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Natural Resources Committee
June 24, 2008

[LR377]

The Committee on Natural Resources met at 1:30 p.m. on June 24, 2008 at McDonald-Belton Building, North Platte Community College, 601 West State Farm Road, North Platte, Nebraska, for the purpose of conducting a public hearing on LR377. Senators present: LeRoy Louden, Chairperson; Carol Hudkins, Vice Chairperson; Tom Carlson; Mark Christensen; Annette Dubas; and Deb Fischer. Senators absent: Gail Kopplin and Norman Wallman. [LR377]

SENATOR LOUDEN: Good afternoon. We will now start the hearing on LR377. My name is LeRoy Louden. I'm from Ellsworth, Nebraska. I'm Chairman of the Natural Resources Committee. I'll introduce the members that are here on the table. To my left is Carol Hudkins from Malcolm, Vice Chairman of the committee; next to her is Senator Deb Fischer from Valentine; and next to her is Senator Mark Christensen from Imperial; to my right is legal counsel, Mark Ludwig; next to him is Senator Tom Carlson from Holdrege; next to him is Senator John Wightman from Lexington; and also most of you from around here would know your Senator Tom Hansen from North Platte. Also in the audience we have Senator Chris Langemeier. Some of the agency people here today is Brian Dunnigan, Rex Gittins, Ron Theis and Sue France all from the Department of Natural Resources, and Jody Gittins from Game and Parks. At this time I would ask that you silence your cell phones or your pages or anything so they don't make any noise and we'll go from there. Those wishing to testify on a resolution should come to the front of the room when that resolution is to be heard. As someone finishes testifying, the next person should move immediately into the chair at the table and be prepared to testify. There are green sign-in sheets for testifiers on the table by the doors and need to be completed by all people wishing to testify. Please complete the form prior to coming up to testify and when you come up to testify, give it to the committee clerk. Do not turn the form in before you actually testify. Please print and it is important to complete the form in its entirety. If our transcribers have questions about your testimony they use this information to contact you. If you do not wish to testify but would like your name entered

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into the official record as being present at the hearing, there are white sheets for you to sign by the door. The list will be a part of the official record of the hearing. 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 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 staff and it will be circulated 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 vocal display of support or opposition to a resolution will be tolerated. LR377 was introduced by the Natural Resources Committee this past legislative session in response to the vacancy created when Ann Bleed retired as Natural Resources director last March. The purpose of this hearing is to seek testimony from any interested persons concerning the Department of Natural Resources. Specifically, we are looking for public input regarding the structure and responsibilities of the department, the authority and qualifications of the department director and other staff, and a decision making process of the department that affect water and other natural resources. The committee would also appreciate any comments or opinions on the subject of whether the department has sufficient funding, staff and resources to perform its duties and responsibilities, including its monitoring of the use of surface water from Nebraska rivers and streams. I would also like to remind you that the purpose of the hearing is to gather information for the benefit of the committee. It is not appropriate to respond to what someone else has testified to unless a committee member asks for clarification. Hearings on this particular legislative resolution are also planned to be held at other locations in the state including Scottsbluff in August and in Lincoln some time this fall. Depending on the information generated today and at subsequent hearings, LR377 could lead to introduction of new legislation next year. With that, I would now like the committee counsel, Mark Ludwig, to give the opening. At this time I would also mention that Senator Annette Dubas from Fullerton has joined the committee. [LR377]

MARK LUDWIG: (Exhibits 1, 2, 3, and 4) Thank you, Mr. Chairman, and members of

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the committee. My name is Mark Ludwig, M-a-r-k L-u-d-w-i-g, and I am the new legal counsel for the Natural Resources Committee. I would like to...I suspect that the focus of the hearing here today is probably going to concentrate primarily on the qualifications and duties of the director of Natural Resources. However, I would just like to reiterate, as Senator Louden just said, that LR377 is broadly drafted enough to cover all aspects of the department at large, not just the qualifications of the director. So that includes reviewing the current structure and responsibilities of the department itself, looking at the issues of whether the department has sufficient staff and resources and funding to carry out its duties and as well as examining the decision making processes within the department, specifically, at least here today, with respect to water issues. So obviously, if the committee members have any questions concerning the department and its operations beyond the qualification requirements for the director itself, that certainly would be in the purview of this interim study. Previously the committee members were provided with some background information and you should have those in your red committee books here. That included some background on the legislative history of the statute itself that governs the qualifications of the department director and you'll note that going back to 1957 the title "state engineer" was removed from the statutes and replaced with the "director of water resources" and I think it wasn't until 1969 that the requirement that the director be a professional engineer was actually codified in statute. Previous to that time it said the director should be a professional engineer but it wasn't until 1969 that that was actually made a requirement that he or she be a professional engineer. And then prior to the functions of the Water Resources Department and the Natural Resources Commission being merged with the passage of LB900 in 2000, the position of the director of Natural Resources Commission was required by statute to be experienced in natural resources conservation, development and use, but there was no requirement that that position be a professional engineer or have any other educational or licensed degree requirement. The professional engineer requirement for the director of water resources now, obviously, the director of natural resources was carried over when the two agencies were merged in 2000. The committee, I believe, was also supplied with some background information showing qualification requirements in other,

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for other heads of state agencies in the other western states as far as their water agencies were concerned. So you can look for comparative purposes how those states, what those states require with respect to whether or not the heads of those agencies or if they do have a state engineer, if there is a requirement that there is a professional engineer requirement either for, obviously, the state engineer in that state or the director of whatever relative department handles water issues in those states. It's not precisely a black and white comparison because obviously, every state is structured a little differently. I think, for example, like in California, the head of their department is not required to be a professional engineer but on the commission itself, there's requirement that so many members have to be engineers or an attorney or whatnot. In the state of Oregon, for example, the head of their department is not required to be a professional engineer but they do have a state engineer position that is required obviously to be a professional engineer. So hopefully, that information will be helpful to you as you examine this issue. We also put together some information showing, just in the state of Nebraska itself, how the other cabinet level agency heads are structured with respect to any statutory requirements for their background qualifications. So you can look at those too and compare how the other cabinet agency heads compare to the director of natural resources with respect to any educational or other experience requirements that they may or may not be required to have. And then finally, for the sake of even further background, as most of you being members of the committee are already aware, there have been past attempts legislatively to address this issue. Back in 2004, 2005 and 2006 legislation was introduced that the committee addressed with respect to the department directors qualification requirements and some of those bills either outright proposed to do away with the professional engineer requirement or structured it such that either the director or subordinate staff or the deputy director would have to have the PE qualification. All those bills...none of those bills were obviously enacted. They were all indefinitely postponed either while waiting on General File or by the committee. So with that, that basically concludes my opening remarks. I just wanted to give you a little background. I'm sure there's going to be quite a few testifiers here today that are going to speak to both sides of this subject and unless there are any questions from the

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committee, that concludes my remarks. [LR377]

SENATOR LOUDEN: Any questions for Mark? Seeing none, thank you, Mark. At this time, would any of the senators care to make any kind of a comment to the...on this hearing today? If not, seeing none, would Brian Dunnigan from the Department of Natural Resources, I ask him to give the first testimony. [LR377]

BRIAN DUNNIGAN: (Exhibit 5) Good afternoon. My name is Brian Dunnigan, spelled B-r-i-a-n D-u-n-n-i-g-a-n. I'm the acting director of the Department of Natural Resources. I'm here today to provide information to the Natural Resources Committee for its interim study of the structure and responsibilities of the department. I have provided each of you with a copy of this testimony and a packet of information on the department and request that it all be made part of the record for this hearing. I've provided you with some information about the organizational structure of the department. There is an organizational chart, a more lengthy explanation of what the department's statutory responsibilities are and how they are carried out, and a shorter summary version of the department's organizational structure. There is also a report on the professional requirements for the directors in other states that have water appropriation systems and rely on western water law like Nebraska does. The department is organized into five divisions, the field offices and the office of the director. The management service division is headed by Rex Gittins. He is responsible for fiscal services, personnel, public information and information technology. His division also administers the many funds the department is charged with keeping and provides staff support to the Natural Resources Commission. The planning and assistance division is led by Steve Gaul. Staff from the planning section are responsible for managing the state's participation in interstate compacts and other programs involving interstate water use as well as the state's participation in local water use programs such as integrated management plans adopted jointly by the department and the natural resources districts. The permits and registration division is headed by Mike Thompson. His staff reviews all applications for surface water appropriations and groundwater transfers and makes a recommendation

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to the director about whether or not to grant approval. They are also responsible for groundwater well registration and well spacing. The research and technical studies division head is Jim Schneider. Jim's staff of engineers and geologists provides technical assistance to all of the divisions as needed in addition to being responsible for conducting the annual evaluation of water supply and the state's participation in the Republican River Compact. The fifth division is a composite of the flood plain program, surveying and mapping services, and the dam safety program. I led this division as deputy director and still do in addition to my duties as acting director. Each of the programs in this division is highly technical and requires very skilled staff. The field offices are responsible for working with individual appropriators on permit changes, enforcing the laws and regulations governing appropriations, and assisting with dam inspections and stream gauging. The field office managers are authorized to issue enforcement orders. As deputy director, I supervised the five field office managers and still do. The director also supervises the chief legal counsel, and the administrative assistant who supervises other administrative support staff. Even though the department is organized into divisions and field offices, everyone works together to get the work done. I feel very privileged to be working with such a talented group of professionals. They take their responsibilities seriously, work hard and carefully, and generously assist each other when asked. It is the best team I have ever been on. Most of the professional staff is composed of engineers and geologists. We also have planners, an economist, attorneys, and computer specialists. I know the one purpose of LR377 is to consider the funding and resource needs of the department. It is my opinion that the department has the right number and complement of professionals and support staff to carry out all of its responsibilities. Do I think more work could get done with more staff and a larger budget? Of course. DNR is no different than any other Nebraska state agency in its effort to keep its staffing levels down and its budget lean. As I continue to review our operations, I believe there is clearly a need for more site inspections and other field investigations. Requests for water administration, that is closing of junior surface water appropriations, has increased dramatically in the last few years. In the information I have provided to you, there is a summary of the number of closing and

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opening notices sent in the last few years. Water administration requires more time in the office preparing closing notices and more time in the field making sure that orders are being followed. There has been an increase in the number of dams being built in the state and many of these have failed to get dam safety approval or a surface water permit as required by the law. We investigate as many as we can and approve their plans after the fact whenever possible. Our current emphasis is on inspecting high hazard dams. Another purpose of the interim study was to consider the qualifications of the director of the department. Currently, the director is required to be a registered professional engineer with experience in irrigation. I am aware that many stakeholders have a strong view on the question of whether or not the agency director should be required to be a professional engineer. There are meritorious arguments to be made both in favor of retaining the current requirement and in adding more flexibility to the agency's operations by modifying it. Governor Heineman and I have not yet had the opportunity to extensively discuss this aspect of the committee's study. The Governor has, however, expressed interest in having some added element of flexibility to any Governor's appointment powers by not requiring the agency director to be a professional engineer but requiring that either the director or the deputy director be required to have that credential. At this time, I plan to listen to the viewpoints expressed in these hearings and discuss them with the Governor in advance of the committee's next planned hearings. Thank you for the opportunity to testify and I'd be happy to answer any questions that you might have. [LR377]

SENATOR LOUDEN: Thank you, Brian. Questions for Brian? Senator Fischer. [LR377]

SENATOR FISCHER: Thank you, Chairman Loudon. Welcome Mr. Dunnigan. It's nice to see you again. [LR377]

BRIAN DUNNIGAN: Thank you. [LR377]

SENATOR FISCHER: You have a PE, right? [LR377]

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BRIAN DUNNIGAN: That's correct. [LR377]

SENATOR FISCHER: Can you tell me what specialization you have? Are you a civil engineer? A mechanical engineer or what type of engineer? [LR377]

BRIAN DUNNIGAN: I'm a civil engineer by degree and have experience in hydrology and hydraulics and have spent most of my professional career as a hydraulic engineer. [LR377]

SENATOR FISCHER: Would you say...well, I won't put words in your mouth. What do most of the engineers in the department have their degree in? Is it civil engineering? [LR377]

BRIAN DUNNIGAN: For the most part, civil, yes. [LR377]

SENATOR FISCHER: What are some of the other degrees that they have? [LR377]

BRIAN DUNNIGAN: To think of our... [LR377]

SENATOR FISCHER: I don't want to put you on the spot. [LR377]

BRIAN DUNNIGAN: To think of our professional engineers, staff wise, I can't think of any off hand that aren't civil engineers. I believe there are eight engineers on staff right now. [LR377]

SENATOR FISCHER: You listed the five divisions. Are the heads of those divisions all engineers? [LR377]

BRIAN DUNNIGAN: No, they're not. [LR377]

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SENATOR FISCHER: Do they all need to be? [LR377]

BRIAN DUNNIGAN: I am currently still a division head with the professional engineer license and oversee our mapping, flood plain and dam safety and that probably should have a PE as a requirement. [LR377]

SENATOR FISCHER: On the permits and registration division, does...you say that that division is responsible for making recommendations to the director on surface water appropriations. [LR377]

BRIAN DUNNIGAN: Yes. [LR377]

SENATOR FISCHER: Is that true? [LR377]

BRIAN DUNNIGAN: That's true. [LR377]

SENATOR FISCHER: Does that also apply for the designation of a basin whether it's going to be fully or overly appropriated? [LR377]

BRIAN DUNNIGAN: That's not in that division but everybody does work closely on that determination. [LR377]

SENATOR FISCHER: How is that done then if it's not in that division? Is that a group effort within the entire department or does the director do it? [LR377]

BRIAN DUNNIGAN: It's somewhat a group effort but the main staff is in our research and technical studies division that makes that fully appropriated base and determination. [LR377]

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SENATOR FISCHER: Do they make that determination or do they make a recommendation to the director? [LR377]

BRIAN DUNNIGAN: They make a recommendation to the director. [LR377]

SENATOR FISCHER: Are those recommendations always followed? [LR377]

BRIAN DUNNIGAN: Those recommendations have to be reviewed by the director and the director will make the final decision. [LR377]

SENATOR FISCHER: Are the recommendations followed for the most part? [LR377]

BRIAN DUNNIGAN: For the most part, yes. [LR377]

SENATOR FISCHER: You said that you believe the department right now has the right number of professionals to get the work done but then you went on and made mention that you think there needs to be more site inspections and field investigations and things. That's kind of contradictory, isn't it? [LR377]

BRIAN DUNNIGAN: Well, the meaning of that is, is that we can get the work done that we're statutorily assigned. Certainly, if we expanded our roles in areas and had different priorities, we may need additional people or staff. I'm still looking at the right balance, what I would think would be the right balance for what I mentioned is field staff and field investigations. [LR377]

SENATOR FISCHER: How closely do you work with NRDs, local NRDs? [LR377]

BRIAN DUNNIGAN: I think I work pretty closely with local NRDs. [LR377]

SENATOR FISCHER: That's good. I happen to represent seven NRDs in my legislative

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district. I've heard comments made that perhaps NRDs when they submit different data that they've collected on groundwater that possibly the department doesn't always take that into consideration when making their designation on fully appropriated basins. Do you have a comment on that? [LR377]

BRIAN DUNNIGAN: I would say, Senator, that the department would look at all data submitted. That is the main focus of anything that we do in the department is to collect the data and apply the best science that we can to whatever decision is being made. [LR377]

SENATOR FISCHER: Do you think that...one last question here. Do you think that the Legislature needs to appropriate more money for the department in order that you can gather data that would be not only important but in the short-term important, but very important in the long-term on how we view water in this state? [LR377]

BRIAN DUNNIGAN: I think that is needed. It's important not only to us today but very important in the future that we have the best data that we can get. [LR377]

SENATOR FISCHER: So you would hope maybe that there would be more revenue available for the DNR to make, to have the money available to do the research and have the scientific data that we can make those decisions? [LR377]

BRIAN DUNNIGAN: Or at least the same revenue that we have available, yes. [LR377]

SENATOR FISCHER: Okay. Thank you very much. [LR377]

SENATOR LOUDEN: Other questions? Senator Carlson. [LR377]

SENATOR CARLSON: Senator Louden. Brian, I got two questions, and one of them is a follow up on Senator Fischer. But first of all, 1969 the requirement was changed to be

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the registered professional engineer with experience in education and, of course, the Department of Natural Resources is pretty wide in its responsibilities and interest. And I don't know if historically, why was experience in irrigation singled out and really not anything else? [LR377]

BRIAN DUNNIGAN: In the old Department of Water Resources that was a primary function and with the merger which brought in the Natural Resources Commission and the Department of Water Resources there is a broader spectrum of activities within the agency. [LR377]

SENATOR CARLSON: Okay. And to follow up on something Senator Fischer asked about, you believe there's clearly a need for more site inspections and other field investigations. Could you be a little more specific on what you have in mind there and what types of things? [LR377]

BRIAN DUNNIGAN: Senator, what I'm really looking at and evaluating there is the way that we operate and do business now as based on priorities that we establish and we do have five field offices throughout the state and they're staffed at varying levels. It doesn't mean that only people in one field office are going to work in one area. We can deploy those as we need to so as the problems get bigger or we need to investigate more, that's where we might find that it would be better to have more people dedicated to that activity, and it would have to do with the regulatory functions of our agency. [LR377]

SENATOR CARLSON: Okay. Thank you. [LR377]

SENATOR LOUDEN: Senator Wightman. [LR377]

SENATOR WIGHTMAN: Mr. Dunnigan, I'm assuming, and that may not be the case that most of your engineers or professional engineers are in division four, the research and technical studies division, is that correct or...? [LR377]

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BRIAN DUNNIGAN: There is one in that division. There are three in our dam safety section and then the remainder would be in our planning division. [LR377]

SENATOR WIGHTMAN: So they're spread throughout the... [LR377]

BRIAN DUNNIGAN: They are spread throughout the agency, yes. [LR377]

SENATOR WIGHTMAN: But there are none in one or two of the divisions, is that correct, no professional? [LR377]

BRIAN DUNNIGAN: That would be correct from our permits and registrations. There would be no engineers in that division. [LR377]

SENATOR WIGHTMAN: So how many total engineers do you have in the department, professional? [LR377]

BRIAN DUNNIGAN: Eight. [LR377]

SENATOR WIGHTMAN: Eight. How many total employees, I'm not on the committee, so...? [LR377]

BRIAN DUNNIGAN: Yes. We have 101 full-time equivalent positions. [LR377]

SENATOR WIGHTMAN: Okay. Thank you. [LR377]

SENATOR LOUDEN: Yeah, Brian, I have questions, and I guess it goes back to...the questioning has been going on, on the staffing or more employees out in the field. Now would this be people...my understanding in this, would be people out in your field offices that would do the investigation or do you need more people in the offices in Lincoln to

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do the investigation? [LR377]

BRIAN DUNNIGAN: It could be structured either way, Senator. I would envision that we would have, if there was a possibility, we would have additional people at the field office level. [LR377]

SENATOR LOUDEN: Is there a need for more flowmeters in these rivers and streams that we have so that you can have a better handle on how much water is going from one point to the other? [LR377]

BRIAN DUNNIGAN: Would you be referring to stream gauges, Senator? [LR377]

SENATOR LOUDEN: I guess, yeah. [LR377]

BRIAN DUNNIGAN: There can always be more stream gauges. One of the problems with stream gauges is the time that you spent, the maintenance involved in it. The cost sharing that we might cooperate with the USGS on, so it really becomes a funding level and then a commitment to maintain that gauge for a long period of time. That's really where the data component of that comes in. There are some reasons for short-term gauges but from a lot of our science, we would want long-term gauges and the continuation of the gauges that are already out there. [LR377]

SENATOR LOUDEN: Do you have a sufficient number now to do whatever...? [LR377]

BRIAN DUNNIGAN: We try to make sure that in the priorities that we're working on that we do have enough gauges to do the jobs that we have to do. It doesn't mean that at any one particular time we're going to have gauges in every place that we would eventually need gauges. [LR377]

SENATOR LOUDEN: About the requirements for a director, are you familiar, I noticed

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with some of this what you handed out, Arizona has, I think, they don't require to be a professional engineer but they also have a footnote there that they have groundwater or something that's controlled by another committee or something like that. Are they set up similar to the way we are in Nebraska? I mean, would they be calling those committees NRDs or something like that or...? [LR377]

BRIAN DUNNIGAN: Senator, I'm not that familiar with Arizona's structure. [LR377]

SENATOR LOUDEN: Okay. That was, as I noticed through the material that you handed out, I think, yeah, the groundwater use is regulated in an active management area and I was wondering how they were, that was my question. With that, any more questions for Brian? Senator Carlson. [LR377]

SENATOR CARLSON: Senator Louden. I do have one more question. Brian, is water modeling an exact or inexact science? [LR377]

BRIAN DUNNIGAN: You're asking an engineer, Senator. It's a science and the way I would answer that, I would answer it that it's as exacting as your data can let you be as an engineer. In other words, if best science is going to be used and the best data but if you're asking on any type of modeling whether or not it will replicate nature exactly, the answer would be no. We try to do our best to replicate what happens in nature through models. [LR377]

SENATOR CARLSON: So two different modelers can come up with different results on the same data? [LR377]

BRIAN DUNNIGAN: There can be two very different models run with the same data that would be answering different questions and would come up with different results. [LR377]

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SENATOR CARLSON: Well, in our department would the modeler be in the research and technical studies division? [LR377]

BRIAN DUNNIGAN: Yes, it would be. We also have other types of modelers in flood plain management that would do surface water modeling and flood plain studies, a whole different kind of model than groundwater modeling. [LR377]

SENATOR CARLSON: And is that a degree position? Do you have a degree in modeling or what's the degree? [LR377]

BRIAN DUNNIGAN: Right now the person that heads up that section has a Ph.D. in hydrogeology. [LR377]

SENATOR CARLSON: Jim Schneider. [LR377]

BRIAN DUNNIGAN: Jim Schneider, yes. [LR377]

SENATOR CARLSON: Okay. How many modelers do we have total? [LR377]

BRIAN DUNNIGAN: With our groundwater modeling we have four right now at least but we also have other people in the agency that are familiar with groundwater modeling besides the actual four modelers. [LR377]

SENATOR CARLSON: Okay. Thank you. [LR377]

SENATOR LOUDEN: Senator Wightman. [LR377]

SENATOR WIGHTMAN: Thank you, Senator Louden. Tell me does the hydrologist have to be an engineer or is the hydrologist somebody...? [LR377]

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BRIAN DUNNIGAN: A hydrologist does not have to be an engineer. [LR377]

SENATOR WIGHTMAN: Are some of them? [LR377]

BRIAN DUNNIGAN: Some of them would be, yes. [LR377]

SENATOR WIGHTMAN: Just looking at your array of those that require professional engineers and those that don't, they're about evenly split but it seems like the more populate states are included in the group that do not require. You've got, Texas, California, you've got some very, not very populate states, Arizona, so you appear to have more of those that have a higher population in the group that does not require it. Do you have any reason that that might be? [LR377]

BRIAN DUNNIGAN: No, I don't, Senator. I'm more familiar with the surrounding states, Kansas and Colorado, that do have the requirement for professional engineer. [LR377]

SENATOR WIGHTMAN: Thank you. [LR377]

SENATOR LOUDEN: Senator Fischer. [LR377]

SENATOR FISCHER: Thank you, Chairman Louden. Brian, you talked about that there's an increase in the number of dams being built. Why is that? [LR377]

BRIAN DUNNIGAN: And that would be a long-term perspective, Senator, and those would be smaller dams also. [LR377]

SENATOR FISCHER: Do you work with the Corps of Engineers on inspecting those when a landowner may...I'm assuming just a small dam that a landowner's putting in. Do you work with the Corps on that? [LR377]

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BRIAN DUNNIGAN: We work independently or if it is a Corps dam, we will work with the Corps on inspections but we would work independently on private dams and emergency situations. There would be a lot of agencies involved, Natural Resources Districts, Natural Resources Conservation Service, our agency, a Corps of Engineers, Bureau of Rec, all of those agencies might be involved in inspections. [LR377]

SENATOR FISCHER: What would happen if a landowner put in a dam without getting a permit first? [LR377]

BRIAN DUNNIGAN: I guess the question could be phrased a couple different ways. If it was put in today it would certainly be illegal and would have to come into compliance. If it was put in sometime, a long time ago, 20, 30 years ago, and we were looking at that, we might try to bring it in under the existing statutes. [LR377]

SENATOR FISCHER: If there's a dam put in now that you haven't been notified of and a permit wasn't granted and there's been no inspection, can you require that it be removed? [LR377]

BRIAN DUNNIGAN: We would have that authority but we wouldn't do that lightly. We would try to work through that situation. [LR377]

SENATOR FISCHER: Okay. Thank you. [LR377]

SENATOR LOUDEN: Senator Dubas. [LR377]

SENATOR DUBAS: Thank you, Senator Louden. Thank you, Mr. Dunnigan. What would be the difference in perspective between a hydrologist and an engineer? [LR377]

BRIAN DUNNIGAN: A hydrologist could be an engineer, would not have to be. They could have experience in hydrology, have training in hydrology and not be a degreed or

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registered professional engineer. I can't answer your question very well. They could have exactly the same perspective or they could have a much different perspective depending on experience, so I didn't do a good job of answering that question. [LR377]

SENATOR DUBAS: Well, I didn't know if it was a very easy question to answer to start with but I guess I'm just trying to understand, you know, where is a hydrologist coming from versus where is an engineer coming from. And what would be the most appropriate engineer degree to be in the Department of Natural Resources? [LR377]

BRIAN DUNNIGAN: I think historically civil engineers has been the most popular degree. I think, maybe to go back and reflect on your earlier question, if we look at in terms of the science, hydrology is a science and hydrology would be the precipitation or rainfall that falls on the land and how that equates then to runoff. Engineers would study that and hydrologists would study that so that's just one part of the science part of the equation. [LR377]

SENATOR DUBAS: Okay. Thank you. [LR377]

SENATOR LOUDEN: Seeing no further questions, thank you, Brian. Thank you for testifying today. [LR377]

BRIAN DUNNIGAN: Thank you. [LR377]

SENATOR LOUDEN: May I ask how many people were going to...were willing to testify today? Could you have a show of hands. Two, six, ten, twelve, fourteen, what, about fifteen or so. Okay, next testifier, please. Welcome, Chris. [LR377]

SENATOR LANGEMEIER: It's kind of a neat setting here. Good afternoon. I'll be quick. Chairman Louden, members of the Natural Resources Commission and one extra, welcome. My name is Chris Langemeier, C-h-r-i-s L-a-n-g-e-m-e-i-e-r. Before I begin my

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testimony, I'd like to congratulate Mr. Brian Dunnigan for his excellent job that he's doing as acting director of the Department of Natural Resources. I'd also like to thank all the employees of DNR for their support of Mr. Dunnigan and all their hard work in this time of change. A smooth transition in the department is extremely important as we deal with such important issues as water in the state of Nebraska. I'm here to support the removal of the PE or the professional engineer requirement of the position of director of Natural Resources. However, this support does not come lightly. The department has a job to do that does not come easily. I repeat that, the department has a job to do that does not come easily. It is my belief that the job of director has and will continue to evolve. As the director works to run the office, manage the employees, assign projects, review projects, review plans, report to the Governor, report and deal with us as legislators, deal with the Attorney General's office as litigation continues, and most importantly, deals with the citizens of the state of Nebraska dealing with the hottest topic in the state of Nebraska, water. We need the right person for the job. He or she must have the ability to perform the job. There's no question about that but by removing the PE requirement, we're not changing the job description and we are also not changing the political nature of any Governor appointed position in Nebraska. There is a condition to my support. I think it's important as we consider this removal of the PE requirement that we consider adding a water hydrologist or geologist to the staff of the DNR to report directly to the director and that person's individual responsibilities could be that of studying the science, which everyone in this room is here to be concerned about, is the science correct. And in conclusion I look forward to hearing the testimony that's to follow and I'm more than happy to work with this committee, and with the committee's support we can take this long overdue change into the One Hundredth One, One Hundred First Legislative Session, First Session, and with that, I would answer any questions if you have any. Hopefully not. [LR377]

SENATOR LOUDEN: Thank you, Chris. Questions for Senator Langemeier? Senator Dubas. [LR377]

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SENATOR DUBAS: Thank you, Senator Loudon. Thank you, Senator Langemeier. What do you see as the biggest drawback to have a PE as a requirement? [LR377]

SENATOR LANGEMEIER: As I said, as a new member of the Legislature, when Roger Patterson left, I spent that summer working on, talking to people about this job. And you have a number of very, very qualified individuals out there that work on the federal level that are engineers that don't have to be PEs. And as we start to narrow down that field of opportunity of people, it gets awful narrow awful fast. When Ann Bleed was appointed to the job we weren't out in my role of researching that and talking to people was not to say Ann Bleed was not the person, but we wanted to make sure that we looked at all our opportunities to decide whether she was or wasn't. You have to have a group of candidates to make a decision on. And that group continued to get narrower and narrower and narrower as we talked to people from Wyoming, we talked to people from Missouri, we talked to people from Colorado that had worked for the federal government. We visited with a gentlemen by the name of Fred Orr, who is a very talented individual, works for the fed, was not a PE, was very instrumental in the negotiations with Kansas and Nebraska in the Republican River compact, did not have the PE requirement. I don't, I'm not saying this job needs to be somebody that is not a PE. I think we need to have the right person for the right job as this job continues to evolve as you sit out in front of people across the state of Nebraska and convince them we're doing what we need to do. And so we have got to make sure that that field of candidates is wide enough that we can throw a wide enough net to determine if we have that right person. Now, Mr. Dunnigan that spoke before us, if he chooses to try to stay on full-time and permanently, I will support him, and I hope he considers that. [LR377]

SENATOR DUBAS: So basically what you're saying then is, you just want to make sure that we are giving as many qualified people the opportunity to apply for this job or show interest in this job without reining it in with that PE requirement. [LR377]

SENATOR LANGEMEIER: I think we quickly narrow the field with just the PE

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requirement down to not having the opportunity to pick the right person. [LR377]

SENATOR DUBAS: So they could still have the PE... [LR377]

SENATOR LANGEMEIER: You bet, you bet. [LR377]

SENATOR DUBAS: ...but this would just open the door for more people to apply.
[LR377]

SENATOR LANGEMEIER: Yeah, I don't want to put in there, cannot have a PE, must not, I should say. [LR377]

SENATOR DUBAS: Thank you. [LR377]

SENATOR LOUDEN: Other questions? Senator Carlson. [LR377]

SENATOR CARLSON: Senator Louden. Senator Langemeier, I want to check you on something you said, see if I heard it right. You're in favor of removing the PE requirement but then you said, there are a lot of other engineers out there that would be good candidates. Now, I've got a limited knowledge of degrees. What's the difference between a professional engineer and an engineer? [LR377]

SENATOR LANGEMEIER: You're out of my bailiwick of expertise but you can be an engineer, as I've gone to school, you can be an engineer without getting the professional engineer stamp. You can go to law school to become an attorney without taking the bar and passing the bar in the state of Nebraska. [LR377]

SENATOR CARLSON: We kind of know one pretty well that did. (Laughter) [LR377]

SENATOR LANGEMEIER: I rest my case. [LR377]

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SENATOR CARLSON: But you did say engineer, did you mean engineer or would you eliminate the engineer terminology completely? [LR377]

SENATOR LANGEMEIER: I don't think you have to eliminate the engineering terminology entirely. I think if you take it back to the same wording that was in 1969 and remove the PE requirement to say they should have an engineering background, I think Mr. Dunnigan made it clear that it's an asset, but I still think on the federal level you can be an engineer without your PE requirement because they don't require it. [LR377]

SENATOR CARLSON: One other question. I don't know if you would know this or not but we've got the list of states that don't require professional engineer. Do you know if any of those states used to and then removed it? [LR377]

SENATOR LANGEMEIER: I don't. [LR377]

SENATOR CARLSON: Thank you. [LR377]

SENATOR LOUDEN: Other questions? Seeing none, thank you, Chris, for coming here and testifying today. [LR377]

SENATOR LANGEMEIER: You bet. Thank you. [LR377]

SENATOR LOUDEN: It's our pleasure to hear your opinion. Next testifier, please. You'd better hurry because if we're going to get through 15 of them, why we're going to do her here before a little after 4:00 so. [LR377]

DAN SMITH: (Exhibit 6) Thank you, Senator Louden and members of the Natural Resources Committee. My name is Dan Smith, that's D-a-n S-m-i-t-h, and I'm the manager of the Middle Republican Natural Resources District. In reviewing LR377, it

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looked to me like there were three issues that were...in that the requirement for the director of Natural Resources there was a reference to structure of the department and funding and that, I thought, were the three most important components of that. I'm circulating some testimony. I'm not going to read through that but I think I will try and touch on those three things. We too agree that that professional engineering requirement should be removed for the qualifications of that director. To a certain extent we would want to see the opportunity for somebody with those administrative skills that are necessary now in that department as far as I'm concerned. The joining of the Department of Water Resources and the Natural Resources Commission, the director's position now overlaps those two previous agencies and there's the need, I think, for more of the administrative skills that could be an engineer rather than an engineer that might have administrative skills. As far as structure in the department, that's something I think that probably doesn't need to be addressed through legislation. The administrator, whomever that might be, the new one, I think, could look at that department and could come forth at that time with recommendations on what changes may or should be made in that department. The third area that's probably as important as anything is funding and funding is always an issue. Some of the funds that came over with the Natural Resources Commission, the Resources Development Fund, the small Watershed Fund, those are funds that the Natural Resources Districts make extensive use of and, of late, they've been terribly underfunded in my opinion. There are a number of good projects in this state that could be done through the Resources Development Fund if it had that funding. There have been some new funds picked up in the last couple of years with regard to water management, the Interrelated Water Management Program Fund, whatever, that's a lot of initials in there, but that fund, the Water Cash Fund, those things can assist those Natural Resources Districts that are working in integrated management. They need additional funding as more designations occur and I'm assuming on down the road, that there will be some more. The dollars that are there are going to be continued to be stretched thin and the issues that we have aren't going away. So, yes, we'd support removing that professional engineering requirement. We think that there's a, you know, an immediate and a long-term need for increased funding

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within that department. I think with regard to integrated management that the department and the NRDs probably have a unique relationship that I'm not sure you can point at with any other state agency in that once that designation is made of the two bodies, then look at the management of those water supplies in a particular basin. We have that need. We have that statutory requirement to work together. Changing the professional engineering degree is not a new issue for NRDs. It's been raised a couple of times in the past and probably the rhetoric of what I've seen in the papers hasn't changed either, you know. The talk is that the NRDs either want to control or cripple the Department of Natural Resources. I'm not sure which one, depending on which article you read you see a different interpretation of what our intent may be but I assure you that isn't there. We work closely with that department. I'd like to echo what Senator Langemeier just said and that Brian Dunnigan has done an excellent job with that department in my opinion. We've been working closely with him. We've got the Republican issues that we've had to address and I am really encouraged about the relationship with the department. There are a number of good employees in that department. There's not a problem there with structure that needs to be addressed right away. Once again, a new manager will look at that department and a new administrator will look at that department and the structure they have and make those recommendations for change so. With that, I'll stop. I'll certainly try to answer any questions if you have any. [LR377]

SENATOR LOUDEN: Questions for Dan? Senator Wightman. [LR377]

SENATOR WIGHTMAN: Thank you, Senator Louden. Thank you for being here, Dan. I guess the question I have, I see one of these, and I'm not sure which state, but I saw that they had a provision that there would be a deputy director of Natural Resources and that either the director or the deputy would be a professional engineer. Do you have any thought, probably wouldn't be necessary, a hydrologist might be just as important but...? [LR377]

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DAN SMITH: Well, I don't know. I would almost say that there probably is that definite need within the department to have a professional engineer that can deal with civil engineering and perhaps even mechanical but civil engineering makes the most sense. There are a number of things that the department does with regard to the plans and permitting on small dams, well, even on some of the larger flood control structures. There are a number of issues that they look on the surface water appropriations and moving an appropriation maybe that do require some engineering skill and there probably needs to be an engineer in that department. Whether it be the director or the deputy director or somebody assigned that responsibility, I guess makes no difference to me but I think there probably is a definite requirement for an engineer in that department. [LR377]

SENATOR WIGHTMAN: Well, I agree that there would be one in the department. Would one of the two top administrative positions, if you had two top administrative positions, should one of those be an engineer? [LR377]

DAN SMITH: I don't think I would go that far. There needs to be one that had some responsibility with regards to those plans and permits but once again, that's structure within the department and I think that can be decided by who is ever administering that department. [LR377]

SENATOR WIGHTMAN: Thank you. [LR377]

SENATOR LOUDEN: Questions? I would have one, Dan. When you mentioned the Resource Development Fund, now is that the one that 16 member Natural Resources Commission, is that the fund that they work out of or is that a separate fund that they work off of? [LR377]

DAN SMITH: They administer that. They make those evaluations on the approval of those projects, yes. [LR377]

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SENATOR LOUDEN: Okay, that 16 member because I have a friend that's on that commission and he tells me all the time that they don't have enough money. [LR377]

DAN SMITH: Yeah, it's terribly underfunded, is within the department funding, I think. [LR377]

SENATOR LOUDEN: And that's the one you're referring to... [LR377]

DAN SMITH: Yes, sir. [LR377]

SENATOR LOUDEN: ...because they do a lot of flood control and damage control and small dams and small lakes and everything else and whatever. And where do they get their money? Is that a, as appropriation? [LR377]

DAN SMITH: Yes, sir. [LR377]

SENATOR LOUDEN: And they're appropriated what, like three or four million dollars a year or do you have any idea of how much they're appropriated? [LR377]

DAN SMITH: It's a little more than that and I can't tell you the dollar amount, sir. I know there's a tremendous backlog of projects in there. My district a number of years ago used that Resources Development Fund for a flood control, a drainage ditch through the city of McCook. We did some crossing work with it but once again that's one of those funds that was administered by the Natural Resources Commission that have been inherited, moved up into some of the department's overview in their administration of it. [LR377]

SENATOR LOUDEN: Now, if there was more money appropriated to that fund, would it be gone anyway? [LR377]

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DAN SMITH: Yes, it would be utilized, yeah. [LR377]

SENATOR LOUDEN: I mean, is it a big hole that you could never fill up anyway or would more money just, I guess, do more work or where would we go with that if we appropriated more money? [LR377]

DAN SMITH: Additional funds in though could pick up some of those, a number of those projects that are there approved and remain unfunded because there aren't enough dollars to go around. And a majority of those funds are going to be flood control, drainage projects, you know, if they were in place, I would almost, and a majority of them seem to be in the eastern part of the state, I would almost guess that you would see enough benefit from those funds in the reduction of damages that it might have paid for the dollars we could have put in there just in the last two months so. [LR377]

SENATOR LOUDEN: I see. Of course, the first time it's rained in the last two months. (Laughter) [LR377]

DAN SMITH: Well, yeah, (laugh) we've definitely have had a lot of rain so. [LR377]

SENATOR LOUDEN: Why have flood control when it doesn't rain? [LR377]

DAN SMITH: Well, that's true, sir. (laugh) [LR377]

SENATOR LOUDEN: Other questions for Dan? Thank you for testifying today, Dan. [LR377]

DAN SMITH: Thank you, sir. [LR377]

DON ADAMS: (Exhibits 7 and 8) Good afternoon, Senator Louden and senators in the

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Natural Resources Committee and Senator Dubas and Senator Hansen and Senator Wightman. My name is Don Adams. I'm executive director of Nebraskans First, a statewide coalition of groundwater irrigators. We oppose the deprofessionalizing the directorship of the DNR. The director of the DNR is arguably the most important state agency head we have. The decisions he or she makes involve extremely complex issues and such decisions directly impact irrigated agriculture which generates roughly five to six billion dollars a year for this state and is the backbone of our economy. Rather than exploring ways to deprofessionalize, downgrade and weaken the DNR, what we should be doing right now is focusing our efforts on finding the very best, most qualified professional engineer out there to head up the DNR. Back in 1998, then Governor Johanns assembled the seven member task force search committee for the purpose of conducting a nationwide search to find a topnotch, fully qualified professional engineer to head up the DNR. This search committee was made up of representatives of the NRDs, the power companies, irrigation districts, environmental interests, farm groups, and agribusiness. Their national search produced Roger Patterson who was working at a very high level with the Bureau of Reclamation in California. Mr. Patterson proved to be the consummate professional and a director with all the people skills and tact you could ever hope for. When you want the very best, you search for your candidate nationwide. That search, the same search that found Mr. Patterson only took, I believe, a couple of months. The DNR is not your typical state agency. It is not a traditional bureaucracy that plugs along and runs itself despite who is at the top. The DNR is in the national arena competing on a grand scale with other state's DNR equivalents which are headed up by professional engineers. Colorado and Kansas both have professional engineers at the top. Many times interactions between state water bosses are one-on-one without staff around and decisions are made among the bosses without staff. Our representative must be at least as professional and technically qualified as theirs and every type of interaction or situation or setting. You don't bring a pocket knife to a gun fight. Fortunately, at least for the time being, we have a professional engineer at the top, who by all accounts, is well-qualified, competent and respected. We commend and endorse Brian Dunnigan and believe he would be a fine DNR director but

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he may not want the job, we don't know. Finally, we all like our doctors to have a warm comforting bedside manner. However, in the end we know that the technical expertise, professional training, and experience of our doctor is really more important to our health than is an affable personality. There is no substitute for professional training, knowledge, particularly in a field that demands the same. Removing the licensed professional engineer requirement for the director of DNR would be a mistake that could result in major long-term unintended consequences. This concludes my testimony. I have been asked to deliver opposition testimony of removing the professional engineer requirement first by the Professional Engineers Coalition, who couldn't make it today but they will probably appear when you're in Lincoln, and by Mr. Ron Klein, who is a licensed professional engineer. I give these to Barb. Thank you. [LR377]

SENATOR LOUDEN: Questions for Don? Senator Hudkins. [LR377]

SENATOR HUDKINS: Thank you. Mr. Adams, I'm not an engineer and I would like to know the difference between what is the education or the training between an engineer and a professional engineer? Would you happen to know that? [LR377]

DON ADAMS: I'm not an engineer either. I have friends that work for engineering companies, HDR for example. They do have...they're professional as much as they have to be trained, they have to pass exams and they operate under a code of ethics. They're trained to be analytical rather than political. Many cases like attorneys, like there's a code of ethics and conduct that govern their actions and a licensed PE is just that. He's licensed by an umbrella group that ensures the qualifications and high standards of the PE's standing are met and maintained. [LR377]

SENATOR HUDKINS: Thank you. [LR377]

SENATOR LOUDEN: Questions? Other questions? I have one, Don. You mentioned when they did the search for Roger Patterson, and that happened before I got into this

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kind of business but I remember them talking about it and at the time there had to be some special appropriations in order to raise the funding in order to hire him, is that correct, when they went out and hunted and found Roger Patterson, the price went up considerably from what they had been paying? [LR377]

DON ADAMS: It went up for sure but you got the very best. [LR377]

SENATOR LOUDEN: I know. In other words though, he wouldn't come unless they upped the pay scale and that's what I'm wondering now, what we're paying the directors now, will we be in the same position if we go out in a search for a new director? Would we have to probably appropriate money in order to hire one? [LR377]

DON ADAMS: And I can't mention names but I know there's several out there that would be interested and I don't know...I mean, money is certainly a factor but the challenge here in Nebraska is a factor they would consider. I would strongly recommend that this committee visit with Roger Patterson and even Mike Jess, and just get their firsthand experience on how they deal with other professional engineers. Not everything is done in an open setting, in a public setting with staff all around where they can constantly consult in their professional staff. And I think it would be most helpful, you know, pay Roger Patterson's plane ticket from Phoenix and have him come and testify at the Lincoln hearing, for example, and hear from him on how important it is that you be at least on the same level as the people you're competing against. [LR377]

SENATOR LOUDEN: One other...the information we have, like in Kansas, the chief engineer or whatever, that's more or less a civil service requirement but that's under the Department of Agriculture, their water system in Kansas isn't it? They're stacked a little different than what we are in Nebraska. [LR377]

DON ADAMS: Yes, they're organized differently but still their "water czar" is David Barfield and he runs the water business and he is a licensed professional engineer, as

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is Mr. Wolfe from Colorado. [LR377]

SENATOR LOUDEN: Now is he a civil service, I guess, employee in Kansas or do you know? Or is he appointed by the Governor or is he appointed by the director of agriculture or somebody? [LR377]

DON ADAMS: Don't know. I would bet he's appointed by the Governor. [LR377]

SENATOR LOUDEN: Okay. And then in Colorado, they kind of have the state engineer is over that, is over part of that and what we have, the executive director, that's a cabinet level position in Colorado and that person doesn't have to be a professional engineer. But the state engineer, of course, I mean, when you put the word state engineer you'd expect him to be a professional engineer but the person that's over him is actually a cabinet level position and they're not required to be a professional engineer. Would we be looking at something similar in Nebraska because what we're talking about is a cabinet level position, is that correct? Do you feel that the Department of Natural Resources is a cabinet level position in Nebraska? [LR377]

DON ADAMS: Well, yes, it is. But it's an executive code agency, it works for the Governor, you know, the head of DNR has a boss. They're not a constitutional agency where they answer to the people directly but I'm just saying, I want out top person to be the best, most qualified expert we can find, not to go back 40 years to how it was, you know, in 1969. [LR377]

SENATOR LOUDEN: Well, I...yeah, I agree, we got to find the best we can. I guess, let's see here if I can find one of the other questions I was going to ask. At the present time I think they have to be a professional engineer with five years experience in a position of responsibility in irrigation work. Do you think that part should be changed? I mean, what are you saying when you say five years of experience in irrigation work? Does that mean when some kid set tubes for his dad, you know, or does that mean you

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were down at Valmont designing circle pivots or should that be clarified even if we do keep the...? [LR377]

DON ADAMS: That's very broad and open-ended, you're absolutely right. Probably most engineers in any similar government agency, BOR, or other DNRs would have some experience with irrigation, tangential though it may be, it's still experience in irrigation. I'd say up to ten years experience in irrigation. (laugh) We want the best. [LR377]

SENATOR LOUDEN: Other questions for Don? Senator Hansen. [LR377]

SENATOR HANSEN: Thank you, Senator Louden. Don, do you believe that the director of DNR should be an advocate for the state of Nebraska, should be an advocate for agriculture in the state of Nebraska, and be an advocate for added-value products in Nebraska? [LR377]

DON ADAMS: Sure. [LR377]

SENATOR HANSEN: Do any of those...it sounds more like the Department of Economic Development rather than a professional engineer and I think that's the point some of us are trying to make is that we need engineers for sure but the head person, I think, ought to be an economic development person rather than an professional engineer. You can certainly comment to that. [LR377]

DON ADAMS: Well, we have an economic development department that deals with that. We want a Governor that's pro agriculture. The Governor's the boss. You know, I don't think we're going to get away where, you know, the person is going to have to end up working for the Governor and therein might be a problem, I don't know. If the Governor isn't pro agriculture, chances are the DNR director is not going to be overly pro agriculture. [LR377]

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SENATOR HANSEN: On June 5 of this year, there were several of us that met with about 60 Kansans on the Kansas-Nebraska border and they gave us 72 million reasons why we were doing things wrong. They said in Kansas they made the decision that groundwater and surface water were interrelated 65 years ago and that we've been doing things wrong all that time. We've created NRDs that were wrong. We shouldn't have done that. Kansas, they have professional engineer, he's the water czar, everything comes out of the capitol and no local control. I don't agree with that aspect of it but right now they seem to be kicking us around pretty well and if we go to court, downstream users usually win. I don't know if that asks a questions or not, Don, but I see... [LR377]

DON ADAMS: That's 30 years of history on how they're kicking our butt. That could stop. [LR377]

SENATOR HANSEN: And how can it stop? Do you think that having someone that's more, has background in irrigation and economic development could do that better than a professional engineer without...I mean, do you believe in the national search? Should this position have a national search like we did when we got Roger Patterson? [LR377]

DON ADAMS: Well, absolutely. [LR377]

SENATOR HANSEN: Okay. [LR377]

DON ADAMS: We believe in that, and a couple of names were mentioned to me from somebody you all know but I can't mention, but they're out there. These are names well-known in water industry circles. I mean you go to the DNR's equivalent and they have an umbrella group. You go to engineering groups, they'll find us somebody, and then it's just a matter of, you know, having them meet with the Governor and see if things will work out with him but they're out there. [LR377]

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SENATOR HANSEN: Thank you. [LR377]

SENATOR LOUDEN: Senator Fischer. [LR377]

SENATOR FISCHER: Thank you, Chairman Louden. Thank you for coming today. As I look through the requirements for other code agency heads, some of them have that they are registered voters in the state of Nebraska. Some of them have that the head of the department has to be 30 years old. Very few of them have an educational level requirement. The Department of Roads, the head of that agency, which employs more people than the Department of Natural Resources, the director does not have to be an engineer. The history is that the director has been an engineer. Department of Natural Resources, my understanding is, that the history of that it came out of the Department of Roads when it was public works and irrigation, and I think we'll have to look into that but I think maybe that's where the engineering requirement came from when that split into different departments. We were told that there's 100 employees in the Department of Natural Resources and only eight are engineers, I think that was it, only eight are engineers. I guess, looking at it, I would think the head of the department needs to be more of a manager and we should have more employees that are engineers. Do you have a comment on that? [LR377]

DON ADAMS: Well, I just disagree with that. I think that you want the very top person to have all the credentials that will garner the respect and credibility required to deal with other states at the highest level. You don't want an office manager heading up the DNR. They have office managers. [LR377]

SENATOR FISCHER: But if you have half of the states that don't have a requirement for an engineer, I guess I don't see where the credibility question comes in on that. We all know there are meetings maybe where discussions are held. I would certainly hope that the head of any agency wouldn't be making agreements with agency heads from other

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states until they've talked to their staff or until they have talked to the Governor of their state to make sure that those decisions are in line with state policy. So I don't feel the threat, I guess, that you feel if we don't have a professional engineer in that position. Comments? You disagree with me. [LR377]

DON ADAMS: I do, strenuously, I do. You need to go and watch the Republican River Compact operate and then you will see how important it is to have a topnotch person sitting at the center of the table that is Nebraska's table. Number two, we're not any other state. We're the number one groundwater irrigation state in the country. [LR377]

SENATOR FISCHER: Don't you think it would be...the head of an agency can't know everything that's happened within that agency and I realize that DNR is a small agency in Nebraska employee wise but they still, the director cannot know everything that's happening in that agency and I think it would be more important to make sure we have very, very qualified employees who are offering the best recommendations to the director in order that they can make a decision. You know, we don't have an engineering requirement for Department of Roads. Does that diminish in any way our director of the Department of Roads when he is at national meetings because right now, I mean, obviously today, we're talking about water and the importance of the Department of Natural Resources but infrastructure, when you look at concerns at the federal level and people talk about infrastructure, it's roads. So are we diminishing our director of the Department of Roads by not requiring that they're a professional engineer? [LR377]

DON ADAMS: Yes. I would encourage you to talk to the professional engineering group who submitted a letter. I delivered it today and they will tell you how the Department of Roads has deteriorated appreciably because there is not an engineer and it has not made matters better so. [LR377]

SENATOR FISCHER: I would challenge you on that last comment you just made

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because I am in contact with this organization and in dealing with transportation, so I would challenge you on that last comment. [LR377]

DON ADAMS: In Lincoln the engineers will be there and you can ask them how they... [LR377]

SENATOR FISCHER: I will. [LR377]

DON ADAMS: Okay. [LR377]

SENATOR FISCHER: I will. Thank you. [LR377]

DON ADAMS: Thank you. [LR377]

SENATOR LOUDEN: Other questions? Seeing none, thank you for testifying, Don. [LR377]

DON ADAMS: Thank you. [LR377]

SENATOR LOUDEN: Appreciate your testimony. Next testifier. [LR377]

CURT FRIESEN: (Exhibit 9) Good afternoon, Chairman Louden and other senators, members of the committee and those others. I'm Curt Friesen, C-u-r-t F-r-i-e-s-e-n, from Henderson, Nebraska. I'm chairman of the Upper Big Blue NRD and I'm here today testifying today on behalf of the board of directors. I'm also a member of the Governor's Water Policy Task Force. I've worked with two past directors of the DNR. The Upper Big Blue NRD board of directors is on record to support changes in statutes to drop the engineering requirement from the qualifications necessary for the director of the Department of Natural Resources. We believe that it is no longer necessary for the department to be administered by an engineer. The department has many functions in

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addition to administering surface water rights. The department is after all, a multipurpose department responsible for natural resources, including water resources development, soil and water conservation, and flood control. The director's job is not a technical position but rather that of an administrator. After all, the bank president does not need to be an accountant but he will seek an accountant's advice. A newspaper publisher does not need to be journalist but he will, she will ask what a journalist thinks. A senator who is a law maker does not need to be a lawyer but will listen to your attorneys for advice. The director's job is twofold. First, manage the department, and second, deal with statewide natural resource issues. To have a well-functioning department, the director needs to be an able administrator. The director needs to hire good people, train them well, and see that they have the money, facilities and equipment to do the job; delegate duties and responsibility to them, get out of their way and let them do their work and make them accountable for their actions; make the final decisions after considering the staffs advice, listening to the public, and reviewing the data and facts, while complying with statutes. Nebraska is faced with several important natural resources issues. To solve them the director needs to be a diplomat and a people person. The director works for the Governor but also needs to deal with the Legislature. Communication with state and federal agencies are required. Discussion and negotiations with other states are paramount. The department will have to work with Natural Resources Districts and irrigation districts. The director cannot do it all alone. It is not a matter of engineering calculations with hard and fast answers. The answers are often not black or white. The director needs to learn about and understand soil and water conservation, flood control, water resources development, as well as surface water rights. The position is not a single purpose one of water rights administration. However, it is important that the director make the final decisions in water rights matters, after reviewing the evidence and facts, and listening to the advice of department staff. There has been suggestions that a state hydrologist also be appointed by the Governor to work parallel with the director. This is a recipe for disaster. A chain of command must be established and followed in any organization. Only one person can be in charge, not two. It hasn't worked in the past to have personnel in the

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department that do not answer to the director and it won't in the future. Engineers are excellent at calculation and design but not necessarily good administrators. The director of the Department of Natural Resources has to be a good administrator, a diplomat, a negotiator and a natural resources leader. The director can rely on engineers as he or she sees fit. What we're requiring the director is to fly the airplane, not to design it. Thank you for taking time to listen to testimony today. [LR377]

SENATOR LOUDEN: Okay. Questions for Curt? Senator Christensen. [LR377]

SENATOR CHRISTENSEN: Thank you, Senator Louden. Thank you, Curt. I'm going to say that I think your mention of state hydrologist was...you've been misinformed there because when that was talked about, I believe that was to be appointed by the head of DNR to keep the chain of command for that reasons you give and I know when discussions that was done late in the session anyway, that's the way that worked. [LR377]

CURT FRIESEN: Okay. Thank you. [LR377]

SENATOR LOUDEN: Senator Fischer. [LR377]

SENATOR FISCHER: Thank you, Senator Louden. Thank you, Mr. Friesen. You mentioned you're a member of the Water Policy Task Force. Has the Task Force taken any position on this change? [LR377]

CURT FRIESEN: No, I don't recall that they've taken any position though. [LR377]

SENATOR FISCHER: Okay. Thank you. [LR377]

SENATOR LOUDEN: Senator Carlson. [LR377]

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SENATOR CARLSON: Senator Louden. Curt, I wrote down four words here and they kind of parallel with what your closing statement here but terms of skill that a director would have, knowledge, negotiator, communicator, executive manager. Which of those is most important? [LR377]

CURT FRIESEN: Executive manager, I would probably put at the top. [LR377]

SENATOR CARLSON: Okay. I'm not disagreeing with you. They're all important. [LR377]

CURT FRIESEN: They're all important. [LR377]

SENATOR CARLSON: You put them all down and that's kind of where the difficult decision is but thanks for your testimony. [LR377]

SENATOR LOUDEN: Yeah, the question I'd have, Curt, we've... as you look at the statutes here and you go into the part where at least five years experience and position of responsibility in irrigation work and, of course, I kind of wonder about that. If they weren't professional engineers should they be like a water law attorney or something like that, an attorney in water law? [LR377]

CURT FRIESEN: Well, it appears to me, looking at our current biggest problems, as being an attorney would probably help the most but I think it shouldn't be restricted, I guess, I feel as to who can apply. I mean, you might find a very qualified candidate that is neither an attorney nor an engineer. I mean, our director, our manager at our Upper Big Blue, I mean, he has run a very tight ship over there and I think we're probably one of the top NRDs in the state, I feel, but he's not either an engineer or an attorney. So I mean, it comes to management skills, I guess, and communication skills. You can always hire other people to advise you and to cover those areas. [LR377]

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SENATOR LOUDEN: Okay. I'll ask you a question here and see if I can put you on the spot. If we just did away with that part of any qualifications to be the director and we would just leave it up to the Governor with the understanding that he would hire the best person possible. Are you comfortable with that? [LR377]

CURT FRIESEN: No, I'm not. [LR377]

SENATOR LOUDEN: Okay. Thank you for your testimony. (Laughter) Next testifier, please. [LR377]

KEITH REXROTH: (Exhibit 10) Good afternoon and thank you, Senator Louden, for allowing this testimony. My name is Keith Rexroth, that's K-e-i-t-h, last name, R-e-x-r-o-t-h. I'm sharing some written testimony with you. I will not read through that but will share some of the high points. Currently, I chair the South Platte NRD. We are headquartered in Sidney, Nebraska. Our district encompasses Kimball, Cheyenne, and Deuel Counties in the southern portion of the Panhandle. Earlier Senator Louden, you were referring to the 16 member commission, I am also a member of that commission for the Natural Resources Department, and represent the South Platte River Basin and today testifying for the LR377. A little bit of background, last Friday both Brian Dennigan and myself had dated our integrated management for our South Platte Natural Resources IMP and therefore, by approval of our board, also by the Department of Natural Resources, this order is going to be going into effect after our legal notices. So we have worked with the Department of Natural Resources in regards to our integrated management plan. It has been approved by both parties and therefore, it's going forward. Just to go through just a little bit of this, the Nebraska Department of Natural Resources employees that I have worked with, and I have been involved since the early '90s as an NRD director, have my utmost respect. I believe Nebraska needs these solid and responsible individuals but sometimes departments in state government do resemble small communities and in some of these small communities there's a few people that are doing a lot of the work. There's also the challenge as a small community

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that at times that community is growing smaller and in some points, I feel, within the Department of Natural Resources that that community is growing smaller in regards to the needs. Some of the challenges that we have faced in the west and that being the urban versus rural conflicts, the over appropriated, those designations, as we move forward, those challenges are going to be moving eastward. We can already see some of that but at this point the Department of Natural Resources, I believe, has that duty to go through a lot of those different aspects. The indications as the written testimony in agreeing to dropping the engineering degree, one of the challenges within this engineering versus politics is that as a state policy we need to be very aware that both of those science and policy need to be involved and I still believe within the department there needs to be a licensed engineer that brings that science to the table to enhance the political decisions that are being made. Here what I've done is listed as to some of the experience that the director would need, experience, education in mediation, motivation, meteorology, these are just some of the "m" words. The political science, also policy, attorney, but all of the different aspects that need to be brought to the table in regards to the director position. So this truly is an enormous position within our current state of natural resources in Nebraska. And as I conclude that the management of this resource, namely, the people, both within the organization and also when enabling those within the (inaudible). Also the NRD system to work together. Yes, there will be conflicts. Yes, there needs to be compromise and yes, there should be answers to the challenges that may very much change. Some of the other...item number 4 in regards to the IMP process. One of the comments here that I would share is the necessity not to shackle the DNR director dealing with statewide issues to their office in Lincoln. They need to be in the country. They need to be working with those involved in the various issues and be able to negotiate, communicate, as we did with some of our municipal challenges. And I think we have covered some of the areas such as, what do you do with the high water user and is that agreeable with the state; how does this happen; and those ideas going back and forth are very important. Again, from program funding, Senator Loudon earlier tapped on the bill that was introduced by Senator Langemeier. This was for the resource development funds. The basic challenge as the

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legislative committee chair for that commission, as we're trying to spend those dollars, we get \$3.4 million per year, that need is overcome by the increased cost as to what those do, and so right now we're backed up around \$60 million for very worthwhile projects. The one in Lincoln is getting close to completed. The one in Wahoo is just beginning to start. You know, three to four million per year versus a billion in damages can be very detrimental to the state and so part of this is what and how do we go forward. The other part that I would like to make note to is, as we move forward across the state with the over appropriated, fully appropriated basins, part of the responsibility towards the department is their decisions need to be based on sound science. The question then becomes, how does sound science work with, you do more with less, and that is, namely, the funding issue. And so for all of the programs, the Interrelated Water Management Plan, the Water Cash Fund, conservation program and finally the Resource Development Fund, these are very worthwhile, very leverage dollars that we do bring in federal local dollars. These are the state arm of those funds. And in closing, I would just say that the South Platte NRD is committed to working on resource challenges. The recent LB962, we feel, does need to be given the freedom to work, and so with that, I would thank you and offer for any questions. [LR377]

SENATOR LOUDEN: Questions for Keith? Senator Fischer. [LR377]

SENATOR FISCHER: Thank you, Senator Louden. Thank you for being here today. Your last comment that LB962 needs to be given to work, what do you mean by that? [LR377]

KEITH REXROTH: Part of what we're trying to do, I believe, Senator, is jump-start a lot of the issues. If you take a look at what we're trying to do, we're trying to, now, as two state departments were merged earlier, the NRDs basically are an extension of a state department, only out into local areas. What we're trying to do with the integrated management challenge is merge the groundwater and the surface water into an integrated management plan. And, to me, that is very important that it be given a

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chance to try to deal with the Department of Natural Resources and the NRDs, trying to move forward in that very real challenge. [LR377]

SENATOR FISCHER: And you spoke about just completing that plan and signing it with DNR and your own NRD, is that correct? [LR377]

KEITH REXROTH: Yes, that is correct. [LR377]

SENATOR FISCHER: Obviously you're at a fully appropriated basin, your NRD? [LR377]

KEITH REXROTH: We are fully, and we are also overappropriated. The challenge with the overappropriated is that takes a basinwide approach, that it's still being worked on. [LR377]

SENATOR FISCHER: And so as you work on these plans as required under LB962, what if it keeps raining? What if it keeps raining, and we have more water than we know what to do with in the state of Nebraska? Dream with me for a moment here, if you will...(laughter)...and we have more water than we know what to do with. Is there anything in LB962 that would allow your NRD not to be fully appropriated? Or do you have to write that into your IMP? [LR377]

KEITH REXROTH: I believe there are mechanisms that bring out to fully. But one of the other aspects to take a look at, Senator, is our particular challenge, currently, is not the fully; it's the overappropriated. And we do have exposure, both to the North Platte and to the South Platte from the overappropriated, of which there is a time frame. One of the challenges within our area, and I would fully support local looking at these, but I would also support responsibility to those NRDs to take action. In our uplands, we have groundwater recharge to the tune of about two-tenths of an inch a year, typically. We have withdrawal, at times, up to a foot a year. So we could have rainfall for the next 50

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years, and what effect would that do to groundwater is my biggest concern. Within the valleys, we have a very, a lot quicker recharge, but also withdrawal of that. And currently we're using some environmental trust funds with the North Platte NRD, also USGS, that we're using the radio technology of the helicopter flyovers so we can actually get a volumetric perception of what groundwater is. [LR377]

SENATOR FISCHER: But how deep does that go? I just read that in the paper, where they're having the flyovers, but it goes 50 feet or how deep? [LR377]

KEITH REXROTH: It's a function of radio waves, Senator, and so the closer to the surface, it's more precise. The farther down you go, it's less precise. But it can go until it hits resistance, with this model, to 300 feet. There is also another one that could be used in the Sandhills that would go to 1,200. But it can...the lower the radio frequencies, the farther into the earth you can go. [LR377]

SENATOR FISCHER: And how deep would the aquifer be under you? [LR377]

KEITH REXROTH: Within the tablelands, we're looking 300-400 feet. A lot of this is done through our Lodgepole Creek; also the North Platte Valley, and there we're looking at probably 200 feet, maximum. [LR377]

SENATOR FISCHER: Thank you. [LR377]

SENATOR LOUDEN: Questions? Oh, Senator Dubas. [LR377]

SENATOR DUBAS: Thank you, Senator Louden. Thank you, Mr. Rexroth. I read through your comments, you're not necessarily saying that you think the PE requirements should be removed. It should just be allowed to be used maybe in other positions, but that you still feel that it has its place in some of the leadership. It's just not necessarily requiring it to be positioned for the director, correct? [LR377]

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KEITH REXROTH: Correct. [LR377]

SENATOR DUBAS: Okay. And then you also included, in your testimony, language: five years' experience in the position of...field of soil and water conservation, expanding just the irrigation. [LR377]

KEITH REXROTH: And part of this is taking a look, Senator, at the change that is going on within our state, both politically and also the water usages. And, to me, I see the Department of Natural Resources' responsibilities, as the NRDs are, of expanding. And so there's all of these other issues, be it dams, be it, you know, the flood control, be it the conservation, that are entering in. [LR377]

SENATOR DUBAS: Thank you very much. [LR377]

SENATOR LOUDEN: Other questions? Senator Carlson. [LR377]

SENATOR CARLSON: Senator Louden. I'm not opposed to this, but I think I'm reading out of your report here, Step 3, "The duties of the assistant director," and, of course, we don't currently have one, but if we did, and carry out these responsibilities, and then we have the very best person that we can have, is the director, we're looking at more money. Would you agree? [LR377]

KEITH REXROTH: As a state, I feel we have a positioning within our water resources that doing least cost within this department is not good for any involved. So, yes, you're correct, Senator. [LR377]

SENATOR CARLSON: Okay. Okay. And I'm not opposed to that. Another question, and I think you maybe answered it partially in your response to Senator Fischer, but South Platte NRD, what would you say is most important, long-term: economic sustainability or

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water sustainability? [LR377]

KEITH REXROTH: They go hand in hand, but the challenge that we have from the west is, once you lose water, everything stops. And so as an NRD we are trying very hard with our phase-in, to manage irrigation systems, to manage our water resource--what is our volume that we're dealing with. That's still unknown. But yet we're making policy with those unknowns out there. And so, economically, we also have to be very alert to that aspect. So, to me, they go hand in hand. Economics, with the Cabela's, with the other non-ag aspects, has been very beneficial. But when you're looking at wheat at from \$8 to \$12, when you're looking at corn from \$7 to \$8, that aspect is also very economically beneficial. And we really can't kill one for the other. We have to work together with those. [LR377]

SENATOR CARLSON: Good. Thank you. [LR377]

SENATOR LOUDEN: Senator Fischer. [LR377]

SENATOR FISCHER: Thank you. Just to follow up there with Senator Carlson, we're doing a tag team here today, I think. You said that you're making policy with unknowns. Did I hear that right? [LR377]

KEITH REXROTH: Yes. [LR377]

SENATOR FISCHER: Do you believe that's at the state level that we're doing that? [LR377]

KEITH REXROTH: To some extent, the challenge that I see here is that responsibility put on the Department of Natural Resources of doing more with less, but yet at a state level they have to base their decision on sound science. And the question, who pays for that sound science? And in some aspects, we do not know, either locally or at the state

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level, all there is to know about our water situation, and I think that's pretty well-known. But we're still trying to put policy together, because our timing issue is of the essence. [LR377]

SENATOR FISCHER: When you finalized your management plan, did you have...did you make decisions in that plan on unknowns, or did you have the benefit of science? Did you have the benefit of data available to you in order to make those decisions? [LR377]

KEITH REXROTH: Senator, I feel we had the best information to date. But as in many areas, that information and technology is always improving. And so I feel our plan is a work in progress; that it will be amended, it should be amended as we go forward, because we will know more. [LR377]

SENATOR FISCHER: Thank you. [LR377]

SENATOR LOUDEN: Senator Christensen. [LR377]

SENATOR CHRISTENSEN: Thank you, Chairman Louden. Do you guys have meters? Do you know how much you're pumping? Do you use another method to know how much you're pumping, so you know where you're at? You talked about withdrawals of 12 inches. I know that can be measured another way. But do you know, when you're setting up these plans, what you're actually using? [LR377]

KEITH REXROTH: We had a phase-in program, Senator, within the South Platte. Part of the phase-in, four of the five districts, or areas, all have meters. The fifth area, which is our uplands, will go into effect next year, so we do have anything over 50 gallons per minute is metered, and we do have the readings on those that are coming in. Some of the wells, we have history back into probably the early '50s, as to water levels. And now, what we're trying to do is tie that with the pumpage rates. A lot of the rainfall events,

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through the (inaudible) rain, we're hoping to tie in, also. [LR377]

SENATOR CHRISTENSEN: Did I hear you right? Your recharge rate is two-tenths of an inch a year? [LR377]

KEITH REXROTH: That is the average that we have been told. There's different areas. We do have an increase in water levels in some areas. And, yes, we do have, like the 20-foot-in-ten-year decrease in other major pumping areas. [LR377]

SENATOR CHRISTENSEN: Thank you. [LR377]

SENATOR LOUDEN: Yes, Keith. I was going to ask the question here on your funding. You're on the Natural Resources Commission, I understand according to that. [LR377]

KEITH REXROTH: Yes. [LR377]

SENATOR LOUDEN: And is that the one you said you get about \$3.5 million a year? [LR377]

KEITH REXROTH: For the resource development fund, which is the flood structure, also other events. [LR377]

SENATOR LOUDEN: Now, when you use that money, are you able to get federal grant money to supplement it, or anything like that? Or is that, what you get is what you get to spend, and that's the size of it? [LR377]

KEITH REXROTH: I think some of the other presenters here would be as good. But to give you an example, with the flood control going through Lincoln, there were federal dollars there. There were the state dollars. The city of Lincoln had dollars. The Wanahoo project involves Army Corps dollars, which are federal. It involves city, and

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the local NRD has put dollars in. So the state funds are really a small portion of what that total project is, because they are leveraged in both federal-local areas. [LR377]

SENATOR LOUDEN: Now if you had more funds in there, would you be able to leverage more money, or is there a limit on...or are you already leveraging the amount that's...? [LR377]

KEITH REXROTH: We're leveraging as much as possible. But again I would reemphasize that the challenge there is due to our costs increasing; that the amount of funding, we are barely able to keep up with those increased costs, and the projects aren't getting done. [LR377]

SENATOR LOUDEN: Okay. [LR377]

KEITH REXROTH: We have about a \$60 million backup right now. [LR377]

SENATOR LOUDEN: Okay. Yeah. What I'm wondering is, if there was more money appropriated to that fund, would you be able to leverage more federal money, or are you...or...? [LR377]

KEITH REXROTH: We would, to the point that...the current projects already have that federal dollars leveraged into them. It's just a matter, like Wanahoo, that the state dollars were not available. And because of that, that project was put off. This last meeting, we did free up, I think, \$400,000, but we had to take it from other projects in order to do that, just so they could get theirs going. The other issue that we have are, on any active stream you have a Army Corps 404 permit, which is getting more difficult to obtain, and so that's doing anything with a live stream. So our timing issues is also challenged there. [LR377]

SENATOR LOUDEN: I see. Part of the LR377 was a question, and I'll just ask you if

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you're familiar with it. Do you think they have enough staff to monitor some of the withdrawals and the amount of water usage in the rivers and streams out in your area?
[LR377]

KEITH REXROTH: Part of the challenge...to answer your question, no, I do not think they have enough staff. We are looking at the retirement of institution, with Tom Hayden, who is at Bridgeport, who pretty much is historically gives you what, you know, Lodgepole Creek, does it run that much. There's meters both there. Also Balzac, which is in Colorado. And so both there, and the other I alluded to in my written was the need for information and education coming out of this department. As this NRDs, we have put that as major importance. And so staffing, I feel, has not risen to the needs or the responsibilities that currently are within the department. [LR377]

SENATOR LOUDEN: Okay. Thank you. Seeing no questions, well, thank you for coming this far and testifying today, Keith. Thank you for your testimony. [LR377]

KEITH REXROTH: Thank you. [LR377]

SENATOR LOUDEN: Next testifier. [LR377]

MICHAEL DRAIN: (Exhibit 11) Thank you, Senator Louden and other committee members. My name is Michael Drain, M-i-c-h-a-e-l D-r-a-i-n. I'm from Holdrege, Nebraska. I am testifying on behalf of the Central Nebraska Public Power and Irrigation District. The piece of paper being passed around is the outline from which I originally intended to speak, but for time concerns I will try to limit myself to a few of the points but not all of them, my only fear being it's possible, since it's in outline form, that the rest of the items not addressed could be potentially misunderstood without explanation, but I will hope that that will not be the case. As a matter of full disclosure, I will let you know in advance that, while I'll be speaking on the issue of the, at least one of my items, the PE requirement of the director, I am myself a licensed professional engineer in the state

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of Nebraska, so I wanted to let that be known. We essentially believe that the qualification requirements for the director of the Department of Natural Resources should be maintained. This is a job that is very technical in nature. Those technical issues are not getting less complex, and are, in fact, getting more complex as time goes on. The PE requirement is not in there simply for the purpose of dealing with surface water issues, alone, but, in fact, to all the issues, technical science issues, that surface water, once had, there are technical issues, scientifically complex issues, that groundwater now brings to our play, as well. I think it also not true that this position is getting more political than it has been, that the water issues are more political than they have been. I think this is a way that all generations tend to look at things, and we always view things are being fairly unique for our period. But let's face it, 100 years ago decisions on who got which water resulted in people standing at various locations with guns in hand, and decisions being made as to who gets water and who does not. These are not unique times. Perhaps only the interjection of where the water is being used or how the water being used, but not the consequence of whether or not water may be used and by whom. I think it's very important to keep in mind that the director of the Department of Natural Resources acts as a de facto judge--a lower court, if you will. Decisions of this director are appealable, not to some district court, but straight to the Court of Appeals. The director serves then as the first lowest court, the trier of fact. And this is very important. There are scientific issues the director must deal with. There are policy issues the director must deal with. There are legal issues the director must deal with. The Governor is there to take care of the policy issues if policy issues are improperly made. And the Appeals Court and Supreme Court are certainly there to deal with any improper interpretations of law, should the director make a bad decision or a bad order in that arena. But when the director is faced with questions of science, the director is faced with questions of fact, the upper courts will, just as they do with district courts, rely on the first court, in this case being the director, to act as the trier of fact. They may revisit questions of law. They are not likely to revisit the questions of the science. You have to be in an egregious state of ignorance of the science, probably, before the upper courts would take that on. I think that is a very important thing for us to

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keep in mind. The license requirement in Nebraska provides protections for Nebraskans, as a whole. It may do so at the expense of the Governor being able to appoint whomever they want, but these protections are for our own good. We have, because of the licensure requirement, minimum competency requirements. We have, as a requirement of licensure in Nebraska, standards of practice in the code of practice that are applicable to a director that would be a PE, that would not be applicable to anyone else. And we have a Board of Engineers and Architects that serves in an oversight role in the event that an engineer would put scientific issues, or rule wrongly or in improperly treat scientific issues for other purposes. Again, these don't provide any protections against policy issues. These don't provide protections against legal issues. But it is a good line of defense on scientific issues. Certainly, there should be other requirements for a director, and the current statutory requirements do not say the Governor shall appoint whichever first licensed engineer walks through the door. I think we would all expect and hope that the Governor would appoint someone with good management skills, with good communication skills, and those requirements, those are not overtaken by a requirement that someone be an PE, though I do know that some may believe that there are no PEs who are good communicators or managers. I will try to skip ahead just a little bit in my comments. We think it's important that the director requirement be filled right away. Do not get me wrong. I am very pleased, the district is very pleased with the work that Mr. Dunning is doing as an acting director, but the state has been working under an acting director in one form or another for nearly half of the last three years, and this results in a department that is in limbo. We need someone to take leadership there, and that is a very difficult thing to do, to ask of someone whom they know to be in an acting position. The perception then becomes that the department lacks guidance; it is off fulfilling the wishes of the Governor's Office or the wishes of the Attorney General's Office, as opposed to the dictates of the person in charge of the agency. Again, I believe it is the role of the department to serve the Governor and to assist the Attorney General's Office, but there must be someone who says what the...someone at the department who says what the department's role is. I believe that this effort to fill the position should include a search effort similar to what we undertook

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with Roger Patterson's hiring. We need to commit resources to the search, and then we need to commit the resources to get the correct individual here. Ideally, the challenges, alone, the desire to serve the public, will bring the best-qualified engineer to this position. But we need to recognize, the type of people that you want are probably already in challenging positions, already providing some service somewhere, and so that, alone, will not be likely to draw the individual. You're probably looking for someone who is a regional level engineer, regional manager for the federal government, someone who is a vice president or a president or a principal of an engineering firm, someone who is an upper-level manager at an NRD or in another state in a similar agency, or in some sort of large water-user organization. I can certainly tell you, as an engineer myself, I do not believe that the pay the state has right now for this job would be sufficient to draw a properly qualified engineer. I would also tell you that the water resources of the state are so important to this state that whatever the cost is to bring the right person is relatively small compared to the value that we would receive. There is also this question in the legislative study regarding the resources needed for the department. And while I'm not very familiar with the various funds that are set up in the state of Nebraska, I would tell you that it is our impression that there is a lack of resources sufficient for the agency to do all of its work. Right now, it appears that staff are pulled from one job to another. Resources are pulled from one location to another. We have conflicts between...with staff who have normal everyday functions at the department being removed from those everyday functions to be put on other projects which are of just as or greater importance to the state, such as dealing with the Republican River issues, dealing with the Platte River program issues. We have certainly noticed, we believe, continuing declines in the rate of response for certain things, and I have heard that from other water users, as well. I cannot tell you where the state should come up with that money, but if you asked the question I'd give you the answer that it does appear that the department is underresourced at this time. I will not address the other brief items that are listed at the bottom of my outline, but I would be glad to take any questions. [LR377]

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SENATOR LOUDEN: Questions for Michael? Senator Christensen. [LR377]

SENATOR CHRISTENSEN: Thank you, Chairman Louden. Thank you, Michael. Appreciate your testimony, and again I think you have reiterated what I've heard all day, that we need a national search to find the right person that can basically fulfill all these, the PE, communicator, leadership, management things, this direction, whether the PE needs to be there or not, I think there's a lot of common thread here. But I've two, three questions here. First, what is it going to take to hire someone? I believe we're \$109,000. Maybe somebody can correct me, but. And I always felt that was probably way low for what we need. [LR377]

MICHAEL DRAIN: I believe that is. It's a hard thing to gauge because what you'll find is, depending on the right person, it may be lower than what the marketplace would bring. I believe that that's what we encountered with Roger Patterson. I believe that Roger Patterson, while it required some increase, it didn't require the increase that would be necessary if he didn't have some Nebraska ties. And it is, at least, my belief that he was also looking to position himself with regard to future jobs, as well; that it would be good for him to get some outside of the federal arena experience. What I would say is, when you look at upper management engineering positions in large firms or industry, when you look at principals of large firms, I think that you will probably find that those are probably typically, I wouldn't be surprised to say, over \$200,000 a year. Again, I think that's nothing compared to what the importance of that position is to this state. You may be able to do a little bit better than that if you go with someone who is already in another government position, because those tend to generally lag behind, and so there won't be this perception of giving up as much when you ask someone to come here from another government position. But even in those cases, you might need something. [LR377]

SENATOR CHRISTENSEN: I appreciate that. I don't disagree with you at all on the pay and what it would take. And I'll say one thing, if you've got the right person, even at \$200,000, can be cheap to get things done correctly. [LR377]

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MICHAEL DRAIN: I agree. I think that's probably a minimum. [LR377]

SENATOR CHRISTENSEN: You made some comments that the first PE is like the director of the lower court, and also that a perception it is being directed exclusively for needs of Attorney General's Office. And I agree that quite often they're being tied up taking care of Attorney General's needs, Governor's needs, NRDs, irrigation districts, and so on. To me, that's been part of my argument and why maybe we need to move it down to a state water hydrologist to support the director, because I feel like we have the high-paid person that needs to be the PE doing the research out running around. And so that's kind of been my direction has been are we misallocating some of our funds? We need the professional engineering supporting the person that the AG and the Governor is sent running around. And I guess maybe I've got a little different perception than some, but I feel like we're taking the person that needs to be directing things from the professional engineering end of it and making them run around instead of doing the work that is crucial to support the person that can run around at a less...in a management-type position some have defined it. I guess I'd like to hear your comments to that because we're kind of flip-flopping them. [LR377]

MICHAEL DRAIN: Sure. And it's a difficult question to deal with. I can't deny that there are good arguments for the proposition of the change. I think some of the biggest concerns, though, are that the person with the technical capacity to evaluate what the right decisions should be, should then be the person making that decision. If the thinking is that we have some need to sever the technical position from the management position, which I don't believe you need to do--I believe that if you look nationally, there are plenty of engineers who are also good managers--but if you have the desire to do that, then how do you give...how do you know that the best scientific answer will not be replaced, on questions of science, with a different answer that is politically motivated when that decision is then made by the director? That's the key, I think, in terms of the protection. Where it's the state hydrologist, if they just make a

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recommendation to the director, the director chooses, for whatever reason to not take that, it's the director's decision that's appealable, not the state hydrologist's. If you want to try to sever it, I think you would need to go through and clearly identify, then, where are the authorities of the state hydrologist? Don't provide an obligation in law that you have some expertise but then have no obligation or indication of where that expertise is specifically to be employed in the decision making. By doing that, though, you then create the complication of, well, do you have someone working for someone else where there's no control? In some ways, we may be paying for the merger of the two departments a few years ago, where you had one that was primarily regulatory in nature, which is where the orders came from and where the decisions were appealable, and you had one that was primarily planning and management in nature, being the Natural Resources Commission, which didn't have that same requirements. At the time of the merger, it was discussed quite extensively, and in order to garner support from a number of entities for that merger the understanding was we would take that scientific basis requirement, make it part of the PE as part of...the PE requirement as a requirement of the director as part of this merger in order to satisfy the concern that we will lose that ability to have the decision making by the person with the expertise, and have the decision making by the person to whom you could have held to the code of practice. And the decision making, that the rest of the issues would be addressed, the politics issues would be addressed, with the Governor having oversight over the appointment. The legal issues would be addressed through the ability to appeal to the court. [LR377]

SENATOR CHRISTENSEN: I guess my...I come through that you have concern that there is more politicalness of not having the PE on top. Then I guess I also say that even if the PE is on top, they're underneath the Governor. If the Governor don't like their direction, it's still political. It could go the other direction should we go to electing them instead of having them appointed. [LR377]

MICHAEL DRAIN: Actually I thought I was trying to make that point, Senator. I'm sorry if

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I wasn't clear on that. No question, politics are involved in this, and having the PE does not eliminate that. They work at the direction of the Governor, and for issues that are political in nature, having a PE is not going to stop that. The concern is when there is a question of fact that the director has to make a determination on, and that question of fact would then be decided or skewed, not necessarily based on the best scientific evidence, but sort of on the scientific evidence but a little bit toward, you know, will...there's some political component to that decision. And when you're talking about the decision of fact, I think that's where our concern is. [LR377]

SENATOR CHRISTENSEN: I guess I'll just have to disagree, because I think that can still affect towards the Governor's side, but. One point you didn't hit on, I said would it be better to have that position elected instead of appointed, so we don't have the political? [LR377]

MICHAEL DRAIN: Well, if it was elected, it probably would be more political. I don't know that that part really matters that much. You know, the Attorney General has to be a lawyer, and I don't think whether that was appointed or elected, that would change anything. There's going to be politics there, but there's also minimum requirements there. You have asked about changes. One of the ones that I...or one of the ones I've not heard brought up, which has surprised me a little bit, is broadening beyond the PE requirement without removing it altogether. And I think certainly if you were going to make some sort of change, you could include professional geologists as well as professional engineers, to expand the quantity of potential qualified applicants. They're very similar to professional licensed engineers in terms of technical qualifications. They have an oversight board. They have a code of practice. So it's all very similar. Also you probably could get rid of the, or replace the requirement for five years' irrigation with something like water resources management. [LR377]

SENATOR LOUDEN: Okay. Well, thank you for your testimony, Michael. [LR377]

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MICHAEL DRAIN: Thank you. [LR377]

SENATOR LOUDEN: The next testifier. [LR377]

TOM KNUTSON: (Exhibit 12) Senator Louden, members of the committee, my name is Tom Knutson, T-o-m K-n-u-t-s-o-n, and I'm president of the Nebraska State Irrigation Association, representing them today. We are a surface water association that's been in existence for over 110 years. We represent most of the irrigation districts and companies across the state, which includes over 1,700,000 acres that are operated by 58 irrigation districts and companies. A number of those districts have been in existence since the early 1900s and 1930s. Today's hearing on LR377 is on the issues relating to the Department of Natural Resources. The very first issue that we're very concerned about pertains to the vacancy for the director of the department. That position needs to be filled and we have offered to participate on a committee to assist the Governor in that regard, probably similar to what was done when Roger Patterson was brought in. To our knowledge there hasn't been any movement on the matter. The Governor has called water the issue of the decade, and we know we have some very serious issues in front of us now on a number of a river basins. We believe very strongly that the position needs to be filled as soon as possible. The Nebraska State Irrigation Association stands on its past position that the skill requirements for the director need to remain a professional engineer. Those requirements are critical in the decision making process on water rights for the state of Nebraska. That requirement has been in force since the modern water rights system was established. In 1985, when the first water department was established, it was known as the Board of Irrigation, and their executive was a state engineer. Other states rely upon an engineer to handle the water rights work for their states. The state of Wyoming has a state engineer; Colorado, a state engineer; Kansas has a chief engineer that all deal with the water right matters, and this is the case for a number of western states. Our direct dealings in the last quarter of the century over water issues have been with Colorado, Wyoming, and Kansas, and I expect that's going to continue for some time. The director must rely on his or her engineering and technical

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knowledge, background, training, and experience in formulating and executing water management decisions, which inevitably will impact a large cross-section of people, communities, commercial interests, and environmental resources. More than any other discipline, engineering--not law, economics, or politics--is at the heart of this work assignment. A government-issued license is the means by which professional competence is generally measured. For engineering disciplines, that means registration by the Nebraska Board of Engineers and Architects. The board administers programs which begin with a series of examinations, and follows with additional requirements intended to assure license holders remain competent in their professions and are cognizant of the professional code of ethics. Another issue has to do with handling water right decisions on both surface water and groundwater. This must be done in an open public forum which allow for inputs and technical ideas from all who have an interest and are impacted by any decisions regarding water right matters. Some central system for that open process needs to include the ultimate review of the facts on water rights, and that would be the Department of Natural Resources. A local decision on water right matters could include the local NRD, but some appellate process must exist. And while that could be a local district court and beyond in the judicial system, it would be better served by a technical review process within the Department of Natural Resources, first. The last issue has to do with the funding of the department. There is not adequate funding to do critical studies and investigate proposals for both surface water and groundwater within the department. More funding for technical positions in the department must occur for any decisions to be given back in a timely and responsive manner. I again would say, if the Governor feels that the water is the issue of the decade, then we need to find the people and the money to handle the matter at hand. I thank the committee for your time and patience on this very important topic for the state of Nebraska. I would be happy to answer any questions. [LR377]

SENATOR LOUDEN: Any questions for Tom? Senator Carlson. [LR377]

SENATOR CARLSON: Senator Louden. Tom, in wanting to preserve the requirement

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for professional engineer, how do you feel about Mike Drain's suggestion that it also could include professional geologists? [LR377]

TOM KNUTSON: I guess I'd prefer a professional engineer. I'm open to discussion on it but I'd prefer a professional engineer. [LR377]

SENATOR CARLSON: Okay. Thank you. [LR377]

SENATOR LOUDEN: Other questions? Yeah, I would have one, Tom. As you've mentioned that what they need to do in here, should they be more apt to be a water law lawyer if they're negotiating with these other states on some of it, and it's mostly water nowadays. [LR377]

TOM KNUTSON: Well, and I recognize that there's a point to be made with that statement. My experience through the years, which includes 35 years now--25 in Nebraska--when I first got involved, I dealt directly with the Division of Water Rights in the state of South Dakota. And there was a board of directors for that Division of Water Rights. There was an engineer, a professional engineer that basically made the recommendations to that board in regard to whether a water right should be approved or not approved. I was young. I came in with a college degree in geography and economics, and I didn't have a clue what some of those people were talking about when they got on the specifics of engineering and hydrology. And even if the guy in charge would have been a lawyer, I think he would have been a little bit lost when the testimony was being presented in favor or not in favor of that particular water right. [LR377]

SENATOR LOUDEN: Okay. I guess one more question I'd have along that line. Would it be better to have a person that was a water lawyer and then be able to hire a professional engineer to assist him in a those type of things, or would it be better to have the professional engineer to hire a water lawyer? [LR377]

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TOM KNUTSON: Well, you're probably going to end up with a lawyer involved either way (laugh) with the legal. [LR377]

SENATOR LOUDEN: Well, one way, one would be the boss, I guess, is the way... [LR377]

TOM KNUTSON: Yeah, I understand that, but I think it really comes down to a lot of science and a lot of technology. Mostly science. And I think I'd still prefer the professional engineer. And I think we need to try, like has been suggested that we have that search. I think they're out there. I think it may cost us some money, but then on the other hand we've had some other issues that certainly are scary, too, as far as costing money. So probably that search is needed. [LR377]

SENATOR LOUDEN: And then one other part there. You mentioned the funding. Now, should some of this funding be due for research and that sort of thing, or do we actually need more full-time employees, like I would like to say, down in the trenches, that do the inspection and go out into the field work, more field people? [LR377]

TOM KNUTSON: I think it may be both. I sometimes wonder if we got enough stream gauging going on in the state. I know I'd like to see more of it on the Middle Loup. That's where we get our water. And we used to have some others...we did have some stream gauging on certain locations, but they disappeared due to funding problems between the state and the USGS. And I think that type of science provides us more information so that we can make better decisions, and if we have the people in the localities, like western Nebraska, and Ord, Nebraska, and down at Cambridge, Nebraska, and other places, that can really help us. Because they've got more information, they can provide that technical advice to the director who has to make decisions in that regard. [LR377]

SENATOR LOUDEN: You feel there should be more stream gauges and probably people to look after them, huh? [LR377]

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TOM KNUTSON: Yeah, I think so. [LR377]

SENATOR LOUDEN: Okay. Thank you. Other questions? Thank you...oh, Senator Fischer. [LR377]

SENATOR FISCHER: Thank you, Senator Louden, and thank you, Mr. Knutson. Can you tell me, a professional engineer, say a civil engineer, what's their job? Can you...? They build dams, right? [LR377]

TOM KNUTSON: Yes, they do. [LR377]

SENATOR FISCHER: They build canals which deals with water, right? [LR377]

TOM KNUTSON: Yes. [LR377]

SENATOR FISCHER: Do they have training in the hydrology with ground and surface water? [LR377]

TOM KNUTSON: I think some of them do it. It depends upon their course work. And probably the previous testifier would have been better to answer. I'm not an engineer, but. [LR377]

SENATOR FISCHER: Okay. Okay, I won't follow that line then. Do they have training and skill in dealing with water rights? [LR377]

TOM KNUTSON: Not all of them. But there are a number of them that do. I would say that the pool may end being more not skilled with water rights but yet that's the, basically, as I see it, they'd have to follow the law with what's there as far as the water right laws. They'd learn that. [LR377]

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SENATOR FISCHER: So you're saying they could learn water law in the state of Nebraska in order to interpret and be that lower court when making decisions based on water rights. [LR377]

TOM KNUTSON: They would have to, yes. [LR377]

SENATOR FISCHER: Okay. You're representing irrigators. [LR377]

TOM KNUTSON: Yes. [LR377]

SENATOR FISCHER: Surface water irrigators. [LR377]

TOM KNUTSON: Yes. [LR377]

SENATOR FISCHER: Do you think maybe that respective dealing with surface water irrigation and...I mean, I guess I can see where you would probably want a professional engineer more with the building, the construction that your area deals with. Would...? Am I off-base on that? [LR377]

TOM KNUTSON: Well, I would add, though, that some of the testimony earlier, when you get into situations of actual negotiations between the states of Kansas, Colorado, Nebraska, I think there's a ton of technical discussions that take place at those particular meetings. And if any of us were the directors, sitting there trying to decipher some of the technical information as they get into the acre-feet and the connection between groundwater and surface water, it may take us awhile to get up to speed, whereas probably if we had that knack already as far as understanding, we'd be able to grab onto that and converse with that other individual that has that same talent from the other states. [LR377]

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SENATOR FISCHER: So you're saying the PE requirement, basically what you would be hiring then, in a director, with that requirement, would be the thought process of an engineer, that analytical mind? [LR377]

TOM KNUTSON: Yeah. [LR377]

SENATOR FISCHER: Okay. On another track here, you talked about stream gauging. [LR377]

TOM KNUTSON: Yes. [LR377]

SENATOR FISCHER: Do you know if any of your local NRDs are interested in adding more gauges to different rivers and streams? And have you looked into working with them? I know some of my NRDs are...they're going to put gauges in. So I didn't know if you had done that. [LR377]

TOM KNUTSON: Okay. I guess there hasn't been any discussion that I'm aware of, because it's been mostly a state-USGS program. But it's a good thought. Yes. [LR377]

SENATOR FISCHER: Okay. Just a suggest you might try and work together on that, because I...you know, I'm a firm believer in we need a lot more data in order to make some wise decisions here. [LR377]

TOM KNUTSON: I agree. [LR377]

SENATOR FISCHER: Thank you. [LR377]

SENATOR LOUDEN: Senator Wightman. [LR377]

SENATOR WIGHTMAN: I'm going to leave right after this witness, so I had a couple

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of...one question that I might ask. It seems to me that this job, Mr. Knutson, requires a number of skills. One would be an administrator. One would be some familiarity with engineering, hydrology, mediator, judge. All of these things have been mentioned. And it seems to be that at one time perhaps one might be more important than another, or might bring a number of skills to the position. But to eliminate everybody who's not an engineer, I kind of agree with the testimony of Senator Langemeier and some of the others that have testified, and we would diminish our pool so much that we may not get the best person for the job. And so I guess, to me, it would seem to me that maybe being an administrator is probably the most important position, most important skill that you bring to the job. I think it's important that he have an engineer. I know we're talking about sitting here dealing with Kansas or some other state with regard to our water compacts, but I assume he's going to have his deputy administrator who maybe could be a requirement. That could be the requirement that a Governor sets if we were to have someone with great administrative skills. He's probably going to be sitting at his elbow and would certainly, and maybe doesn't speak with quite the same authority that the administrator, the director does, but he would still be there and probably at the table. Usually in a lot of these, I think the Attorney General is also present. So I guess I would be interested in your comments with regard to the... [LR377]

TOM KNUTSON: Well, I sometimes think we're almost looking for a person that it's, you know, Jesus. But it's going to...we know we can't do that. I think that when we did the search for Roger, we found somebody. And a Roger was all those, I believe. He was well liked and he was a professional engineer. He was a manager. I think there are people out there like that, that are professional engineers. We haven't really tried to seek them out, that I'm aware of. I've had some contacts with a few people, but it gets back to, what's it pay? And then that gets to be a concern because the Governor and the Legislature makes that decision. So we think we know where a number is at, but I don't think it's going to be enough, and that's been discussed earlier. I respect what you're saying, Senator. I just...I think we need to make an attempt to see if we can't find somebody, because I don't think...you can't be changing the law today or before

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January, but we've got some time between now and then. Maybe we would find somebody, and that's why I suggest we need to make a stab at it. Thank you. [LR377]

SENATOR WIGHTMAN: Thank you. [LR377]

SENATOR LOUDEN: Okay, and thank you for your testimony, Tom. Thank you for being here today. [LR377]

BRIAN BARELS: (Exhibit 13) Good afternoon, Chairman Louden and members of the committee. My name is Brian Barels, B-r-i-a-n B-a-r-e-l-s. I'm the water resources manager for Nebraska Public Power District. My background is in biology, and I have a master's degree with emphasis in aquatic ecology. I have worked on river systems and water for the past 35 years, including the Mississippi River, the Missouri River, the Platte River, and other rivers within the Midwest. I've been with NPPD for 31 years, and have held positions in our environmental division and have managed NPPD's irrigation and hydro operations. I am a member of the Water Policy Task Force, and I've been involved in negotiations regarding the Platte River and on Nebraska's water resources and endangered species for nearly 20 years. As you're probably aware, NPPD utilizes the water resources of Nebraska in its generating resource mix. Water, whether it be surface water or groundwater, is an integral part in many types of the generation of electricity for the residents of the state of Nebraska. In Nebraska and many other western water law states, including South Dakota, Kansas, Colorado, North Dakota, and Wyoming, to name a few, the state official making Wyoming regarding surface water permitting, surface water administration, and surface water adjudications is required to be a professional engineer and have practical experience in water or irrigation management. Professional training and practical experience in the engineer field are necessary to fairly and accurately make the quasijudicial decisions required by this subject matter. All western water states recognize that the proper administration of surface water rights require a sound technical understanding of the facts surrounding each water right. We should seek nothing less for the good of all Nebraska citizens. The

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education and knowledge must be based on the principles of hydrology and hydraulics that the background and training has typically come through the civil engineering field. Today, that need for fair and accurate decisions regarding water management is more important than ever in Nebraska. The recent passage of LB962 in 2004 has expanded the Department of Natural Resources' duties from what it did historically in the management of surface water to also include a shared management of integrated water supplies. As a result, the department must not only make technically sound decisions on appropriated and administrating and adjudicating surface water, but also in the development of integrated management plans, the use of water banking, processing complex water transfers, and also in LB962, is the leasing of surface water between different water uses, as well as estimating our future water supplies. The knowledge of the scientific principles associated with hydrologically connected surface water and groundwater which occurs in some manner throughout Nebraska, again comes through education and training in the civil engineering degree tracks of most universities. In a court decision regarding the administration of water in Nebraska, the Ponderosa Ridge case, one of the challenges on appeal was that the statutes impermissibly delegated legislative authority to the director. The court specifically notes in its decision of the requirement that the director be a professional engineer with five years' experience in irrigation work. The question I think we need to make sure we address before we make significant changes is, if that requirement was removed from the statute, can challenge occur to the DNR decisions on a basis of impermissibly delegated authority? The need for a technically trained and practically experienced decision maker in the Department of Natural Resources has dramatically increased over time. For that reason, the qualifications for that decision maker should not change. We believe that the person needs to be a registered engineer and have at least three years of practical water management experience. With respect to the operational aspects of the department, it is important that the personnel have the skills to enable th department to function and decisions to be technically sound and to be made in a timely basis. With regard to the needs of the department from an organizational and staffing perspective, either Mr. Dunnigan, in his present position, or the new director, needs to work with the

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stakeholders to establish the necessary organizational aspects to conduct the department's statutorily mandated work activities. This may include evaluations of field office locations, the personnel necessary for fully appropriated studies, intermanagement plan development and monitoring, transfers, leases, water banking, which is coming down the road, and other permitting activities within the department. The last item that I would like to touch on is for the need for water planning to meet the future needs of the state. Those planning studies need to occur and to continue to provide appropriate management of the state's water resources and its ability into the future. Again, thank you for holding this interim hearing on this important subject, and I'd be glad to address any questions you may have. [LR377]

SENATOR LOUDEN: Any questions for Brian? On your last statement, then, are you saying, Brian, that you think there needs to probably be more funding for the Department of Natural Resources? Is that what you're...? [LR377]

BRIAN BARELS: I think to a certain degree. I think, yes, there's a number of important activities that are undergone, and not only do they have to be completed, they need to be completed in a timely manner. It doesn't matter whether your business is an irrigator and you want to transfer water to another field, or if you're an industry that wants to bring economic development to the state of Nebraska. The decisions regarding water and how you're going to get it need to be made in a timely basis so those folks can move forward. We can't take two years to decide if it's okay to transfer the amount of water. So you have to look at what the requirements are for the department to accomplish and provide adequate staffing, that those decisions can be made in a timely basis. [LR377]

SENATOR LOUDEN: Okay. One other question. You mentioned in your testimony that you mentioned the states that the official making the decision of surface water is a professional engineer. Some of these states, like Kansas, that's in the Department of Agriculture, they may...do they have someone over them before they make that

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decision, or how does that work? [LR377]

BRIAN BARELS: I think in those cases they are the decision maker. They may have a director of the department, but the decision that's made and gone forward with is the decision of that engineer. [LR377]

SENATOR LOUDEN: Now, do they make the decision or do they make recommendations? [LR377]

BRIAN BARELS: They make the decision. [LR377]

SENATOR LOUDEN: Okay. You mentioned South Dakota there, and I was wondering, in some of our material we have South Dakota, I didn't think, was mentioned. Are you familiar with how Arizona does it? [LR377]

BRIAN BARELS: No, I'm not. [LR377]

SENATOR LOUDEN: Okay. Other questions for Brian? Senator Fischer. [LR377]

SENATOR FISCHER: Thank you, Senator Louden. Brian, you mentioned a court case and that it was specifically mentioned in that court case that Nebraska's director was a PE with so many years of experience in irrigation. Are you saying or are you implying that if we change that, then every decision by DNR is going to be challenged? [LR377]

BRIAN BARELS: I'm not suggesting that. What I'm suggesting is that the expectations and experience of the decision maker are critical in establishing those initial decisions based on scientific, technically supported facts that go forward through the court system. [LR377]

SENATOR FISCHER: Are other decisions made by state agencies on scientific facts

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that would go forward? [LR377]

BRIAN BARELS: Um, yeah, I think there are probably, to some degree. I think of the Department of Environmental Quality is one. I think each agency deals with some of those facts in different ways. You know, to submit many applications in today's age to the Department of Environmental Quality, it's got to be submitted by an engineer. We've talked about the Department of Roads and the role of the director in that case. And in all likelihood, there are aspects that the Department of Roads must do and probably be submitted to the federal government, and my guess would be some of those must come from a certified engineer. It doesn't necessarily mean the director needs to be that person, and that's not what my testimony has said. My testimony has said the decision maker needs to be a professional engineer. [LR377]

SENATOR FISCHER: So are you saying the director of DNR doesn't necessarily have to be the decision maker? [LR377]

BRIAN BARELS: What I'm saying is, you could have two positions, as has been discussed by previous folks and questions that you've asked, experienced from other states. There can be a state engineer and there can be a director of the Department of Natural Resources. If Nebraska so chooses that they be one and the same, then that position should be a professional engineer. If Nebraska wants to delegate that authority to a state hydrologist, whatever...a state engineer would probably be a preferred terminology, then that position should be a professional engineer with the experience necessary to understand and make sound technical decisions. [LR377]

SENATOR FISCHER: Okay, thank you. [LR377]

SENATOR LOUDEN: Seeing no other questions, thank you, Brian, for your testimony. [LR377]

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JOHN MIYOSHI: (Exhibit 14) Chairman Loudon and members of the Natural Resources Committee, my name is John Miyoshi, spelled J-o-h-n M-i-y-o-s-h-i. I am the general manager of the Lower Platte North Natural Resources District located in Wahoo. Our district has a close relationship with the Department of Natural Resources, constantly working with programs and staff members from DNR. Four years ago, I worked with a three-member committee who reviewed the use of information technology at DNR, and made recommendations to then-Director Roger Patterson, and received an inside look at a key portion of the department. Our NRD's recommendations to improve the structure and responsibilities of DNR are as follows: 1) changes to upper administration, (a) remove the engineering requirement from the director's job description. This is a politically appointed position which can change with each election. It is very difficult to find a candidate who meets all the listed requirements and has the skills to manage a department with all the responsibilities DNR has. There are many experienced qualified candidates who have degrees in business, law, geology, natural resources, or engineering that would be an asset to Nebraska in the DNR director's position. Item (b): Require that one of the top three positions at DNR meet the engineering requirement currently placed on the director position. We much prefer to see a nonpolitical appointee who would likely remain for a number of years as our engineering expert at DNR. Item (c): Create a position which reports directly to the director of DNR, titled "state hydrologist." Water is the issue of the era, with DNR often sitting as judge and jury. The director should have a staff member who can devote scientific time to solving and advising on these problems. The second item is staff changes. The department currently has responsibilities in the Republican, Platte, Niobrara, and Missouri basins, and adequate staff to handle one or two of these issues. If we expect each of these basin's problems to be resolved, adequate staffing needs to be provided. Other programs are also suffering from the lack of adequate staff time to fulfill DNR's mission. DNR has done a good job of setting their internal structure to handle the resource challenges of Nebraska. I see their staff rallying and united to make Director Dunnigan successful. I hope the Natural Resources Committee will consider the changes we have suggested above to keep DNR as our natural resource leader in Nebraska. [LR377]

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SENATOR LOUDEN: Thank you. Questions for John? Senator Fischer. [LR377]

JOHN MIYOSHI: You don't have to play "stump the NRD manager" if you don't want to. [LR377]

SENATOR FISCHER: I'm going to have you settle everything once and for all, okay? (Laughter) You talked about that, you know, the history is the head of an agency changes with each election, and we all know that the majority of code agency heads are political appointments. They report to and work for the Governor, and that is his prerogative, to appoint those heads of agencies. Do you know what the history is for the Department of Natural Resources? When we get a new Governor, do we get a new director? [LR377]

JOHN MIYOSHI: If we go back and look at history, we did have the combination of Department of Water Resources and the Natural Resources Commission into DNR. In the wisdom, our past governors have shown they have not had a large turnover in those areas. They've put some, I believe, very good people in those positions, and most of the governors have continued those particular people. [LR377]

SENATOR FISCHER: Wouldn't you say then that having that PE requirement has made those directors good people and qualified people, and that's the reason the Governor hasn't changed it. [LR377]

JOHN MIYOSHI: I believe that there's a larger pool we can...there is more opportunity there to get the right person in the job. [LR377]

SENATOR FISCHER: You guys all have that same line: If there's a larger pool, we have the--yeah, I'm sorry to pick on you, but, you know, you have the same line--and we have the larger pool, there's more opportunity. Did you have a briefing beforehand? [LR377]

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JOHN MIYOSHI: No, I think it's something that makes sense. [LR377]

SENATOR FISCHER: I'm picking on you. You don't have to answer. I'm just picking on you. [LR377]

JOHN MIYOSHI: Okay. [LR377]

SENATOR FISCHER: You talked about the state hydrologist who reports directly to the director of DNR. That was one of your suggestions that you brought up. Would that hydrologist then make the judgments, make the decisions? [LR377]

JOHN MIYOSHI: Well, again, that would be up to the director, but by statute they have the authority to name the hearing officers that hear each individual... [LR377]

SENATOR FISCHER: Currently. [LR377]

JOHN MIYOSHI: Yes. To hear the individual cases that come before DNR. When Ann Bleed was assistant director, of course, she had very good experience in hydrology, and often was the one that would oversee those type of issues. [LR377]

SENATOR FISCHER: So if you have these two people then, if you have a director who doesn't have to be a PE, and you have the state hydrologist who would be an engineer then... [LR377]

JOHN MIYOSHI: Who could or might not be a PE. But if the third position would be the assistant director, I believe really one of those three people, you really want to have that engineering requirement sit with one of those top three people. [LR377]

SENATOR FISCHER: So, basically, we're saying we all realize the importance of

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having an engineer in the Department of Natural Resources who has the ultimate responsibility and authority to make decisions, but we just don't know if we want him to be the director. [LR377]

JOHN MIYOSHI: Correct. That's my testimony. [LR377]

SENATOR FISCHER: Okay. Interesting. Thank you. [LR377]

SENATOR LOUDEN: Senator Carlson. [LR377]

SENATOR CARLSON: Senator Louden. John, in looking at your recommendations here, it's going to be an increase in staffing, and at the executive level, and that's more money. And I've said before, I'm not necessarily opposed to that. If we look at the state as a whole, and we don't have more money, then in order to do this we're going to have to reduce expenditures in some other area, and it might be education. It might be roads. It might be law enforcement. It might be Medicaid. It might be any of several other areas, because this is that important. Now, and I'm not necessarily disagreeing with you, but you are saying we're short on staff; we need to ramp up. Now, it seems to me like if we go back to--and Roger Patterson's name has been mentioned several times, and I have nothing but admiration for him; I don't know anything bad to say about Roger Patterson--but that position ought to be the one that gets the Legislature to fund more money to look forward to expand to take care of these needs, and that wasn't done. [LR377]

JOHN MIYOSHI: I don't think we'll ever see that happen. The director is an appointee by the Governor and needs to dictate what the Governor says. You know, they're not open to make budgetary decisions without the Governor's discretion being involved. And that's why I think it's up to us, outside of state government, to come in and tell you what we see from the outside. [LR377]

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SENATOR CARLSON: And so the director doesn't have anything to do with long-range planning in the department or what's necessary from a staffing standpoint. [LR377]

JOHN MIYOSHI: Of course, he works with the Governor and at the discretion of the Governor, so he needs to work with the Governor on those programs. [LR377]

SENATOR CARLSON: So then the Governor hasn't done his job? [LR377]

JOHN MIYOSHI: Well, the Governor sits kind of like you, in a pretty tough spot with a limited pot in deciding where the money goes. What we do know is Nebraska spends about 1.5 percent of its budget on environmental programs. And for a state so dependent on water and environment for the livelihood of our state, that's a pretty small investment by our state. [LR377]

SENATOR CARLSON: Well, I gave you tough questions, but thank you for you answer. [LR377]

SENATOR LOUDEN: Other questions for John? Thank you, John, for you testimony. Thank you for being here today. [LR377]

JOHN MIYOSHI: I'll get out while the going's good. [LR377]

SENATOR LOUDEN: Next testifier. [LR377]

MIKE DELKA: (Exhibit 15) Mr. Chairman and members of the committee, my name is Mike Delka, M-i-k-e D-e-l-k-a, and I'm the manager of the Bostwick Irrigation District in Nebraska. Our district serves approximately 22,935 acres in the counties of Harlan, Franklin, Webster, and Nuckolls County in the Republican Basin. Our project has been operating since 1949, and our water rights in the Republican date back to 1946. I come before you because the issues in our district has been extremely difficult to deal with for

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some years. We first spent approximately ten years dealing with the Bureau of Reclamation to renew our contract with the district operation and repayment. The contract is a 40-year contract, and we have a financial obligation to pay the Bureau of Reclamation. In 2006, we paid the federal government \$94,101 for construction repayment, \$47,620 for dam charges, \$20,523 for the Bureau of Reclamation, and then \$2,294 for distribution reserve funds and \$4,587 for supply reserve funds. Lastly, and most importantly, we have an obligation to provide a water supply for our water users who pay the tolls. As you know, the last number of years there has not been a water supply that allows us to accomplish the goals of our district. The Legislature has stepped in and provided the needed financial relief so the district could meet its contractual obligations with the federal government. That relief is very much appreciated because we could have been in default with our federal contract. We recognize that the help was coming because of the water obligations to Kansas and the compact between the states. I have attended compact meetings, and they are very technical in nature and they open your eyes in a hurry to what we have before us. This brings me to the issue of the director of the Department of Natural Resources. We do not have one and we need one now. We need a director who understands the relationship between groundwater and surface water, and what it will take in the various basins to keep this water supply sustainable for all users, both now and in the future. We need a director that has the qualifications to deal with these technical issues. We do not need to change the qualifications. We need a director now that can deal with the issues now. We also need a director that can deal with the overriding issue, and that is, who should be regulating groundwater in our state? If our groundwater had been regulated properly in the Republican Basin, with everybody being metered and having an acre allocation since the 1970s, I'd be willing to say that we would not have Kansas on our back over a shortage of water, and surface water users would have a more sustainable supply. Lastly, I understand that the testimony was provided this last session by some implying that irrigation districts in the Republic Basin may soon be out of business. I do not feel that is a true statement. We have a contract to honor and an obligation to our water users to provide a water supply that they have paid for, and we will honor our contracts.

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I thank you, Mr. Chairman and members of the committee, for your time. I'd be more than happy to answer any questions. [LR377]

SENATOR LATHROP: Questions for Mike? Senator Fischer. [LR377]

SENATOR FISCHER: Just a short question, I think, Mike. You made the comment, on the second page of your testimony here, that if the groundwater had been regulated properly you don't think we'd have the problem we have now. Obviously, I guess I think you implied a jab at the NRDs on that one. Did you? [LR377]

MIKE DELKA: I think what we imply is that there seems to be a disconnect in controls between surface water and groundwater. In our basin, anyway, we've had a moratorium on surface for quite awhile. And it was quite a struggle for the NRDs to impose the moratorium and get the controls they needed. And even to go back, most of them will say that they split their allocations out between the years of, I think it's '98 to 2002. Is that correct? Senator Christensen has been fairly involved, and, too, has Senator Carlson. Back that up, and you probably have a point in time that, when they recognized the problem, that if there would have been quicker actions taken or there would have been the mechanisms to take quicker actions between all of the players, that there should not have been the development that rushed in there at the last, and that really has created part of what seems to be the problem. [LR377]

SENATOR FISCHER: Do you think if...I'll turn the tables on you. Do you think if there had been quicker action taken by DNR and possibly not granting so many surface water rights in various basins around the state, we wouldn't be facing problems in many areas? That perhaps surface water rights were granted that shouldn't have been granted because possibly data hadn't been collected or rights hadn't been kept track of? I don't want to put the blame on anybody. I'm hoping we can all work together on this. [LR377]

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MIKE DELKA: No, that's fine. [LR377]

SENATOR FISCHER: But I guess I...you know, it disturbs me that you would make a comment like that, because I can turn it around, and on the other side here, too. [LR377]

MIKE DELKA: I'm not going to propose a clean-hands concept on anyone. There, in our basin, which I'm more familiar with than, say, the Platte, where we have...you know, prior to development, surface water, we've had 400-and-some-thousand acre-feet passing by where we have our reservoir. The impacts to turn that down to 40,000 or 50,000 acre-feet came from somewhere, and it really wasn't...some of it was anticipated, some of it wasn't. Some of the surface rights, possibly out west, maybe there was not a sufficient supply for some of those. With the stream flow depletions that have been documented with the projections that are out there for the future, that's really...when they seen there was a problem, they stopped. But they didn't stop drilling the wells at that time. We didn't have a consensus of approach. We had more of an embattlement at that time, than anything. There was a certain degree of denial. And I think there has been a lot of been mentioning here with science, and there wasn't...there was...science goes both ways. [LR377]

SENATOR FISCHER: Do you think there's enough funding for the department, that they can do the job they're supposed to be doing right now? [LR377]

MIKE DELKA: I'd rather not comment on that... [LR377]

SENATOR FISCHER: We'll talk. [LR377]

MIKE DELKA: ...because there's always, like they were talking stream gauging. [LR377]

SENATOR FISCHER: Yeah. [LR377]

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MIKE DELKA: And then you're always wanting more information. As soon as you get a little more information, then it always leads to more questions about more information. If we're talking about policing, trying to be everywhere at once is hard. How much is enough? How much is enough for a local police force? Can you stop every domestic issue that's out there? [LR377]

SENATOR FISCHER: But wouldn't you say that, possibly because of budget constraints, the department has maybe had most of their focus on a few basins across the state; and others, the focus isn't there and records haven't been kept? Or do you feel qualified to answer? [LR377]

MIKE DELKA: I don't feel qualified to answer that. I don't know what records they have kept and haven't kept. So for me to comment on that would be speculation. [LR377]

SENATOR FISCHER: Okay. Thank you. [LR377]

SENATOR LOUDEN: Mike, I guess I have...as I look at your testimony here, down here towards the bottom part of the first page, or something, you mentioned that we needed a director and we need one now. I guess, what is it, I need my money and I need it now? What...in other words, you think the qualifications should stay like they are? Is that my understanding from your testimony? [LR377]

MIKE DELKA: I would say that. Yes. I was very impressed with what Brian...when you guys were asking him questions, if he wouldn't have the background that he had and the experience he had, I don't know that he could have accommodated your answers the way he did. [LR377]

SENATOR LOUDEN: Well, we're pretty sharp to ask them kind of questions, then. (Laughter) What about the, you need a director to deal with the overriding issue about

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who should be regulating groundwater in our state? Well, that's been delegated to the NRDs to regulate the groundwater. Now, are you telling us that we probably should be setting up some type of a person that has authority over surface water and groundwater, both? Is that where you're going? [LR377]

MIKE DELKA: I believe that all of the NRDs that have spoken today have mentioned the integrated management plans that were developed jointly between the NRDs and DNR, and to...for him to sign off on that would have to require an understanding to a certain degree. And the more he would understand that, the better off I think we would all be. [LR377]

SENATOR LOUDEN: Do you feel that the Department of Natural Resources have had people on there that understood the regulating of groundwater and surface water, both? I mean, do you feel that they've been doing their job along that line already? [LR377]

MIKE DELKA: They've done...they've got people in place. They've...I mean, we've all talked about the water model, the modelers that are on staff, the engineers that are on staff. There's a lot of science out there. It's at what level do you administer it? And that's a decision that has to be made and placed in on science. Again, I can only speak for our basin. We have districts that, until this year, the last couple of years, we've had no water. What little bit we have, we have assigned agreements with the state. Though, what we were missing, nobody came forward to offer us anything for. The...so we're trying to, I guess, evolve along around with everything else, and it's kind of...I don't know. I don't want to get too complicated, I guess. [LR377]

SENATOR LOUDEN: Okay. One other I noticed here, you said that we need a director understands relation...yeah, be surface water, and you're down there in the Republican River Valley. You have the relationship between groundwater and surface water, we need a director for that. The way that lawsuit went a few years ago, it looks like to me we need a attorney general that understands that relationship. Wasn't that more the

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problem a few years ago is what the Attorney General that was defending you down there couldn't understand the difference, the relationship between surface water and groundwater? [LR377]

MIKE DELKA: I don't know that I want to respond to that, to tell you the truth. (Laughter) [LR377]

SENATOR LOUDEN: Okay. You don't have to. [LR377]

MIKE DELKA: There's not a good answer to that. Okay. [LR377]

SENATOR LOUDEN: Thank you anyway, but and thank you for your testimony today. [LR377]

MIKE DELKA: Thank you. [LR377]

SENATOR LOUDEN: Next testifier. [LR377]

ROD IMM: (Exhibit 16) Senator Louden and members of this committee, my name is Rod Imm, R-o-d I-m-m. I'm the manager of the Ainsworth Irrigation District in Ainsworth. The Ainsworth Irrigation District delivers irrigation water from Merritt Reservoir southwest of Valentine to about 35,000 acres of farmland near Ainsworth. Our supply and distribution system is located in Cherry, Brown, and Rock Counties in north central Nebraska. For over 40 years, the Ainsworth Irrigation District has worked closely with the former Department of Water Resources, and now the Department of Natural Resources. As in the past, many complex issues face the state of Nebraska, the Republican, Platte, and Niobrara Rivers, to name a few. It seems these issues have become more extended with the increasing demand put upon this state's limited water supply. Due to the scope and nature of the Department of Natural Resources, we believe that only a qualified licensed engineer has the qualifications to be the director of

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this agency. Over the past few years, the department staff has been cut to a bare minimum, putting an overwhelming work load upon the existing staff. In some cases, water right transfers have taken two or more years to complete. We respectfully ask this committee to see to it that the director of this agency receives compensation comparable to other professional engineers, and that funding is available to keep the department fully staffed as that director deems necessary. We also believe that with the imminent water issues facing this state a director should be appointed by the Governor very soon. On behalf of the Ainsworth Irrigation District, thank you for the opportunity to provide testimony to LR377. [LR377]

SENATOR LOUDEN: Any questions for Rod? Well, I think you're... [LR377]

ROD IMM: I'm glad Senator Fischer's not here because I'm sure she wouldn't give me a break. [LR377]

SENATOR LOUDEN: Yeah. I was going to say, your senator left. Do you want to (laughter) hurry up and get out before she gets back or what? [LR377]

SENATOR HUDKINS: I'll take her place for this one. [LR377]

SENATOR LOUDEN: Okay. [LR377]

SENATOR HUDKINS: You say in the last part of your testimony that water right transfers have taken more than two years to complete. Now, what's going on? [LR377]

ROD IMM: Well, in some cases I think that some of their...I must say, they have very...as I've said in my testimony, we've worked with them for many, many years, and they have very good people there. And I think...and I can't say that if it's...I know they've moved people around to deal with some of the other issues that are going on, like the Republican Issues. And it moved people out of water right transfer-related areas, and

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it's been kind of a problem, and I think it's been a problem for them. [LR377]

SENATOR HUDKINS: So you're saying it is a matter of personnel. You get someone started, and then they move to someplace else and you start over. [LR377]

ROD IMM: I think that some people have been moved to other ares of the department and I believe that...I strongly believe and I'm not a person that believes in big government at all. But I believe this agency does need the staff to make it run like it should, and get their business done in a timely manner. [LR377]

SENATOR HUDKINS: Absolutely. [LR377]

ROD IMM: I think Brian is doing a very good job down there, and we would support him if he would desire to become the director. [LR377]

SENATOR HUDKINS: Thank you. [LR377]

SENATOR LOUDEN: Well, thank you, Rod, for your testimony today. [LR377]

RODD IMM: Thank you. [LR377]

SENATOR LOUDEN: Next testifier. Go ahead. [LR377]

JIM MEISMER: (Exhibit 17) Senator Louden and members of the Natural Resource Committee, my name is Jim Meismer, J-i-m M-e-i-s-m-e-r. I'm on the board of directors of the Twin Platte Natural Resource District, and I'm also a chairman of the legislative committee for the Nebraska Association of Resource Districts. And I'm here to present some comments today on LR377. First, I would like to thank you for coming to North Platte to take comments on this issues. I appreciate that the Legislature reaches out to the constituents and holds hearings in western Nebraska. I'm going to skip a couple of

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these paragraphs because I think in my handout that you can read them, but they've been covered rather thoroughly so far today. I'm going to skip down and I just want to comment that under current law, many qualified candidates are eliminated from consideration because they do not hold an engineering degree and because they do not have five years of experience with irrigation work. This department is not only about engineering and education, but includes a wide variety of resource management objectives, such as legal economic, and public education aspects. Although there are more water issues to deal with since the passage of LB962 in 2004 and the passage of subsequent cleanup bills, and much of the engineering and hydrology work is not being done in conjunction with other DRN staff, the private sector, and engineers from NRDs and other organizations. We see as the skill sets needs for the director do not solely focus around engineering. The role has become focused on water resource planning, funding issues, and facilitating and mediating disputes over water resource management and use. There is much less focus on engineering work for the director as many others can perform this task. The director needs to have good skills and personnel management, communications, business management, knowledge of water law, and the ability to communicate with people all across the state. The best person to fill this role may or may not be an engineer. The following paragraph is a statutory requirement for the state engineer which heads up the Department of Roads. you will note that the engineering degree is not listed. Rather, please note that in subsection 5 that the director has the ability to deploy engineers and others for proper transaction of the business of the office. We believe the Governor should have the ability to choose from a wide range of qualified candidates to run for this department. Eliminating the engineering requirement does not preclude an engineer from being appointed to the position. The only thing it does is to make them compete with other qualified candidates for the position. Candidates for this position should not be limited to a protected special class. I would like to address a few of the other related issues to the interim study. We would support additional funding and staff for the department. There is a lot of work involved in developing water management plans in the Republican, Platte, and Niobrara River Basins. There may not be enough staffing at the state level to assist all these

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basins in a timely fashion to complete all the work that needs to be done. The Natural Resources Commission also has a lot of projects and programs to implement. Many of these programs that are underfunded, including the development fund used for flood control purposes. We are fortunate in Nebraska that we have not had the sever flooding that has occurred in Iowa and Missouri this year. Many of the existing flood control structures have protected communities across the state. However, there are a lot of communities that still need protection. We would like to work with the Legislature and other interested parties to assure funding is available to construct and maintain these critical structures. Thank you for your time and consideration, and we urge the committee to move forward on these changes to the director's qualifications and consider making other changes in the department. [LR377]

SENATOR LOUDEN: Okay. Questions for Jim? Senator Carlson. [LR377]

SENATOR CARLSON: Senator Louden. Jim, appreciate your testimony. And you're not the only one that's indicated this, but this increase in funding or adequate funding comes up consistently. Would you support an occupation tax on irrigated land across the state to properly fund the DRN? [LR377]

JIM MEISMER: I think those are options, but I also think that the state has an obligation, as the Governor has said in many occasions, that water is the issue right now for he has even referred to as the century. And with some of the compacts, the cooperative agreement, the compact on the Republican, the South Platte River compact, all the regulations that are put on the state. I think the state needs to step forward with some of this funding. The NRDs are responsible for some of it also, and I think if we work together, we can achieve the goals. But some NRDs have...all NRDs have a taxing authority, but we have a limited base, and some NRDs it's how much money we can raise. And so we have funding limitations. But I think the state needs to address some of the issues that it has signed on to address, and some of the agreements that it's signed, particularly the copy of the agreement. [LR377]

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SENATOR CARLSON: Then just to follow up on matters of water, across the state, would you say every citizen needs to share that responsibility or perhaps irrigation, a bigger part because seemingly they have more to gain and more to lose by the right to use water. [LR377]

JIM MEISMER: I don't think it's unfair to ask citizens of the state of Nebraska to share in the responsibility. Everybody in the state in some way or another benefits from the water in the state of Nebraska. Irrigation, obviously, is a big user of water. The consumptive uses of water, it's not just the water pumped, it's the consumptive use of the water. But we are in the process now through our integrative management plan to try to make up those loses that have occurred since '97. So we...I think the whole state uses it, the whole state needs to take care of it and help pay for it. [LR377]

SENATOR CARLSON: Thank you. [LR377]

SENATOR LOUDEN: Well, thank you for your testimony, Jim. [LR377]

JIM MEISMER: You're welcome. Thank you. [LR377]

SENATOR LOUDEN: Next testifier. How many more are left to testify out there? Just two? Okay, good. [LR377]

RON WOLF: (Exhibits 18, 19) Mr. Chairman, members of the committee, my name's Ron Wolf, R-o-n W-o-l-f. I work for the Twin Loups Districts near Scotia, Nebraska. Live on the edge of a swamp about half way between North Loup and Scotia. Bear with me, discussed with a couple of senators here my public speaking training was gained over a 21-person party line, (laughter) so we'll go from there. Wanted to address the funding issue, I guess, first for the department. Rod Imm talked about two years to get water transfers accomplished. Finding the same thing with water rights applications, it's due to

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lack of funding, I was told, and the necessity to move water right administration people to other duties. That tells me you're short of crew, you're short of resources, you're short of money. And I think it'd really, really enhance the well-being of this state to have these matters handled properly. Be these appropriations, granted, denied or whatever, because with changing status in river basins, when you delay applications, you delay development. So you've got people out there willing to risk some money may be able to get it now, but they don't know the status of the ability to utilize water for that development. One year, two years, three years, it's pretty hard to plan a business out into future with this kind of a delay. I think the funding issue is very important. I can't speak to the structure and the responsibilities within the department. I dig ditches for a living and that's about the limit of my capabilities, so. The department of directors qualifications I would like to speak to a little bit. I believe Mike Jess was appointed I believe in 1981. We've had three directors since then: Jess, Patterson, and Bleed. That's a pretty good stretch for three people. It tells me we're not missing very far on this requirement to hold this job. I know there's a perceived need for a larger pool. I do believe some recent, in the past five years, eight years, court cases that had to do with coaches I think at the university. Probably requires that the Governor announce an application for that job. And this I think probably knocks your pool of applicants down because if you're in a position or are placing that position in jeopardy when it becomes known that you may be interested in a another job, that's not a good situation. You lose the ability to talk to some pretty good applicants. I don't know how you bypass it. It's my understanding that probably is a legal requirement. Unless you would utilize some type of search committee who could speak to these applicants until you had something firm for them and the Governor to go on. I think with the problems in this state right now, I don't think this is the time to dumb down the job. I've worked with some extremely intelligent attorneys. I think you've got enough attorneys involved in water right now for about four states. I've worked with some super sharp engineers, hydrologists. We've got this qualifications; it's been working. Rather than and urgent need for change, I see an urgent need to get somebody appointed, give this department some leadership. I think we're in trouble of the Republican. I think there's possibilities of other problems out there

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the we may not even be aware of due to the lack of funds, staff, and maybe some director. So I would urge this committee do what you can to get somebody to pilot the ship. I think this drifting directionistly is not a good thing. The engineering qualification also, I've heard people mention the Department of Roads. I don't know if the Department of Roads does much negotiation on compacts with other states. I think the Department of Roads responsibility tends to quit at the yellow line there at the Missouri River. Or when you appoint someone to direct this department, they're into negotiations, they're into different problems than the Department of Roads. The responsibilities of this director lop over into three other states, plus the Missouri Basin. The ability to understand these technical matters, even with the guidance of an excellent staff, it's still the director that signs the orders and that's where the ultimate responsibility lies. I think...I guess to be blunt, opening the pool to me is not necessarily an asset. I don't need the Governor's buddy running it. I'm not hunting a buddy. I want somebody that will deal with the science, deal with the facts, make straight announcements and negotiations, and issue orders that are within the boundaries set by the Legislature. I have also been asked to present written testimony for Mr. Cramer, a director on the Frenchman Cambridge Irrigation District who had to leave a little bit ago. So I thank you for your time and your consideration, and I held you past 4:00, Senator. I would answer questions, if I could. [LR377]

SENATOR LOUDEN: Yeah. Is there questions for Ron? Senator Hudkins. [LR377]

SENATOR HUDKINS: Mr. Wolf, thank you very much for coming today and for presenting Mr. Cramer's testimony as well. I've been keeping a little tally here as to who's supporting relaxing the requirements and who isn't. And I want to know if it's just coincidence or what, but it seems to me that all of the NRD representatives today have said, yes, we could relax those requirements, we don't need the professional engineer. And then we have all of the irrigation people are saying, no, we need that professional engineer. Do you have any comment about the two very distinct groups? [LR377]

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RON WOLF: First, let me explain, I am they and they are we. (Laugh) I own ground that hold surface water appropriations. I also own a little ground that's well irrigated. I also have a patch that's conjunctively used. I can't shoot myself in the left foot and help my right foot. And I think you'll find that is in most places across the state, we are they. I do think there may be some feeling out there. Oh, I wished I'd have let Ron Bishop go before me. (Laughter) I do think there's some feelings out there that the NRDs may feel the need for this change in the hopes that they may get some more amicable rulings or decisions than what may have possibly been happening with the last director or two. But again, there are files of administration. Patterson was a good politician. He was a good people person. He was also a very competent engineer. Jess was more direct, more hearings. If there was a problem, he brought it to head. You had a hearing, there was an order issued, and you can appeal it. So there are styles of administration within this department that's going to depend on the person themselves. As long as it's based on the best science and within the legal parameters set by the Legislature, I think we can live with it, Senator Hudkins. But I think it's probably more than coincidence that the split happens to be somewhat as you indicated. You might ask the next testifier what the reason is for that, I believe. [LR377]

SENATOR HUDKINS: Well, I've got a couple of more questions for you. [LR377]

RON WOLF: Okay. [LR377]

SENATOR HUDKINS: You said, and other in the afternoon said, that we need more funding for this department. I don't think any of us here would disagree with you. But if you talk with people from roads, they need more funding. You talk with people in education, they want more money desperately. You talk to social services, they are just going from hand to mouth literally, they need more money. Everybody wants more money. Everybody does need more money. Where do we get it? [LR377]

RON WOLF: I'm already smoking two packs a day, so I'm doing my part (laughter). I

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don't have an answer to that, Senator Hudkins. [LR377]

SENATOR HUDKINS: Thank you for your honesty. [LR377]

RON WOLF: Just don't raise my taxes to get it. (Laughter) [LR377]

SENATOR HUDKINS: That's it. That's it. And you know what, this is probably my last official function unless I go out to Scottsbluff and wherever else we're going because I'm term limited out. I'm not going to have to deal with this next year, and you're going to have a lot of new people--20 of them only have two years of experience. There's going to be at least 15 more that would be elected this November for the first time. That's a lot of new people. And I've been there 16 years. I'm the oldest...well, tenured, on this group. We have had these problems for 16 years. We haven't really fixed anything. If it would have rained in the last however many years in the southwest part of the state, maybe they wouldn't have been quite so serious. But nothing has changed. [LR377]

RON WOLF: Senator, may I use one of Senator Fischer's techniques? Let me flip this around. Maybe it was time that it didn't rain because I think we've been building problems in some of these basins. As I say, there may be problems we built into the system that haven't shown up yet and we don't even know it. That's definitely possible; I think in places, probable. But if you read Willis' diaries back in the '30s, he was the head of roads and irrigation at that time, spoke of, folks, it's about time we cut down some of this on the upper Platte. There's some work been done in the Republican and I think I'm like a lot of people in Nebraska. It's working for me, I know we need to cut down, but, boy, me and that boy could use that one more well over there. Then we'll start cutting down. And that's people. I don't think...I see some pretty good legislatures (sic) here. You're not going to change people. It's the tragedy of the commons, if you're familiar with that. We're repeating history that was learned in England over 450 years and we're doing the same thing. So maybe in the long term, not our generation, if you will, maybe bringing this to some full realization and getting some solutions started might in the long

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term not be all bad. [LR377]

SENATOR HUDKINS: And earlier when Mr. Adams was here, he spoke for the Nebraskan First, who is a surface water irrigators group. [LR377]

_____: Groundwater. [LR377]

SENATOR HUDKINS: Groundwater, I'm sorry. Groundwater, and according to the groundwater people, not just Mr. Adams, but according to the groundwater people, you know they should be entitled to sink their wells, however many and wherever they want to. If you're from a surface water irrigators group where you should be able to take water out of the rivers or whatever, and if the doggone groundwater irrigators wouldn't have sunk so many wells, there would be more water. So we're all in this together. [LR377]

RON WOLF: That is part of the popular myth, conception, if you will, and I'm well aware of your--I don't know whether it was a warning on the new senators coming in. But the lack of background is really hurting the process as I see it now because this is about all I do is water and I don't even understand it that well. I don't know how you people keep up with all these issues. But there's a conception in this state, in places I think more prevalent than not, that I own that water under my ground. That is not true. Water in Nebraska is an asset of the state. The second thing I hear is well, we've got to protect these well water rights. Folks, there ain't no such animal. There are more uniforms running around out there than there is well water rights in Nebraska. When you punch a well, what you've done is utilized a permit which grants you the right to construct a means by which you can withdraw part of the state's asset and share either the benefit of it or the shortage thereof with your neighbor. When you get into surface water, you're into property now. There are property connotations to surface water. That may be part of where we're seeing the pros and cons of how the departments run between surface water users and NRDs. Please, as you consider this, keep in mind, and I will certainly make a public apology at the place of your choosing if you can show me in the statute

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there is no surface water right connection to a well. There is no such thing as a well water right. You have a well water permit, which is a construction permit allowing you to share the shortage with your neighbors. When I've got my surface water appropriations, I'm greedy; I don't want to share with you. That means you want part of what I've got. When we put that well down, know the conditions. I'm going to share with Ray (phonetic) to north of me and I'm going to share with Merlin (phonetic) to the east of me. That's the way it works. [LR377]

SENATOR HUDKINS: Thank you very much, appreciate the testimony. [LR377]

RON WOLF: Are we done with our sidebar conversation? [LR377]

SENATOR HUDKINS: We're done, we're done. [LR377]

SENATOR LOUDEN: Any other questions? Thank you for your testimony, Ron. [LR377]

RON WOLF: Thank you very much for your patience. [LR377]

SENATOR HUDKINS: Those were all good questions. [LR377]

SENATOR LOUDEN: I wondered. It's up to you guys, it's 5:00. (Laugh) [LR377]

SENATOR HUDKINS: I don't care. [LR377]

KENT MILLER: (Exhibit 20) Senator Louden and members of the Natural Resources 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 Resource District, and our offices are here in North Platte. I couldn't pass up the opportunity just to come up here and thank you for coming to North Platte. Since we've kind of kept you here all afternoon, I do hope you'll come back again. But we do like seeing you in western Nebraska and we appreciate this opportunity. The Twin

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Platte NRD supports the position of eliminating the engineering requirement. I'm certainly not going to restate what many have stated to you earlier. As Senator Fischer said, we're talking from the same script and she's almost right. It's in my written testimony. I did though want to talk about two funding issues, and one of those is that we have a very good working relationship, I believe, right now with the staff of the department as we're working through development of our integrative measurement plan. The staff participates in our stakeholder meetings. Our stakeholders have been meeting on a monthly basis for over three years. We just want to request that that relationship continue to exist and that their travel not be restrictive because that relationship, I think, is good and solid because of the fact that they've been coming out to North Platte and meeting with our stakeholders. So I hope it doesn't become a funding issue that their staff can't travel. The other funding issue that was just mentioned very briefly by Dan Smith earlier, but I wanted to expound on a little bit, and that's the Interrelated Water Management plan program Fund. And that's a fund that was put in place three years ago, and if action isn't taken in this coming legislative session, that fund sunsets in fiscal year 2009. It's been in place for three years. This has been a fund that the Twin Platte NRD was able to access for 2 projects in fiscal year 2007 and 2008. Each of those projects were in cooperation with other natural resource districts, but they were administered by us. And for 2009, we were able to participate in one project. We also benefited from other projects that were administered by other NRDs that we were part of. In my opinion, this has been one of the better funds that's been available for natural resource districts to develop data, to develop programs to work towards development of our integrative management plans. And we wouldn't be where we're at today without that fund. This last time around there were 9 request totally almost \$1.3 million that were not able to be funded for this coming year. We were a part of at least two, I think possibly three, of those requests. So I would encourage you, the Legislature, to look at reauthorizing that fund and to fund that fund because I think, again, I think that's been one of the better uses of state dollars that I've seen in my over 30 years working with the districts that I think have been very helpful partnership and to help move integrative measurement plans forward. Again, thank you for providing me the opportunity to

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provide testimony to you in western Nebraska, and we enjoy having you in North Platte. [LR377]

SENATOR LOUDEN: Thank you, Kent. Yeah, we came here and we have probably spent some of our money, so your economy should have perked up a little bit today. [LR377]

KENT MILLER: Thank you. [LR377]

SENATOR LOUDEN: Any questions for Kent? I guess... [LR377]

KENT MILLER: You guys are so kind, thank you. [LR377]

SENATOR LOUDEN: Yeah, thank you for your testimony. [LR377]

SENATOR HUDKINS: Well, I got scolded for asking questions, so I'm not going to do it again. (Laugh) [LR377]

KENT MILLER: And I got scolded earlier, so I'm... [LR377]

RON BISHOP: Senator Louden and members of the committee, my name is Ron Bishop, R-o-n B-i-s-h-o-p, and I'm not going to repeat a lot of things that have been said before. I endorse the testimony that Kent Miller just handed in, as well as others. There are three points that I want to make real quick. Number one, the department is underfunded and undermanned to carry out LB962 as it was envisioned by the Water Policy Task Force. We need to be doing more, need to be more proactive in some of these other basins. We weren't ready for the Niobrara. We we're ready, aren't ready for the Lower Platte Basin. We aren't ready for a lot of other areas across the state. We need to be aggressive and get on top of those problems before they get too severe. Second point, they're underfunded on their programs. Let me give you an example: You

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heard testimony earlier today that the water resources development fund gets \$3.5 million a year, currently, is getting about \$3.5 million. There's a backlog of \$60 million. An example of what that fund does: We recently completed about four or five years ago the Wood River floodway. We used about \$3.5 million of resource development funds, combined it with about \$3.5 million of local dollars, and used that to hedge about \$8 million from the federal government. So we had about a \$15 million, \$16 million project with \$3 million, \$3.5 million worth of state investment through that development fund. A year after we completed construction and had dedication on that project we had heavy rains in the area. And the corps of engineers that had provided the federal dollars came in and evaluated the flood protection and the flood damage reduction that we had from that project, and their evaluation indicated that we Prevented \$24 million worth of damage just in one storm event. When that \$15 million investment that took \$3 million from the Resources Development Fund. That's the kind of investment the state can get out of projects like that. And that \$60 million probably represents at least \$120 million worth of projects that may prevent twice that in damage to the state of Nebraska, so the return is great on that fund. Third and final thing, and then I'll get out of here so you folks can quit and get home or wherever you're going to go, I'd like to invite you back out to our natural resource district and visit with you, along with the other natural resource districts and folks in the Platte Basin about some of the things that are going on so that you get more a hands-on feel for some of the things that we're doing by ourselves and in cooperation with the Department of Natural Resources, some of the things in managing those resources and in working on transfers and water banking, trying to meet the commitment that the state of Nebraska made when they signed onto the Platte River Cooperative Program. And so if I could get you to come out, I'd invite the other NRDs from the Platte Basin to come in and we like to make a...if we could have a half a day or even three hours of your time. Maybe when you're going out to Scottsbluff to the meeting, if you could stop for a half a day in Grand Island or if you're going to have another hearing we'd be glad to offer our meeting room for your hearing. If we could get you to come in in the morning and talk to you about the programs in the Platte, and then have your hearing in the afternoon. Either one would be great, but we'd

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love to have you out and love to have the opportunity to visit with you about some of the things that are going on that I think you'd be surprised. [LR377]

SENATOR LOUDEN: Well, thank you, Ron, for the invitation. We'll take it up. Senator Hansen. [LR377]

SENATOR HANSEN: Thank you, Senator Louden. Ron, you got to answer the question. [LR377]

KENT MILLER: Yes, sir. [LR377]

SENATOR HANSEN: Why do NRDs want to change? Why a surface irrigators not want to change in the PE requirement? [LR377]

RON BISHOP Surface irrigator...this is my opinion, and it's based on my own observations, the surface water folks seem to be content with the way things have always been. There's always been in the Department of Water Resources that oversaw surface water activities, there's always been an engineer in charge, and they've grown accustomed to that. And in fact, many of the engineers that have followed since the Department of Water Resources was merged with the Natural Resource Commission, our carryovers from that surface water association were no longer dealing just with surface water though. The NRDs feel that we're dealing with groundwater as well as surface water, and so there's a lot of good geologists out there that know a lot more about groundwater than some of the surface water engineers that we've had in charge. That even includes Roger Patterson. He was a surface water person. He was with the bureau reclamation dealing with surface water projects. Also, we've seen folks like Jim Cook, and most of you that have been around a while know Jim Cook. Jim Cook was a top-notch water law (inaudible), as far as I was concerned. I could always go to Jim and I could get a straight answer and a complete answer. If he didn't know it, he'd find out and get back to us. He handled the negotiations on the Platte River Cooperative

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Agreement for the state for the most part. And so there's a lot of other folks out there that would make good directors for the department. All that's required now is a licensed professional engineer. Keep in mind that there's a lot more licensed professional engineers that are not civil. There's mechanical engineers, there's electrical engineers, there's sanitary engineers, they're on and on and on. Our law as it currently exists doesn't limit it just to civil engineers or just to ag engineers, just to hydrologic engineers. It just says, licensed professional engineer. So that's one thing that you'd ought to look at, but I would urge you to keep in mind that they're are other professions out there that would apply to the job that needs to be done. We have a lot more groundwater irrigation than we do surface water irrigation by about eight times or nine times. And so don't forget the geologist or the geohydrologist who can make a contribution. Don't forget the water law specialist that can make a contribution. And we're not saying lower the standard. We're saying broaden the opportunities to look for the right person and that right person has about five different major jobs, and you're not going to find someone that is perfect in all five of those jobs. And so some of those he's going to have to rely upon staff and that could just as well be relying upon an engineer on staff as it can relying on a water law attorney on staff or relying on a geologist on staff. That's basically the difference as we see it between surface water and groundwater. [LR377]

SENATOR LOUDEN: Senator Carlson. [LR377]

SENATOR CARLSON: Senator Louden. Ron, Jim Cook was an attorney, right? [LR377]

RON BISHOP: Yes. [LR377]

SENATOR CARLSON: Yeah. Okay. Thank you. [LR377]

RON BISHOP: Yes. He was... [LR377]

SENATOR CARLSON: Or he is. [LR377]

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RON BISHOP: ...a top-notch attorney, as far as I was concerned. [LR377]

SENATOR LOUDEN: Senator Fischer. [LR377]

SENATOR FISCHER: Thank you, Senator Louden. Ron, I think everybody agreed today for the most part that the department needs more funding. And why we're looking into that on this study resolution you realize this committee doesn't handle funding; that would be the Appropriations Committee. Also, the Governor comes up with a budget, but working with his directors of the agencies that he presents to the Legislature. So I would encourage everyone here today who agreed with that that the funding issue that you need to continue on and broaden who you speak to on that. Also, a number of programs were mentioned that DNR funds. You know, you said we're \$60 million behind in one program on projects. And \$3.5 million for one program...and that's a lot of money. However, I think when we talk about funding issues, again, we need to broaden our perspective and understand the challenges that we're facing here. You mention the Platte River Cooperative Agreement. [LR377]

RON BISHOP: Yes. [LR377]

SENATOR FISCHER: The state, I would assume, is going to have a responsibility in funding that in the future too. So while we all have our programs and projects that we'd like done and in individual districts around the state. When we talk about water, we need to realize the state's obligation, too, that will need to be funded. [LR377]

RON BISHOP: Right. [LR377]

SENATOR FISCHER: So thank you. [LR377]

RON BISHOP: You bet. [LR377]

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SENATOR FISCHER: I just was talking, I didn't have a question. (Laugh) [LR377]

RON BISHOP: No, you make good points. [LR377]

SENATOR FISCHER: Oh, bless you. Thank you. That's a good note to end on. [LR377]

RON BISHOP: Yeah. [LR377]

SENATOR LOUDEN: One question that I would pose to you, Ron. In the area where you grow a lot of corn, right? [LR377]

RON BISHOP: Yes, we do. [LR377]

SENATOR LOUDEN: You do. [LR377]

RON BISHOP: Well, a little less than a couple of weeks ago. [LR377]

SENATOR LOUDEN: Now you grow a lot of mud. [LR377]

RON BISHOP: Yeah, that's right. [LR377]

SENATOR LOUDEN: Okay. Having mentioned all of that, and it takes a lot of water, I introduced a bill in the last session that would take, I think it was a cent or something like that, but it would put a tax on ethanol, and that money was to be used to fund water. And Farm Bureau and everybody else screamed it down something fierce. What is your opinion on that? Should we go to the ethanol or someplace like that that requires water to fund water? We're going to have to find the funding someplace. Ethanol is something we're probably going to ship out of state, so there'd be other people that would be helping pay for us. What's your opinion on that? (Laughter) You're going to have to say,

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yes or no. [LR377]

RON BISHOP: Here's the rock and here's the hard place. It would...probably a couple of years ago personally I would have tended to agree with you. Today however, some of the ethanol plants are being hard-pressed because of the current price on corn, hard-pressed to...they're certainly not making the profits that they were two, three years ago. [LR377]

SENATOR LOUDEN: Now, we're not talking about the profits on ethanol because this is going to be a pass...they're going to pass that through to whoever they're selling it for, and last spring fuel was not quite, you know, just \$2.80 or so; now it's up, you know, nearly \$3.80. So the... [LR377]

RON BISHOP: Senator, I would say that we need to be creative in looking at ways to come up with money to do the things that we need to get done that's in the best interest of the state, and in the long term will save us money. And so looking at that as a possibility, I think probably has some merit, and if we can come up with any other ideas to look at too, I think we ought to throw them all on the table to discuss them because a lot of these things that we've been talking about that we say needs more money, in the long term it's going to save us money. And so to spend a little now to save more later, I think is worthwhile, and we need to look around. And I know the Legislature is pressed for where to spend the money. And so it's probably going to take some new sources to do some of these things that... [LR377]

SENATOR LOUDEN: Aren't we looking at like \$150 million on that Platte River recovery program or something like that? I mean, we're looking at a trainload of money up in the future there. [LR377]

RON BISHOP: The first increment is about a \$300 million increment. Fortunately for Nebraska they were able to come up with most of their share by the stuff that has

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already been done developing the environmental count in McConaughy and letting fish and wildlife service have the first close to 100,000-acre feet of water that flows into McConaughy so that they can release it at their will. And some of the lands that have been acquired by central and NPPD because of their relicensing under FERC. They were required to do certain things and that all came under that relicensing thing. And so Nebraska is able to take advantage of that and use that as a big part of their share of this first increment. The feds have plans for a second and a third increment, and that's where it's going to really hit hard if that ever comes to pass. [LR377]

SENATOR LOUDEN: Okay. Thank you. I guess that ends...thank you for your testimony, Ron, and... [LR377]

RON BISHOP: And I was sincere about that invitation. We'd really love to have you all come out. [LR377]

SENATOR LOUDEN: (See also Exhibit 21) Okay. Good enough. That will end our hearing today on LR377, and thank you all for staying this long. [LR377]