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Transcriber's Office

Natural Resources Committee
January 23, 2009

[LB134 LB160]

The Committee on Natural Resources met at 1:30 p.m. on Friday, January 23, 2009, for the purpose of conducting a public hearing on LB134 and LB160. Senators present: Chris Langemeier, Chairperson; Tanya Cook; Deb Fischer; Ken Haar, Beau McCoy; and Ken Schilz. Senators absent: Annette Dubas, Vice Chairperson; and Tom Carlson.

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SENATOR LANGEMEIER: Good afternoon; it is 1:30 to my watch, right on the dot. A minute late up there, but anyway, welcome to the Natural Resource Committee. I'd like to welcome everybody that's here to testify and here to listen within the room, as well as everyone that's out on the closed captioned TV, as well as we're broadcasting now via the Internet, so everyone that's watching it via the Internet. My name is Chris Langemeier, I'm the chairman of the Natural Resource Committee. I'd like to introduce the people around the table here so that everyone knows who they are. We're going to start to my far right or your left we have: Barb Koehlmoos, who is our committee clerk; we have Senator Tanya Cook, from District 13, Omaha; we have Senator Deb Fischer from District 43, Valentine, Nebraska; clear out to my left or your right we have Senator Beau McCoy from District 39, Omaha; we have Senator Ken Haar with us from District 21, Lincoln; and we have Senator Ken Schilz from District 47; and then we have the committee clerk, we have Laurie Lage with us today, committee counsel, excuse me. Committee clerk there, committee counsel here. That's why we have her. And that's why she is right here. The pages today, we have Malinda Frevert, from Omaha, will be helping if you have things to hand out; we have Justin Escamilla, from Scottsbluff. We also have two additional pages that are going to help us today that we don't normally have, we have Kim Weber, from Lincoln, who is over here; and we have Jared Weikum, from Lincoln as well, who is here. We thank them for their work today. The bills, we will hear them in the order they were posted. We will start with LB134 and then move to LB160. We ask the introducer to introduce, and then after that, then we go...we take supporting, or proponents. When that is completed we will take opponents. And then after that, we'll take anybody that wants to testify in a neutral position. And then the introducer will have the opportunity to come up and close after that. When you all came in the room, you may have seen there are these green sheets back by the doors. If you plan to testify, I need you to fill this out in its entirety as this becomes a record of this hearing. We need to know who you are, where you come from, what your position is when you do that. If you're here to show support but yet you don't want to testify, there are other sheets, and I've seen a lot of you sign them, sign in, that's great. If you want to have a record that you were here and you had a position but you just didn't want to come up front, we do appreciate that as well. We ask you to sign in and give us your name and address and give us your position on those sheets. So we do...would ask that you sign in, in that regard. But you don't have to. If you're just here to experience the day, you don't have to do anything. As you come forward to testify we ask you to give this green sheet to our committee clerk for the record. We'll ask you to come to the

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

Natural Resources Committee
January 23, 2009

chair, we'll ask you to say your name and spell it, first and last name, no matter how simple you think your name is we need it for our record. We really need you to spell it out for us. It helps the transcribers make our record more quickly and more accurate. If anyone cares to hand anything out, we would like ten copies of it. So if you have something that you do not have ten copies for, please raise your hand and we'll have a page help you with that. In the past, we have had people hand out particular items like photographs and that. We do want to warn you, if you do submit it and hand it out, we will keep it for the record. We will not be giving it back, so if it is something you want us to look at and you do want it back, you might show the committee members in their office at a later date. But if you do hand it for us to look at, we are going to keep it. At this time I would ask everyone to turn their cell phone off so we do not disrupt the committee and its process. We would appreciate that. We also ask that as a testifier is testifying that we have no comment from the crowd, either pros, cons or whatever the statements may be up here. You'll have your opportunity to testify if you choose to. We do not allow props; we will not let anybody use a prop to demonstrate their point. We ask that you verbally communicate to us what your thoughts are. With that, I have one more thought that I have not said in the previous...just now came back to me. As you see as we go today, you will see the senators get up and leave the room. We have Senator Pankonin, he is supposed to be in his committee, I believe Health Committee, at this time. As you see, he is here testifying. The committee members will have to get up, they will have to go to other hearing rooms and give testimony on a bill they've introduced. So it's not in disrespect to your testimony but they will get up and leave from time to time to go to some other committee to introduce or give testimony on a bill that they've introduced, as Senator Pankonin has done today and then he will get back to Health Committee. With that, we will open the hearing on LB134. And Senator Pankonin, thank you, and you're recognized to open on LB134. [LB134]

SENATOR PANKONIN: Good afternoon, Chairman Langemeier and members of the Natural Resources Committee. I am Dave Pankonin, D-a-v-e P-a-n-k-o-n-i-n and I represent the 2nd Legislative District. I'm here to introduce LB134. This bill would eliminate the use of eminent domain by natural resources districts for optional, recreational trails projects, while maintaining that power when needed for necessary flood control structures. The issue that prompted the introduction of this bill was described to me by constituents, many of whom are longtime friends and customers. After hearing their concerns, I decided that they were important enough to bring them to the attention of the Legislature. The MoPac East Trail currently runs from the city of Lincoln in Lancaster County to the village of Wabash in Cass County. The Lower Platte South NRD is planning to connect the MoPac East Trail at Wabash to the Lied Platte River Bridge Trail near South Bend, Nebraska. This proposed ten mile extension would connect the MoPac Trail with the metro corridor that begins in Omaha to create a continuous trail route between our state's two largest communities. The route currently proposed by the Lower Platte South NRD includes the unnecessary taking of private property for recreational purposes. The proposed route does not follow as closely as it

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

Natural Resources Committee
January 23, 2009

might the county road right of way and instead, transits through citizens' yards, and farm fields. In some cases, the public trail would be placed unreasonably close to individual landowners' homes and yards. In addition, the NRD will have a difficult task in crossing 334th Street and Church Road. There have been several serious vehicles accidents at this intersection because of the sight lines. Since I drive down Church Road on my way to Lincoln everyday, I am very concerned about people safely crossing the road on bikes or by walking. LB134 was prompted by a local issue but it speaks to the broader question. How should NRDs be allowed to acquire property for nontraditional purposes? Can we legislate a better solution for citizens when an NRD wants to develop recreational trails outside of floodways? The elimination of the power of eminent domain for NRDs when used for optional recreational trails would, hopefully, result in a greater effort to chart routes that more closely follow road right of way or obsolete rail beds if available. As you listen to the proponent testimony today I would ask you to consider how you would feel if a public recreational trail was constructed on your land and very close to your home. Thank you. [LB134]

SENATOR LANGEMEIER: Thank you. Are there any questions for Senator Pankonin? Senator Schilz. [LB134]

SENATOR SCHILZ: Senator Langemeier, thank you. Senator Pankonin, do you know if there will be any of these homeowners that you had testified about, will they be giving testimony today? [LB134]

SENATOR PANKONIN: Yes, they will, Senator Schilz. [LB134]

SENATOR SCHILZ: Okay. Thank you. And then, which NRD is this in again? [LB134]

SENATOR PANKONIN: The Lower Platte South NRD. [LB134]

SENATOR SCHILZ: Okay, thank you very much. [LB134]

SENATOR LANGEMEIER: Seeing no other questions, thank you for your introduction. [LB134]

SENATOR PANKONIN: Thank you. [LB134]

SENATOR LANGEMEIER: And as you come forward to testify, we will give you a little advice...is less is more and precise is best. And so we ask you to come forward. Senator Pankonin has a row of people that he has asked to testify kind of first, so if you would, we'll let this group go one at a time. And then as others want to testify, please come forward. Welcome and welcome to the Legislature. [LB134]

JIM PANSKA: (Exhibit 1) Good afternoon. Jim Panska. J-i-m P-a-n-s-k-a. And I'm here

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

Natural Resources Committee
January 23, 2009

in support of Senator Pankonin's LB134. A lot of us have heard the expression rails to trails. And it has a nice ring to it and it talks about using abandoned railroad tracks for trails, both biking, walking, etcetera. But what happens when there is no abandoned railroad track to use? That's the problem we face in our area in Cass County. This bill is not about whether you're in favor of biking or walking or trails, it's about the taking of private property for recreational trails. I can still remember the first time, or maybe the second meeting, information meeting, we had with the NRD talking about their proposed trail through our area. And the question came up from a landowner, what if I don't care to sell my property for the trail? And there was some discussion about it, but basically we were told, you'll go to court and you lose. And they said they had the process of eminent domain and that's the way it would be. It doesn't seem like that would be the proper method, in my mind. And to make it even more offensive, they said that they would not be taking title to the property, they would get an easement and then the property owner would still be paying the taxes on their property. I guess that's when I got a little more excited. So I discussed with several people, well, how do you deal with the NRD? Who do you go to and who has control over the NRD? And basically, I was told no one does. They have the power to do what they want to do. I think that this was I guess the alternative that we felt was what we needed, to introduce a bill in the Legislature to give some control over that for the private citizen. And I think there are reasonable alternatives that exist for this trail but I feel that as long as eminent domain is the easiest way to go about it, I don't think these other alternatives are going to be pursued. And that concludes my testimony. [LB134]

SENATOR LANGEMEIER: Thank you, are there any questions? Senator Fischer.
[LB134]

SENATOR FISCHER: Thank you, Chairman Langemeier. Thank you for being here today, sir. I can sympathize with your plight that you're in. What other alternatives do you suggest besides using eminent domain for an easement, as I understand you said, an easement, not even a taking of the land? What other alternatives would you suggest? [LB134]

JIM PANSKA: Well, that is a hard question, I guess. That's not really for me to say. That's for the NRD to say. I mean, there are alternatives like Senator Pankonin mentioned about the use of the right of way along the side of the road. There is a trail. There is an abandoned railroad track that goes past where they proceed to cut off. And I apologize, I have maps that I forgot to hand out. Is it all right if I do that now? [LB134]

SENATOR LANGEMEIER: You bet, if you just hold them up the page will come and get them and distribute them. It's never too late to hand out stuff when you're sitting there.
[LB134]

SENATOR FISCHER: You mentioned an abandoned railroad line. [LB134]

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

Natural Resources Committee
January 23, 2009

JIM PANSKA: Um-hum. [LB134]

SENATOR FISCHER: Do you know for sure if that's abandoned? [LB134]

JIM PANSKA: Oh yes, yes it is. [LB134]

SENATOR FISCHER: I... [LB134]

JIM PANSKA: You'll see it on the map here. [LB134]

SENATOR FISCHER: ...oh good. [LB134]

JIM PANSKA: That's why...that's what made me think... [LB134]

SENATOR FISCHER: Oh, okay. [LB134]

JIM PANSKA: If you look at...towards...on the ledger towards the bottom left, there, it says rails with trails and you see a little green dotted squares. [LB134]

SENATOR FISCHER: Um-hum. [LB134]

JIM PANSKA: Then you look over on the right at the map, and you'll see there was a proposal to go through to Weeping Water there and then north. That is where the abandoned rail line is now. It goes east farther into the Weeping Water area and then the trail was proposed to go north towards Louisville. Excuse me. [LB134]

SENATOR FISCHER: I don't want to interrupt you but on the completed trails all the red, this is really an informative map, thank you. On the completed trails, were those all done by the NRD? [LB134]

JIM PANSKA: I'm not sure I can answer that. [LB134]

SENATOR FISCHER: Okay. [LB134]

JIM PANSKA: There are trails that are following highways, and I mean, there's a difference between a trail along a highway and the ones that are constructed along abandoned railroad tracks. [LB134]

SENATOR FISCHER: Okay. I also have the Cowboy Trail going through parts of my legislative district. I've never seen anybody on it. It has cinders on it and so if you're a biker you're going to blow your tires out as you ride on that Cowboy Trail so most all the bikers just ride on highway, even where the BRAN goes through. They use the highway.

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

Natural Resources Committee
January 23, 2009

They don't use the rails, the Cowboy Trail which is part of the rails to trails. People do use it within different towns in my community because it's paved there, so people do use it for walking. Are these...do you know what the majority of these trails have for a bed on them? Are they cinders, are they paved, are they gravel? [LB134]

JIM PANSKA: Are you talking about the one that we're talking about here? [LB134]

SENATOR FISCHER: If you wish. [LB134]

JIM PANSKA: Well the one that's completed to the Wabash area has been... [LB134]

SENATOR FISCHER: Can you point that out for sure on the map here? [LB134]

JIM PANSKA: ...well let's see, is it blue? I think it's blue. It can't be the...I'm not exactly sure if it's the blue or the red one. It must be the red one there. The completed trails we see... [LB134]

SENATOR FISCHER: By which community is it? [LB134]

JIM PANSKA: Okay it goes from Lincoln to Eagle to Elmwood. [LB134]

SENATOR FISCHER: Oh, Okay. [LB134]

JIM PANSKA: The red line. [LB134]

SENATOR FISCHER: Okay, okay, yes, yes. [LB134]

JIM PANSKA: It says completed trails. [LB134]

SENATOR FISCHER: Do you know what that is? [LB134]

JIM PANSKA: That has...it is crushed rock. [LB134]

SENATOR FISCHER: Crushed rock, okay. [LB134]

JIM PANSKA: I guess this is another concern since you brought it up, I wasn't going to. That we are concerned about the fact that these trails are used by family recreation and the narrow tired bike people are going to be riding down the highway whether this trail is there or not. They're not going to be using this, so it's not going to like, it's not like we're going to be eliminating a lot of traffic off of the highways. And I guess another consideration that I've had is this trail is to complete to the north and in order to do that, it has to cross the Platte River and they're using an abandoned railroad bridge to do that. But if something would happen to that bridge, whether it be an ice jam or the

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

Natural Resources Committee
January 23, 2009

bridge was damaged in some way, the trail would lead to nowhere, whereas if it went over to Highway 50 and up through the Louisville area there's a highway there and there would be a bridge. And that bridge obviously would be maintained. So there's, you know, there's a lot of concern. I just...the issue today is the private taking of property but there's a lot of other things. [LB134]

SENATOR FISCHER: Thank you very much. [LB134]

SENATOR LANGEMEIER: Senator Schilz. [LB134]

SENATOR SCHILZ: Thank you, Senator Langemeier. Mr. Panska, is it? Is that right? [LB134]

JIM PANSKA: Yes, um-hum. [LB134]

SENATOR SCHILZ: Are you a landowner, along this? [LB134]

JIM PANSKA: Yes, I am. [LB134]

SENATOR SCHILZ: Okay, and does this development that they're talking about...you...how much of your land does it go over and can you describe the area where it... [LB134]

JIM PANSKA: Well, let's see, it would... [LB134]

SENATOR SCHILZ: I guess describe it, is it on the end of a field, does it go through the middle of your field, does it... [LB134]

JIM PANSKA: No, it's proposed to go primarily along the edge of the field. [LB134]

SENATOR SCHILZ: Okay. Okay. [LB134]

SENATOR LANGEMEIER: Any other questions? I do have one question, just for clarification as we start to hear about this. The bill would affect eminent domain for NRDs and trails throughout the state, any NRD. I know we're going to talk a lot about your situation, but we're talking statewide. On your project, how far along is the NRD in your negotiations? Have they made you an offer, so you're not... [LB134]

JIM PANSKA: No, we haven't gotten that far yet. [LB134]

SENATOR LANGEMEIER: You haven't got your registered letter yet? [LB134]

JIM PANSKA: No. It's...they're in the process of developing the area. [LB134]

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

Natural Resources Committee
January 23, 2009

SENATOR LANGEMEIER: The plan. [LB134]

JIM PANSKA: Yeah, the plan. [LB134]

SENATOR LANGEMEIER: Okay. Okay, thank you very much for your testimony. [LB134]

JIM PANSKA: Um-hum. [LB134]

SENATOR LANGEMEIER: Further support, supporters? Come on up, come on up. Don't be shy, just don't knock each other down coming up. [LB134]

ROGER GAEBEL: Good afternoon, Senators. I'm Roger Gaebel, R-o-g-e-r G-a-e-b-e-l. I'm the fifth generation in my family to be farming. We're going to be celebrating 150 years here in a few years. The farm that's in this project is a youngster. It's only been in the family for about 50 years. The problem that we ran into with this eminent domain issue is where it would actually go, and the problems it would run into if they went ahead and took it, which in our case, they'd have to do. I don't know of anybody that's going to agree to an easement or anything. When they showed us the plans originally for the bike trail I looked at it and I couldn't believe that they actually considered the four options that they had. And the first one was a safety issue which Senator Pankonin talked about at 334th Street and the Church Road. That's basically a blind intersection, and you have, oh, maybe a two second time lapse between the car coming overhill through this intersection where bikes were supposed to cross. There's been one fatal accident there, already. And the fact that it was built with such narrow shoulders they're...I think they're actually classified as a four foot dirt shoulder. So if a motorist was even going to try and avoid the bicycle if they had time, they would be in an accident because of the soft shoulders, the narrow shoulders and the steepness of the banks. When I talked to the people that were designing it about this, or wrote a letter when they asked for comments, and I asked them about the safety concerns with that, and it seemed like they'd never thought of that before. So they had a consultant come out and look and they said, yeah, I guess you're right, we can't cross there. Well if you can't cross at the intersection, that leaves two options. You either go down through would be my father's field that I farm or would be the neighbor's in either case. And so that's going to split this field up which brings up the problem with this going through a field. They're talking about 26 feet, is what they explained to us as the easement that's needed, the ten foot rocked center and then there's a ditch on either side for drainage. Well, if you put...excuse me...put this through the middle of the field, you can no longer cross with machinery without slowing every time you bounce across that. If you would move this over to the edge of a field, now you're looking at ditches that, again, cut through the terraces and what we've put in to control erosion has now got a ditch cut through it. And we're going to see water and everything eroding down through there with another huge

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

Natural Resources Committee
January 23, 2009

ditch. And so going through the field or along the edge of the field doesn't appear to me a reasonable option. You can't do this without destroying property. If they did go ahead and condemn our property and they went ahead and did this, that's going to put our farm implements 13 feet, giving their 26 foot easement that they want. We're looking at 13 feet from the edge of their easement to the center of the road. We're going to have farm machinery 13 feet from there. I don't know how they're going to expect sprayers to keep from drifting chemicals onto the bike path or the user or an anhydrous machine, if you're familiar with anhydrous ammonia. You lift it out of the ground, you're going to have an escape of anhydrous ammonia that's going to gas the user at the time. Or even at harvest time, the combines and the straw choppers throwing cobs out are going to go past the 13 foot area and somebody's going to get hit with those. None of that's going to be accepted by a user or his attorney. And so that's going to be the next thing if we can't protect the user on an area this short, maybe we should come back and condemn another strip of ground for a buffer zone to protect them. Another thing that wasn't answered is what happens if this person gets hurt on a bike trail by his own accident? This is an easement; we still own the property. So who are they going to come after in that instance? All of these things just look like a terrible end for the way this thing's planned. And to condemn property and go ahead and do this, it just seems really unfair to me. I realize that power of eminent domain is a tool that we need to accomplish projects like highways and power lines and gas lines, but it seems silly to condemn property and, in my opinion, destroy property for something like a recreational trail that's going to be used by a very few people. And I guess we need your help with that. So that's all I have, thank you. [LB134]

SENATOR LANGEMEIER: Thank you very much. Are there any questions. I'm going to ask you one, just because I'm curious now... [LB134]

ROGER GAEBEL: Sure. [LB134]

SENATOR LANGEMEIER: ...on your 13 feet. Your combine, how many row is it? [LB134]

ROGER GAEBEL: I have a small one, it's 16 feet, or...I'm sorry...six rows? [LB134]

SENATOR LANGEMEIER: Six rows, 36-, 30-inch rows... [LB134]

ROGER GAEBEL: Yeah, 30. [LB134]

SENATOR LANGEMEIER: ...36-, 30-inch rows? [LB134]

ROGER GAEBEL: Six 30s, yep. [LB134]

SENATOR LANGEMEIER: You don't fit on 13 feet. Are there any questions? Thank you

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

Natural Resources Committee
January 23, 2009

very much for your testimony. [LB134]

ROGER GAEBEL: Thank you. [LB134]

SENATOR LANGEMEIER: We're ready when you are. [LB134]

THERESA JOHNSON: (Exhibit 2) Okay. My name is Theresa Johnson, T-h-e-r-e-s-a J-o-h-n-s-o-n. I'd like to start off by just thanking the committee members for allowing us to voice our concerns about allowing the power of eminent domain to take personal property for a recreational trail along 334th Street near Murdock, Nebraska, Cass County. The pictures that I just passed out are of our particular property along 334th Street and the first picture that you see is our original homestead picture. From the early 1900's, I don't know an exact date, but the home was...and the homestead was established in 1883. And then the second picture that you have is our current property as of now. There is an additional building there that's not on the picture but that would not be effected by the path. So, a precious gift is something that we all appreciate and has special meaning for those that receive it. The home that I own now, which is that second picture, is one of those gifts that was offered to me from my parents, Wayne and Helen Leutchens. My home and the 160 acres of farmland that it sits on were originally purchased in 1883 as I indicated earlier by Fredrick Leutchens from the Chicago, Burlington & Quincy Railroad Company. And I am the fifth generation Leutchens family member to own this property. My family has chosen to keep this farm in family hands and now I want to preserve the integrity of my family's farm and pass this gift on to my children someday, as well. We are not the only fourth or fifth generation landowner along 334th Street outside of Murdock. There's other landowners that are just as proud of their farming heritage and wish to pass their farms on to their family members as well. Just to kind of go back over the pictures, the original homestead I said was built in 1883 and it was first built about a quarter of a mile west of our current home in a pasture. And then part of that house and some of the buildings were moved to their current location in 1918. And that's when the new home and some of the other buildings were built later on that year. Our home, and then the barn that is seen in the colored photo which is on the, it would be on the left side of the picture, was, that barn was one of the original structures moved in 1918. And it sits about 90 feet from the center of the road. The proposed bike path would only be approximately 60 feet from the front of our home and about 45 feet from the front of that barn. There are mature trees, a well between the right of way and the front of those buildings that I've mentioned. There's two driveway obstructions. A bike path, obviously, in the front of our property is not a desirable situation because we sit so close to 334th street. A bike path...it was also suggested that the path be placed on the back side of the property and skirt the property line, which are those trees at the back of the picture there, where the silo is. That presents other issues. There's a pasture access that you can see that goes down behind the property which would be impossible to fence with cattle and that needs to stay open and shouldn't be interfered with. And then it would also divide our home from its adjoining

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

Natural Resources Committee
January 23, 2009

160 acres. So it would split the property from it's farm ground. The house across the road at the bottom left-hand corner that sits slightly farther off of 334th Street than ours does. There's other obstructions there as well, mature trees, a driveway, there's a well in the right of way which is real close to the edge of the road. We are not the only landowners that have concerns about bike paths running through our front yards or cutting through properties and there are many other issues to consider, as you've heard already, before we allow eminent domain powers to take personal property for recreational trails, that few, or if any landowners along 334th want. On behalf of the past and current and future landowners please help preserve the integrity of our farms and of our agricultural heritage. Thank you. [LB134]

SENATOR LANGEMEIER: Thank you. Are there any questions? I have a couple. [LB134]

THERESA JOHNSON: Okay. [LB134]

SENATOR LANGEMEIER: Ms. Johnson, first of all, you talked about a well. Are you talking about an irrigation well as in the... [LB134]

THERESA JOHNSON: No, it's just a home well. [LB134]

SENATOR LANGEMEIER: A domestic well is in the county right of way area? [LB134]

THERESA JOHNSON: Yeah. Um-hum. That is, there is actually two. One on... [LB134]

SENATOR LANGEMEIER: We're off topic, I'm just verifying that I heard that right. [LB134]

THERESA JOHNSON: No, okay. [LB134]

SENATOR LANGEMEIER: Now the second question I have is, as we look at this picture that you provided us and obviously there's an acreage across the place. And I'm going to ask this question and if you don't have the answer... [LB134]

THERESA JOHNSON: Um-hum. [LB134]

SENATOR LANGEMEIER: ...don't worry about it. Somebody will educate me as we go forward. But you said your place sits within 160 acres...and in four of those per square mile. What is the density of housing in your area? I mean, is this typical that there's going to be an acreage on all the county roads, one every mile, or one every three miles. Do you have any idea the density of these acreages? Yeah. [LB134]

THERESA JOHNSON: Are you talking from the beginning, from trail end? [LB134]

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

Natural Resources Committee
January 23, 2009

SENATOR LANGEMEIER: No, just your area... [LB134]

THERESA JOHNSON: Okay. [LB134]

SENATOR LANGEMEIER: ...around your house. What would you say? One house per section, two houses per section. [LB134]

THERESA JOHNSON: Well, in this section, there's four. [LB134]

SENATOR LANGEMEIER: Okay. Would that be typical? [LB134]

THERESA JOHNSON: No. No. Further south of our house there is no acreages there in that next mile section. And then there's several if you go north of here. Another mile north then you do have several acreages to consider as well as a cemetery. [LB134]

SENATOR LANGEMEIER: Okay. Okay. I'm getting at the... [LB134]

THERESA JOHNSON: So I don't know, it's kind of hard to tell. I have...I don't know. There's a map of the proposed trail that we have. [LB134]

SENATOR LANGEMEIER: Sure, sure. [LB134]

THERESA JOHNSON: But I didn't bring that today...of that, you know... [LB134]

SENATOR LANGEMEIER: That's fine. [LB134]

THERESA JOHNSON: ...from beginning to end. [LB134]

SENATOR LANGEMEIER: What I'm leading to the judgment of the placement of the trail. [LB134]

THERESA JOHNSON: Oh, yeah. [LB134]

SENATOR LANGEMEIER: Would there be spots you could have placed this trail without going through your front yard, is what I'm trying to get at, and you've answered that for me. [LB134]

THERESA JOHNSON: Well, in this situation I don't believe there is. I think the roadway is probably the most reasonable part at this point. So... [LB134]

SENATOR LANGEMEIER: Okay. Any other questions? Seeing none, thank you very much. [LB134]

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Transcriber's Office

Natural Resources Committee
January 23, 2009

THERESA JOHNSON: Thank you. [LB134]

SENATOR LANGEMEIER: Next proponent. Proponent. Welcome. [LB134]

JUDY STROY: Hello. My name is Judy Stroy, J-u-d-y S-t-r-o-y. And thank you for allowing us to come and speak today. My husband's family has farmed in the Murdock area for over 130 years. We are the fourth generation to live on the family farm and participate in the farming business. Our sons have also expressed an interest in becoming the fifth generation to continue the family farm. Over the last 32 years, my husband and I have worked hard to build and add onto our family business. We did not work hard to build our farming business so that any part of it that contributes to our living and livelihood could be possibly taken away from us by eminent domain for a recreational trail. With preparation for the bike trail between Wabash and South Bend, part of our farm ground would possibly be compromised. We depend on the ground for our yearly income and cannot afford to lose any of the ground. If the bike trail does cross our property, it will cut up a field into several parcels and make it very difficult to farm the small sections created by cutting across the field. This is not only an issue for my family, but for every farm family along the proposed route that will have their fields compromised. Also, most of the fields in our area have been terraced for proper drainage and this could be an issue with the trail cutting across midsections of the fields. I'm not against progress or creation of recreational facilities for our citizens. But I feel more needs to be done for...to research alternative solutions that are less disruptive to personal property and individuals incomes. When I say my prayers, I thank God for the property that he has entrusted to our care and I always ask him to continually guide us to be good stewards of our property. So in closing, I'd like to ask that this opportunity be extended to all the property owners here today by your support of LB134, to protect our properties. Thank you. [LB134]

SENATOR LANGEMEIER: Very good. Thank you, are there any questions? Senator Haar. [LB134]

SENATOR HAAR: Thank you. Do you, in the negotiations for this, did you see any other routes that make sense or not? [LB134]

JUDY STROY: There are other roads that probably would be more accessible to have a trail built close to them, you know, like within the shoulder or the right of way of the road property without cutting through fields or taking personal property for access. Yeah, I know Mr. Panska related to that in his talk and by providing you with maps. [LB134]

SENATOR HAAR: Because unlike other parts of the trail that were...used to be railroad tracks, that's not the case, here. Correct? [LB134]

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Transcriber's Office

Natural Resources Committee
January 23, 2009

JUDY STROY: No, it is not. [LB134]

SENATOR HAAR: I suppose that's what makes it really difficult too. Yeah. [LB134]

JUDY STROY: Um-hum. [LB134]

SENATOR HAAR: Thank you very much. [LB134]

JUDY STROY: You're welcome. [LB134]

SENATOR LANGEMEIER: Senator McCoy. [LB134]

SENATOR McCOY: Thank you, Senator Langemeier. Ms. Stroy, if you could, and you touched on this earlier and then earlier testifier, Mr. Panska had attested to this as well, you had mentioned splitting up some fields into smaller parcels. Would you mind touching on that again briefly? Mr. Panska had mentioned that it was kind of the edge of maybe some of his property. Does it go through, am I to understand it goes through some of your fields? [LB134]

JUDY STROY: One alternative would go through catty-cornered through one of our fields. [LB134]

SENATOR McCOY: Okay. When you say alternatives, I'm just trying to get a better understanding. [LB134]

JUDY STROY: Well, they have given us several proposed routes. [LB134]

SENATOR McCOY: Okay. [LB134]

JUDY STROY: You know, maybe one side of the road versus the other side. You know, I think there was like three or four proposed routes at the last meeting that we had. But when you cut across, you know, with today's equipment, it's large. And we're small, we're still small farmers so we don't have the extremely large equipment but we still deal with, as Mr. Gaebel said, you know, 16 foot headers, six row heads on our combines. And when you take a larger field and cut it up into smaller parcels, it creates issues for moving that equipment around the field and farming the property properly. [LB134]

SENATOR McCOY: Thank you, I appreciate that. [LB134]

JUDY STROY: You're welcome. [LB134]

SENATOR LANGEMEIER: Any other questions? Seeing none, thank you very much... [LB134]

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

Natural Resources Committee
January 23, 2009

JUDY STROY: Thank you. [LB134]

SENATOR LANGEMEIER: ...for your testimony. Great job. Next supporter. [LB134]

PAUL MORRISON: Mr. Chairman, members of the committee, good afternoon. I'm Paul Morrison of Lincoln, Nebraska, P-a-u-l M-o-r-r-i-s-o-n. I am a former NRD director and do have some knowledge of NRD activities. I'm speaking on behalf of some concerned citizens of Cass County who are being faced with eminent domain to take parts of their agricultural land for a recreational trail. Eminent domain is a non-friendly tool government bodies can use to accomplish their goals and missions. Eminent domain should never be used as a first option to acquire land. In this situation of acquiring land to construct recreational trails, we believe that eminent domain should not even be an option. We believe that other options will never be considered unless the eminent domain option is eliminated. We're not debating the value of recreation and hiking/biking trails. We are debating the use of eminent domain. While we do acknowledge the value of recreational trails, does that value justify the use of eminent domain? We do not believe so. A vote for this bill is not a vote against recreational trails. A vote against this bill is not in favor of recreational trails. This bill helps define how land is acquired for the construction of recreational trails. When you listen to those that speak against this bill, be sure you are hearing how eminent domain is absolutely necessary to construct recreational trails, and not just another emotional story on the benefits of recreational trails. Again, this bill is about how land is acquired to construct recreational trails and we believe eminent domain should not be one of those options. Thank you. [LB134]

SENATOR LANGEMEIER: Thank you; are there any questions? I'm going to have one. Mr. Morrison, again, as we talk about this issue we're not here to judge the merits of this particular trail. We're looking at NRDs trail...eminent domain for trails across the state. And this bill in it's drafting says that we're taking this power away from NRDs, which you've served on. It does not state that we're taking it from cities or other entities that may want to use eminent domain to make a trail. Would it be your thought that that should be expanded beyond just NRDs? And you don't have to have a thought, I just... [LB134]

PAUL MORRISON: You know, it's possible. You know, I think that sometimes cities maybe, as an example, maybe have a little more freedom in where they're going to put their trails. You know, that we're getting into a situation here when you start moving out into the agricultural world, the farmland, these kinds of projects become a little more difficult. I think as you see in the city of Lincoln, there's many trails that follow the right of ways of the roads, the abandoned creek beds, and you know, even the creeks in flood plains, and they haven't had to go out and acquire private property for such a purposes. [LB134]

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Transcriber's Office

Natural Resources Committee
January 23, 2009

SENATOR LANGEMEIER: So could I translate that statement into the fact you think the cities are using it better than the NRDs are using it? [LB134]

PAUL MORRISON: I think in those cases, and to use as an example, my familiarity with the city of Lincoln, they have not used eminent domain for those purposes. [LB134]

SENATOR LANGEMEIER: Okay, okay. Thank you. Very good. Thank you for your testimony. Next supporter, or proponent. I think we have one more in the front, come on up. You can get up...come on up and get staged. Welcome, we're ready when you are. [LB134]

BOB RIKLI: (Exhibit 3) Good afternoon. My name is Bob Rikli. That's B-o-b- R-i-k-l-i. Chairman Langemeier, fellow senators and Senator Pankonin, I would thank you for this opportunity to be here and present testimony in support of Senator Pankonin's bill, LB134. Our present farm is on one of the proposed bike trails that was purchased in 1927 by my wife's grandfather. On another alternative route which is a mile away, the farm that's currently owned by my wife and I was on the other path proposal, was purchased in July of 1883 by my great grandfather who immigrated to the United States from Germany in search of independence and freedom. Our oldest son, who is also a farmer, is the fifth generation in our family to farm this ground. Many of these farms that would also be affected by this plan are family farms that are multi-generational. Some of them are even older than what ours are and you've seen that already. One of the big things that we also need to face is the concerns that would be faced by the potential users of this bike path, safety of potential users because we use pesticides for the control of weeds, insects, and diseases as a part of our good stewardship management practices. The NRD has proposed a corridor of a quarter of a mile on each side of the road. Ladies and gentlemen, this would encompass over 2,700 acres of currently farm ground. Clearly, this is an abuse of the intent of eminent domain. This bike path/trail has been designated several years ago. In the last two years, I have seen seven people use that road for a bike path. The proposed route would cause chopping up of farms into unmanageable small fields. We no longer farm with two row equipment. Today we use 16 row planters and sprayers that cover 100 feet at a time, thereby making these small fields impractical to farm. Personally, we will be going to 16 row equipment next year. Our corn head will be an eight row corn head which will take considerable amount of ground. It was also stated the machines throw material out of the back of them and that could endanger some of the people that might be on the bike path at the time of harvest. I would refer you to page 3. This data was provided by the World Initiative for Soy and Human Health which is also known as the WISHH program. I was on the board of directors of that committee several years ago. You can read for yourself some of the data that I've got on there. This proposed path would eliminate over 25 acres of ground that is currently being farmed today. With today's production of soybeans, we average from 50 to 60 bushel per acre on these farms. At 50 bushel per acre, these 25 acres that are proposed to be eliminated would produce enough soy flour to feed over

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Natural Resources Committee
January 23, 2009

23,800,000 people for one day. When concerning the required 25 grams of protein per day, this would equate to nourishing 65,100 children each and every day of the year. The soybean oil that would be a by-product of the flour milling process would lessen our dependence on foreign oil by providing enough soy diesel to drive in an environmentally friendly and sustainable manner for over 32,000 miles each and every year. How can we, morally and ethically, afford to waste this amount of food and fuel for the sake of a bike trail that has other alternatives for the trail? This is not only about a trail, it is also a humanitarian issue. In my researching previous bills that pertain to the use of eminent domain, I find that it can and has been used very effectively and efficiently without violating a person's rights. The intent of the usage of eminent domain is for the constructive projects that will benefit all taxpayers. Clearly, this project is an abuse of the powers that it was intended to be used for. I encourage each of you to support this bill to clarify and prohibit any abuses of eminent domain and protect the taxpayers of Nebraska. I want to clarify that none of us are against the many conservation practices and other valuable projects that our NRDs do at this time. In fact, many of us here today use these practices and the services for our...on our own farms. The reason alternative route, there would be a much less controversial route, and not infringe on the rights of many of the people that are here today. Senators, thank you for your time and understanding and we ask for your support of this bill. And I will entertain any questions at this time. [LB134]

SENATOR LANGEMEIER: Thank you very much. Are there any questions for Mr. Rikli? Senator Haar. [LB134]

SENATOR HAAR: Senator. You mentioned that there's another route that you see that would be less intrusive? [LB134]

BOB RIKLI: That's correct. [LB134]

SENATOR HAAR: Can you tell me about that? [LB134]

BOB RIKLI: The route that Mr. Panska described would be the one that would continue on down the current bike path to the east down towards Highway 50. I think there's about three miles there. [LB134]

SENATOR HAAR: Is this the one on the map? Did you see this map...the light green, that one right there. [LB134]

BOB RIKLI: That's correct. Yes. [LB134]

SENATOR LANGEMEIER: I do need you to go back to the mike for the response so we have it on the record. I know you told him something, but you've got to say it on the mike. [LB134]

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Transcriber's Office

Natural Resources Committee
January 23, 2009

BOB RIKLI: Yes, that's correct. The light green, from what I can understand on there would be the proposed, another alternative to what we're looking at today. It's a much more feasible and much more workable, much less controversial alternative. [LB134]

SENATOR HAAR: Then you mentioned the proposed corridor of a quarter mile on each side. [LB134]

BOB RIKLI: That's correct. [LB134]

SENATOR HAAR: Tell me what's that about? [LB134]

BOB RIKLI: They...in the letter that they have sent us, they are asking for a corridor a quarter of a mile on each side of the road. That way if they want to, one of the proposals that they had had would take on Mrs. Johnson's farm and go way out in the field, clear around I think almost a quarter of a mile out into the field and then come back across. It would encompass almost three 80s of ground and would...it would divide those farms to where they would be very, very hard to farm. [LB134]

SENATOR HAAR: Okay. [LB134]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much for your testimony. [LB134]

BOB RIKLI: Thank you for your time and... [LB134]

SENATOR LANGEMEIER: Thank you. [LB134]

BOB RIKLI: ...appreciate that. [LB134]

SENATOR LANGEMEIER: You bet. At this time I'm going to recognize Barb DeRiese who joined us. She is the committee clerk for the Ag Committee and she is here kind of shadowing here today. So she may come in and out as she's learning the process, so next supporter. [LB134]

KA REN RUWE: Good afternoon, Senator Langemeier and members of the Natural Resource Committee. For the record, my name is Karen Ruwe, K-a-r-e-n R-u-w-e, and I'm from Arlington. My husband and I farm in Washington County and I'm here today to testify in support of LB134 on behalf of Nebraska Farm Bureau. Nebraska Farm Bureau has long been a champion of private property rights. Property rights are among our most basic rights and it is government's role to protect them. The taking of property through eminent domain should only be permitted when there's a clear public use for the betterment of the public good, regardless of the kind of real property we may own. A

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Transcriber's Office

Natural Resources Committee
January 23, 2009

home, a vacant lot, or farmland, government should never be able to force us to sell it just so it can be turned over to someone else for their recreational benefit. It is our understanding that LB134 would, in fact, enhance private property rights by limiting the natural resource districts' power of eminent domain as it is related to the development and management of recreation areas. Nebraska Farm Bureau Federation opposes the use of eminent domain for the development of recreation. We believe land acquisitions for trails and other projects should be done on a willing buyer, willing seller basis. Stating this, I would point out that the NRD is at a distinctive advantage in price negotiations since condemnation can be used as a fallback measure, although agreeable sales and accounts for the majority of land acquisitions by the NRDs eminent domain has been used in the past by NRDs to acquire recreation lands. Near Norfolk, the Lower Elkhorn NRD has used the power of eminent domain to acquire more than 12 acres along a three-quarter mile stretch on the north bank of the Elkhorn River. The land which was held by the same family for more than 100 years was used for a Cowboy Trail extension project. Condemnation was also used by the Papio-Missouri River NRD on parcels of the land on the Boyer Chute project near Fort Calhoun, Nebraska, which is in my county. It is in our opinion that condemnation by an NRD for a recreation land raises serious concerns as to whether the power is being used for betterment of public good for a public necessity. We believe that flood control and similar projects are instrumental in meeting structural needs of society. However, we would question whether a bike trail or a recreational park should be treated in the same manner for acquisition purposes. Furthermore, the use of eminent domain serves to create twofold problems for the existing and surrounding landowners. Not only do landowners lose their rights to the land, surrounding landowners watch their taxes rise as the acquired lands are taken off the local tax bases. Many will argue the benefits of developing recreational areas. We would argue that this benefit should not come at the expense of private landowners who, in many instances, have held ownership of the properties for numerous generations and will be the ones responsible for making up the lost tax dollars for school roads and other local services. I would like to again reiterate our support of LB134 and I thank you for the consideration of these comments. [LB134]

SENATOR LANGEMEIER: Thank you. Are there any questions for Ms. Ruwe? Seeing none, thank you. Very good. I think that was your, Senator Pankonin, that was your starter. Anyone else wishing to testify in support for LB134. Come on up, there's an empty chair up there if we have...the next one wants to come up and have a seat as they get ready. You're doing good. Welcome; we're ready when you are. [LB134]

THOMAS REED: My name is Thomas Reed, T-h-o-m-a-s R-e-e-d. What I'd like to talk about some more of micro personal landowner concern. Two of my neighbors told me over the last couple of years that in one instance, there was bad weather and some bikers knocked on her door, she's in her 80's, and asked if they could come in. And she said no, so they went to her basement and broke in and stayed there until the weather passed. Another situation was where a person came home and she found some people

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Transcriber's Office

Natural Resources Committee
January 23, 2009

using her well in her backyard and they were bikers. So there's...you know, for the state of Nebraska there's going to be a concern of are you going to supply water to the people that ride their bicycles on this trail, and are you going to supply shelter for these people. Also, I've been on this land for two years now. I've planted 500 trees, 250 bushes and if this trail goes along the right of way it could possibly take up to 20 trees and 15 bushes, which, I figured that the total landscape cost to me would be \$7,000. And haven't heard that somebody's going to compensate me for that. So that's some personal issues that I think the state needs to be concerned with. Is there any questions? [LB134]

SENATOR LANGEMEIER: Very good, thank you. Are there any questions? Seeing none, thank you very much. I appreciate that. [LB134]

THOMAS REED: Thank you. [LB134]

SENATOR LANGEMEIER: Further support? Seeing no others to testify in support, we will move on to opposition. Mr. Johnson, we're ready when you are. [LB134]

GLENN JOHNSON: (Exhibit 4) Okay. Chairman Langemeier and members of the Natural Resources Committee, my name is Glenn Johnson, G-l-e-n-n J-o-h-n-s-o-n. I am the general manager of the Lower Platte South Natural Resources District. Our offices are here in Lincoln, Nebraska. Our district has taken the position in opposition to LB134. Our district has done a lot of projects over the last 36 years. Flood control, stream channel improvement, stream channel, you know, restoration, wetlands, trails, we've been involved in both urban and rural and the district has used eminent domain. But eminent domain is used as the last resort. There is a process that we are required, by state statute, and if federal funds are involved we go through by federal statutes and federal regulations of appraisal, negotiations, and only if negotiations fail, or in the event that a landowner simply refuses at all to even come to the table and discuss negotiation, or in some cases a landowner has requested to go to the use of eminent domain and at their request. Eminent domain has a value protecting both the landowner for being treated fairly and also the public for being treated fairly. So it protects both the interests, if it's used. Obviously, or district prefers not to use that. I'll talk a little bit about the specific project that's been referenced in the previous testimony. This district got involved in trails projects in the early 1990's with the...taking title to, and development of the MoPac East Trail beginning at 84th Street on the east edge of Lincoln. And it runs all the way down and completed all the way to Wabash. The district does own two more miles of abandoned railroad right of way to the east, but it does not extend all the way to Highway 50. There is still private property between where the railroad ends and Highway 50. That was brought up here earlier as another alternative connection. The district has also been involved in the Oak Creek Trail from Valparaiso to Brainard, the Homestead Trail running from Lincoln south and then has developed trails along Salt Creek in Lincoln and at Antelope Creek up. Except for one particular mile section, all of

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Transcriber's Office

Natural Resources Committee
January 23, 2009

that has been on railroad right of way or along stream corridors. And we've been very fortunate to have those readily identifiable corridors. This particular trail project we've been working on for the last three years is a nine mile segment that will connect the trail system from Lincoln to Omaha. This is not just an NRD project. This has been in the works for many, many years. In fact, in 1994 it became part of the state trails plan that was developed for the Department of Energy and Economic Development. Those two departments hired...and had this state trails plan. And since that time it's been updated in 2004 and again, it was part of that plan. So it's part of a statewide network of trails. Going beyond the statewide, it's actually part of a national trail system that runs from coast to coast, the American Discovery Trail, which was mandated by the Nebraska Trail System Act of 1968 and this happens to be one of the routes in that particular trail corridor. Unfortunately, to make that linkage from where this trail stops now at Wabash to the Lied Platte River Bridge where it will connect in all the way to Omaha, there is no readily identified available corridor. There is a short segment towards the north end of it of abandoned Rock Island Railroad right of way, but that is now in private ownership, no longer in the railroad's ownership. As we began to look at how to make that connection, we hired a consultant. We went through a study, we looked at actually four different section line alignments to get from point A to point B. We looked at stream corridors within that same general area, we even looked at a half mile...as a potential corridor, running down a half mile line. The consultant ended up recommending a 334 feet, one of those particular corridors. Before it came to the board or before the board could act on it, there were two of the NRD directors who lived in that area said, we'd like to work with a smaller group of individuals and landowners, property owners, interested people in that area to see if we can come up with a local option. And they worked on it, they did come back, they recognized the, recommended the same corridor but their recommendation included staying totally within the county road right of way. As we moved forward, the difficulty with that is the funding agencies for projects, and from a safety standpoint, it creates some very difficult situations to stay within the county road right of way. If you simply expand the road's shoulders, you have to expand them to maintain a clear zone between the traffic and the trail users to the point where you've used up all of the rest of the county road right of way and you've got to go acquire right of way outside of the existing county road right of way to replace the road ditch. So you can't put the trail in the road ditch without having to replace the road ditch. As we develop these...the corridors, the district adopted that one particular corridor as a designated route. There were public meetings and we did get input, lots of it, from the affected landowners and interested concerned parties. We then hired a second consultant to move into the next phase and refine that. You heard them talk about a quarter mile on either side of the road corridor. That was strictly for planning purposes. We wanted the second consultant to have the option to look on either side of that road corridor, within and outside that corridor, to be able...because there are facilities, farmsteads, residences very close to the road. and to be able to look and see where an alignment might be that would minimize the impact within that corridor. There was absolutely no intention, whatsoever, of the district to acquire a half a mile wide strip or a

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Transcriber's Office

Natural Resources Committee
January 23, 2009

quarter mile on either side. We're looking at a 20 plus, 25 to 30 foot permanent easement. We did identify, the consultant did look at many, many numerous, as many routes as they could consider to try and get from point A to point B. And they're all different alternatives. And what they've come back to us now, which we...the board has not yet considered, is one consolidated alignment out of all of those alternatives that minimizes the impact. During this process, we had public meetings. The consultant also met with about 40 percent of the individual landowners, or at least those who were willing to meet with the consultant to talk about the specifics of these corridors and how they would be impacted. The recommended corridor that is being proposed at this point utilizes the county road right of way as much as possible and then where it can't stay within the county road, a portion of it would extend just outside. But it basically parallels the county road right of way and even uses some of the right of way to make...for the easement area. But it would be in 9.5 miles we're estimating up to 21 acres over 34 parcels from 22 separate landowners. And we will have to follow federal guidelines and requirements for right of way acquisition if and when the project gets to that point. The board has...is moving the project along on an incremental basis. Our board's position is that eminent domain is the last resource we would have to go to. But if we were able to acquire three negotiations, 20 out of the 21 parcels and not the 21st parcel, the \$9 million of public dollars and private dollars that have been invested to get from Lincoln to Omaha already to this point would still have a gap in it. And it would be very difficult and very...could potentially be very expensive to acquire that right of way if the landowner is even willing to discuss negotiations. I guess at that point, I close my testimony and just say the district urges the committee to indefinitely postpone LB134. [LB134]

SENATOR LANGEMEIER: Thank you. Are there any questions? Senator Haar. [LB134]

SENATOR HAAR: Senator Langemeier. As Senator Langemeier has pointed out several times, this hearing in a way isn't so much about this nine mile section is it really is a much broader policy. And you state in your letter that you said eminent domain with three independent court appointed appraisers and the opportunity for appeals. So, just since it's really kind of a broad issue, could you tell a little bit more about that process of...that you have to go through to finally get to the appeals and what that means. [LB134]

GLENN JOHNSON: First I'll make a disclaimer that I am not an attorney. And so you're hearing from an engineer's standpoint... [LB134]

SENATOR HAAR: Okay. [LB134]

GLENN JOHNSON: ...but one with a number of years of experience. First, the need for the property has to be identified and there is a hearing process that the district goes through with all the landowners prior to even beginning negotiations. The Nebraska

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Transcriber's Office

Natural Resources Committee
January 23, 2009

Uniform Land Acquisition Act guides the natural resource districts as to how to go through the process of acquiring right of way. We then have a professional licensed appraiser develop an appraisal based upon that particular right of way requirement. That appraiser brings that appraisal to the district. The district would accept or reject, but the board would have to identify and accept some level of appraisal. Normally they accept the appraisal as the beginning basis for negotiations. And negotiations begin with that appraisal as the basis. Then we go back and forth with the landowner and through a process of, you know, good faith negotiations. If at some point we are not successful in coming together on a dollar value, then the district board makes a decision at that point when they consider the negotiations to either go to eminent domain or not. That decision is not made up front. [LB134]

SENATOR HAAR: Okay. [LB134]

GLENN JOHNSON: That decision is made after they consider the negotiations as they proceed, and if they come to a failure. Once they file eminent domain, it goes basically to county court. And there the county judge appoints three independent individuals. Usually one is an attorney, one is a licensed appraiser, and one is a registered property holder within the county. The property owner and the district both appear at this hearing before these three board of appraisers and the district basically presents, here's what our offer was, here's the basis on the appraisal, you present the appraisal at that point and the basis for your offer. The property owner can be represented by counsel if they so choose and often are. Then they basically present their argument to the three members on the board of appraisal. Then the board of appraisal goes out to the actual property and views the property. At that point those three members get back together and develop their recommended award of damages. The property owner and the district, both parties, have an opportunity then to appeal that award of damages. If either one feels that it's inadequate or too much or too little, they can appeal that. That goes to district court where there is a, basically a trial before a jury. And again, it's on the amount of the damages. That trial concludes with a determination and then either party, again, has the opportunity to appeal that to the Nebraska Supreme Court on the basis of damages. [LB134]

SENATOR HAAR: Now, what you've described mostly has to do with the value of the property. What about the issue of, in this case for example, the route of a trail. Can that be appealed as well? [LB134]

GLENN JOHNSON: At that point, probably no. That's not an appealable aspect of a condemnation. When you go to...if you were to appeal it to district court, it's just on the basis as I understand of the value. [LB134]

SENATOR HAAR: Okay. And then there was the implication that people were basically threatened that, you know, you don't like what we're saying we'll just condemn it. Do

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Transcriber's Office

Natural Resources Committee
January 23, 2009

you...how do you relate to that? [LB134]

GLENN JOHNSON: Well, if my recollection of the way the question was phrased is, if we don't, could you take it through eminent domain? And do you have the authority to take eminent domain, to take this property through eminent domain? And the answer was yes, the district does have the authority if we are unable to negotiate to take the property through eminent domain. [LB134]

SENATOR HAAR: Okay. [LB134]

GLENN JOHNSON: It was, not to my knowledge, ever stated as a threat. But it is simply stating a fact that...and responding to a question, the district does have that authority. [LB134]

SENATOR HAAR: Thank you. [LB134]

SENATOR LANGEMEIER: Senator Fischer, welcome back. [LB134]

SENATOR FISCHER: Thank you, Senator Langemeier. I apologize for being gone. I had a bill in another committee so I missed much of the testimony here today, and hopefully my questions haven't been asked before and I'm not repeating things. Has your NRD used eminent domain in the past for any reason? [LB134]

GLENN JOHNSON: Yes, we have, certainly. [LB134]

SENATOR FISCHER: On what? [LB134]

GLENN JOHNSON: On flood control projects, building whether they're dams or whether they're channel improvements. Generally that's the type of project where we have acquired right of way. All of our trail projects up to this point have been on either abandoned railroad, or along stream corridors that were basically already publicly owned. [LB134]

SENATOR FISCHER: So I would take it from your answer you have never used eminent domain for a recreational purpose in the past? [LB134]

GLENN JOHNSON: As part of a flood control reservoir that has multiple purposes, yes we have. [LB134]

SENATOR FISCHER: What did you use it for, specifically, on your reservoir? Is there boating that's available there? Do you...is there boating, water sports available in the reservoir, is it a large reservoir? [LB134]

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Transcriber's Office

Natural Resources Committee
January 23, 2009

GLENN JOHNSON: Yeah. The reservoir is about 100 surface acres northwest of Lincoln and it's open for hunting, fishing, boating, camping, bird watching, basically any type of outdoor activity. [LB134]

SENATOR FISCHER: Okay. Who owns the land around the reservoir? Who owns the shoreline and the reservoir? [LB134]

GLENN JOHNSON: The district owns the shoreline and the reservoir. [LB134]

SENATOR FISCHER: Okay. So and by law, the district could not transfer that or sell it, is that right? On a reservoir, do you know? [LB134]

GLENN JOHNSON: I'm not aware there's a prohibition that if the district wished to put that property up for auction, unless there was a restriction in the funds that were used, you know, to construct that, I'm not aware of a legal restriction other than that would go with the funds if they were federal or state funds. [LB134]

SENATOR FISCHER: Okay. Are you aware of the Supreme Court case a few years ago, Kelo v. New London, Connecticut, on the use of eminent domain for recreational purposes. [LB134]

GLENN JOHNSON: Yeah, just not enough to...I'm aware that there was a case, yes, but I'm not familiar with the case. [LB134]

SENATOR FISCHER: Okay, thank you. [LB134]

SENATOR LANGEMEIER: Senator Schilz. [LB134]

SENATOR SCHILZ: Thank you, Senator Langemeier. Now Mr. Johnson, you mentioned in your testimony and we'd heard it before that you're only searching for a permanent easement... [LB134]

GLENN JOHNSON: Right. [LB134]

SENATOR SCHILZ: ...and not outright purchase of the property. What would be the difference both in how you would figure the value of that easement as well as the liability that the district would assume upon placing that...or upon getting that easement? [LB134]

GLENN JOHNSON: Okay. The basis for acquiring an easement in this case is a little bit unique in that the property ownership goes to the section line, which is the center of the road. The county has a dedicated 66 feet right of way, 33 feet on either side of that section line. [LB134]

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

Natural Resources Committee
January 23, 2009

SENATOR SCHILZ: Um-hum. [LB134]

GLENN JOHNSON: If we were to somewhere either within that county road right of way or at the edge of a county road right of way, just outside that 33 feet from center line acquire a strip of fee title, that would isolate that property interior from the roadway, and you'd split the property in half, essentially. They would have ownership of what's underneath the county road right of way, then a parcel 30 foot wide owned by the natural resource district, then again the private property. [LB134]

SENATOR SCHILZ: Um-hum. [LB134]

GLENN JOHNSON: That's why we've proposed that an easement is better for all purposes. In terms of the value of the easement when our appraiser and our experience over the years where it's been flood control or something else where the use by the district is basically entire, we acquire all of the use of the property, the landowner basically has no utility of that property, that's valued the same as if it were fee titled. [LB134]

SENATOR SCHILZ: Okay. Then so then as you're looking at this eminent domain, would you then take some of the concerns of what I've heard today is that these fields would be split? Is that devaluation of the fields around there, is that also included in the value of your easement that you're taking care? [LB134]

GLENN JOHNSON: If there is, and the way it's anticipated now it would be, in an extreme case, only in an extreme case where there would be a severance, or a field split because we are attempting to stay right up against the property boundaries right now. [LB134]

SENATOR SCHILZ: So you'll maintain... [LB134]

GLENN JOHNSON: But if there were, if there were a severing of one piece from the other, the first thing that happens is that on all of our trails that we have in existence today, we provide crossing opportunities for...because most of the railroad corridors go through the middles of property not along the edges. And it's usually the same property on both sides. And we have many, many, many ag crossings, other type of crossings... [LB134]

SENATOR SCHILZ: Sure. [LB134]

GLENN JOHNSON: ...that we allow the trail corridor. [LB134]

SENATOR SCHILZ: Sure. [LB134]

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

Natural Resources Committee
January 23, 2009

GLENN JOHNSON: Those would still be permitted. Yeah, I think that's... [LB134]

SENATOR SCHILZ: Okay. [LB134]

GLENN JOHNSON: If there were to be, though, a severance, that would be taken into account in the appraisal process. If there's damages to the remainder, you know, from either severing it off or making it inaccessible or unfarmable because of the size of the tractor or configuration of the track. [LB134]

SENATOR SCHILZ: That would all be considered? [LB134]

GLENN JOHNSON: That would be considered in the appraisal process. [LB134]

SENATOR SCHILZ: Now my next question then, you say that that would only be in places where the field would be severed.. [LB134]

GLENN JOHNSON: Correct. [LB134]

SENATOR SCHILZ: In areas where you're going to cross, let's say, the bottom end of a field... [LB134]

GLENN JOHNSON: Um-hum. [LB134]

SENATOR SCHILZ: ...would you then maintain grade and everything like that so the drainage happened the way it was always supposed to? You know, if you look at your railways, at least, if nothing else, yeah they may go through the middle of the field, but they were designed to go through the middle of a field. [LB134]

GLENN JOHNSON: Certainly. [LB134]

SENATOR SCHILZ: And then so you have some drainage considerations there and stuff like that. [LB134]

GLENN JOHNSON: Obviously we would have to design it just like you do...just like the railroad corridor was designed if the field is going up and down and the trail can't have...like a railroad, you can't exceed certain grades. [LB134]

SENATOR SCHILZ: Um-hum. [LB134]

GLENN JOHNSON: From an Americans with Disabilities Act limitation, you have...you can't just simply go down a 10 percent slope, you're basically limited to a 5 percent slope. [LB134]

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

Natural Resources Committee
January 23, 2009

SENATOR SCHILZ: Right. [LB134]

GLENN JOHNSON: So you would have to do some cuts and fills and every time you cross a drainage there is going to have to be culverts and other drainage accommodations provided. If there are terraces and other conservation practices, those all have to be restored to where they continue to function properly. We run into that with all the dams that we construct because there we're constructing across a valley. We're constructing a dam and flooding it and the way that terraces generally are constructed on a contour, we have to reconstruct the ends of those terraces. [LB134]

SENATOR SCHILZ: Sure. [LB134]

GLENN JOHNSON: So that's part of the design, construction, and compensation process. [LB134]

SENATOR SCHILZ: Right. What's...okay...I think my last question is, let's say that you go through, that you would go through the process of eminent domain, you would acquire that property and then you would do everything, such as you said, to make sure that it was all kept the way it was supposed to be, and then there would be a problem later on. Is there a grievance process to go back through to the NRD and say, hey look, your design didn't work the way you said it would. [LB134]

GLENN JOHNSON: Certainly. Certainly. We have an elected board of directors and... [LB134]

SENATOR SCHILZ: And who pays for the fixing the problem? [LB134]

GLENN JOHNSON: If it was a problem of the design, a problem of the operation, obviously, it would be the district's responsibility to pay for that. [LB134]

SENATOR SCHILZ: Okay. [LB134]

GLENN JOHNSON: We've got...we've been working with adjoining landowners on the railroad corridors to resolve some problems that existed with the railroad. And we've come back in and worked with them, the adjoining property owners, financially, to resolve to both our benefit some of those, those erosion problems. [LB134]

SENATOR SCHILZ: Sure. [LB134]

GLENN JOHNSON: So I think we've got a record of working with the adjoining landowners if there is any kind of a problem. [LB134]

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

Natural Resources Committee
January 23, 2009

SENATOR SCHILZ: Okay, thank you. [LB134]

SENATOR LANGEMEIER: Senator McCoy. [LB134]

SENATOR McCOY: Thank you, Senator Langemeier. Mr. Johnson, I appreciate your testimony. A little bit of clarification, if I could. On the back page of your written testimony here you'd mentioned that discussions with federal, state funding agencies it was determined that constructing the trail entirely with the existing county right of way raised safety issues and is not feasible or fundable. In the beginning of the two paragraphs down it said the recommended trail corridor utilizes as much as possible the county right of way. Can you kind of explain, if you would, a little more, and you touched on it slightly, why that is that if you're going to use the county right of way as much as possible, where you note that down below, how using it entirely of the county right of way what the difference is as far as how it would not raise the same safety concerns. Would you mind addressing that, if you would, please? [LB134]

GLENN JOHNSON: The safety concern and the trail design and operation is basically, there needs to be a minimum five foot clear zone, clear distance from the edge of the trail to the edge of the travelled roadway. [LB134]

SENATOR McCOY: Okay. [LB134]

GLENN JOHNSON: From another roadway. So, from the edge of the roadway you have to set the trail back at least five feet. And then if you have a ten foot trail with...and then you have a two foot clear zone--and these are ASHTO standards for any trail that Federal Highway Administration, Department of Roads, and Game and Parks, the funding agencies all follow. [LB134]

SENATOR McCOY: Um-hum. [LB134]

GLENN JOHNSON: All require to be followed. So you've got five, ten, two and then a three to one slope away and basically, you've occupied everything from, almost everything from the road edge to the 33 feet right of way. [LB134]

SENATOR McCOY: Um-hum. [LB134]

GLENN JOHNSON: And in some cases, the road is higher than the right of way. Some cases the road is lower than the right of way, depending upon where it's at. [LB134]

SENATOR McCOY: Um-hum. [LB134]

GLENN JOHNSON: And the problem is then you have to replace that, you have to replace that road ditch and essentially you're acquiring the same type of right of way

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

Natural Resources Committee
January 23, 2009

interest outside of the existing 33 feet for a road ditch that you were going to be using for a trail. The consequence, also, is then if that road is ever improved...right now, most of that section is a gravel road. There are two miles that are paved. If that roadway is improved, someone is going to have to pay the cost of relocating a trail that was built with federal funds and acquiring the right of way to do that. So if you widen the existing roadway, you've obliterated, potentially, the trail that's there. And so, you know, that's why they were discouraging, you know, and saying, you know, we're, you know, from a safety standpoint we can...what we're talking about in terms of utilizing county road right of way is going from the edge in because, particularly where the road right of way slopes down, there is an opportunity, and the county has been, we've been working with the county and discussing to move that in so it's not entirely 30 feet outside that 33 feet. So part of it, maybe ten foot could be within the existing county road... [LB134]

SENATOR McCOY: Um-hum. [LB134]

GLENN JOHNSON: ...area. And I guess that's what we're talking about, we're using that as much as possible. In some cases, we may be forced to come almost totally within the right of way. Narrow up, you know, and then come back out if there is some physical constraints that would limit us to doing something else. [LB134]

SENATOR McCOY: Do you know of an instance, I guess to conclude with that and you had mentioned that if a road was improved it might require a kind of a redo, so to speak of a trail that's paid for with federal funding. Do you know of an instance that that's happened or occurred, to your knowledge? [LB134]

GLENN JOHNSON: Well one that's going to occur is when Highway 34 east of Lincoln is improved, that's this one coming up. [LB134]

SENATOR McCOY: Um-hum. [LB134]

GLENN JOHNSON: MoPac Trail, right now, crosses Highway 34 at grade... [LB134]

SENATOR McCOY: Um-hum. [LB134]

GLENN JOHNSON: ...and it would be...we've designed a safe crossing there, like would be designed on Highway 1 and Church Road. They may have to be a little...not a straight across route... [LB134]

SENATOR McCOY: Um-hum. [LB134]

GLENN JOHNSON: ...but we may have to redesign it. But in this case, they're modifying, they're widening, Highway 34 and they are going to, at this point, either put in an under crossing or an overpass as they add additional lanes at the expense of the

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

Natural Resources Committee
January 23, 2009

state Department of Roads. So they're going to have to replace that trail crossing of Highway 34. [LB134]

SENATOR McCOY: I appreciate that information, I guess, and in a little more detail. Do you know of an instance, you'd mentioned that the majority of this section, all but a couple miles of this 9.5 mile section, is gravel. Do you know of any instance when there's been such a roadway as this that's had to be improved? That would be a little different than what you're talking about with Highway 34. [LB134]

GLENN JOHNSON: Well, recognize that Cass County is a growing county. It's growing in population. [LB134]

SENATOR McCOY: Um-hum. [LB134]

GLENN JOHNSON: And being between the influence of Lincoln and Omaha and just in and of itself is a growing county. There are, you know, a number of roads that have been paved. Some have tried to maintain just the existing one, just two miles to the west of this road corridor has been paved, maintains, essentially, the same cross-section. It's a little bit wider on the surface, I think, the paved surface then the gravel surface is, but does have, basically has no shoulders. And so, you know, I...there are in Lancaster and Cass County many instances where gravel roads, as their traffic increases, traffic volume increases, the county determines that it's an appropriate time to regrade the road and hard surface it. [LB134]

SENATOR McCOY: Thank you, Mr. Johnson. [LB134]

SENATOR LANGEMEIER: Senator Haar. [LB134]

SENATOR HAAR: Senator. Someone earlier raised the issue of liability. [LB134]

GLENN JOHNSON: Um-hum. [LB134]

SENATOR HAAR: If I'm on that bike trail and something from a combine hits me, who is liable? [LB134]

GLENN JOHNSON: Well, there is a recreation trails act. [LB134]

SENATOR HAAR: Okay. [LB134]

GLENN JOHNSON: And basically unless it was a malicious and intentionally, intentional and malicious act, you know, that doesn't mean you wouldn't get sued. But there's not an inherent liability. Again, I'm not an attorney, that's my understanding of it. [LB134]

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

Natural Resources Committee
January 23, 2009

SENATOR HAAR: Sure, sure. [LB134]

GLENN JOHNSON: The district carries liability insurance on all the trails that we have and all the other public access areas that we have. It's no different than, you know, hunting on the edge of a property and right next to, you know, going along the edge of a property--public access property where you're hunting, or bird watching, or whatever you might be doing, just hiking, and right adjacent to ag lands and other, you know, private property. [LB134]

SENATOR HAAR: Okay. [LB134]

SENATOR LANGEMEIER: Senator Schilz. [LB134]

SENATOR SCHILZ: Thank you, Senator Langemeier. Mr. Johnson, just a couple more questions, as we were talking before. Obviously, the trail that you're going to build is going to have some sort of a profile that... [LB134]

GLENN JOHNSON: Correct. [LB134]

SENATOR SCHILZ: ...you're going to raise it how far above the surrounding land and how will that be, do you know? [LB134]

GLENN JOHNSON: If there's no reason to, it'll be designed to require as little grading as possible. [LB134]

SENATOR SCHILZ: Um-hum. [LB134]

GLENN JOHNSON: And if it requires only a, you know, just a six inch crown, basically that's all the grading that would be done. But if you come to a low crossing, there may be some additional excavation to get the necessary filled what the cross...to maintain the drainage and to maintain the grades. [LB134]

SENATOR SCHILZ: Right, right. Okay. And then, can you, maybe you don't know, but do you know how many pieces of property this may... [LB134]

GLENN JOHNSON: Yes. [LB134]

SENATOR SCHILZ: ...sever, so to speak? [LB134]

GLENN JOHNSON: Well... [LB134]

SENATOR SCHILZ: I know there's 22 landowners involved. [LB134]

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

Natural Resources Committee
January 23, 2009

GLENN JOHNSON: ...yeah, there's...yeah there's 34 different parcels... [LB134]

SENATOR SCHILZ: Um-hum. [LB134]

GLENN JOHNSON: ...that that right of way would be acquired from. [LB134]

SENATOR SCHILZ: And, I'm guessing, you don't know for sure... [LB134]

GLENN JOHNSON: I don't know any at this point because it hasn't been...the design hasn't been, you know, completed. But at this point I'm not aware that there would be any severance where there would be, where it would not be following a property boundary. [LB134]

SENATOR SCHILZ: Okay. All right. Thank you. [LB134]

SENATOR LANGEMEIER: Now you get me. Mr. Johnson, I have a couple of questions. You talked about this being part of a national trail system across America. Is that in chunks or are we hoping to connect New York to L.A., or... [LB134]

GLENN JOHNSON: Yes, there's... [LB134]

SENATOR LANGEMEIER: I guess my question is, is from Lincoln, how are we getting to Denver? Or where are we going? [LB134]

GLENN JOHNSON: From, there's a combination that when it's been laid out, there is one corridor from, actually there were two corridors, one in Nebraska, one in Kansas. They come back together in Missouri and Colorado and then that single corridor to the two coasts. And that trail, the identified trail is a combination of both on road and off-road trails. It's just, you know, people have traversed it many times, and followed that from one coast to the other. But it's not all off-road trail and it's not, you know, so some of it is on highways and on streets where there is no off-road trail, so. [LB134]

SENATOR LANGEMEIER: Okay. The reason I asked that is, this trail idea is kind of in my mind one that has developed over the last few years and seems to be growing for the desire to have trails. In your NRD 20 years ago, did you do anything with trails and when did you start doing trails? [LB134]

GLENN JOHNSON: We started, our involvement with trails came in the early 1990's with linear trails. Prior to that, we had been involved with the city of Lincoln in the early development of trails in the 1970's when they first started, when they built the first trail along Antelope Creek in Lincoln, we were involved in constructing some bridge under crossings as part of the trail project. That was really our first involvement in linear trails. On our public access properties we've had, you know, we've had trails, interior trails that

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

Natural Resources Committee
January 23, 2009

have been part of that since the beginning. [LB134]

SENATOR LANGEMEIER: Okay. Thank you. Now I have one other question, is it...actually I have a couple more. But transmission lines in Nebraska, we require, a few years ago we changed the statutes that Nebraska Public Power an entity in putting transmission lines across Nebraska, has to put them perpendicular to section lines. We don't allow them to go diagonally anymore across people's property for a number of the reasons we've heard in testimony. Are there guidelines in building trails as far as why we wouldn't want to make 90 degree turns on perpendicular lines with sections? Are there guidelines out there that you have...and you talked about federal funding. Are there...I guess my question is, is there federal guidelines that says you have to build a trail in this way, this slope, this shape? [LB134]

GLENN JOHNSON: There are guidelines, as I mentioned, the ASHTO standards for, basically design standards for trails. And they talk about width, they talk about slopes, but in terms of alignment there may be maximum curves at, for rated speeds, you know, or that you can't have certain radiuses of curves. But in terms of going this way and this way and this way and this way, jogging back and forth or running diagonally, there's nothing in standards as far as I know about alignment. Obviously, one of the concepts in terms of the sponsors, there's a couple of thing. One is usually a straight line from point A to point B is the shortest and usually the least costly, but not always. Another point in identifying trail corridors is, you know, if there are natural grade features, if there are natural corridors to follow like string corridors, those are certainly a, could be actually less costly and be longer and more tree lined and aesthetically pleasing to the biker and runner and hiker, so. [LB134]

SENATOR LANGEMEIER: So the priority in the trail would be the runner, the hiker. [LB134]

GLENN JOHNSON: No, the priority in trail is the multiple user, a multiple, you know, it's there for walking, hiking, running, bicycling. [LB134]

SENATOR LANGEMEIER: One final question. You talked about eminent domain, you talked about people voluntarily wanting to enter into eminent domain for protection on the landowner's ability to get paid correctly, and I would agree too. But on the other side, you mentioned that sometimes the district would want to go into an eminent domain to protect the public interest, I think was the word you used. Don't you have a board of directors that's elected to make decisions on what to pay that you wouldn't need to go to eminent domain to make that decision for them? [LB134]

GLENN JOHNSON: The board is, could be faced with a choice of either we go to eminent domain or we pay whatever the landowner asks, and that could be whatever the landowner asks. And the board is caught...if that were the last property that needed

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

Natural Resources Committee
January 23, 2009

to close the gap, the board is put in a position of should we protect the taxpayers' interest of not paying, overpaying, you know, one individual three to four times what the appraised value is, is there inequity with the other persons who may have negotiated and settled for the appraisal or near the appraisal. Those are the dilemmas the board members go through in considering settlement versus going through eminent domain. And in some cases they choose to go the route of, okay, we'll go beyond what we normally have paid in negotiations because the size of the parcel, because of some unique circumstances, rather than go to eminent domain. [LB134]

SENATOR LANGEMEIER: Would I not say, welcome to public service? One more question, Senator Haar. [LB134]

SENATOR HAAR: One more quick question. How many board members and what are their terms? [LB134]

GLENN JOHNSON: I have 21 board members and they are elected for four year terms. [LB134]

SENATOR HAAR: Okay. [LB134]

SENATOR LANGEMEIER: Very good. Thank you very much. Further opposition to LB134? Step right up. You're going second so you'll probably have less questions. You lucked out there. Go ahead when you're ready. [LB134]

JOHN WINKLER: (Exhibit 5) Good afternoon, Senator Langemeier, and members of the Natural Resource Committee. My name is John Winkler, J-o-h-n W-i-n-k-l-e-r, and I'm the general manager of the Papio-Missouri River Natural Resources District. Glenn did a very good job of stating eminent domain procedures that our board follows as well, and our board will also use eminent domain only as a last resort. We are a district that has been involved in trails for probably over a decade now, and we've constructed and maintained various trails throughout the district since that time. We are also a partner with the Lower Platte South on the MoPac Trail from Omaha to Lincoln. And in fact, the Papio NRD is constructing the last leg of that trail north of the river, and hopefully, we will start construction this summer. Our main objection to this bill is that it appears to go beyond one project in one district in the state. We believe LB134 would make it very challenging and potentially very expensive to complete a variety of trail projects throughout the state if eminent domain is limited or eliminated for those projects. The district has acquired right of way for all kinds of projects over the years, and obviously, we use that only as a last resort. In fact, the district has run into a number of situations where we were required to use eminent domain for the acquisition of the right of ways. And the most recent example is trying to acquire a right of way from the public schools land trust. That is one of their procedures that you go through eminent domain to acquire that property. We've also had to use eminent domain to acquire right of ways

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

Natural Resources Committee
January 23, 2009

from one of our NRD directors. So, we have had experience going through that process as well. Again, Glenn did a good job of explaining the reasons for eminent domain, why it is important, and then also that it be tempered. And we have a board of directors of 11 that are charged with making that decision, who serve the same number of terms as Glenn's. And it's a smaller number group, but no less the responsibility. So the Papio-Missouri NRD respectfully request that this committee definitely postpone LB134. [LB134]

SENATOR LANGEMEIER: Thank you, Mr. Winkler. Are there any questions? Senator Fischer. [LB134]

SENATOR FISCHER: Thank you, Senator Langemeier. Welcome, Mr. Winkler. [LB134]

JOHN WINKLER: Thank you. [LB134]

SENATOR FISCHER: Can you understand why people are upset by this? [LB134]

JOHN WINKLER: Yes. [LB134]

SENATOR FISCHER: Nebraska is a state that I think is a strong state because we have like 93 or 94 percent of our property held by private citizens. We're a private property state, and I realize that there are a number of trails that have emerged in the state and they are a benefit for the people that use them. But do you really feel that's a proper use of eminent domain to take private land for somebody else's recreation? [LB134]

JOHN WINKLER: We sympathize, obviously, anytime that you have to use that authority. These trails, as Glenn stated, are multimillion dollar investments from not only the NRD, but you have federal funding, state funding, even charitable foundations fund the trail systems. And it's not a simple tool to use and it should not be taken lightly. And in no way am I minimizing the impact of having that authority. But again, it becomes necessary from time to time to have the authority to exercise it. And I think Glenn did a good job of stating, not only for the benefit of the public, but also for the benefit of the private landowner that they are getting a fair value for that. You could go, is it fair that, you know, one particular, two particular landowners could, you know, possibly impact the benefit of a larger number of citizens. And so, it's not an easy question to answer. But we do sympathize and again, we use it very sparingly and we have to use it very tempered. And our board believes that and I wholeheartedly believe that, and again, I'm not minimizing what these people are experiencing. I know Glenn, and I know Lower Platte South and our district, we go to great lengths to provide options and other alternatives to try to eliminate and minimize the need to have to go to that step. And our board will do everything and bend over backwards to try to formulate a deal or negotiate a settlement with property owners, so it is not taken lightly. [LB134]

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

Natural Resources Committee
January 23, 2009

SENATOR FISCHER: How many acres of recreation land is under the control of your NRD right now? [LB134]

JOHN WINKLER: I don't have that number right off the top of my head. I can get it for you. [LB134]

SENATOR FISCHER: A lot? [LB134]

JOHN WINKLER: Yes. [LB134]

SENATOR FISCHER: I should have probably asked Mr. Johnson, but do you have any idea how many acres are involved in his NRD that are used for public recreation right now? [LB134]

JOHN WINKLER: No, I don't. [LB134]

SENATOR FISCHER: I agree with Senator Haar that this is a public policy decision that we're looking at with this bill. And a role of government, I also believe, is to protect the interests of the minority. In this case, when you're stressing the public good, the public being any citizen to use a trail for recreation, while that is a benefit for our society and for the public, I don't know if that's for the public good in the same way that a highway would be, or a transmission line, or something that would benefit, and would be needed, I think you could make the case it is more needed by a large number of people. Comments? [LB134]

JOHN WINKLER: It's not an easy issue. [LB134]

SENATOR FISCHER: Okay. Thank you. [LB134]

SENATOR LANGEMEIER: Senator Schilz. [LB134]

SENATOR SCHILZ: Mr. Winkler, thank you so much for coming in. On this issue and to dovetail with what Senator Fischer was asking, I guess in the broadest sense, as you look at recreation opportunities within your NRD, and I'm just asking you because you happen to be the one sitting there when I thought of the question, what are the principle things that you look at for recreation? Why obviously, recreation... [LB134]

JOHN WINKLER: Right. Right. [LB134]

SENATOR SCHILZ: ...but you're not just building it so that people can go run around. I mean, there's a reason. [LB134]

JOHN WINKLER: No, in our district specifically, because we're a part of a larger metro

Natural Resources Committee
January 23, 2009

area, at least in the Omaha area obviously, trails are, you know, we talk about using them for commuting. We talk about the, you know, gas prices and you talk about the dependence on foreign oil. Our plan is to try to put together a trail system that people can actually go to work by utilizing the trail system. And we work feverishly with the city of Omaha and all of our other partners in the metro area to put that together. My kids are in grade school and we get notes all the time of child obesity. Kids aren't spending enough time outside. They're spending time in front of the video games and that's why we look at trail systems to get kids out to explore nature, to walk on the trails. Moms, you know, we see them on the trails pushing their kids in the strollers, bikers. So it's part of a larger picture. It's just not a trail system to just wander around. It's actually a part of a larger network too. Omaha has a bikeable community initiative now, and the NRD is a part of that. And we want to get to the point where we're like Portland and some of the other communities that have been proactive in this, and 15 to 20 percent of their population commutes by bike. And that has a huge impact on their infrastructure, carbon footprint, you know, fuel usage, and so it's all part of a larger picture. [LB134]

SENATOR SCHILZ: And would you say that that larger picture is, hey, if we do this stuff, people like it and they will come here and enjoy it more and have more economic development? [LB134]

JOHN WINKLER: Yes. Well, it's part of quality life and it's that quality of life and having those amenities that will draw people to want to open businesses in your community. I was in the economic development field when I was the city administrator of Plattsmouth. The first thing that people do when they come to look at your community is, what are the recreation? Do you have a community center? Do you have parks? Do you have baseball fields? Do you have trails? Those are all, that's the first question because they have employees and they have families that, they want to have those type of amenities and those things to have available for their employees and their families. So that's something that's very economic driven. [LB134]

SENATOR SCHILZ: Sure. So then, I guess, my last question would be for you, do you think it's right then to take property from somebody that has developed that already, is using it for economic gain now, and turn that towards some other economic gain that you can see using eminent domain? [LB134]

JOHN WINKLER: Are you talking about the specific project? I mean... [LB134]

SENATOR SCHILZ: I'm just talking about in general. [LB134]

JOHN WINKLER: I guess we can do everything we can to try to avoid that. Like I say, in planning and design, we do everything we can to make sure that we're working cooperatively with those folks that we have to do to acquire property in any project. I guess it depends on the situation and to say it's blanket, no, this isn't right is difficult to

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Transcriber's Office

Natural Resources Committee
January 23, 2009

say. [LB134]

SENATOR SCHILZ: I understand. [LB134]

JOHN WINKLER: And I think everybody here has a different opinion of that. [LB134]

SENATOR SCHILZ: And that's why I asked the question. [LB134]

JOHN WINKLER: And, you know, personally, and I know my board and I personally would do everything we can to avoid it. But again, I think it sometimes becomes necessary. [LB134]

SENATOR SCHILZ: Thank you. [LB134]

SENATOR LANGEMEIER: Mr. Winkler, I have a couple of questions, and I know you're fairly new with the Papio NRD as the general manager, but when the NRDs were formed in '75, was it part of their mission to be involved in trails? [LB134]

JOHN WINKLER: I don't think it was specifically was trails. It was recreation, was a part of that statutory authority that... [LB134]

SENATOR LANGEMEIER: Okay. And you talked about the city of Omaha taking on this new trails initiative. Could the city build trails? [LB134]

JOHN WINKLER: Yes. [LB134]

SENATOR LANGEMEIER: Can they condemn and build trails? [LB134]

JOHN WINKLER: Sure. But, you know, to stretch those public dollars, the city...we partner together with the city and then also we bring in federal funding, we bring in foundation funding, so it's a partnership when we build those trails. It just doesn't fall to one particular entity, although it could. [LB134]

SENATOR LANGEMEIER: Could not a city bring in federal funding and other funding? [LB134]

JOHN WINKLER: Sure, and they do. [LB134]

SENATOR LANGEMEIER: Okay. And when the NRD partners with a city like Omaha and Papio partner together, don't the taxes all come on the same tax statement to a homeowner in Omaha? [LB134]

JOHN WINKLER: It's when you... [LB134]

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

Natural Resources Committee
January 23, 2009

SENATOR LANGEMEIER: Maybe a different line item but it all comes on the same tax statement, correct? [LB134]

JOHN WINKLER: Right. Right. And many times on most of our trails, sometimes we cross political jurisdictions. For example, you may cross from the city of Papillion to the city of Omaha to the city of Bellevue. For example, our trails along our levee system is a perfect example. We cross many different political boundaries there. So in that instance, it makes sense for the NRD to take the lead in that particular trail, because we do have the ability to cross those political jurisdictions because we have jurisdiction over the entire district. So it's an example. [LB134]

SENATOR LANGEMEIER: Okay. Very good. Thank you. Thank you for your testimony. Oh, oh, Senator Haar. [LB134]

SENATOR HAAR: Could I ask one quick question? You have to forgive us new people because we have some background questions to ask. Does state law tell how many directors you have or why does one group have 21 and another has 11 and...? [LB134]

JOHN WINKLER: That, and I can't...Jim, can you answer it? Dean? Somebody after me, I don't know that particular statute. [LB134]

SENATOR HAAR: Okay. That's just some background information. [LB134]

SENATOR LANGEMEIER: Dean can answer that question. [LB134]

JOHN WINKLER: Sorry, Senator Haar, I didn't have that. [LB134]

SENATOR LANGEMEIER: Okay. Thank you. [LB134]

JOHN WINKLER: Any others? Okay. Thank you. [LB134]

SENATOR LANGEMEIER: I assume, Mr. Edson, you're testifying, you can answer that. Are there other opponents, they can move up, getting ready. Mr. Edson, go ahead. [LB134]

DEAN EDSON: Senator Langemeier, and members of the committee, I'm Dean Edson. That's D-e-a-n E-d-s-o-n, and I'm the executive director for the Nebraska Association of Resources Districts, which is the trade association for all the NRDs, providing some comments here in opposition to LB134. And I'm going to keep my comments brief because I think Mr. Johnson and Mr. Winkler covered a lot of technical aspects and some of the nuances of how the trails projects work, how eminent domain works. I just want to emphasize a couple of things. As Mr. Johnson mentioned, what eminent domain

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

Natural Resources Committee
January 23, 2009

really does is protect the landowner, to make sure that the landowner gets compensated appropriately for whatever parcel that is being acquired from him. It also protects the taxpayer and keeps the taxpayer from overpaying an exorbitant rate or price for that land. That can all be negotiated before eminent domain ever comes into play. The second thing I want to point out is that this trails issues gets real emotional as you have seen today. What I want to stress to you that I've heard comments that we're taking 2,500 acres of ground; that's not true. What we're talking about here, in that nine mile stretch is possibly up to 21 acres, not 2,500, and 34 parcels and 22 separate landowners. You could come up with an agreement with 21 of those, never use eminent domain, and all it would take is one to stop a project. And that's why eminent domain is there. In absence of it, a project gets stopped even if 21 of 22 want the project. With that, I'm going to close and try to answer any questions you might have. [LB134]

SENATOR LANGEMEIER: Did you have an answer for his question? Go ahead and give that. [LB134]

DEAN EDSON: Do you want to repeat the question for the record? [LB134]

SENATOR LANGEMEIER: Oh, okay. Senator Haar, would you like to... [LB134]

SENATOR HAAR: Yes, thank you. The question is, who sets the number of elected board members for the NRDs? [LB134]

DEAN EDSON: The Legislature sets the parameters of how many directors you can have on a NRD board and that's the number between 6 and 21. And then it's up to the NRD to decide how many directors they would like to have. [LB134]

SENATOR HAAR: Thank you. [LB134]

SENATOR LANGEMEIER: Senator McCoy. [LB134]

SENATOR McCOY: Thank you, Senator Langemeier. Mr. Edson, thank you for being here today. A follow up to something you just mentioned a moment ago. You had indicated that you were speaking of up to 21 acres of permanent easements, and that if a single one of those landowners was resistant to this idea, could hold up the project. Do you happen to know on this particular project, how many of those landowners are against this particular project? [LB134]

DEAN EDSON: Not of that group. That's a...the little facts I gave you were out of Mr. Johnson's testimony and that's just one of the trail options that he's discussing. And as far as we know today, all those options are still on the table as far as where the trail may go. What I mentioned was the up to 21 acres was one of the options. [LB134]

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

Natural Resources Committee
January 23, 2009

SENATOR McCOY: Thank you. [LB134]

SENATOR LANGEMEIER: Thank you, Mr. Edson. Very good. Thank you for your testimony. Next opponent. [LB134]

ROSS GREATHOUSE: My name is Ross Greathouse. I'm representing today... [LB134]

SENATOR LANGEMEIER: I need you to spell that for me, please. [LB134]

ROSS GREATHOUSE: R-o-s-s G-r-e-a-t-h-o-u-s-e, just like it sounds. I'm representing the Nebraska Trails Foundation, the Great Plains Trails Network, and I'll give you some very quick background on those organizations. The GPTN, the Eastern Nebraska Trails Network, which is in Omaha, and the GPTN is here in Lincoln. Nebraska Trails Foundation is a 501(c)(3) foundation which covers the entire state of Nebraska. Those organizations started in 1983 when the Rock Island Railroad was abandoned between Omaha and Lincoln. And we incorporated those organizations in '84 and have been working on trail projects since that time. In regards to the MoPac Trail, the main issue of this meeting, we started on that, we raised \$275,000 to buy the portion from Lincoln to Wabash and the two miles east. Glenn mentioned, and we had several people testify, that we should go straight on over to Highway 50. Well, beyond our two miles, beyond Wabash, we had a private railroad. That's owned by the Abel Construction Company. They mine limestone out of the quarries there and that's an active railroad, so we have no access to that because it's still an active railroad. And besides, if we went over to Highway 50, we wouldn't be able to get back to the \$2.9 million bridge that I helped raise \$540,000 in private funds for. By the way, we have raised on the MoPac Trail, the foundation and the two trail organizations that I mentioned, to date we have raised \$930,000. So of that \$9 million that was mentioned earlier that's been expended on trails between Omaha and Lincoln to date, \$1 million of that came from approximately 2,000 donors, all the way from \$5 worth of nickels from the little girl to \$200,000 from foundations. So we have a broad, broad base of people who have been involved in this. In the last...since we organized these organizations, we have helped establish 320 miles of trails in the state of Nebraska. Those are built trails. We have an additional approximately 200 miles. Example, there's 100 and some miles of the Cowboy Trail west of Valentine that is not yet developed, and then we have about 40 miles of the Homestead Trail that goes to Marysville, Kansas, from Lincoln, which is yet not developed. In addition to this, I might mention that we just barely got into the fact that all of the money that we get from the federal government comes from the Federal Highway Administration. Why would it come from the Federal Highway Administration instead of the Parks Department? It comes from them because its intended, its original intent, and still its intent, is transportation. Now we have a tendency to call them recreational. And I have to confess that I use them for that purpose, although I also use them for my health. But it is recreation, but it is also transportation. Five percent of the students at the University of Nebraska go to classes on their bicycles down the Billy Wolfe or one of the

Natural Resources Committee
January 23, 2009

other trails that lead into downtown Lincoln. If you took those 5 percent, that's 1,200 students. Okay, I built 1,200 more parking places to put those students in. And yes, at Wabash, Nebraska, there's not many people going to be using this for transportation. I would agree with that. It's mostly recreational at that point. But when you look at the whole system, the Y Camp, Camp Kataki sits on the river right adjacent to the bridge. We talked to the Y Camp about having a hostel, so you can get on your bicycle with your family and ride down to stay overnight on the weekend and come back. I know it's hard for them to understand that the people in the city seem to be overpowering the rural communities. I grew up on a ranch ten miles from Wyoming and I know that feeling. I know what that is all about. But if you would ask the adjacent landowners of established trails, if you would go down to the MoPac east and you ask about the number of incidents of problems between the adjacent landowners and the users of the trail, I think you would find it to be almost nil. There's just very little. The people who use trails don't throw trash and if anything, they pick it up. And so, I think the trails community, particularly these NRDs, have done an absolutely phenomenal job of maintaining and taking care. These trails are so much better taken care of that are on railroad rights of way than when the railroads had them as far as weed removal and washout repair. They do a much better job than the railroads did. And so in the issue of eminent domain, nobody ever wants to use eminent domain. And it's perfectly understandable why they don't. When you force somebody to do something, it angers all of us. We all feel bad about doing that. And I know that those boards of directors all dislike that in the worst way. But are you going to let a single individual stop...if we didn't have eminent domain in all forms of our public entities, and I'm talking about in cities and counties, federal government, state government, NRDs, if we didn't have it, we wouldn't have any schools or highways or universities or anything else. Because there's always someone along the route who says, no, it's not going to happen. And so it was done for an outstanding reason. The people who administrate it are honest and they, I don't know of a case where I can remember where it's been abused. I'm sure there are. But I'll give you an example here in Lincoln. We wouldn't even have the MoPac Trail in Lincoln if it weren't for eminent domain. The city of Lincoln used eminent domain to acquire four miles of the MoPac Trail, from 84th Street to 30th Street. Now most of you don't know that, but that is true. That trail that exists today was taken by eminent domain, and because there wasn't a willing seller. And he was compensated, went to court, and the value was determined in court, as people have explained. So don't do this. Don't put this impediment into our government. It would be very detrimental in the long run. And besides that, we have already spent \$9 million of public and private funds. And there's another about \$6 million, some of it in the pipeline already, to do. And if you think there's not a possibility of that happening on this project, it will. And when you look at the other routes, and we tried to buy the Rock Island, of course, back in '83. And you know who purchased the Rock Island? We offered \$600,000 for it, the Rock Island Railroad from Omaha to Lincoln, the Nebraska Trails Foundation did. And we were outbid by a group of farmers from Sarpy County and the Waverly Coop. And so we attempted to do this on a right of way. We talked about, well, move it over someplace

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

Natural Resources Committee
January 23, 2009

else. It's the same thing here in the city. We have trails...we have 125 miles of trails within the city limits of Lincoln, Nebraska. And every time we develop one through the neighborhoods, there's always, there's always opposition. Always has been and there always will be. It's the old NIMBY thing, not in my back yard. And that people said, well, I'm going to build a six foot fence between my house so they won't damage my property. And I remember some particular individuals who testified to that at hearings, and now they have their children's playground about three feet from the trail, and no fence. And so it takes a while for everyone to adjust to that, but they do. And as a matter of fact, it draws neighbors. If you ask the real estate people in the city of Lincoln this question, why do you put "for sale" signs on the trail? Why do you put your "for sale" property signs out on the right of way, the trail right of way? It's because people buy their homes because they want a safe way for their kids to go to school, a safe way to cross Highway 2 here in Lincoln, Nebraska, on the old Rock Island Railroad right of way. So with that, I'll take any questions. [LB134]

SENATOR LANGEMEIER: Are there any questions? Senator Fischer. [LB134]

SENATOR FISCHER: Thank you, Senator Langemeier. Thank you, Mr. Greathouse, for being here today. I grew up in Lincoln and I remember riding my bike. I grew up around 48th and A Street and my two brothers and I would ride our bikes down to the Antelope Creek where the Children's Zoo is now and it was before there was trails and you had all the sandstone in there. And we made our own trails. Our parents didn't necessarily know where we were, but that was back in the good old days. And I do enjoy when I'm here during session, my mother still lives here, but when I'm here during session I use the trails through Antelope Park now that they've been built there. And they are a great benefit, so. [LB134]

ROSS GREATHOUSE: I probably have seen you there. [LB134]

SENATOR FISCHER: So, I'm walking. I have bad knees. I'm not riding that bike anymore. [LB134]

ROSS GREATHOUSE: That's all right. That's okay. [LB134]

SENATOR FISCHER: So I know what you're speaking of, and I think the three gentlemen who testified from the NRDs will tell you that I'm a strong supporter of NRDs... [LB134]

ROSS GREATHOUSE: Good. [LB134]

SENATOR FISCHER: ...and I always have been, and on a number of issues from dealing with different issues that urban NRDs are faced with to what rural NRDs are faced with, and currently what the entire state's faced with in regards to our water

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

Natural Resources Committee
January 23, 2009

situation and the challenges we have there. But this is a difficult situation and when I mentioned the Kelo case earlier, I don't know if you're familiar with that. A few years ago the U.S. Supreme Court ruled that land could be taken for economic development and that happened in Connecticut, and there was great backlash on that. I believe in the public good, but I think we also need to protect the rights of all people. [LB134]

ROSS GREATHOUSE: Absolutely. [LB134]

SENATOR FISCHER: And I'm not doubting the benefits of a trails system, but here again, I hope we can be aware and not slight people who are here protesting what they see as a taking of their land. And none of us would want our land taken. I think we can all agree to that. [LB134]

ROSS GREATHOUSE: I agree that eminent domain is a distasteful thing. It always has been and always will be. But if we didn't have it, the project stops literally. And so when you consider what has happened to date, now is there another location? Well, there were four locations. They were studied over approximately three years of time by professional designers and by the board of directors plus a special committee and they all came back to this particular route. Well, they also had three other routes. And so, are there alternatives? Sure, there are alternatives. But this one was selected as the prime route and I don't know all of the reasons for that, but it probably is because it's probably the most direct route. [LB134]

SENATOR FISCHER: You mentioned the number of university students that you felt were using a trail. Do you know within Lincoln and how many miles of trails, did you say? One hundred and twenty some. [LB134]

ROSS GREATHOUSE: One hundred twenty five miles of trails within the city, the corporate limits. [LB134]

SENATOR FISCHER: Are there any counts on how many people use that? [LB134]

ROSS GREATHOUSE: Yes, there are. The Great Plains Trails Network does one every year at 14 locations on a Sunday in July and we've done it 25 years. [LB134]

SENATOR FISCHER: Do you sit there with a clicker? [LB134]

ROSS GREATHOUSE: No, we count them on a chart and some 80 volunteers work for 14 hours at these locations and Lincoln Parks Department uses that information to put into their applications for federal funds and so it's done at the same locations each year, on the same day each year. [LB134]

SENATOR FISCHER: So how many people? [LB134]

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

Natural Resources Committee
January 23, 2009

ROSS GREATHOUSE: Well, the numbers have varied greatly over the years and they vary greatly with weather. If it's 112 on that Sunday in July... [LB134]

SENATOR FISCHER: But an average, average number. [LB134]

ROSS GREATHOUSE: Oh, I think the most we've ever had through one count spot was on the Rock Island Trail at Van Dorn Street in Antelope Park. You've been by there many times, and I believe the count was 2,800 people in the 14 hours. Twenty eight hundred people crossed that point, and we also count the types of users, bike, walk, whatever. [LB134]

SENATOR FISCHER: You mentioned the Cowboy Trail, that's in the northern part of my district. I have 13 counties, but it's the northern part. [LB134]

ROSS GREATHOUSE: Been on it many times. [LB134]

SENATOR FISCHER: Have you truly been on it on the highway? [LB134]

ROSS GREATHOUSE: Oh, many times. [LB134]

SENATOR FISCHER: Because I, seriously, have never seen anybody on it. [LB134]

ROSS GREATHOUSE: I've run out from Valentine five or six times. [LB134]

SENATOR FISCHER: Well, but that's in...where you leave from Valentine to the bridge. [LB134]

ROSS GREATHOUSE: No, no, no. I went over the bridge. I went three and a half miles out. [LB134]

SENATOR FISCHER: Yeah, people use that one. I'm talking about the rest of the highway trail, not close to the town. [LB134]

ROSS GREATHOUSE: Oh, I think it's true to say that the person on the racing street, the Italian racing bike with its little tiny tires isn't going to get out on the Cowboy Trail. He's going to stay on Highway 20 and go all the way across on the highway. I've been on ten bicycle rides across Nebraska and six other 300 miles Tour De Nebraska rides with my granddaughter. And we went down the Cowboy Trail last year 40 miles and so... [LB134]

SENATOR FISCHER: Did your tires last? [LB134]

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

Natural Resources Committee
January 23, 2009

ROSS GREATHOUSE: Yes, I did find. And well, I had them slimed. Do you know what sliming the tires does? It keeps the thorns out, so. [LB134]

SENATOR FISCHER: Oh, well, you know all the ins and outs of it then. [LB134]

ROSS GREATHOUSE: Anyway, well, the point is, there were 200 people on that ride and we all went 40 miles down the Cowboy Trail. And by the way, there was an event last summer, this last fall here in Lincoln and Omaha called the Market to Market Relay. Twelve hundred people ran down the MoPac, the built part and the unbuilt part. So if you haven't seen anybody on the trail, probably you weren't around that Sunday. Because there were 1,200 people down it. [LB134]

SENATOR FISCHER: Well, I put on 30,000 to 35,000 miles a year in my district so I think I see the Cowboy Trail quite often. [LB134]

ROSS GREATHOUSE: Yeah, and I'm sure you're right. I'm sure you're right. [LB134]

SENATOR FISCHER: But I do appreciate your comments. Thank you. [LB134]

SENATOR LANGEMEIER: Any other questions? Seeing none, thank you very much for your testimony. [LB134]

ROSS GREATHOUSE: Thank you. [LB134]

SENATOR LANGEMEIER: Next opponent. Come on up. Just hand her the sheet. We're ready when you are. [LB134]

GARY GEBHARD: Excellent. It's good to get up and move a little bit. The name is Gary Gebhard, spelled G-e-b-h-a-r-d. All right. I'm also one of the fifth generation Nebraska types. In fact, my family got here before this was a state, and we've been building ever since. And one of the things I do, I wear a variety of hats. I'm the current Nebraska representative for the American Discovery Trail and sit on the board of that. And there's a question really about where that goes. It goes along some of the irrigation canals out west and then off road and some trail use, as was specified earlier. That is a coast-to-coast trail from Point Reyes in California to Delaware and numerous people have crossed that so far. A big interest, this trail is still before Congress for approval as an official trail, but our champion on this trail was none other than Representative Doug Bereuter for many, many years. In fact, he looked at the Rock Island bridge back in '84 for us and...because he knew what an asset that was at that time, and so, an undying friend for trails for the state. One of the other things I do, I'm on the Department of Roads committee for funding for federal highway funds, which I've done since 1992. And we look at a lot of trail projects, historic preservation projects, scenic byway projects for the state. And every year we get more projects in than we can fund. We

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

Natural Resources Committee
January 23, 2009

have \$4 million to \$6 million a year out of federal highway funds for those projects. It's putting up street lights, historic street lights, plantings, there's a Nebraska arboretum that we support and trails, and historic preservation projects like depots and such. And we literally have done hundreds of trail projects with this funding source, and it's been a great boon for the state here. In fact, we won a national award at ASHTO, the American State Highway Officials Association, and our director of that oversees a process is routinely invited to other states to show them how we do it and how we do it so well. It's a great success story for government that we don't often hear about. One of my other hats is as a registered architect in the state of Nebraska. I got my education here in Lincoln where I grew up, moved to Omaha, and working out of there. They've sent me to New Orleans while the city is still evacuated to assess the VA hospital there. We don't have any problems here compared to what they had there. Nine months later, not much else had changed, you know. Government down there is struggling, all right, and the way the federal government reacts. But here, we've got some great success stories and this project, the trail in this case that has been discussed, builds on the success stories that we've had since the early '80s, since '84, '83 for the Keystone Trail in Omaha where we fought for a couple of years to get them to even study to being part of that northwestern right of way to use as a trail, and they built that first mile and there was no stopping it after that. In a way, trails are like that horse in the barn. The door has been open for 25 years plus and it's not going back in. And we're just thrilled with what it's done for the state of Nebraska. And I think that the power of eminent domain, it makes me nervous too. That word, those two words, that would make anyone nervous here, especially, well, after last year's assessment for property in Omaha, which I won't go into that. But I think if it's done responsibly and caring, I think it can work. We've heard the trail protests and that, and you could write any other name and set a trail in those protests and you'd have a similar argument that I've heard in other public hearings, whether it's a shoulder, a wider shoulder leading from the SAC Museum down to South Bend. I've heard a similar argument there for three feet of pavement there. We've heard the same argument when Mahoney Park was suggested, a big recreation facility, state funds again. You know, if you think recreation isn't important in Nebraska, I suggest you ask Bo Pelini. All right. He takes that seriously and we have a wonderful state here. If you get off I-80, even I-80 can be beautiful, but if you get off I-80, it's a fabulous place. I've done 15 Bike Rides Across Nebraska here. And granted it was on gravel, and there's a reason for that because of skinny Italian bikes, but we enjoyed every community we've ever been in. Nebraska has the greatest citizens ever and I think this is what we're supporting with these trails. It brings those great communities, those great citizens together. And we share our state with, last year, 37 other states of the United States came here to ride across Nebraska. It wasn't because we have mountains or oceans. It was because we have us, and that's what we're about. Any questions? [LB134]

SENATOR LANGEMEIER: Any questions? I only have one comment. You said the horse was out of the barn. [LB134]

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Transcriber's Office

Natural Resources Committee
January 23, 2009

GARY GEBHARD: My grandfather raised horses, so. (laugh) [LB134]

SENATOR LANGEMEIER: Yeah, we sure could tether it to a post though. (laugh)
[LB134]

GARY GEBHARD: Well, that's true. [LB134]

SENATOR LANGEMEIER: Thank you for your testimony. [LB134]

GARY GEBHARD: Okay. [LB134]

SENATOR LANGEMEIER: Any other opposition? Seeing none, any in a neutral
testimony? Seeing none, Senator Pankonin, you're recognized to close. [LB134]

SENATOR PANKONIN: Chairman Langemeier, thank you. I want to thank all the
committee for their attention and consideration. It's been a long hearing. You have
maybe another long one coming. And obviously you could see because of my family
being in the farm equipment business in Cass County, I have had multigenerational
relationships with the testifiers, many of the testifiers. Have known their extended
families. I know these farms. I know the situation in the local area. But actually after
hearing the hearing, I'm more interested in this bill than I was before. I think that we
have a policy decision that's an important one to make here. Because as you've heard, I
think the folks, we have extensive trail systems already especially in the metro areas,
but if we, as you said, Chairman Langemeier, if we're heading from Lincoln to Denver,
where are those trails going to go? And so this issue may be, although it's local in my
area, may be more important as we go forward. I do want to mention about eminent
domain because it's been mentioned that NRDs don't like to use it for obvious reasons.
But, I think in this case we talked about 22 landowners. I have a signed statement that
folks extended to me, and I would think that probably 15 out of these 22 landowners
would probably want it, you know, this would probably go to eminent domain. They
probably would not want to sell and there may be more. These are just people I know
and I know their situations. I don't think it's going to happen without eminent domain.
And I also want to state that in this stretch, if you want to ride your bike from Omaha to
Lincoln, if you've got a thin tire, you're not going to go on this trail anyway, you're going
to go on the highways. But this 334th Street as Mr. Rikli mentioned is part of the
temporary trail right now. You can ride your soft tired bike from Omaha to Lincoln and
go down 334th Street. These folks would be glad to see you. But they haven't seen very
many of you. Mr. Rikli said he's seen seven in two years. I drive it every...across this
334th every day. Of course, it's a little dark a lot of times when I'm coming but later in
the year it's light, I have yet to see a bike cross that portion. And it's part of the trail right
now. And that's the other thing. I mean, if you just left it alone in this sort of situation the
NRD, I mean, until the traffic built up, people can go down 334th and this joined. There's

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Natural Resources Committee
January 23, 2009

not a gap. They can use the country roads, be happy to. That's what the intention is right now. But I think we have a larger policy issue because if this trail network's going to get bigger and bigger all over the state, then we're going to have this issue at other places. And I think it's an important one. I think it's a discussion that your committee will hopefully talk about some more. After hearing the testimony today, I'm going to give strong consideration to make this my priority bill, Chairman Langemeier. I think it's an important discussion we need to have. We need to figure out how this is going to work when these situations come up. I agree that maybe we can't have one person hold up a trail, but in this case you've got 15 out of 22 through a stretch. I think it's important to have, because we're going to have this other places. Thank you. [LB134]

SENATOR LANGEMEIER: (Exhibits 6 and 7) Thank you, Senator Pankonin. I have two letters to read in in opposition. One is offered by the Sierra Club of Nebraska signed by Ken Winston. We will add that to the record. And also I have one in opposition from Stan Staab, general manager of the Lower Elkhorn Natural Resources District. With that, that concludes the hearing on LB134. Thank you all. [LB134]

SENATOR HAAR: Senator Langemeier, I didn't get the opposition letter. [LB134]

SENATOR LANGEMEIER: You'll get them. They were just submitted. At this time I would ask you to take your conversations out into the hall. We'll give them just a second here, and then we'll have you start. I'm going to remind, since it has been quite a time since we started this today, and if we have new testifiers coming in while we're waiting here, we would ask you to fill out one of these sheets. You can pick them up by the back doors if you would like to testify on LB160, so we have your name for record. Also, if you would like to again sign in that you are present here today and want to be on record as support or opposition, but don't care to testify, please sign in at the back doors. You'll find those sign-in sheets. And so with that, I think...I lost my committee. (Laughter) Yeah, there we go, there's two of us. I think we're going to go ahead and start. They will be back momentarily, if your ready. Senator Gay, you're recognized to open on LB160. [LB160]

SENATOR GAY: Thank you, Senator Langemeier. For the record my name is Tim Gay, state senator, District 14. I'm here to introduce LB160. The reason I step forward to introduce LB160 is somewhat personal, living in the Papio NRD and over the years seeing the situations we have at times down there. Had some background on these issues being the prior county commissioner, now state senator. This was, as some of the members know and some of the new members, this has been introduced before. I think there has been some major improvements when Senator Kopplin introduced a bill. I thought there has been a lot of communication that's happened. In the prior years, I've been watching that happen. So I decided to come forward and introduce this bill. LB160 is a very important bill. It simply gives the Papio NRD another tool in order to carry out their statutory duties. And that is important because as we will hear many times

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Transcriber's Office

Natural Resources Committee
January 23, 2009

throughout the session about local control, I'm a firm believer in local control as well, also in good government. And I believe many times we ask local elected officials to do a job and then, of course, the public is watching them do their job but do we allow them the tools to do their job? And sometimes I question that. I have been on the receiving end as many of you have from state government. They ask you to do certain things, and oh, by the way, there's not a lot of assets or resources to do that. So I think this is a reasonable way in light of the economy and some of the budgets we have, that's been well thought out and something that needs to be done for the public. LB160 authorizes a resource district which encompasses a city of the metropolitan class to dedicate a portion of its existing mill levy to finance flood protection and water quality enhancement projects through the issuance of bonds. And I think that's important, existing mill levy. There isn't authority now, but as we do larger and larger projects, I think the opportunity to creatively finance these projects is very important in the future. This would also require public vote of any proposed bond levy that would exceed 2 cents within the NRD's existing 4.5 cent levy limit. The bond proceeds could be used for design right of way acquisition and construction of multipurpose projects and practices for storm water management, flood control, and water equality enhancement, including low impact development, best management measures and flood plain via reservoir basins and levees. LB160 places restrictions as well on these projects that could be funded through the bonds, including limiting the reservoirs or water equality basins having a permanent pool of no greater than 400 surface acres, prohibiting the use of eminent domain for purpose of enhancing for private developers. In addition, the legislation provides public access for permanent pools with over 20 surface acres as well as further access requirements when suitable for recreational use. Looking at...I have other notes and I know in the interest of time, I'm going to move on. But I'm going to be followed by so many professionals who looked into this issue and will come to you with some more professional engineering in those things. So I don't want to waste your time there. But like I say, I think where we're at, we're at a point in time where this issue has been discussed and discussed and we've looked for alternatives again and again on water equality, storm runoff, safety, and I think this bill as we discuss it and with your input would help create an opportunity to solve some of these problems that have been going on. Now, the people behind me will give, you know, will speak more on that. But when we have an opportunity which I believe this addresses and I do believe the entities have come a long way to try to find a common ground here and maybe on some of these tough decisions, you'll never find a common ground that will please everybody. But watching the process over the years and being involved last year as a co-sponsor of this bill, it was a priority bill for another senator, but I do think some movement has been made that you will hear today that will further enhance this opportunity and hopefully receive your support. Senator, I'm open for any questions now, but I think in the interest of time, there's plenty of people behind me that will probably some of your questions, so. [LB160]

SENATOR LANGEMEIER: So you don't really want them? [LB160]

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Transcriber's Office

Natural Resources Committee
January 23, 2009

SENATOR GAY: I'll take them, but... [LB160]

SENATOR LANGEMEIER: Are there any questions for Senator Gay? They're going to respect your wishes. Thank you very much. [LB160]

SENATOR GAY: Thank you, Senator. And, of course, I will be available, any information you're going to need while you're making up your minds, we're more than happy to get to you. [LB160]

SENATOR LANGEMEIER: Are you going to stick around and close? [LB160]

SENATOR GAY: I'll stick around for a little while. You know, if I'm around. [LB160]

SENATOR LANGEMEIER: We'll see how it goes. [LB160]

SENATOR GAY: Yeah, we'll see how it goes. Thank you. [LB160]

SENATOR LANGEMEIER: Okay. You've heard the opening. Now we will move on to supporters or proponents for the project. Don't be shy, come on up. Welcome. We're ready when you are. [LB160]

JIM THOMPSON: (Exhibits 8 and 9) Thank you. My name is Jim Thompson, J-i-m T-h-o-m-p-s-o-n. This is my ninth year as a member of the board of directors of Papio NRD. I'm in my third year as chairman of that board. I take this honor seriously and look at my oath of office seriously as I practice and direct what is needed to uphold and protect all of our precious resources. This environmental bill has to happen. This protection of our land has to happen. The protection of our people has to happen. For years we have collectively addressed what we can do to facilitate these important goals. In the Omaha area, Lake Zorinsky was built, Lake Cunningham, Standing Bear, Wehrspan, Walnut Creek Lake, and others, were constructed as flood control measures. The job is not complete. We can sit down and relax and wait for the continued drought to carry on. We can wait for urban sprawl to withdraw, and we can hope that the rain clouds that do come start dancing beyond our borders. Seriously, we can no longer wait to take action to protect the Omaha metropolitan area. We, you, I, the NRD board, the Legislature, the affected cities and counties need to take progressive measures now. We need to provide the necessary tools to build both water quality and flood control measures. The Omaha metropolitan area is in a precarious situation with the existing layout of the land. Collectively, we need to provide further protection. The infrastructure needs grooming now, so that years from now we will not be having the \$1.5 billion discussion of redoing what we should have been done. The bill has been in evolution of consensus and common sense. You will likely heard that low impact development is the solution to controlling flood waters. In a real world, it is

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

Natural Resources Committee
January 23, 2009

only part of the solution. This bill in the NRD's existing storm water management plan include the ability to fund and address this component. The investment by property owners from South Sioux City to Sarpy County is extremely sound when compared to the value of protecting people and property in our state. I will not be on the NRD board forever. Some of you, unless changes are forthcoming, will be term limited to other roles. Within this time as partners in our resource protection, I employ your cooperation. I strongly believe, as do the overwhelming majority of my colleagues on the NRD board, that we need to take this positive, make this positive difference not only for those falling in our footsteps, but for future generations of Nebraskans. Years from now when I view the infrastructure changes that we have made, I want to say they had a real impact on protecting our countryside, our homes, and protecting lives. Take a serious look at our neighbors in Iowa. The flooding damage in June of last year was astronomical. The flooding in Cedar Rapids submerged 1,000 blocks, 7,200 properties, caused evacuation of one-tenths of the residents. Estimates to just fix the damage is \$5 billion and counting. The estimates to provide future protection will likely involve more billions. Some of you may want to review this in your spare time, maybe this weekend when you're snowed in. I've got a CD here for you that describes the Iowa flooding issues. Take a serious look at what happened in Texas where 13 people died in 2007. Ohio, Florida, Kansas are other states that recently suffered devastating floods. And yes, Katrina is a name none of us want to forget. Natural disasters happen. On June 11, 2008, Omaha experienced a rain that brought the water within two feet of the existing levees. That rain was considered a ten-year event. If it had been a 100-year event, which is defined as a 1 percent chance of significant rain in any given year, we would still be cleaning up like our friends in Iowa. While we have learned a lot from our own flooding, we have not been able to truly act on all these lessons. We have the studies that indicate where significant flood and water quality structure should be built, current water conservation such as rain barrels, grassy swells, rain gardens, expensive green growth simply will not stop a deluge when the fateful rains pounce and pour. Today's reality is that the flood plain in our metro area has dramatically increased. For those of you living or owning a business within a flood plain, the cost of insurance is not cheap. The reality has been in flood control structures will shrink those flood plains. Not only will this save hundreds of thousands of dollars each year in flood insurance premiums, more importantly will provide the necessary protection for the multitude. The reality is in Nebraska it can take significant action at minimal expense to do the right thing. An important editorial is printed in the World-Herald on July 13, 2008, and to borrow the headline, there really is "No time to waste." I've got copies of that editorial I'll pass along. Thank you. [LB160]

SENATOR LANGEMEIER: Thank you. Are there any questions, for Mr. Thompson?
Senator Haar. [LB160]

SENATOR HAAR: Yes, thank you. I have a couple questions. First of all, what happened to the bill last year, because I've been lobbied by both sides, but I wasn't told

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Transcriber's Office

Natural Resources Committee
January 23, 2009

what happened to the bill last year. [LB160]

JIM THOMPSON: It was, the hearing was late. It went to the floor amongst many other things, probably at eleventh hour and it died. [LB160]

SENATOR HAAR: Okay. And why is this even necessary? Is it that NRDs can't issue bonds or...? [LB160]

JIM THOMPSON: The NRDs cannot issue bonds. The only thing we can do is save for the rainy day and I hate to use that old adage, but literally, we are trying to save for a rainy day. The cost of flood control structures vary depending on size. We have been saving a little bit each year but there are many more structures that need to be built than what we can afford at one given...as that savings grow. [LB160]

SENATOR HAAR: So NRDs across the state are not allowed to sell bonds. [LB160]

JIM THOMPSON: We're the only government entity without bonding authority. Utilities have it, schools have it, obviously, state, city and county. [LB160]

SENATOR HAAR: That's interesting. Okay. Thank you for that information. [LB160]

JIM THOMPSON: You bet. [LB160]

SENATOR LANGEMEIER: Senator Fischer. [LB160]

SENATOR FISCHER: Thank you, Chairman Langemeier. Thank you, Mr. Thompson, for being here today. What do you think needs to be done specifically? Do you have projects in mind, your board? I assume you've been looking at projects. [LB160]

JIM THOMPSON: We have a number of projects. As I mentioned, we've had studies commissioned by professional engineering firms, which show where the best protection is in the metropolitan area. From a priority standpoint, we have picked a few. We've got one current project in Papillion, which is at the, towards the base of the funnel if you want to look at the Washington, Douglas, and Sarpy County as where the water goes. And there's more projects that will take a higher priority because of the urban sprawl that has occurred and the development that is continuing. And we're not going to stop that. I mean, and so, yeah, we need to get the authority to spend some money. And it's within our mill levy. We currently have 4.5 cents. And you'll hear some more details about that later, but we are currently taxing less than 3.5 cents. [LB160]

SENATOR FISCHER: How much do you think it's going to cost for some on your wish list of projects that you need? Do you have a cost? [LB160]

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Transcriber's Office

Natural Resources Committee
January 23, 2009

JIM THOMPSON: No, we don't. I don't have an exact cost. We have, as Mr. Winkler will testify, a plan going on a three-year basis. And he will get into that in greater detail of what we can buy within a three-year, another three-year period. [LB160]

SENATOR FISCHER: Okay. I'll wait and ask him the questions then. Thank you very much. [LB160]

JIM THOMPSON: Okay. [LB160]

SENATOR LANGEMEIER: I'm not going to wait. Mr. Thompson, I've known you a long time. My question is, is you made the comment, you said, let's learn from the lessons of Iowa. And you've also referenced the levees on a ten-year storm where we're within feet from the top in June. [LB160]

JIM THOMPSON: In June we had a rain that...yeah. [LB160]

SENATOR LANGEMEIER: And then you said we could create control, flood control structures which shrink the flood plain. [LB160]

JIM THOMPSON: Correct. [LB160]

SENATOR LANGEMEIER: If we truly wanted to learn from the lessons of Iowa, would not we be better to band all building within the 100-year flood plain versus building false hope levees that break, have rodents put damage in them. And, I mean, Iowa thought they were safe until those broke and they even flooded Rapid City. They flooded the downtown thinking they could be preemptive, and it turned out to be one of the biggest messes in history. Should we not be taking this to another level and head of the state saying responsibility of the state is to say, no building in a flood plain? [LB160]

JIM THOMPSON: Well, it's already, it's... [LB160]

SENATOR LANGEMEIER: Which I couldn't have built my house a year ago if that was the case, but if we truly wanted to take your statement of let's learn from Iowa... [LB160]

JIM THOMPSON: Yeah. Unfortunately, the buildings and the development is already within the flood plains. New flood plains maps have been issued in certain portions of the area, metropolitan area. So now, new businesses are in the area. To carry that scenario out, let's buy all the businesses and keep it all green space. That is phenomenally expensive and we talked earlier about private property rights and so on. [LB160]

SENATOR LANGEMEIER: But could we not do that to the future? [LB160]

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Transcriber's Office

Natural Resources Committee
January 23, 2009

JIM THOMPSON: We should limit and that's where...the NRDs do not have zoning authority. We're reactive to what's going on and we take the lead role because water runs through multiple jurisdictions. That's why it's our bill, and we got the Papio Partnership that you'll hear more about later to help create that. But flood plains, especially now that new federal standards have increased the levee size for protection, may be needed in Louisiana. Is it needed here in Nebraska? That's a whole another issue and we don't have time to talk about the federal levee size. But in general, though, that's part of it. There's still water running down and as the houses even without the flood plain, the water has to go somewhere. And a few of these structures are necessary, not every single one that has been designed in 1970, but a lot of them are. [LB160]

SENATOR LANGEMEIER: Okay. Thank you very much. [LB160]

JIM THOMPSON: Okay. Thank you. [LB160]

SENATOR LANGEMEIER: As you learn and the first one always gets the questions. Now, nobody will come up. Next supporter of LB160. Mr. Winkler, welcome back. [LB160]

JOHN WINKLER: (Exhibit 10) Again, Chairman Langemeier, and the Natural Resource Committee. Thank you for having me. My name is John Winkler, J-o-h-n W-i-n-k-l-e-r, and I am, again, the general manager of the Papio-Missouri River Natural Resources District. I would like to read into the record letters of support that the district has received. The first one is a resolution from the city of Omaha supporting the bonding bill; also is a letter of support from the city of Valley, Mayor Mary Caffey; also is a letter of support from the city of South Sioux City; in addition is a letter of support from Dakota City; in addition there is a letter of support from Sarpy County Board of Commissioners; a resolution supporting the bonding authority from the city of Papillion; a support letter from a private engineering firm, Tetra Tech; a letter of support from the Bellevue Chamber of Commerce; a letter of support from Sarpy County Economic Development Corporation; and also a letter of support from Metro Omaha Builders Association. What you will hear today in testimony subsequent to my own is that the Papio Creek Watershed is one of the most dangerous watersheds in the Midwest. As Mr. Thompson explained, we had near flood events in June of 2008, which highlighted the need to take immediate action. Storm water runoff has increased 25 to 30 percent since 1970, and continues to grow. In addition, cities, villages, counties, throughout our district must comply with unfunded federal mandate such as the Clean Water Act, and now more stringent levee certification requirements issued by the U. S. Army Corps of Engineers and FEMA. In order to address these challenges, you will learn of an unprecedented partnership of cities, counties, the NRD and other stakeholders. This group was formed in August of 2001 and over the last eight years have worked together to formulate a local plan of action to address local flooding and water quality issues. This partnership

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

Natural Resources Committee
January 23, 2009

will be presenting a proposed watershed management plan with accompanying policies to a public officials meeting on February 14, 2009, which you will be, obviously, all invited to attend. Shortly thereafter each member of the partnership will take these policies and this plan to their councils and boards for adoption. The purpose of this bill is to provide a necessary financing tool to fund the recommendations contained in the plan, which will reduce the risk of catastrophic flooding and improve water quality in the district. This vital financing tool will meet these objectives: protecting public infrastructure and investments; protecting lives, health, safety, and welfare of all residents in the district; protecting private property of individuals, business and taxpayers of the district; reconstruct flood levees that are determined deficient by FEMA and the U.S. Army Corps of Engineers to their new certification standards; reduce the amount of property in harm's way and subject to costly federal flood insurance; bring communities in the district into compliance with the federal Clean Water Act; and most importantly, provide a local formulated plan funded locally with no request to the state of Nebraska for funds. As many of you are aware, this bill has been through the legislative fire for three years now, and through that, it's been tempered and shaped into the current form you see today. We've had countless meetings and negotiations and compromises and discussions with senators and stakeholders about the contents of the bill. This bill advanced from committee 8-0 last year, and this bill is similar to last year, although different. The committee amendments are continued to be attached. For example, this bill continues to fund low-impact development best management practice. Flood plain buyout for those interested if they are in harm's way and they want to get out, this will give the district the ability to honor that. Reservoir basins and also levee improvements, which you will hear about in more detail. LB160 continues the restrictions that were offered in committee amendment restricting reservoir and water quality basins to a permanent pool of 400 acres or less; provide public access for permanent pools of 20 acres or more; further prohibits the use of eminent domain for purposes of enhancing private developers. Another caveat that was added this year is the vote of the people. This particular section allows the district to utilize 2 cents of its existing 4.5 cents for bonding purposes. If the district chooses or must exceed that limit, then it goes to a district-wide vote of the electorate. Again, requests no state funding to address these local issues. It's a local problem, we have local solutions, and we think that we can take care of it locally. In its simplest nature, we are charged not only as the NRD, but members of the partnership to guarantee public health and safety and public welfare. And that is the goal of this plan, of the policies that will be presented, and of the funding mechanism that is in front of you today. I'll end my testimony there, and any questions you may have. [LB160]

SENATOR LANGEMEIER: Thank you, Mr. Winkler. Any questions? Senator Haar.
[LB160]

SENATOR HAAR: Thank you. The one point on your letter here, further prohibits the use of eminent domain for purposes of enhancing private developers. As we've heard,

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

Natural Resources Committee
January 23, 2009

there have been some times in the past where it sounds like that. Could you address those issues, because I think none of us are interested in that. [LB160]

JOHN WINKLER: Sure. I have attached a, into your seats, I have attached a fax sheet on...I think your talking about Bennington Lake. It was a project the district entered into with the developer to... [LB160]

SENATOR HAAR: You have an attachment here? [LB160]

JOHN WINKLER: Yes. Is it part of...is part of...in the back of your packets under, last page. Go to the very end. There you go, okay. [LB160]

SENATOR HAAR: Okay. [LB160]

JOHN WINKLER: This project obviously occurred before my tenure on the board but this gives you a breakdown of what actually occurred there. The district was interested obviously in flood control and this particular structure does accomplish that. So the board entered into a public-private partnership with the developer. A breakdown of the cost that was associated with this, is the district basically got a twenty-some million dollar structure for about \$3 million in public input. You know, there's questions and there was concerns about public access to the lake. There is a public fishing pier, but there isn't public access to the body of water. The district is only responsible for the maintenance of the dam. They're not responsible for the maintenance of the lake itself. That is on the developer. As you can see, the NRD agreed to maintain the dam only, perpetually, not the lake. So our interest, obviously, was in the flood control. And I believe it was a...I wasn't there, but it was deal that the district felt that they could get that flood control at a very minimum public investment. Also, you will see that the developer donated to the NRD 220 acres of land valued at approximately \$1.3 million. In turn, the NRD donated to the city of Bennington 40 acres for expanded park development, donated 39 acres to the Bennington school district for a new school site, and developed 42 acres for a wetland above 180th Street for public recreation use. The Horrigan Development Corporation also developed four miles of public trails estimated cost at \$2 million around the development, which will ultimately connect to the metro trail all on their dime. And the dam site 6 would have cost the district \$20 million if built by the NRD as a total public facility, with lifelong public dollars to maintain at these facilities. And then it goes into some specifics of, that they was the largest earthen project in the state at that time, and both the city of Bennington and Bennington school district endorsed the project. Now, what you will see in this bill is, another project like that can't occur with the restrictions in the bonding bill. Everything above 20 acres has to have public access to the pool. So you will not see another project like that with these bond funds. [LB160]

SENATOR HAAR: So, sins of the past? [LB160]

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Transcriber's Office

Natural Resources Committee
January 23, 2009

JOHN WINKLER: Again, it was, I think, it was a chance for the district to contribute minimal to gain flood control. It depends how you view it. I don't think the board would enter into another agreement like that. I can't speak for them. But again, this particular bonding bill and its language eliminates that situation. [LB160]

SENATOR LANGEMEIER: Seeing no other questions...oh, Senator Fischer, excuse me. [LB160]

SENATOR FISCHER: Thank you, Chairman Langemeier. Thank you again, Mr. Winkler, for being here today. I had asked your board chairman earlier on your wish list of needs or, maybe it's not a wish list, it's what you have to do. [LB160]

JOHN WINKLER: Right. [LB160]

SENATOR FISCHER: What's it going to cost? [LB160]

JOHN WINKLER: In today's dollars, it's computed about \$375 million. [LB160]

SENATOR FISCHER: And how long is it going to take you to raise that if this bill would pass? [LB160]

JOHN WINKLER: With the 2 cents that the district could levy on its own, is about, and it depends on interest rates and all those things, about \$200 million over a 20-year period. Now that doesn't take into consideration that the development community has agreed through building permit fees to contribute one-third to the cost of the plan. So, you're getting fairly close. Now we do have some issues with levee improvements, and we've got about \$8 million to \$10 million just in year one on that. So you have to lump that on top and... [LB160]

SENATOR FISCHER: Is that because of the federal requirements that have changed on the levee since Katrina? [LB160]

JOHN WINKLER: Yes. Post Katrina our requirements are, obviously, more stringent. And congratulations Omaha and the Midwest, you're the test case for those new standards, so. City of Omaha could speak specifically to those. I believe you will hear from the village of Waterloo. Just a small town of 800 people is looking at \$4 million. [LB160]

SENATOR FISCHER: You went through a whole list of cities that sent in letters of support here, Omaha, Valley, South Sioux, Dakota City, Papillion, Sarpy County, were just a few I got down. Are those cities willing to kick in any money for this? [LB160]

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

Natural Resources Committee
January 23, 2009

JOHN WINKLER: I believe if you're talking about the...again, those details haven't been worked out, but the idea is... [LB160]

SENATOR FISCHER: But they're all part of this Papio Partnership, is that correct? [LB160]

JOHN WINKLER: That's correct. They're all part of the partnership and...but all the residents live within the district. So everyone will be contributing through property taxes and through a building permit fees. So, those jurisdictions will be collecting building permit fees and then forwarding them to help fund the plan. So that, you know.... [LB160]

SENATOR FISCHER: So are you saying there's no reason for the city to levy any tax because the people involved are already being taxed for it? [LB160]

JOHN WINKLER: Exactly. I hate to use the term, we're all in the same boat. But, (laugh) that's the idea obviously. You have general public benefit throughout the watershed. [LB160]

SENATOR FISCHER: Okay. You mentioned a flood plain buyout and that's if anyone who, anyone who lives in the flood plain doesn't want to stay there. How many people, how many structures are there in the flood plain? [LB160]

JOHN WINKLER: There could be, there's thousands. And one response to it, Senator... [LB160]

SENATOR FISCHER: Tens of thousands? Hundreds of thousands? [LB160]

JOHN WINKLER: Probably tens of thousands. There's one thing that Senator... [LB160]

SENATOR FISCHER: How are you going to buy them all out if they all want to get out? [LB160]

JOHN WINKLER: Well... [LB160]

SENATOR FISCHER: More bond issues? [LB160]

JOHN WINKLER: I don't think, obviously, that we would encounter a full scale buyout. One thing that Senator Langemeier brought up that was interesting is that our flood plains have expanded and those people that built outside of the flood plain at one time, are now in it. And they're coming to us saying, we did everything right. We built outside the flood plain, we followed all your rules, and now we're in. And so, the flood plain has become a moving target. And to say no more development of flood plain, well, where

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

Natural Resources Committee
January 23, 2009

does that end. As development occurs and nothing is done, that will continue to grow. And so, I don't think, Senator, in reality that you would get that many people to say, you know, we're totally out of this. I mean, you've got businesses, and homes, and neighborhoods, and schools, and the public gets structured in the flood plain. I don't know if you would ever get to that point. [LB160]

SENATOR FISCHER: How much has the NRD district saved? [LB160]

JOHN WINKLER: The district board three years ago set aside 1 cent per hundred of valuation to try to save. The district currently has \$8 million in the count and at the end of this fiscal year we will have twelve. But you're looking at \$475 million and that doesn't account for increased construction costs, inflation, so to try to save as you go, it's almost impossible. You have a moving goal post and you just aren't going to get there by doing that method. [LB160]

SENATOR FISCHER: I've heard from some people who live above the city of Omaha, specifically in Washington County, and I don't want to put you on the spot, but I guess I will, you don't always have to answer. But, how would you answer them when they say, people are building in the flood plain and do you want us to pay for it? It's kind of like when the floods hit Iowa, the floods hit Missouri and the federal government goes in and we all pay for those people and then they relocate there, which happens to be a little pet peeve of mine, and then we pay for them the next time it floods too. So, what about the people in Washington County that are going to continue to pay for what's going on in Omaha? How do you answer that? [LB160]

JOHN WINKLER: Hindsight's twenty-twenty. We have 80 to 90 percent of our flooding issues are on the ground right now. As being a part of the, a benefit of being a part of the district is that the urban areas have been funding conservation measures in the rural areas since the districts were formed, terracing, erosion control, sediment control. And so, you know, we were even criticized at one time by the city of Omaha because we spent too much money in the rural areas and not enough in the urban areas. We liken this to urban conservation. It's the urban areas' time. Everyone contributes. Storm water, pollutants, and we have a big funnel. Washington County contributed to the storm water and they contribute to the pollutants, and so we're all in this together. And to simply divide the district by urban and rural issues, we're not going to get the problem solved. And the urban area could just as easily say, why are we funding rural initiatives. Because it's the right thing to do, it's right for the district, and it's right for the people we serve. And that's our answer. [LB160]

SENATOR FISCHER: I'm sure you remember LB701 that was passed dealing with issues in the Republican River Basin. Would you liken LB160 to LB701 in that, if passed, the Legislature is saying, this is an issue in the basin and we're giving you tools to handle the issue that faces your basin? [LB160]

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Natural Resources Committee
January 23, 2009

JOHN WINKLER: Yes. The biggest issue, though, between the difference is, we're not asking for a tax increase. We are not asking for additional fees. We are saying we can do this with what the Legislature has already given us. All we need is just the enabling legislation to be able to fund capital intensive projects over a period of time. [LB160]

SENATOR FISCHER: Should we extend bonding authority to all NRDs? [LB160]

JOHN WINKLER: That's up to each individual NRD. [LB160]

SENATOR FISCHER: Does this legislation do that, or is it... [LB160]

JOHN WINKLER: No, it encompasses a NRD that has a city of the metropolitan class. [LB160]

SENATOR FISCHER: Should we extend that to all NRDs? [LB160]

JOHN WINKLER: We've asked other NRDs to sign on and other NRDs aren't interested at this time. They may, you know, but no one has come forward and demanded it. So we each have our own issues, although we are bound, obviously, by districts. We each have our own unique individual. The Republican River has their issues and you know, we have our own in the eastern part of the state. Some deal with less water, some deal with too much, and so, we are unique. [LB160]

SENATOR FISCHER: Thank you. [LB160]

SENATOR LANGEMEIER: Senator Haar. [LB160]

SENATOR HAAR: Thank you, Senator. Do you know, do the communities along the watershed now prohibit building in the flood plain? [LB160]

JOHN WINKLER: No. There are restrictions, and again, the city is going to address those individually. The district doesn't have zoning authority so we cannot implement that. [LB160]

SENATOR HAAR: Right, yeah, yeah. But we're going to hear from the city? [LB160]

JOHN WINKLER: You'll hear from the cities and they will, you know, indicate what they plan to implement, what they already have on the books, so. But, there are restrictions. [LB160]

SENATOR LANGEMEIER: Thank you, Mr. Winkler. I think we're done. [LB160]

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Transcriber's Office

Natural Resources Committee
January 23, 2009

JOHN WINKLER: Okay. Thank you. [LB160]

SENATOR LANGEMEIER: Next, come on up. Mr. Edson. [LB160]

DEAN EDSON: (Exhibit 11) Thank you, Senator Langemeier and members of the committee. My name is Dean Edson, Dean D-e-a-n Edson E-d-s-o-n. And I'm the executive director of the Nebraska Association of Resources Districts, which is the trade association for all the NRDs. It's a pleasure to have this opportunity to testify in support of LB160 today. I want to point out that the association has had a long-standing policy to support bonding authority for all NRDs to help finance some of these projects. In this particular bill we have tried to address the concerns about having this authority granted to all NRDs, that all NRDs may end up using this. And so the bill's designed narrowly to only affect the Papio District, although at some point in time the rest of the districts may need to have this authority to address some storm water issues. What we've tried to do with LB160 is address all the concerns that have been raised in the last three years in the debate on this bill by putting in those provisions on public access, limiting the size of the dams, etcetera. And Mr. Winkler talked about those. What I want to point out to the group is what I mentioned to the committee over the past couple of years. I liken this issue to what we dealt with with a lot of other water issues and I'll parallel it with the Republican River Basin. It was the policy of this state to encourage development of irrigation in the Republican River Basin all the way until 2001. The NRDs had come in repeatedly in the '90s and requested authorities to put moratoriums in place in the Republican River Basin but were turned down because there were no problems, there were no issues. Groundwater was not included in the compact, don't have to worry about it. Well, we all know where we're at today and it's because we refused to look prospectively into the issues of what if. What if something happens? What if we're not prepared? What if we didn't act proactively and try to address some of these issues? Same thing happened in the Platte River. Up until 2004 it was the policy of this state to encourage irrigation development in the entire Platte River and in 2004 it changed your mind and now all of a sudden we'll try to reverse all of that. That was five years ago. Now, you can't reverse things in five years of a hundred-year policy on water issues. And so what we're trying to do here is address these things proactively. I want to point out we're not asking for state dollars. We're asking for the authority to raise the capital through bonds so we can get the up-front money to build these projects. Saving it one penny, one mill-levy penny at a time is not going to get us there. We can't get there fast enough so we need to issue the bonds so you get the up-front capital and pay it over time. I know of nobody, and I know there's maybe a few people, that may buy a house by paying cash but it's pretty hard-pressed to find somebody to do that. People don't have that kind of money up front, so they get a loan to buy the house or buy the car. We're doing the same thing with the bond issue here. We're getting the capital to put the capital project in place and then paying for it over time. Iowa was mentioned and I wanted to provide an article to you--excuse me--that was...that ran in the World-Herald on Monday. And this basically what the Iowa plan is to address the financing of the flood

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

Natural Resources Committee
January 23, 2009

control structures that they need to put in and restore and also address some of their storm water issues. The governor is asking for \$43 million per year in general funds to do this. They're going to issue \$700 million in state bonds and then try to pay for it through \$56 million in casino revenues, profits off of casino revenues. That's how they're going to finance it. We're not asking for anything from the state. But you start to see the magnitude of the problem and the issues and I know if we came forth with a bill that asked for \$43 million or state bonding authority to get the state to pledge for the bonds we'd probably get laughed out of this room. And so what I think we've developed here, in closing, is something that allows us to address these issues and finance them locally and protect the lives and property of the people in the Papio area, including the city of Omaha. With that I'll close and answer any questions you may have. [LB160]

SENATOR LANGEMEIER: Seeing no questions, oh, Senator McCoy. [LB160]

SENATOR McCOY: Thank you, Senator Langemeier. Thank you for being here again today, Mr. Edson. Quick question here for you. You had mentioned earlier that you had had a long-standing support of bonding authority, is that correct? [LB160]

DEAN EDSON: Yes. [LB160]

SENATOR McCOY: Okay, thank you. I guess my question would be why do you believe it is, and Mr. Winkler earlier noted that to his knowledge no other NRDs across the state had come forward to be a part of this piece of legislation. Why do you believe that would be when it would seem that if in case they may need it down the road, they wouldn't want to be a part of it just to make sure they could access that if needed in the future? Do you know why that might be? [LB160]

DEAN EDSON: Why we haven't... [LB160]

SENATOR McCOY: Why there haven't been other NRDs that have come forward to be a part of this. [LB160]

DEAN EDSON: Well, right now with the storm water regulations don't apply to all communities right now and the first step was the Omaha community, the large populated communities in the state. And so when the storm water issue, the focus has been there. There's been some opposition from some rural senators that don't want their district in rural Nebraska to have the bonding authority, for whatever reason. And so just to address that issue since we don't maybe need it right now in, say Senator Fischer's district or, you know, some other district in rural Nebraska. We'll just narrow the definition to address that concern. I'd be willing to explore, open it up to everybody but I think it brings some other issues to the table. That's why we defined it narrowly. [LB160]

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Transcriber's Office

Natural Resources Committee
January 23, 2009

SENATOR McCOY: Do you...could you kind of briefly give us an idea of what maybe some of those other issues might have been that there might be some resistance in other parts of the state for bonding authority in other NRDs? [LB160]

DEAN EDSON: I think it's just...well, yeah, I mean, the Legislature in my experience, and I've been around here about 20 some years, the Legislature does not hand out or dole out authorities very handily and quickly. There's a thought process that goes into all of this as some of the senior senators here know about and as a freshman you're going to find out about and there's a lot of contemplation about policy here and it's very open and it's public and I think it's great. But we have a tendency to be real conservative about handing out authorities. This is one of them. They don't want to hand out more taxing authorities to local political subdivisions. It's a property tax issue. And so there's some caution with that, but then you have to manage that then, with what's their obligations and how do you pay for your obligations and so the debate begins. If we had a way to get some state dollars into this, it'd be great. And maybe we wouldn't have to put so much local dollars in, but that hasn't been the case. And right now you're faced with a situation of making some real tough decisions on some other major issues, such as schooling. Well, we know we're not going to be able to compete against that so we've got to find out something...another way to finance things. As the hearings go on, there's some other bills out there that have been introduced and we've been working with Senator Langemeier and some other senators and trying to figure out innovative ways to finance some of the other water need projects that we have out there and water conservation, without tapping into state dollars if we can avoid it. And so we're going to have to talk more about that. And I was doing some revolving fund ideas and there's several bills introduced on that. But it's an overall policy issue here and a policy choice that we've got to focus in on. And here are these projects that need to be funded and there's not General Fund dollars to do them so you've got to figure out another way to do it and then also address the concerns about expanding the authorities too broadly. That was a long-winded answer but hopefully you get kind of a picture of why this is drafted narrowly and why the other NRDs aren't coming in here and saying me too, me too, because we don't necessarily need it in all districts right now. [LB160]

SENATOR McCOY: Thank you, Mr. Edson. [LB160]

DEAN EDSON: Yep. [LB160]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much for your testimony. [LB160]

DEAN EDSON: Thank you. [LB160]

SENATOR LANGEMEIER: Next supporter or proponent. Come on up. And we'll keep from getting snowed in here yet today. I'm ready when you are. [LB160]

Natural Resources Committee
January 23, 2009

MARTY GRATE: (Exhibit 12) Good afternoon. Thank you, Senator Langemeier and members of the committee. My name's Marty Grate, M-a-r-t-y G-r-a-t-e. I'm the environmental services manager for the city of Omaha. And I want to thank you for the opportunity to testify. As Mr. Winkler indicated, we have a letter of support signed by Mayor Fahey and a unanimous resolution by our city council in support of LB160 My testimony is available in writing and so to save time I won't read it to you, you can read it later, but I did want to hit some high points and kind of add a little to what John and Jim told you. Certainly, the Omaha metropolitan area faces some really huge challenges and it's not just one challenge, we've got multiple challenges. We've got flood control challenges, we've got storm water management challenges, we have combined sewer overflow challenges. We have hundreds of millions of dollars worth of challenges in the Omaha metropolitan area. There is no one answer, and I suspect before you get the chance to leave today that there will be people that come up here and say that there are simple, low-cost options available that will solve all of these problems. And I'm not an engineer, I don't have all the expertise that some of our consultants do, but I've been involved in this program, this issue long enough to know that there are no simple, easy, one-step options. What we're going to need is a combination of solutions. In 2006, the city of Omaha and many of the organizations that are part of the Papillion Creek Watershed Partnership adopted some policies. We incorporated them into our master plan. It was a combination of best management practices, both structural and non-structural, to address flooding issues, water quality issues. One of the issues that was in those six policies certainly was flood control and there was a decided preference for regional reservoirs to help deal with those peak flood water flows. There is a need to fund the construction of those and those are the issues, the flood control reservoirs and the funding thereof that got all of the profile. But there are a lot of other things that Omaha and the other communities have done. We certainly have implemented more strict zoning regulations. We've done some buyouts of properties in low lying areas, trying to make up for some of those sins from the past. We've looked at a number of different options. Just recently, since 2006, we went back, we met with the public some more. We received some more input, we looked at what we had done in 2006 and one of the things we learned and admitted was, yeah, low-impact development is good. We should do more of it than what we said we were going to do in 2006. And very recently the city of Omaha has strengthened its commitment and actually required low-impact development techniques as minimum requirements for new developments. It's going to take a whole suite of technologies and management practices to solve all of the problems that we have. But it still remains throughout all of our studies very clear to us, and our consulting engineers have helped us to come to the conclusion that regional reservoirs are going to need to be a part of the solution if we're going to control the flood water aspect of it. Low-impact development is going to be necessary in order to control the water quality part of it but we need both of them. I guess the one other thing that I'll touch on is the question, well, why does the NRD need to do this? To be honest with you, the NRD are the folks by state, you know, charter that are responsible and have

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Natural Resources Committee
January 23, 2009

the expertise, the knowledge about flood control about reservoirs. They're the ones that have the jurisdiction that span the areas that need to be controlled. They're just an obvious candidate for doing it. It's something that's going to have to be financed, it's not going to be pay as you go, you've heard that already and we just really feel like this is the NRD's role. The city of Omaha a long time ago agreed to take on responsibility for regional management of sewage treatment. The counties have taken on regional management of the solid waste landfills. The flood control reservoir system and water quality basins are within the expertise of the NRD. It's very, very logical for them to have the ability to finance these projects and to take that lead role. With that, I'll end my testimony and answer any questions. [LB160]

SENATOR LANGEMEIER: Thank you. Are there any questions? Seeing none, you're getting off easy. [LB160]

MARTY GRATE: Thank you. [LB160]

SENATOR LANGEMEIER: Thank you, Mr. Grate. Next supporter or proponent. [LB160]

STANLEY BENKE, JR.: Senators, thank you very much for the opportunity to address this committee on LB160. My name is Stanley Benke, Jr., S-t-a-n-l-e-y B-e-n-k-e. I am the village board chairperson for the village of Waterloo. I'm in my second term serving the citizens of Waterloo in this capacity. It is for them that I'm here before you today. Waterloo is a small community of just over 800 people. We're located between Omaha and Fremont along the Elkhorn River. The Platte River is only about 2.5 miles to the west of our community. Waterloo has a past history of flood events that have occurred. The most significant flood event on record took place in June of 1944. It was during this flood that the Elkhorn River inundated Waterloo with six feet of water on Main Street. In 1962, as a young boy, I remember the flood waters from the Elkhorn River coming into our backyard. This was the last flood even that ever effected Waterloo. That was because the Waterloo Village Board of Trustees initiated action with public support to build a ring levee around Waterloo. Two years later, in 1964 a ring levee was built under the guidance of the Army Corps of Engineers. Our levee was tested in March of 1978 when the Platte River surrounded Waterloo from the west and three days later the Elkhorn River flooded from the east. The levee was monitored and withstood this test. Again, the levee was tested in 1983 with flood waters. In December of 2007, the Waterloo Village Board of Trustees were notified by FEMA that they were in the process of increasing and accelerating their enforcement of updated free board requirements for levees. The free board is the additional height of the levee above a 100-year flood event. This was a result of the levee failures that occurred during Hurricane Katrina. We were informed that Waterloo would have to go through an extensive certification process to certify our levee that has existed for more than 40 years. This levee certification would have to be completed within two years in order to keep our current flood rating of not being located in a flood plain. If we did nothing, FEMA's flood rating

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Natural Resources Committee
January 23, 2009

maps would change to show Waterloo now located in a flood plain. Any new construction would have to be built to flood plain standards. This would have a crippling effect on the future economic development and growth of Waterloo. Anyone with a mortgage would be faced with acquiring flood insurance. The Waterloo Village Board of Trustees met with the Papio-Missouri Natural Resource District and JEO Consulting, which is the town's engineer, as to what our next steps would be. It was at one of these first levee meetings that the village board shared with the community what our main objectives were. One, to protect the lives and well-beings of our citizens and the public; two, to protect the homes and business as well as their personal property; and three, not to stifle economic growth and development in Waterloo. JEO Consulting did a preliminary survey of the levee and found that most of the levee did not meet FEMA's new free board requirements. As the Waterloo Village Board chairman I addressed the Papio-Missouri River Natural Resource District's board of directors at one of their meetings, asking for their guidance and assistance regarding a flood study that had to be completed to determine the feasibility. It was unanimously approved to partner with Waterloo on the flood study. After another public information meeting we will be ready to move forward with the levee redesign improvements. Preliminary levee improvements could be between \$3.5 and \$4 million. Waterloo operates on a relatively small budget and could not financially move forward on our own with these improvements. We again need financial assistance of the Papio-Missouri River Natural Resource District. This is why on behalf of the community of Waterloo I'm asking for all of you to please support LB160 so that the Papio-Missouri River Natural Resource District can issue bonds for projects such as ours. Thank you very much for your time and consideration of support. [LB160]

SENATOR LANGEMEIER: Thank you very much. Are there any questions? Senator McCoy. [LB160]

SENATOR McCOY: Thank you, Senator Langemeier. Mr. Benke, can you describe to me if this piece of legislation does not become law and put in the statute, what the plan is for the Village of Waterloo to finance this levee project? [LB160]

STANLEY BENKE, JR.: What, Waterloo has a limit on the bonding authority that we have as a community and therefore we would not have the finances to finance the entire...and it could be less than \$4 million, but if it were \$4 million, we would not be able to finance these improvements and therefore our objective would not be met. So if this bill were passed with the NRD's ability to issue bonds, we could get this taken care of. And the other issue we're dealing with right now, we're one year into our two years that we have to finalize this project so we're under some real time constraints right now. [LB160]

SENATOR McCOY: So if this doesn't go through, as you said, the only other option would be to allow it to be...or it would be not to come into compliance in other words.

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Natural Resources Committee
January 23, 2009

[LB160]

STANLEY BENKE, JR.: That could happen, very easily happen. [LB160]

SENATOR McCOY: Thank you. [LB160]

SENATOR LANGEMEIER: Thank you. Seeing no other questions, thank you for your testimony. Further supporters or proponents? Go ahead when you're ready. [LB160]

MARK STURSMA: My name is Mark Stursma, that's M-a-r-k S-t-u-r-s-m-a. I'm the planning director for the city of Papillion, and I'm here representing the city of Papillion. And I would like to thank you for your consideration of this important bill. The city of Papillion supports this bill and our city council has passed a resolution specifically indicating our support. And I'd like to tell you briefly why this is so important for the city of Papillion. Papillion is a downstream community within its basin. That means that all the pollution and additional runoff from existing and future development from Douglas and even Washington County flows down to us. Because of that, we need protection now. Later this year we will be adopting a revised flood plain map with significantly increased areas of flood plain and floodway. We had to notify 249 property owners within our jurisdiction of their pending change in status. The effects range from households and businesses now needing to buy flood insurance to developers who have invested millions in property and infrastructure being told that they will no longer be issued building permits because the property is now in the floodway. Needless to say, these revised maps have an enormous impact on our city. We do have a mitigation plan to help recertify the levees along the west Papio Creek and reduce the newly defined areas of floodway. This plan includes bridge elevations, levee improvements, and regional detention facilities. These are all methods that FEMA recognizes for amending flood hazard designations. At this time, some other methods such as low-impact development are not recognized. Even though we fully support low-impact development techniques they will not allow us to recertify our levees and bring that floodway back to its current status. We need this bill to allow us to manage storm water the way we think best serves our jurisdiction and we think regional detention is the best solution for our particular needs and I'd like to briefly explain why. Only regional detention can collect runoff from existing development. This is important because as I mentioned, we are already at risk. We trust that regional detention reservoirs will remain effective over time because they will be publicly maintained, and as I mentioned, timing is important to us. Our regional detention reservoir can provide immediate protection for both quality and quantity for a large drainage area once it's constructed. Other methods happen incrementally over time and are dependent upon development. And lastly, although this is not our only objective by any means, a nice side benefit of regional reservoirs is that they create wonderful public recreation amenities and they tend to increase the value of surrounding development. We're not asking other jurisdictions to use regional detention in place of other methods if that is their preference. We're asking

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Transcriber's Office

Natural Resources Committee
January 23, 2009

for the ability to manage this storm water in our jurisdiction in the manner that we think is most effective. I would also like to point out that regional detention is by no means our only method of storm water management in Papillion. I believe that Papillion has been a leader in this area. We passed the storm water management ordinance years ago to protect Walnut Creek Lake from silt and pollution. We have adopted the ordinances and policies created by the Papillion Creek Watershed Partnership which, among other things, increases creek setbacks, reduces fill-in flood plains, further regulates grading to reduce erosion, requires on-site detention for water quality, and defines and encourages low-impact development. And finally, we are the only jurisdiction to adopt an ordinance that allows us to enforce the pending flood plain maps prior to their formal adoption. We now require council approval for any development in an area where the flood plain maps are changing. So in closing, I would again, stress our support for LB160. We need this to implement the storm water management plan that's approved by the majority of the Papillion Creek Watershed Partnership. We need it to help us protect our natural environment from pollution, and we need it to protect our residents from the catastrophic effects of potential flooding. And again, thank you for your consideration. [LB160]

SENATOR LANGEMEIER: Thank you very much for your testimony. Are there any questions? You're getting off the hook easy too. Thank you very much for your testimony. [LB160]

MARK STURSMA: Thank you. [LB160]

SENATOR LANGEMEIER: Further supporters or proponents? [LB160]

PAUL DIERKING: (Exhibit 13) My name is Paul Dierking, P-a-u-l D-i-e-r-k-i-n-g. I'm a water resources engineer for HDR Engineering in Omaha. I want to thank you for the opportunity to provide testimony today regarding water quality and flood control issues within the Papio Watershed. Papio Watershed, as you have heard, has a number of existing problems and impairments regarding water quality. E. coli contamination threatens numerous streams within the Papio Watershed. Excessive sediments and nutrients in lakes are beyond NDEQ's regulations and EPA's regulations. There are also isolated cases of toxic pollutants. As you have heard, in addition to these impairments, members of the Papio Watershed Partnership are bound by the EPA to submit a plan to address these water quality impairments by July of 2009. Within six months they have to have a plan in place that recognizes the water quality impairments and a plan to address them. In addition to water quality, you've also heard some issues regarding flood control and the history of flooding in the watershed. You've heard about existing projects that have taken place that have helped reduce some flooding risk in the area, however, they're still an existing threat to the watershed. As has been mentioned, there's been updates made recently to over 50 miles of stream within the watershed, just recently. And some of those are the new updates that the city of Papillion and others will be adopting here shortly. Those updates have shown that flood plain risk,

Natural Resources Committee
January 23, 2009

flooding risk has increased on the order of 20 percent in the different communities and will continue to increase if future development occurs according to existing zoning maps. So the problem will only get worse from here. As you've also heard, that the city of Papillion's levees are no longer in compliance because of these increases in flooding depths, increases in flooding areas compared to what's there right now for FEMA mapping. So the FEMA maps that are there today show that the levee is in compliance. The new information that's been studied and brought forth shows it's no longer in compliance because there's more water reaching the area. In addition, there's another flood control feasibility study that's been performed in another portion of the watershed that revealed similar results. Along the 16-mile stretch of Big Papillion Creek through the heart of Omaha, if a 100-year event occurred today, approximately \$325 million in damages would occur and impact over 750 structures in that 16-mile stretch. As mentioned earlier, there would be thousands of other structures that would be impacted throughout the other areas of the metro and Papillion watershed, but just in that stretch it would be 750 structures. According to FEMA's mapping today, only 350 of those are in the flood plain. So the flooding risk has increased, the area has widened and the flooding depths have increased to include an addition 400 structures just in that reach that are not currently aware of the risk that they're in. So as you can tell, flood plains are moving targets. Just like many things in nature they're not static, they don't remain the same. Land use changes, channel changes, different types of development impact the flood plain and where it is located. As evidenced by these water quality impairments and the flood control needs within the watershed, as you've heard, the partnership has developed a plan. This plan has been a watershed-wide approach that protects the watershed through a variety of strategies, nonstructural measures including policies that will change flood plain management., as you've heard. Numerous communities, including the city of Omaha, are looking at adopting only allowing building in the outer 25 percent of the flood plain area, not allowing building anywhere in the flood plain but just in 25 percent of that flood plain fringe area, they call it. So ordinances and policies are being developed to use nonstructural management measures to address these issues. And then there are structural improvements that are being recommended, the regional detention structures, the low-impact development strategies as new development occurs and an implementation plan that outlines how these management strategies should be implemented in the near future and over the long term for all the projects. These methods were integrated into a single comprehensive plan as mentioned, and it consists of that low-impact development strategy that would be applied everywhere throughout the watershed for the water quality concerns, primarily. An enhanced level of that low-impact development would be applied in the Washington County area to address how their policies are currently written. And then there are the structural measures of the 15 regional basins that are being proposed for flood control and some water quality basins to help the water quality within those reservoirs, existing reservoirs and the proposed reservoirs. The benefits of this plan would allow for application of water quality controls everywhere, new development, redevelopment within the urban area. It would allow for flexible limitation of flood control, and that's key

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Natural Resources Committee
January 23, 2009

because there are existing needs as you have heard. Those needs are projected to increase with future development. Where development occurs would dictate how low-impact development would be applied. It would only occur in those newly developed or redeveloped areas. The regional detention sites would allow for flood control measures to be implemented where needed and when needed. Proven methods, as I've discussed, would be acceptable by FEMA so that they would recognize those measures and incorporate those into the flood insurance maps. It provide a manageable level of structures to operate and maintain by the different jurisdictions. And finally, it reduces urban sprawl and maintains development densities. I want to thank you for your opportunity to provide testimony. [LB160]

SENATOR LANGEMEIER: Are there any questions? Senator Haar. [LB160]

SENATOR HAAR: Thank you, Senator Langemeier. On your first page you mentioned a deadline of July, 2009. What happens if you miss it? [LB160]

PAUL DIERKING: I'll let the jurisdictions speak to that. I'm not extremely well-versed in how all their permit reads and everything, but my understanding is the communities formed this partnership so they could file one joint permit to the EPA five years ago. They were required in that five-year period to have a storm water plan, management plan in place by July of 2009 to address various water quality issues within the watershed. Beyond the circumstances of that...I know they're able to issue fines and things at some point. I don't know that those would be issued immediately, but I know that's within the power of the EPA. [LB160]

SENATOR HAAR: And that's the plan that's going to be presented in February? [LB160]

PAUL DIERKING: Yes, exactly. [LB160]

SENATOR HAAR: Okay. And then, as an engineer we've heard some about retention basins versus dry dam or whatever it's called. Can you explain a little bit about the difference between the two and from an engineering standpoint? [LB160]

PAUL DIERKING: Yes, I'd be happy to. You mentioned dry dams, you mentioned reservoirs, those are typically function almost identical except for the fact that the reservoirs have water in them to begin with, so that volume in that reservoir is already accounted for for any type of flood control. So if you have a flood event, the flood storage is accounted for above that elevation of that existing water. In a dry structure you simply don't have that existing volume of water in the dam so you have more available storage for flood control which allows you to lower the elevation of the dam, potentially. So that's the explanation of dry dam versus wet dam, provide identical flood protection downstream if they're designed according to the same criteria. The other item that you probably are wondering about is the low-impact development. Traditionally,

Natural Resources Committee
January 23, 2009

low-impact development is tailored to smaller storm events, more frequent storm events of the order of two to three inches within a day's worth of time which are fairly common. Maybe on a two-year event has a 50 percent chance of occurring every year. Those methods are primarily used for filtering water as it comes off the landscape for water quality concerns. Some minor amount of detention does occur through those strategies for those smaller events. What we've done for part of the plan is looked at enhanced levels of that low-impact development that would be allowed to tailor those structures for larger amounts of flood control. Those essentially end up being because for 100-year rainfall event, for example, that's over six and a half inches of rain within a 24-hour period in this area of the state you have to go somewhere with that volume of water. The soils don't allow all the water to infiltrate, therefore, the low-impact development that's enhanced that we're talking about would essentially, by development, development by development, would each install a small on-site detention basin. And you can line that with native grasses and things for filtering and all that kind of...but that's essentially it's a smaller version of a reservoir except on a much smaller scale. [LB160]

SENATOR HAAR: Now dry dams are often the location of parks and things like that, right? Is that a part of this proposal that's coming forward in February? [LB160]

PAUL DIERKING: The plan currently has no financing or items for recreation or anything within the plan itself. The plan is strictly tailored to water quality and flood control issues. Now the individual projects, the individual jurisdictions as they come forward, either the jurisdiction's nonprofit entities may incorporate recreation into those projects if they so choose, but it's not part of the funding and the dollars that have been laid out to date. [LB160]

SENATOR HAAR: Okay. [LB160]

SENATOR LANGEMEIER: Senator McCoy. [LB160]

SENATOR McCOY: Thank you, Senator Langemeier. And thank you, Mr. Dierking, for being here this afternoon. A couple quick questions for you, if I may. In earlier testimony Senator Fischer brought to the attention of Mr. Winkler, as it relates to the price tag and today's dollar of the wish list, or what needs to be done to comply, somewhere in the neighborhood I believe it was stated as \$375 million in today's dollars. Obviously, flood plain buyout is part of that as it was discussed. In your written testimony it appears that as you noted if a 100-year flood event occurred the damages just to that section would be over \$325 million. How does that relate to the overall price tag? It appears that flood plain buyout could easily exceed the cost as it was stated of that \$375 million. Just in flood plain buyout alone, it appears there's no real exclusions or anything as in notes in the bill. Can you address that a little bit as to exactly how that would proceed with flood plain buyout? Is there any other information that you have regarding that? [LB160]

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Transcriber's Office

Natural Resources Committee
January 23, 2009

PAUL DIERKING: I can't speak to how the jurisdictions or how the partnership would implement the flood plain buyout program that they may be considering, but I can tell you is that in that same stretch in which if a 100-year event occurred, \$325 million of damages would occur. In that same stretch we looked at...there was a study that looked at what the buyout cost would be for that stretch. I don't know the exact number off the top of my head, but I do know it was well over \$400 million. So that's...as you pointed out the buyout cost would exceed the cost of the projects that are being laid out for the plan. As mentioned by Mr. Winkler and others, buyouts are occurring, the city of Omaha is doing some of those. Those will continue to occur probably on a case-by-case basis and I can't speak for the jurisdictions, but I don't believe the intent of using this bonding authority would be to buy out all the flood plain properties because of the infeasible cost tag, price tag that would be included. [LB160]

SENATOR McCOY: Sure, I understand that you can't necessarily speak for all the jurisdictions involved but it does appear that anyone in this flood plain can request a buyout and can be part of that if they so choose, correct? [LB160]

PAUL DIERKING: Yeah, again, that would be up to the jurisdiction's authority to accept that offer from those individuals. [LB160]

SENATOR McCOY: But as it's written, that is part of it? [LB160]

PAUL DIERKING: Yes. Yeah, it's given the authority to implement structural and nonstructural improvements such as buyouts. [LB160]

SENATOR McCOY: So it may be very difficult, then, to determine what the overall cost could be of the flood plain buyout. [LB160]

PAUL DIERKING: Potentially. I would say that the partnership has this plan laid out and that's the plan that they're planning on implementing. So, yes, flood plain buyouts may occur on an individual basis but I believe the plan as it's laid out is their intent. [LB160]

SENATOR McCOY: Thank you. [LB160]

PAUL DIERKING: Um-hum. [LB160]

SENATOR LANGEMEIER: Senator Haar. [LB160]

SENATOR HAAR: Thank you, Senator. So basically at this point we're approving a blank check and we're saying to the NRD, you know, you decide how to spend it. Is that accurate? [LB160]

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Transcriber's Office

Natural Resources Committee
January 23, 2009

PAUL DIERKING: I would characterize it as you're giving them the authority to authorize bonds, and I would also add that their plan is what they're planning on implementing. Again, I can't speak for the jurisdictions, but I would say that their plan which includes approximately \$375 million in structural improvements of original basins and approximately \$100 million in additional low-impact development strategies is their plan. So I would estimate it at approximately \$475 to \$500 million. [LB160]

SENATOR HAAR: So at this moment, we're just looking at a broad outline? [LB160]

PAUL DIERKING: Yes. [LB160]

SENATOR HAAR: Okay. [LB160]

SENATOR LANGEMEIER: Senator Fischer. [LB160]

SENATOR FISCHER: Thank you, Senator Langemeier. Okay under Section 1, I don't know how familiar you are with the bill and with the levy part and the bond part, but it really wouldn't be a blank check under Section 1, would it, because of the limit that's put on there? Am I not reading that? [LB160]

PAUL DIERKING: That's how I read it. [LB160]

SENATOR FISCHER: So it really wouldn't be a blank check. We do have a limit that's on here, correct? [LB160]

SENATOR HAAR: Gotcha, that's a good point. Yeah. [LB160]

PAUL DIERKING: It would appear so, yes. [LB160]

SENATOR HAAR: Yeah, okay. [LB160]

SENATOR FISCHER: Thank you. [LB160]

SENATOR LANGEMEIER: Seeing no other questions, thank you. [LB160]

PAUL DIERKING: Thank you. [LB160]

SENATOR LANGEMEIER: Thank you for your testimony. Further support? I'm going to at this time remind you if you need to say in your testimony as you've heard before, exactly that, we've already heard it. I think the committee will concede that the levees have changed, the flood plain has grown. We would ask for new information from this point forward. Thank you, go ahead at will. [LB160]

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

Natural Resources Committee
January 23, 2009

BOB PETERS: My name is Bob Peters. I'm the city administrator in Dakota City. I've been there for about five years. It's B-o-b P-e-t-e-r-s. Next Monday night I'm going to go to a meeting that the Sioux City school system will host that will be a 32-year anniversary of the cities and the counties and the school system in South Sioux City and Dakota City working together. We've made a commitment to taxpayers to maximize those revenues and that all levels of government in Dakota County are going to work together, are going to go the same direction and are committed to helping each other achieve the goals that are represented by our publics. I want to give you some brief examples of that cooperation, okay? Two years ago we built a \$7.2 million jail by funding the jail with a .5 percent sales tax so that everybody working together in putting that jail and not needing to raise our property tax rates. The cities of Dakota City and South Sioux City have an economic development agreement that's pretty unique and will allow us to share infrastructure development cost, land cost, and the taxes that are generated from common property. The cities of South Sioux City and Dakota City, the South Sioux City school district and a couple of other districts have worked together to develop a Safer Schools Plan that has everybody signing off on it to help keep our kids safe. Sioux City, South Sioux City, other schools, Dakota County have developed, I think, probably a unique economic development agreement in which South Sioux City is going to do the economic development for the entire area. That means we're not going to compete against each other for private industry. It does mean that private industry coming to Dakota County is going to know that we're going to work together to help them out. I could go on with the number of examples all the way from we share common parking to sharing garages and on and on; I won't do that. I will say that the reason for my testimony today is to encourage you to strongly consider this legislation that provides the tools for different levels of government to work together for the public good. You should expect it, the public should expect it, it is a win-win. John talked before about partnerships, okay? As we addressed and we've had a lot of discussion about flood control, but that's not the only issue. As we address flood control, as we address other environmental issues we are confident that if people work together they can address those issues at a local level. We're asking you to help us provide the tools to do that. Thank you. [LB160]

SENATOR LANGEMEIER: Are there any questions? Seeing none, thank you, and a very good job. Next supporter/proponent? [LB160]

JOHN FULLENKAMP: Mr. Chairman, members of the board, my name's John Fullenkamp J-o-h-n F-u-l-l-e-n-k-a-m-p. I'm a lawyer by trade with a stack of papers and it's late at night and you're probably wondering this is going to go on too long, so I'll try to disregard that stack of papers and just talk to you about a couple things, and not to just talk about somebody else's testimony. If you go back and you're reflecting on this and you want to know what's happening in the world of development, and I happen to be a lawyer who represents real estate developers and home builders, I'm actually here on behalf of the Metropolitan Omaha Builders Association and all their members in the

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

Natural Resources Committee
January 23, 2009

Eastern Nebraska Development Council. This is an area of the law which is ever expanding and has a tremendous amount of work has occurred over the last three to five years. When Mr. Stursma on behalf of the city of Papillion explained to you what has occurred, that essentially, is happening in all jurisdictions. This partnership that you've heard talked about is comprised of, it's an attempt to take a global approach to a problem that really can't be solved locally because the rain doesn't know where it falls. And it is an effort of the Papio NRD, initiated essentially because of the requirements of the EPA and good stewardship of everyone's area of city of Omaha, Papillion, Bellevue, La Vista, Bennington, all the cities in the area, Sarpy County, Douglas County, Washington County. And for the last three or four years there's been an enormous amount of debate, and very healthy debate, accusations one against the other that we're not listing to the other guy. But as a result of all of that, as often happens and I'm sure you see it here, the more you argue about something the more something seems to come to fruition. And while not everybody is pleased with perhaps the way that it's come about, I think the majority of the people that are attending all of these meetings think that the NRD is really the right place to do this, with the input of the partnership. They think that the NRD has hired the right kind of professionals like Paul who was here before me. They've spent a tremendous amount on studies. Every time someone has come up with a potential solution it has been honestly and openly examined. The issue of low-impact development which I think you'll hear when some of the opponents come up is the supposed panacea. You don't really need to have these darn dams if you have low-impact development and there's a whole bunch of different ways to do that and without getting into all of the debate about whether builders like low-impact development or the extent of the low-impact development which, by the way, the Metropolitan Omaha Builders Association endorses the concept of low-impact development as it's proposed right now. They just object maybe to an extreme portion of low-impact development which is sort of been held out as the panacea. So the result of all of that is there's been tremendous new regulations which didn't exist three or four years ago. This whole stack of papers was really here to demonstrate to you what happens on a subdivision. Years ago we didn't have temporary silt basins; we do now. We didn't have permanent silt basins; we do now. We didn't have something that's affectionately called a gutter buddy, which you may or may not know what it is, but it's a long tube of material that's put at every inlet and subdivision anymore to clean and slow the water. We didn't have silt fences, we didn't have the types of grasses and the planting schedules and the erosion control and the terraces and all the things that are done at great expense but to honestly and agreeably on behalf of the development community clean water, slow it down, retain it on site as much as possible within the confines of still trying to make a living in an environment that we have now. You folks know as well as I do, though it maybe has impact my business a little closer than yours, what has happened to the real estate business as of late. But nonetheless, one of the things the development community has been approached with because we believe the engineers from the NRD and we believe the things they've come up with are the right things to do. You've heard the talk about the funding of this. So those of us that have been to all these meetings

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

Natural Resources Committee
January 23, 2009

have been asked, and assuming a bill like this would pass, to go to our constituency and say to them, look guys you're going to have to start paying a fee with every building permit that comes up now from now on to start going into a pot to help the NRD do the things that they believe are necessary to help this flooding issue and so forth. And we are willing to do that, and we are willing to go to our constituency and say the Legislature and the state of Nebraska and the NRDs have come to an accord that says we'll give the NRD the authority to do this and we will go to our people and say you guys are going to have to pay for part of this. The alternative of that is we go back to business as usual. There may be stricter regulations on how you develop a subdivision. Whether anybody develops another one for awhile, I don't know. But we think this is a much better way to approach it. So one of the things you'll hear about getting back and then I'll stop, because I promised to try to go quickly, is gee let's just make this ultimate low-impact development on every site. So let's just put a big pond on every site as opposed to the kind of pond that you guys are talking about now. But what that would mean, and does that concept work? I suppose in it's ultimate, it probably does, but what that would mean is that you would have to develop all the property all at the same time. Now that's just not going to happen. It's not when and if, you know, the flood doesn't know who's got low-impact development and who doesn't. There needs to be, and the reason we would ask you on behalf of the home builders and the people that build these houses and do the developments to support this bill, is the flood doesn't know when it's going to come. And we need to get these things in place in an orderly fashion and we honestly believe that the NRD is the right people to do it with the advice and consent of the partnership. And admittedly, there's not 100 percent consensus of that partnership, but it's pretty strong that they've all debated the plan and I honestly think those are the people...so I'd be happy to answer any questions if you have any. [LB160]

SENATOR LANGEMEIER: Are there any questions? You're going to get let off easy too. Thank you very much. [LB160]

JOHN FULLENKAMP: Thank you very much. Let the lawyer go without picking on him. [LB160]

SENATOR LANGEMEIER: Fullenkamp, you did well. You did really well. Further supporters? [LB160]

JERRY HARE: Afternoon. [LB160]

SENATOR LANGEMEIER: Go ahead when you're ready. [LB160]

JERRY HARE: My name is Jerry Hare, J-e-r-r-y H-a-r-e. I'm the public works director in Bellevue and I'm also representing the Chamber. I just simply want to say that we're on the lower end of this watershed and we watched the bill develop the last two or three sessions and I'm here simply to ask for your support of LB160. [LB160]

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Transcriber's Office

Natural Resources Committee
January 23, 2009

SENATOR LANGEMEIER: I'm going to ask one quick clarification question. [LB160]

JERRY HARE: Sure. [LB160]

SENATOR LANGEMEIER: You said you were here on behalf of the Chamber, that's Bellevue? [LB160]

JERRY HARE: Bellevue Chamber of Commerce, sorry. [LB160]

SENATOR LANGEMEIER: There's lots of chambers out there. Are there any questions? Seeing none, thank you very much. [LB160]

JERRY HARE: Okay, thank you. [LB160]

SENATOR LANGEMEIER: Further support? Good afternoon, evening I should say. [LB160]

FRED UHE: (Exhibit 14) Good evening, Senator. Chairman Langemeier, members of the committee, my name is Fred Uhe, I will attempt to be very brief. Last name is spelled U-h-e. I'm the chief deputy clerk of Sarpy County and the county's registered lobbyist. You have heard a lot of testimony and I guess I'll just touch briefly on Sarpy County's position on this. And being at the bottom of the watershed, there's probably never a spring that goes by that we're not under water somewhere. And traditionally this body, I think, has encouraged local agencies of government to cooperate so we became involved in the partnership not only for the flood control aspect, but also for the Clean Water Act requirements under the storm water runoff. We think the partnership has been a good, wise use of tax dollars, and as previous testifiers have said, we felt that the NRDs had the expertise in the flood control water issues and stuff that the counties and cities would not have. One issue I don't think was touched on, because I have been told by some that we probably have allowed development in areas that we should not have. That possibly may have been true in the past, but I think previous testifiers have also explained that the flood plain is now growing on us. That's due to development further upstream. I think the issue, and if we don't reach a solution here soon, is either to spend millions of dollars on depopulating and buying out property and moving people out of Sarpy County or eventually putting some restrictions on development upstream. So I think that not only has tremendous economic impact on the state as a whole and for the metro area. So I think there needs to be the balance and hopefully this...there's been a lot of work done on this particular piece of legislation to meet some of the opponents' objections, issues of eminent domain, private developers, the tax levies, so in this case we think it's a good partnership and something truly needs to be done. I grew up in Sarpy County, I remember times when downtown Papillion has been under water. As a child I had a friend who lost his father in the flood and so we are at risk for

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

Natural Resources Committee
January 23, 2009

tremendous property and possibly a loss of human life. So with that, I'd be willing to take any questions. [LB160]

SENATOR LANGEMEIER: Thank you, Mr. Uhe. Any questions for Fred? Seeing none, thank you very much. [LB160]

FRED UHE: That's probably the shortest and quickest you've heard me talk. [LB160]

SENATOR LANGEMEIER: (Exhibits 15 and 16) That is true and I appreciate it. Further supporters? I think we maxed out, nope, I have a letter to read. Lance Hedquist who is the city administrator for the city of South Sioux City would like to submit a letter in support of LB160. Any more in support? We have a letter from Sarpy County Economic Development signed by, I can't make that out, in support of LB160. We'll figure that out. Now shifting over to opponents? How many do wish to testify in opponent? Oh, wow. You might want to talk to each other and make sure you get your points across so we don't duplicate. You're up; let's do it. We're ready for you. [LB160]

DAVID BARGEN: (Exhibit 17) Mr. Chairman and Senators, my name is David Barga, D-a-v-i-d B-a-r-g-e-n, registered lobbyist here on behalf of the Papio Valley Preservation Association, the PVPA. Andy Pollock is usually the person who represents this group and unfortunately he had a family matter to attend to and could not attend so he sends his apologies. PVPA has two main concerns with LB160. One is the expanded bonding authority being requested by the NRD, the Papio Valley NRD. And secondly, the overall plan that LB160 is meant to address still includes at least 27 dams, structures to a pool of water. While LB160 is a step in the right direction, it's not much of a step from last year's final amendments that were part of LB880 which was eventually killed. Now others will testify behind me about the bonding, the dams, I want to talk just a about the legal aspects a little bit of the bill and the history of this legislation that has occurred before this. LB160 is the Papio-Missouri River NRD's fourth attempt to expand its bonding authority. The first two attempts were killed in committee, the latest attempt saw the floor. LB552 in 2005 was killed by the Natural Resources Committee. LB272 in 2007 was killed by the Revenue Committee, and last year LB880 received only eight votes to advance from General File, the rest were votes to bracket the bill to the last day of the session which had the effect of killing the bill. LB160 is essentially the same bill that was defeated last year as amended by AM2455 and AM1787 with one exception, and that being that LB160 now has a 2 cent restriction on the special bond levy absent the vote of the people. But that's the difference between last year's bill and this year's. LB160 does not effectively address the potential for abuse of eminent domain. LB160 does not change current law which prohibits a public taking for private or economic development. That was, of course, Senator Fischer, your bill in the wake of the Kelo decision. But the language of LB160 does not provide protections from a public taking that could later be transferred to another private entity. Section 2 says the district shall now require real property for a project described in subsection 1 of the section by

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

Natural Resources Committee
January 23, 2009

eminent domain proceedings pursuant to Section 76-704 to 76-724 if the real property is to be conveyed to a private entity or private enterprise after such acquisition. The taking, therefore, could be for a legitimate purpose on day one like flood control, and then the land could be transferred a month later or a year later to a private developer. And LB160 looks only at the original intent of the taking that eminent domain may not be used if the real property is to be conveyed. It doesn't look forward as to if the intent has changed. This could lead to disputes and litigation over what was the original purpose for the taking. The language from LB945 from last year addresses this better. It says that regardless of the purpose for which it was taken, it may not be transferred to a private entity or private developer. I won't get into detail right now about another bill that's been proposed. I just want to mention it briefly, LB577 that Senator Rogert has introduced, we think it's a better solution for these issues. It's a cleanup of existing law, actually, with the addition of two provisions that protect upland landowners whose land do not fall within a project that's being considered or whose lands who might be effected by construction of a project. And the NRDs do currently have bonding authority. They can create what's called an improvement project area and assess bonds to persons inside that improvement project area and we think that's a better approach to this question. We've heard testimony about development, essentially. I think in a nutshell, development has caused the issues downstream in cities and in Omaha and in south Douglas County and Sarpy County. We think that the best place to address those issues are with the folks who are in those areas with the developments that have occurred and the creation of a project improvement area would do just that. Again, I want to keep my comments brief because we have plenty of people behind us to testify about more in detail about this bill. But the NRD's proposal has been rejected by this body in the past and for good reason, and it should again be rejected. We think that LB577 is a better solution. We understand that flooding is an issue. We just think that there's a better way to go about doing it to protect property and life and protect interests. We heard some discussion earlier that this is like the Republican Basin's approach to their issues down there, but it's not. The Republican Basin was attacking an issue that arguably affects the entire basin and that affects not only just that basin, but probably the entire state to try and keep Nebraska in compliance with the interstate compact that would affect all the taxpayers of Nebraska. In this situation we're trying to protect development and landowners who are a specific subgroup within a district and asking the entire district to pay for that project. And we just think that that's probably a less efficient and less fair way of taking care of the problem. So with that I'll keep my comments brief and take any questions you might have. [LB160]

SENATOR LANGEMEIER: Okay. Great job, good information. Are there questions?
Senator Fischer. [LB160]

SENATOR FISCHER: Thank you for being here, I couldn't keep up with you. [LB160]

DAVID BARGEN: I'm sorry. [LB160]

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

Natural Resources Committee
January 23, 2009

SENATOR FISCHER: I'm trying to take my notes here for questions so... [LB160]

DAVID BARGEN: I was trying to be brief. [LB160]

SENATOR FISCHER: ...if you could, well I can get it from the transcript later, a copy of your testimony. You brought up my bill from a couple of years ago. I'm glad you took note of it. But aren't NRDs already prohibited from taking property with eminent domain use and then conveying it to a private developer? By statute, aren't they already prohibited from doing that? [LB160]

DAVID BARGEN: Well our concern is that what has happened in the past and what we believe and could happen in the future is that there could be a present purpose to take property for flood control and sometime in the future it could be turned around and sold to a private developer. And there will be testimony about, I believe, that happening in the past or concerns about that happening in the past. [LB160]

SENATOR FISCHER: Was the statute that prohibits them from doing that, was that in effect when this happened in the past? [LB160]

DAVID BARGEN: I'm not aware of that. I'm not sure, but what I think, well, what has been done in the past or what that statute may address is a direct, immediate transfer to a private developer. What we're concerned about is that there may be not a direct, immediate transfer, but it may happen in the future. And it's kind of an end run around those kinds of statutes and so those are the kinds of concerns that our clients have with those issues. [LB160]

SENATOR FISCHER: If that cannot happen by current statute or an amendment would be put on to take care of that so it wouldn't happen in the future, you and the people you represent would be more comfortable then? [LB160]

DAVID BARGEN: That's one of the issues that we have with the bill, certainly. [LB160]

SENATOR FISCHER: Where you brought up the entire district would have to pay for the project and that that's different than LB701, I could argue with you on that because the NRDs in the Republican Basin, they do have the authority to tax every property taxpayer in that basin to...in order to shoulder the challenges that they have in that basin. [LB160]

DAVID BARGEN: Correct, and what our argument is that if that's occurring it's probably more appropriate in that basin to do that. Because what they are solving is a problem that's impacting not just a select subset of that district. They're solving a problem that arguably affects every taxpayer within that district by way of trying to keep Nebraska out

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

Natural Resources Committee
January 23, 2009

of a lawsuit in which all those taxpayers may have to end up paying for that. [LB160]

SENATOR FISCHER: I must be getting testy here at the end of the day but I could argue with you on that too, that where it's a compact that the state entered into and it was signed by the state of Nebraska, that all of us within the state of Nebraska, all taxpayers could or should be taxed in order to pay for that because it's a state obligation. [LB160]

DAVID BARGEN: Correct, and that's a fair argument. And that's why we think that's the inverse of this argument. Because in this case, we have, the proposal is to have the entire district paying for a subset of that district, less than the population of the district. And we believe that to be fair and efficient, that there needs to be some measures put in place to effectively, you know...assess the costs where the problems are occurring. We've heard testimony all day today about how it's been development that has occurred that, you know, for whatever reason however it proceeded has caused these issues to become now critical. We have levees that no longer qualify, we have flood plains expanding. That's been happening because these areas have been developing and that's fine, but we do not believe that that should be now borne...the cost should be now borne by my clients who are upstream from that who have not been a part of that development. [LB160]

SENATOR FISCHER: What about runoff from upstream into areas downstream and the, you know, we heard about problems from the runoff as it gets down to the end of the chain, so to speak, the end of that funnel. How would you answer that? [LB160]

DAVID BARGEN: And surely there is runoff from all portions of the district, but we believe and there will be testimony about this after me that the greater runoff is from places that have been built with concrete and structures that have caused the flow to increase and extended those flood plains. So we don't believe that the major issue is coming from upstream. It's coming from right where the development has occurred. [LB160]

SENATOR FISCHER: I haven't looked at LB577. Does that have a mechanism in it in order to pay for the projects that are needed in order to control these problems? [LB160]

DAVID BARGEN: LB577 is a beast of a bill because it looks big. Essentially what it is, though, is a rewrite. Senator Rogert requested that we rewrite the statute that already exists to make it simpler and to make it make more sense. It already exists in law, the procedure to create what's called an improvement project area and what the district can then do is issue bonds to pay for projects that affect that area and then assess the cost to the people within that project area. And so we believe that that's a more fair way to do what's being requested here. Now what the bill does also include are some protections for upstream folks. For instance, if there were going to be structures built as part of an

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Natural Resources Committee
January 23, 2009

improvement project area that were not within the improvement project area, they would have a seat at the table, a voice to come in and be there for the hearings, be there for the meetings and there would also be some eminent domain protections also. [LB160]

SENATOR FISCHER: What if there's a project upstream? The people you represent are they mainly from Washington County? [LB160]

DAVID BARGEN: Yes, correct. [LB160]

SENATOR FISCHER: So what if there is a project that has been selected that needs to be done? The NRD that elected board makes that decision it needs to be done in Washington County and it's a very, very expensive project. So under LB577, then, the people just in Washington County would be paying for any projects up there, is that correct? [LB160]

DAVID BARGEN: And that's a fair question. I mean, to be fair the process could work the same way in those areas. I'll let them address that directly and you can ask them that question directly. But that's a fair question. [LB160]

SENATOR FISCHER: Okay, thank you. [LB160]

SENATOR LANGEMEIER: Any other questions? Thank you. [LB160]

DAVID BARGEN: Thank you. [LB160]

SENATOR LANGEMEIER: Very good. Next opponent? Next of many. You can come on up, there are seats up front as you get ready to testify. [LB160]

PAUL RUWE: Senator Langemeier and members of the Natural Resource Committee, I'm going to be very brief today. My name is for the record, my name is Paul Ruwe, P-a-u-l R-u-w-e. And I am from Arlington, Nebraska. My wife and I farm in Washington County and we are members of the Washington County Farm Bureau. I come before you today on behalf of the Nebraska Farm Bureau Federation in opposition to LB160. Nebraska Farm Bureau policy opposes providing NRDs the authority to issue bonds for the purpose of constructing flood control projects. One of our concerns with giving NRDs such authority is because we have not always seen that the primary interest in these structures is flood control, but rather has been assisting private development. As such, we question the use of public funds for structures whose benefits are primarily private in nature and we are concerned about the loss of farm ground for such projects. I, and other members of the Washington County Farm Bureau have been concerned with the proposed flood control structures for more than 20 years. We are interested because some of the structures are proposed to be built in Washington County. It is our sense in observing these issues over the period that while flood control benefits do exist

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

Natural Resources Committee
January 23, 2009

with these structures, flood control isn't the primary reason for the structure. For example, the lake which was built near Bennington providing flood control for a small portion of the Papio Watershed, and on my view was built primary to provide lakefront development for the private developer. In our opinion, if flood control is the underlying purpose for these structures it could be better achieved with zoning restrictions on building in a flood plain and using area for green space. This can be done for less cost and within existing NRD funding authorities. Again, Nebraska Farm Bureau policy opposes LB160 and I'd be happy to answer any of your questions that you might have. Thank you. [LB160]

SENATOR LANGEMEIER: Are there any questions for Mr. Ruwe? Senator Fischer. [LB160]

SENATOR FISCHER: Thank you, Senator Langemeier. Thank you for being here, is it Ruwe? [LB160]

PAUL RUWE: Ruwe. [LB160]

SENATOR FISCHER: Thank you, Mr. Ruwe for being here. I always appreciate Farm Bureau's input and I work with them as you know on a number of issues. Questions, though. When you said flood control was not the primary purpose for the structures being built, do you think that's true on what the NRD is talking about doing now? [LB160]

PAUL RUWE: I'm not familiar with what their whole plan that they're going to propose in the future here is. But if going back to the Bennington project, the structure was built along the Papio and primarily, you heard that they formed a partnership. The developer donated that property because he wanted to have the lake structure there so that he could provide more expensive lots. And that is primarily stopping the drainage from that development. And I don't have a problem with there being a dam put in there and a lake developed, but I think it should be developed by the people that were gaining the benefit from it. And it was my understanding, we heard about the dry dam and that could have been or would have been more or less of a dry dam situation. But they pumped water into it in order to provide a lake for that development in effect. [LB160]

SENATOR FISCHER: I personally have a real problem with an NRD or any other political subdivision using eminent domain and then selling it to a developer. Would you be more comfortable if you could be assured that that wouldn't happen whether it's...I mean, we need to look into if that is taken care of in current statute or if we need to take care of that. Would you be more comfortable then if we could take care of that situation? [LB160]

PAUL RUWE: Eminent domain, or the lack of it, would certainly. [LB160]

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Transcriber's Office

Natural Resources Committee
January 23, 2009

SENATOR FISCHER: Well, it wouldn't be the lack of eminent domain, but it would be to spell out that the NRD wouldn't be able to turn around and sell it to a developer. [LB160]

PAUL RUWE: It's my understanding that, and I'm not sure, you know, you'd have to check in with somebody else as to on that, but I was told that some of the monies that were supposed to be paid back to the NRD for helping with the project from the developer never took place, that they simply had to write it off. [LB160]

SENATOR FISCHER: Has anybody asked any board member for the records or information, those are all public records, that took place? [LB160]

PAUL RUWE: We have. Unfortunately the way the Papio NRD board is set up, you know, it's elected by the population and so for all of our area out there we have one board member. And we have a new board member who has just been put into place on it, and we have been in contact with him to find out if he could get us some information as to what is going on because we are concerned. But, you know, you only have one vote versus the rest of them. [LB160]

SENATOR FISCHER: We do have the Freedom of Information Act. If you make a request and it's not acted upon by the political subdivision, action can be taken and you can contact the state Attorney General's office. I mean, I know of specific instances where that has taken place and I would suggest you look into that if you feel that you haven't received information. You should look into that. [LB160]

PAUL RUWE: All right, I appreciate knowing that. [LB160]

SENATOR FISCHER: Also, change is hard. At the end of your comments when you said, you know, we should go back or use things for green space and things like that, you know, there's been development. [LB160]

PAUL RUWE: I know, that is the problem on there. [LB160]

SENATOR FISCHER: You know, you can't look at Omaha, you can't look at Papillion and say, gosh darn it, you never should have built there so phooey. You know, we can't do that. [LB160]

PAUL RUWE: I was glad to hear that some of the testimony in favor of the bonding here that they were talking about that they were going to address some of these issues because in the past, I was down here and testified against the bill two years ago. And we asked about that specific thing and well, nobody had any answers for it. They weren't doing anything about it and obviously, you can see that as the development has taken place in Omaha and the NRD has bought some properties out even for when they

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

Natural Resources Committee
January 23, 2009

did the channelization because they were built right down onto the Papio and it was necessary to get them out of the way in order to channelize it. [LB160]

SENATOR FISCHER: You know, but the citizens of the state, you know, they're our friends and neighbors that live in Omaha and Papillion and Sarpy County and Valley and Waterloo and all the other areas. As I said, they're our neighbors and they didn't do anything wrong, you know, when they built there. And we need to weight that too. Those folks, their homes are there and their livelihoods too, and we can't just write that off. [LB160]

PAUL RUWE: Well, as an example, to a little background on my comments there, I served on the planning committee in Washington County for 18 years. And when we were going through our comprehensive plan and updating it a few years back here, we were approached by then manager of the NRD, Steve Oltmans, and he wanted to make sure that we didn't do anything to prevent them putting the two dam sites in that they were proposing and have proposed for many, many years on there. Our county zoning requires that if a developer develops the land he must not have any more discharge coming off of that property than what was prior development. Perfect example of a low-cost way of saying well, if you can't with low-density or if it's dry dam, you have to have the engineering available to stop this from creating a problem for your neighbor and you know, in effect, you know, I don't want to have anyone lose their lives over it either. I just want to make sure that if they are doing these structures that it actually is for the purpose intended and not just to provide for more growth in that area and for the developers. [LB160]

SENATOR FISCHER: And I would agree with you on that, but with your zoning has...aren't you worried that's going to limit growth in Washington County? Limit economic development from taking place? [LB160]

PAUL RUWE: We haven't had a problem yet, in fact, we had... [LB160]

SENATOR FISCHER: I hope you realize I come from an area where we're searching for economic development, we're losing population like mad. [LB160]

PAUL RUWE: Our problem has been more with trying to protect agriculture so that they can continue in their pursuits because the development is coming in so quickly and it'll surround an area and then that industry in that area is so restricted that they really can't continue with what they had. So that's what our problem, and that's probably the reason that we want to make sure it was orderly, that we didn't get into a situation where we had to ask for a dam to protect someone downstream or that. [LB160]

SENATOR FISCHER: Well, thank you for your comments. [LB160]

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Transcriber's Office

Natural Resources Committee
January 23, 2009

PAUL RUWE: Thank you. [LB160]

SENATOR LANGEMEIER: Any other questions? Senator Haar. [LB160]

SENATOR HAAR: Yes, thank you. Question, we heard that there's going to be a plan submitted in February. Do you know at all is anybody from Washington County from the zoning...planning department being included? [LB160]

PAUL RUWE: I don't know. I'm not on the zoning board any longer so I don't know. [LB160]

SENATOR HAAR: Right, yeah. [LB160]

PAUL RUWE: I'm sure that maybe some of our supervisors are here. They might be able to shed light on that. [LB160]

SENATOR HAAR: Okay. At some point I'd like to know that to see if indeed these folks from in the upper part of the region are going to be included in there. Thank you. [LB160]

SENATOR LANGEMEIER: Thank you. Any other questions? Seeing none, thank you very much for your testimony. [LB160]

PAUL RUWE: Thank you. [LB160]

SENATOR LANGEMEIER: Further support? [LB160]

SHAWN MELOTZ: Opposition. Be careful. [LB160]

SENATOR LANGEMEIER: Oh, excuse me, opposition. (Laughter) It's late. [LB160]

SHAWN MELOTZ: You said that probably to the wrong person. That's all right, it's late in the day. [LB160]

SENATOR LANGEMEIER: I was on Revenue Committee two years ago, I'm getting to know you all. [LB160]

SHAWN MELOTZ: (Exhibit 18) My name is Shawn Melotz, S-h-a-w-n M-e-l-o-t-z. And before I begin, I'd like to answer a couple questions that Senator Fischer had. I served on a steering committee for dam sites 1 and 3C. And we were told that in order to buy out those business and homes that are effected in the flood plain was \$457 million and there were 700 homes. At the time, we felt that this was not an outrageous option when you consider by buying those individuals out of the flood plain you no longer have an

Natural Resources Committee
January 23, 2009

issue. There's no maintenance and there's no continued cost to the taxpayer by doing that. But with that being said I'd like to thank Chairman Langemeier and the members of the Natural Resource Committee for allowing me to express my opposition to LB160 and I urge this committee not to advance this bill to the floor. Before you I've given quite a bit of financial information. I just wanted to let you know and help you understand as I go through my testimony. As you've heard, this is the fourth year Papio-Missouri River NRD is asking the Legislature for the ability to issue general obligation bonds. As of today, the Papio NRD plan is to build 27 more dams. Therefore, it is safe to say that these dams would, or these dollars will be used to construct dams costing the taxpayer hundreds and millions of dollars. Today I'd like to present this committee with my concerns with granting this NRD, the Papio NRD, bonding authority. I'm a practicing certified public accountant and since 2004 I've monitored the financial information of the Papio NRD and the practices they use. And I'd like to share this with this committee, this governmental entity's financial tendencies. One of the handouts that I gave you was a copy of the adopted budgets, the summary pages, and with that I'd like to say that from fiscal year 2006 through fiscal year 2008 the Papio NRD has grown its cash reserves to a current balance of over \$20 million. This is only in their general cash funds, this does not include the funds in their improvement project areas. This is a \$12.5 million increase in three years. In addition, this includes a reserve for dams that you've heard early testimony from Mr. Winkler and it includes a reserve for \$13 million. As part of the budgeting process, that \$13 million is no longer incorporated into its budget numbers. It is a footnote to the budget. The fiscal year 2009 budget, which is the first sheet under the group of papers, reports a budget cash reserve of \$23 million, property tax assessment of \$16.6 million, and property valuations to this NRD are close to \$50 billion. Establishing a large cash reserve has occurred through a practice of consistently over budgeting expenditures and thereby overtaxing property owners in the district. For example, if you look to the bottom of that sheet, the fiscal year 2008 expenses that were budgeted, which is the bottom column on the left, were \$44 million. Yet this NRD only spent \$19 million. The total per the printed sheet says \$27 million, but \$8 million of those dollars were transferred to a reserve, they were not true expenditures of the district. This represents 43 percent of used budgeted money and this practice has been consistent if you page back through the other years. In the private sector, spending less than budget is commended. However, over budgeting should not be acceptable when property taxes are used, especially in today's economic environment. Next, I would like to give a brief discussion regarding the practices used by the Papio NRD when they constructed the two recent dam sites. Project 1, or example 1, you've heard some testimony regarding it which is dam site 6, which is Newport Landing near Bennington. The Papio NRD partnered with a developer to build this dam under the guise of flood control, yet the structure provides minimal flood control by HDR's reports of 1.2 percent of the watershed. This dam cost taxpayers \$3.5 million and was \$1 million over budget. The lake surrounding this dam is private. Due to financial stress, the SID surrounding the lake filed for bankruptcy protection citing it was \$19 million in debt. So the bondholders of the SID bonds are no longer being paid interest on their bonds. The next

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Natural Resources Committee
January 23, 2009

project that was constructed by this NRD is dam site 13 which is on 192nd and Dodge. This dam was also constructed under the guise of flood control. This structure provides even less at less than one half of 1 percent of the watershed and cost taxpayers \$7 million. It, too, was \$1 million over budget. This project was constructed through a private-public partnership between the Papio NRD and a developer. To acquire the land for dam site 13, the Papio NRD exercised a developer's option on the land. There was no eminent domain evoked that I'm aware of on this dam. But the NRD paid for the land and paid for the option to the tune of \$3.5 million which was \$53,000 an acre. In exchange for that transaction, \$1 million of this money was to be paid back to the NRD by the developer nine months after closing. The agreement went on to state that if not paid timely, interest at 2 percent over prime would be included when paid. It was 18 months before the funds were paid back to the Papio NRD. The amount paid was \$1,035,000, making this, essentially, an interest-free loan. In addition to the million dollar transaction, the Papio NRD sold three acres to the same developer for \$600,000. Today, \$580,000 of that payment or that amount due has not been paid back to the NRD and there was a note on this, it is not due until 2011. The interesting part of the note that occurred with this transaction was interest is due on only \$180,000 of that note. There was \$400,000 that had no interest attached to it. Therefore, essentially, two interest-free loans totaling \$1.4 million were executed as part of this transaction. Those are taxpayer funds. My final issue regarding dam site 13 project, no competitive bidding was utilized during the construction of this project. The agreement specified that the developer would pay for the construction costs and the NRD would reimburse the developer. No maximum construction costs were agreed on, however, an estimate was given that the project should, the construction of the dam should cost \$1.3 million. The practice of not using competitive bidding for this project was because the Papio NRD revised their policies to state that competitive bidding shall not apply to projects engineered by developers. I believe the property taxes of this district should have better safeguards, especially on multimillion dollar projects. Next I would like you to turn to the second set of handouts. This is the plan given at a December 2008 meeting by the Papio Creek Watershed Partnership and it was prepared by HDR Engineering. They call this plan, plan D. We've been sitting in meetings for years and several years now and I have, of course, zeroed in on some of the dollar amounts and I'd like to share that with this committee. If you look to the third column on the bottom row, the cost of the proposed project by this partnership is \$1 billion. The \$376 million that you hear and have heard is just for the 27 dams. The project includes placing low-impact development measures on commercial property and residential property. The fourth column from the right that I've circled in red is the amount that will be funded by property taxes by those people residing in the Papio NRD district. The plan calls for \$3 million to come from private funding. The private funding is, according to the plan, will occur through lot fees assessed at the time the developer applies for the building permit. My concerns with this section of the plan are first, regulations to collect this lot fee do not exist in current zoning codes; second, the anticipated lot fees includes expected assessments in Douglas and Washington Counties; neither counties support this plan;

Natural Resources Committee
January 23, 2009

third, the fee is not assessed until the building permit phase which could be years after the onset of a development and any development currently platted will not have fees assessed because they were grandfathered; and fourth, in residential development, the lot fees undoubtedly will be borne by the homeowner, which, in my opinion is the public not the developers. If the fees are not collected, the public financing will clearly increase, thus raising property taxes beyond the asking of LB160. Conceivably, the Papio NRD will be back to this committee asking for additional bonding for years to come to fulfill this plan. Now we turn to LB160. LB160 allows a 2 cent levy for bonding. As you can see in the budgets, the Papio NRD has this 2 cent levy available today. Their fiscal year 2009 total budgeted levy is 3.4 cents. This--excuse me--this 3.4 cent levy includes a 1 cent set-aside for dams. Therefore, this 2 cent levy is available. And let me remind you of the Papio NRD's over budgeting practices which inflate the current levy. I don't know, because I am not sure of what future levies will be, but I believe there is some cushion in this levy that could allow them to issue additional bonds for years to come because the 2 cent is a one-year cap. With property valuations at over \$49 billion within the Papio NRD, a 2 cent levy is the equivalent of \$10 million in property taxes. With \$10 million of property tax per year used to pay annual bond interest and principal on a 30-year period is \$158 million in bonds that could be issued the minute you sign this bill without the vote of the people. If these bonds are payable over a 30-year period, the cumulative tax effect could be well over \$300 million. With probable valuation increases, budgeted property taxes will also increase allowing additional bonds to be issued for years to come and paid for by future generations. I realize I've provided an overwhelming amount of information, but I truly believe it's important that this committee understands the gravity of allowing bonding authority to the Papio NRD. This is an NRD who historically over budgets, who holds large excess cash reserves, who no longer requires competitive bidding for damn projects, and who apparently answers to no one. Thank you, and I ask this committee not to advance this bill to the floor. Should you have any questions, I've left my name and phone number as well as my e-mail address. I'll be happy to give you any information you should need. Thank you. [LB160]

SENATOR LANGEMEIER: Very good. Thank you. Are there any questions? Senator Fischer. [LB160]

SENATOR FISCHER: Thank you, Chairman Langemeier. Thank you for this information. I'd like to ask if it would be all right with you if I would give this to Mr. Winkler and ask him to respond to all of your testimony that you gave here. I would like to know his response to it, so is that all right with you? [LB160]

SHAWN MELOTZ: Please do. [LB160]

SENATOR FISCHER: Okay. Thank you very much. Mr. Winkler I hope we can talk afterwards. [LB160]

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Natural Resources Committee
January 23, 2009

JOHN WINKLER: Definitely. [LB160]

SENATOR FISCHER: Thank you. [LB160]

SENATOR LANGEMEIER: I guess I would have one question. Has he already seen that? [LB160]

SHAWN MELOTZ: Excuse me, it's their budget. [LB160]

SENATOR LANGEMEIER: That's what I thought. [LB160]

SHAWN MELOTZ: And the Papillion Creek Watershed spreadsheet was presented at a public meeting. [LB160]

SENATOR LANGEMEIER: Senator Fischer. [LB160]

SENATOR FISCHER: I was specifically talking about your testimony. [LB160]

SHAWN MELOTZ: Yes, sure, sure. [LB160]

SENATOR FISCHER: You know I would like him to go through and I would like to see what his responses are. [LB160]

SHAWN MELOTZ: Yes. No problem. [LB160]

SENATOR FISCHER: Thank you. [LB160]

SHAWN MELOTZ: Thank you. [LB160]

SENATOR LANGEMEIER: Very good, very good. Next opponent? [LB160]

KEVIN PROPST: (Exhibit 19) My name's Kevin Propst, K-e-v-i-n P-r-o-p-s-t. And I'd just like to say, good evening, Senators. I'm the chairman of the board of trustees for the village of Washington and I'm here today testifying on behalf of the board and all of our constituents. Many of the constituents were here earlier today, but some of them had to leave, of course, because of the lateness. But we would submit that we are opposed to LB160 and I will keep my testimony as short as possible. I would like to point out to the committee that there's a provision in LB160 prohibiting the use of bonding for building impoundments with a pool size of greater than 400 surface acres. I believe this to be misleading and please allow me to explain. I've submitted documents to the committee and I would like to add that this information comes directly from reports from the Papio-Missouri River NRD, HDR Engineering, and the Papillion Creek Watershed Partnership. First, I would like to refer to exhibit A, and Senator Fischer, this is your wish

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

Natural Resources Committee
January 23, 2009

list that you were requesting from them before. This is a list of 27 dam sites proposed by the Papillion Creek Watershed Partnership. These sites would be located in Douglas and Sarpy County. If you refer to column A, labeled Pool, you will see that there is not one of the 27 proposed dams that have a pool size of over 400 hundred acres. Also, you will see the total estimated cost is over \$375 million. That is in today's dollar amount. If these dams are to be built several years down the line, taxpayers will have to pay a much higher cost than portrayed here. Although the Papio NRD and HDR have also insinuated there are no plans for building dams in Washington County at the present time, I would like you to refer to the back page that says Papillion Creek Watershed Management Draft Plan. If you'll see on the top line, it's on the very back page, I think, they still have on their plan dam site 3C which is located in Washington County. So they have given the facade that they have shelved this plan, but they have not. Now if you'll look to exhibit B, under alternative one which is the original plan by the Papio NRD and the Papillion Creek Watershed Partnership to build two large structures in southern Washington County. And as you can see, dam site 1 can be built with bonding under LB160. However, because of the pool size, dam site 3C cannot be built with the bonding under LB160. But the Papio NRD could use general funds as well as other financial sources to complete this project so the Washington County dams can still be built and are still on the table. The second alternative that, if you'll look at alternative two on that same page, it's the second option that the NRD has proposed, is to built 15 smaller dams instead of the two larger structures. Please note that all of the 15 structures can be built with bonding under LB160. The pool sizes are all under 400 acres. Either alternative would cost the taxpayers over \$108 million. Once again, that is in today's dollars. It's important to note that all but one of the structures on the Papio-NRD's primary wish list could be built using bonds. That's 41 dams costing taxpayers a half a billion dollars. This does not include maintenance costs which will go on for the life of all these structures. I believe the issue of pool size is relevant because I feel it represents another area where the Papio NRD misleads the public. The pool size issue appears to be a compromise, yet it's only a disguise for building every dam in their wish list at the taxpayers' expense. So in conclusion, it's my opinion that LB160 would give the Papio NRD unlimited funding on the backs of taxpayers to go forward with their plans to build 42 dams in Douglas, Sarpy, and Washington Counties. Therefore on the behalf of the village of Washington, we would ask the committee not to allow this bill to advance out of committee and at this time I'd entertain any questions. [LB160]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Fischer.
[LB160]

SENATOR FISCHER: You folks have waited a long time and I have a lot of questions for you, too. So thank you. [LB160]

KEVIN PROPST: Good. [LB160]

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Transcriber's Office

Natural Resources Committee
January 23, 2009

SENATOR FISCHER: I'm assuming most of the people that are here that are opponents are from Washington County? [LB160]

KEVIN PROPST: There's several from Douglas County, also. [LB160]

SENATOR FISCHER: Okay, thank you. That was my question... [LB160]

KEVIN PROPST: Yes. [LB160]

SENATOR FISCHER: ...because I'm a rural person and I think rural people kind of watch what's going on. Nothing against urban people but, oh gosh, Senator Cook's going to smack me one over here. (Laughter) So I am really happy to see that there's people here from Douglas County too; thank you. [LB160]

KEVIN PROPST: Yes. This isn't just a...they tried to portray it as a rural versus metropolitan, and it's not that. [LB160]

SENATOR FISCHER: I know. So but I was just trying to find out is that what it is? [LB160]

KEVIN PROPST: This is a taxpayer issue. [LB160]

SENATOR FISCHER: Thank you. [LB160]

SENATOR LANGEMEIER: Thank you. Thank you very much. Seeing none. [LB160]

KEVIN PROPST: Anything else? All right, thank you. [LB160]

SENATOR LANGEMEIER: And if she hits you, I'm probably responsible, so. [LB160]

SENATOR FISCHER: I know. [LB160]

SENATOR LANGEMEIER: Calm down. Further opposition? Welcome, and thanks for your patience. She's still smiling at 6:15 tonight, sitting here since 1:30. [LB160]

MARIAN MAAS: (Exhibit 20) It's been a long day. Well I appreciate very much the opportunity to speak to you this afternoon. My name is Marian Maas, M-a-r-i-a-n M-a-a-s, and I am from Sarpy County. [LB160]

SENATOR FISCHER: Thank you. [LB160]

MARIAN MASS: Senator Langemeier, members of the committee, I appreciate the opportunity to speak to you and express my opposition to LB160. I reside in Bellevue. I

Natural Resources Committee
January 23, 2009

have a Masters and a Doctorate in the Biological Sciences and have worked professional for the city of Omaha's Public Works Department, and as a supervisor in the Water Quality Bureau of Iowa's Department of Natural Resources. I have been a project manager for a federal study of the Papillion Creek and the project focused on public outreach and water quality improvement for the streams. Before I begin, I'd like to address, there was a question earlier about a plan that is needed by July, and I believe it's for the DEQ, the Nebraska DEQ. I'm quite sure that the city and the partnership have got a basic storm water management plan that will fulfill the DEQ's request at that time. The likelihood of fines is probably nonexistent. And I want to also make clear that there is no mandate for dams. In the past, that has been an element that has been portrayed and there is not a specific mandate by the state or the federal government to have dams and reservoirs to control storm water. The Papio-Missouri River NRD once again wishes to obtain bonding authority for the purpose of building at least 27 dams on the Papillion Creek system. It has already been pushing hard to build dam number five that's designated WP-RB5 on the west Papillion Creek in Sarpy County with the intent of building dam number 6, WP-RB6, and number 7 on adjoining tributaries very soon thereafter. Again, as usual, the NRD chooses to build dams rather than to promote and utilize a low-impact development and conservation design approach as its major approach to deal with runoff in these subwatersheds. Planning and design work is going forward on this dam and many landowners only learned of the plan after the fact. Will all landowners be willing to sell, and if not, will pressure be brought to bare including the threat of eminent domain which we've heard a great deal about today. As a biologist, I am concerned about the environment. These are natural streams with natural riparian habitat and adjoining agricultural fields down there on dam number 5 in Sarpy County. It isn't too far from where I live. With the loss of these natural channels, habitat loss once again occurs. Urban sprawl will take their place as developers clamor to have lakefront property available for sale at generally higher prices than had the streams and hillsides been left as they are now. Low-impact development is something you've also heard a lot about today. I don't know if there's been much actual description about it. It is a storm water management approach that has a great deal of backing by the federal EPA, the Environmental Protection Agency. It focuses on an infiltration of rainfall, managing the raindrop where it lands. And I think many of you, the rural people and farmers are aware of this. The conservation practices of no-till, terraces, cover crops, these kinds of things help to hold that raindrop in place. And these kind of practices haven't been utilized in the urban setting until more recent years. Some parts of the country are far more along in this area than Omaha is. These practices remove pollutants, they recharge the ground water, they improve stream water quality, they enhance property values and urban landscapes and effectively reduce the amount of storm water runoff volume. In recent years, the EPA has expected municipalities to incorporate the use of these green infrastructures for reducing their combined sewer overflows and storm water runoff as major components of those programs. The city of Omaha has not promoted or required LID practices until really in the very recent time frame. And as I have said, many cities are further along but they are starting to do it now. But they are minimal, very minimal

Natural Resources Committee
January 23, 2009

requirements. For example, they are starting to say no building in the flood plain except for 25 percent. There are many areas where they say that there's no building in the flood plain and the Washington-Douglas County Stormwater Policies Committee has come down with that as one of their policies, of no building in the flood plain. Dams will not reduce runoff from downtown Omaha rooftops and parking lots and despite what the NRD might say, it will not solve Omaha's CSO problem. However, establishing porous concrete in strip mall parking lots and infiltration areas next to large shopping centers to take that runoff will indeed be effective in handling large quantities of runoff. The city of Milwaukee controls at least 37 percent of all runoff through LID, and that is the last sheet in that packet I handed out and it's highlighted in yellow. Multiple well designed LID practices in developments at the lot and the subdivision level where you use different practices, not just sedimentation ponds but a multiple associations of practices, can effectively control rainfall of 100-year flood events. Even the NRD's own study states that "Watershed-wide LID could serve as an alternate to regional detention reservoirs." In other words, LID performs equally as well as dams for flood control, plus LID also has the advantage of improving the water quality benefits throughout the watershed not just below the dams. And then on page 10 in the packet, you will see the NRD study where it talks about the comparisons of LID with regional detention centers or basins. Dams do little to improve water quality. Any such benefits from the dams are gone within one to three miles below the dam, and that was also mentioned in this study, or in one of their studies. Five of the cities' reservoirs themselves have been on the state's impaired waters list with water quality problems. Silt builds up in reservoirs, eventually requiring costly excavation as was necessary with Glenn Cunningham Lake. Phosphorus nitrogen, bacteria, PCBs and other contaminants associate strongly with particulate matter and they contaminate the reservoir sediments and the water column above it. Dams in a stream system, and this is from my biology point of view, I need to present the information on the biology of dams because this is something people generally don't hear. Dams in a stream system are extremely detrimental to fish populations, other aquatic organisms, and the wildlife that depend on the stream corridors. Dams reduce the flow of water downstream and alter those natural fluctuations which serve as spawning cues. In other words, for native fish species, they need to have a spring rise to be able to know that the reproduction time is there. When dams control the water, the water comes at an even rate and they don't receive that. Wildlife depend on traveling along stream corridors for water, food, and population connections. And in fact, as our landscape has changed to intensive agriculture and urban development, stream corridors are some of the last remaining habitats that we have in our areas. Most importantly, dams are barriers that prevent fish from moving upstream to quieter waters for spawning and for protection of the juvenile fish. And separating of fish populations like this is one of the biggest reasons of species loss is because there is a cutting down of the genetic diversity and they eventually die off because they lose genetic vigor. A large number of dams on one stream system such as what is planned here for the Papillion Creek with 27 dams really magnifies these ill effects on the biological communities. And then I want to mention one last thing about

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

Natural Resources Committee
January 23, 2009

the Iowa flooding; it was brought up earlier. I have family that live in Iowa City and I'm originally from Iowa. There are 28 dams on the Cedar-Iowa River system, and the mayor of Iowa City and one of the officials of Iowa City mentioned that the Coralville Dam which is just upstream of Iowa City did not help them. In fact, the Coralville Dam had four to five feet going over the spillway. The dam and the reservoir did not help Iowa City, protect it from flooding. In conclusion, LID and other options such as not building in the flood plain, raising of bridges and levees, having a good, thorough LID plan and implement it, all are a less costly approach and builds an environmentally sustainable way to manage rainfall and runoff. This approach avoids the immense capital costs of dams in these tight economical times and provides protection to a free flowing Papillion Creek, which is a valuable natural resource at the doorstep of most Omaha residents. And I thank you for your time and do you have any questions? [LB160]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, thank you very much. [LB160]

MARIAN MAAS: Thank you. [LB160]

SENATOR LANGEMEIER: Further opponents? We are ready when you are. He's still smiling too, that's good. [LB160]

TYLER MOHR: (Exhibit 21) My name is Tyler Mohr, T-y-l-e-r M-o-h-r. And I want to thank Senator Langemeier and members of the committee for the opportunity to speak today. I am a Douglas County farmer and I'm very much opposed to LB160. Being conservation minded, our family has been one of the biggest supporters of the Papio-Missouri River NRD in the past. We've had the opportunity to work with dedicated field personnel and technicians, but we are very concerned about the direction that our NRD board and management has taken. The Papio NRD has been redistricted in such a way that it has taken away a fair voice for rural property owners. In fact, even though over 80 percent of the Papio NRD remains an ag land, there are currently no farmers on the board. I am concerned that our NRD board has delegated their elected authority to the Papillion Creek Watershed Partnership, a group of handpicked or self-appointed individuals. It is actually in a written agreement which I passed around to you that the NRD serves at the pleasure of the Papillion Creek Watershed Partnership, allowing the partnership to dictate programs and policies. It was their policy work group which was comprised of attorneys and others primarily representing the interests of real estate developers that proposed the use of bonding authority, and there's a list of who was on the committees in the later part of that handout. Even if the public was allowed to vote on bonds, few would be made aware that these bonds could and would be used to finance private development projects benefitting a select few. I'm concerned about a number of questionable financial agreements and transactions that have already occurred within projects in which developers have partnered with the Papio NRD.

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

Natural Resources Committee
January 23, 2009

Because of the lack of transparency, the lack of accountability, and the lack of oversight, I believe granting bonding authority to the Papio-Missouri River NRD would be an invitation to all kinds of abuse. I would ask that LB160 be stopped in committee. Thank you. [LB160]

SENATOR LANGEMEIER: Very good. Thank you. Are there any questions? I don't see any, thank you very much. Further opposition? [LB160]

DUANE WILCOX: (Exhibit 22) I was going to say good afternoon, but I'm going to say good evening. It's been a long day for all of us, I'm sure. [LB160]

SENATOR LANGEMEIER: You're still smiling too. [LB160]

DUANE WILCOX: Yea, I've got to be. My name's Duane Wilcox, D-u-a-n-e W-i-l-c-o-x. Thank you, Senator Langemeier and all of you senators for letting me address this committee in regards to LB160. I'm chairman of the Washington County Board of Supervisors; this is my 19th year as a board member. And I don't have this on the handout that the clerk is handing out, but I would like to say you have not received a letter from the Washington County Board of Supervisors in opposition to this because we meet twice a month. We met the day before this bill was introduced and I, for one, would not begin to get a letter out saying that this board, that my board opposed it if it wasn't done correctly. I'm sure that there will be one; it will be on the agenda Tuesday. With that, I'll get into my testimony. My opposition to this bill is primarily based on the needs with our current distressed financial conditions. I do not believe property tax increase is needed at this time. The NRDs currently have the ability to levy up to 4.5 cents. This bill addresses the NRDs that have the cities of the metropolitan class. Since the Papio-Missouri River NRD is in this class, I will use it as an example. This bill allows for a 2 cent levy for bonding authority without the vote of the people and more taxing with the vote of the people. At the present, the Papio NRD is levying at 3.37 cent rate which includes 1 cent which is earmarked for building of dams. Therefore, the Papio NRD will be able to bond for 2 cents immediately, should this bill be passed. Their current levy of 3.3 cents shows that they're not at their maximum rate. Why ask for more authority when they are not at their allowed limits? Their 2008-09 budget indicates that they are budgeting for over \$16 million in tax asking dollars. This same budget shows \$20 million in cash. If the need for bonding is so great, why is there an abundance of cash at their disposal not being put to work? This is an agency, in my estimation, that is not exhibiting fiscal control. This proposed legislation gives them the ability to accelerate reckless taxation. If you doubt this, examine their financial statements which were presented to you earlier. Today, the plea from the citizens is to lower property taxes. This bill allows for an increase in the levy by 33 percent of their current rate. This is far from the request of the electorate. The Governor, and the Legislature have proposed a number of plans to cut taxes. This bill does the exact opposite. Our Washington County Board, along with Douglas County, has adopted storm water policies that control water

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

Natural Resources Committee
January 23, 2009

quality and quantity with no new levy authority. It is currently our opinion that the storm water measures can be implemented without a cost to the taxpayers by regulating the development standards. Therefore, no new spending vehicles are needed and no increase in property taxes are needed. I would like to back up just a little bit on the storm water policies. We passed ours on approximately December 27, 2007. I don't know the exact date, it was our last board meeting. We meet second and fourth Tuesdays of the month. It was our last board meeting in '07; these were adopted. And since then when I got the regulating and development standards, we have hired an engineer to go over the plans that a developer would present to us. Have we had subdivisions, developments since then? No we have not on account of economical situation it is today. But they are in force and I would be more than happy to get you a copy of them. I didn't think about bringing them. If you would like to have them I will mail them to you, probably e-mail. If you would like to have them, just let me know. And with that, I would urge you not to advance this bill. Your actions will demonstrate this committee's commitment to control the government's spending appetite. And with that, I'll close and thank you. [LB160]

SENATOR LANGEMEIER: Thank you, Mr. Wilcox. I need to do one piece of housekeeping business with you. [LB160]

DUANE WILCOX: Yes, sir. [LB160]

SENATOR LANGEMEIER: On your sheet you turned in, you turned it in as a representative of Washington County. Is your testimony the official testimony for Washington County or is it for yourself. [LB160]

DUANE WILCOX: This is my testimony as an individual, not for the Washington County Board as I indicated because it was, I was unable to get a letter of opposition. I'm sure there will be, we have legislative bills on for discussion and possible action on Tuesday's meeting and I'm sure there will be a letter sent that day. [LB160]

SENATOR LANGEMEIER: Okay. That's fine. I just want to make sure we have you on the record in the way you wanted to be. So. [LB160]

DUANE WILCOX: No, no, I want you to have it that way. I wanted it to be clear. [LB160]

SENATOR LANGEMEIER: Are there any questions for Mr. Wilcox? Senator Fischer. [LB160]

SENATOR FISCHER: Thank you, Senator Langemeier. Thank you, Commissioner Wilcox... [LB160]

DUANE WILCOX: Yes. [LB160]

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

Natural Resources Committee
January 23, 2009

SENATOR FISCHER: ...for being here today. [LB160]

DUANE WILCOX: Let me say, Supervisor, thank you. [LB160]

SENATOR FISCHER: Oh, I'm sorry. Supervisor, you have seven on your board then, yes. [LB160]

DUANE WILCOX: We're supervisor in our county. Yes. Thank you. [LB160]

SENATOR FISCHER: I have a couple of counties on my 13 that are supervisors, but the rest are commissioners; my apologies. [LB160]

DUANE WILCOX: That's quite all right. [LB160]

SENATOR FISCHER: You talk about you have storm water policies. In the past, this committee has seen proposed legislation usually brought by cities where they have concerns with storm water... [LB160]

DUANE WILCOX: Um-hum. [LB160]

SENATOR FISCHER: ...and they are looking at ways to fund controlling it. What are your policies that you have for storm water because in cities, of course, with all the concrete there are tremendous problems and they want to tax parking lots more... [LB160]

DUANE WILCOX: Yes. [LB160]

SENATOR FISCHER: ...and things like that in order to control their storm water runoff. If you could just give me an example of a couple...just a couple would be good. [LB160]

DUANE WILCOX: Well, I'll give you a brief example, Senator Fischer. In our county of Washington County of a little over 20,000 in population, Blair being our largest town and I know that they are working on their own. And our storm water management policies primarily are LIDs and best management practices. [LB160]

SENATOR FISCHER: Okay. [LB160]

DUANE WILCOX: And a developer will not get a building permit unless they comply. I hope that answers your question. [LB160]

SENATOR FISCHER: Okay. Thank you. [LB160]

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

Natural Resources Committee
January 23, 2009

DUANE WILCOX: Thank you. [LB160]

SENATOR LANGEMEIER: Thank you very much for your patience and your testimony. [LB160]

DUANE WILCOX: Thank you for your time, very much, appreciate the opportunity to speak. [LB160]

SENATOR LANGEMEIER: You bet. Next opponent? [LB160]

MIKE BOYLE: Mr. Chairman, members of the committee, my name is Mike Boyle, M-i-k-e B-o-y-l-e. I'm a member of the Douglas County Board of Commissioners, representing southeast Douglas County from 42nd Street and Dodge southeast. Everything really has been said, so I'm not going to be repetitive. But I do want to encourage Senator Langemeier and his thought about wouldn't it be cheaper to remove the people in the way of the flood as a permanent solution, or quasi-permanent, as opposed to building, spending millions and millions of dollars on dams that will have to be refurbished over their lifetimes. And so I would simply say that. I do want to say that the Douglas County Board of Commissioners did vote unanimously against LB160 and we did that last, oh a couple of weeks ago actually, right as soon as we got the number. I do want to mention, too, unless Larry Dix is in the room, that the Nebraska Association of County Officials as well, last Friday, voted against, unanimously against LB160. I do want to take a quick snapshot if I could, particularly in deference to my friend Senator Fischer from Valentine, which is truly God's country. I do want to say that as a urban dweller, my wife Anne and I live in the Old Market. We've formed, Douglas County formed a very good alliance, I think, with Washington County some time ago because we had been invited to join the watershed partnership and we joined unanimously, paid our dues, \$15,000. I got myself named to the committee and went out and attended some meetings and it was pretty boring so I delegated it to the environmental services guy at Douglas County and I came back and told my pal, Clare Duda, who is a farmer and a Republican everything. We're pretty opposites on a lot of things, but we see eye to eye on a lot of things, I said, Clare, what is the deal? Why is Washington County not chipping in and paying for this water problem when all these years those of us in Omaha have poured out money for all of these improvements to the farmland? What's the deal? This is the first time we have something and they won't contribute. So we were kind of baffled so we decided we'd call and we talked to Duane Wilcox and other commissioners. We went up and spoke to Washington County Commissioners. We discovered that their refusal to join the Papillion Creek Watershed Partnership was correct, the correct position and ours was the one that was wrong. So we formed an alliance with our friends in Washington County and began to work and we let the NRD know that we had reversed our position. We kept paying our membership dues so we could still kind of get their mailings, you know? And then we developed a partnership the Douglas-Washington Stormwater Policy Committee, to respond and come up with a

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

Natural Resources Committee
January 23, 2009

solution that made more sense. And so that's what happened, that's what brings us here today. This is not rural-urban, this is elected officials I hope who feel a strong responsibility to do things that are right when it comes to the taxpayer and what's coming before you is the wrong thing. Please don't advance this bill, thank you. [LB160]

SENATOR LANGEMEIER: Senator Haar, questions. [LB160]

SENATOR HAAR: Senator Langemeier, thanks. [LB160]

MIKE BOYLE: Senator. [LB160]

SENATOR HAAR: Why did, just real briefly, why did Douglas County and NACO vote against? [LB160]

MIKE BOYLE: We feel that at first of all the long-term effects of building all of these dams and the kind of maintenance costs that are involved in them, we feel that it's really an aide to developers bill. When my good friend John Fullenkamp sat here and talked about the fees, they contribute about \$500, I understand per lot and the taxpayers are paying \$800 million. And oddly enough, they're developing the areas where there's supposed to be...could be floods. We think it's bad public policy. That's really the reason, and we think this solution is not a good solution, that true low-impact development is long term, is more friendly to the environment, it makes a lot more sense. [LB160]

SENATOR HAAR: Thank you. [LB160]

MIKE BOYLE: Thank you. [LB160]

SENATOR LANGEMEIER: Senator Fischer. [LB160]

SENATOR FISCHER: Thank you, Senator Langemeier. Welcome, Commissioner. [LB160]

MIKE BOYLE: Thank you, Senator. [LB160]

SENATOR FISCHER: You heard the gentleman from HDR speak in favor of this bill. Were you here when he spoke? [LB160]

MIKE BOYLE: Yes. [LB160]

SENATOR FISCHER: My impression was he was saying the low-impact is not going to cut it. The problem is too big and, you know, we can put in some drainage places. You've kind of picked up now on Senator Langemeier's idea to move people which,

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

Natural Resources Committee
January 23, 2009

that's my next question. But what do you propose if the low-impact is not enough?
[LB160]

MIKE BOYLE: Well I think low-impact would be enough. There may have to be some, you know, I feel for my friends in Papillion but they committed the same sins that I did when I was mayor of Omaha. We allowed all this development, we paved right up to the creek. The city of Omaha has a firefighter garage on the very bank of the Big Papillion. As you cross 84th Street in Omaha, go over on that creek is down below and then it wanders down into Papillion where they're all concrete. We all committed those sins. And I think the solution is at least to get the residents out of there, get the people who live in that flood area, relocate them over time. Now the HDR engineer talked like it was going to be \$345 million. Well, but that was a 100-year flood. So does that mean we have 90 years to get them out? I mean, it's not \$345 million right now. It can be a long-term movement and I think it's the better solution because we don't have the dams that silt up. We don't have this possibility, a strong one, of the developer not being able to meet his or her obligations financially and then the taxpayers getting stuck with it. And also there are great examples all around the country of low-impact development that are working on large scales. [LB160]

SENATOR FISCHER: How are you going to move these people? [LB160]

MIKE BOYLE: Well, I think, you know, it's not unlike... [LB160]

SENATOR FISCHER: Are you going to use eminent domain to move them? I mean, really, how are you going to move them? [LB160]

MIKE BOYLE: Well I think when they're presented, you know, with the...what's happened it's not because...we're not moving them for a trail. We're saying to them, you know, you live in an area that could flood. What are you going to do when you try to sell your house? I mean, you don't have to disclose to a buyer...you know, one other thing, the water, the basement doesn't leak but it could be that the house would be under water. So I mean, they have to disclose this, which is a terrible detriment. And I think it's in anyone's common sense good benefit to. [LB160]

SENATOR FISCHER: But what if they don't agree with it? [LB160]

MIKE BOYLE: Well then I guess they'll stay. I suppose they would stay, I mean, I don't know, I'm not a big fan at all of or a fan of eminent domain and I think it's worth looking into. I don't think we should dismiss it. Don't pat us on the head. These folks want to sometimes pat us on the head and say, you know, we know best. No, I don't know about that I think there are new solutions. [LB160]

SENATOR FISCHER: Have you hired an engineering firm to look into the low-impact to

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

Natural Resources Committee
January 23, 2009

maybe counter what the other side is proposing? [LB160]

MIKE BOYLE: They hired the one that we were going to bring it, so we're kind of at a spot. So we do feel, you listened to the testimony today and I was very impressed earlier this evening with the two women who came up and talked about the finances and Marian Mass from Iowa. I mean, these are really professional people who know what they're talking about and, you know, we rely heavily on them and Mike Ryan who is kind of getting burned out who didn't come today. We really have some great citizens who have stepped up with the knowledge to give us advice but we do plan to hire an engineering firm to tell us in a neutral way whether we're out to lunch or not. We don't think we are. [LB160]

SENATOR FISCHER: Okay, thank you. [LB160]

MIKE BOYLE: Thank you. [LB160]

SENATOR LANGEMEIER: Senator McCoy. [LB160]

SENATOR McCOY: Excuse me, thank you, Senator Langemeier. Commissioner, if I could dovetail on what Senator Fischer was speaking of earlier going back on to what if those folks would decide they didn't want to move. I think it was addressed earlier in the day the issues that we've had in certain parts of the country where we bailed out, federal government has bailed out folks that continue to move back into those flood plains. [LB160]

MIKE BOYLE: Right. [LB160]

SENATOR McCOY: It would seem to me that we could have similar difficulties in those situations. [LB160]

MIKE BOYLE: I agree with you and I really...when I see the flooding along the Mississippi and that whole delta... [LB160]

SENATOR McCOY: Exactly. [LB160]

MIKE BOYLE: ...and I think, you know, what are we doing, you know. I mean, I'm one person who even questions whether New Orleans ought to be rebuilding right below Lake Pontchartrain. What sense does that make? So we may have to use the damned words eminent domain. There are times when government has to step up and, you know, for the welfare of the citizens do something that nobody really wants to do. And this may be a time, hold your nose and, you know, pray you're doing the right thing and say you have got to get out. We're going to have to condemn your property and your house and we'll do the best we can to relocated you. It's not an ideal situation, but it's

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

Natural Resources Committee
January 23, 2009

sure better than letting them stay here, I suppose, and letting them be under water if that's really what the case is. And I think it could be. [LB160]

SENATOR McCOY: Thank you. [LB160]

SENATOR LANGEMEIER: Senator Fischer has one more question. [LB160]

SENATOR FISCHER: Just one more. Is there land in Douglas County not within the city limits that, you know, you kind of have authority over within the flood plain? [LB160]

MIKE BOYLE: Let's see, it's pretty diminished, but yes, we do. There's an area out near 144th and Industrial Road. It's where the Mercedes dealership is and the Acura auto and Charlie's Restaurant. That was just declared by FEMA to be in a flood area so... [LB160]

SENATOR FISCHER: But that's county, not city. [LB160]

MIKE BOYLE: Right. And so with the county area jurisdiction is really very small and I'm sure you're, there's no one here from Elkhorn, is there? But anyway, the county's jurisdiction is very small now. [LB160]

SENATOR FISCHER: So are you going to move the Acura dealer? [LB160]

MIKE BOYLE: Well, you know, we talked to them. I met with their lawyers and the solution may be something as...no, we're not planning on moving them. Maybe we'll have to talk about trying to pay their flood insurance, I don't know. We'll have to figure out something. I don't know what, but they're under that burden and obviously they have the same problems that...you know, but it is a business as opposed to a private home. [LB160]

SENATOR FISCHER: Okay. Thank you. [LB160]

SENATOR LANGEMEIER: You're not done yet. Senator McCoy. [LB160]

SENATOR FISCHER: We're tag teaming. [LB160]

SENATOR McCOY: Thank you, Senator Langemeier. One more question to...because I'm actually fairly familiar with that area that you're speaking of near 144th and Industrial. There's actually a pretty sizable, a number of sizable subdivisions that would be just to the west of Charlie's Restaurant... [LB160]

MIKE BOYLE: Okay. [LB160]

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

Natural Resources Committee
January 23, 2009

SENATOR McCOY: ...back in there. Does that new flood plain area include those subdivisions? [LB160]

MIKE BOYLE: No, it does not. [LB160]

SENATOR McCOY: Or where does that, you do know roughly where that stops, where the boundary is? [LB160]

MIKE BOYLE: Well, my memory is that it really just goes a little bit past Catfish Charlie's and there's some apartments back there but I don't believe it even goes much...if it includes the apartments, I'd be surprised. It seems like it ends right there and there's a, there was a lake there I think, and maybe there still is. I guess there is behind Catfish Charlie's so but I don't think it goes beyond that into the residential...I don't believe it does. [LB160]

SENATOR McCOY: Because my question as pertains to that would be what Senator Fischer just asked and that would be, that's a very sizable subdivision. If that goes into the subdivision very far, the same thing would beg the question, what are we going to do with those homes? [LB160]

MIKE BOYLE: Well, I think we have to, you know, look at the alternative being building a dam that will collect silt, will have to be cleaned up in probably seven years or eight years, you know, and also, the true motive. I mean, I had the former director of the NRD told me that this is going to be a windfall, this sort of...I've got other people involved with the NRD telling me this is a windfall. Think of what's going to happen to our mill levy because of all this development. I had a fellow from HDR tell me, this is all development driven. Let's get straight about it. That's what this is all about. This didn't come about, this doesn't address the Clean Water Act, it doesn't do anything to deal with how the Westroads is going to stop antifreeze from draining into the sewer. These dams don't do anything to help that. So that's another time bomb that's ticking, you know. We're going to tell all these companies, these businesses that are under tremendous stress now, that now, guess what, you have to do something to stop all this antifreeze from coming into the sewer system. And we're in this area. So is Lincoln, I believe. And so I think that the least expensive over the long haul is relocation, I really do. And I think it's much more pleasing. It's not sexy, the developers don't want to necessarily try to build housing along an area where you see a green slope. I mean, I understand it but we've done it for years. Out by N.P. Dodge Park we have a soccer field that is totally, floods several times a year and we used to get complaints when I was in the city that why is the soccer field flooded? Well, it's not really a soccer field, it's for floods. And the same thing with Tranquility Park. It was built to control water runoff, it wasn't to built as soccer fields. But it was a by-product, which is another way of, you know, getting a benefit. And it is a big dilemma. I don't mean to write it off or to say that you're...you're not wrong, you're absolutely on point about those issues. It's a big one, but they shouldn't be

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

Natural Resources Committee
January 23, 2009

dismissed. We should really look at it and see what would it take to do that, I think. [LB160]

SENATOR McCOY: Thank you. [LB160]

SENATOR LANGEMEIER: You already had your one more question. (Laughter) Senator Fischer has one more. [LB160]

MIKE BOYLE: I can give you my number or Anne's cell phone. [LB160]

SENATOR FISCHER: Senator McCoy's going to have one after me now too. [LB160]

MIKE BOYLE: I know that. [LB160]

SENATOR McCOY: I probably will. [LB160]

SENATOR LANGEMEIER: I'm not looking that way. [LB160]

SENATOR FISCHER: Now you've made too much fun of me. I don't know if I even remember it. [LB160]

SENATOR LANGEMEIER: You lost it? [LB160]

SENATOR FISCHER: I lost it. [LB160]

SENATOR LANGEMEIER: I'm sorry. (Laughter) Thank you for your testimony. [LB160]

MIKE BOYLE: Thank you. Thank you, very much. [LB160]

SENATOR LANGEMEIER: Next opponent. [LB160]

SENATOR FISCHER: I guess I'm done. [LB160]

SENATOR LANGEMEIER: Call Anne. [LB160]

CLARE DUDA: With any luck, I may be the last. Good evening, Senator Langemeier, members of the committee. [LB160]

SENATOR LANGEMEIER: It's okay. You guys are doing great. [LB160]

CLARE DUDA: Oh, okay, fine. My name is Clare Duda, C-l-a-r-e D-u-d-a. I am a Douglas County Commissioner. I am a farmer and a constituent of Senator Cook's. What a pleasure to see you in official action, now, Senator. Probably the only farmer in

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

Natural Resources Committee
January 23, 2009

eastern Douglas County, kind of an odd thing. I never thought when I got into office that I would be getting involved in storm water. But as this issue has placed itself before us, as we have had to get involved with this, to me, much of what has been said today and the focus of why I am involved with this is a philosophical question of as development occurs, who is responsible for the runoff being created by the new development. Under the NRD scenario, we the property taxpayers are responsible for the runoff that those developers are creating. We don't have to be. We can tell the developers, you are responsible for the runoff that you are creating. You can, through low-impact development and, you know, we're being pooh-poohed with all, you know, it's a panacea. But low-impact development is a very real thing that we need to be adopting if we don't want to just continue piling more and more responsibilities on the property taxpayers. Everybody wants to cut property taxes. It's hard to do as a county commissioner, without cutting services. You know, if we're going to cut their tax rate we've got to cut services somewhere. Here is a new area of responsibility, all of these damns, hundreds of millions of dollars, of property tax dollars being spent that are not being spent today and don't have to be spent. Absolutely, this was a developer's dream the way this was developed. The NRD, under the guise of the Clean Water Act, and this has very little to do with clean water, this is all about flood control. But this came at the prompting of the Clean Water Act. We're told we have to clean up our water. Nobody wanted to bother with it, we don't know anything about it. Everybody said, gee, the NRD can take care of this. The NRD said they would, we were all fat, dumb, and happy just let them go until we started seeing the plan that they came up with for how it was to be addressed. And all the little old warning buzzers started going off that there was a problem here. We did band together with Washington County, we believe we have found a better way of handling this. Had the Legislature given the NRD the bonding authority three or four years ago when they first asked, you would not see any trend towards low-impact development today. They didn't need it, they could give lip service only to it. Low-impact development is a very, very broad term. It can mean very little or a whole lot; it's a real broad term. And so how, how rigorous you are in your standards is the whole key to everything. But you don't have to allow development that creates more runoff than property taxpayers assume the responsibility for. And that's what I think is the philosophical question that we all need to be focused on behind this whole discussion. Who is responsible for that runoff? Yes, retrofitting existing properties is expensive, difficult, the county is in the process of doing that in some of our properties within Omaha's city limits, trying to significantly reduce the amount of water that we have flowing off into the sewers contributing to the combined sewer overflow problems. I understand it's expensive to come back and retrofit. I hate to say this, even possible there's going to have a dam or two if they are solely for flood control. If they are solely for people that have already built when it wasn't a flood plain, now all of a sudden it is. I would question why we went for 20 or 25 years without updating the flood plain maps, and all of a sudden we do and gee, look how much they're different. I think we should be keeping them a little more current than just updating them once every 20 or 25 years. That was part of the problem with why so much new area came into the flood

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

Natural Resources Committee
January 23, 2009

plain. But Douglas County has signed on to be a part of the idea that developers are responsible for it, and really, that's my whole point. That's why I'm involved in this issue and that's the stand that I would hope that the Legislature would also take. We all have problems with property taxes and here is adding new responsibilities to what is going to be paid for by property taxes and that's not a way to ever get property taxes under control. Thank you. [LB160]

SENATOR LANGEMEIER: Thank you. If you want your FEMA maps updated, you're in the wrong Capitol. (Laughter) [LB160]

CLARE DUDA: Well, no, that was, the NRD worked with FEMA to get those updated. [LB160]

SENATOR LANGEMEIER: Senator Haar. [LB160]

SENATOR HAAR: Thank you, Senator. So low-impact development would seem to be a good solution for future...but are you talking about retrofitting them, going back and retrofitting a lot? Or how do you see taking care of those sins of the past? [LB160]

CLARE DUDA: Well, one thing...yeah, there are two separate questions, Senator, and a good question, yes. As we move forward to require low-impact development on all new development. If you look at how many of those dams are to control runoff for development that hasn't even occurred yet, if we do require true low-impact development we only need a small fraction of those dams. It will reduce the need greatly. Now, into the retrofitting, yes. Cumbersome, expensive, at some point nobody wants to have the storm water runoff fee where you charge people by their parking lot size or roof size or impermeable surface. Nobody wants that, but it's inevitable that that is going to come and at some point the Legislature is going to have to allow that and once that gets in place, that becomes the means for incentivizing people to reduce the runoff. Right now, there is no reason for anybody to reduce the runoff unless they are truly environmentally minded. But once you start assessing a fee for the amount of water that runs off, unless they have a rain garden to control the water that runs off their parking lot, if they have means to reduce that storm water fee then suddenly they have a financial incentive to make these improvements and it becomes a question for that property owner. Do I want to make the improvements or pay the runoff fee? And that's what it's going to take to eventually address retrofitting. I'm more focused on how we move into the future. [LB160]

SENATOR HAAR: Now, the low-impact development requirements and so on, who makes those in terms of this district? Is it the planning authority, I mean. [LB160]

CLARE DUDA: Well, Douglas County is responsible for our zoning area, and yes, it is a relatively small area and after the annexation of Elkhorn it became even smaller

Natural Resources Committee
January 23, 2009

because then it went to a three-mile extraterritorial jurisdiction. That took a lot of the area that we are responsible for. But we did come up with a new comprehensive plan here just a couple of years ago. We retained Conservation Design Forum out of Chicago, a firm with a lot of expertise in low-impact development and they came in and helped us. They then came in and helped HDR when the partnership...and again, had everybody just given them the green light three years ago, none of this stuff ever would have occurred. But the partnership, and I go to the partnership meetings after Mike got bored with going to them, I started going. And so yes, Douglas County is a dues paying member even though we are in disagreement with most of the partnership, we do attend those meetings and I think that this ship is moving. I think the whole partnership is starting to turn a little bit toward saying, I mean, they have to recognize us. And they have started saying, what can low-impact development do? And HDR said at one of the meetings they would have no credibility if they did an analysis of how much low-impact development could help, and so they brought in Conservation Design Forum, the same company we had used to help them with that portion of their planning. So they are starting to look a little bit at how can low-impact development help them. And I'm thrilled that they are, but they need to look a whole lot more. And if we give them the green light and give them this credit card to go out and spend hundreds of millions of dollars, suddenly there is no incentive anymore to try to find a better way. I think we hold their feet to the fire, as it has been held for several years. I think good things have come about because of the fact that they never had the bonding authority and I think if you don't give it to them now, more good things will have to come about as they have to find a better and smarter way to address the storm water needs. [LB160]

SENATOR HAAR: One of the kind of confusing things is we hear from one side that we've got to do this now, and you're saying, basically we can do this a little slower. [LB160]

CLARE DUDA: Correct. [LB160]

SENATOR HAAR: Okay. [LB160]

CLARE DUDA: Sure, we still have all of the permits that we need to file and be in compliance with but, yes, I believe there is a better way and that going slower will force a better way. [LB160]

SENATOR HAAR: Um-hum, interesting. [LB160]

SENATOR LANGEMEIER: Senator McCoy. [LB160]

SENATOR McCOY: Thank you, Senator Langemeier. Commissioner, just so I can kind of understand and wrap my own hands around this, you mentioned earlier that the number of dams and whatnot that have been proposed was based upon development in

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

Natural Resources Committee
January 23, 2009

the future, or included that. And maybe you said this and we've obviously talked about a lot this afternoon, or maybe someone else did, to your knowledge has there been any study or any accounting taken place of what would happen if we pursued somewhat more of a plan of low-impact development and actually how many dams that we could cut out of this equation through any of that? Has any of that been done that you know of? Any kind of a...I mean, you talked about HDR being involved in this and this outfit out of Chicago that's been a part of this as well. Has any kind of a study like that been done or any thoughts to that? [LB160]

CLARE DUDA: Yes. The partnership has looked at that. Now, they still are obviously are in support of wanting the bonding authority and building all the dams. But yes, they have started looking at how could low-impact development reduce the needs? [LB160]

SENATOR McCOY: Okay. Something is being put together to that effect? [LB160]

CLARE DUDA: I still don't agree with where the partnership, what their recommendation is and with the plan that they will be presenting on February 14 to the elected officials. Douglas County did voice opposition at their last meeting when they said, everybody in agreement? No, not everybody was. [LB160]

SENATOR McCOY: Okay. [LB160]

CLARE DUDA: So yeah, they started looking at it a little bit, but if not...I believe fully represented in the plans that they are proposing. I also, one other point I would like to make with regard to the dams is, don't assume that the dams going in means that there will be no more flooding. You know, this idea that floods will stop or the dams will stop the flooding is not true. Look at, even if you spend hundreds of millions of dollars on these dams, the question needs to be asked, how much is the flood prevention improved? Because it is not...you're still not...there's so much of the flooding that it's created right solely on the spot that the flooding occurs that a dam upstream may not do any good. So the dams are not a cure-all, they're an easy out I believe for a government entity, but not a cure-all. [LB160]

SENATOR LANGEMEIER: Senator Haar. [LB160]

SENATOR HAAR: Another question, thank you. Through this testimony I am trying to just sort of figure out the motivation. It sounds like at least this side is very disappointed with the response of the NRD board and this almost isn't a question, but you know, just to...is it because they aren't informed? Are they feeling the pressure to do something right now? I mean, really, that's where the solution this points is with that elected body and they are an elected body. [LB160]

CLARE DUDA: They are an elected body, it does take a team effort. As they point out,

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

Natural Resources Committee
January 23, 2009

they don't have zoning jurisdictions... [LB160]

SENATOR HAAR: Um-hum. [LB160]

CLARE DUDA: ...that's up to the local cities and counties and so it is imperative that we do try to work together. [LB160]

SENATOR HAAR: Um-hum. [LB160]

CLARE DUDA: We recognize that. I came into this after the plans were already...when they came and said okay, now we need bonding authority and we're going to dam up, you know, as much of the world as we can. That's when I became involved with this and so I was not involved during the development originally but I am firmly of a belief that this was viewed...it was job security for the NRD, as well as just a wish list for the developers working together. I mean, if the NRD is in debt for 20 years you can never say, gee, I wonder if they've completed their mission and we no longer need them. Not an option. [LB160]

SENATOR LANGEMEIER: Senator Fischer. [LB160]

SENATOR FISCHER: Hello. [LB160]

CLARE DUDA: Good evening. [LB160]

SENATOR FISCHER: Would you be more comfortable giving bonding authority to the NRD if it would have to take a vote of the people even to implement it. Not with the 2 cent levy right off the top but for the... [LB160]

CLARE DUDA: Would I be more comfortable? Yes. I'd be most comfortable if they just didn't have the bonding authority. But yes, absolutely I would be more comfortable under that scenario. [LB160]

SENATOR FISCHER: You know it gets, for us, you know, we need to look at the policy issue on it and each side presents their views and, you know, the NRD and their folks coming up today, you know, we needed to get this done and get it done yesterday so things don't wash away with flooding. And then we hear from the opposition and it's stalling, you know, stall here and we need to look at this more and we need to study here, I mean all us do that too. One side or the other depending on where we are. Are you stalling? [LB160]

CLARE DUDA: Much good has occurred because of the slow pace. [LB160]

SENATOR FISCHER: Okay. Thank you. [LB160]

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

Natural Resources Committee
January 23, 2009

SENATOR LANGEMEIER: Very good. [LB160]

CLARE DUDA: Thank you. [LB160]

SENATOR LANGEMEIER: Very good testimony. Thank you. Further opposition? And he's still smiling too, I like that. [LB160]

ROBERT HARPER: Amen. My name is Robert Harper, R-o-b-e-r-t H-a-r-p-e-r. And I'm from Kennard, Nebraska, and I'm not...I can honestly tell you I am president of the PVPA, I'm very proud of that. They didn't vote me in because of my intelligence, they voted me in because of my looks. (Laughter) And I just wanted to address you people today and put a face on this. We have a business, my wife and I, and our family business is called Knutsen Oil and Feed and we're located in Washington, Nebraska, which is in Senator McCoy's district. I want to tell you we've been there for 70 years. I'm the third generation owner and I have two children--I have five kids--but these two over here have...God has blessed me with great children and I'm very thankful. But I'm just telling you I want to put a face on this because earlier you talked about what's going to happen to them people in Omaha that get flooded. Who is going to bail them out? Who is going to give them the eminent domain? Well, they definitely, the NRD definitely, wants to flood me out as in Washington, as in our business. They want to put 20 foot of water above our front door in our business down in Washington. It's already in the plans, it's always been part of the plan. But I can tell you my wife's grandfather, Eric Knutsen, started the business back in the '40s. They started fighting these dams in the '70s, the early '70s. But we didn't fight the NRD, we fought the Army Corps of Engineers. We went to Washington, the people here, and then we have two past presidents or three past presidents of the PVPA sitting out here. And we always try to bring a busload of people when there's things going on this. We don't get paid, we're not paid to sit in here like some of these NRD people are. Some of the people they brought in get paid, we don't. We sit here as a grassroots deal, it's always been that way. If you want studies, hydrologists, engineers, we don't have millions of dollars. You know what we have, is soup fund-raisers is what we have. We have two or three generous farmers and we have a great family in the Mohr family that absolutely do a great job of everything we're doing. But if I can get back to how long we fought this, is from the early '70s, so this isn't new. I mean, the NRD sits and talks about how the rains come, if the rains come at the right places what's going to happen? Well, and of course I've been told by past people and presidents and people that are way more intelligent than I am, if the Missouri River has too much water flowing in it, with flood water is coming from Iowa, that it backs the Missouri River up into Omaha. Then no matter how much water comes down from our side, from the Washington County side, that that water has nowhere to go, that's what is going to flood Omaha, but you can't get people to understand that. You can't tell them that this is a problem, we need to build dams, we need to have recreation, we need to have development. And that's what we've been

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

Natural Resources Committee
January 23, 2009

fighting all along for 40 years. Like I said, I don't know how you put it, but they're trying to take care...get me out of the way, they want to flood me. And that's what I'm fighting for is for my family business, for everything that we have there in Washington and that's why...I, you know, I'm not...can tell you about runoffs, rainwaters, everything else that you guys want to know. And I can't tell you everything from hydrology points because we don't have the money to do the studies. We don't have HDR, we don't have the corporations sitting beside us, all the developers that have given us the money to go find these things out. We don't have that, and I don't see us ever having that. But what we do have is you senators that we vote in, and you guys are supposed to really weigh out the consequences and find out what the best solution. And so, you know, our livelihoods and everything we do is in your hands and we're thankful for that, and we are. And I, just like I said, I'm thankful for every one of you guys sitting here because you, you're the ones that'll take care of us, or make the right decisions. And I pray for that. And that's all I have to say. [LB160]

SENATOR LANGEMEIER: I have a question, Mr. Harper. [LB160]

ROBERT HARPER: Yes, sir. [LB160]

SENATOR LANGEMEIER: You talked about getting flooded out at this, at the start of your business. [LB160]

ROBERT HARPER: At our business, yeah, Knutsen Oil and Feed. [LB160]

SENATOR LANGEMEIER: What dam number is that? [LB160]

ROBERT HARPER: It was always 3A and 3C and they've changed their numbers in the last forty years probably two and three and four times. And that is right on the county line there in Dutch Hall, right south of Dutch Hall if that helps. Right on the north side of Highway 36, and that's always been the crown jewel in their scheme of things in their plan. And what the Corps of Engineer started out with was that, we fought that, we went to Washington, D.C. and fought that, they pulled the fundings and I have the papers next door in our business where Eric and Emma, you know, lived. I have them over in cabinets where they denied funding for building these dams. And that was from the Corps of Engineers. We don't have a signed paper that ever said, look, we withdraw everything for these dams and these dams aren't feasible. I think that I could find you, honestly, the papers that would say these are not feasible to build, these dams, from the Corps of Engineers. But when the NRD develops...getting with the developers, well, we've got to have them. This rainwater, we've got to have it. It might rain, somebody might flood. Well, I guarantee you guys my place is going to be flooded if they get their wishes. Seriously. And there's no two ways around that, and of course half these...three fourths of these farmers in here, the ground will be flooded out if they get their wishes. So. Any other questions? [LB160]

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

Natural Resources Committee
January 23, 2009

SENATOR LANGEMEIER: Senator Haar. [LB160]

SENATOR HAAR: Thank you, Senator. I'm going to put you on the spot a little bit, because you sent us a letter and in this whole discussion I've been trying to really sort out emotion from reason. Okay? [LB160]

ROBERT HARPER: I was thinking I was probably the only emotion here today. Everybody else has been talking every figures and facts and numbers and all that, but I'm really concerned for my family, for my business, and for my children here. [LB160]

SENATOR HAAR: Yeah, but you put in writing, you talk about rogue NRD and you said you're aware of past activities and improprieties in the administration and operation has proven time and again that it's brought, that it's board lacks the impartiality and the receptivity to constituent concerns. What do you think's really going on here? [LB160]

ROBERT HARPER: I don't think we have enough time. Seriously, Senator Haar, in 1976 I was a senior up in Arlington High School. Mel Hoyer was the president of the PVPA. I wrote a paper to the Corps of Engineers, I'm sorry. [LB160]

MIKE BOYLE: Excuse me, I want, as a lawyer to caution you about the words you use. [LB160]

ROBERT HARPER: Okay, I'm sorry. [LB160]

MIKE BOYLE: That's okay, I just don't want you...I'm on your side. [LB160]

ROBERT HARPER: Are we winning? Are we winning? That's what I want if you're on my side. [LB160]

MIKE BOYLE: Don't use rogue or any other derogatory term. [LB160]

ROBERT HARPER: Okay. No, and I won't...I, definitely, but I would give you some history on it. [LB160]

MIKE BOYLE: I'm sorry. [LB160]

ROBERT HARPER: What we had... [LB160]

SENATOR HAAR: Sure. [LB160]

ROBERT HARPER ...back in 1976, the Washington County, Burt County, we had 11, and I might not be exact on this, but we had 11 representatives on our NRD, in the

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

Natural Resources Committee
January 23, 2009

Papio-Missouri Valley NRD. Over the years after we had the dam stopped, in probably '78 to the early '80s, we quit coming to the meetings because the dams were no longer a question. They were no longer viable. They were no longer funded by the Corps of Engineers. The Corps of Engineers didn't push them. The NRD didn't push them, but what they've got since that 1980's was everything is instead of a geographical base, it's a populous base. So what they ended up with was all the representatives were here in the, what did you want to call it, the city. You know, we don't have...we have one representative for however many square miles of Burt County, Dakota County, Washington County, that type of deal. We had one representative. Some of the policies, I mean, as far as they've had the president kicked out, which is a fact, I mean, I don't think I get in trouble with that. I mean, he's been kicked out. They've had board members that have been accused, probably not convicted, but accused, if I can say that. You know, and we've had a tough time with just even, seriously, even sitting down and chatting, to sit with the NRD members and okay, guys, let's talk about this. Why does this have to go to Lincoln, and why can't we talk about it up here in our own districts? But we can't do that because we've had times where they've gotten together and, of course, it's been board members, PVPA people and they've turned it around on us like, well, these guys are the ones that came and talked to us about it and we can do this. Well, and they'll come down to the senator's office and say, hey, look everybody's on board this LB160. We're not on board this LB160, we don't want to have nothing to do with this LB160. And I don't...does that answer your question, Senator Haar? I mean... [LB160]

SENATOR HAAR: Well, I appreciate your honesty but I just needed to bring that up... [LB160]

ROBERT HARPER: Right. [LB160]

SENATOR HAAR: ...because it's kind of bothered me. Yeah. [LB160]

ROBERT HARPER: And I'm sorry it was that severe. [LB160]

SENATOR HAAR: Well, emotion is okay. [LB160]

ROBERT HARPER: Yeah. And like I said, I...we've...have we gone on in good faith? Yeah, I think we have. I think that what we're trying to do and what we've done for the past 40 years because we don't have big money, and we come in and it's from the heart and it's from the, you know, it's from who we are. That's why we fight, that's who we are. How do you fight a business or a company or, what do you call it, the NRD? How do you fight when they're accountable to nobody? It's hard being accountable to you guys, to the state senators when they come in and they have more power than what some of these people have. How can we fight them except with being here like this? And thank God for this. You know, I'm serious, and thank God for Mike Boyle being my attorney

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

Natural Resources Committee
January 23, 2009

now. (Laughter) So that'll probably cost me a couple hundred dollars with him jumping in there like that but there'll probably be a bill in the mail but that's all right. [LB160]

SENATOR LANGEMEIER: I would advise you to pay it. [LB160]

ROBERT HARPER: But I don't want to offend nobody, I really don't. But it's been a long struggle so what, Senator Fischer, what you're thinking that this is something new, or something here that there's a magical answer? But there are no magical answers to this. There really isn't. I mean, it's not in the wastewater, it's not in the dry dams, it's not in the pervious concrete and everything. Those aren't the answers. But I guarantee you the answer isn't in a 3,000 acre lake with, you know, \$2 million, \$5 million, \$7 million homes on it that are all, half of them are for sale. Go look at that Bennington development, Newport. See how many lots are in there for sale, see how many houses are in there for sale, see how many places are open. And when you sit and talk about, boy, this is good for the economy, I don't know if Mr. McCoy, if that's in your district or not, but go drive around in there and see what it is like. And we know what the economy's like and I, the last thing, God bless President Obama, we just pray that he can give us some directions in what he can do for what is there. I, that's another thing, that we're just thankful. So. [LB160]

SENATOR HAAR: I appreciate your openness. [LB160]

ROBERT HARPER: I appreciate you guys and don't think every one of us do, everyone of us that came down here on the bus today. You know, we're not paid and we know that these guys are and we just appreciate you listening to us. [LB160]

SENATOR HAAR: Well, we're paid a little bit. (Laughter) [LB160]

ROBERT HARPER: And I'm glad. [LB160]

SENATOR LANGEMEIER: Thank you very much for your testimony and everybody sticking around. [LB160]

ROBERT HARPER: Seriously, Mr. Langemeier, I appreciate it. And Senator Fischer, you guys, Senator Cook, thank you very much. [LB160]

SENATOR LANGEMEIER: And I'll tell my committee, I think we're done with...the introducer has gone home. Was there anybody that wanted to testify neutral capacity. Seeing none, the senator has gone home and waived closing. At that time that closes the hearing on LB160. [LB160]

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

Natural Resources Committee
January 23, 2009

Disposition of Bills:

LB134 - Placed on General File with amendments.

LB160 - Placed on General File with amendments.

Chairperson

Committee Clerk