LOUDEN: Questions for Ann Bleed? Senator Wallman. [LB800]

SENATOR WALLMAN: Thank you, Chairman Louden. Thank you, Ann. How many acres would this affect for farming, do you have any idea? [LB800]

ANN BLEED: Well, really I don't. Right now I know of several projects which are being discussed and designed to take advantage of the intentional recharge law. One of them is in the Frenchman Valley. It's a project being developed by the Department of Natural Resources and the Bureau of Reclamation. There is another one that's being developed in the Platte and my guess is if these are successful, and I think they will be, there will be more in the future. [LB800]

SENATOR WALLMAN: Thank you. [LB800]

SENATOR LOUDEN: Other questions? Senator Christensen. [LB800]

SENATOR CHRISTENSEN: Thank you, Chairman Louden. Thank you, Ann. With your explanation there, I guess, made me think, are we opening up the possibility of charging groundwater irrigators for natural recharge of the river, because if... [LB800]

ANN BLEED: It would not be for natural recharge of the river, Senator. The intentional recharge bill requires that you quantify what, in fact, is being intentionally recharged and the fee presumably would be for the water that is coming as a result of the irrigation ditch facilities that have to be maintained, not as a result of natural precipitation. [LB800]

SENATOR CHRISTENSEN: I guess my question comes off of the loss since we've had above Lake McConaughy, saying that the streams have been depleted by them wells, are we opening up a can of worms? [LB800]

ANN BLEED: I don't believe so. I don't see how this bill would have anything to do with

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

the questions of whether groundwater pumpers are depleting stream flows more than they can do so without harming surface water users. [LB800]

SENATOR CHRISTENSEN: Okay. Thank you. [LB800]

SENATOR LOUDEN: Other questions? I would ask one, Ann. Will this have any effect on some of this return flow stuff that might be out here in our future? [LB800]

ANN BLEED: The intentional recharge project would have to be developed in such a way that it would not take water away from existing users that would otherwise get that water. [LB800]

SENATOR LOUDEN: What I'm wondering is, will that water in the future want to be used for return flow rather than be used to pump back on that existing farm ground. [LB800]

ANN BLEED: Well, that is going to be one of the aspects of provide...or allow it from the department...allowing for an intentional recharge permit that in the process of transferring the water from a direct surface water irrigation permit to an intentional recharge permit, that that transfer in and of itself does not adversely affect another surface water appropriator downstream. That will have to be part of the considerations in the permitting process. [LB800]

SENATOR LOUDEN: But is that written into this law that that consideration is going to be in there? [LB800]

ANN BLEED: The law itself does have requirements that would protect the third-party user. The only thing this is doing is changing, or removing the date that would restrict when a district could in fact charge for the water. [LB800]

SENATOR LOUDEN: Okay. It's in the statute anyway, it would change... [LB800]

ANN BLEED: Yeah, this is not changing the basic statute. [LB800]

SENATOR LOUDEN: Yeah, it's just changing the date. [LB800]

ANN BLEED: It's just taking the date out. [LB800]

SENATOR LOUDEN: Okay. Thank you. Other questions for Ann? Thank you, Ann. Next proponent for LB800. [LB800]

BRIAN BARELS: (Exhibit 2) Good afternoon, Chairman Louden and members of the committee. My name is Brian Barels. That's B-r-i-a-n B-a-r-e-l-s. I'm the water resources

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

manager with Nebraska Public Power District. I've also been a member since this initiation on the Water Policy Task Force and has been mentioned earlier that when the original LB962 was being debated by members of the Task Force, it was recognized that these types of projects would be beneficial in areas that are fully appropriated or over-appropriated or for potential ways to store new water resources for new uses. Those provisions, as Director Bleed pointed out, were included in the surface water transfer provisions of that original 2004 legislation. Again, as I've said, as Nebraska deals with compact compliance or bringing a basin back to a fully appropriated rather than an over-appropriated or even for providing for new uses in a basin that is fully appropriated, this legislation will be beneficial when you have an existing irrigation project that can work with the water users in the area to provide conjunctive benefits. Conjunctive management means utilizing the total water and surface water supply available to an area to optimize the long-term sustainability of the current and potential future new uses. NPPD owns and operates three irrigation canals between Gothenburg and Kearney, Nebraska, and provides supplemental storage water to four additional irrigation canals in that reach of the Platte River. All seven of those canals predate the present limitation within the statute, so essentially those projects could not be used for an intentional recharge project. Back in 2004, NPPD entered into an agreement with the Central Platte Natural Resource District and the Nebraska Department of Natural Resources to conduct what we call a conjunctive management project. And again, those goals are to use both the surface water and groundwater resources in this area to optimize water availability. Some examples of things that could be done or projects that may come about would be, for example, extending the canals to an area that has a groundwater shortage where additional recharge or augmentation could occur. Or potentially it may mean just leaving water in the canals as they presently exist for a longer period of time. The goal then would be that irrigators could utilize potentially both surface water and groundwater resources. In periods that surface water is in abundance and available, irrigators could use those surface water resources. But also we would be augmenting the groundwater resources such as in drier periods those irrigators could use groundwater for their irrigation water supply. Again, we are in the initial stages of that study with those two agencies. We've done some background work. We're developing additional models and tools to evaluate the alternatives that might be before us in this area. But again, because these irrigation canals predate the August 26, 1983 date that is presently in the statutes, NPPD would support removal of the date from the statutes and I'd be glad to answer any questions you might have. [LB800]

SENATOR LOUDEN: Any questions for Brian? Senator Fischer. [LB800]

SENATOR FISCHER: Thank you, Chairman Louden. Brian, can you tell me why that date's in there in the first place? The history on that? [LB800]

BRIAN BARELS: Well, I'm probably not the best one to answer that question. This part of the statutes was put in place at one point in time. I believe it did allow all projects to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

be induced, recharged and the statutes even included some provisions, as Dr. Bleed had mentioned, for fees for that intentional recharge. At some point in time, it was decided that it's best not to do that with existing projects, but it should be set...the statute should be set aside to be used for new projects, and I'm assuming it's about that time frame that was in the statutes that was decided. [LB800]

SENATOR FISCHER: Okay. Thanks. [LB800]

SENATOR LOUDEN: Senator Carlson. [LB800]

SENATOR CARLSON: Senator Louden. Brian, at the possibility of asking a question out of order, looking at the wording here. We look at opportunities to use the total water supplies and develop projects to utilize water during times of excess, provide supplies for periods of shortage in order to maintain. It may be even instead of maintain, that reach sustainability. Isn't it possible and it's legal at times to divert water from the Platte River through Johnson...through the canal at Johnson Lake and over to Elwood Reservoir on...in times of excess? [LB800]

BRIAN BARELS: I believe there are other parts of the statutes that allow a storage facility to use excess water and that's excess to above other permitted uses for storage and reservoirs like that. [LB800]

SENATOR CARLSON: To your knowledge, is that something that's really being, I would hope, watched closely so that we don't miss opportunities? [LB800]

BRIAN BARELS: Oh, absolutely. Those owners of storage reservoirs that are short of water closely watch flows that are available to take advantage of that situation, if it can occur. In fact, Senator, I believe it did occur last summer or spring when there was some excess flow on the river and other downstream appropriators were checked with, as I understand, and everyone agreed that it was time to put water in Elwood. [LB800]

SENATOR CARLSON: Well, whether it's correct or not, I thought we missed some opportunity last year and we certainly wouldn't want to. [LB800]

BRIAN BARELS: Absolutely. That's correct. [LB800]

SENATOR CARLSON: Thank you. [LB800]

SENATOR LOUDEN: Other questions? Senator Christensen. [LB800]

SENATOR CHRISTENSEN: Thank you, Chairman Louden. Brian, since that's brought up, a year ago I was very offended a year ago and raised a little stink when there was water running around in...the Holiday Inn Express at Grand Island and around Arby's

Natural Resources Committee
February 06, 2008

and it was flooding with ice jams at Ashland, and we were not transferring into Johnsons Lake and Elwood Lake. And one of the first responses to me was, we had to maintain endangered species flow and my response was, if they're outside the banks where it's flooding, they deserve to die. (laughter) And I think we've done a poor job of getting this taken care of. How do we address this? Senator Carlson's right. We missed a huge opportunity a year ago for days. [LB800]

BRIAN BARELS: There are opportunities that occur. Unfortunately, many times they're not predictable, In some cases that water that may have ended up outside the stream bank by Grand Island, may have originated from snow melt or rains downstream of the diversion by North Platte or it could have been a timing issue. As you pointed out, Senator, there are two entities that hold instream flow rights on the lower Platte River that being the Central Platte Natural Resource District and the Game and Parks. I don't know what the exact flow conditions were, but it may have been possible that the process was happening to verify with those entities that it was okay to take additional water upstream. I do know that there is a proposed piece of legislation that will probably come before this committee that specifically does include language that does indicate that during times of flooding, upstream appropriators can take water out of the system if the downstream appropriators are not harmed and agree to allow that to occur. And that bill may yet be coming up so I think we're taking action to try to be able...to make sure we can take advantage of those situations as we go forward. We have the ability, you may be aware on our projects, to take water from the South Platte or North Platte River. I'm glad to be able to report that the flows of the South Platte have increased over the last week and we are using those flows to help fill Sutherland Reservoir and Lake Maloney. Lake Maloney has been dewatered since the fall of last year because of the drought and in the cooperative of efforts of NPPD and Central that store water in Lake McConaughy. But unfortunately, it does expose sand around the edges of Lake Maloney. So we have been watching that river and as it came up, we are trying to take advantage of those type of situations to be able to get water in these reservoirs and that's extremely critical during these times of drought. [LB800]

SENATOR CHRISTENSEN: Well, I guess I would love to figure out a way to streamline the process because as far as I'm concerned it ought to...as soon as flows hit a certain level, boom, it ought to be done. Because it is such a precious resource and it is wasted so easily and can be such a narrow window. We don't have two, three days to get it figured out. We may have an hour to get it figured out. [LB800]

BRIAN BARELS: Yep. And that's very understandable. I just point out one other thing that we have to consider, not knowing the exact time when you did see that water. But whether it's a canal to Sutherland Reservoir or the canal to Johnson Lake and Elwood Reservoir, if that water, excess water happens to occur when there's an ice cap on that canal, you've got to move slow. Otherwise you could have significant damage, structural damage to those facilities. So a lot of it's timing, availability, downstream needs. All

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

those things have to be taken into consideration and I'm not saying it was, Senator. But that's just one factor that has to be considered if you're going to try to get water into a canal or reservoir. What is the physical situation within that canal? [LB800]

SENATOR CHRISTENSEN: I understand that. Thank you very much. [LB800]

SENATOR LOUDEN: Other questions? Thank you for your testimony, Brian. Next proponent for LB800. [LB800]

RON BISHOP: Senator, Ron Bishop again with Central Platte Natural Resource District and I'm here on behalf of our natural resource district who is working closely with NPPD on those seven canals. Those seven canals are all located in the western part of our natural resource district and that's why we've partnered with NPPD and the Department of Natural Resources to look at the possibility of a conjunctive management program out there, looking at both surface water and groundwater supplies, and see if we can redistribute them a little better to better serve the area, and also that happens to be that part of the natural resource district that is over-appropriated. And so we've got too many uses and not enough water, at least too many uses at a certain time of the year. And so this conjunctive management study is trying to look at our total water supply and our total needs and see if they can be adjusted a little bit between surface water and groundwater and supply everybody the water that they need, help us get back closer to the fully appropriated, and just serve everybody better. But we are stopped by utilizing those seven projects because they all predate the date that is currently in the law. And so we'd like to see that changed so that we're not limited in our options out there in looking at those seven projects and the groundwater supply, so that we can do a better job of managing the total water supply out there. I'm also here on behalf of the Nebraska Water Resources Association and the State Irrigation Association who also have taken a position in support of LB800. [LB800]

SENATOR LOUDEN: Okay. Questions for Ron? Senator Wallman. [LB800]

SENATOR WALLMAN: Thank you, Chairman Louden. How many irrigated acres do you think we'd have to retire to be in compliance? [LB800]

RON BISHOP: Well, we're working on that number right now. We know, just to get us back to the '97 level, we'd have to...we have to come up with about 3,400 acre feet of water just in our natural resource district to get us back. To the fully appropriated, it'd take something more than that. We don't have that number today but we're working on it and hope within the next 60 days or so that we'll come up with it. [LB800]

SENATOR WALLMAN: Thank you. [LB800]

RON BISHOP: In the entire Platte Basin we have to come up with, and I think, I don't

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

remember the number exactly, but it's something over 20,000 acre feet of water to get us back just to the '97 level. [LB800]

SENATOR WALLMAN: Okay. Thank you. [LB800]

SENATOR LOUDEN: Other questions for Ron? Seeing none, thank you for your testimony, Ron. [LB800]

RON BISHOP: Thank you. [LB800]

SENATOR LOUDEN: Next proponent for LB800. Are there opponents on LB800? Which one are you? [LB800]

JOHN THORBURN: Proponent, sir. [LB800]

SENATOR LOUDEN: Proponent, oh, okay. [LB800]

JOHN THORBURN: (Exhibit 3) Good afternoon, Mr. Chairman, senators. My name is John Thorburn, J-o-h-n T-h-o-r-b-u-r-n. I'm the manager of Tri-Basin Natural Resources District, headquartered in Holdrege. Tri-Basin NRD is responsible for protecting the soil and water resources in Kearney, Phelps and Gosper Counties. I would like to provide testimony in support of LB800 on behalf of the Nebraska Association of Resources Districts. LB800 is a very simply bill. All it does is strike out the date August 26, 1983 in Section 46-299 of our state statutes. The effect of that very simple change is potentially complicated, however. This change would allow any irrigation district in Nebraska the opportunity to create an intentional recharge project whenever, wherever and however they see fit, subject only to approval by the Department of Natural Resources of conversion of existing water rights from irrigation to groundwater recharge. When this section of law was written back in the early 1980's, NRDs didn't have any responsibility for preventing depletions to streamflows, we didn't have fully or over-appropriated basins. There were no such things as joint integrated management plans. Don't misunderstand the intent of my testimony. Intentional groundwater recharge is an extremely important tool that NRDs will need to use to maintain compliance with the Republican River Compact, the Platte River Recovery program and LB962. Tri-Basin NRD is the clearest example in the state of the benefits that groundwater recharge can provide, even though the recharge that we receive is incidental, rather than intentional. Even in our area, however, the benefits of groundwater recharge have not been universal. Thousands of acres in Gosper, Phelps and Kearney Counties have been damaged by excess groundwater recharge that brought the groundwater table up to the land surface. For that reason, it is critical that NRDs be given the opportunity to work side-by-side with irrigation districts as they consider possible recharge projects. We think that state law should be clear on this point, which it isn't at this time. We advocate for an amendment to LB800 that would require irrigation districts to get the approval of

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

affected NRDs for the design, location and amounts of water applied in groundwater recharge projects. We also think that it is more appropriate for the locally elected boards of natural resources districts to review and approve any groundwater recharge fees proposed to pay for such projects, rather than the state Department of Natural Resources, as is currently provided for in Section 46-2,101. Finally, we think that the definition of intentional groundwater recharge needs to be more precise than it is in existing law. A more precise definition would clarify which types of activities qualify as intentional recharge and should, therefore, be eligible for collection of fees. In conclusion, the Nebraska Association of Resources Districts support the concept of intentional groundwater storage and we think that it is appropriate for irrigation districts to derive revenue for providing that service. For a variety of reasons, we also think that it is critically important that the design and operation of groundwater recharge projects should be overseen by affected natural resources districts. Thank you. [LB800]

SENATOR LOUDEN: Questions for John? I got one in your testimony here, precise definition and intentional recharge and should, therefore, be eligible for collection of fees. Would you explain that to me just a little bit? [LB800]

JOHN THORBURN: Well, yes sir. In the statutes there is a definition. I believe the exact term to find is, underground, intentional underground water storage. But the way it's presented in the statutes it gives quite a bit of latitude for irrigation districts to determine on their own what that is. And in fact, part of our concern arose from a meeting we had with the local irrigation district about how they might construct or operate such a project. And they, at least, put out the idea, I don't know that they really intend to follow up on this but the possibility that not lining a canal, for instance, would be an intentional act and therefore, would create an intentional recharge project from which they could derive fees. And as I say, the statutory definition is vague enough that it might allow such a project. [LB800]

SENATOR LOUDEN: Now do I understand this correctly then, that they could drill a well and pump water out of there and charge a fee for that water that they're pumping out, is that what you're telling me? [LB800]

JOHN THORBURN: Well, it wouldn't, they would be able to charge a fee to a groundwater user who is pumping water in an area that they've defined as receiving the benefits of intentional recharge, yes sir. [LB800]

SENATOR LOUDEN: Okay. In other words, they would say that that's their water that they're using and they had to pay a fee to get it down that far so if anybody siphons it up they've got to fee in order to use it, that's how it'll work? [LB800]

JOHN THORBURN: Exactly. And the local groundwater irrigators under current statute, their only recourse is either to the irrigation district board or to the department when the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

water rights come up for review at a public hearing. [LB800]

SENATOR LOUDEN: Is there anybody that's pumping alongside these canals and just has an irrigation well that pumps... [LB800]

SENATOR LOUDEN: Oh, certainly there are cases like that, yes sir. [LB800]

SENATOR LOUDEN: Would that affect them if they started doing something like this? [LB800]

JOHN THORBURN: Oh, I imagine so. And it wouldn't necessarily have to be a well adjacent to a canal. It could be within several square miles of an irrigation district or a canal system. [LB800]

SENATOR LOUDEN: Okay. Other questions for John? Senator Christensen. [LB800]

SENATOR CHRISTENSEN: Thank you, Chairman. John, you're concerning me I guess with your testimony here that, you know, you got the mound in your district. That's one thing keeping you out of regulations and what I'm hearing is now for several miles you could turn around having your farmers having to pay a fee for what has been natural recharge from that canal. [LB800]

JOHN THORBURN: Well, yes sir. What has always been interpreted as incidental or accidental recharge, the canals leak water, could be perhaps reinterpreted to mean intentional recharge because the district allows the canals to leak water and therefore, becomes eligible for a fee to be charged to the irrigator. [LB800]

SENATOR CHRISTENSEN: So who's going to set this fee and, you know, that's going to put a lot of people into fees in your district. I guess I would think that would be concerning to you. [LB800]

JOHN THORBURN: Yes sir, it is. The fees are proposed by the irrigation district to the department. As I understand the extent of the department's review, is whether the fees reasonably reflect the value of water and so it would appear to me anyway, to be a relatively limited review by the department of the validity of the fees. [LB800]

SENATOR CHRISTENSEN: I guess I struggle with and, I know you testified to part of this, but basically if their irrigation district is asking for the fee and DNR oversees it which is in charge of surface water, it's kind of like kettle calling the pot black. [LB800]

JOHN THORBURN: Well, yes, Senator. The possibility, I guess, exists. One would hope that it wouldn't work out this way in practice but the possibility exists that these projects could be done in such a way that they're not entirely in line with the plans of the district

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

or the needs of the irrigators. [LB800]

SENATOR CHRISTENSEN: Could not that water fee be set at what we've been paying in the Republican? [LB800]

JOHN THORBURN: I don't believe there is any restriction on the amount of fee that could be charged other than as I say, the department has to determine that it reasonably reflects the value of the water. [LB800]

SENATOR CHRISTENSEN: So you know, I guess, my concern is not that maybe they're not do something but the fact that pretty soon we're going to have a fee on everybody's water. [LB800]

JOHN THORBURN: That becomes a more realistic possibility, yes sir. [LB800]

SENATOR CHRISTENSEN: You know, I guess pretty soon if we're going to sell water, we're just going to shut agriculture off and we're going to sell it to Colorado or Texas or the cities. I guess, you know, I just see an enormous erosion here, opening a can of worms that I'm concerned about. [LB800]

JOHN THORBURN: Understandably, Senator. [LB800]

SENATOR LOUDEN: Senator Fischer. [LB800]

SENATOR FISCHER: Thank you, Chairman Louden. Thank you, John. On...following up on some of Senator Christensen's questions there to you, irrigation districts and the Department of Natural Resources are the two entities involved in this, aren't they? [LB800]

JOHN THORBURN: Yes. Yes ma'am. [LB800]

SENATOR FISCHER: Then why are you even testifying for the natural resource district? Why are you involved here? [LB800]

JOHN THORBURN: We would like to be involved because, of course, an intentional recharge project is recharging the groundwater supplies and natural resources districts are responsible for regulating groundwater and it seems appropriate to the association that we should have some role in the development and operation of those projects. [LB800]

SENATOR FISCHER: Are you involved right now? [LB800]

JOHN THORBURN: At this point we haven't gotten to a stage where we're planning or

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

actively designing a project in my area. As Mr. Bishop testified, they are doing that in the Platte and they play, Central Platte NRD plays a role in that project. [LB800]

SENATOR FISCHER: Would this bill assist NRDs in becoming more involved? [LB800]

JOHN THORBURN: The bill as it currently stands does not change the roles played by NRDs which are strictly at the...an advisory role, I guess, as allowed by or as cooperative role with the irrigation districts. [LB800]

SENATOR FISCHER: So then back to my original question, why are you here and what's your involvement? [LB800]

JOHN THORBURN: Well, we feel it is very important for any groundwater recharge projects to be considered in the context of an integrated management plan or in the needs of NRDs to comply with interstate compacts and interstate agreements. [LB800]

SENATOR FISCHER: So you're, you're here to say, I guess, to make a statement that you want to be involved and you feel you should be involved but this legislation really doesn't help you in that, does it? [LB800]

JOHN THORBURN: No, ma'am, it does not. [LB800]

SENATOR FISCHER: Thank you. [LB800]

SENATOR LOUDEN: Other questions for John? Thank you for testifying, John. [LB800]

JOHN THORBURN: Thanks. [LB800]

SENATOR LOUDEN: Next proponent for LB800. [LB800]

KENT MILLER: Good afternoon. My name is Kent Miller, K-e-n-t M-i-l-l-e-r. I'm general manager of the Twin Platte Natural Resource District and our offices are located in North Platte, Nebraska. I originally was not going to add testimony and duplicate what the NARD's position is which was discussed the last two days during our legislative conference but Senator Fischer, you asked a question that sparked...that I wanted to get up and visit with you for a couple of minutes. I've been around long enough that I was around when and remember the history of this original legislation. The original legislation provided for intentional and incidental groundwater recharge and I think incidental is the key one to talk about just for a moment. That the original legislation did allow for a fee for incidental groundwater recharge as well as a fee for intentional groundwater recharge. Our natural resource district was one of the ones who led the effort after that legislation was passed to remove the opportunity for a fee for incidental groundwater recharge. Our board of directors at that time did not believe that

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

groundwater users who were pumping from an area where there was accidental or incidental groundwater recharge should all of a sudden then be allowed to or have to pay a fee. You know, we see those along the main supply canals of irrigation districts as well as some others. As one example is, you know, we have the main supply canal for Nebraska Public Power District as well as Central Nebraska Public Power and Irrigation District and the Twin Platte NRD. So our NRD was one of the ones that led the effort at that point to remove the fee for incidental groundwater recharge. We always supported a fee for an intentional groundwater recharge project. Now, there's been none to date. You know, there's a number being considered but if a project was designed for intentional groundwater recharge, then everyone would be involved from day one and aware of the fees in being involved in this process. And I believe that that's why when that legislation occurred the second time why the date was put in. Our natural resource district can now support what's being discussed here with the NARD's proposed position. The NARD's proposed position is through LB962. There's an integrated management plan requires a joint effort between natural resource districts and the Department of Natural Resources for conjunctive management of groundwater and surface water. We recognize, we're even discussing in our district, some potential conjunctive management projects involving irrigation districts that pre-exist this date. But we view this as this would be a changed project. It would not be just simply, if you will, backdooring a fee for incidental groundwater recharge. It would be a changed project, a change in operation, a change in facilities that would allow and provide for intentional groundwater recharge. So based on the NARD's position that the NARD supports this bill with the NRDs having an opportunity to review the plans and to approve the fees, because we should be involved in that effort simply because LB962 requires a joint partnership between the Department of Natural Resources and natural resource districts. So you know, consequently, disposition for the Twin Platte NRD is very different from where we were before but we can support that now as long as this isn't a backdoor approach for a fee for incidental groundwater recharge because we recognize as a need for new conjunctive management projects, that will involve existing irrigation districts. So I just wanted to add a little bit of that history and then reemphasize the point of the NARD's position. So thank you, and I'd be sure be happy to answer any questions. [LB800]

SENATOR LOUDEN: Thank you. Senator Christensen. [LB800]

SENATOR CHRISTENSEN: Thank you, Chairman Louden. Kent, thank you. Would you agree with the statement made previous that any unlined canal could potentially be added to the intentional recharge? [LB800]

KENT MILLER: Our, that's a concern we have and that's why the Twin Platte NRD can support the NARD's position that the NRD be involved in the planning and the approval of the fees because if it's just simply a backdooring because an unlined canal that's been there for a hundred years is providing groundwater recharge with no changes in

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

operation at all, they can then provide a fee. We don't think that that's correct. We don't think there should be a backdoor approach but if there's a new effort to develop a conjunctive project, then there's going to be many occasions where that's going to be needed for us to be able to work together. [LB800]

SENATOR CHRISTENSEN: I guess my concern comes in...I don't have a position determined yet, but I'm try to dig into this. I've not understand why you'd be a proponent to this without an amendment. You say you're taking the NRD... [LB800]

KENT MILLER: We're a proponent with the proposed amendment that the NARD has. In other words, the current... [LB800]

SENATOR CHRISTENSEN: Has that been handed to us? [LB800]

KENT MILLER: Well, and that's something that... [LB800]

SENATOR CHRISTENSEN: You should be an opponent. [LB800]

KENT MILLER: Well, it's an interesting situation for the Twin Platte NRD whose has always been opposed to a fee on incidental groundwater recharge. But we also recognize, the example that I have is with the Western Irrigation District. This is an irrigation district in Keith County. They are having...they want to have discussions with the Twin Platte NRD through our stakeholder process of looking at what options are there to manage that district differently that may provide a delta, may provide some additional water to the river because currently, that irrigation district, because that irrigation district is involved in the South Platte River Compact, that irrigation district never receives a full supply. They never receive their 120 cfs. Every one of the producers in that small irrigation district has groundwater wells so there may be an opportunity to manage that district differently through a conjunctive management type project. Under existing statutes because of that date that's in there, we wouldn't be able to do that and so we're looking at some sort...you know, in our district, we're looking at some sort of way to work with the intentional groundwater recharge provision so that if we can come up with a change in the physical layout of that district, the way that district is operated, then there should be a mechanism to allow for a conjunctive project. But we would not be looking at just simply say, wake up tomorrow morning and say, now all of a sudden it's intentional. You know, there's got to be a concerted effort working with the state and with the NRD to determine that it's a revision that works with conjunctive management. But we absolutely are opposed to any provision that would allow backdooring a fee for incidental groundwater recharge. [LB800]

SENATOR CHRISTENSEN: And what you're telling me this bill needs a lot of work and because otherwise, there's a lot of unintended consequences. That's the hardest thing about any legislation is determine where is the unintended consequences. To me, this

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

one looks like there's huge unintended consequences here. [LB800]

KENT MILLER: I agree with you. It needs some work. I wish I would have had an amendment to hand to you today. I know the NARD would have liked to have done that but this come about fairly quickly and...but as we discuss this, yes, it needs a lot work. But it's a change that needs to happen to give us the most flexibility as we move forward with conjunctive projects. [LB800]

SENATOR CHRISTENSEN: I understand the initial intent of it and support it, but the unintended consequences here to me seem huge and I guess I'm concerned what could happen here. [LB800]

KENT MILLER: And we would like to work with you on providing some amendments to this bill to make it workable. [LB800]

SENATOR CHRISTENSEN: Thank you. [LB800]

KENT MILLER: But unfortunately, I don't have that for you today. But that was one of the reasons I wanted to get up, was to clarify that concern. [LB800]

SENATOR LOUDEN: Senator Fischer. [LB800]

SENATOR FISCHER: Thank you, Chairman Louden. Thank you, Kent, for coming forward and you've clarified it for me. I think you've clarified it for me. (laughter) You are saying the NRDs support the concept but are not in full support of this bill as it is currently written? [LB800]

KENT MILLER: That's correct. [LB800]

SENATOR FISCHER: Currently the NRDs do not have any amendments to bring forth at this time, is that right? [LB800]

KENT MILLER: That's correct. [LB800]

SENATOR FISCHER: Would you anticipate that one of the amendments would be that the NRDs should review the plans and set the fees? [LB800]

KENT MILLER: Yes. [LB800]

SENATOR FISCHER: Thank you. [LB800]

SENATOR LOUDEN: Other questions? Thank you, Kent. Thank you for your testimony. Other proponents for LB800? Are there opponents for LB800? Those wishing to testify

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

in neutral for LB800? [LB800]

JAY REMPE: Chairman Louden, members of the Natural Resources Committee, my name is Jay Rempe, that's R-e-m-p-e with Nebraska Farm Bureau Federation here today on behalf of Nebraska Farm Bureau in a neutral capacity. We don't normally get up in a neutral capacity on this bill but the discussion that has already taken place, I think goes to a lot of our feelings on this bill in that there...we have, we definitely see a need to have a discussion about how we can allow these kinds of intentional groundwater recharge projects to move forward and provide some kind of a mechanism for financing of those. Because I think they are key to addressing some of the water challenges that we have, that we face in this state. But we also have concerns about making sure that as we move forward, that we do it in a way that we try to control this and make it as tight as possible so we don't have some of those unintended consequences that Senator Christensen and Senator Fischer have raised. And so we come up in a neutral capacity, wanting to help in a way that we can to try to make this thing work, but also try to put some restrictions around it, I guess, so it doesn't get out of hand. One of the things that we would like to see, and I'm not sure how the present statute works but as far as these fees, my understanding is these fees right now are approved by DNR. And I'm not sure if there are any hearing requirements or any landowner notification requirements as far as trying to notify and let people in the affected area have an input into the project or at least have a sounding board on how this might work. And that's something that we would like to see or try to explore anyway, is how we can provide a process where the affected landowners can have some input into the process. And with that I would be happy to answer any questions you might have. [LB800]

SENATOR LOUDEN: Questions for Jay? Senator Carlson. [LB800]

SENATOR CARLSON: Senator Louden. Jay, in listening to you and listening to John and Kent before you, if we take the stance that the NRDs should review plans and set the fees, that's one thing. And then the Department of Natural Resources should review the plans and set the fees, that's another. Well, it would seem like the two are going to be opposites, so shouldn't it be some kind of a joint negotiation? [LB800]

JAY REMPE: Yeah, you ask a tough question there and (laugh) somehow I think you need...and this goes not only to this issue, but a lot of issues when you have both surface water and groundwater interest involved, you need both involved in it and how you structure that, I'm not sure, Senator Carlson, but I think somehow you need to allow both to have some input. Who makes the ultimate decision, I'm not sure as I said here today. And again, I guess, what we...we're not concerned so much at this point who ultimately makes that decision as long as there's a process to allow the landowners to be involved and provide some input into it at this point. [LB800]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

SENATOR CARLSON: Thank you. [LB800]

SENATOR LOUDEN: Questions? Thank you, Jay, for your testimony. Next proponent for LB800 or neutral, I guess, we are now aren't we? Yeah. [LB800]

DON ADAMS: Good afternoon, Senator Louden. My name is Don Adams, A-d-a-m-s, executive director of Nebraskans First groundwater irrigators coalition. This is I guarantee the first time we've testified neutral on any bill and I just echo Jay Remppe's comments. They're exactly in line with mine and I commend Senator Christensen for raising these issues. This bill was...does provide too many open-ends for increased fees to be assessed on unsuspecting producers at this time and I ask that we get the amendments squared away in committee, not allow the bill to get out on the floor and try to do it on the floor. And Kent Miller was right on, I think, he could draft the language to ensure that the NRDs do have the oversight and the final authority on these projects. Thank you very much. [LB800]

SENATOR LOUDEN: Questions for Don? Senator Carlson. [LB800]

SENATOR CARLSON: Senator Louden, So Don, you're saying that the NRDs should set the fees and the DNR have no say? [LB800]

DON ADAMS: Well, that would certainly be preferable in my view, yes. Absolutely. I can see this...I can see what has been historically incidental now magically becoming intentional with the date removal going back in time, drawing in all sorts of unsuspecting producers into a new taxing scheme. I think it's inevitable that would happen as it's drafted now. [LB800]

SENATOR CARLSON: Well, I'm sitting here trying to figure out if the NRD sets the fee, why not set it at zero? The DNR sets the fee, why not set it high? So how do we reach an agreeable... [LB800]

DON ADAMS: Well, I trust the NRDs. I'm not so sure I trust the DNR based on my history with them in the past. I trust the NRDs completely and I know they'd do the right thing. They're on top of this situation in this state. [LB800]

SENATOR CARLSON: Okay. [LB800]

DON ADAMS: We need to invest them with more power, not less. [LB800]

SENATOR CARLSON: Thank you. [LB800]

SENATOR LOUDEN: Other questions? Seeing none, thank you, Don, for your testimony. [LB800]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

DON ADAMS: Thank you. [LB800]

SENATOR LOUDEN: Anyone else wishing to testify in the neutral? Seeing none, then that will close the hearing on LB800 and now we will go to LB801 with the amendment 1629 attached to it. [LB801]

JODY GITTINS: Good afternoon, Chairman Louden, members of the Natural Resources Committee. My name is Jody Gittins, J-o-d-y G-i-t-t-i-n-s. I'm committee counsel for the Natural Resources Committee and introducing LB801 on behalf of Senator Louden and the Amendment 1629. LB801 is a very simple bill. It was brought to the senator by the Water Policy Task Force and requires any integrated management plan to prevent or offset any increased depletion to the stream resulting from the removal of a surface water appropriation from a tract of land by an adjudication or a voluntary relinquishment or transfer when the land continues to be served by the groundwater well. That's LB801. The amendment, 1629, is much more complicated than that in some respects. The amendment is very straightforward in that it simply requires that all natural resource districts require wells to be metered in either their integrated management plan, which is something that's required by law if you've been declared over-appropriated or fully appropriated, or in their groundwater management plan which is required for all NRDs to have regardless of their situation as far as the designation by the department. It also requires surface water to be measured so that we can determine how much water is actually being pumped and used in the state of Nebraska. Many of our natural resource districts currently have measuring devices requirements on their wells. All wells in the Republican Basin for the three NRDs have to have metering devices imposed. Other NRDs have required that measuring devices be placed on any new wells that are drilled within their district to get accurate information as to how much water is being used. The bill also says that before an irrigation device can be installed, measuring device can be installed, if it's for groundwater, that device must be approved by the natural resource districts and if it's surface water, that device must be approved by the Department of Natural Resources. Senator Louden, in various conversations that we've had, has heard of measuring devices that are solar powered. If the sun doesn't shine they don't run, but the water still works so there is no measurement. The report is required by the natural resource districts to submit to the department says how much water is being pumped, the location of the water well, providing aggregate information as to how much water is being pumped for irrigation use, industrial or domestic use, municipal wells. Provides, are there problems with the measuring devices so that they're aware that x number of measuring devices during this session didn't work properly or this didn't happen. Provide for identification by using the registration number of the well and describe the location of each water well for the department. The same is true for what the department must provide in terms of surface water use in its report to the Legislature for the total amount of water pumped from the wells and the surface water diversion works, and identifying those by river basin. This information could then be used to

Natural Resources Committee
February 06, 2008

determine...to assist in the determination as to what designation is appropriate for what river basin, subbasin or reach. The Amendment 1629 did not come from the natural resource districts, it did not come from the Department of Natural Resources. It came because of a hearing and concerns that Senator Louden has regarding getting accurate information that can be usable information for the state in determining how much water is pumped and being used in the state of Nebraska. In speaking for Senator Louden, he believes that by gathering this information and by having accurate data on hand, we should be able to provide the necessary information to keep us out of additional litigation and perhaps show, in fact, that we are in compliance with other compacts and agreements in the state of Nebraska. And it's future looking as opposed to reacting to a situation. The wells would...the metering devices would all have to be installed by the year 2012. There is no obligation on the part of a natural resource district to provide any cost-sharing. That's strictly up to them. If they want to provide it, that's their call and they're boards of directors. This simply says it has to be installed. [LB801]

SENATOR LOUDEN: Questions for Jody? Seeing none, thank you, Jody. Are we going to have a show of hands of those who wish to testify in favor? Okay. Are we going to have a show of hands of those who testify as opponents? Okay. Will the first testifier as proponent for LB801 and AM1629 please start. [LB801]

ANN BLEED: Senator Louden, members of the committee, I'm Ann Bleed, that's A-n-n, B-l-e-e-d, speaking as director of the Department of Natural Resources and also as co-chair of the Water Policy Task Force. This is a bill that was brought to the task force from a subcommittee, surface water and groundwater members of the task force and again, the task force moves this forward on a consensus basis. Essentially the concern that is attempting to be addressed here is related to lands that are served by both the surface water, water right and groundwater well. The concern is that if you transfer the surface water right off of the overlying land to new, to irrigated a new piece of...or a new field, and then you allow the remaining well on those land to irrigate that full, say a 100 acres in the old land and then you have a 100 acres of new land that's being irrigated, that would be an expansion of consumptive use and then you get into problems of, well, if the Department of Natural Resources allows that expansion of consumptive use by allowing the transfer of the surface water right off the land, then does that mean that the groundwater irrigator has to be restricted by the NRD to say they can't use their well? Or if the groundwater irrigator's not going to be restricted by the NRD, then DNR is sitting in a position of, well, maybe we shouldn't allow the transfer of the surface water right off of the land to a new use because it would be an expansion if the well is continues to be used or there's an expanded use of the well. This caused quite a bit of discussion among the task force members. Eventually they determined that it would be very difficult to craft a law that would pertain to every natural resources district in the state and deal with all the variations that you might have in trying to ensure that there is not a problem as result of the transfer of the surface water right off of this land that's also served by a well. So the compromise that came from the task force was that this would be dealt with

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

within the integrated management planning process for fully and overappropriated areas. And you could have different roles for a given NRD whichever, whatever makes sense within that integrated management process for that NRD. The intent of the bill is that this would pertain to both fully and overappropriated areas. And with that, I'll try to answer any questions. [LB801]

SENATOR LOUDEN: Ann, are you testifying just on LB801 without the amendment to it? [LB801]

ANN BLEED: That's correct. [LB801]

SENATOR LOUDEN: Okay. Questions for Ann. Senator Christensen. [LB801]

SENATOR CHRISTENSEN: Thank you, Chairman Louden. Thank you, Ann. Is surface water a right of use to the landowner? They have a right to use the surface water under land, correct? [LB801]

ANN BLEED: If they have a permit from the state of Nebraska to use the water, they have the right to use that water within the restrictions or conditions on the permit. It does not...if you purchase a piece of land without a water right, you do not have the right to use surface water on it but it is pertinent to the land, although it can be transferred off of the land to another piece of land or to another use if there's a permit granted for the transfer. [LB801]

SENATOR CHRISTENSEN: Is groundwater a right of use for the land? If they have a well that went in by the restricted time, they have a right to use that too, correct? [LB801]

ANN BLEED: That's right. The statutes say that a person has the right to use water from underneath their land for use on overlying, the overlying land for beneficial and reasonable...beneficial purposes and reasonable use. They cannot transfer that groundwater off of the overlying land in all situations. There's restrictions on how far they can transfer the use of that right off the overlying land depending on the use. [LB801]

SENATOR CHRISTENSEN: So they are two separate right? [LB801]

ANN BLEED: Yes. [LB801]

SENATOR CHRISTENSEN: So, let's take a scenario. Let's say before a district become fully and over appropriated, somebody had two rights, one surface, one ground, used them both. Under this bill, we'd be taking one right away from them. [LB801]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

ANN BLEED: No. This bill only pertains to areas that are considered to be fully or overappropriated, in which case there's the concern that you cannot expand the consumptive use of water from what is the existing consumptive use is at the time the district became fully or overappropriated. [LB801]

SENATOR CHRISTENSEN: Okay. I want to give you an example. We have for years, we've been restricted to about eight inches of surface so we transfer up to four inches of surface water off of a A onto B because it's a surface right only, so it has 12 inches. [LB801]

ANN BLEED: Now, wait a minute. Does the B have a surface water right now? [LB801]

SENATOR CHRISTENSEN: Surface...B has a surface water right that's going to get eight inches. To fully grow the corn we need 12, so we transfer some off of farm A to farm B to get it to 12 inches, and in doing that, you're now saying I can't have 12 inches over here. [LB801]

ANN BLEED: If you're transferring that water right off of that, the four inches off the land that only has the eight inches, no, you cannot increase your surface water right to 12 if you're in a fully or overappropriated basin. [LB801]

SENATOR CHRISTENSEN: So basically, I'm losing the rights of one right. I've had the right to put 12 inches on this land, chunk of ground, and because the dam isn't big enough or doesn't have enough in it, I can only get eight, I've transferred four surface over to this farm, still put on my 12 here, you're going to prohibit that? [LB801]

ANN BLEED: Well, first of all, if you're using water from the irrigation district itself, your contract would probably prohibit that. [LB801]

SENATOR CHRISTENSEN: My contract does not. [LB801]

ANN BLEED: But if it's a situation where you're expanding the consumptive use of water as a result of the transfer in a basin that is already considered to be fully or overappropriated, that expansion of the consumptive use is a problem in those districts and this would prohibit that expansion if you're increasing your consumptive use. Now what you just described, I'm not convinced is an increase in consumptive use. Depending on how it is done, it may be perfectly viable to do so because you would not be increasing your consumptive use. [LB801]

SENATOR CHRISTENSEN: Because this has been done in this example for 15 years. And I would say by the time this would come fully appropriated, they had the history of transferring that water over, that if this come into law, it would cease it. [LB801]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

ANN BLEED: Let me ask you, Senator, would it expand the consumptive use of the water? [LB801]

SENATOR CHRISTENSEN: It's not expanding it from what's been used for the past ten years but it is transferring water from one chunk of ground to another one that as I read this, would restrict that other one. [LB801]

ANN BLEED: Okay. The example you're raising is a good example of why it's very difficult to come up with specifics of a transfer law that would be pertinent to this kind of situation. That is why in this amendment, it basically says that it's up to the NRD and the DNR to work something out under the integrated management planning process. And the major requirement is simply to make sure there is no increase in consumptive use. So if in your situation there, in fact, is no increase in consumptive use, I would surely hope that in the integrated management planning process we would allow that transfer to continue. [LB801]

SENATOR CHRISTENSEN: I guess my concern comes, I'll give an example of Lower Republican, this change in IMP, they used to divide it on 183 Highway, 12 and 11 and they went to straight nine, straight through because they've got more board of directors on the east side of that, so they thought it'd just be fair to give it even to everybody. Well, in doing that, they've lowered consumptive use on the west guys, maintained the east guys, and I'm afraid the same situation could happen with this bill. Well, they're going to say, well, if you transfer it off, then we could reduce consumptive use. So even though you've had two individual rights, we're going to shut this down. [LB801]

ANN BLEED: All this change would do is say that whatever rules and regulations that are put in for transfers or allocations or what have you, if there is a transfer of surface water right off of the land, that the rules and regs of the Integrated Management Plan should ensure that as a result of that transfer, there's not an increase in consumptive use over what was being used before. The decision by the Lower Republican NRD to, instead of having different allocations in eastern part of the district as opposed to the west was their decision, and that was a good example of local decision making by the local NRD. [LB801]

SENATOR CHRISTENSEN: But it still come down to who it affected and it didn't affect very many on the east side (laugh) and it didn't... [LB801]

ANN BLEED: Well, that may be, that was the decision by the natural resources district. [LB801]

SENATOR LOUDEN: Do you have other questions for Ann? [LB801]

SENATOR CHRISTENSEN: So that is why I'm saying this could come into play again,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

so thank you. [LB801]

SENATOR LOUDEN: Senator Carlson. [LB801]

SENATOR CARLSON: Senator Louden. Ann, I've got to get this straight in my mind. Through the committee on the task force, that committee put together LB801. How many were on that committee? [LB801]

ANN BLEED: Well, all the task force bills were...originally came out of discussions between a subcommittee of the task force that worked on, actually throughout last year, last summer, fall and into the spring. That subcommittee which included both NRDs and surface water representatives, as well as some municipalities and Game and Parks Commission, depending on the topic, certain people would or would not come to the meetings. They brought these bills to the full task force, all 49 members. And these bills were put through the task force, I believe, at our October meeting, if I'm remembering correctly, Senator Louden, I'm not sure if your memory is better than mine. And went through the normal process we have at the Water Policy Task Force of developing, of determining whether there is a consensus or not to support these bills. For these three bills there was a consensus by the task force last October. [LB801]

SENATOR CARLSON: Okay. So LB801 had the consensus? [LB801]

ANN BLEED: Right. [LB801]

SENATOR CARLSON: LB801 did not have the requirement for metering? [LB801]

ANN BLEED: No, no, it did not. [LB801]

SENATOR CARLSON: Okay. Thank you. [LB801]

SENATOR LOUDEN: Other questions for Ann? Thank you, Ann, for your testimony. [LB801]

ANN BLEED: Thank you. [LB801]

SENATOR LOUDEN: Other proponents for LB801? [LB801]

RON BISHOP: (Exhibit 4) Senator Louden, members of the committee, I'm at a little bit of a loss whether I should be up now or later since you're hearing both the bill itself, LB801, and the amendment, because we do have strikingly different positions on each of those. But I am choosing to testify in support of LB801. We think it's a solution to a problem that we have out there. It isn't clear who is responsible for making up the offsets required when there is a new depletion to the river because of a transfer of a

Natural Resources Committee
February 06, 2008

surface water right. We have many of our operators out there who have a surface water right out of an irrigation canal or maybe just out of the stream itself, and they also have irrigation wells. Sometimes they use them as back up, sometimes it's the primary source and the surface water is used as backup. Sometimes it's all kinds of different combinations but they do have both sources that they can use, sometimes on the entire farm. If they transfer that to another user, and that other user might be a dryland farm, they're allowed under the law to do that. Then the question is, if they do that and they continue to use their irrigation wells to irrigate that same land, we've developed some new acres and there's likely to be a new depletion to the river, and who's responsible for offsetting it? That's one of the cases that conditions that has come up and so this clarifies how that would be handled. It would be handled, it would be laid out in the Integrated Management Plan adopted by the natural resource district for the groundwater part and the Department of Water Resources for the surface water part. It's something that the group talked about for over a year, couldn't come to another solution that could spell it out and would cover everybody's situation all the time. And so they felt it was best if each natural resource district, in their Integrated Management Plan and working with the department, worked out how those situations would be taken care of and I think it's a logical solution. It's a solution that Water Policy Task Force and the surface water and groundwater subcommittees looked at and endorsed by consensus. And so I'm speaking in favor of LB801 for our natural resource district, also for the Nebraska Water Resources Association and the State Irrigation Association legislative coalition group. They both, as well as does our natural resource district, supports LB801 as it was originally proposed. I need to put on my other hat for a minute though, and if I could get the young lady to hand out these, the amendment that is being proposed to this, we take the opposite position on. We've got some real concerns about the amendment that would require meters on all the wells and would require reporting. The handout that I'm giving you, the first part of that amendment lays out the projected cost to the natural resource districts across the state, and you notice, we're listed at the top there. We have some 17,500 irrigation wells and hundreds, if not thousands, of other commercial and industrial and municipal wells, some of which are metered, some of which are not. And we think it's a very conservative estimate. Our cost within our natural resource district to the producers within the district would be \$19,030,000. That would be just for the initial installation of meters. That's based upon \$1,100-and-some estimate, and I think that's very conservative when you consider that it's not just the meter that has to be acquired. It has to be installed and sometimes that installation can be as much as the cost of the meter. But this estimate is based on \$1,100-and-some cost. It would cost us over \$19 million. To do the monitoring then on the wells and the reporting that's required in the bill, I would have to hire 12 staff people to do all of the operations, all of the water management, all of the conservation work, all of the tree planting, all of the other activities across our natural resource district. I have a staff of about 16 or 17. I'd have to hire 12 more people just to take care of the meter part of this, and we're estimating the cost at \$645,000 a year for staff and benefits and transportation, trucks and all the other equipment that would be required. If you go to

Natural Resources Committee
February 06, 2008

the third page, there's a total there and the total just for the initial installation is estimated to be \$90 million. Now you say, maybe we shouldn't be objecting to finding out how much water is pumped, because the meters will only tell us how much is pumped. It won't tell us how much is used, if use is consumption. There's a big difference between water pumped and water consumed, especially in our natural resource district and other parts of the state as well. Our land, if you drive out through the Grand Island and Kearney area there, our land is pretty flat. Our land tends to be on the lighter soil side, tends to be sandy. And so, it doesn't really matter much whether an individual irrigator has to pump 20 inches per acre or 12 inches per acre. The corn crop that he's growing, if it's corn that he's growing, is going to consume about seven, seven and a half, maybe eight acres...eight inches, depending upon where he's located in the district. But that's seven to eight acre inches of water, out of the either 12 or 20 that he pumps, is what's consumed, it's what's used up. The rest of it, in our district, ends up back in the aquifer. We don't have runoff of groundwater, irrigation water. It all ends up back, it's lucky to get to the end of the field on some fields but it all ends up back in the aquifer. So the net impact is what's consumed and that's what we need to try to manage because that's what has an impact on the river, and that's what we've got to manage for LB962. That's what we have to manage for the Platte River Cooperative Agreement. That's the important number, the consumptive use. What is left over after the use, and you look at evaporation, transpiration, and runoff, that's what's consumed. The rest of it ends back in the aquifer and no loss to the aquifer, then, as far as volumes of water. On the next two pages there, it shows the areas that have been fully appropriated and overappropriated and we have been involved in those areas. Part of our district is overappropriated so we have to get back to a balance. We have to get back to a fully appropriated status. All the rest of our district is fully appropriated so we have no new depletions are allowed. No new uses are allowed unless they're offset. We saw that coming as did the other natural resource districts in the Platte Basin some nine or ten years ago and so we joined together in an effort to gather detailed information. And we developed a large database of information and developed it into a groundwater model that's known as COHYST, Cooperative Hydrology Study. And the cooperative part is that there are about seven natural resource districts that were involved, covered in the area. There were two public power and irrigation districts and there were originally three state agencies, now two, because two of them were merged, all involved in working together trying to develop this database, one piece of which was, how much water is consumed by different crops out in our area. Not how much is pumped, but how much is consumed, what is the loss to the area from the total water supply. You see on the map in yellow here, the area that was covered by that model, it's all of the Platte River Basin from the state lines clear down to Columbus but it also laps over into the Loup and down into the Republican and the Blue River Basins. If you turn over to the map that shows the little squares, that happens to be Dawson County and each of those squares is a section of land. And the number in the section of the land tells us the percentage depletion to the river of pumping a well within that section of land. So we have enough data, enough information that we not only know how much water is consumed by a

Natural Resources Committee
February 06, 2008

given crop, we know what the impact is to the Platte River. Those numbers will probably be adjusted over time as we refine COHYST but it's the best scientific information available at the present time. And it's certainly better than the readings that we might get off of a meter because this provides us information that we can use, that we can plan, that we can manage our surface water and groundwater resources from. If you'll turn over to the next page, you see the COHYST map with all the colors. Each of those colors is a different natural resource district area. And then, it's followed with a yellow map at the top of the page and then a whole list of items down below. You'll notice a little square below the town of Lexington on the map. I have picked out one section of land within that area and shown you what kind of detail we have available as far as water consumption on that particular piece of ground. For example, if that piece of ground were planted to irrigated corn, the ET, the evapotranspiration off of that field of corn, would be 29.3 inches per acre. The effective rainfall, how much that crop could use, is 20 inches at that location. The CIR, that's the Consumptive Irrigation Requirement, is 12.2 inches per acre and the recharge under those conditions and that takes into consideration the location, the rainfall zones, the soils, and a whole host of other items, the recharge is 2.8 inches per acre. If you go down, say six or seven, you come across irrigated potatoes. Irrigated potatoes on that piece of ground has a whole different set of numbers, a different ET number, a different effective rain number, a different CIR number and a different recharge number, as do almost every crop that's listed here. That information was developed for us by studies over years that conducted by the University of Nebraska at their research centers across the state and have been incorporated into the database. We are at the point with that data and that information, if you turn over two pages, you'll come to a page that up, up in the upper left-hand corner, it says CIR offsets. We can plug into a computer program that we have set up, any section of land across our natural resource district. As an example, we've used that section 30, that little red square below Lexington as an example, and we can determine if it were an irrigated corn and there was 160 acres of it and we converted that down to a future condition of dryland corn, 160 acres, all we have to do is hit the submit button at the bottom and the next page appears. And it tells us with 160 acres what the consumptive irrigation requirement is per acre in inches, what the recharge is, what the groundwater withdrawal is or the impact on the aquifer, 122.7 inches or acre feet on that 160 acres. It tells us what the depletion is to the Platte River, 92 percent, which means if you were to pump that well for 50 years, 92 percent of that water pumped in those 50 years would have shown up as an impact on the Platte River. It would have depleted the Platte River. How much would it deplete it? 112.9 acre feet of water per year. So we've refined the information. We've gathered the information that is helpful to us, that is important to us in manage the groundwater resource and the surface water supplies there because we've had to, because the Platte River Cooperative Agreement and more recently, because of LB942, LB962. We've got all of this information available. What we need out there is the ability to offset the depletions that we've got to get us back to fully appropriated, to offset the depletions for new municipal uses and new industrial uses and new commercial uses that the Legislature has assigned to the natural resource

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

districts. We have to either say, no new activities or they have to be offset. In a case of municipal, and industrial and commercial stuff, that falls to the natural resource district to come up with the offsets. So we either have to shut them down or we have to supply the offsets. What we need is more scientific information to refine the COHYST study to get even better estimates of the information that we've got, and to be able to acquire water rights so that we can provide those offsets that the Legislature has required us to provide. The \$19 million that the producers would be required to spend on meters and the \$645,000 a year that we'd be required to spend in order monitor them and make sure they were running, and gather the information and report to the state and report to the Legislature, quite honestly, in our case, doesn't help us with management. It doesn't do anything for us. We've passed the point of knowing how much is pumped, we've refined it down to the point where we know how much is consumed and that's the important figure in managing the water resources and supplying the offsets that we have to supply. And so for that reason, we support LB801 but we certainly oppose the amendment and, in fact, we oppose it enough that if the amendment were to become a part of LB801, we would oppose LB801 with the amendment as well. In some parts of the state meters are great. If you're going to have an allocation program, you need to know how much is being pumped if that's how you're going to regulate, if that's how you're going to control the amount pumped. In the Platte Valley, in our district and several other districts around us, that's not the way they're going to regulate. If we get to the point where we have to regulate to cut back and come up with water, we'll do it by acres. We'll say, okay, everybody has to cut back 5 percent of your irrigated acres and because of LB962 we've already certified all the irrigated acres so we know where they're at. We know how many acres we're irrigating. We know how much water has been consumed on each one of those acres regardless of where it might be in the natural resource district. It's based upon crop and location, and so we have that information, and instead of saying, okay, everybody gets 10 inches of water and using a meter to make sure that they only use the 10 or the 30 over 3 years or the 50 over 5 years or whatever it might be, we just say, everybody has to cut back 5 percent. So if you're irrigating 1,000 acres now, you have to cut back and you can only irrigate 95 percent of 1,000 acres, 950 acres. And that's a much easier way for us to do it. It doesn't fit every natural resource district and that's why the law has been written and the law allows that decision to be made by the local natural resource district. If allocation fits their program and their area better, then they'll probably have to look at meters and do it that way. But if regulating acres fits better like it does for us and several of our neighbors there in the Platte Valley and perhaps other areas in the state, then meters are not needed for that kind of a program. With that, I'll stop and maybe there's a question or two. [LB801]

SENATOR LOUDEN: I got questions, Ron. My understanding is you're for the bill and you're against the amendment. When you talk about, oh, this chart you have here where you're going to...you figured out by the consumption. What happens to your numbers if somebody leaves the irrigation well run for a couple extra days because, I mean, the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

water is pumped out there and it's gone someplace whether it sits and makes puddles or what. It doesn't necessarily, if it goes back to the ground, then why is the Platte River not having any water flow past it, you know, in Grand Island? That's because you guys are pumping it out. If you didn't pump it out, would the river flow better? [LB801]

RON BISHOP: Senator, prior to groundwater irrigation development, the Platte River often went dry in the summertime. That's not a new phenomenon that's developed just since groundwater irrigation. Back in the '30s, in fact, the Platte River was drier than it is now. There was one year in the '30s where the Platte did not flow by Grand Island for 238 days. It was completely dry and that was before groundwater irrigation came into the valley. [LB801]

SENATOR LOUDEN: Then you're telling me that your irrigation up and down the Platte River doesn't have any affect on the flow of the Platte River? [LB801]

RON BISHOP: No, I'm not telling you that, Senator. It does have some impact on the Platte River. The COHYST study indicates that it does and if you look at that, if you look at that map, it shows Dawson County with the numbers in it, that indicates the magnitude of the impact, 41 percent of the water pumped out has a...depletes the flow in the river. [LB801]

SENATOR LOUDEN: Now, one other question I have. You have how much, what, 12.2 inches to grow the corn plus 20 inches of rainfall, is that what...is that what these numbers here are on this deal, or thereabouts? [LB801]

RON BISHOP: Yes. [LB801]

SENATOR LOUDEN: Okay. Now how come we're getting corn now that doesn't take that much water, these guys out the western end of the state are growing corn that requires less water. Where will you go with your numbers if people were using hybrid corn that uses less water or watering at certain times of the year, stressing the corn, and then watering later on? I guess, my question is, by what you're doing with your program, which is fine and you are the first ones to do it, but is that, is that, what would you say, getting to be archaic management because you're coming out with new hybrids and new ways to irrigate that you don't have to use that much water to start with? [LB801]

RON BISHOP: And as new hybrids come out, and they're working on new hybrids that will use, consume less water and I hope they're successful. As those numbers come out, we'll have to do new research and we'll have to change the numbers so that the consumptive irrigation requirement will hopefully go down. And I hope that will help us get things back into balance or if we're back into balance, keep us in balance. [LB801]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

SENATOR LOUDEN: Now, how will you control that if there's new ones come out, how will you control these people to make them use less water? Because right now, they can use whatever they want to, is that right? The NRD doesn't have any control over how much water a farmer pumps, is that correct in your district? [LB801]

RON BISHOP: In our district, that's right. We do not have any regulations that tell them how much they can pump at this point. Rather than, rather than regulate in the western part of the district where we're overappropriated, we have chosen to go out and acquire water rights and we've got a water banking program where we're trying to acquire water rights to provide that offset and the reduction of use, reduction of consumption from willing sellers and willing buyers. If that's not successful, then we'll have to go in and regulate but when we go in and regulate, we'll go in and tell, if each of you were a farmer in the district whether you raised 100 acres or 1,000 acres, we'd tell each one of you that you have to cut back perhaps 5 percent or perhaps it'll take 10 percent, whatever it'll take to get us back to the balance. [LB801]

SENATOR LOUDEN: Could they, but at the present time if you just regulated them, regulated them until where you're getting what, 20 inches of rainfall and you regulated them to the 7 or 10 inches or something like that, would that, would that more come more in line? You'd be able to do that rather than just tell them to cut back 5 percent of their...how much they're going to farm because you know, and I know, that you're not going to be able to go out there and tell those farmers to start farming 5 percent less of the irrigated ground. It'll never happen, I don't think. [LB801]

RON BISHOP: We think in our area we can be more successful telling them that, than we can be successful in telling them, okay, everybody's got to pump 7 inches of water a year per acre. [LB801]

SENATOR LOUDEN: Some of that good bottom land down along the Platte River there that you know, black soil for, Lord only knows how many feet, and they farm every inch of it, you think they're going to cut off 5 percent of it just because they can't get enough water when they what, have irrigation wells that are about 20 feet deep, do you think you can control that, that way? [LB801]

RON BISHOP: That's, we don't want to do it that way, Senator, and that's why we've got the water bank program and we're trying to go out and deal with individuals who are willing to stop irrigation for a price and sell us their water use off of that particular piece. Sometimes it's because they're getting old enough that they don't want the hassle of all that work associated with irrigation and they don't have kids coming in to take their place. Sometimes it's odd shaped fields, corners off of, they want to put on a center pivot. They don't want to fool around with those ever-changing length of rows on the corners and so they're willing to retire one, two, three or four of the irrigation corners and we can gain water that way. All kinds of reasons why they're willing to sell us the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

water right off of there and that's...we're trying to acquire as much as we can so we don't have to go out and try to tell... [LB801]

SENATOR LOUDEN: If you start buying those water rights, will it cost you more than 19 million bucks? [LB801]

RON BISHOP: No, it'll be less. [LB801]

SENATOR LOUDEN: Okay. Other questions for Ron? Senator Carlson. [LB801]

SENATOR CARLSON: Senator Louden. Ron, of the 17,500 wells, I can imagine fairly close I think, but about what would be the average number of acres covered by each well? [LB801]

RON BISHOP: It varies across the district, Senator. In the western part of the district it's probably, probably 80 to 100 acres. In the eastern part of the district, it's probably more like 40 acres per well. It depends upon where it is and the capacities of those wells. In the eastern part, for example, in Merrick County, they can get a well pretty much anywhere they put it down. There are some areas where it's very limited. Some of the wells that they put though they'll have to tie 8 or 10 wells together to run a center pivot. Other locations they'll get a well that'll...in the spring of the year, will produce 600 gallons a minute but by the time the irrigation season is over, it's down to 300 gallons a minute. While out in the west, in the Kearney area and on out into Dawson County area, it's not uncommon to have a 1,000 gallon a minute well and it'll pump 1,000 gallons a minute pretty steady throughout the irrigation season. [LB801]

SENATOR CARLSON: Okay. Using 80 acres at \$1,100 a meter, that figures out about \$14 an acre. Now in terms of cost, I guess I don't have a lot of sympathy with that in that the Lower, Middle and Upper Republican they're facing up to \$10 an acre per year on occupation tax. So they're going to pay for that in a hurry. But another thing, you indicated that, and I'm not arguing with you on this, that 50, 60, 70 years ago the river was, the Platte River was dry, and you said two hundred and some straight days in 19 what? [LB801]

RON BISHOP: In the thirties... [LB801]

SENATOR CARLSON: In the thirties. [LB801]

RON BISHOP: ...and I forget exactly which year, but the drought of the 30's there was something like 238 days the Platte River didn't flow at Grand Island. [LB801]

SENATOR CARLSON: And I know, historically, that that's the case. Now, Senator Louden said, that...so, asked you if then the groundwater pumping along the Platte

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

hasn't had any affect on stream flow, and you said, no, it has had an affect on stream flow. [LB801]

RON BISHOP: That's correct. [LB801]

SENATOR CARLSON: So, therefore, if it's had an affect on stream flow and you start with what's being pumped now and ratchet that back, at some point in time, it makes a difference on the stream flow. You said that it does and so somewhere in here, the amount of water that is pumped does have an affect and I can see a reason for knowing then how much is pumped. Now you make a good case and you've done a lot of research on this and I don't even want to argue with you on how you're approaching it, but I think there's a little bit of a conflicting idea here where you did agree that pumping makes a difference. But it used to be that it was dry so long anyway during the summer that it was almost like it didn't make a difference. But I have a tough time subscribing to the idea that it doesn't matter how much you pump. [LB801]

RON BISHOP: What matters, Senator, the point I was trying to make and I probably didn't make it very clear, what matters is not how much is pumped, how much is consumed, because it's the consumed water that has an impact on the Platte River. It doesn't matter whether an individual irrigator pumps 18 inches per acre or 12 inches per acre, it's how much of that 18 inches or 12 inches is consumed and lost to the system through transpiration or evaporation. That's what has an impact and that's the part that lowers the flows in the Platte River. [LB801]

SENATOR CARLSON: Well, cost enters the picture here but I don't think you'd subscribe to a program if cost wasn't a factor that it wouldn't matter if somebody turned on the well and pumped it 24 hours a day, 7 days a week for 5 straight months. [LB801]

RON BISHOP: No. And we've got laws that prevent that. The natural resource districts monitor runoff and prevent runoff from his property and so we've already got laws on the statute that doesn't cover surface water, but it covers groundwater. If they are wasting groundwater, the natural resource district will stop it. [LB801]

SENATOR CARLSON: But if how much is pumped versus how much is consumed and the excess goes back into the aquifer, it shouldn't matter how much they pump. [LB801]

RON BISHOP: It doesn't up to a point but you're example of pumping it full steam for five months, if you assume that not all of it is going on crops and spreading across the whole field, some of it might be trickling down two or three furrows and out the end, we've got a way to stop that. That that's spread out across the field, what isn't consumed by the crop ends up, in our district ends up back in the aquifer. And so the point I was trying to make is that the data that we need for managing our groundwater supplies and for limiting impact on the river is not tied to how much is pumped, it's tied

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

to how much is consumed because it's the consumed water that has the impact on Platte River flows and on our total water supply. And I probably made it poorly, Senator, but that was... [LB801]

SENATOR CARLSON: That's fine. Thank you. [LB801]

SENATOR LOUDEN: Senator Kopplin. [LB801]

SENATOR KOPPLIN: Thank you. I do appreciate all the work you've done and you've given us a lot to think about, but I'm not sure that you have accounted for one thing in my mind at least. When that excess water that is pumped returns to the aquifer, you really don't know whose stream flow you're affecting or when or where that might be, would you say that's correct? [LB801]

RON BISHOP: Well, in the majority of our irrigation is in the Platte River Valley and it's anywhere from 2 feet to water to 30 feet to water, depending upon whether you're on the bottoms or you're up on the terraces. We do have some uplands where it's a little farther to water but the majority of our irrigation is in that 2 feet to water to 30 feet to water. And so when they apply it to a field, it just soaks in and soaks down below the root zone and gets back to the same aquifer in basically, the wells here, and it's recharging right here on the same field that he's irrigating with and so it doesn't move. [LB801]

SENATOR KOPPLIN: In that way, I would agree with you but that's not necessarily true everywhere. [LB801]

RON BISHOP: No. [LB801]

SENATOR KOPPLIN: The runoff may go to a stream which takes it completely different than what the aquifer would do it. [LB801]

RON BISHOP: Absolutely, absolutely. [LB801]

SENATOR KOPPLIN: Okay. Thank you. [LB801]

SENATOR LOUDEN: Senator Wallman. [LB801]

SENATOR WALLMAN: Thank you, Chairman Louden. I would agree...I appreciate this information. I live in Tri-River Basin in the Little Nemaha, Big Nemaha and the Blue and we have surface irrigation too, flood irrigation yet. And when they start irrigating, the water table it's deep there, you know, but our nitrate level goes up so some of the communities had to put in treatment plans. So how is your nitrate levels in the Platte River? [LB801]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

RON BISHOP: Not good. [LB801]

SENATOR WALLMAN: And that grows invasive species, you know, they grow like the dickens. And so, I think that's where we're going to have to watch out. Iowa dealt with this. [LB801]

RON BISHOP: Yeah, that is the location where we require them to meter their water where they've got high nitrates and we do require that. We don't require them to put on a flowmeter, though. We think there's a cheaper and better way to do it. We've acquired about four ultrasonic flowmeters. We go out and measure what their capacity is and on those wells that don't drop off during, in production during the irrigation season where they stay pretty steady, which is the bulk of our wells, we can go out and tell them they're pumping 622 gallons a minute or whatever it might be. Many of them are on power units, electric units and the electric utility will tell them at the end of the year how many hours that well ran. And so it's just a matter of multiplying the two, they can figure out how much they applied and they don't have to spend the eleven, twelve, thirteen hundred dollars for a flowmeter. [LB801]

SENATOR WALLMAN: And I'm a farmer so I appreciate it's hard to tell a farmer what to do. (Laughter) [LB801]

RON BISHOP: Yeah, well they're... [LB801]

SENATOR WALLMAN: But in Iowa where they've got high water tables, they can only use nitrogen side dressing. [LB801]

RON BISHOP: We've had a...we can only do that in our district too. Yeah, we've got quite a water quality program that we've initiated since back in 1988 that requires them to measure the nitrates in their water, measure the nitrates in their...in the corn root zone each year and then to back off the amount of commercial fertilizer and the way they put it on and when they put it on, based upon those tests. [LB801]

SENATOR LOUDEN: Other questions? Senator Christensen. [LB801]

SENATOR CHRISTENSEN: Thank you, Chairman Louden. Thank you, Ron, appreciate your work. I'm going back to the bill LB801, You made a comment earlier that if you transfer water to dryland, it's going to increase consumptive use. This bill's written for fully and overappropriated, correct? [LB801]

RON BISHOP: Yeah. [LB801]

SENATOR CHRISTENSEN: So if it's fully and overappropriated, then new lands are cut

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

out, so if people transfer water run, how are we getting new consumptive use? [LB801]

RON BISHOP: We, we...well that's the argument that we're concerned about getting into. The irrigation districts, when somebody cancels out their water right, the law allows them to transfer it to another location. If where that water, surface water right was cancelled from has wells, which many of our surface water irrigated lands do across the valley, they have established a right to use groundwater in that particular land. Sometimes it's on the whole farm because they've used groundwater on the whole farm. We've gone in and certified all those acres as irrigated with groundwater or surface water or both. If they transfer it, then the question comes up, who makes up that offset for that variance where the irrigation district transferred the surface water right, if that is, in fact, a new use and a new depletion to the... [LB801]

SENATOR CHRISTENSEN: Okay, so you're permanently transferring a right then? [LB801]

RON BISHOP: Pardon? [LB801]

SENATOR CHRISTENSEN: You're permanently transferring a right versus one like I was talking about. [LB801]

RON BISHOP: As versus what you were talking about. No, this is a permanent transfer. The guy gives up his surface water right. He says, I'm tired of paying that \$35 an acre for that surface water and then I don't get it when I want it. I want to be able to go out and throw the switch and I got a well here anyway, so take it, I'm giving it up. [LB801]

SENATOR CHRISTENSEN: I wish I could give mine up. (Laughter) Thank you. [LB801]

SENATOR LOUDEN: Other questions for Ron? Well, thank you, Ron, and that's... [LB801]

RON BISHOP: Senator, before I go... [LB801]

SENATOR LOUDEN: ...the reason I wanted to have you go over your whole program because I know it's very important you people out there in that district where some of the early leaders and how it was done. There's a little bit different philosophy what I have and what you have, how it probably needs to be done in the future and that's what we're looking at is four or five years out, and when you look back four or five years what we were doing, what should we be doing four or five years from now and I think we're going to need some lead time because if it is going to come around to we have to meter it, you're going to have some lead time. You can't go out and put them all on the first year so it's going to have to come over a period of years and that's what I wanted the discussion about and I appreciate it. [LB801]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

RON BISHOP: I appreciate the opportunity to do that, Senator, and I would like to invite the natural resources committee out to our natural resource district. I'd love to have the opportunity to go into much more detail than I've been able to in front of you today about the program that we've got developed out there, about water banking that we're doing, about tracking the irrigated lands and the Cooperative Hydrology Study. I would very much like to have you take the time, sometime this calendar year, whether it's in session or after the session, to come out and visit us out there at Central Platte out at Grand Island and we'd love to have the opportunity to go over our stuff with you. [LB801]

SENATOR LOUDEN: Thank you, Ron. Next testifier. [LB801]

JASPER FANNING: Thank you, Mr. Chairman and members of the committee, I'm Jasper Fanning, and that's J-a-s-p-e-r F-a-n-n-i-n-g. I'm the general manager of the Upper Republican Natural Resources District and like Mr. Bishop, my board is in support of LB801. I think it's a good piece of legislation that allows us to deal with those areas where we have co-mingled acres, albeit not that many in our district alone, within the Republican Basin that is also an issue in the future that we may have to deal and LB801, we believe, will work for us as it's drafted. With respect to Amendment 1629, however, I'm sure you're thinking it would be pretty easy for me to sit here and testify in support of that amendment considering our districts had meters on all the wells since 1980. However, my board took a slightly different position. They felt that some districts probably need to have the same kind of program that we have and a lot of those districts are establishing very similar programs to ours. However, in other parts of the state, we recognize that metering every well is not only a waste of funds from a cost standpoint in some instances, it's not really what we need to be managing in terms of our water resources. As Mr. Bishop correctly indicated, pumping alone is not enough of an indicator of what's actually being consumed, and LB962 and all the efforts for integrated management in the state deal with the consumption of water. And while pumping is related to the consumption, it is not all consumed and so, I think, you know, in certain instances that Ron certainly highlighted, and I do want to be brief, there are better programs and I think you've got enough history of the Central Platte's program to recognize that there are newer and better technologies. One place that I would disagree with what Mr. Bishop provided in testimony is in the cost of what it will take him to read those meters. He said he needed 12 staff members. I would guess he'll need a couple more than that, given the number of wells that he has to read, and we only have 3,400 wells and meters out there that we take a look at every year, and we have three full-time staff members to deal with those 3,400. And in our district, it's primarily pivot irrigation, very few tributary streams or anything like that. Once you start having some tributaries, and a few more tributaries and streams in your district like I know the Middle Republican has, we can read meters an awfully lot faster than they can just because a smaller field size is a little bit harder to get to places and some of those things. Until you've actually

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

been out there and gotten in the field and done that, you don't know really how long it will take you. I don't want to take much of your time and I guess I would take any questions if anyone had any. [LB801]

SENATOR LOUDEN: Questions for Jasper? Seeing none, thank you for your testimony. [LB801]

JASPER FANNING: Thank you. [LB801]

SENATOR LOUDEN: Next proponent for LB801. Seeing no more proponents, first opponent for LB801. [LB801]

STEVE NELSON: Good afternoon, Senator Louden and committee, my name is Steve Nelson, N-e-l-s-o-n. I live at Axtell and farm in Franklin County and Kearney County, have land in the Tri-Basin NRD and in the Lower Republican NRD. All of my wells have meters on for the purpose of the Kansas agreement. I'm here to testify in opposition to the amendment to the bill on behalf of Nebraska Farm Bureau. I'm not going to reiterate all the things that have been said about the science and the availability of information. We believe that the NRDs are able to provide the information and the data that is necessary. I would add that when it comes to cost, I believe that the numbers that Mr. Bishop presented are conservative. I've had installations that have cost up to \$4,000 by the time you changed everything that you needed to to get the meter correctly installed. And I know that there's been some changes in equipment that might make that simpler but certainly, I do believe that those costs are conservative and would be considerable, and I'm not sure that they're necessary at this time. So I would just stop my testimony here and answer any questions that you might have. [LB801]

SENATOR LOUDEN: Now are you testifying against LB801 or just the amendment? [LB801]

STEVE NELSON: Just the amendment. [LB801]

SENATOR LOUDEN: Okay. Questions for Steve? Senator Carlson. [LB801]

SENATOR CARLSON: Senator Louden. Steve, I maybe should have asked other testifiers too. You're testifying against metering, not against measuring, is that correct? [LB801]

STEVE NELSON: Yes. I'm testifying against... [LB801]

SENATOR CARLSON: You're for measuring, you're testifying against metering. [LB801]

STEVE NELSON: I'm testifying against requiring meters to be installed on all wells in

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

the state, mandatory well meters. [LB801]

SENATOR CARLSON: Do you feel that measuring is important? [LB801]

STEVE NELSON: I think measuring is important, certainly. [LB801]

SENATOR CARLSON: Okay. Thank you. [LB801]

SENATOR LOUDEN: Other questions? Seeing none, thank you for your testimony. [LB801]

STEVE NELSON: Thank you. [LB801]

SENATOR LOUDEN: Next opponent. [LB801]

KENT MILLER: Senator Louden, members of the committee, my name is Kent Miller, K-e-n-t M-i-l-l-e-r. I'm general manager of the Twin Platte Natural Resources District and our offices are located in North Platte. I'm testifying also in opposition to the amendment. I am not testifying in regard to the bill itself, but in opposition to the Amendment 1629. I want to begin by saying that the Twin Platte NRD does not oppose meters. We support the current options that natural resource districts can use to require meters. Some districts, as Jasper Fanning pointed out, that was the best way to go for their district and it's a useful tools for producers. But for the Twin Platte Natural Resource District, as was testified by Ron Bishop in the Central Platte Natural Resource Districts, any regulations that may be required in the Twin Platte Natural Resource District, our preference is to manage consumptive use. Meters are not a required tool to determine reductions in consumptive use. Reductions in consumptive use can be a curb with reduction in irrigated acres. It can also be reduction in consumptive use could also be accomplished through changing in cropping types. Managing consumptive use works in the Twin Platte NRD. The soil types in the Twin Platte Natural Resource District are such that basically runoff is nonexistent. In the valley, we're close to the groundwater table. In the hills, it's sandy. We may be farther from the groundwater table but it doesn't take long for that water to get back down when it's going through sand. We believe that we can manage reduction in consumptive use in the Twin Platte NRD essentially using aerial photography, using computer models, using what Ron Bishop spent a great deal of time going over with you, that same technology, essentially their district developed it. We're using the exact methodology, the exact technology that the Central Platte Natural Resource District is doing. We have a baseline. We have a low-level infrared photography that's been digitized baseline for 2004. Our stakeholders, working towards an integrated management plan in the Twin Platte Natural Resource District, has been meeting for almost three years now. And they continue to tell us that they prefer options, more options and options that can be available to them through a management based on consumptive use. It gives them the opportunity to look at reducing irrigated acres.

Natural Resources Committee
February 06, 2008

We think it also gives them the opportunity if they want to from the baseline of 2004, to look at changes in cropping. Therefore, it gives them more opportunity to have a viable agricultural operation by making choices that best fit their land. You know, if they were to prefer allocations, then we would work with them on that also. One of the things that I think is not understood about allocations is that if you have meters, if you require allocations and you're going to reduce the consumptive use, then that means an allocation that requires deficit irrigation. It does not allow for continuing to plant the full plant population to get maximum yields on the ground. If you're going to reduce consumptive use, you have to have deficit irrigation. So the example, Senator Louden, that you talked about in regard to good bottom land, it really doesn't matter if you have deficit irrigation or if you reduce the acres. You'll still result in the same yield if you're managing for that reduced consumptive use because if you're going to continue to irrigate every acre of that good bottom land, but with reduced water available, then you're going to have to go in and plant a lower plant population. If you...you may want to manage based on consumptive use and reduced irrigated acres, then on the acres you do plant you can do a full plant population. Either way, you're going to get the same yield for that field and you're going to have the same consumptive reduction of groundwater used. One of the things that I think concerns some folks, if they watch that person pump 20 inches when they only need to pump 10 inches. They see that well running longer...they see their neighbor's well running in a hot day in western Nebraska, they think if that well's running longer there's a substantial amount more evaporation that's occurring. It's running longer, it's throwing the water up into the air, there should be a substantial more evaporation. But when you talk to the researchers at the University of Nebraska, when you talk to Derrel Martin and his counterparts, there's very little difference if you run that well longer in the additional evaporation. Their studies have become more refined over the years and there's not a great deal of difference. In the Twin Platte NRD there is a large cost to install meters. Ron Bishop talked about the \$19 million, I think it was he used in his district. We don't have the number of wells he has. We have about 3,100 wells in our district. If you use a figure of \$1,300 per meter, we're looking at \$4 million to install those wells. Now, whether that cost comes from the Twin Platte NRD or whether it comes from the individual, it's still a \$4 million cost. Now, we use \$1,300 per meter. A couple of my directors last evening told me that that's too low, very conservative. They pointed out examples that was just pointed out to you, that it's just not as simple as cutting a section out of your pipe and putting a meter in. Many of those installations require a total different alignment of the pipes, of the plumbing if you will, and can very easily reach into the several thousand dollar range. So the \$4 million in the Twin Platte NRD is conservative. We estimate, and we have slightly less wells than the Upper Republican has, and I would estimate 2.5 man years. If you calculate all of the support costs, the equipment, the transportation, etcetera, I'm estimating that cost to the Twin Platte NRD would then would be around \$175,000, \$180,000 a year. That cost to the Twin Platte NRD is essentially the same cost as it is to the Central Platte NRD because our valuation is so much smaller that again, it works out to about the same cost. We see the value in producers understanding how much

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

water is being pumped to save energy. We understand that it may save staff time or personnel time or farmhand time and because of that we offer a free service to the producers in our district utilizing an ultrasonic meter. Ron Bishop referenced an ultrasonic meter available in his district. We offer a free service. We're very happy to go out and determine for any producer who has asked us to, how much water they're pumping. And as was pointed out to you, if you don't see a drawdown in the wells during the irrigation season, which most of our wells we do not, that's an accurate record of how much they're pumping and then they can utilize that and they can see if they're wasting their energy or other resources. So we encourage you not to impose essentially an unfunded mandate on natural resource districts in areas where we don't think they're needed with meters. We would much prefer to use those kind of dollars to refine the management that we think is more effective for our district. We will need to monitor consumptive use through reduced irrigated acres or changing of cropping. We're going to need to update our aerial photography on a yearly basis. There's a cost for that. We're going to need to have additional personnel to use the digital technology to do that. But it can be done, and we think it can be done at a substantially lower cost than put meters in. A final concern that one of my directors suggested last evening that I share with you is that one of the comments that have been made is we need a base possibly into the future of how much has been pumped. But if you look at meters and meter records as a base to determine how much has been pumped, it's an inaccurate database as compared to the consumptive use because what's pumped was not consumptively used in the Twin Platte NRD, as been explained to you in the Central Platte NRD, goes back into the groundwater. It hasn't been lost. So if you simply go on what's pumped, you're going to have an inaccurate database, at least in our districts, going into the future as to what the consumptive use was during that period of time. So, I guess, in summary, in regard to this amendment, we don't feel it's needed. We feel that the tools are available for natural resource districts to best carry out their job. We feel that this amendment would be a very costly...to areas that can better use the dollars in a different way and we feel like it would establish an inaccurate database. So with that, I'd be happy to answer any questions. [LB801]

SENATOR LOUDEN: Thank you, Ken. You're in a fully appropriated, you're fully appropriated in the Twin Platte, is that correct? [LB801]

KENT MILLER: The Twin Platte, the entire district is fully appropriated. The area within the 28 percent 40-year STF, or COHYST defined line, is overappropriated. [LB801]

SENATOR LOUDEN: And you're right square in line with that Platte River recovery program or whatever? [LB801]

KENT MILLER: Oh, we're right in the middle of that. [LB801]

SENATOR LOUDEN: And five years from now, if they tell you that you're going to have

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

to cut down your water consumption, what are you going to do? You going to go out there and cut down on your irrigated ground or what? [LB801]

KENT MILLER: We are looking at all options. The last resort option is to reduce consumptive use based by reducing irrigated acres. That's the last resort option. We're looking at a number of different options in our district. We're looking at potentially conjunctive use type projects. We're looking at, is there anything available to the Platte River Basin via the South Platte River Compact, because there's a winter provision there. But a last resort is, yes, reducing irrigated acres. [LB801]

SENATOR LOUDEN: Will you, would you, if you had to put some kind of pumping restrictions on, how would you go about doing it? I mean, that could be, that could be asked of you. You know, I mean, they asked some of these other NRDs that you can only pump about so much water. So I'm wondering how are you going to keep track of how much, how much you're going to be allowed to pump. [LB801]

KENT MILLER: Well, at that point, if we were asked that, we would be able to provide to them, as Ron Bishop pointed out, the amount of water that's been consumptively used. We have those tools in place in our district just like he does. [LB801]

SENATOR LOUDEN: That doesn't tell you how much is pumped though, that tells you how much you used but doesn't tell you how much you pumped, does it? [LB801]

KENT MILLER: That is correct but the amount of water that's pumped is not the issue. It is the amount of water that was consumptively taken away from the river flows. [LB801]

SENATOR LOUDEN: But like Senator Kopplin mentioned, when you pump it out here, it affects what happened perhaps down below or someplace like that. That's what I mean. [LB801]

KENT MILLER: Well, if the water runs off, you're correct and in visiting with some of the managers in the other parts of the state, that is an issue. They don't have the soils that we have and the water does run off. In our district, the water doesn't run off. Now, you know, you pointed out the example of pumping every day for five and a half months or whatever it was. One of my directors here a while back indicated that when he was younger, and he's much younger than I am now so that wasn't too long ago, you know, he can remember the days when fuel was cheap and wells did pump way longer than they should have, and he can remember the days when there was water running in the ditches. In today's world they aren't doing that, turn the wells on, let them run for three months. They still may be running their wells longer than they should be but we're not seeing runoff in the Twin Platte NRD. We're, got very sandy soils in the valley, we're close to the groundwater table in the hills, we're not but we've got very sandy soils, we're not seeing runoff. I think that's the key. [LB801]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

SENATOR LOUDEN: Okay. Other questions for Kent? Senator Carlson. [LB801]

SENATOR CARLSON: Senator Louden, Kent, in the Platte River problem and going from fully appropriated or overappropriated to fully appropriated and looking back at 1997 levels, if the last resort is to reduce irrigated acres and I understand why that would be the last thing you'd want to do, it would be the last thing anybody wants to do. If it's not a matter of how much water is used, then what else is there? What's the answer? Is it crop rotation? Is it...because if it was reduction of irrigated acres the problem could be solved overnight. [LB801]

KENT MILLER: More than likely the reality is, is that we're going to see a reduction in irrigated acres to meet our management based on consumptive use. That's more than likely that's what's going to happen but again, our producers have told us that if we have to see reductions, we would rather see a reduction in irrigated acres and then let us pick those irrigated acres we want to reduce rather than to have allocations that ultimately end up in the same yield for that field. You know, if...if you're going to reduce the consumptive use, then there's going to be a financial impact to that individual producer because he's not going to be able to produce as the same yield he has been producing on the acres that he has. The question becomes, what's the best way for that producer to cut back and still have a viable operation, and we're trying to leave as many options as possible open to the producer to let them make that decision and yet have the final product that we have to have, and that's reduction in consumptive use. Now, you know, as an NRD manager I'm not looking for other options. But to get back to post '97, that may be the only reality that's really out there. [LB801]

SENATOR CARLSON: Thank you. [LB801]

SENATOR LOUDEN: Other questions for Kent? Seeing none, thank you for your testimony. [LB801]

KENT MILLER: Thank you. [LB801]

RORIC PAULMAN: (Exhibit 5) Roric Paulman, I'm from Sutherland, Nebraska. It's R-o-r-i-c P-a-u-l-m-a-n. Thank you, Senator Louden, and the Natural Resources Committee today for this opportunity. I'm a producer from Sutherland, Nebraska. I have a large farm, nearly 6,000 acres and over 40 high-capacity wells. I have wells in the Upper Republican, the Middle Republican and the bulk of them in the Twin Platte NRD. I'm currently a member of the Twin Platte Natural Resources Stakeholders Group. I'm also on the Overappropriated Basin Stakeholders Group for the Platte River. I'm also chairman of the West Central Water Coalition which is a grassroots effort, producers in our area to support and research and look for alternatives and answers. And that's why I'm here to day as representing myself and these others. I'm also currently a member of

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

the NPPD Landowner Committee which is in the impact zone directly reflected from the high capacity well field around Gerald Gentleman Station. And it's taken (laugh) I want to address...I'm not going to go over a lot of my notes because a lot of it was talked today on consumption but one of the things that I wanted to talk about, and Senator Carlson asked a couple of different times, is to fully understand consumptive use. Three years ago I scoffed at it. You know, meters I have them. I have also on my own accord, bought meters. I raise eleven different crops from dry beans to sugar beets to popcorn to whatever, and all various levels of consumptive use. But I do that to manipulate or work under the realm of an allocation. But I've trained myself and, of course, with over a 25 percent increase in electrical costs associated with Midwest Electric, of course, diesel fuel as everybody's understanding, those kinds of things do not allow you to punch the button and walk away. It's not fiscally feasible. You just can't do that. Some of the tools that are out there that they talked about, the sonic metering...in the wells I don't have meters on, I've taken it upon myself, all of the electric companies in our area now allow you over the internet to look at basically anything that's happening with that well as far as they're concerned and usage and start up times, and so you can calibrate a meter to that well. It's relatively simple and take it upon yourself to kind of see what happens. I know what my consumptive use is on those crops and I'm not going to waste that resource to raise a crop better or make sure that I have extra water because in the event that you do have, there's always a consumptive use associated with natural habitat. There's a fixed amount of consumptive use irregardless of irrigation. Whether it's grass or some type of dryland crop, there is a fixed use and I apologize, (laugh) I slipped when I got out of my pickup today and I dropped this but I brought a...we took it upon ourselves and just got this back. It's a technical memorandum. We commissioned a report out of our own pockets, out of the West Central Water Coalition on consumptive use and it actually is in the Upper Republican NRD. We specifically excluded surface water from, the best we could. We tried to take an area but it had COHYSt data, has CALMIT data, has all the data that is available today. And we put that together and we hired a firm out of Colorado to do an independent study exactly on this, on consumptive use. And I'd like to present this today. I only have one copy because (laugh) the rest of them ended up in the snow bank, but I resurrected this one and I would offer this and...for you to take a look at later on. I'm here to oppose the mandated water meters. They're a great tool. I don't dispute that but they haven't conserved any water. They've measured it. And it places the focus in the wrong place, I believe. All these other gentlemen have talked about consumptive use and that, we believe, is the effort, is how to consistently reduce consumptive use. We only grow a crop, say for 100 days, and the other 265 days a year, what are we doing to manage that off season consumptive use? Can we do a better job of that? Well, if we take all the money and use it to basically meter the 100 days of pumping water, then what about those other off season times? You know, cover, conservation, maybe it's in a rotation. We spray it with some new chemical but I don't know what that is. I don't have the answers but I think we're at the tip of the iceberg of what those kinds of situations and opportunities present. Meters, as a part...I'm going to switch hats. As a stakeholder on the Twin Platte and also the basin,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

the meters are in our tool box. There's a myriad of things that you charge to us in LB962 as tools in our tool box and we are looking at every one of those. It's a struggle of what is the best answer. What is five years from now? What is ten...we're charged for 13 years from now and what we're trying to do. To tie our hands behind our back in that respect, it would be a difficult thing for us, I believe. It's tied somewhat right now struggling with what the definition is between fully appropriated and overappropriated because we still don't have that. We're working on it in the subcommittees and getting that designation, what the number is. And to clarify a little bit about the consumptive use, I'm right next to a large well field there at Gerald Gentleman Station, and these numbers they're not in stone but there's 24 high capacity wells that pump approximately 52,000 gallons a minute. But the associate the consumption of those wells at only equal to one center pivot. So when you...I really struggle with consumptive use but that is an issue that has taken me a long time here to gain ground on and I still, with cropping and cropping patterns and some of the things that are going on, it's an ongoing understanding. But I'm not unwilling to not continue to be educated in it and spend time with it. We do it all on our own. With that said, our group is again, we've taken it out of our own pocket to spend a substantial amount of money and to put together a summary of a technical memorandum that I think would help in clarifying consumptive use and excluding the surface water component. The money that I believe that could be potentially designated to metering would greatly enhance the capability of the COHYST model or CALMIT or any type of other technology that is out there. Again, that same five year time frame, Senator Louden, it's changing yearly. Every one of us is figuring out a way to do with less. Even though prices are sky-high, nitrogen now is quadrupled as we all know as producers, if you are in this room. All those things, they're growing expedientially with also the price. So again, I present you with this document that we have for consideration on the consumptive use process and I'm open to any questions. [LB801]

SENATOR LOUDEN: Are you testifying against the bill or just the amendment? [LB801]

RORIC PAULMAN: Just the amendment. [LB801]

SENATOR LOUDEN: Okay. And at this time I'd like to notice for the record that Senator Annette Dubas from Fullerton has joined us at this time. Questions for Kent? [LB801]

RORIC PAULMAN: Roric. [LB801]

SENATOR LOUDEN: Oh, I got the wrong, yeah, I'm looking at the wrong guy. Thank you, Roric. [LB801]

RORIC PAULMAN: You bet. [LB801]

SENATOR LOUDEN: Sorry about that. [LB801]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

RORIC PAULMAN: That's all right. [LB801]

SENATOR LOUDEN: You farm down there, then you have meters or you have ways of calculating the usage on all your wells or nearly all your wells, is that what you said? [LB801]

RORIC PAULMAN: I have wells in the Upper and the Middle, which I'm required to meter and then I purchased meters that I spread across various soil types so that as I...I rotate everything. I don't grow a crop consistently. I grow dry beans, wheat, then may go to soybeans, strip till back to corn whatever, but my interest was and is in normal precip, which is what is really the wild card is precip, and we monitor that. There's several Neb sites for precip that are close to us, rain gauge sites, and so we use that and then the ET rate that's posted every day and then base that off of what our consumptive use is and what we're pumping. And as a result of that, I figured out what that crop takes so if I have a 39 inch allocation over three years, then I've figured out how to change that cropping to fit that consumptive use or that draw of water. [LB801]

SENATOR LOUDEN: Do you have soil moisture monitors? [LB801]

RORIC PAULMAN: Yes, I do. [LB801]

SENATOR LOUDEN: In all of your... [LB801]

RORIC PAULMAN: No, I do not. They're very expensive and I just...again by soil type and by region. [LB801]

SENATOR LOUDEN: Okay. Other questions for Roric? Seeing none, thank you for your testimony. [LB801]

RORIC PAULMAN: You bet. [LB801]

JOHN TURNBULL: (Exhibit 6) Senator Louden, and members of the committee, I'm John Turnbull, J-o-h-n T-u-r-n-b-u-l-l. I'm the general manager of the Upper Big Blue Natural Resource District in York and I'm testifying today on behalf of our board of directors. I'm testifying in opposition to the amendment to LB801, not on LB801 itself. We oppose it because it adds a statewide requirement for water meters and we think, is an infringement on basic local control that has been mandated to the NRDs as far back as 1975 with the original passage of the Groundwater Management Act. DNRs officially determined for three years in a row now that the Big Blue River Basin is not fully appropriated, and we have adopted groundwater regulations back in 1979 and have been carrying those out ever since that time at various phases depending on conditions. A quick summary of our regulations, we have a goal in our groundwater regulations to

Natural Resources Committee
February 06, 2008

sustain our groundwater situation at the 1978 levels, and that was one of our low points. I'll go over that in a graph in a minute so you can see how that's changed over time. We require stiffer well spacing than the state requirements are, that's a thousand foot between wells of different ownership. That only applies to wells of 50 gallons a minute or more and does not apply to domestic wells. We require water meters on any new or any replacement wells and that regulation has been in effect since 2004. We don't require meters on other irrigation wells unless the groundwater declines continue, and when it reaches a certain point, then we'll require allocation for all water use and meters on all wells. Ground water levels in our district declined to a point in the spring of 2006 that required us to certify all irrigated acres and that process is now virtually complete. We have 1,120,000 irrigated acres now certified in our district and as a comparison, that's about the same number of acres that's in irrigated in the entire Republican River Basin. We now require water use reports from all water users and that came about because of the point that the water declined to in 2006. Those first water use reports are now due and that's for the calendar year 2007. As of Friday, my staff told me we have 1,050,000 acres that have reported water use. That's about 94 percent of that that's certified and this was a number that kind of surprised me. But the average water use on those irrigated acres in 2007 was 3.9 inches. We had a wet year, about 4 inches above normal for rainfall, and the rains came at the right time, and so we had a lot of folks who got by on very little irrigation water and we had some of these acres that didn't have any irrigation water applied to them at all. And as we go through these reports we'll be better able to get a better report for you as to how that all breaks down. In this same process we asked folks how many people actually are using meters, have meters on their wells throughout our district. We have about 12,000 wells; 23 percent of those are now metered which is a higher number than what I had expected. We also have rules and regulations for large water users. We require detailed groundwater studies for ethanol plants, as an example, before we'll permit a well for them. We've had several folks go through that process. We've permitted some and sent some back to do more studies. We encourage water use, water meters throughout our district, through regulations, through education and through cost sharing. We...those cost sharing monies have come from Nebraska Soil and Water Conservation Fund, EQIP, which is a federal program through our own NRD money, and through a large Environmental Trust grant that we got in 2006. And, of course, landowners and operators are funding a great deal of expense of putting meters on. Our trust grant was for \$900,000 and we've spent a third of that and each year we're...and all the funds are now spoken for, for all three years although we're still in the second year of funding, and that money will fund about 1,800 meters total. If the amendment to LB801 goes forward, even though we'd prefer that it did not, we have some suggestions for you in the wording of the amendment and I've outlined them in this testimony that I've presented to you. The first one is on page 6, lines 21 and 22, the words "approved by the department" be stricken is our recommendation so that the sentence reads "Measuring device means a device used to measure the total volume of water pumped or diverted annually." That paragraph goes on to say that the Department of Natural Resources is responsible to approve

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

measuring devices for surface water appropriators. We think that is correct. The paragraph also says that NRDs should approve water meters for groundwater use and we think that's correct. We just think that it is not necessary that the department also approve meters for groundwater use and it ought to be NRD's responsibility for groundwater and DNR for surface water on those measuring devices. We suggest that on page 7, to add the phrase "field turnouts" so that the amendment would read "measuring device to be installed on surface water diversion works and field turnouts before June 30, 2012." We think it's important that you know the difference between where the water is diverted at a river diversion point and what's actually delivered to the head end of the field. Those are two vastly different numbers, particularly on places where you have a long transit distance between the diversion point and the field itself. Again, on page 7, near the bottom, on lines 21 and 22, we suggest that the wording be "The report shall include the aggregate information for each group of water wells, irrigations wells, industrial wells, municipal wells, and municipal and industrial combined wells." And then to strike all those subparagraphs under that section. We don't think it's necessary that the department get a report on each individual well by well registration number. That's about 90,000 records to the state. That's a responsibility each district should do. We should gather the information, summarize it and provide it to those folks that need it. If somebody needs more detail, we can provide it for specific areas. We also, if you'll notice, left out the word "domestic wells." Under Nebraska Groundwater Management Act, we can only regulate wells that are greater than 50 gallons a minute. Domestic wells, by their nature, are less than 50 gallons a minute. We don't have any idea what they pump. We don't know how many wells there are for domestic uses. So I think that's going to be a tough one to get at and I don't think it's a very large use, and we could spend a lot of time trying to get you a number that in the end really wouldn't mean a lot to any of us. We think we're capable of gathering the water use data for meters, keeping track of it by wells and we also, I think it's important to realize that in well registrations, those things have been going on since 1957 and if you originally drilled a well in '57, you probably said that well irrigated a quarter section. 1970 maybe you put down a second well and used two wells to irrigate the same quarter, so what well waters what acres? That's hard to determine so we think it's better to keep track by irrigated land by the acres of land rather than by the wells. The meters are a way to get at that or however else they want to report it. So there's been a lot of talk about consumptive use. In our basin, because of our soil conditions and our geology, if people over pump, that water gets to the stream, leaves the land, gets in the Blue River and goes to Kansas. It doesn't get back into our aquifers. We don't have a very well-connected stream and aquifer condition. So we're a different situation than what you've heard Kent Miller and Ron Bishop talk about in the Platte Valley with shallow sandy soils. You won't see me talking much about consumptive use. I don't know what a consumptive use meter looks like. So I think if you have to go to regulation, our regulations call for allocation rather than reduction of acres. We've amended our regulations ten times in 30 years. We've had very long discussions on whether things should be metered or not, who should pay for it, who should repair the meters. We've

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

had really long discussions on, should we reduce acres or should we reduce allocations? We've had long discussions, should we regulate or not? And those discussion go on all the time and the same issues you've talked about here today come up every time we revisit our regulations. It's just at the local level rather than here to level at the Legislature. Now on the last page, I've got a couple of graphs for you just for your information. A year ago, you...there was some discussion about well permits and how those were going. There's a graph that shows well permits that we've issued from 1978 through the end of calendar 2007. Well permits are required when you establish a management area and so that's when ours started, was in January of '78, and you can see the real high point was in 2003. And I think that had two things going on, one we had real dry conditions, and two, there was a lot of talk around the state of Nebraska about moratoriums and we had a lot of folks drilling to try to beat what they thought might happen. This last two years, we're seeing much more normal drilling rates. The yellow part of that bar are replacement wells which moratoriums wouldn't prevent in any case. And a lot of those are wells that were drilled in the '50s and '60s where the casings are starting to fail and they're having to redo them. The second chart's groundwater declines over time from '62 through 2007. You can see that the groundwater decline from early on until about 1981. Our regulations started in 1977 with an awful lot of controversy about whether to do it or not. Ground water increased up through about 1987. A wet cycle, then a dry cycle dropped to about '92, '93 was very wet, groundwater levels increased clear up through 2000 where we end up 7 feet above where we started in 1962, and we've seen some real sharp declines in these last few years, and in 2006, because of those declines, we went to certification and water use reports. If we hit that red line on the bottom, that's meters and allocation. Those regulations are in effect, they're already there. All the board has to do is pass a motion to direct the staff to carry it out. So there's not going to be...there will be a public debate but we don't have to go through a huge long hearing process to get it to happen. Anyway, that's our information and we urge you not to forward the amendment. Answer any questions. [LB801]

SENATOR LOUDEN: Thank you, John, for your testimony. Then, for the most part, you're putting in meters in your district. It's just that you're doing as a...for a retrofit and new or replacement well? [LB801]

JOHN TURNBULL: That's required on new and replacement and if our groundwater declines go down another foot or 1.6 feet, then they'll be required on all wells. [LB801]

SENATOR LOUDEN: Then you're... [LB801]

JOHN TURNBULL: All we're saying is, we think it should be a local decision rather than a statewide decision. [LB801]

SENATOR LOUDEN: Okay. Well, if we all had local people like you, we wouldn't be

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

sitting here, would we? [LB801]

JOHN TURNBULL: Well, I got gray hair over working with boards and committees for 30 years to get as far as we have. [LB801]

SENATOR LOUDEN: Okay. I think, it looks like to me, you have a pretty good program. Are there questions for John? Senator Carlson. [LB801]

SENATOR CARLSON: Senator Louden. John, I imagine most of your area is probably covered by pivots. [LB801]

JOHN TURNBULL: Probably about 60 percent we think now. I don't have a good count for you but... [LB801]

SENATOR CARLSON: Okay. [LB801]

JOHN TURNBULL: ...a lot of conversion has taken place in the last five years from gravity to pivots. [LB801]

SENATOR CARLSON: I'm getting a little bit confused in all this testimony today. Nothings been mentioned about minimum till or no-till. Do you have much of that in your district? [LB801]

JOHN TURNBULL: We have a lot of it now, way more than we did five or ten years ago. Probably minimum tillage is probably the biggest tillage practice, more so than no-till. And that's making a big difference on the amount of irrigation water required. We think it's a good practice, we encourage it. We also are doing a lot of education, particularly we're doing a demonstration farm at York where we're going with deficit irrigation trying to show folks how far back you can cut it and still get a reasonable yield. We're getting some pretty good results from the public watching that one. [LB801]

SENATOR CARLSON: So that deficit irrigation plus minimum till has probably a pretty good impact on the 3.9. [LB801]

JOHN TURNBULL: Oh, I think so. There's a couple things that have happened over 30 years. One is there's been a change in farming practices and, of course, change in field prices which have caused people to be more conservative in water use. Another one is a change in attitude of the producers. We're a whole generation different now than we were in the late '70s. In the late '70s, nobody wanted to be regulated, no way, no how, and they made that very clear. And now, they say we'd prefer not to be regulated but if you have to, go ahead. So it's...I've noticed a real big change over my career in that. And I think, talking about the consumptive use thing, as the previous testifier said to you, what he does is when a NRD sets a tight allocation, then he changes what crops

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

he uses on various fields and he's reducing his consumptive use of water that way. And I guess that's our view, it's not the NRD's job to manage that farm. That's the farmer's job to manage his farm. What we're saying, here's the box you've got to operate in. What crop you grow is your choice and if they choose something that uses less water and can make a good income, then that's probably a good decision on their part.
[LB801]

SENATOR CARLSON: Thank you. [LB801]

SENATOR LOUDEN: Other questions? Seeing none, thank you, John, for your testimony. [LB801]

JOHN TURNBULL: Thanks for your time, Senator. [LB801]

SENATOR LOUDEN: Let's see, how many more testifiers do we have left? Four. Okay.
[LB801]

TYLR NAPRSTEK: Good afternoon, Senator Louden, members of the committee, I'm Tylr Naprstek, T-y-l-r N-a-p-r-s-t-e-k. I'm the water resource manager for the Upper Elkhorn NRD out of O'Neill, Nebraska. I'm here at the board's request to oppose AM1629 to LB801. I'm not against LB801 and I'm not here to be anything against that. I want to discuss a little bit about flowmeters and why they will not work up in the Upper Elkhorn NRD. We are currently enrolled in a flowmeter cost-share program in which we offer up to 50 percent for installation. We have had less than 1 percent of our 4,000 irrigation wells show any sort of interest as far as the installation of flowmeters. There are a lot of reasons for this, which I will touch on a few but I did want to say, using the figures that I have been presented earlier by Ron Bishop, of our 4,000 wells that if we installed flowmeters at a rate of \$1,500 apiece, that would be \$6 million and that's just for the purchasing and installation, not any of the required inspections or reports that the NRD would be subjected to turn in to the DNR. The point I wanted to touch on, as far as the applicability of a flowmeter, not all wells that are high capacity are necessarily decent candidates for having a flowmeter installed on them. A lot of times if you are using a series of wells installed together, the construction of those wells at the end point where it goes in the pivot, does not allow a flowmeter to be installed. Generally you talking to most of the manufacturers of flowmeters, they need a spacing of five diameters upstream in the upstream flow and at least 2 pipe diameters downstream to accurately give a good reading on what's going through the pipe at that point. Needless to say, if you tie a bunch of wells in together, you're not going to get that sort of reading especially if it's piped in from several different sources. Flow meters do provide irrigators with some good data if they're applicable for that particular site but like I mentioned, the district doesn't have the capability to get to every site of our 4,000 irrigation wells. I would recommend that the committee look at further studies of flowmeters and their applicability, if every district is necessarily a good candidate for this program, and as

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

well as consider the cost for installation of flowmeters across the entire state. That would conclude my testimony. [LB801]

SENATOR LOUDEN: Questions for Tylr? I would ask one, Tylr. Do you have any wells that are metered in your district? [LB801]

TYLR NAPRSTEK: Absolutely. [LB801]

SENATOR LOUDEN: How many, or what percentage? [LB801]

TYLR NAPRSTEK: At this point in time, we have 20 wells that have been cost-shared through us. Now, several wells have been cost-shared through the EQIP program but due to the privacy of information act, our cooperators, the NRCS, will not give us the data of who's been cost-shared for installation. So strictly through the natural resource district, we have 20 wells that have been installed. [LB801]

SENATOR LOUDEN: Okay. Now, you're telling me because of the privacy, they put flowmeters on their wells but they can't tell you? [LB801]

TYLR NAPRSTEK: That's correct. [LB801]

SENATOR LOUDEN: Not even if they shoot you? (Laughter) [LB801]

TYLR NAPRSTEK: That wasn't in my job description. [LB801]

SENATOR LOUDEN: It seems a little bit odd because the natural resources district has control over that groundwater and you can't get any data on how much they're pumping? Why, because of your rules you have in your NRD or what? [LB801]

TYLR NAPRSTEK: No, there are 4,000 irrigation wells and the ones that we have the main interaction with are the ones that we either take a nitrogen water sample at, a static water level or do a "chemigation" inspection and that just isn't 100 percent of our wells, so there are those that are outside the wells that we actually inspect. [LB801]

SENATOR LOUDEN: Okay. How do you have any control over your wells? Do they just, you give them the permit to drill them and then they just pump all they want or what's your program up there? [LB801]

TYLR NAPRSTEK: At this point in time, we are not fully appropriated except for 234 square miles that have been appropriated due to the Niobrara River Basin being designated. The areas outside that appropriation have to submit a permit application for a high capacity well through the natural resource district. We take a look at the land use value as well as its proximity to other wells and approve it and it is subject to inspection

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

at any point in time. [LB801]

SENATOR LOUDEN: Do...then when you, with all these wells that you don't know what's happening, you gave permits for them, have those been...do you have a permit? You have to have a permit in order to drill a well, the Department of Natural Resources or somebody requires that. [LB801]

TYLR NAPRSTEK: Yeah. The permit process didn't start until 1997. That's when our groundwater management plan adopted the rules for permitting. [LB801]

SENATOR LOUDEN: Okay. Now have you got how many certified irrigated acres you have? [LB801]

TYLR NAPRSTEK: Not yet. That is a process that we're currently going to amend our groundwater management rules to include and we'll start with that in the very near future. [LB801]

SENATOR LOUDEN: And then the county assessors don't love you yet, then do they? [LB801]

TYLR NAPRSTEK: Not yet, but we're working on it. (Laughter) [LB801]

SENATOR LOUDEN: Then have you, have you started certifying acres, irrigated acres? [LB801]

TYLR NAPRSTEK: No, not yet. Not until it becomes rules and regulations with our... [LB801]

SENATOR LOUDEN: Okay. You're not going to do it until you're forced to it? Is that what you're telling me? [LB801]

TYLR NAPRSTEK: No. I'm telling you that we're trying to amend our groundwater management plan so that we can legally enforce and start certifying acres. [LB801]

SENATOR LOUDEN: Okay. Then you guys are kind of out there in la-la land. You think everything is going to be like it used to be then with your irrigation, is that what you're telling me? I mean, if you don't have a plan, you haven't started certifying the acres or you're just thinking about it and something like that, you haven't went very far and you're on that Elkhorn River that drains down into the Platte, and we've been fighting with the Game and Parks all the time on how much water we're going to let go down the Platte River and here you guys are up there siphoning off all you want. Now, how are we supposed to answer all of that? [LB801]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

TYLR NAPRSTEK: I can't answer that at this point in time but we are trying to progressively act before we are fully appropriated and get the data rounded up. [LB801]

SENATOR LOUDEN: Okay. Thank you. Other questions for Tylr? Well, thank you for testifying. I, glad to hear where you're at on that because that will probably be another book to open one of these days. Thank you. [LB801]

TYLR NAPRSTEK: Thank you, Senator Louden. [LB801]

STAN STAAB: (Exhibits 7 and 8) Good afternoon, Senator Louden, members of the Natural Resource Committee. I am here to testify today on, strictly on LB, or excuse me, AM1629. My name is Stan Staab, S-t-a-a-b, I'm the general manager of the Lower Elkhorn Natural Resource District based in Norfolk. We cover all or parts of 15 counties in northeast Nebraska and we're the downstream brothers to the Upper folks that you just heard from. I am appearing today in opposition to AM1629. Most, and I say most but not all of the 15 members of the Lower Elkhorn NRD board of directors, feel that mandatory metering of all existing wells is not necessary at this time. We assume the amendment intends that flowmeters will be installed on each well since flowmeters are the most accurate long-term method to measure the amount of water being pumped from wells. We do recognize the value of this data and we have implemented programs to quantify the amount of water being pumped throughout our district. We're late starters. Last year, my board decided to require meters on all new wells over 50 gallons a minute including industrial, municipal and irrigation. We provide 50 percent cost-share on all new and existing wells for the meters. The board also recognizes the value of flowmeters as a tool to manage groundwater use especially for irrigators, and we now have a 90 percent cost-share program to encourage people with existing wells to install one flowmeter in each township in our district. This is specific for providing us with information from wells scattered throughout the district and we have had several folks interested in doing this. We've had quite a few takers on the 90 percent portion of it. I can't give you a number. I could get that for you. We feel our approach is an effective method to collect data that will serve our needs and the needs of groundwater users in our district. Installing flowmeters on every well in Nebraska will be very expensive, and you've heard those numbers. With this amendment provides no funding mechanism to accomplish this monumental task. Ground water users, the NRDs, and the Department of Natural Resources will all need to find a way to pay for the installation, maintenance, and data handling to carry out the mandate. Additionally, installing flowmeters on each well and surface water diversions in Nebraska within the next four years will be a logistical challenge just in finding enough of those measuring devices or meters for all of these things, all these wells and surface water. We estimate that it will take \$7.5 million to equip the 5,000 wells in our district. We assume that's an installation cost of about \$1,500 a meter per well which kind of jibes with what we've heard today. These meters will require maintenance to ensure accurate data. We will need at least three staff time members we've calculated to inspect, maintain meters, keep track of the data, make the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

reports, and as well as probably adding some office and shop space. We've not got numbers on that at this point. We do believe that consumptive use also has a role here. Those use estimates may be a valid alternative for quantifying water use for each well statewide. This is a broad statement on my part. We don't know that much about that sort of thing in our district. We're trying to get somewhat of a handle on it. This would be a much less expensive method of estimating water use. I'm also testifying today on behalf of the Nebraska Association of Resource Districts. They also oppose this. I believe that the vote was unanimous yesterday at our...the action taken at our annual conference in Lincoln. Dean Edson is not with us but I have permission to provide and relay that information to you. With that, I would thank you for the opportunity to testify today and I would be willing to try to answer any questions. I also have a, one letter from a Joseph Schmit from McLean, Nebraska, who is in our district and he is also opposed to this. I just have one copy, I apologize, but I'll submit this to you. Thank you. [LB801]

SENATOR LOUDEN: Questions for Stan? Senator Kopplin. [LB801]

SENATOR KOPPLIN: Thank you. Consumptive use in your area would not work the same as consumptive use in the sandy areas, wouldn't you say that's true? [LB801]

STAN STAAB: That would be different, although we have some sandy conditions in Pierce County. And by the way, we are beginning to certify acres in Pierce County which is our most heavily irrigated county. We are beginning to do those kinds of things and we started actually about two years ago on this but it would not be the same formula that you would use out west, that's correct, sir. [LB801]

SENATOR KOPPLIN: Correct. Because how much you pump does make a difference on what's happening to downstream, far downstream and don't you think we would have quite an expense to correct the problems that are created by over pumping in your area? [LB801]

STAN STAAB: I can't deny that there would be large expenses involved. As far as the over pumping, that is, I guess, to be debated. My board would argue with that. I believe we have statistics that show that our static water levels, and we're very heavy believer in looking at static water levels, our static water levels and we have a very sophisticated system in our district, show that our groundwater is very stable and some places have actually come up which is very interesting, especially in Madison and parts of Pierce County, streamflows are stable. In the Elkhorn and Logan Creek, it's kind of really hard to explain some of this, and that's why we're actually doing two very sophisticated computer models working with other NRDs, the ELM model to the west, which includes part of Madison and Pierce County, and then the ENWRA study, Eastern Nebraska Water Resources Assessment, to the east which is a glaciated area and that's a extremely difficult area to get a handle on. We drilled 14 test holes to try to find enough

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

water to provide...have water available for a rural water system in the Oakland area. So we know how difficult that is and we are trying to get a handle on all that, as best we can. We spent a lot of money and time on this for several years. [LB801]

SENATOR LOUDEN: Other questions for Stan? Do you have any idea on how much, on how much water you used or anything in your district? You have no way of finding out, is that correct? [LB801]

STAN STAAB: Actually, no, I can't give you a number on that. As I say, we are trying to do, beginning the meter program. We are trying to get some handle on that but as far as a raw number, I just don't have that at this point in time. [LB801]

SENATOR LOUDEN: And how many wells did you say you had? [LB801]

STAN STAAB: We have about 5,000 wells today. [LB801]

SENATOR LOUDEN: 5,000? [LB801]

STAN STAAB: Um-hum. [LB801]

SENATOR LOUDEN: And yet, like I think John, yeah, John Turnbull, yeah, mentioned that their consumption was what, 3.9 or something like that. There's no way you could give anybody an answer like that? [LB801]

STAN STAAB: I can't give you that today. They've got a very sophisticated program in the Upper Big Blue beyond where we are. [LB801]

SENATOR LOUDEN: How many years out are you before you can give out information like that? [LB801]

STAN STAAB: Oh, I'm hoping within the next three to five years, based on some of the modeling work in some of these kinds of things, we're going to have some very...at least ballpark estimates for that sort of thing because our board's asking the same question. [LB801]

SENATOR LOUDEN: What percentage of your wells have meters, do you have any idea? [LB801]

STAN STAAB: Probably a very small percent, probably 10 percent, quite frankly. Most of our wells are pivots too, we have in that rolling ground. We also have a very strong no-till program that we cost-share in the northeast. It's one of the first programs in the state and has been nationally recognized for that and that's very effective. And we have heavy soils, it's a different ball game in the northeast than it is in the Central Platte.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

[LB801]

SENATOR LOUDEN: How many gallon per minute do most of your irrigation wells pump? [LB801]

STAN STAAB: Well, some of those wells will pump, you know, 600 to 700 gallons a minute or so. I think 700, 800 for a center pivot is a pretty good number and most of those actually irrigate a quarter. You've got some situations where you tie some wells together, I mean there's different things out there. It's not all the same by any means. And some of the aquifer is quite limited. They're lucky to get 200 to 300 gallons to try to do some irrigation in the eastern part. [LB801]

SENATOR LOUDEN: Now when they pump from those aquifers, does that dry up some of the domestic wells around there or... [LB801]

STAN STAAB: We've had one instance like that in Wayne County. We got an "oncurring" situation in the shallow aquifer area. [LB801]

SENATOR LOUDEN: How deep do they go for these 200 gallon a minute wells? [LB801]

STAN STAAB: Well, we're down, most of our wells are in excess of 200 feet, 220, something like that. [LB801]

SENATOR LOUDEN: Oh, that isn't very deep. Is there no...there isn't any water below that or what? [LB801]

STAN STAAB: In some areas there's some water but it's just economically appropriate to go about that depth. We can get the amount of water that they really need so that's what the drillers are telling us, that's where they're at with it. [LB801]

SENATOR LOUDEN: Okay. Because I was going to say, you get up in Box Butte County there, they go deeper than that for their house well. [LB801]

STAN STAAB: Yep. I understand that. [LB801]

SENATOR LOUDEN: Okay. Other questions for Stan? Seeing none, thank you for your testimony. [LB801]

STAN STAAB: Thank you, very much for your time. Appreciate it. [LB801]

SENATOR LOUDEN: Next testifier. Next opponent. [LB801]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

DON ADAMS: Good evening, Senator Louden. My name is Don Adams, executive director of Nebraskans First. That's spelled A-d-a-m-s. I'll make this very, very short. We oppose LB801, primarily because it seems to undercut and blur the distinction between groundwater and surface water and it seems to violate the correlative rights doctrine. If an irrigator had a surface water right which he's paid for and a groundwater right which he's invested heavily in, his ability and right to use that groundwater should be on a share and share alike with all other groundwater irrigators in the district, and that's our primary concern with LB801. As relates to AM1629, it's really clear after hearing these NRD directors and managers today and staff that they know what they're doing. I think we need to let them do their job, let the stakeholders and the stakeholder groups that are developing these integrated plans, fellows like Roric Paulman, do their job. They're doing the right thing. They're investing a lot of time to get this right and they know better than Lincoln on how to manage their water resources. And we ask that you let them settle in a little bit, get their arms around LB962 which was a huge change in their operations, a huge commitment that was forced upon them, and let them work their way through that and down the road the Cooperative Agreement which poses a huge problems down the road for us. Finally, the state mandate out of Lincoln for meters will surely cause more tension and angst and ill will out there, I can guarantee that. And finally, Senator Kopplin, if you read the World-Herald every day or the Lincoln Journal Star, you will get depressed and you will think that we have a serious water crisis in this state and we don't. There are areas that have problems but there's a direct cause of the draught and that's going away and when the NRDs do their groundwater level testing in the spring, you'll see that these levels are coming up and the problem that existed for six, seven, eight years will go away. And finally, I think the backdrop of all discussion on water should be every year we let two million acre feet come into our state, we let nine million acre feet flow out of our state, so it's clear that we don't have a water usage, overusage problem. What we have is a water storage problem in this state. But if we built another two or three smallish reservoirs, we could solve the problem, solve the problem even the Republican through water transfers from water rich areas down to the Republican, and certainly make Fish and Wildlife Service happy by keeping more flows, time flows in the Platte when they want them. So that concludes my testimony. Thank you. [LB801]

SENATOR KOPPLIN: I just want to make one comment. [LB801]

SENATOR LOUDEN: Senator Kopplin. [LB801]

SENATOR KOPPLIN: The indication that I only read the papers to find out what is wrong with the Lower Platte is completely wrong. I think you're not looking at it clearly if you disregard information that comes from our universities, our Game and Parks, and so on. The Lower Platte does have a problem and it's not just because the papers say so. Thank you. [LB801]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

SENATOR LOUDEN: Senator Carlson. [LB801]

SENATOR CARLSON: Senator Louden. Don, tell me how you interpret share and share alike and correlative rights and apply it. [LB801]

DON ADAMS: All groundwater users... [LB801]

SENATOR CARLSON: You said district. You used the word district. [LB801]

DON ADAMS: Okay. All groundwater pumpers within a district have the same allocation, that's share and share alike. [LB801]

SENATOR CARLSON: So you're saying district by district? [LB801]

DON ADAMS: No, I'm saying all groundwater pumpers in a natural resources district. [LB801]

SENATOR CARLSON: Okay. You're saying NRD by NRD. [LB801]

DON ADAMS: If they are regulated or regulated fairly and equally. Some don't have a ten inch allocation, others have a six inch allocation because they sold the surface water right. That's not share and share alike and that's our concern with LB801. [LB801]

SENATOR CARLSON: Well, I think I agree with you but I'm...if you have four natural resource districts, how do you interpret correlative rights across those four? [LB801]

DON ADAMS: The correlative rights apply to the irrigators within the district. They're regulated by a district. They're regulated equally under a share and share alike doctrine. We don't have different classes... [LB801]

SENATOR CARLSON: So you're okay, you're okay with a district that's got a fourteen inch allocation and another district that's got a six? [LB801]

DON ADAMS: Yes, if they're in different districts. Yes. [LB801]

SENATOR CARLSON: Okay. Thank you. [LB801]

SENATOR LOUDEN: I have a question, Don. First of all, I'll agree that all the answers don't come out of Lincoln probably. I live a long ways from Lincoln and I can relate to that. One thing I don't agree with though, is when you say the NRDs have always handled everything all right. Think back 10 years ago. Right now we're looking at a 50 foot drop west of Alliance up there in the surface water. I mean, it's dropped 50 feet. There's no water for the first 50 feet. And while there's no water, you might say, from 50

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

feet lower than what it was, and it used to be around 120, so nobody put a kibosh to drilling wells then. They kept right on letting them drill wells because nobody wanted to be on the NRD board and tell their neighbor they couldn't drill a well when they had one, so everybody got to drill a well. The other deal is, look back 10 years ago and at the Republican River area at the amount of wells that got drilled in there. Somebody didn't call a halt. Somebody wasn't thinking ahead of time because 20 years ago Kansas quit drilling wells in their area but nobody took up the banner when they got into the Republican River, so it isn't necessarily to say that we don't want to do anything now into the future because the NRDs can handle it. That's the reason we're here today is to put their feet to the fire or bring some of these suggestions up that something needs to be done. And we've gotten testimony against people that don't think we should do anything but yet, the same people will tell us the amount of flowmeters they have in their district. I mean, and some of the other ones will testify that that's what they're doing. So this isn't necessarily say that the NRDs have handled everything the best that it could be handled over the years because I'm familiar with some of them in my district that haven't done anything. The North Platte NRD are just now getting their flowmeters in and getting their irrigated acres certified and they're the ones that are right, you might say, up in the front of the cannon on that Platte River recovery program. And as it comes down the Platte River, that's where the problem is because there's no flow going into Lake McConaughy, and the argument is there's too many wells up and down the Platte River above McConaughy. So with that, I would mention that, that part I would disagree with you. Whether...I like local control, don't get me wrong. I think NRDs should have local control but I think we have to at least keep pushing all the time on the NRDs to do local control or else we won't get local control. Now, I'll let you...I'll give you a minute to respond to that. [LB801]

DON ADAMS: Perhaps, it's not a perfect system but in this country it's the best system there is. I am totally convinced of that and they are adapting to the times. The seven, eight year draught changed a lot of things in this state. Prior to that there was really no need to regulate. The draught has changed that but you will see groundwater levels come back and the streams will fill and so will McConaughy. McConaughy is a function of snow melt not irrigation and the COHYST study has proven that. You could shut down all the groundwater wells above McConaughy and it would just be a demidietas impact on McConaughy and that's the COHYST study that everybody acknowledges as being the best high, holy study of all times. Mother nature will get us out of this and young Tylr, I don't...their NRD is not in la-la land. They don't have a problem. Game and Parks is concocting a problem. If there were endangered species problems in that area and those basins, the U.S. Fish and Wildlife Service would be all over it. There isn't. That is not critical habitat for any endangered species, even though, well... [LB801]

SENATOR LOUDEN: What I'm saying about...Okay, now you're getting into something that I didn't talk to you about as far as that Elkhorn deal. What I point out on that Elkhorn, is we're having problems down in the Lower Platte and the Elkhorn is some of

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

the drainage basin for that area and those people should be first on line to know how much water they're using and how much water they have or what they have used. This is very good information so that they can do, have some rebuttal for what's going to happen down the Platte. This is the same thing that happened in the North Platte NRD up there. Those people were not ready with their information and their research to know how much water they were pumping. And at the present time, they're within a whisker of having a lawsuit between Central Power and Irrigation and the North Platte NRD up there. I mean, these guys were ready to go to court over it. And this is the reason I would like to see these NRDs take a lead in doing something like that so they do have the research when we have something like Game and Parks and some of those people coming along with the endangered species. I have a real problem with endangered species so. [LB801]

DON ADAMS: So do we. One last thing, I would like to hear what DNR's position is on the state mandated metering program. That would be interesting to hear their position on it. Thank you, sir. Thank you. [LB801]

SENATOR LOUDEN: Okay. Thank you for your testimony. Next testifier. Let's see and then...you the last one, Duane? Okay. [LB801]

LYLE HEINRICHS: (Exhibit 9) Senator Louden, members of the Resource Committee, my name is Lyle Heinrichs, L-y-l-e H-e-i-n-r-i-c-h-s. I'm a farmer from Shickley, a member of the Little Blue Natural Resource District, one of the directors. I've served since 1995. On behalf of the Little Blue NRD I'd like to convey our board's concern about LB801 especially with the addition of AM1629. In 2004, LB962 defined the state's duty for water management to set broad policy goals concerning the utilization and management of groundwater. The legislation went on to state the Legislature's confidence in the NRDs for managing groundwater. However, AM1629 requires that NRDs open up the groundwater management plans or integrated water management plan for the purpose of requiring a specific management tool, water measuring devices. Such legislative dictates undermines local control and the authority of the NRDs to make groundwater management decisions. Further, they fly in the face of the broad policy goals that the Legislature highlighted in LB962. Section 3 of the amendment suggests that identifying the amount of water being pumped from a certain water well and surface water diversion will preserve the waters of the state for all beneficial uses. Although the meters may be considered a good management tool by some, meters by themselves do not save or preserve water. It's in the person operating the irrigation system that can save water. The Little Blue NRD has approximately 1,900 meters in the field at this time. Most were installed in the early 1980's when the district was considering the allocation of groundwater. However, with stabilizing water tables in most areas of our district over the next 10 years and a significant conversion of inefficient gravity systems to more efficient pivot systems, the board's philosophy about effective way to manage of water shifted to educational programs. Our most recent focus has

Natural Resources Committee
February 06, 2008

been on providing one-on-one assistance to producers in the use of the newest irrigation scheduling technology. Farmers now have a better understanding of the soil moisture content, timing of water applications and crop water needs. Working with the cooperative extension educators, we've established a rotating network of 20 operators each year who are equipped with evapotranspiration gauges, soil moisture sensors, handheld soil moisture gauges. Soil moisture conditions are monitored at each site weekly and entered in the district's Web site for ready availability for producers throughout the district. We also provide cost-share to producers to obtain the equipment for their own operation. The program has been a huge success with each participating operator saving on average at least 2 inches of irrigation water per acre compared to the neighbors. Water meters are a tool for assessing total water applied for the set or season and a gauging pump performance but they do not give the producer information about the crop water needs, which is critical to verify if irrigation is needed or not. On the other hand, the information gathered from soil moisture sensors and ET gauges, give time specific data and much more maximum benefit from the water being pumped. In the Little Blue NRD, the cost to install meters on the remaining high capacity well is estimated at about \$5 million. However, the meter installation is only a small part of the ongoing metering program. An effective metering program requires additional NRD staff, overhead, operating costs, certifying meter installations, collecting data, assist producers with meters, problems and maintain meters. We believe an examination of the budget of the NRDs which have implemented metering programs in the recent years would show a significant increase in local property tax requirements just to manage the programs. The local NRDs have been given authority to make specific management decisions regarding the best and most effective groundwater management tools and controls. We believe the decision regarding those management tools should remain under the NRD's authority. I urge you to remove the AM1629 from LB801, or kill the bill. Thank you, very much. [LB801]

SENATOR LOUDEN: Questions for Lyle? How many wells do you have in your district? [LB801]

LYLE HEINRICHS: I don't have a handle on that. Michael gave me that. [LB801]

SENATOR LOUDEN: Okay. [LB801]

LYLE HEINRICHS: But we have a...in our testing program, and we didn't write this in here either, and I was involved in it this year. On my farm we used 5.4 inches of water to irrigate our corn. A lot of the neighbors around there was using all the way from 7 to 9 and we feel that 2 to 3 inches savings on every acre is a great savings all the way around. [LB801]

SENATOR LOUDEN: You got your acres all certified and everything like that? [LB801]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

LYLE HEINRICHS: Pretty well. It's an ongoing deal. About three years ago when they hollered moratorium, everybody got scared and we says, hey, if you don't have certified acres, you're not going to pump your well and, you know, by golly, they all went down to the court houses and they started in certifying acres (laugh) and so we do have a lot of history on all of that. We do have a management area too and we monitor that very heavily. [LB801]

SENATOR LOUDEN: Okay. Other questions for Lyle? Seeing none, thank you, Lyle, for your testimony. [LB801]

LYLE HEINRICHS: Thank you. [LB801]

DUANE GANGWISH: Good evening, Senator Louden. My name is Duane Gangwish, G-a-n-g-w-i-s-h. I'm not certain whether I'm testifying in opposition or somewhat neutral but our board only asked me to come and address one component of the bill and of the amendment and that is their concern regarding the domestic well inclusion for metering. Specific examples were given to us by our vice chairman of our Cow-Calf Council, who is John Young from the Rex Ranch out west, where he said they have solar wells and other wells that exceed 50 gallons a minute, and it was their concern that those would be included in some type of metering program. And so, my appearance here is merely just to bring that to your attention that domestic wells were included and those are by definition include livestock, and we have some concern that those might be metered out in the ranch country. So with that, I'd be happy to answer any questions. [LB801]

SENATOR LOUDEN: Okay. Any questions for Duane? Then you think that 50 gallons should be raised? [LB801]

DUANE GANGWISH: They didn't take a position on that. There are...I was told that there is a solar well that has a capacity of nearly 80 gallons a minute and it was just a concern that those would be included. It'd be difficult to find a windmill that might produce that much but I'm really not skilled in windmills. [LB801]

SENATOR LOUDEN: Well, yeah, a windmill's around 3 to 5 but we have pumps around the corrals and stuff that do 30 and 40, but I just wondered if that was a problem with the stock grower or Cattlemen if that should be raised higher. [LB801]

DUANE GANGWISH: Well, that by definition in statute what a domestic well is and our concern was because that was in there, that it might include all those that are for livestock outside of the farmyard or barnyard. [LB801]

SENATOR LOUDEN: Okay. Thanks. Any other questions for Duane? Thank you for testifying and staying here, Duane. [LB801]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

DUANE GANGWISH: Well, it was educational. (laugh) Thank you. [LB801]

SENATOR LOUDEN: Other opponents to LB801? Anyone wishing to testify in the neutral? Seeing none, this closes the hearing on LB801 and I guess this closes the hearing for the day. [LB801]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 06, 2008

Disposition of Bills:

LB798 - Advanced to General File, as amended.
LB799 - Indefinitely postponed.
LB800 - Indefinitely postponed.
LB801 - Held in committee.

Chairperson

Committee Clerk