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Natural Resources Committee  
January 28, 2009

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[LB54 LB56 LB184 LB300]

The Committee on Natural Resources met at 1:30 p.m. on Wednesday, January 28, 2009, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB300, LB56, LB54, and LB184. Senators present: Chris Langemeier, Chairperson; Annette Dubas, Vice Chairperson; Tom Carlson; Tanya Cook; Deb Fischer; Ken Haar; Beau McCoy; and Ken Schilz. Senators absent: None. []

SENATOR LANGEMEIER: Welcome to the Natural Resources Committee. It is just a hair after, oh, my watch says 1:30. We welcome everyone here that's in the crowd, we welcome everyone that's watching on close-captioned tv, and all our new friends that are watching it via the live broadcast on the internet. Welcome to the Natural Resource Committee. My name is Chris Langemeier, I am the chairman of the Natural Resources Committee. I'd like to introduce the people that we have here. We are missing a couple of senators that are testifying in other committees and they will be back. We'll start clear out on the end: we have Barb Koehlmoos, who is a committee clerk for the Natural Resources Committee; we have Senator Tanya Cook, Omaha, District 13; we have Senator Tom Carlson, District 38; Senator Fischer will be back; she is testifying on a bill in another committee, she's from District 43; we're going to move clear out to Senator Beau McCoy from Elkhorn or the Omaha area, District 39; Senator Ken Haar who lives in north Lincoln, District 21; Senator Ken Schilz with us today, District 47, Ogallala; and then Senator Annette Dubas is also testifying in another committee and she will be back, she is the vice chairman; Laurie Lage is the committee's counsel; and we have two pages that will help us as you want to hand things out today. We have Justin Escamilla, from Scottsbluff, and Melinda Frevert from Omaha, with us, and they will help us as we go forward. We will take the bills, there was a little change out there, I believe, on the schedule. We're going to do LB300, and then LB56, and then LB54, and then LB184. We will ask the introducer to come up to the table and have a seat and give us the introduction and then we will take support or proponent testimony and then in completion of that we'll take opponent testimony and then we'll take neutral testimony. At this time, I'd reference you to the corners of the room. If you are going to testify, you will see that there are green sheets that look like this. We ask that you fill them out in their entirety so all our testimony is of record. We need to have your name and who you're with and everything documented, so we ask that you fill those out and your position. And as you come up to testify, I would ask you to give that to the committee clerk, and we thank you. Now if you're here and you're not going to testify but you want us to know that you were here and you want us to know your opinion on a bill, there's another sign-in sheet in the corner that's got a lot of lines on it. Please put your name and address and fill that out completely, the bill you want to testify on and whether you want to support or oppose so we do have a record that you were here and you do have an opinion on a bill but you don't care to testify and that is much appreciated as well. If you're going to hand out testimony we ask that you have ten copies to hand out. If there's anybody that needs a page to help you make a few more copies of something

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you want to hand out. I will advise you if you hand out pictures, we get a lot of people want to hand us out pictures, if you do give it to us to look at it becomes part of the record. We're not going to give it back. So if it is something you really want to keep, I suggest you just hold onto it. Please speak clearly. When you sit down I'll have you introduce yourself and I need you to spell your first and last name, no matter how simple you think it is. We need it for clarity of the record, we need you to spell it for the record.

[]

VICKI WASSERBURGER: May I ask a question? [LB300]

SENATOR LANGEMEIER: Okay. [LB300]

VICKI WASSERBURGER: I e-mailed my testimony down. Does that mean I still need to go get ten copies? [LB300]

SENATOR LANGEMEIER: If you've e-mailed your testimony to me I have that and we will read those as we get to those. We'll read that you wanted them submitted. We don't read the whole testimony, we hand them out to the committee, but we do put it in the record that you submitted a letter. [LB300]

VICKI WASSERBURGER: Okay because that's what I'm going to say. Thank you. [LB300]

SENATOR LANGEMEIER: Exactly, we have those, yes. Very good, we ask...we don't allow props in the room. Other than that, we'll get started on LB300. And Senator Heidemann is here and welcome to the Natural Resources Committee and we are ready when you are. [LB300]

SENATOR HEIDEMANN: Thank you. Senator Langemeier and members of the Natural Resources Committee, I am Senator Lavon Heidemann, Lavon L-a-v-o-n, Heidemann, H-e-i-d-e-m-a-n-n, representing District 1 in the southeast corner of the state. I'm here today to introduce LB300. Nebraska law requires that public power districts to use sealed bids for a procurement of certain materials, equipment and services for construction, maintenance, repair, or improvement of any public power plant or system. Currently, the sealed bid threshold for public power districts is \$100,000. The sealed bid threshold was increased from \$50,000 to the current threshold of \$100,000 in 1999, ten years ago. The cost escalation of materials, equipment, and services utilized in the electric utility industry has rendered that \$100,000 bid threshold out of date and inadequate. LB300 raises public power districts' sealed bid threshold from the current \$100,000 to a two-tiered approach. The first tier is a \$250,000 level for public power districts with the annual revenue under \$500 million. The second tier is a \$500,000 level for public power districts with the annual revenue of \$500 million or above. The sealed bid requirements can discourage participation by smaller Nebraska-based business.

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Therefore, the sealed bid process can actually limit rather than enhance competition. Furthermore, public power districts that own generation and transmission facilities must obtain components and some service from a small group of national-international vendors. These vendors customers are comprised mostly of private companies which are not required to use the sealed bid process. Oftentimes these vendors are not interested in expending dollars in time to submit bids unless the projects or services needed are of significant dollar amounts. I urge you to look favorably upon LB300. If you have any questions I will try to answer them. I want to share with you there are people following me that are much more knowledgeable in this process. You would probably be better asking some of the more tougher questions to them, but I will try. [LB300]

SENATOR LANGEMEIER: Thank you for the introduction. Are there any questions for Senator Heidemann? Senator Carlson. [LB300]

SENATOR CARLSON: Senator Langemeier, Senator Heidemann. Do you like this bill? [LB300]

SENATOR HEIDEMANN: Yes, I...Cooper Nuclear is in my district as a power owned by NPPD, a public power plant. It's very important for my district, I have carried bills like this--similar--in past years, last year being one of them. I think this will help the process without hurting anybody. I do like this bill or I do not carry bills that I do not like. [LB300]

SENATOR CARLSON: I didn't...I'm kind of giving you a bad time, I thought maybe as chair of the Appropriations Committee you like it because it had no fiscal impact. (Laughter) But thank you. [LB300]

SENATOR LANGEMEIER: Are there any other questions. Seeing none, thank you. [LB300]

SENATOR HEIDEMANN: Thank you very much. I need to get back to Appropriations; I will at this time waive closing. [LB300]

SENATOR LANGEMEIER: Okay. Thank you very much. [LB300]

SENATOR HEIDEMANN: Thank you. [LB300]

SENATOR LANGEMEIER: I will add just for the crowd's sake, as you see senators get up and leave it's not they find your testimony irrelevant or boring or any other way. They are introducing bills in other committees so you will see them get up, go do that and come back. Come on up, next...we'll move on to supporters or proponents of LB300. We're ready when. [LB300]

JOHN McCLURE: Good afternoon, Chairman Langemeier, members of the committee.

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My name is John McClure, J-o-h-n M-c-C-l-u-r-e. I am vice president and general counsel for Nebraska Public Power District. I'm here today in support of LB300. I appreciate the introducer's comments. I think he did an outstanding job summarizing the reasons for this bill and I'll get into some specific examples that I think help support why this is a good change in the law. As he indicated, we're looking at increasing the bid threshold for sealed bids for public power districts. The electric industry in particular has experienced dramatic escalation in terms of the cost of materials and equipment that we are using. Some examples, we use a lot of metals in our industry. Between 2003 and 2006 the raw cost of aluminum tripled. Between 2003 and 2006 the cost of copper nearly quadrupled. I was reviewing the cost of particular components that we install in power plants. At nuclear power plants we install devices in the reactor called local power range monitors that measure reactivity in the reactor. Back in the late '90s, one of those particular devices cost around \$20,000. In 2008, to replace one costs nearly \$89,000. Another example, we have feed water heaters in power plants. Those are devices...and these are major devices that would not be covered by this change but it's an example again of the kind of upward cost pressure in the electric industry. Feed water heaters are used to increase the efficiency of the generation operation. Four feed water heaters cost us about \$2.1 million total in 2005. By 2008 it was almost \$5 million. So these are some of the kinds of increases and as Senator Heidemann indicated, international demand has been a major factor. As nations such as China, India, and other Asian parts of the world are adding tremendous amount of electric infrastructure, we're seeing competition and increasing prices for these materials. In addition, the industry in this country is spending substantial capital reinvesting in its infrastructure, replacing equipment in its operations that's maybe been out there 30 and 40, 50 years in some cases but it's now time to replace it. And that's fairly common throughout the entire United States. Another benefit from this is we have had numerous instances where small Nebraska contractors have been overwhelmed by the requirements of the sealed bid process because of some of the complexities and requirements that exist and they're more likely to do business with us if it's not quite as formal of a process. In addition, many of the major equipment suppliers that we deal with in our industry for both generation and transmission are dealing primarily with investor-owned utilities around the country who do not have these public bidding processes and they are generally inclined not to bother with the smaller transactions, and \$100,000 is a small transaction for them. Certainly larger projects they will submit a sealed bid. Another issue here is we want to protect our electric consumers as well as Nebraska contractors. Some of the things we do internally at NPPD that I believe will help assure this protection, we maintain a bidders list very actively. We are constantly adding to that bidders list. We break it down by particular areas of equipment provided or skills that are provided and when we're looking for something we frequently contact those suppliers or those contractors and say we have a job coming up, we certainly hope that you are bidding on it or are supplying a quote to us. Secondly, NPPD has a board policy, even though the threshold has been at \$100,000 for those items not covered. We have a board policy that if we are spending more than \$50,000 for equipment or

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materials, that we have to request price quotes. So we want to get the best value we can for our customers. In conclusion, the electric utility in Nebraska is committed to two primary facts. One, we want to be low cost and two, we want to be reliable. As of 2007, which is the latest annual data, Nebraska had the fifth lowest electric rates in the country so I think our industry has demonstrated we are committed to being competitively priced. We believe this change will expedite procurement without compromising value to electric consumers or opportunities for Nebraska businesses and contractors. I'd be happy to try and answer any questions you may have. [LB300]

SENATOR LANGEMEIER: Okay. Are there any questions for Mr. McClure? I guess I have one question. You're an industry that uses a lot of aluminum, you use a lot of copper. Is it a challenge for people to bid with such volatility in those prices? If I bid to you today, you take bids for two weeks, then you tell us who won the bid 30 days away, I mean, doesn't that make it a little challenge for me to even try to put a bid in for something that isn't that big? [LB300]

JOHN McCLURE: The sophisticated bidders have locked in supply prices because you're absolutely right. There has been tremendous volatility in those markets and so that can be a problem if you get on the wrong side as a supplier in your pricing arrangements upstream with someone who is actually producing maybe raw material for you that becomes wires or some other component in our industry. We've seen that happen and we've had situations happen where because of volatility a vendor was not able to perform. They got caught on the wrong side and we had to...we ended up cancelling a contract, letting them out of...they had agreed to supply a number of transformers over a period of years and it just wasn't going to work. It was going to be an absolute disaster. But we try to protect against that wherever we can. [LB300]

SENATOR LANGEMEIER: Sure. Any other questions? Thank you, Mr. McClure. Very good. [LB300]

JOHN McCLURE: Thank you. [LB300]

SENATOR LANGEMEIER: Further supporters of LB300? [LB300]

TOM RICHARDS: (Exhibit 1) Chairman Langemeier, members of the committee, my name is Tom Richards, T-o-m R-i-c-h-a-r-d-s. I'm the manager of governmental community relations for OPPD. OPPD is in support of LB300. In the section that applies to us primarily is we would be in a utility that provides over \$500 million of revenue a year, what we spend and what we generate as a utility. I've got some testimony that I'd like to pass out. I'm going to summarize the testimony for you, if I can get one of the pages to pass this out for me. I think the highlight in the first paragraph...I'm going slowly because there's the last one...the highlight in the first paragraph would be when you hear the term that we're going from \$100,000 to \$500,000, while \$500,000 is a lot of

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money in the utility business, \$500,000 is generally spent on a lot of different items when you're talking about three quarters of a billion or a billion dollar project so we...to give you an idea of what that would mean at least for OPPD, for OPPD there are probably a yearly basis between contracts between \$100,000 and \$500,000 about 16 to 19 contracts a year. We're not talking about a tremendous amount of contracts, if you're thinking that this increase is a huge jump. You know, in our case it's about 16 to 19 contracts per year that would fall with inside that range. Where the second part to it, you know, if you get down into the second paragraph...if you get into what it is that we're doing by doing that, where are the costs and the savings you're asking? Well the cost and the savings come from a couple of different places. One is that, at least in OPPD's case, while we don't have in house legal counsel, we have private counsel who charges us an hourly rate to prepare those bids, you know, that are prepared by our materials management. There's costs of advertising in all the different papers that it has to go into. There are what called bid bonds where we want to make sure that you have contractors, when they're bidding on a project to make sure they're reputable, they have to place what's called a bid bond and that gets billed into the cost of a bid, so that's another place where you'll save money. So while it's not a tremendous amount of money, it's procedurally and in the cost of those contracts it can save a fair amount of money during the course of a year. One last thing on the first page is that even though the law calls for the threshold to be at \$100,000, there are times when OPPD wants competitive bids that we use below \$100,000 and we could do that just as well with the \$500,000 level as well. We found over the years that it's an expensive and time consuming process but we also understand it's the public's money and we think at this point it's time to raise it to a dollar amount that's probably more in today's line with what we spend. And lastly, although the sealed bid process will remain in place for our procurements, we support the supported increase up to \$500,000. We want to assure the committee that this change will not lead to less competitive bids, but instead will increase the bidder pool and save money for our customer owners and we respectfully urge you to advance the bill out of committee. [LB300]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Richards? Seeing none, you're off the hook. [LB300]

TOM RICHARDS: Thank you. [LB300]

SENATOR LANGEMEIER: Further support of LB300? Welcome, we're ready when you are. [LB300]

GARY WESTPHAL: Mr. Chairman, members of the committee, my name is Gary Westphal, G-a-r-y W-e-s-t-p-h-a-l. I'm the general manager CEO of Butler Public Power District headquartered in David City, Nebraska. And I'm here not only representing Butler Power District, but also the 35 members of the Nebraska Rural Electric Association and the 22 members of the Nebraska Electric G&T. All of those members

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are smaller than the entities that Mr. Richards and Mr. McClure are representing. All of us are less than \$500 million revenue a year. So we're talking about the smaller, the lesser threshold. And I am in support of LB300. I just want to give you a sense, for us. Sealed bids add cost and time elements to projects, as those gentlemen talked about. And just to give you an example, it cost us just about \$200,000 to build one mile of transmission line. That's either 34.5 or 69 kV line and we're building a lot more now than we were ten years ago. And that line, because of that cost if you build just one mile line and we go out and it extends the whole process and the cost. Generally, we build more than one or two miles and so we would get a contract for that but should we build a mile and sometimes that's all it takes, we feel we should be able to do that without going out for contract. With inflation the way it's been in the last ten years and as Mr. McClure mentioned, it's been pretty significant just in the last five. We feel that we should be able to construct one mile of line without going through the bid process. So in essence, I ask for your support of LB300. Any questions? [LB300]

SENATOR LANGEMEIER: Very good. Senator Haar. [LB300]

SENATOR HAAR: Thank you. Give me those numbers again for about the cost of a mile. [LB300]

GARY WESTPHAL: A mile line, and I'm talking about a 34,500 or a 69,000 volt line. [LB300]

SENATOR HAAR: Okay. [LB300]

GARY WESTPHAL: Just under \$200,000 a mile. [LB300]

SENATOR HAAR: Okay, thank you. [LB300]

SENATOR LANGEMEIER: (Exhibit 2) Seeing no other questions, thank you very much for your testimony. Further support for LB300? Seeing none. Any opponents to...oh yes, I'd better read this letter. We do have one letter of support for LB300. It came from Tom Rudloff, general manager of the Elkhorn Rural Public Power District so we'll put that into the record. Now we'll move on to opponents. Are there any opponents for LB300? Seeing none, any neutral testimony? Seeing none. The senator has waived his closing and so that will close the hearing on LB300. We will move on to LB56, and Senator Fischer is back from her other committee. And for the record, when I announce your name on here it will be on the record correctly if I pronounce it wrong, so I will pre-apologize for that. Senator Fischer, you're ready to open on LB56. We're ready when you are. [LB300]

SENATOR FISCHER: Thank you, Chairman Langemeier and members of the committee. For the record my name is Deb Fischer, F-i-s-c-h-e-r and I'm the senator

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representing the 43rd District in the Nebraska Unicameral. I appear before you today to present LB56. LB56 makes several changes to the Livestock Waste Management Act that addresses unintended consequences of the current law. LB56 clarifies the standard for a discharge violation and the ruling of a discharge violation by the Nebraska Department of Environmental Quality. This proposal only amends what falls under the scope of the Livestock Waste Management Act and does not eliminate or diminish any environmental protection law or regulation or decrease civil penalties for violating the act. The primary purpose of this bill is to clarify that a discharge violation, otherwise known as a strike, applies on a facility by facility basis. As a practical matter, the strike will only apply to the permit holder and its partners with regards to the facility at which the actual discharge occurred and would not be applied against other separate facilities. Current law unduly allows for the partners of the permit holders that operate an entirely different facility independent of the permit holder to have a strike applied against that separate facility. LB56 clarifies that a strike is tied to the particular facility and its respective owner or owners by which a discharge violation is found. LB56 distinguishes between a discharge and a discharge violation for the purpose of issuing a strike. A discharge is the very act or event of spilling, leaking, pumping, etcetera pollutants into any waters of the state or in a place which will likely reach waters of the state. Therefore, regardless of the permit holders intention in emitting the pollutant, the actual event is simply recognized as a discharge, whereas a discharge violation is the actual finding by DEQ that identifies intent and negligence on the part of the National Pollutant Discharge Elimination System applicant or permit holder. In order to issue a discharge violation or strike, LB56 requires that DEQ complete a formal process including an investigation notice and hearing. The standard at which a permit holder is recognized to be at fault is discerned by willful negligence or intentional conduct. By establishing this standard of liability, the possibility of applying a strike when the permit holder took all reasonable measures to prevent a discharge is eliminated. The permit holder is, however, still responsible for existing civil penalties as a result of the discharge. As previously indicated, DEQ has the statutory authority to enforce the Livestock Waste Management Act and LB56 appropriately grants DEQ discretion in doing so. Thus, DEQ is given the opportunity to reject an application for a National Pollutant Discharge Elimination System permit, a construction and operating permit or major modification of either type of permit or to revoke a permit upon a finding of three strikes. Granting DEQ such discretion with regards to permits will enable the department to proceed rationally with enforcing the statutes so that rejection and revocation are not mandatory. The state of Nebraska is largely rooted in agriculture and dependent on the economic success of agriculture production. I believe that LB56 is a reasonable and rational change that we would see to these permits. Thank you very much. [LB56]

SENATOR LANGEMEIER: Thank you, Senator Fischer. You've heard the opening on LB56, do you have any questions for Senator Fischer? Seeing none, you're off the hook. Just as a point of reference, how many here to testify in some fashion on LB56, please raise your hand. Okay. Now we'll proceed with supporters or proponents to

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LB56. Come on up, don't hesitate. There's some seats up front if you want to come up. Welcome, we're ready when you are. [LB56]

RUSS VERING: Thank you. Good afternoon, Chairman Langemeier and members of the committee. My name is Russ Vering, R-u-s-s V-e-r-i-n-g. I appear before you today representing the Nebraska Pork Producers and I would like to thank you all for hearing my testimony in support of LB56. I'm from Howells, Nebraska, where my family has lived and done business in the community of Howells all of my life and all of my father's life. We operate and own swine facilities around the town of Howells. I know other producers in the area who do the same. We own and operate separate facilities that have different owners. They consist mainly of family members who are involved in potentially in one or more, but seldom in all operations. We have been raising swine in newer style facilities for over 12 years and our commitment to a clean and maintained environment is our top priority. I and my family take great pride in operating well-designed and environmentally safe production facilities. We have made significant investments in human resources to go above and beyond the minimum requirements to protect the environment we share with our friends and our neighbors. The first week in January 2009, our NDEQ inspector spent time with us checking our records and discussing with us our swine operations and day to day objectives. DEQ staff make routine visits to our operations and we strive to do all that we can to provide complete and accurate information as required by our permits. Our goal has always been to exceed regulatory expectations and implement departmental recommendations to the best of our ability. I take pride in the fact that I and my key staff have participated in the appropriate land application training and testing required to operate a livestock facility. Our employees hand in weekly records and meet twice a month to discuss operational issues at our facilities. This constant communication allows us to make informed decisions about manure application and prepare for busy spring and fall application times. By communicating and planning, we are able to purposely manage our manure application and avoid problems that can be encountered without proper planning. These are all things that are evaluated during our annual review by NDEQ. The changes being proposed in LB56 will not diminish our responsibility to our environment, but they will account responsibility to those who make the ultimate decisions on a facility by facility basis. It is unreasonable to hold all of our partners accountable for the actions of one. In conclusion, I support the change to the three strikes rule because it more clearly defines who is responsible for deliberate actions that jeopardize the status of a permit. It also provides definitions for the seriousness of the action and the defined path in which the permit status will be reviewed and sanctioned if necessary. Just one more thing I wanted to just stress is the environmental part and the things that we do to protect our environment, that is the most important thing to us and so when it comes to a three strikes rule, it's very important that we take care of the environment and do a good job there so. I want to thank you for your time and I appreciate your service to our Unicameral and the state of Nebraska. I will be pleased to respond to any questions you may have. [LB56]

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SENATOR LANGEMEIER: Thank you, Mr. Vering. Are there any questions? Senator Schilz. [LB56]

SENATOR SCHILZ: Thank you, Senator Langemeier. Mr. Vering, how many facilities--separate facilities--does your family and partners operate? [LB56]

RUSS VERING: We have, Senator Schilz, we have about 40,000 spaces that we operate and they are anywhere from 4,800 to 9,600 head on a site. [LB56]

SENATOR SCHILZ: Okay. Sure, and so if you take all those, how many sites would that be? [LB56]

RUSS VERING: There's one, two, three, four, five. I think there's five altogether. [LB56]

SENATOR SCHILZ: Okay. Thank you. [LB56]

SENATOR LANGEMEIER: Any other questions? Senator Haar. [LB56]

SENATOR HAAR: Thank you. Just for some of us who are new to this and not necessarily rural people, could you explain the strike system just as some background? [LB56]

RUSS VERING: The strike system, as I understand it, is if you have a willful discharge, actually with any discharge, whether it's accidental or anything, you need to notify the DEQ and let them know so they can record it. You need to keep it in your records. I guess transparency is very important. But if it's a willful, just to give you an example, if you were moving manure with a truck and let's say you rolled it in the ditch, that would be a discharge. So that would be very important to notify and I guess if it was negligent in some way...or I guess a good example of negligence is just to go take that truck and go to the creek and just dump it right in the creek. [LB56]

SENATOR HAAR: Um-hum. [LB56]

RUSSELL VERING: That would be negligent completely. [LB56]

SENATOR HAAR: Um-hum. Sure. Yeah. [LB56]

RUSSELL VERING: That would be something willful that you were doing to harm the environment so that would be...I would constitute a strike. An example of something that maybe would be something that would be reviewed but maybe not a strike would be something...if a center pivot would malfunction or and it would sit in one place and continue to run, obviously those things are checked frequently but it could happen...

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[LB56]

SENATOR HAAR: Um-hum. Sure. [LB300]

RUSSELL VERING: ...and that would be something that probably wouldn't be negligent, it would be some sort of a malfunction of, you know, something in the center pivot that would keep it from moving so. But all those things have to be disclosed to the NDEQ if that would happen so. [LB56]

SENATOR HAAR: Okay, thank you. [LB56]

RUSSELL VERING: Anything else? [LB56]

SENATOR HAAR: No, that's it. [LB56]

RUSSELL VERING: Thanks. [LB56]

SENATOR LANGEMEIER: Seeing no other questions, Mr. Vering, thank you for your testimony. [LB56]

RUSS VERING: Thank you. [LB56]

SENATOR LANGEMEIER: Further testimony in support, or proponents? Go ahead. [LB56]

STEVE OTT: Good afternoon, Senator Langemeier and members of the committee. My name is Steve Ott, S-t-e-v-e O-t-t. I'm here today representing myself and the interests of my family in support of LB56. I'm from Wisner, where my father, my brother, and an uncle and myself are cattle feeders. Our family has been feeding cattle in Cuming County for 61 years. In 1929, my grandpa Chris Kvols emigrated from Denmark at the age of 17 and worked as a farmhand for family members. In 1948 my grandpa went partners with Louis Dinklage in a feedlot and then went and bought the feedlot from Louis in 1954 and went on his own. Today we have three separate feed yard businesses held within the family. Please let me allow you to begin my testimony upon the foundation that we are vigilant in stewards of the land and the water that's been entrusted in us. Since inception of the state and federal regulations requiring runoff controls and all of our operations have been constructed with runoff controls and implemented a nutrition management plans which are in compliance with Nebraska's Title 130 regulations and the federal CAFO rules. Since taking these steps to achieve compliance, none of our facilities have ever had a discharge. LB56 is important to our family now and especially in the future. My brother Adam, my dad Gene, and I are owners of Ott Livestock, which is a feedlot located about four miles northeast of Wisner. My father and my uncle Ronnie are partners and sole owners in two other operations,

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they're Kvals Feedlot and Wisner Feedlots. Because my father is owner in all three operations they are all tied together on DEQ's disclosure form. With the proposed changes in LB56 in an event that the three noncompliant discharges occurred within five years in any combination within the three operations all could be at risk. This would be devastating to our families. Another important component of LB56 is the standard by which the discharges could become a strike. Accidents happen, even in a well-maintained and tightly run operation. Any malfunction of mechanical equipment or failure of a pipe or a hose which results in a discharge would not be in compliance with our NPDES permit. The requirements for an investigation of public notice and hearing add structure to the process surrounding a very serious matter of the suspension or revocation of a permit for both the producer and the public. I want to thank you for giving me the opportunity to speak on this matter and I would be happy to answer any questions if I could. [LB56]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Ott? Seeing none, thank you very much for your testimony, great job. [LB56]

STEVE OTT: Thank you. [LB56]

SENATOR LANGEMEIER: Further supporters or opponents, excuse me, proponents? Still support. Welcome. [LB56]

DUANE GANGWISH: Good afternoon, Senator Langemeier and members of the committee, my name is Duane Gangwish, that's D-u-a-n-e G-a-n-g-w-i-s-h. And I'm here today as a registered lobbyist for and representing the members of Nebraska Cattlemen in support of LB56. I want to offer our thank you to Senator Fischer for introducing the bill. I believe we've worked hard to bring relevant and concise language today and have included DEQ, other state agencies, and several senators in crafting this bill. My testimony today will be mainly focused on technical issues since you've already heard several testifiers' personal perspectives. As a point of reference, before I joined the staff of Nebraska Cattlemen four years ago, I worked for a period of about five years for an engineering firm and as my duties there I assisted in the permitting process of about 200 facilities located in Nebraska, South Dakota, and Iowa. You may first ask why is this change necessary and why now? 54-2431, or the bad actor clause or the three strikes rule as some refer to it has been on the books since the late '90s. However, prior to 2008 the department had not initiated any action relative thereto. To my knowledge, so far there have been seven show cause actions sent to producers with several hearings already completed and I believe DEQ is here also and their staff can better describe their processes and their activities to date. Our first and foremost concern is that the current law uses the term permittee and as you heard both from Mr. Vering and Mr. Ott describe their businesses, this term has the potential to hold separate businesses though related by ownership liable for the actions of others. The language of LB56 brings the valuation of discharges which may rise to the level of a strike clearly to the

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facility by facility basis partly by using the terms applicant and permit holder versus permittee. We believe we are the only business segment in the state held to such a standard where three uncontrollable actions would lead to the revocation or suspension of lawful business. Three sections of the Livestock Waste Management Act are modified by LB56. First, 54-2417(8) which is on page 3, line 13 modifies the definition by removing accidental or intentional. On the surface, it would appear that this would weaken the statute, however this change merely removes the culpability or state of mind associated with the described events following that. If one of those events occurred, it would be a discharge. Webster defines culpability as meriting condemnation or blame, especially as wrong or harmful. Culpability is addressed in 54-2431. Not all discharges are equal. The National Pollutant Elimination Discharge System or NPDES permit is authorized in the federal CAFO rule codified in CFR 122, 123, and 412 and also in Nebraska state statutes 54-2417(12), allows the permitted CAFOs to discharge to waters of the state under very strict parameters clearly defined in the permit and its underlying regulations. For example, if a livestock waste control facility is properly designed, maintained, and operated and there is a precipitation event greater than the 25 year 24 hour storm for that location, the facility is allowed to discharge. Producers are required to keep detailed on site records to document all precipitation, pumping, routine inspections, and maintenance. None of these discharges would ever be drawn into the language addressed into this bill. As the law stands today, as well as the proposed language in LB56, only discharges that are not in compliance with a permit could be considered under 54-2431. Secondly, 54-2422 which is page 6, line 5, affords small producers which are statutorily exempt from the inspection requirements the same standard of review regarding discharges as medium and large facilities as defined in Nebraska Administrative Code Title 130, Chapter 1. The third and most substantive change occurs in 54-2431 which is page 6, line 10. We have defined applicant and permit holder for use later in this section. A new definition of discharge violation has been created to bring culpability back into play for the purpose of evaluating noncompliant discharge that would rise to the level of a strike. Any noncompliant discharge is a violation of the general powers and duties statutes within 81-1504 and 81-1506 and subject to civil penalties. A case in point for explanation purposes, a producer was dewatering a holding pond through a center pivot. The pivot reached a predetermined point and stopped moving, however an electronic switch failed to shut down the pump and a noncompliant discharge occurred. Under LB56 this would still be a discharge subject to civil penalties, excuse me, under the law but it was neither intentional nor due to willful negligence and therefore would not be subject to consideration under 54-2431(3). Section 2, of 54-2431 on page 7, gives the department discretion in the rejection, revocation, and/or suspension of permits and delineates between new applications and existing permits. The new subsection 3 of 54-2431 defines where and how the unsuitability standard would be applied. The changes in 54-2435 would require the Environmental Quality Council to promulgate rules for the reinstatement of suspended permits as well as establishing procedures as to how the department would conduct proceedings valuating discharge violations. We believe

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these changes are important to protect the current and future livelihood of livestock producers in this state while continuing to enforce a strong and environmental oversight. Thank you, and I'd be happy to entertain any of your questions. [LB56]

SENATOR LANGEMEIER: Thank you very much. Is there any questions? We'll start with Senator Schilz and work our way around. [LB56]

SENATOR SCHILZ: Thank you, Senator Langemeier. Mr. Gangwish, do you know how many, excuse me, do you know many owners or how many facilities this law would...or this law is now keeping track of? I mean, anyone that is partnering up with someone who has separate facilities, do you have a number out there? Or where could I go to find that? [LB56]

DUANE GANGWISH: I don't know, Senator. The department may have that...the department would have that information available to them, yes. [LB56]

SENATOR SCHILZ: Thank you. And then... [LB56]

DUANE GANGWISH: And to clarify, that has to be any time a permit is applied for... [LB56]

SENATOR SCHILZ: You have to disclose, right. [LB56]

DUANE GANGWISH: ...of any kind you have to disclose who the owners are. [LB56]

SENATOR SCHILZ: Sure. I just thought maybe you had...knowing you, I just figured you'd have it at the tip of your tongue, ready to go. And then the next question, and this is...let's say that, and just to clarify a little bit, let's say that I have a facility, which I do, and you had a big rain, say it rains 15, 20 inches in 24 hours. Under current law, and our holding ponds would spill or discharge, would that be considered a strike under current law? [LB56]

DUANE GANGWISH: It depends and there's two parts to the answer. If prior to the rain event beginning, your pond was above the start pumping level which your records would document, your NPDES permit would not cover that discharge and you would be guilty of a noncompliant discharge. If prior to the rainfall event your pond was at or below your start pumping level, then to use your example, 15 or 20 inches, it would obviously overflow and that discharge would not be counted against you in any way. That would be covered within the permit. [LB56]

SENATOR SCHILZ: Very good, thank you. [LB56]

SENATOR LANGEMEIER: Senator Haar. [LB56]

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SENATOR HAAR: Yes, thank you. Again a city kid, pretty much, asking questions so if I owned three different sites and these strikes, you know I had a strike against one site would that count against all three of those facilities? [LB56]

DUANE GANGWISH: If you were the sole...the way the law is today and you were involved whether you were the sole owner or partner the answer, sir, is yes. [LB56]

SENATOR HAAR: Okay. And under the new change a strike against one of my facilities would not be a strike against the others. [LB56]

DUANE GANGWISH: That's correct. [LB56]

SENATOR HAAR: Okay. Okay. And the part I'm just...I'm sorry, I need some more explanation because I don't understand it yet, is the whole thing of the liability around going from accidental to willful negligence or intentional. Could you give me some more explanation of that? [LB56]

DUANE GANGWISH: My children have a special name for me and what I do, sir, and it doesn't involve legal work. [LB56]

SENATOR HAAR: Okay, well, I'm picking on you because you're the lobbyist. [LB56]

DUANE GANGWISH: If I may defer, there will be a gentleman following me who would be able to address that very clearly. [LB56]

SENATOR HAAR: Okay, well I can wait. [LB56]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you, Mr. Gangwish for your testimony. Further supporters or proponents? Come on up, don't be shy. [LB56]

ANDY POLLOCK: Good afternoon, Mr. Chairman, members of the Natural Resources Committee. My name is Andy Pollock, and that's A-n-d-y P-o-l-l-o-c-k and I represent as a registered lobbyist eight livestock producers. They are all identified by name on the green sheet that I just gave the clerk. And I guess the person that Mr. Gangwish was referring to, Senator Haar, was myself so I will be glad to answer that question and maybe another one that you asked of Mr. Vering. Really, members of the committee, I want to keep my testimony very short, very brief. I am a lawyer as well as a lobbyist. I have been working with Mr. Gangwish and others, including attorneys and staff at the Department of Environmental Quality, to craft this bill essentially since July of this year. We put a lot of time and effort into it and I think at the end of the day, Senator Fischer has introduced a very clean, a very positive bill and all of the clients that I represent

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heartily support the changes in LB56. I won't relay they why, I think the witnesses and the senator before me have explained why we think it's an important and necessarily bill. I would simply say that we were very cautious in ensuring that we did not touch, change, diminish, reduce or eliminate any environmental protection law. That's not the goal of the bill. The goal of the bill is just to add some common sense to the way the language of the law reads so that it can continue to be enforced with some common sense. And I would say that I think we all owe DEQ a debt of gratitude for being sensible in how they currently enforce this law, in how they interpret some of the terms that are unclear and some of the terms that, as you heard earlier, we're attempting to clarify by the changes that Senator Fischer is making in LB6. What I'd like to do, mainly, is just avail myself of any questions that you might have, to put myself on the firing line, I suppose. I would say that if Senator Dubas after this hearing if she doesn't come in later would want to sit down with me at any point I'll make a point to let her know that I'm willing and able to visit with her about questions she might have. Before opening myself up for questions, if I could just address a couple of questions that Senator Haar had asked. First to Mr. Vering, I think he answered that question but your question was what is the current system? You asked him to walk through the current system that's being used by DEQ and without getting into great detail, essentially, he talked about a strike occurring--a discharge, excuse me--occurring like Senator Fischer said, there's a spill of any type. And currently as I understand it and you can certainly verify any of this or get elaboration from DEQ, DEQ investigates. And oftentimes those investigations are prompted by a report by the producer itself; they self-report. Not all the time, but oftentimes that's the case. So the report is made, an investigation begins at some point, I don't know in detail when that begins...and I would also qualify my testimony, I do not practice before DEQ and so my familiarity with their processes is somewhat removed. But my understanding is they investigate. If they determine that it does rise to the level of what they consider to be a possible strike, a possible discharge not just an event, but something that they believe was caused by negligence, then they begin a process of a formal proceeding. And as I understand it, that begins with a show-cause order that is issued by the department, sent to the permit holder, sent to the livestock producer and I think discussions begin. I think there are potentials for negotiations with the department between the department and the producer. And I don't know at what point that process might begin but essentially DEQ continues its investigation and then issues a show-cause order. At some point, if the matter is not resolved through settlement, there would be a hearing. Notice would be published of the hearing, I believe, and the producer would have an opportunity to come and defend him or herself. Basically DEQ would put on its case as to why they think there was a negligent discharge, the producer comes and tries to explain why they believe it was not the result of negligence and thereafter...and I should add that is typically, as I understand it, handled by a hearing officer with whom DEQ contracts or assigns. The hearing officer renders a recommendation, I've not seen one of those recommendations, and then DEQ takes that under advisement and ultimately issues a decision. And that decision could be to find that there was no strike or violation. The decision on the other hand could be that

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there was a violation. And if there was a violation, essentially, that's the end of the process. There's a strike recorded and that's on the person's record for five years and that's under current law, all of that's under current law. Another thing that I should add that I think is really important to the discussion on this bill is not, that's not the only process that takes place. There is often, if not always, and DEQ might be able to answer this question better a coincident investigation proceeding that's initiated by the Attorney General. I think it can be initiated by the county attorney as well, but I'm familiar of at least one that was initiated by the Attorney General that happens alongside the DEQ proceeding and that's under a different section of law. A different section of law that I think it's important to note is not affected in any way by this legislation. And we were careful to do that and DEQ really brought up some good concerns about preserving that protection. But that other area of law allows for civil penalties up to \$10,000 per violation per day to be handed down for a discharge. It also allows, in fact, a revocation by the department of an NPDES permit in the event of an egregious discharge violation. And that, again, that statute, I have to emphasize, that statute is not affected in any way by Senator Fischer's law. It remains intact, so that fining authority remains intact and in fact the revocation authority that DEQ has under a separate section of law is intact too. A recent example, there was a strike that was pursued by the department, or a discharge that was pursued by the department. Ultimately the producer and DEQ reached a settlement agreement and in fact the producer in that instance accepted a strike being charged against one of his facilities. At the same time, the Attorney General pursued that action and as a result of that the District Court entered a decree fining that particular operator \$4,000 for that violation, that same violation. Seems like it might be double jeopardy, but they're under two different provisions of law. And again, that fining ability, that civil penalty provision is unchanged, untouched by this particular legislation so hopefully that addresses your question about what the current process is. And I'm sorry to go into so much detail but I think it's a good question. [LB56]

SENATOR HAAR: I appreciate that, thank you. [LB56]

ANDY POLLOCK: The second question that you asked to Mr. Gangwish was to kind of talk through the levels of culpability. Right now, and that's again a state of mind. Currently under state law this standard in section 54-2431, and I can sure point to right where that is if you want me to, is accidental or intentional. Any spill, any discharge that is accidental and intentional and I can tell you that that's language that has the entire industry on edge. [LB56]

SENATOR HAAR: Now is that accidentally and intentional or intentional? [LB56]

ANDY POLLACK: No, it's or intentional, good question. [LB56]

SENATOR HAAR: Okay. [LB56]

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ANDY POLLOCK: So basically anything in between accidental or intentional, a discharge that falls within any of those areas is a strike. And another thing that's important is that not only is it a strike, but it is mandatory. It's incumbent, DEQ has no discretion. They are under a mandate under the current law to issue a strike even if it's an accidental spill, an accidental discharge and I think in the view of the industry that's just too onerous. Accidents happen, anybody who has driven a car knows that no matter how good you may...how well you maintain your car, how often you check your tires, change your tires, you hit a nail on the road occasionally and perhaps swerve off into the ditch and that's a pure accident. It's our opinion that that needs to be raised to a higher standard and the standard that Senator Fischer has put into the bill is willful negligence or intent. And certainly, an intentional discharge is something that I think you can ask anybody in the industry if that happens, the operator should be penalized and should be penalize severely. They give all the rest of us a bad name. Willful negligence, the standard, is defined by the Supreme Court and I can read that to your or I can certainly give you a quote from the not so distant case. But essentially what it boils down to, Senator, is any...if the actor in this context if the producer has knowledge of a potential risk that would lead to a discharge and does not address that risk and there is a discharge resulting, that would be willful negligence. [LB56]

SENATOR LANGEMEIER: Okay. Are there any other questions? Senator Cook. [LB56]

SENATOR COOK: Mr. Pollack, I have a question kind of based on what you just offered. You offered a definition on willful negligence and based it on the standard definition by the Supreme Court, that's the Nebraska Supreme Court or the United States Supreme Court? [LB56]

ANDY POLLOCK: Good question, Senator Cook, that is the Nebraska Supreme Court. [LB56]

SENATOR COOK: All right. Can you give me an example of willful negligence? You gave a vehicle example. Perhaps you can offer that and then one taking place on a feedlot or something. [LB56]

ANDY POLLOCK: Sure. And I'll do my best on both counts. A possible vehicle example, and let's go back to the tire. I know that my tire has been...I've had to fill it every day for the last week and I know there's a leak, obviously and yet I decide to head out on the interstate and drive back home to Ogallala knowing that there's that leak. I disregard it. That, in my view, according to the Supreme Court standard would be willful negligence. In this type of example, Mr. Gangwish might be better to address this, Mr. Gangwish if I mess this up you can jump up and scream. But I would say if there's a lagoon that has had some small leaks, they haven't penetrated the waters of the state but there have been some small leaks and the operator knows of those small leaks and doesn't take

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any remedial measures to try to correct that and there is a breach, a larger breach at the same place that there was a smaller leak, that would be willful negligence. If...a lot of times they spread the waste on fields and into a position where it can't run off into the waters of the state and they do that using a center pivot just like you'd use to irrigate a corn crop. They know that there's been problems with the pivot, they know that it's been malfunctioning not in any serious degree, but it breaks down in that area where they knew there to be a problem and they hadn't taken any steps to try to remedy that problem, that would be willful negligence too. [LB56]

SENATOR COOK: Okay. [LB56]

ANDY POLLOCK: Again, that's up for the department to decide and they decide it on a case by case basis give the facts of the case but they do do that now. They apply a negligence standard and they look at that and they weigh the facts and circumstances of that particular case and they don't solely...they investigate thoroughly, they don't rely solely on the testimony of the producer themselves. [LB56]

SENATOR COOK: Okay, thank you. [LB56]

ANDY POLLOCK: Yeah, thank you. [LB56]

SENATOR LANGEMEIER: Senator Carlson. [LB56]

SENATOR CARLSON: Senator Langemeier. Mr. Pollock, I'm sitting here trying to think of an example that maybe helps me understand it and perhaps some of the rest of the committee a little bit. I think there's two elements here that need to be addressed in this bill. One is that you've got part owners in various facilities and they're not really active in the management of those facilities but because they're part owner they can get in an uncomfortable spot with a strike. And then there's what we've been discussing here, the willful negligence, but let me use an example. If you and I and Senator Fischer go together and we buy three tractors and we pay \$600,000 for the three tractors and then we each determine which tractor we're going to operate with but we own them together. So we get that done and Senator Fischer, she's operating hers and you're operating yours and I'm operating mine. And I get out on the road and the front wheel comes off and there is a possibility that I endanger somebody when that happens. Now, maybe I should have known that, maybe it's purely accidental. I think under current law it doesn't matter. [LB56]

ANDY POLLOCK: That's correct. [LB56]

SENATOR CARLSON: And so you've got a strike. Then, next time out on the road one of the big wheels falls off and... [LB56]

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ANDY POLLOCK: Same tractor. [LB56]

SENATOR CARLSON: Same tractor, my tractor. And maybe I should have been more careful, maybe I shouldn't, I don't know if it's negligence or purely accident. Then the next time out on the road the exhaust pipe flies off my tractor and so I've had three incidences, but you're partial owners and you're not in the management and care of that tractor but now that's three strikes. It's not fair. [LB56]

ANDY POLLOCK: I would agree with that. I would first say that I'm glad I didn't get that tractor. But I would say applying that example to this situation, the way the law reads right now, at least it's unclear how it would apply. But the concern is that it would be applied in such a way that not only the department take that tractor off the road, but they would take Senator Fischer's tractor off the road and my tractor off the road as well. [LB56]

SENATOR CARLSON: Yeah. Thank you. [LB56]

ANDY POLLOCK: Thank you. [LB56]

SENATOR LANGEMEIER: Senator Haar. [LB56]

SENATOR HAAR: Now, if Senator Carlson had owned three tractors, these are not John Deeres right? I have John Deere blood in my family. If he owned all three tractors, what would happen under the before and after, the current and the after? [LB56]

ANDY POLLOCK: Okay. The current law, all three tractors would be taken off the road that Senator Carlson owns. Under the change, that one tractor that had the three breakdowns would be taken off the road. [LB56]

SENATOR HAAR: Okay. [LB56]

ANDY POLLOCK: That said, that other provision of law that I mentioned before that the AG had prosecuted in that other instance, if DEQ and the AG, and I don't know how much collaboration they have, you'll have to ask them. If they determine that Senator Carlson just wasn't taking care of his equipment there would be the potential that first of all they would fine him for each one of those breakdowns if it rose to a level of negligence. And second of all, they could take his operating license for all three tractors away. I think, and I think that situation would have to be egregious. The definitions under that current law, or under that law are maybe not as clear cut as they are under the three strikes rule. But that authority exists and that authority remains under current law and is unchanged by this bill. [LB56]

SENATOR HAAR: Okay, and how would you prove willful negligence? That's almost

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like looking at somebody's state of mind, or how do you prove that sort of thing? [LB56]

ANDY POLLOCK: You know, similar to the way that you prove negligence. You look at all the circumstances surrounding the situation. It is a much lower burden than establishing an intentional discharge. An intentional discharge you really do have to get into state of mind. But with all of these you do have to get into some level of state of mind, whether it's ordinary negligence or gross negligence or willful negligence. You explore what happened based on the circumstances. Certainly, you ask the producer what happened and you ask that producer's management and their staff, you know, what happened beforehand? What did you do? What did you know about? You expect truthful answers in that and in a proceeding they would be sworn in under oath and you really try to pry to the bottom of what happened and you look at testimony, but you also look at circumstantial evidence. I don't know if experts, I'm not an expert in the mechanics of a center pivot but certainly I would expect, I've done some other civil litigation in my day, that there would be means to determine how long the problem had existed prior to the actual big blowout problem. [LB56]

SENATOR HAAR: Okay. And that would be under the changes that Senator Fischer is proposing. What would it be under the current law? [LB56]

ANDY POLLOCK: If you read the current law by its letter, it wouldn't matter the mindset whatsoever. Any discharge, no matter how accidental, no matter how unforeseeable, no matter how many prudent measures and reasonable measures the producer took to avoid a discharge, there is potential liability. There is potential risk of a discharge. DEQ, like I said, to its credit has read into that provision a negligence standard. Essentially negligence standard is...and this isn't to quote the Supreme Court, but I can sure give you a citation at some point. It's you should have known that there was a risk and you failed to act accordingly. [LB56]

SENATOR HAAR: Okay. So under the current law it would, an accident or the thing you talked about earlier about the truck in the ditch it wouldn't matter what his intentions were or anything, it would just be the truck is in the ditch. [LB56]

ANDY POLLOCK: Under current law, I mean, I still think you'd look at issues like maintenance and upkeep and failures to address problems likely. It's similar, I would submit to you and certainly others might disagree with me that willful negligence and negligence are a lot closer together than they are to, than either one is to intentional and they're also a lot closer together than either one is to accidental. [LB56]

SENATOR HAAR: Okay, thank you. [LB56]

SENATOR LANGEMEIER: Senator Schilz. [LB56]

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SENATOR SCHILZ: Thank you, Senator Langemeier. Mr. Pollock, let's go back to Senator Carlson's, Senator Fischer's and your tractors for a second. Let's say that all this has happened and that that law applies to maintaining your tractors. Going forward, obviously Senator Carlson didn't do a very good job with taking care of stuff, but would Senator Fischer have the opportunity to buy into another facility and open that up after there were three strikes against them? Do you know that? [LB56]

ANDY POLLOCK: That's an excellent question, under the current law? [LB56]

SENATOR SCHILZ: Yeah. [LB56]

ANDY POLLOCK: The answer to that would be no. [LB56]

SENATOR SCHILZ: Okay. [LB56]

ANDY POLLOCK: The answer to that would be because she has three strikes by virtue of her partner's lack of care and you put me in the spot where I'm feel like I'm debating the integrity of Senator Carlson, but. [LB56]

SENATOR SCHILZ: He brought it up, so. [LB56]

ANDY POLLOCK: But yeah, the way the current law is, is that would apply to the partner, at least that's the concern we've heard expressed by DEQ. That we really don't know where that strike stops so it would apply to the partners and the current law is that DEQ shall reject an application for a new permit by someone who is unsuited to be a permit holder and then it defines in a later section what unsuited means and that would include a felony violation, but it also includes racking up three strikes. [LB56]

SENATOR SCHILZ: Sure. [LB56]

ANDY POLLOCK: So I would say that Senator Fischer would be prohibited from applying for another permit within five years from the first violation that Senator Carlson had. [LB56]

SENATOR SCHILZ: Sure, okay. And then just one other question. How does is apply to out of state interests that may be coming in. [LB56]

ANDY POLLOCK: If...do you mean...and let me just add one thing to what I said. I think one way to view that is to view it as Senator Carlson's strikes and misdeeds would be imputed to the others. Are you saying if there's an operation that wants to come in Nebraska, open a new facility? [LB56]

SENATOR SCHILZ: Sure or buy into a facility that's already a growing concern. [LB56]

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ANDY POLLOCK: I would have to check to see if violations in other states would count against this. I don't think they would, but don't hold me to that and I can sure check. Now, if they wanted to come in and partner with a producer that already had a strike or two, then they would inherit by imputation those strikes. [LB56]

SENATOR SCHILZ: But obviously, those strikes probably do not go back against their facilities in different states. I would see that that would be very hard. [LB56]

ANDY POLLOCK: To my knowledge, this is the only state...and again I've not done an exhaustive review but I have yet to hear that there is any other state that has a three strikes rule. So I don't think it would impute against them in those other states. [LB56]

SENATOR SCHILZ: Thank you. [LB56]

SENATOR LANGEMEIER: Senator Fischer has a question, I think she wants to defend her tractor. No. Senator Haar. [LB56]

SENATOR HAAR: Thank you. So okay we've given Senator Carlson three strikes. [LB56]

SENATOR SCHILZ: Well deserved. (Laughter) [LB56]

SENATOR HAAR: Well deserved. [LB56]

ANDY POLLOCK: I'm never riding in his tractor. [LB56]

SENATOR HAAR: Stay away from him. So could he then buy into, for example, Senator Fischer's or my operation, let's say that I have an operation. Could he then become a partner in an operation if he has three strikes against him? [LB56]

ANDY POLLOCK: I believe that there's a risk that it would cause your operation to be charged then, imputed with the three strikes. [LB56]

SENATOR HAAR: Under the current law? [LB56]

ANDY POLLOCK: Under the current law. [LB56]

SENATOR HAAR: And under the new law? [LB56]

ANDY POLLOCK: That would change. He could... [LB56]

SENATOR HAAR: He could buy into mine. [LB56]

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ANDY POLLOCK: He could buy in your facility, he can't drive that tractor again but he could buy into your facility if the laws changed, correct. [LB56]

SENATOR HAAR: Okay. [LB56]

SENATOR LANGEMEIER: You going to lose the other wheel here, Senator Carlson? (Laughter) [LB56]

SENATOR CARLSON: Just to make maybe a final statement here I'm glad I brought it up because it's a little easier to understand. [LB56]

ANDY POLLOCK: Yeah, I agree. [LB56]

SENATOR CARLSON: But, Senator Haar, under what I said when I made that third mistake, all three of us are shut down. [LB56]

SENATOR HAAR: In the current law. [LB56]

SENATOR CARLSON: Yes. [LB56]

ANDY POLLOCK: Yeah. And you don't have an ability partner with Senator Haar even though he has a perfectly clean record in his operation. [LB56]

SENATOR HAAR: But under the new law, he could. [LB56]

ANDY POLLOCK: Correct. [LB56]

SENATOR HAAR: Yeah. [LB56]

SENATOR LANGEMEIER: And it would be Senator Fischer, because she got drug into this deal. [LB56]

SENATOR FISCHER: Don't be pulling me into this. [LB56]

SENATOR LANGEMEIER: She, then, couldn't partner with Senator Haar at a later date as well because of his poor tractor driving, right? [LB56]

ANDY POLLOCK: That's true, exactly, good point. [LB56]

SENATOR LANGEMEIER: Okay. Thank you very much, I don't see any further questions. Further support for LB56? [LB56]

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SENATOR HAAR: That's really after people, individuals who have no respect for the law. [LB56]

SENATOR LANGEMEIER: Seeing no other one coming forward, I have one letter in support offered by Robert Hallstrom on behalf of the Nebraska Bankers Association, and that letter is in support. Now we will move on to opponents? And the floor is open for opponents. Please come on up. Mr. Winston, come on up. And I have a number of letters I'll read in at the end on that as well. Mr. Winston, we're ready when you are. [LB56]

KEN WINSTON: (Exhibit 4) Thank you, Senator Langemeier and members of the committee. Well, I'm always reluctant to come to a committee and oppose a bill that a committee member has introduced, so if I could hide under the desk I would do that. But for the record my name is Ken Winston, last name spelled W-i-n-s-t-o-n. I'm appearing on behalf of the Nebraska Chapter of the Sierra Club. And my testimony is being passed out. Allow me to run through the points that we're making today and then I'd be glad to answer questions. The Nebraska Chapter of the Sierra Club has taken a position in opposition to LB56. We're opposed to LB56 for the following reasons. It's our position that it's unnecessary. There are several hundred permit holders, I tried to get the exact number from DEQ today, but I guess I called too late and couldn't get the exact number, so they told me I was safe in saying that there were several hundred permit holders under the Nebraska Livestock Waste Management Act. And to date, there have only been three permit holders that have had one strike taken against them and no one has been found guilty of a second strike to date. Then we're concerned about the proposed change to intentional or willful negligence for liability under the bad actor provisions. DEQ currently, as Mr. Pollock indicated, they currently use the negligence standard to enforce the bad actor provisions. According to DEQ there were more than 150 discharges from animal waste facilities in 2007 and 2008, yet as previously indicated, there were only three findings of violations under the bad actor law. So they're not going after everyone who has had a discharge. It's only, as I understand it, they only use it in a situation where there's people who have failed to use reasonably prudent, to take steps of reasonable prudence. Then, secondly, and the intentional or willful negligence standard, I am an attorney and I have done some criminal defense work, this language is typically used in criminal violations. It's rarely used in civil proceedings so in general, civil proceedings will use negligence standard or occasionally there is a strict liability standard but generally, the intentional or willful negligence standard is one that's used for criminal violations. And then we believe that this would be an important enforcement tool having the three strike provision available so that someone knows that if they don't follow the rules that they would be held liable for failing to follow those rules. Then, finally, I guess the final point that I want to make is feeling like this is going the wrong direction. That, and the reason I brought up some history is just because of the fact that most of the senators weren't in the body at the time that I was involved in this process. But in 2006 there was a bill introduced, LB975, which addressed a number of issues

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that needed to be addressed that session under the Livestock Waste Management Act. And we originally opposed the bill and then prior to the hearing on the bill, the introducer brought various interested parties together including the Sierra Club, the Farmer's Union, the Farm Bureau and the Nebraska Cattlemen. We all came together, also met with people from DEQ and worked out all the provisions of the bill prior to the hearing and for the folks who happened to be here that day, it was kind of an interesting day because it was probably the first time that I've gotten up and testified in support of the same bill that a member of the Farm Bureau had testified in support of. And at that time I made a little joke when I got into the witness chair, I said well here I am appearing in support of a Farm Bureau bill and the Sower isn't falling off the Capitol, so and it's still there, so I guess I just want to offer that as an indication of willingness to work on important issues for the people of the state. And then, similarly the Nebraska Cattlemen contacted me in 2006 and asked if I would act as one of the judges for the Aldo Leopold Conservation Award and I was very proud and honored to act in that function and so I guess I'm just wanting to stress the opportunities that we have to work together to the extent possible. Then, finally, I guess I just would hope that we wouldn't get bogged down on issues like this because I think there are a lot of issues that are very important this session. Our top priority issues are energy issues and I think there is a lot of issues there where Senator Fischer has introduced a bill that has a number of positive provisions in it that we're...that I find very, very interesting and so...and we think that there's some opportunities there where we can work together. For example, opportunities for production of electricity through capturing methane from livestock waste facilities. So, and net metering may be an opportunities to do that. So there's a number of opportunities that we'd like to stress that we'd like to work together on. And so if the committee wants to work on this bill, if the introducer wants to work on this bill. I was putting together my notes at a late date, so I haven't had a chance to talk directly with the introducer yet but I'd be glad to work with her and her office on the bill to the extent possible. And I'd be glad to answer your questions. I have my own definitions of negligence and willful negligence but I will, unless somebody wants to hear them I will stop with my testimony and respond to questions. [LB56]

SENATOR LANGEMEIER: Thank you, Mr. Winston. I was here in 2006 and I do remember that moment. We're going to go out to the end, Senator McCoy. [LB56]

SENATOR McCOY: Thank you, Senator Langemeier, and thank you, Mr. Winston, for being here today. A quick question for you, if I may. You mention in your written testimony here the fact that DEQ rarely uses this tool. [LB56]

KEN WINSTON: Um-hum. Yes. [LB56]

SENATOR McCOY: As an indication that, you know, when operators may have engaged or failed to meet the standards of reasonable prudent operations, which you said. Nonetheless, that may be the position that NDEQ currently has. But the statute as

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it reads now does allow for a different interpretation of that unless that's changed. Would that be your interpretation of that? [LB56]

KEN WINSTON: Sure. I would agree with that. I don't know that...here's where I have heartburn is changing it to a standard that would require what I would consider you'd have to show intent, an intent to violate the law, as opposed to just not behaving prudently. And I believe that...now if there was, if the law would be changed to just negligence, I believe that would reflect what current law...what the way that it is currently being administered and I would not have a problem with that. So yes, I think if that's the intent to change it so that the law reflects the way it's being administered, that would be fine. From our perspective. [LB56]

SENATOR McCOY: Okay. Thank you. [LB56]

KEN WINSTON: Thank you. [LB56]

SENATOR LANGEMEIER: Senator Haar. [LB56]

SENATOR HAAR: Yes, thank you. I didn't know I had the colleagues well enough yet to know who else is a lawyer. [LB56]

SENATOR LANGEMEIER: I believe none of us are. [LB56]

SENATOR HAAR: None of us, so that's an advantage. (Laughter) [LB56]

KEN WINSTON: And wherever two or more lawyers are together there will be disagreement. [LB56]

SENATOR SCHILZ: And somebody getting billed. [LB56]

KEN WINSTON: I wish. [LB56]

SENATOR HAAR: So from the statistics on here, then, when there has been an accidental discharge or whatever...has not resulted...I mean that's not automatically a strike. [LB56]

KEN WINSTON: That's correct. DEQ, well, and obviously I know that some DEQ people are here so I hope they will testify and speak for themselves but... [LB56]

SENATOR HAAR: Maybe that's a better question for them. [LB56]

KEN WINSTON: ...but I had conversations with them and it was my recollection that there were 157 discharges in the last year and only three of them have resulted in

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findings that there was something that would be held as a strike against that person.  
[LB56]

SENATOR HAAR: So your argument is that the tough part here is the intentional.  
[LB56]

KEN WINSTON: The intent, the language that would change it from ordinary negligence to requiring a showing of intent. And actually willful negligence also requires intent. When someone is willful, I mean, they used to refer to children as being willful when they would disobey their parents. It's a showing that there is an intent that the person intended to, or they went ahead with knowledge that there was something wrong with the situation. [LB56]

SENATOR HAAR: So going back to that sentence where you talk about criminal conviction versus civil proceedings. So the criminal conviction has to basically be more difficult is what that says. [LB56]

KEN WINSTON: Under...well most criminal law requires intent. You have to prove the person intended to do the harm. Now there are some variations on that. For example, a traffic law, for example, is a strict liability offense. If you're going 75 in a 65 mile an hour zone and you get caught by the laser gun, then you'll probably end up having to pay a fine. [LB56]

SENATOR HAAR: That's happened, yes. [LB56]

KEN WINSTON: I've heard of that. So, but for most criminal violations, you have to show intent so that it isn't just a matter of an event happened, you have to show that the person intended for that harm to happen. [LB56]

SENATOR HAAR: Okay. I think I'm starting to understand. That's it, thank you. [LB56]

SENATOR LANGEMEIER: Senator Schilz. [LB56]

SENATOR SCHILZ: Thank you. Thank you, Senator Langemeier. Mr. Winston, thanks for coming in today. [LB56]

KEN WINSTON: Thank you. [LB56]

SENATOR SCHILZ: First question I have is, do you know of, or can you think of any other businesses or industries that are regulated on a facility by facility, and everyone's tied together like that? [LB56]

KEN WINSTON: Well, it's kind of a difficult question because I don't know how this

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works, exactly. There are situations where people are held liable for actions of their partners and that is actually fairly common. [LB56]

SENATOR SCHILZ: In...okay, go ahead. [LB56]

KEN WINSTON: In the legal system. [LB56]

SENATOR SCHILZ: Sure. [LB56]

KEN WINSTON: I mean if I'm partners with somebody who is engaged in nefarious behavior, now I won't necessarily lose my license, but I can be held liable for...for example, if I were partners with another lawyer who is defrauding his clients I could be held liable for any... [LB56]

SENATOR SCHILZ: Could you be disbarred for that? [LB56]

KEN WINSTON: If I knew he was doing that. [LB56]

SENATOR SCHILZ: So if you had willful negligence. [LB56]

KEN WINSTON: Yeah if that was the kind of situation and there was that kind of connection. [LB56]

SENATOR SCHILZ: Sure. [LB56]

KEN WINSTON: And I guess this is an area where I'd be glad to look at addressing this particular situation and if we can come up with some language that makes sense. Where I have a little bit of concern is I would be concerned about...and I'm not really an organizational lawyer, I don't deal with putting together corporations or partnerships or what have you. But I know that there's ways of structuring things so that you have one person out here being the fall guy. And I wouldn't want to set up a system where you could have somebody be a fall guy and the people behind the scenes would escape liability if they were culpable as well. So I guess...but I'd certainly be willing to discuss...I mean, I don't like the idea of holding somebody liable for...the example that was given earlier, I mean, Senator Fischer shouldn't. [LB56]

SENATOR SCHILZ: Just seems kind of wrong, doesn't it? [LB56]

KEN WINSTON: Yeah, Senator Fischer shouldn't have to bear the...I mean, I like Senator Carlson too. [LB56]

SENATOR SCHILZ: He started it, it's okay, he started it. But yeah, and so then conversely...then like you said it wouldn't also be fair to hold somebody else responsible

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or liable if they weren't part of that process as well. Or part of that. If they weren't culpable. [LB56]

KEN WINSTON: Yes, Right. And I guess I just would want to, I'd like to see if there are some ways that could be addressed. But we want to make sure that it isn't a situation where somebody is using some sort of shielding mechanism to avoid liability. [LB56]

SENATOR SCHILZ: Right. Sure, sure. And conversely, we'd want to make sure that somebody isn't putting a law in place that takes somebody's regular opportunities to conduct business away from them in such a manner like this, as this as far as I can tell. My next question would be...and from what I understand from Mr. Pollock's testimony, doesn't DEQ always have the authority if they determine that somebody has violated the law egregiously to pull that permit at any time? With proper due process, obviously. [LB56]

KEN WINSTON: I guess I'd rather...that's my understanding but I think this is another tool that they can use. [LB56]

SENATOR SCHILZ: Sure. [LB56]

KEN WINSTON: So that that...and as I said, I hope that DEQ testifies and they can address those directly. [LB56]

SENATOR SCHILZ: Understandable, yeah. [LB56]

KEN WINSTON: I don't want to speak on their behalf. [LB56]

SENATOR SCHILZ: I understand and I asked you just as...if that's in place, like you said, do we really need to worry about this if they've got that authority up front? [LB56]

KEN WINSTON: Well, I wish I had all the history on this legislation because there was...the original idea was enacted in the 1990's and at that time, I think there was concern about bad actors, and that's what it's called, the bad actor provision. [LB56]

SENATOR SCHILZ: Right. [LB56]

KEN WINSTON: And they didn't want to have somebody who could come in and have repeated violations to be able to continue an operation. So that was the idea was to prevent people, operators who were violating the law. And from the sounds of things, all the people that made presentations today, all of them are exemplary operators. [LB56]

SENATOR SCHILZ: Sure. [LB56]

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KEN WINSTON: And so they would not be in danger of falling under this provision. [LB56]

SENATOR SCHILZ: Right. So since 2000, was it 2006? Well, 2007 2008 when there were the 150 discharges and having only found three findings of violations, do we...could you argue that we don't need the bad actor clause? That we never needed it because it's just not occurring? [LB56]

KEN WINSTON: Well, I guess I would say it's a tool, I mean, that can be used in the event that someone is behaving in a manner that is inappropriate and it's another sanction. [LB56]

SENATOR SCHILZ: Sure. And I guess you're probably right and maybe DEQ is the right...maybe somebody from DEQ is the right person to ask because I think, if the way I understand it right, that opportunity may be there anyway. Okay. And then I guess that's all the questions I have right now. And just one more, if you don't mind, Senator. And this gets back to, I mean, gets back to the sense of fairness. If somebody truly has an accident, right, and we can define that however you want, should they have to rise up to such a thing as having the opportunity to lose their business even if that accident was somebody else's doing? [LB56]

KEN WINSTON: Well, in general my answer would be no. And it's my understanding the example that you used earlier if there was a big rain event where there was ten inches of rain in a 24 hour period, that DEQ would not use this provision in that situation. And once again, as I said, they would have to answer that question. But based upon my conversations with them, if it's an act of God, if it's something that's unforeseeable or something that is foreseeable within the permit there would be no sanctions. They would not be sanctioned under this law if there were sanctions. [LB56]

SENATOR SCHILZ: Sure. Right. But there would be other ways that they could. [LB56]

KEN WINSTON: Well, there could be sanctions but in some situations there would be no sanctions whatsoever. [LB56]

SENATOR SCHILZ: Absolutely. [LB56]

KEN WINSTON: Because it was, you know, it was in the permitted status and therefore it could legally happen. [LB56]

SENATOR SCHILZ: They paid the fee to let that happen, basically. [LB56]

KEN WINSTON: Right, yeah. And as I said, in general I don't like the idea of people being held at fault for something that they didn't cause. But I think that if somebody had,

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I mean, the standard that as I understand it as a reasonably prudent person, that's the standard negligence. [LB56]

SENATOR SCHILZ: Sure. [LB56]

KEN WINSTON: And a reasonably prudent person should know what the requirements are and if that person follows those requirements and then they should not be held liable if there is an event that falls outside of those parameters. So if it is truly an accident or an act of God, it's my understanding that this provision does not apply. That... [LB56]

SENATOR SCHILZ: Okay. [LB56]

KEN WINSTON: ...and so it's only in a situation where they've failed to act prudently that they would be held liable under this provision as currently enforced. [LB56]

SENATOR SCHILZ: So I don't mean to keep going on here, but you just brought up another thought. So let's say I own a feed yard and I just had to let an employee go who just happens to know where the start switch is on the engine that pumps the effluent out onto the field. He heads out there during the evening and turns it on. Is that an accident? Is that wilfully negligent? Does that fit into this deal? Because I...we all know how those kind of things can happen. The way I read it, it looks like it fits in there and I would be liable for somebody that would be acting maliciously towards me. [LB56]

KEN WINSTON: Well, I guess if you had already discharged him or were in the process of discharging him I would surprised if you would be held liable for the malicious acts of a third party. I mean, in ordinary negligence law, or ordinary liability law it would be unlikely that you would be held liable for, as I said, the malicious acts of a third party. [LB56]

SENATOR SCHILZ: Sure. Sure. And I'm sure that he's going to tell everybody that asks, it wasn't me that turned it on, I don't know how it happened. I'm just thinking out loud, but thank you very much, I appreciate it. [LB56]

KEN WINSTON: Okay. Thank you. [LB56]

SENATOR LANGEMEIER: Senator Carlson wants to lose his other two tires, I think, off his noisy tractor. [LB56]

SENATOR CARLSON: I'll try and make this brief, Senator Langemeier. Mr. Winston, in your sheet that you handed out, the first two points would lead me to the conclusion that you're okay with the way things are being handled now. [LB56]

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KEN WINSTON: In general, yes. I mean, I guess I...lacking more knowledge about the subject, I would say it appears that DEQ is acting appropriately. [LB56]

SENATOR CARLSON: Okay. In the second paragraph you say that the Department of Environmental Quality currently uses a negligence standard. And because they currently use the negligence standard that makes you a little more comfortable with the way they are doing things. Would that be fair? [LB56]

KEN WINSTON: Yeah, that's correct yeah. [LB56]

SENATOR CARLSON: But that's a practice, that is...it's a voluntary decision on the part of the director of DEQ. [LB56]

KEN WINSTON: I believe it's based upon an interpretation of some language in the act. And that they look at the term allow as requiring negligence. But once again, I hate to be attempting to speak on behalf of the department. [LB56]

SENATOR CARLSON: Yeah. But there's...everything involves a certain amount of subjectivity and some of it has to do with how either you or I perceive the attitude of the individual that's in a position to make some of these decisions. And by and large, I think most of us are satisfied with the way the current department of DEQ is managed and the way they approach things and they're not out to get people. But that's not a guarantee. So I think you'd made a statement that if the negligence standard instead of willful negligence was in the bill, you're a little more comfortable with that. [LB56]

KEN WINSTON: That's correct. [LB56]

SENATOR CARLSON: And are you also comfortable with after this discussion that perhaps it should be violation by location rather than three strikes...rather than bringing in all other locations that might involve partial ownership? [LB56]

KEN WINSTON: Let me qualify my answer. I would want to hear from DEQ in terms of whether they find problems enforcing, whether they would find problems enforcing if it was just facility by facility. And I guess I would want to hear from some people who are more involved with the corporate structure as to whether that would cause difficulties in enforcement under that. But if those hurdles could be overcome, then the intent, I don't have a problem with the intent. [LB56]

SENATOR CARLSON: Okay. And I think you say in our little example that I became the bad guy and I really effected Senator Fischer and Andy unfairly. [LB56]

KEN WINSTON: And I didn't believe you because I can't picture you as the bad guy. [LB56]

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SENATOR CARLSON: Well I appreciate that. Okay. Thank you. [LB56]

SENATOR LANGEMEIER: Thank you very much for your testimony. [LB56]

KEN WINSTON: Thank you. [LB56]

SENATOR LANGEMEIER: Further testimony in opposition? Do you have a green sheet? Thank you. They get on my case after these if I don't do that. [LB56]

MARY HARDING: I'm out of practice. Mr. Chairman, Senators of the committee, my name is Mary Harding. M-a-r-y H-a-r-d-i-n-g. I'm here today representing the Nebraska League of Conservation Voters and I want to address my comments very narrowly to the provisions in this proposal that deal with intentional or willful negligence. Likewise that caused us concern and we wanted to suggest that this language needed to be tightened up a little bit. You know, accidents do happen but if you've got three accidents in the same place. You know, you've been given a chance to learn from your mistakes so we have some concern about this standard and the way that it's drafted and would like to see that the department does not have to prove intentional or willful negligence in order to declare that a violation has occurred. [LB56]

SENATOR LANGEMEIER: Okay. Thank you. Are there any questions for Ms. Harding? [LB56]

SENATOR CARLSON: Senator Langemeier. In your statement, Ms. Harding, you said that there's three accidents in the same place, that should cause some concern and I would agree with you. And I think that's part of the attempt here to go by location versus across the board. Thank you. [LB56]

SENATOR LANGEMEIER: Senator Schilz. [LB56]

SENATOR SCHILZ: You're nodding your head, is that an affirmative statement? [LB56]

MARY HARDING: That's an affirmative response, I agree. I think the same kind of thing applies to property management, landlords and retail of...residential and retail. They are held accountable for both incidents that occur on their property by facility so that you could be cited for maintaining a property that's a detriment to the neighborhood. But also then there is a provision for a landlord...at a certain point, you've got enough facilities that are not being well maintained, then there's another provision that can kick in there to say this is a--I guess--bad actor. [LB56]

SENATOR SCHILZ: Right but if one facility is being maintained properly and another facility is not, then you're in agreement that you should go after that facility and not

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necessarily the whole. [LB56]

MARY HARDING: Correct. [LB56]

SENATOR SCHILZ: Thank you. Okay, thanks. [LB56]

SENATOR LANGEMEIER: Seeing no other questions, thank you for your testimony. [LB56]

MARY HARDING: See, I'm not an attorney, it's quick. [LB56]

SENATOR LANGEMEIER: We appreciate that, by the way. Further opposition? Mr. Hansen. [LB56]

JOHN HANSEN: Mr. Chairman, members of the committee, for the record my name is John Hansen and I'm the president of Nebraska Farmers Union, and I appear in opposition to LB56. There's several problem areas, I think, with it. One is that as we look back from a longer period of time, the reason that we got to bad actor in the first place is because we had bad actors. And we had some folks in Nebraska and they were the owners and they controlled the management and the management approach was to cut corners and, you know, they did a very good job of cutting corners and it was the folks who don't even really kind of slow down as much as most of us would do if we were thinking about running a stop sign. They just pretty much said, what are you going to do about it. And so as you look at this real conflict that came up between livestock production and rural communities and neighbors and all of this stuff, DEQ needed an additional handle. And what was the, you know, finally the handle was that if you had somebody who is just pretty much going to flaunt the regulations, if they were in fact the owner bad actor in this compromise position that it's in, which was not what anybody wanted, which is the kind of definition of a good compromise, nobody was thrilled with it. But I think it's worked extremely well and has been extremely effective and the fact that we haven't had those problems is a measure of the success of the tool and the instrument. If I thought that we were putting livestock producers out of business and we were having a whole host of problems and the overuse of three strikes, then I would be first to come in and say well we need to revisit, because that's clearly not the intent. The overwhelming majority of livestock producers in the state of Nebraska do a very good job of managing their facilities in an environmentally responsible fashion. The law as is in most cases applies to the statistical outliers who, in fact, knowingly, willfully cut corners and do things that cause us to have to make a law in the first place. And so, in my view, as you look at the consequence of the activity, the management of any facility is ultimately responsible and answerable to the owners. The owners have the final authority and they have the final responsibility. I am a firm believer in ownership but in my view, with ownership comes not only responsibilities, but also comes liabilities. And so as we look at the ownership structure of the hog industry which is a stone in my heart

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at this point. Yesterday I spent a good deal of phone time with our national office reflecting the phone calls that I'm getting in from independent hog producers who are flat going broke and are just really struggling. I wish I had a good way to help stem that bleeding and help keep those folks in business and I think a lot of us in the livestock industry are wondering what could we do to try to help independent hog producers. But the reality of the situation that we're in, in my opinion, is we're going to continue to wash out an awful lot of really good, independent hog producers in our state and we're going to see more and more large corporate absentee ownership. And I think that this tool that we have is a good fall back tool to have if, in fact, that happens so that there is, in fact, some culpability. My approach has been going back not just to 2006 but to '97 and the other livestock waste battles that were fought down through the years is that, as I look at this, if I thought this were causing problems my first reaction and I first of all compliment DEQ for using, I think, a lot of good sense to get to the point where we're not just taking every single discharge and calling it a strike. That was the fear, frankly, when we started out with the bad actor in the first place. It would be used in a punitive action. I don't think that's been the case. But if we were, in fact, having a problem my initial reaction as a cure would be more likely to back up and say, well, what do you think about four strikes? What do you think about more leniency if called on? But I am very slow to give up the ultimate hammer which is ownership, which in my opinion there ought to be a corresponding amount of liability and responsibility for ownership when you also enjoy the benefits of ownership. And remember that in a lot of cases, we're already doing a very good job of limiting personal liability in a lot of cases through the LLC system, where we limit personal liability. We use family farm corporations, but in some cases I think ownership actually is important to be able to reign in those statistical outliers which caused this problem in the first place. And with that, I'd be glad to end my testimony and answer any questions if I'm able to do so. [LB56]

SENATOR LANGEMEIER: Okay. Are there any questions for Mr. Hansen? Senator Schilz. [LB56]

SENATOR SCHILZ: Thank you, Senator Langemeier. Mr. Hansen, thank you for coming in today. I really appreciate it. And you were talking about, you know...whether you're talking about hog producers or cattle producers or cattle feeders or whatever, I mean, there's...you know, yeah, it's pretty tough right now. I can't disagree with you for sure. But what...as that consolidation happens, what normally happens to these folks that had owned the small independent operations? Do they go on to work for these larger companies that are coming in and taking over or do they just go someplace else? [LB56]

JOHN HANSEN: Well, it really varies. And, you know, if you go back to when I started as president of the Farmers Union in 1991, if you look at the total number of hog producers we had in the state at that point and you look at what we have now, there's a lot of people would say that anybody who is in any kind of position of responsibility

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during that period of time ought to be thrown out. But it's been a very painful period of time and you know, a lot of those folks in the 98 crush, for example, that really just went out in massive numbers, you know, really kind of all over the place. Some of them didn't get out quick enough, not only lost their livestock assets but also lost their ground, they lost the whole thing and they're completely out of production agriculture. Some of them were able to pare down and, you know, hang on to the home quarter, go to town, get a job, farm the home quarter at nights, weekends, that kind of thing and try to work their way back in if they could get their wife a good enough paying job. And so it goes. I mean, you see different kinds of strategies but most of the folks that I know of for the most part that left the livestock sector left, when they were forced out as owners, left the sector. [LB56]

SENATOR SCHILZ: Completely. [LB56]

JOHN HANSEN: Most of them, I would say but I. [LB56]

SENATOR SCHILZ: But some of them...sure, but some of them surely would stay. Well, maybe when things got rough they would go ahead and try and maintain some of that equity position in what they're doing by partnering up with somebody else. And that's where I come in, that's where I get concerned is because now all of a sudden you talked about ownership and some of these folks, some of these folks are keeping 10 to 20 percent of their facility...I know because I've seen this, I've watched a little bit. They're keeping 10 to 20 percent of the ownership of that facility and then, you know, the larger owners or whoever it is is then in partnership with those guys. I'm just afraid that this could affect those guys because if, you know, the three strikes would...I mean, obviously we can all see where three strikes comes from, can't we? Talk about an arbitrary number, but anyway as we. [LB56]

SENATOR HAAR: Right. Yeah. [LB56]

SENATOR SCHILZ: Except for in baseball. There's a good reason why it's in baseball. But anyway, so what I'm saying is I don't want to hamper those folks from being able to be a part of agriculture and be part of what they like to do with this hanging over their head when they may have no control of what somebody else who is also trying to give them an opportunity, so to speak, becomes the person or the entity that has those strikes against them and forces them out as well on their farm. That's my concern. [LB56]

JOHN HANSEN: And, Senator, I would agree with that and if I thought that there was an enforcement record that was causing that problem, then as I say, I would come back and revisit what we have now. But I also, you know, the...Nebraska, in my opinion, has done a very good job of avoiding the kind of situation that was caused in North Carolina, for example, by having good and appropriate regulations in place, and having good and

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effective mechanisms in place that help make sure that our producers were, in fact, being good environmental responsible producers as well. The difference in operational perspective between different kinds of ownership structures is very different and I just reflect back on that history and you needed from a regulatory standpoint, some kind of an ultimate hammer. And if you looked at what happened as a result of, I mean, there was a lot of good reason why we got to bad actor, and the fact that bad actor's been in place. The fact that we have such a good track record as a result is kind of back to my parenting days a really good reason why we had a midnight rule. [LB56]

SENATOR SCHILZ: Sure. Yeah. [LB56]

JOHN HANSEN: It worked. [LB56]

SENATOR SCHILZ: Sure, yeah. And I'm with you and I don't think that there's anybody that's in the livestock industry at least that I know of that wants to degradate the environment so I think it's exactly that reason that we need to keep these people that have farmed the land and worked the land continuing to be there and have those opportunities. And you know, if there's nobody willing to come in and help some of these folks out because of things like this, they can go someplace else and set up because they don't have to worry about what some would consider owner's loss, then I think we need to make it as easy as possible. Because I like those guys being on their 800 acres or their section or whether they've got a quarter of ground and being able to do what they want to do, so I appreciate it. Thank you very much. [LB56]

JOHN HANSEN: Thank you, Senator. [LB56]

SENATOR LANGEMEIER: Senator Haar. [LB56]

SENATOR HAAR: Thank you. You said common sense in law which is really what we wish all laws would be. The thing that still bothers me about this is the standard of negligence and we've already heard and I will ask DEQ for sure, but it's not absolute that if somebody has an accident they're given a strike. We've heard that, I think. [LB56]

JOHN HANSEN: Yes. [LB56]

SENATOR HAAR: But I think by going to this intentional or willful is maybe raising the bar too high. How do you have common sense between those two, in absolute and this very difficult standard? [LB56]

JOHN HANSEN: Well, my new favorite expression to explain a whole host of things which is a very large number that I can't really explain, as I look at the economy, as I look at a whole pile of things that are going on, the deficit, lots of economic and regulatory problems, is it is what it is. So my new expression is I think when you look at

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discharges that are of a substantial nature, that are able to climb into the strike category by virtue of the nature of the discharge, you have a more objective standard than trying to get to the point from a regulatory perspective where you're trying to look into willful intent and determine what it is they had in mind to do. And that that really raises to me the regulatory bar in a negative way because it involves either an enormous amount of additional research and subpoena powers and testimony and formalized things that would parallel a process similar to criminal prosecution to get to a reasonable and factually accurate determination of intent. And so when you increase the amount of intent you also...when you include that in the ask from a regulator's perspective you've also almost inherently, in my opinion, increased the amount of subjectivity that's involved in the enforcement. And I think that that's in itself a problem. And if we had every single discharge going in the strike category, I'd say, yeah this system isn't working. But if you're going to ask the...put DEQ in the position where now they're going to have to look not only to the amount of physical discharge that's happened, but you have to look into the heart and the mind of the folks who did it to determine intent, that's a whole other arena, I think, of regulation and I'm a bit...I'm real uncomfortable, in fact, going that direction. And that's why I come back to the point where if the current system which I think is more fact based, it is what it is. And so if you've got a whole pile of discharges that finally get into the strike category and we were actually causing a problem then I would look at either how it is that we put discharges into the strike category or we'd raise the number of strikes. I agree with Senator Schilz, three isn't magic. This isn't baseball; it could be four. [LB56]

SENATOR LANGEMEIER: Okay. Thank you very much for your testimony. Seeing no other questions. [LB56]

JOHN HANSEN: Thank you. [LB56]

SENATOR LANGEMEIER: Thank you, Mr. Hansen. Further opposition? Come on up. Go ahead when you're ready. [LB56]

KARA HARBERT: (Exhibits 5 and 6) Good afternoon, Senator Langemeier and members of the committee. My name is Kara Harbert, K-a-r-a H-a-r-b-e-r-t and I'm here on behalf of a group of citizens who are concerned about LB56 and are in opposition of it. Their names are on the back of the sheet that's being handed out. The Livestock Waste Management Act exists to protect the integrity of our natural resources. The amendments proposed in LB56 only serve to weaken that protection in an attempt to fix something that isn't broken. Only three strikes have been issued under the current bad actor provisions of the act despite a greater number of violations. This seems hardly enough to justify spending committee and Legislature time and resources on altering it. By adding intentional or with willful negligence, the act would circumvent the intent of the act. Few, if any, operations would suggest that they have ever...that they ever have or would commit a discharge violations with intentional or willful negligence. Accidents

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happen, but this act is in place to ensure that they don't happen to a fault. Without a doubt, willful or intentional violations should be punished. However, willful or intentional negligence can be tough to prove and inclusion of this language will allow accidental discharges to go even more unnoticed. Discharge permits are given to protect our water use and quality. Violations of permits or committing wrongful discharge should be punished whether intentional or not. Owners of multiple facilities should be held accountable for their entire staff and structure as well as their impact on our shared land, air, and water. If multiple related violations occur, action should be taken to see that they stop. Changing the act to see that willful or intentional violations are only counted within a single operation has consequences. If a multi-operation owner has five different operations that are each found guilty by notice and hearing to have committed intentional or willful violations, those charges remain separate and distinct and we are not allowed to observe the pattern emerging for an owner. The Livestock Waste Management Act is a system to manage the unavoidable waste of one of Nebraska's most successful industries. Where we share resources such as the land and the water, it is necessary that firm regulations exist to protect those resources for all of us. The Livestock Waste Management Act has proven to be firm in this area and needs no loosening as proposed in LB56. I'd be happy to answer questions. [LB56]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Carlson. [LB56]

SENATOR CARLSON: Senator Langemeier. You, in your statement here are representing quite a group of individuals. Does this group have any identification or any name or how is it that you're representing this group? [LB56]

KARA HARBERT: They're just a group of individuals who are aware that I was going to testify in opposition of LB56. Just association; one of them is the farmer from whom I buy my meat. [LB56]

SENATOR CARLSON: Okay. [LB56]

KARA HARBERT: There's no...they don't represent an organization. [LB56]

SENATOR CARLSON: Okay. Thank you. [LB56]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much. [LB56]

KARA HARBERT: Thank you. [LB56]

SENATOR LANGEMEIER: (Exhibits 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17) You did a good job. Further opposition? Seeing no one coming forth. I have a number of letters that I'm going to read in and will be on the record in opposition of LB56. And I'm going to

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skip their towns and just put their names in and again, if I butcher your name, I apologize; it will be correct in the record: Ted and Ramona Thieman; Lori Fischer; Melissa Konecky; LeRoy and Loranda Buoy; Neil Harrison; Lawrence Shackman; James and Kathleen Harris; Joyce Coppinger; Roger Topil; Deborah Hunsberger; and Pamela Daly, and a number of those are duplicates of the testimony we just heard in that list but they did submit their own letters in opposition so that will be part of the record. We'll move on now to neutral testimony. Is there anyone wishing to speak in neutral testimony? Director, come on up. [LB56]

MIKE LINDER: Good afternoon, Senator Langemeier, members of the committee. My name is Mike Linder, that's M-i-k-e L-i-n-d-e-r. I'm director of Nebraska Department of Environmental Quality. And I didn't have any prepared comments, but I know there were questions that came up that referred to DEQ so I just thought I'd make myself available. This can be very quick if you don't have any questions, but if you do I'd be happy to respond. [LB56]

SENATOR LANGEMEIER: Are there any questions? [LB56]

MIKE LINDER: I think Senator Haar had some, he took off. [LB56]

SENATOR LANGEMEIER: I think we're going to start with Senator Schilz. [LB56]

SENATOR SCHILZ: I'll go ahead. Thank you, Senator Langemeier. Just for clarification, does...do you believe that DEQ has the ability to go out and if there's egregious offences to revoke permits even without the three strikes bill? [LB56]

MIKE LINDER: Well, I think it was referred earlier as this is one tool we have for enforcement. We do have several avenues we can take. We use administrative orders if we just want to get a situation corrected. We have the ability to refer factual situations the to the Attorney General for either civil or criminal enforcement, and we do have an administrative process to revoke or suspend permits as well. It's not something we use often, but we have used that ability in the past, so yes, we do have that authority. [LB56]

SENATOR SCHILZ: Well, I think we're all happy. [LB56]

MIKE LINDER: In most if not all of our permit programs we have that ability. [LB56]

SENATOR SCHILZ: Sure. And I think we're all happy that you don't have to use that very often, I would hope. And I would also hope that it's because people are acting in a responsible manner rather than negligence on your part. Thank you. That's it, thank you. [LB56]

SENATOR LANGEMEIER: Senator Dubas. [LB56]

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SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Mr. Linder for being here. And I apologize, I know I've missed a good share of this hearing so this might have already been covered, so just...and I might visit with you later... [LB56]

MIKE LINDER: Okay. [LB56]

SENATOR DUBAS: ...outside of the hearing but, you know, one of the premises of this bill is, you know, there are multiple owners but may share a same permit and so it's how do we protect those other owners if they aren't a part of bad actor, so to speak. Do you know, do you have any examples where there might be some innocent owners who are suffering the consequences of a permit holder? [LB56]

MIKE LINDER: Well, I think some of the statistics have already been talked about, but so maybe it would help a little bit to go back through that. We, you know, there's been reference to a negligence standard and actually we don't really use the word negligence. We use the language that's in the statute and it talks about somebody having allowed a discharge. And to me, that means you could have not allowed it, so there's some foreseeability to prevent the violation. So what we do is we get knowledge of discharges throughout the year and I think the reference was accurate. The last couple of years we've had a large number of violations or not violations, but discharges because of the weather pattern, the wet spring and early summer. So we look at every situation on its facts and decide the appropriate follow-up. You know, if it was accidental we would work with the producer to try to make sure that it doesn't happen again; if it's allowed because of the chronic wet period or a major rain event, that's typically allowed under the permit. But if there are factual situations that we think with prudent behavior could have been avoided, then we issues these show-cause orders and give people the opportunity to come in and give their side of the facts if we don't have the whole facts in front of us. We want to make sure that we're basing it on the facts. So we do go through that process so I don't know if I covered your question or not. So yeah, we've...in terms of numbers there have been seven, I believe seven, show-cause orders issued. We've had a number of hearings, we've resolved three of those show-cause orders so there are three outstanding strikes issued. Now, I don't know if there's common ownership among those three or not, I just don't...you know, haven't gotten to that. [LB56]

SENATOR DUBAS: Okay. Thank you. [LB56]

SENATOR LANGEMEIER: Mike, Director Linder, I should ask one question. As I listen to the testimony on both sides here, I almost think that the policy you have in DEQ is more towards what this legislation would do than what the old legislation would do. Would that be a... [LB56]

MIKE LINDER: In terms of? [LB56]

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SENATOR LANGEMEIER: You know, the policy and the way you've looked at issues that come before you. [LB56]

MIKE LINDER: You know, I don't know. [LB56]

SENATOR LANGEMEIER: Okay. [LB56]

MIKE LINDER: You know, one of the main intents, I think is this multiple site dilemma and, you know, I would comment that we haven't necessarily made that interpretation of the statute. It is there to interpret that way but we haven't faced that situation yet so. But I think it is...it would be a concern if...you know, the last time this was changed was 2006 and my testimony I remember was this is the most stringent possible enforcement statute we could have. This is taking away somebody's livelihood so we want to make sure that we use that authority prudently. So, you know, to the extent it could be interpreted the way it's been discussed here, I can see that concern and that's not...that would take clarification in the statute so. [LB56]

SENATOR LANGEMEIER: Okay. Thank you. Further questions? Senator Carlson. [LB56]

SENATOR CARLSON: Senator Langemeier. You may have answered kind of what he asked. I was going to frame it a little differently. You have the current framework and guidelines by which you operate. And then you have LB56, so which one of these more closely follows the way you run the department? [LB56]

MIKE LINDER: Well, obviously the current one. We try to follow the statute. The way we run the department would be the current language. [LB56]

SENATOR CARLSON: Okay. [LB56]

MIKE LINDER: But I think some of the goals of the legislation we couldn't accomplish with the current language, if that helps. [LB56]

SENATOR CARLSON: Okay. Okay. That was part of what...and I think, to make a statement here and it isn't just to compliment you, but you can have framework and you can have the rules that try to cover everything and create an environment that allows somebody to be successful in that position. But it's still a matter of the qualifications of the individual that's in that spot as to whether that framework is effective or not. And I think there are a number of people that perhaps feel you interpret some things in a way that seem to be more, maybe, fair, and that there could be a danger if we had a change in leadership that that might not be the case, and I think that's part of the reason for some of these things in LB56. Thank you. [LB56]

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SENATOR LANGEMEIER: Any other questions? Senator Haar. [LB56]

SENATOR HAAR: Yes, thank you. Several words that were used by various people are reasonable and prudent. It seems that's the way you're doing it. And do you feel, though, that you're not enforcing the statute the way it reads? [LB56]

MIKE LINDER: No, I think we are. And if you look at current language, the language I looked at in the current statute talks about an applicant or permittee that has allowed three discharges to the state, to waters of the state. Now, the word discharge is defined to include the words accidental or intentional. But to me, the language has allowed, modified, the use of the word discharge and that it includes some kind of foreseeability or ability to have avoided a discharge. So that's the way we've approached it. It's been compared to a negligence standard and that's probably a good comparison. But, you know, the word negligence isn't in here. It is...it was trying to make sense out of this language as allowed. You know, if you try to make sense out of statutes, you have to look at the whole context of the act. And if we have, you know, I think last year in 2008 we had 86 discharges, largely because of the weather. You know, it would be a matter of time before nobody could be a livestock producer if every single discharge was a strike. I don't think it works in the context of the statute. So that's why I think the use of the word, or the interpretation of the has allowed language makes sense. It gives that statute sense within the context of the act. Now I know there's concerns it could be interpreted otherwise and, you know, I can't disagree with that but I think our interpretation is very defensible. [LB56]

SENATOR HAAR: Could you have made the determinations you did on those seven strikes if you had had to have proven willful negligence? [LB56]

MIKE LINDER: No, I can't answer that without going back and really looking at the facts. [LB56]

SENATOR HAAR: Okay. [LB56]

SENATOR LANGEMEIER: Okay. Thank you very much. [LB56]

MIKE LINDER: You're welcome. [LB56]

SENATOR LANGEMEIER: I see no further questions; thank you for your testimony. [LB56]

MIKE LINDER: And if there's any further questions that you need from our department, statistics or anything, feel free to inquire. [LB56]

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SENATOR LANGEMEIER: (Exhibit 18) Feel free to contact. Okay, thank you. Are there any other neutral testimony? Seeing none, I do have one letter that I neglected earlier, offered by Farm Bureau, signed by Craig Head in support of LB56 for the record. With that, that concludes. Oh, I'm sorry. Senator Fischer, while you still have your tractor, you may close. [LB56]

SENATOR FISCHER: Thank you, Chairman Langemeier. My tractor still works, no thanks to Senator Carlson's behavior. (Laughter) But I do thank you for your attention to this. It's a serious matter and I do appreciate Senator Carlson's example. I think that helped the committee possibly get a better understanding of what this bill is doing. I was happy to see in Mr. Winston's letter that he does recognize the good stewardship of people in agriculture and those involved with animal agriculture and the fact that there have only been, I believe, three permit holders who have been found guilty of one strike. And nobody's been found guilty of two. But to say that the bill's unnecessary, I think ignores comments that we've heard from other people, including Director Linder. When he did comment that when the law was passed two years ago, he felt it was one of the most stringent laws around and it threatened the livelihood of people. And we heard that from the two young men who spoke at the beginning of the hearing. And I'd like to thank them for coming forward because they, I think, explained very well what the purpose of this law is. It's to protect families, it's to protect family farms so that they do not lose their livelihood. And we also need to remember that we are not diluting this in any way, because it was explained that under other statutes that exist here in the state of Nebraska, DEQ can still impose sanctions, they can impose fines, they can revoke permits. We are not diluting this in any way. What we're trying to do is to protect people, and protect their livelihood. I do appreciate Ms. Harding's comments about the proposed change to the law and how it would apply to a facility, not to the names of a permit holder on any facility in that spiderweb that we see out there on how ownership is interconnected. I appreciate Senator McCoy's comments when he asked the question and then made a comment that he felt this bill was to clarify for the future so we can protect people on farms, on ranches and protect those families and their livelihood because that is the purpose of this bill. And I thank you for recognizing that. When we had the young man come forward, Russ Vering who spoke about being a pork producer and the problems they faced, and when Mr. Hansen came up and spoke about the history and the current situation that our pork producers are facing with being washed out of the business, and those are the small pork producers, that's Mr. Vering. He supports this bill because he understands how he can be washed out of being in this business. And I just hope we can have a good discussion when we discuss this bill and I would be happy to continue to answer any questions you may have and will find answers for you. But I think we had an excellent hearing. I think the main points of this bill have been brought forward and I think we do...I think this committee, I think we all have an understanding of what we're trying to accomplish with the bill so I thank you very much. [LB56]

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SENATOR LANGEMEIER: Thank you, Senator Fischer. That concludes the hearing on LB56. We thank everybody that testified or submitted a letter. (See also Exhibit 24) Now we'll move on to the opening, while you're sitting there Senator Fischer, LB54. You're recognized to open. [LB56]

SENATOR FISCHER: (Exhibit 19) Thank you, Chairman Langemeier and members of the Natural Resources Committee. For the record, my name is Deb Fischer, F-i-s-c-h-e-r. I am the senator representing the 43rd District here in the Nebraska Unicameral. I am here today to introduce LB54. LB54 is the result of frequent and comprehensive meetings between a number of water stakeholders including surface water irrigators and groundwater irrigators. Last session, I introduced LB924 that was a compilation of several water related issues. This concept of offsets was one of those issues. There was a great deal of disagreement on accurately accounting for water offsets at that time, and so these stakeholders came together during the interim to work on an agreeable concept for offsets in our river basins. LB54 is the outcome of those meetings that took place over a seven-month period. While current statute requires that any new use be offset in fully and overappropriated basins, there is no existing method to retire an existing use and allow for a new use. This raises many questions and concerns regarding management efforts to offset the impact of new uses, the accounting procedures, and methodologies used in order to conclude that existing water users are not negatively impacted. The Nebraska Department of Natural Resources, natural resource districts, and other water users have struggled with ways to authorize new economic development and avoid harm to existing surface water appropriations, excuse me, to avoid harm to existing surface water appropriators. With a number of fully and overappropriated basins in our state, not to mention the most recent preliminary determination on the Lower Platte, we must address viable solutions for managing our water resources and for providing continued economic development through the process of offsetting water uses. Therefore, LB54 establishes a procedure for natural resources districts to offset any new depletions to streamflow resulting from a new use. LB54 incorporates procedures to track depletions and gains to streamflows into a natural resource district's integrated management plan. This calls for clear and transparent procedures with several specific requirements that the procedure must consist of. This includes using generally accepted methodologies to estimate depletions and gains to streamflows based on the best available science and identifying the course of actions to be taken so as not to harm existing surface water and groundwater users. LB54 also requires that the NRD and Department of Natural Resources identifies reporting and consulting procedures to make information available regarding new uses in the basin. The bill further requires that the potential water available to mitigate new uses be identified and that a plan is developed in consultation with water stakeholders to make water available for offsets in order to encourage economic development and sustainability in the basin. Lastly, as a part of the procedures in the integrated management plan, LB54 requires that procedures be identified for applicants seeking approval of a new water use. LB54 is particularly important as we look ahead at the

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future of our state's water resources. Water is essential to economic growth in this state and the procedures outlined in LB54 provide a valuable process to allow for growth opportunities in manufacturing and development, municipalities, and agriculture. I do have an amendment to the bill that I would pass out that we can discuss later and I thank you for your attention. There will be a number of people coming up, I believe to follow me, both surface water and groundwater users and other interested parties that will be able to answer questions as I would be happy to now. Thank you. [LB54]

SENATOR LANGEMEIER: Are there any questions for Senator Fischer? Seeing none, thank you. You've heard the opening on LB54; the floor is now open for proponents or supporters. Just out of curiosity, how many people plan to testify on this in some fashion? Okay, thank you. [LB54]

DON BATIE: Senator Langemeier, members of the Natural Resources Committee, my name is Don Batie, D-o-n B-a-t-i-e. I'm a farmer and irrigator from Dawson County, north of Lexington. And I am a member of the Dawson County Farm Bureau, and I'm here today representing the Nebraska Farm Bureau Federation in support of LB54. First, I'd like to thank Senator Fischer for introducing LB54. It represents an important next step in a difficult road to the integrated management. Since the passage of LB962, there has been considerable discussion on the need for economic development in fully and overappropriated basins while at the same time assuring the state's water resources are managed appropriately. To manage the goals of LB962, depletions of streamflows resulting from new uses must be offset or mitigated. It's been clear from the discussions that a better understanding is needed on how to account for those depletions and offsets as Senator Fischer outlined, and the procedures to be used to provide for offsets and how existing water users will be protected. As Senator Fischer outlined, LB54 requires NRDs and DNR as part of their integrated management planning process to agree on these clear and transparent procedures to track the depletions and gains streamflows that result from changes in water use. Such procedures will provide management flexibility and allow future economic development projects to move forward more quickly, reducing costs while ensuring that water management goals of LB962 are met. The bill, in effect, created no surprises policy which is to me, the best news of all, concerning integrated management new uses. They'd have to agree on a methodology to estimate depletions and offsets and provide assurances that existing users will not be adversely affected. It also requires, if possible, the identification of potential water available to mitigate new uses and development of plans to make water available to offset--for offset--for economic development. Finally, I guess LB54 helps establish clear rules of the game. You know, it's always good to know the rules before you start a game and this would help that process. And it'll help provide certainty and a better understanding of the steps that would be needed to be taken by people that want to establish new uses. For these reasons, Nebraska Farm Bureau supports LB54 and encourages the committee to advance the bill. I would be happy to try to answer any questions you might have; thank you. [LB54]

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SENATOR LANGEMEIER: Okay. Are there any questions for Mr. Batie? Seeing none, you're getting off the hook very easy. [LB54]

DON BATIE: Thank you. [LB54]

SENATOR LANGEMEIER: Thank you very much for your testimony. Mr. Bishop, welcome. [LB54]

RON BISHOP: Mr. Chairman, members of the committee, my name is Ron Bishop, spelled R-o-n B-i-s-h-o-p, and I'm general manager for the Central Platte Natural Resources District located in Grand Island, Nebraska. But I am appearing here today to testify on behalf of the Nebraska Association of Resource Districts who just completed their conference here in town and during the conference, took a position in support of LB54 as it is written. They strongly support it. It's going to mean more work for all of us. I think it's necessary and it's a good idea to lay these procedures out first as we're developing our integrated management plans so that everybody is aware of how things are going to be accounted for, what's going to count, what is not going to count and how we're going to keep track of this and share the information with the state Department of Natural Resources. So for those reasons, the natural resource districts have taken a strong position in favor of LB54 and would hope that you would move it forward. [LB54]

SENATOR LANGEMEIER: Are there any questions? Senator Haar. [LB54]

SENATOR HAAR: Thank you. Could you go into some of the detail of this bill? [LB54]

RON BISHOP: Yes. It lays out...well, LB962 was passed in 2004, calls for the state to review basins across the state and determine whether or not they're in balance or out of balance. At the time, at the initial investigation, several of the areas across the state were deemed to be overappropriated and out of balance. Several other parts of the state were deemed to be fully appropriated, in balance and so we needed to maintain that balance status in those areas. We needed to get back to fully appropriated in those areas that are overappropriated. As part of that process, there was a freeze on any new uses of groundwater and new uses of surface water across those areas, with an exception that the natural resource districts can allow variances to that no new uses provided they offset the new depletions. And so, in the overappropriated areas we've got to come up with water in order to bring it back to the fully appropriated. In the rest of the areas that are just fully appropriated, any new use, whether it's for municipal use, commercial, industrial use, ag use, whatever, they have to be offset. And so we have to go out and acquire those waters one way or another and provide them back to the river to offset the impact of these new uses. This bill lays out a system where we agree up front between the natural resource districts and the Department of Natural Resources who are responsible for developing those integrated management plans just how that's

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going to be done. We do that in cooperation with stakeholders all across the basin. Stakeholders have input into those plans. We consult in the fully appropriated and we consult and collaborate in the overappropriated areas with stakeholders, stakeholders being all the municipalities, all of the surface water users. And in our basin, which is the Platte River Basin, we also consult with banker groups, groups that might have an interest either direct or indirect to water and water use and the economy of the area that's created by irrigated agriculture. So this bill then says how we will develop in the plan a system that is available for everybody to review before we start getting into implementing those integrated management plans to be incorporated as part of the integrated management plan. It's a system, then, that accounts for water, how we're going to acquire that water, how that water is going to count or what part of the water that we acquire counts, what part doesn't and just lays it out so that everybody sees up front how that's all going to be carried out and how these offsets are going to be furnished back to the river. [LB54]

SENATOR HAAR: But you're saying it makes more work for you and is that in terms of getting stakeholders together and the whole process? [LB54]

RON BISHOP: Well, the plan is going to be more detailed. [LB54]

SENATOR HAAR: Gotcha. [LB54]

RON BISHOP: Because that plan has to lay all this out. But I think that's good. I think that's good that we lay it out so that not only me and the people within our natural resource district know what is going on, but the people along the river down below as well as up above know how we're going to operate. And what's going to count and what's not going to count and how we're going to track that water, that as we do acquire water that is primarily buying out in our case buying out existing users or taking water in the stream that might be in excess of water rights and Fish and Wildlife Service needs and Game and Parks instream flow needs and our own instream flow needs. Sometimes the flows are higher and those needs are all met and there's still excess water in the river. Part of that might be capturing some of that excess, storing it in a reservoir and then releasing it back to the stream when times are...or when it's needed or to offset new activities. The natural resource districts are assigned by law the responsibility for providing not only flows back into the river to get us back to fully appropriated, but also assigned the responsibility of offsetting any new uses for, in our case, Grand Island or Kearney or Lexington or the other communities or any new industry that comes into the area. We need to supply the offset water to offset whatever impact they have to the Platte River. And this will lay out, then, the method that we and the state of Nebraska agree to as to how that's going to take place and how that's going to be accounted for. [LB54]

SENATOR HAAR: Makes the school state aid formula sound simple. (Laughter) [LB54]

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RON BISHOP: It may well be. [LB54]

SENATOR LANGEMEIER: Seeing no other questions, Ron, I have one question. [LB54]

RON BISHOP: Yes. [LB54]

SENATOR LANGEMEIER: You stressed that you supported this in its green copy, as I'll call it, the original draft. Have you seen the amendment? [LB54]

RON BISHOP: I have. Several of the folks at the meeting, in fact, all of the folks at the meeting saw some amendments and I'm not sure if we're talking about the same amendments that there were. [LB54]

SENATOR LANGEMEIER: So at this point you have no opinion of the amendments, you like the green copy. [LB54]

RON BISHOP: The opinion was that we like the way the bill was introduced. [LB54]

SENATOR LANGEMEIER: Okay, that's what I wanted to know. [LB54]

RON BISHOP: We like it in that form, yes. [LB54]

SENATOR LANGEMEIER: Okay. [LB54]

RON BISHOP: There is...I should point out, at the last minute there were some questions raised by some of the attorneys that have been involved with natural resource districts and with the state about whether some of the language really did what was intended to do in one area. And so they...we have asked them to look into it and to get information back to us no later than next week to make sure that everybody understands what the bill does and that it does exactly what we want and I apologize for the late position that the attorneys have taken, as several of them were involved with the senator as it was being developed. And everybody thought that it was all covered, and it may well be that it really is covered, but by no later than next week I personally will get word back to the senator and this committee as to the concern, whether there is a concern or not. [LB54]

SENATOR LANGEMEIER: Okay. Thank you very much for your testimony. [LB54]

RON BISHOP: Thank you for the time and thank you, Senator, for introducing the bill. [LB54]

SENATOR LANGEMEIER: Further testimony in support or proponents? Come on up.

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[LB54]

TOM KNUTSON: Good afternoon, Senator Langemeier and members of the committee. My name is Tom Knutson, T-o-m K-n-u-t-s-o-n. I'm president of the Nebraska State Irrigation Association and professionally, general manager for the Farwell-Sargent Irrigation Districts as well as Loup Basin Reclamation District in Farwell, Nebraska. I come before you on behalf of the Nebraska State Irrigation Association and the water coalition of irrigation districts, public power and irrigation districts, municipalities and NRDs that met last week in support of the bill with the amendments that the senator, I believe, has passed around today. And I want to thank Senator Fischer publicly for hanging in there because I know it has to have been extremely difficult the last year. But with her hard work of working with the group of people that she worked with in the past seven months, she's put together a bill that we feel can work. And so I applaud you for that, from our association and then from myself personally. I think patience is a good virtue and I think this is what we needed with this bill. I worked eight years for our districts to buy an irrigation project, the reservoir, the dams and everything through the federal system, testifying before Congress, the House, and the Senate. The Bureau of Reclamations said we were the low-hanging fruit and have patience; it took eight years. But anyways, one year I don't think is that bad to get a bill that I think will work. And I applaud you again and I thank you for the opportunity to testify on behalf of the Nebraska State Irrigation Association and the coalition. And I'm happy to take questions, although I probably don't know very much about the technical stuff that's in the bill. I just know that Senator Fischer's got things under control so I thank you. Any questions? [LB54]

SENATOR LANGEMEIER: Thank you very much. Are there any questions? Senator Carlson. [LB54]

SENATOR CARLSON: Senator Langemeier. Mr. Knutson, what changes do you think would you spell out that the amendments make? [LB54]

TOM KNUTSON: I haven't seen the amendments but I think, could you share the amendments? I think page 13 was one. [LB54]

SENATOR CARLSON: Well, strikes the word significantly on that [LB54]

TOM KNUTSON: Yes, yes. And I think that makes it consistent from what I understand with what we have in the statute now, is that correct? That's probably why we did that. [LB54]

SENATOR CARLSON: So it's, this would be a wrong statement. It's not a significant change, then? (Laughter) [LB54]

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TOM KNUTSON: It's just a change that makes it comply with what the law is now.  
[LB54]

SENATOR CARLSON: Okay. All right. Thank you. [LB54]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much for your testimony. [LB54]

TOM KNUTSON: Thank you. [LB54]

SENATOR LANGEMEIER: (Exhibit 20) Further testimony in support? Seeing none, any testimony in opposition? Seeing none, any testimony in neutral? I do have a letter to submit to the record on behalf of the director, Brian Dunnigan of the Nebraska Department of Resources in a neutral capacity. Seeing no other testifiers, Senator Fischer waives closing and that concludes the hearing on LB54 and thank you to everyone that has participated. We will move on and we will open on LB184 and Senator Louden is here to do that. Welcome, Senator Louden. Go ahead when you're ready. [LB54]

SENATOR LOUDEN: Thank you. Good afternoon, Senator Langemeier and members of the Natural Resources Committee. My name is Senator LeRoy Louden and I represent District 49. The name is L-o-u-d-e-n. Today I bring before you LB184, a bill to authorize the Department of Natural Resources to administer riparian water rights. Currently, there are two kinds of water rights, appropriated water rights and riparian water rights. Appropriated water rights are given by the Department of Natural Resources if there is water in a stream. In April of 1895, the state decreed that appropriated water rights would be used to allocate water available in streams. It decreed that the Department of Natural Resources or its predecessor would make arrangements and determine priorities of rights and use to the public water of the state. Nothing was mentioned who was to make arrangements and determinations for riparian water rights. Under the riparian rights principle, all landowners whose property is adjacent to a body of water have the right to make reasonable use of it. If there's not enough water to satisfy all users, allotments are generally fixed in proportion to frontage of the water source. These rights cannot be sold or transferred other than with the adjoining land and water cannot be transferred out of the watershed. In this instance, LB184 sets out that the riparian rights are to be used to water livestock. The Hat Creek Basin at the present time is the only place in Nebraska where riparian water rights have been awarded. As stated in the bill, the court system must be the one to award riparian rights. This was done in the 1960's in the Hat Creek Basin. At that time nearly 50 years ago, it was agreed to have the Department of Natural Resources administer timing of the flow of the water right. They did so until last summer when an upstream ranch was sold to a person from out of the area. That person declared that the department didn't have the authority to administer riparian rights. The Department of Natural Resources

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agreed that statute does not give them the authority and consequently, riparian water rights holders had to return to the court and secure a court order to restore their rights to receive a streamflow to water livestock. I've introduced LB184 to authorize the Department of Natural Resources to administer riparian water rights when these rights have been awarded by the court system. As stated in the bill, in order to have riparian water rights the court must find that the tract of land in question borders a natural stream, came into private ownership prior to April 4, 1895, and was not separated from the land contiguous to the stream at any time. My understanding is that as the law is written now, it is the duty of the sheriff to administer any court order decree relating to these water rights. I thank you, Senator Langemeier and members of the committee for listening to my testimony. This is an issue that's very important to the people in my district. I ask that you advance this to General File for debate by the entire Legislature and I'm open to any questions that you might have. [LB184]

SENATOR LANGEMEIER: Very good. Are there any questions for Senator Louden? Seeing none, they're letting you off the hook. Thank you very much. [LB184]

SENATOR LOUDEN: Okay. I do have testifiers; thank you. [LB184]

SENATOR LANGEMEIER: You bet. We will move on to support, those wishing to testify in support please come forward. [LB184]

VICKI WASSERBURGER: Good afternoon, Chairman and Senators, I'm glad to be here and thank you for allowing us to speak. I represent my husband and I and several landowners. [LB184]

SENATOR LANGEMEIER: I need you to stop. I need you to say and spell your name, please. [LB184]

VICKI WASSERBURGER: (Exhibit 21) Oh, excuse me, thank you. My name is Vicki Wasserburger, it is spelled V-i-c-k-i last name Wasserburger W-a-s-s-e-r-b-u-r-g-e-r. We traveled 500 miles to get here. We're from about 20 miles from the South Dakota border and 30 miles from the Wyoming border so we live a ways away. We run two ranches, one in Dawes County and one in Sioux County. It is the Sioux County ranch of which we are speaking today. We are here in our behalf and on the behalf of several families in northern Sioux County. Those families are named on the green sheet. They consist of John Geiser, J.W. Geiser, Lloyd Quintard, Jean Quintard, Ray Semroska, and Dan Staudenmaier. I'd like to give you folks a little background on Sioux County, Nebraska. In 1886, Sioux County was organized by proclamation of Nebraska Governor James Dawes. The Hat Creek Valley in northern Sioux County was settled by early pioneers who were mostly recent immigrants from Austria, Germany, and Luxembourg. The years of the 1880s saw most of the valley settled and Hat Creek was the only live water source for the homesteads on the northern end of Sioux County. My husband Jake's

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grandfather, known as Big Jake Wasserburger homesteaded land along Jim Creek and Hat Creek in 1887. Big Jake increased the original homestead to around 3,700 acres. The land has been in our family since that time. Hat Creek provided the only water source for Big Jake's family and his livestock. Cattle had to walk as much as two miles to get to water, and the same with all of the other ranchers up and down the stream, mostly downstream from us. In the early 1960's, Big Jake's son George Wasserburger was forced to initiate a lawsuit against Bill Coffee because Mr. Coffee was using all the water available for irrigation purposes. There was not enough water in Hat Creek to water George's cattle or the other ranchers' cattle downstream from George. George and the other ranchers all drilled a lot of dry holes trying to find water. There is no potable groundwater in the norther Hat Creek Basin. There's a lot of alkali water which cattle and humans cannot consume. Big Jake and later his son George, hauled water for household use until 1968 when the ranchers in the northern Hat Creek Basin banded together and formed the Montrose Pipeline, Incorporated, with 80 percent funding coming from the Great Plains Conservation Program and the remaining 20 percent coming from the ranchers. The pipeline is over 36 miles in length and has a limited water supply, thus limiting the number of livestock using the line. There is no watering of yards or gardens. Only livestock and household use is allowed because of an insufficient supply of water in the wells servicing the pipeline. Montrose Pipeline does not supply water to riparian pastures. There was no need to spend the money to put tanks on pastures bordering the Hat Creek because we could use that for water. Since 1968 the pipeline has seen two supplemental wells go dry and the original two wells decrease in flow. The pipeline is maxed out; it cannot carry any more water. There have been numerous power outages of ten days or more, the pipeline is aging and there are numerous breaks. Water tanks malfunction and drain the pipeline leaving livestock and people without water for up to a week or more depending on the timeliness of the repairs. Our only other source of water for emergencies is Hat Creek. Before the drought of the last several years, there were beaver and numerous other wildlife, deer, antelope, lynx, whatever all along Hat Creek including pheasants and grouse. Since the riparian water is not flowing, the deer and the antelope are moving out of the area or using the Montrose Pipeline water which creates a further burden on the pipeline. The cottonwood trees, willows, and brush that helped stop erosion are dying. And you don't see pheasants or turkeys or any other wildlife along there anymore. The District Court of Sioux County in July of 1964, decreed and the Nebraska Supreme Court upheld the appeal in July of 1966 and 1978 that the Department of Water Resources was to administer the riparian rights on Hat Creek Basin. However, the district court ruling, case number 2296 of April 5, 1978, which the Nebraska Supreme Court upheld, states on page 1, number 5, the appointment of an administrator to directly supervise the enforcement of the injunction is not required at this time, but this finding it without prejudice to the right of the plaintiffs to renew their request for such appointment if defendants persist in violating the injunction, which means that the Department of Resources has not been appointed, they don't have to but we'd sure like them to administer it. The court did not enjoin the Department of Water Resources to administer

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the riparian rights. Counsel agreed to ask the Department of Water Resources to do so. They have been voluntarily administering those rights since the 1970's and we feel they've set a precedent. Due to there not being an appointed administrator of riparian water, a new landowner has challenged the rights of the riparian users which, along with recent droughts has caused many hardships. The new landowner has brought forth enough complaints that the Department of Water Resources now believes they do not have the statutory authority to administer the riparian rights in the Hat Creek Basin. We, therefore, asked Senator Louden to consider drafting a bill to give statutory authority to administer the riparian rights to the Natural Resources Department. LB184 would give the Department of Water Resources the statutory authority to administer the riparian rights in Hat Creek Basin and any other basins where vested riparian rights have been established. Currently, there are several landowners that are unable to use pastures bordering Hat Creek at this time as there is no water available because the appropriators upstreams are not being administered. There has been a total of four bulls lost in the last winter because they tried to drink out of the water out of the creek and the water flow stops because the appropriators are taking the water and the bulls fall in and either drowned or are injured. And at about \$3,000 a bull, that gets a little expensive. We, as well as the other landowners, ask that you send this bill with a clarification of the amount of water needed for riparian users out of committee and onto the Unicameral for speedy passage. A continuous stream of water to the South Dakota border would water all the wildlife and cattle of the riparian users. We sure appreciate you listening to us and I'd be happy to take any questions if you have any. [LB184]

SENATOR LANGEMEIER: Very good. And for the record, to answer you earlier question, we do have a copy of your testimony. [LB184]

VICKI WASSERBURGER: Thank you very much. [LB184]

SENATOR LANGEMEIER: Are there any questions for Ms. Wasserburger? [LB184]

SENATOR HAAR: Yes. [LB184]

SENATOR LANGEMEIER: Senator Haar. [LB184]

SENATOR HAAR: Is it...are you...is there one person in particular who is using more water, or is it a whole group of people upstream from you? [LB184]

VICKI WASSERBURGER: At this point in town, in town...in time, it is one person in particular. There are other irrigators upstream that have used water before, but they were more amicable to everybody working together. [LB184]

SENATOR HAAR: Good, thank you. [LB184]

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SENATOR LANGEMEIER: Any other questions, seeing none. Thank you very much. [LB184]

VICKI WASSERBURGER: Thank you. [LB184]

SENATOR LANGEMEIER: Further testifiers in support of LB184? Mr. Bishop, you're back. Welcome. [LB184]

RON BISHOP: Yes. I'm back. Mr. Chairman, members of the committee, my name is Ron Bishop, spelled R-o-n B-i-s-h-o-p. Manager of the Central Platte Natural Resource District, here testifying on behalf of the Nebraska Association of Resource Districts who just as recent as yesterday took a position in support of this bill. And we would urge passage of the bill. It appeared to be pretty plain to us that this made good sense and just continued what had been the policy of the department in the past and so we would ask your favorable consideration. Thank you. [LB184]

SENATOR LANGEMEIER: Thank you. Are there any questions? Seeing none, you get off easy too. Further testimony in support? Mr. Hansen. [LB184]

JOHN HANSEN: Chairman Langemeier, members of the committee, again for the record my name is John K. Hansen, H-a-n-s-e-n. I'm the president of the Nebraska Farmers Union. The hour is late, the need is obvious. We support this bill and this does and would return the administrative practice to that which most of us who have a background in this area thought was the case and worked fine when the department administered riparian rights before. We would thank Senator Loudon for bringing this bill and encourage the committee to adopt it and report it to the Legislature for consideration. Thank you very much. [LB184]

SENATOR LANGEMEIER: Very good. Any questions? Seeing none, thank you very much for your testimony. Further testimony in support? Seeing none, opposition? Anyone wishing to testify in opposition to LB184? Seeing none, anybody in a neutral capacity wanting to testify in a neutral capacity? Welcome, come on up. We're ready when you are. [LB184]

JEAN ANGELL: Good afternoon Chairman Langemeier and other members of the Natural Resources Committee. My name is Jean Angell, the last name is spelled A-n-g-e-l-l. I'm an attorney from the Department of Natural Resources and I'm here to offer testimony on LB184 in a neutral capacity. Some of this will be a repeat of the water rights. Because of the difficulty to understand the two of them, I will go through my entire testimony again and take any questions. Again, Nebraska recognizes two types of water rights, appropriative rights and riparian rights. And the department and predecessors have administered for appropriations since 1895. We've had the responsibility and the duty to do so. We approved the appropriations, we administer for

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the appropriations and we do so in priority of time. That means, we do so by when did the first appropriator get the right and who is calling for the water. Each appropriation that is given is for a specific amount of water to be used at a specific place and for a specific purpose, and again, they each have a priority. Each year the department opens and closes hundreds of appropriations for seniors who need water. What LB184 would do, would authorize the department to administer riparian rights and those would be only those rights that were validated and recognized by a court order, not water rights granted by the department. Riparian rights are rights that attach to that tract of land that's contiguous to a stream and it had to have been owned privately by April 4, 1895. They aren't obtained by going to the department, getting a permit. They're recognized by courts, but one does not have to go to the court to get them. One does not even need to use a riparian right to have it. One could start today and say, I have this land, it was owned privately by April 4, 1895 and say I want to exercise that riparian right. The riparian rights don't have a priority date, as I said, so riparians share and share alike. They don't get to call out somebody else like appropriators do. Another difference is riparians may not divert water. They can't take water out of the stream except for domestic purposes. Rather, riparians can just use the water for domestic or for watering livestock in the stream bed. But it's important to note that those preferences, those uses have preference over all other uses of surface water. Riparian and appropriative rights are part of very different systems that are presently unconnected. As stated, appropriative rights are statutorily created and administered by the department and riparian rights exist only through common law, or through the courts. LB184 would interject aspects of riparian rights into the prior appropriations system. This bill provides that the department could administer for riparian rights much like the department administers for appropriations but only for those riparian rights validated through a court order. And the only appropriators against whom the riparian could call would be those appropriators who were parties to the lawsuit in which the riparian right was validated as well as any appropriations that were given after the lawsuit. Riparians could not call, however, against an appropriator that was also watering livestock. Again, riparian rights are common law rights recognized by a court but, again, a trip to the courthouse is not required. Riparian rights exist whether they are claimed or used and many riparian landowners could claim riparian rights for the first time today even though they've never been used before. There are 12,811 miles of stream that are eligible for riparian rights and could call the department to close appropriations. What this bill would do would codify what a riparian right is and when a riparian can call the department for water administration. That's my testimony, I'll take any questions. [LB184]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Carlson.  
[LB184]

SENATOR CARLSON: Senator Langemeier. In your material here so I can understand, a riparian right for watering livestock, the livestock would have to be there in the stream.  
[LB184]

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JEAN ANGELL: Correct. [LB184]

SENATOR CARLSON: It cannot be pumped out of the stream into a tank. [LB184]

JEAN ANGELL: That's correct. [LB184]

SENATOR CARLSON: Okay. Thank you. [LB184]

SENATOR LANGEMEIER: Any other questions? Seeing none, thank you very much for your testimony. Very good. Is there any other neutral testimony? Seeing none, Senator Louden you are recognized to close on LB184. [LB184]

SENATOR LOUDEN: Thank you, Chairman Langemeier and members. I guess my close will be more of a statement. I did want to point out that the Wasserburgers drove from in there north of Harrison and I imagine there's plenty of snow they drove through in order to get here today and it is a long way there. The next thing that I want to point out is that this Hat Creek Basin up there is like Ms. Wasserburger testified, there is no water there other than what runs down that creek and that has been that way since...as I always say, since they took it away from the Indians out in our country and that's about what it was. When they were back there in the 1880's why that is close to the area. In fact, that's not too far from where Buffalo Bill was supposed to have shot Dull Knife is right up in that country. So I mean, yeah, that's a part of the country we have and the history we have out there. And this is something that people had gotten along with for several years and you had a newcomer move in there and they decided that they could hold that water or store that water for irrigation. They didn't have to release it because nobody had the authority to make them release it because of their appropriation. So consequently, this is what's brought about and this is all we're asking now, is that the riparian rights be administered by the Department of Natural Resources because it was awarded back in the 1960's when they took it to court. And that's what the bill does now. I think the counsel from Department of Natural Resources mentioned 12,000 miles of rivers that they could be riparian rights on. Well, there isn't going to be 12,000 miles of rivers that people are going to ask for riparian rights because, for instance like the Niobrara River the water's running through there all the time so there's no need to ask for riparian rights because the water is already running through there. It's mostly an isolated issue, mostly in the northwest corner of Nebraska and I would certainly appreciate your consideration for it. And I would thank you for your consideration today. So I will answer any questions if. [LB184]

SENATOR LANGEMEIER: Are there any questions for Senator Louden? Seeing none, thank you very much for your testimony. [LB184]

SENATOR LOUDEN: Okay. Okay, thank you. [LB184]

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SENATOR LANGEMEIER: That closes our hearings on LB184 and it closes our hearings for the day. Thank you. (See also exhibits 23 and 24.) [LB184]

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Disposition of Bills:

LB54 - Placed on General File with amendments.  
LB56 - Placed on General File with amendments.  
LB184 - Placed on General File.  
LB300 - Placed on General File.

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Chairperson

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Committee Clerk