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Natural Resources Committee  
October 07, 2009

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[LR128 LR181]

The Committee on Natural Resources met at 9 a.m. on Wednesday, October 7, 2009, in the Ockinga Seminar Center at the University of Nebraska at Kearney, Kearney, Nebraska, for the purpose of conducting a public hearing on LR128 and LR181.

Senators present: Chris Langemeier, Chairperson; Annette Dubas, Vice Chairperson; Tom Carlson; Deb Fischer; Ken Haar; Beau McCoy; and Ken Schilz. Senators absent: Tanya Cook. [LR128]

SENATOR LANGEMEIER: Oh. I guess I'm told we're not ready. Are we ready? Good morning and welcome, everybody, to Kearney to the University of Nebraska at Kearney campus. I'd like to welcome you here. This is the Natural Resources Committee hearing for LR128 and then LR181. My name is Chris Langemeier; I'm the Chairman of the Natural Resources Committee. I'd like to introduce the people around the table with us today. We have more than just the committee, which we greatly appreciate. Starting to my far right or to your far left, we have Senator Ken Schilz from Ogallala, Nebraska. We have Senator Ken Haar from Malcolm, Nebraska. We have Senator Tom Carlson from Holdrege, Nebraska. And there I am saying "Nebraska" every time. It's a habit; I can't break it. Laurie Lage is the legal counsel for the Natural Resources Committee. We have the Vice Chair of the committee, Senator Annette Dubas from Fullerton. I have Senator Beau McCoy from Elkhorn, Nebraska. We have Senator Mark Christensen from Imperial, Nebraska. We have Senator Dennis Utter from Hastings, Nebraska, and Senator Tom Hansen from North Platte, Nebraska. And it's just going to be in my vocabulary--Nebraska; I like it. Today we are going to start with--well, let me introduce a couple other people. I'd like to introduce...we have some guests out in the crowd. From the Department of Natural Resources, we have Director Brian Dunnigan. He kind of keeps a low profile there. Ron Theis and Susan France with him. We have from the Department of Environmental Equality, we have Director Mike Linder and Carla Felix; I saw them both. From Governor's Policy Research Office, we have Mark Matulka--right there. And then from the U.S. EPA office, we have Sarah Hatch from the Kansas City

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region office. And then we have Steve Chick with USDA, who's up front. We'd like to welcome them to participate with us here today. And yes, I skipped. Clear to my far right, we have Barb Koehlmoos, who is the committee clerk for the Natural Resources Committee. She's been telling me what to do all morning. If you're here to testify, you'll see in the back of the room, you'll see these green sheets. We ask that if you are going to testify that you fill these out. And when you come up, there's a basket right here at the table that you put it in there. It helps us keep a good record and an accurate record of those of you that wish to testify--and have done that. There's also this sheet in the back of the room. If you're here today and you want to be on the record as being here and part of the process but you're not going to testify, you have the option, you can sign in on this sheet--you don't need to do both--but you can sign in on this sheet. That way we know you're here and part of the process but you didn't choose to testify. At this time I would ask that you turn your cell phones off or to vibrate so we don't disrupt the process of those coming forward to testify. With that, we'll get this started. Oh, you'll see at the table a light system. You get five minutes to testify--you get four minutes of green light, one minute of yellow. And just as an idea, how many are here to testify on the bills--one or the other--today? Okay, we're going to have a good crowd. So when the red light comes on, we're going to ask you to stop. Then we'll open you up for questions, and then we'll continue to proceed with that. So you'll see the lights in front of you. So with that, we're going to open the hearing on LR128, and I'll give a brief introduction. We've done a little P.A.; well, hopefully, you can hear the testifiers a little better as they look away from you. How's that? Is that helping? About there? This way at least you can hear the testifiers as we go through this process. Again, my name is Chris Langemeier, C-h-r-i-s; Langemeier is L-a-n-g-e-m-e-i-e-r. I'm from Schuyler, Nebraska; I'm here to open on LR128. I introduced LR128 as being the chairman of this committee for a year and being involved in water issues my entire life in the Legislature. So many people have come to me and said: Chris, we need a state water plan. And as I inquired into what they thought a state water plan was, I could see that it was pretty obvious there were a lot of different definitions out there. So the goal of LR128 in my mind, for this round, was to get people to vocalize what their definition is. And just for

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the crowd here--the senators have heard this--but I sent out an e-mail to everybody on the Water Policy Task Force and asked for their input, and I've gotten a number of individuals that have sent me letters in regards to what their definition of a state water plan is. The key, in my mind, is in as we try and develop a definition, then into the future you can actually develop something of a state water plan. But you've first got to figure out what that...what does a state water plan actually mean? And so we've gotten some great feedback. We want to create something that isn't a policy that's not recognizing of the uniqueness of our state in the particular areas. We don't want something that sits on the shelves in Lincoln and becomes a mandate from Lincoln onto the citizens of Nebraska. I think a statewide plan...and this isn't a policy; this isn't statute; this isn't 962. This is an idea to start to recognize all the uniqueness features of our state, whether it's environmental, irrigation, municipality, and the list goes on and on and on. So with that, I'm going to conclude. I have asked Director Dunnigan to come up and testify. He said he was going to testify, so I asked him to come up after me. And then we'll move on from there. Are there any questions? Seeing none, we'll move on. Welcome; we're ready when you are. [LR128]

BRIAN DUNNIGAN: (Exhibit 1) Thank you. Good morning Chairman Langemeier and committee members. My name is Brian Dunnigan, B-r-i-a-n D-u-n-n-i-g-a-n, and I'm the director of the Department of Natural Resources. I'd like to offer the following statement for your consideration: The department has recently provided Senator Langemeier with background information including a history of water planning in the state, bibliography of past planning studies, and a bibliography of other state planning activities. Under the provisions of Nebraska statute 61-206, the department shall serve as the official agency of the state in connection with water resources development, soil and water conservation, flood prevention, watershed protection, and flood control and shall plan, develop, and promote the implementation of a comprehensive program of resource development, conservation, and utilization for the soil and water resources of this state in cooperation with local, state, federal agencies and organizations. The provisions of statutes 2-1599 through 2-15,106 outline a process for a state water plan and review

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process. The director of the department is to provide guidance and general supervision, assisted by the Game and Parks Commission, the Department of Ag, the Governor's Policy Research Office, the Department of Health and Human Services, the Department of Environmental Quality, the Water Center of the University of Nebraska, and the Conservation and Survey Division of the University of Nebraska. The director may request assistance from any private individual, organization, political subdivision, or agency of the state or federal government. The department produces an annual report and plan of work on the Nebraska state water planning and review process by September 15 each year and submits it to the Governor and the Legislature. That report provides additional detail on the department's planning activities. The committee may wish to refer to its copies of these reports for historical perspective of the state's planning priorities. In the late 1970s and early 1980s there was a major effort undertaken that included all agencies previously mentioned. One result of that effort was the publication of water policy issue studies and recommendations. Several of the recommendations have since been acted on through legislation. Many of the issues discussed remain issues today. Since the end of that effort, the department and other agencies have continued to work together in varying ways on planning activities. The passage of LB962 in 2004 reoriented planning within the department to a large degree. Under the provisions of the Ground Water Management and Protection Act, the department is required to work with local Natural Resources Districts to address surface water-ground water relationship issues in a joint state-local planning framework. The resulting integrated management plans are, of course, specific to water supplies of each river basin and priorities of the local Natural Resources Districts, not statewide plans, and have specific purposes of balancing water uses with supplies and protecting existing users. The department now has an integrated management division to work on the plans and related activities and has made such work a priority. The division currently has a staff of 11 full-time equivalents. The integrated management planning process is extremely important in the context of statewide water planning because it is meant to ensure that overdevelopment of the surface water resources does not occur. In the overappropriated areas in the Platte basin, the IMPs will bring back in line with available

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water supplies. The integrated management plans are also the major method available for the state to use in meeting its obligations under interstate compacts, decrees, and agreements where the impacts of ground water use on stream flow are considered. For example, the IMPs in the Republican basin have been extremely important in maintaining compliance with the Republican River compact. The department has also during the last several years been highly involved in conducting, reviewing, and funding research that will provide better tools for water management while using the best available science to assist in future planning efforts. The department has had a planning division throughout the history of the Natural Resources Commission and the Department of Natural Resources. Currently the Planning and Assistance Division has 6.5 full-time equivalent positions. This division currently is responsible for the statewide stream gaging program, development and coordination of data sets, economic and geologic review of proposed projects that are requesting funding, coordination with other governmental agencies, statewide mapping and geographic information system analysis, and technical assistance to the director and other divisions. In addition, the department's management services division provides the support for the Natural Resources Commission and its duties of allocating available funds for local entities' proposed projects across the state. Provided in your packet is a summary of the current department or Natural Resources Commission funds that are used for projects and planning and research. A separate list is provided that describes currently known possible sources of revenue that can be used for research or planning. We hope this information is useful to you in your study of this issue, and we'll try to provide any additional information you might request for your study. Thank you for the opportunity to appear before you today, and I'd be happy to answer any questions the committee may have. [LR128]

SENATOR LANGEMEIER: Thank you, Director Dunnigan. Are there any questions? Seeing none...oh, Senator Schilz. [LR128]

SENATOR SCHILZ: I guess...thank you, Senator Langemeier. Mr. Dunnigan, thanks for

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being here this morning--another full crowd for the third day in row. As we talk about water planning...when you talk about the water plan--and I know the Legislature gets a copy--can you give us just kind of a thumbnail sketch of what all is included in that as far as when you talk about the planning document itself every year that you submit.

[LR128]

BRIAN DUNNIGAN: Yes. Basically what's included in that document are the activities of the agency that support planning, basically, in all forms. So a major portion of it this year was devoted to the integrated management plans that have been going on across the state. But other pieces of that report would include the data development, the tools that are being developed, the ongoing research activities of the department and its cooperators. And it would give an idea of all the activities that we're involved with.

[LR128]

SENATOR SCHILZ: Right. Right. And then I guess the next question: In this planning process, do you bring...it says here that you have the authority to bring together whoever you need. Does that happen on a regular basis, where you're bringing in different folks and talking about what the future should hold and where we should go?

[LR128]

BRIAN DUNNIGAN: Senator, that hasn't happened in many, many years. It really...probably the end of the 1980s was the last time that that really happened to any great degree. And especially after the passage of LB962, the department really did reorient its planning efforts to focus on integrated management and not so much the statewide planning effort. [LR128]

SENATOR SCHILZ: Right. Sure. Okay. Thank you very much. [LR128]

BRIAN DUNNIGAN: You bet. [LR128]

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SENATOR LANGEMEIER: Senator Carlson. [LR128]

SENATOR CARLSON: Senator Langemeier, thank you. Mr. Dunnigan, in an IMP--and that is determined and voted on by an NRD or several NRDs, and that becomes the plan or the intent is that that becomes a plan--if there's not agreement, would you explain the process that occurs if the department and the NRD or NRDs can't agree on a plan. Explain the process, would you? [LR128]

BRIAN DUNNIGAN: Sure. And that would kind of be the last resort, because I know both entities would work very hard to reach agreement. And in the past we've reached agreement on all of the IMPs. But the process set up in the statute is the, I guess, the formation of the Interrelated Water Review Board. And that board is made up of five individuals--two appointed by the Governor and, if my memory serves me right, three also appointed by the Governor but given...from a list of at least six given to the Governor by the Natural Resources Districts. And that board then would take a look at the plans of each NRD and the department and decide which one to go forward with. [LR128]

SENATOR CARLSON: So those six that are submitted, those are submitted by the NRDs and not by the department. [LR128]

BRIAN DUNNIGAN: That's correct... [LR128]

SENATOR CARLSON: And three of those would be chosen. [LR128]

BRIAN DUNNIGAN: ...at least six, it could be more. [LR128]

SENATOR CARLSON: Okay. [LR128]

BRIAN DUNNIGAN: Yes. [LR128]

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SENATOR CARLSON: But three of those would be chosen, and the other two are appointed by the Governor. [LR128]

BRIAN DUNNIGAN: Yes. [LR128]

SENATOR CARLSON: Okay. Thank you. [LR128]

SENATOR LANGEMEIER: Senator Christensen. [LR128]

SENATOR CHRISTENSEN: Thank you Chairman Loudon (sic). Thank you, Brian. In doing the IMPs, do you go out and determine what the sustainable number of recharge is for each river basin and tributary? [LR128]

BRIAN DUNNIGAN: Not, I think, in the context that you're asking the question, Senator. The sustainability would be something that would be determined through the process. And that would be both determined by the department and the local NRD--but not necessarily a water-in/water-out balance. [LR128]

SENATOR CHRISTENSEN: It...wouldn't that be something important to understand if you're going to understand a rivershed and estate plan or whatever you're doing, wouldn't it be important to know the amount of recharge versus amount going out? [LR128]

BRIAN DUNNIGAN: Well, in the IMP process, we're really looking at the hydrologic connection of surface water and ground water, so that changes that just a little bit. But certainly your point is valid, and that's certainly something that on a planning effort you could certainly do. We're specifically directed under LB962 to look at the hydrologically connected relationship of surface water and ground water. [LR128]



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SENATOR CHRISTENSEN: Thank you. [LR128]

SENATOR LANGEMEIER: Senator Dubas. [LR128]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Mr. Dunnigan, for being here this morning. You stated that your focus since 962 has really been on the IMPs. [LR128]

BRIAN DUNNIGAN: Yes. [LR128]

SENATOR DUBAS: When I think about statewide planning, I'm thinking you're looking at the immediate needs as well as the big picture--the long range. Do you think we can address the long-range concerns, planning through the IMP process? [LR128]

BRIAN DUNNIGAN: It does to some extent, because we're looking at that...those IMPs, and we're looking and monitoring those into the future. So it's not just a shortsighted approach in that IMP process. It would be a longer-term approach, and, in fact, the mechanisms are in there to revisit and monitor those throughout time--recognizing, though, that they are just on a basin-by-basin basis. So, although they might not all be tied together, there is relationships between all of the IMPs in a basin. But it probably doesn't have the great extent of long-range planning that you might be referring to. [LR128]

SENATOR DUBAS: Is there a way that we can tie those IMPs together so we can look at it in a bigger-picture way? [LR128]

BRIAN DUNNIGAN: Oh, I think the framework is probably there. And then probably over the top of that could--similar to what might occur in the overappropriated basins for the basinwide plan might be something to consider. [LR128]

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SENATOR DUBAS: Thank you. [LR128]

SENATOR LANGEMEIER: Senator Schilz. [LR128]

SENATOR SCHILZ: Thank you, Senator Langemeier. Mr. Dunnigan, in your...just a little bit ago, in your earlier statement, you said that you would get sustainability through the process. Can you explain that a little bit? [LR128]

BRIAN DUNNIGAN: Yes. A definition of sustainability. And it might be different from NRD to NRD, and we might be talking about in one particular NRD what sustainability means--it may have some economic considerations. In another NRD it may have compact-compliance implications. In another one it may be a water-balance sustainability. But that's really something that has to be discussed among the stakeholders, the department, and the specific NRDs to define that. And the reason I mention that is because that's one of the things that really, if you're talking about it, you probably have an idea of what you're talking about, and somebody else might not have that same idea. So you really have to define what that is. [LR128]

SENATOR SCHILZ: Right. And the reason I asked is because, you know, throughout the whole negotiations with the Water Policy Task Force, that question of sustainability was always hanging out there, and no one was able to...or no one was able to come to a conclusion on what that definition was, so I was interested... [LR128]

BRIAN DUNNIGAN: Yes. [LR128]

SENATOR SCHILZ: ...in what you had to say. Thank you. [LR128]

SENATOR LANGEMEIER: Any other questions? Seeing none, thank you very much, Director Dunnigan. [LR128]

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BRIAN DUNNIGAN: Thank you very much. [LR128]

SENATOR LANGEMEIER: One more step that I didn't talk about that...many of you that I can see across the crowd have come and testified before the Legislature. And at the Legislature we testify in an order; here we do not. We don't take proponents, opponents, and neutral testimony; we just take testimony. So feel free to come on up and get ready, and those that are willing to testify, come on up. Come on up, Mr. Bishop. They're not running enough to knock you down to get there. Welcome. [LR128]

RON BISHOP: Thank you, Senator, and welcome to the central part of the state, all of you. My name is Ron Bishop, spelled B-i-s-h-o-p, and I'm here today to visit a little bit about state water planning, because it's not a new topic for us. With me here, somewhere, is Tom Knutson, who is the general manager of the Farwell Irrigation Project up in Farwell. In August of 2008, ground water and surface water interests began meeting across the state to develop solutions to Nebraska water problems rather than continuing to oppose each other at legislative hearings. And we've been before you in opposite positions a number of times. Leaders from both groups have met as a coalition on a regular basis since back in August of '08, attempting to work on solutions to the issues that face all of us in the water planning business. Our goal, once we have solutions, is to come back to the Legislature and the Governor with ideas that will provide a springboard for wise water resource planning in the state. And I think Dan Smith appeared before the committee about a year ago at one of the hearings. In regard to solutions, our past difference on the subject of qualifications for the director of Natural Resources has been discussed at length, and we've appeared in opposite positions before the committee discussing the qualifications of the director of Natural Resources. We recognize that an engineer is needed to make those difficult technical decisions that are needed in regard to surface water rights and needs. However, the group also recognizes the state is, we think, lacking in regard to long-term needs for water planning in the state. In that regard, the group wishes to inform you that we as a group do recognize the importance of that endeavor and have agreed to make known to

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the Governor that we think a director needs to be appointed to manage water planning in the state. We recognize it means dollars but also recognize that not having comprehensive water planning has cost the state dollars as well. Today we have a Natural Resources Commission of 16 people. Three are appointed by the Governor, and the rest are appointed by the Natural Resources Districts. Decisions for funding from the Natural Resources Development Fund for projects are made by that commission. Funds from the Legislature to this fund are normally in the \$4 million range. It would be best to fund the Natural Resources Development Fund with more dollars, but in that process we feel we need interaction from legislators from the Appropriations Committee and this committee with the commission to allow a better understanding of the funding needs for the state. Therefore we recommend that three legislators be involved with the commission in that process. All of this may sound nice and easy except for the big issue of funding. Where do dollars come from? We're working on that issue, and we've made progress, but we need more time to come up with solutions. While we share a concern in that regard, we also know that local entities suing other local entities and the state being sued by other states is not a cheap answer. Having said that, the Water Policy Task Force had a committee that worked tirelessly on the matter of funding, but we did not resolve that issue and develop a final method to accomplish the goal. We're working with some of those committee members now, and we know it will take a concerted effort on a statewide basis to find a balance to assist the state in its funding needs. Our message to you is that we want to continue our effort as a coalition, and we want to come back to this committee and the Governor with what we feel will be an acceptable solution to the funding issue. This in turn will allow us to meet the goal of a comprehensive state water planning process. I want to thank you, Mr. Chairman and members of the committee. We'd be more than happy to try to answer some questions. And as a outline of a work product that we have been working on, I do have an outline of what we think a water planning agency should look like and what the responsibilities would be. And at this point, we would recommend that we take the planning section and make it a separate section from the water administration, the water department. And so we do have a work product here that is a draft of what we

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would propose that looking like. And I also have brought along a copy of a application that we submitted some time ago--a lot of the water interests across the state submitted to the Nebraska Environmental Trust for a grant to start a planning process. And in that it outlines a process for developing a state water plan that covers the projects and some of the programs and activities that we think should be an important part of the state water plan. So I'd like to leave you with copies of that. It may be seed for thought for you as you go through the process. And with that, I'll stop, and we'll try to answer any questions if there are any. [LR128]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Bishop? Senator Dubas. [LR128]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Mr. Bishop. I know you stated this at the beginning of your testimony, but just how many of you get together? And do you get together on a regular basis, or is this a little less-formal meetings? [LR128]

RON BISHOP: It's a little less formal, but we try to get together regularly, approximately once a month. The group is composed of four individuals from surface water projects. Specifically, it's Tom Knutson with Farwell; it's Don Kraus from Central Nebraska Public Power, Brian Barels with NPPD, and Dennis Strauch from out west in the Panhandle. And then representing Natural Resources Districts, there's myself, Butch Koehlmoos from up at Ord, Dan Smith from down in the Republican, and Kent Miller from the Tri-Basin NRD. And just recently we have added to the group, trying to get some input from the east, a couple of the NRD managers from the east: John Miyoshi out of Wahoo and Glenn Johnson out of Lincoln. So that's the group that has been meeting, and we hope to continue to meet in order to give some input and some suggestions to the committee. [LR128]

SENATOR DUBAS: Great. I applaud your efforts. [LR128]

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RON BISHOP: Thank you. [LR128]

SENATOR LANGEMEIER: Senator Hansen, do you have a question? [LR128]

SENATOR HANSEN: Yes. Thank you, Chairman Langemeier. Ron, it's good to have you here this morning. [LR128]

RON BISHOP: Thank you. [LR128]

SENATOR HANSEN: As of October 1, I can give you 93 million reasons why we can't form another part of the bureaucracy that we're already...that we have in Lincoln. So we're going to ask you again to do more with less, and, hopefully, you can get together from the incomes of the various NRDs and the public power entities and come up with a plan. I would say this is not a good year to come to the Appropriations Committee and say: We need money for another planning agency. I understand the reason for it, but I just want to know if you can do more with less. [LR128]

RON BISHOP: We need to do the best job that we can with what is available, Senator. We think state water planning is important enough that without doing a good job of it it's going to end up costing us money. And we think that there's some staff with the current Department of Natural Resources that would blend right in there. And so it's not like we're suggesting starting a whole new department with a whole new staff. It would be splitting out part of the current Department of Natural Resources--that planning part and some of the other items--and having a separate responsibility and a separate section. [LR128]

SENATOR HANSEN: Changing the priorities, in other words. [LR128]

RON BISHOP: Yes. [LR128]

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SENATOR HANSEN: And I think we're going to have to do that in all state agencies--change the priorities--because there's not going to be money there for a couple of years at the minimum, so I appreciate that. [LR128]

RON BISHOP: Let me tell you, one of the problems that we run into in the state with a director that is in charge not only of the management and administration of surface water rights, but also there's a need for a proponent for water projects and a cosponsor on some of those water projects to solve our water problems. It's very difficult for an individual to sit there as an impartial judge in deciding whether or not to issue a water right for a project or to administer that water right when on the other side he's a proponent of that project because it solves some of the state's problems. And so we see that as a conflict, if you will, in wearing two hats on one individual. And so we think coordination would be very important. But we think it would serve Nebraska better if it was two different functions carried out by two different individuals. And we recognize there would be some money, some additional money. We can't just split the department and take care of it, because there's more needs to be done, and so there would be some additional funding required. But we also recognize the situation that Nebraska is in. [LR128]

SENATOR HANSEN: Thank you. [LR128]

SENATOR LANGEMEIER: Senator Carlson. [LR128]

SENATOR CARLSON: Thank you, Senator Langemeier. Mr. Bishop, the idea of a director at the state level certainly would be important in bringing various groups together with various interests and concerns and trying to move forward with a plan that would be somehow acceptable to everyone. In surface and ground water--and this would be your opinion--in your opinion, what are the things that ground water and surface water interests are rather easily agreed upon, and what are those things that

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are difficult to find agreement, common ground? [LR128]

RON BISHOP: Well, there's a number of things. You always hear, and you always read in the paper about some of the things that we don't agree on. And they seem to catch the headlines and catch the interest of the news media. But, quite honestly, there's an awful lot of things that both surface water and ground water interests agree on. We both recognize that irrigation and irrigated agriculture and water is the lifeblood of the state of Nebraska, especially west of Lincoln in Nebraska, and we recognize that it's very important. And there are many, many examples where surface water projects provide ground water recharge that is important to the ground water irrigators. A good example is just west of us here, in Dawson County. Within our Natural Resources District we have seven irrigation districts. And those irrigation districts bring water out of the Platte River into the area and provide not only irrigation water for about half the acres that are irrigated out there, they also provide ground water recharge that helps us on groundwater supply for those that rely on ground water for irrigation. But it also is a great benefit to us for ground water quality. Where we've got surface water coming in and recharging every year, we don't have the ground water nitrate problems that we do in the area outside of where those surface water projects are being carried out, even though they're raising the same crops and applying nitrogen to the same types of soils. It does make a difference in that it maintains a steady water table elevation and doesn't allow pockets of ground water declines to develop that tends to concentrate those nitrates. As they do get--and they do get in the ground water--as...they move, tend to move on, though, if that ground water level is maintained, and so it makes quite a difference. So it's a tremendous benefit to us in the area. And we and NPPD and the local surface water irrigators all agree on the importance of that to each other. And the irrigators in Dawson County recognize the importance of having both--a good ground water supply but being maintained by surface water projects. [LR128]

SENATOR CARLSON: Hey, that's good information; that's understandable. Now, what, in your opinion, is your main difference? [LR128]



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RON BISHOP: Our main...well, where problems have developed is, when the laws were set up in the state of Nebraska, surface water was governed under "first in time is first in right," and ground water has always been "relative rights." And now that we're trying to address the interrelationship between the two, you know, one group would like to see the other group change to their system. And that doesn't necessarily work, because we're too far along. Had we started back in 1880 setting up the same system for both ground water and surface water, it would have been a different issue. But we're past that point now; we can't go back. And so we just have to work out our differences and try to resolve the issue. And we'll get there; we'll get there. I think this group that I was talking about--Tom here started that group, and he reached out to some of the NRDs and some of the ground water folks, and I think we'll see more and more of that as time goes on. [LR128]

SENATOR HANSEN: Okay. Thank you. [LR128]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much, Mr. Bishop. [LR128]

RON BISHOP: Thank you. I do have some things to leave for the committee. [LR128]

SENATOR LANGEMEIER: If you'll leave them with Barb, we appreciate it. [LR128]

RON BISHOP: Great. Thank you. [LR128]

SENATOR LANGEMEIER: Come on up. For those of you standing, there are some seats over in this area towards the front. There's one up front here. Mr. Thieman, welcome. [LR128]

TED THIEMAN: Thank you. [LR128]

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SENATOR LANGEMEIER: If you lean forward, I think they'll be able to hear you.  
[LR128]

TED THIEMAN: Good morning. My name is Ted Thieman. I'm the president of the Nebraska Environmental Action Coalition. The spelling of my name is Ted, T-e-d, Thieman, T-h-i-e-m-a-n. My address is 405 East Leona Avenue, Petersburg, Nebraska. I'm here testifying with...I'm reading testimony which is a product of the Nebraska Environmental Action Coalition--a draft, and this has been approved by the board of directors of the Nebraska Environmental Action Coalition. I see my green light is on already. This may take slightly over five minutes. If it does, I do have a person here to read the rest of it; or if you want to indulge me, I'll just continue the reading. (Laughter)  
[LR128]

SENATOR LANGEMEIER: I'll see how it goes. [LR128]

TED THIEMAN: Okay. Okay. That's fine. Senators and members of the Natural Resources Committee, I thank you for this opportunity to testify in regard to the governance and management of Nebraska's publicly owned surface and ground water resource. If I may, I'd appreciate your placing this testimony into both records for the hearings of today, of the LB128 (sic) and LR181. Governor Heineman and his staff are really...are to be commended for recognizing that intervention and immediate action are necessary relative to water issues in NRDs associated with the Republican River. From the 1972 outset, placing authority for ground water management in the hands of regional Natural Resources Districts may have been a mistake. Thirty years later, in 2002, the Governor's Water Policy Task Force finally, although reluctantly, admitted to the conjunctive relationship between surface waters and the once abundant ground waters of native aquifers. Far before that time, the local NRD concept was probably obsolete in design and purpose. Whether it's a river or stream or pond, natural sandhill lake, reservoir, or underground aquifer, really Nebraska's waters are one. The Nebraska

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Environmental Action Coalition believes there never was a legitimate reason to divide management responsibility for the resource between Nebraska's Department of Natural Resources and 23 regional Natural Resources Districts across the state. Republican River NRD boards of directors past and present have placed all Nebraskans in legal and financial jeopardy through manipulative, self-indulgent, self-serving single-interest management of their ground water resource--or I should maybe properly say our ground water resource. Nebraskans may owe them thanks, however, for waking us up to the many inequities and dangers inherent in Nebraska's NRD water management systems. We have learned that questionable management techniques and board decisions too often favor a select few, usually irrigators, with little regard for any other interests within the district who may have equally legitimate claims on local water resources. Problems of water quantity and quality experienced by the cities of Sidney and McCook are just two examples of inequity defining a flawed water management system. Many if not most NRD board seats in the western three-fourths of the 23 districts are held by irrigators and/or others with vested financial interests in agricultural irrigation. It is to be expected, then, that decisions, policies, and procedures proposed and adopted will most frequently favor that single-interest select group. Too often others equally dependent on water for business, commercial, recreational, and other interests receive little consideration. Legal agreements, pacts, and contracts with water users outside the district are dealt with as a mere inconvenience, disregarded, ignored, or met with tongue-in-cheek proposals having little or no relationship to the problem. Drought cycles, water conservation tillage, vegetation, and so forth may all result in water consumption or savings. Some NRDs are currently engaged in costly projects to eradicate nearly all trees near streambeds. Regardless of accusations and their efforts to shift the blame, the overwhelming reason for depletion of aquifers and diminished flow in conjunctive streams is the ill-advised overappropriation decisions by NRDs' board of directors. Another flaw in the NRD system is that a small group of board members elected locally, in effect, has authority to obligate the entire state legally and financially. We have learned the hard way that the entire state is responsible for NRD board decisions involving policies and practices in violation of established law. If all

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Nebraskans are to be held accountable for NRD water policy decisions, all Nebraskans should be entitled the right to choose those delegates that are so entrusted. Such is not the case when NRD boards are elected locally. In an era of unpredictable, possibly radical, climate change, it seems reasonable that Nebraska's farm interests adopt measures to ensure that agricultural production is maintained and capable of meeting whatever unforeseen needs may arise. The standard of true sustainability must be of prime concern. It's puzzling, therefore, to note that all 23 Nebraska NRDs endorse the 10/50 and the 28/40 formulas of determining fully appropriated and overappropriated status within their respective districts. The overappropriated designation of 28/40 is reached when a conjunctive stream is subject to a stream-flow depletion of 28 percent over a period of 40 years due to adjacent ground water extraction. Under the formula, an area is considered fully appropriated when adjacent stream flow is diminished by no more than 10 percent over a 50-year period. Working under this formula, NRDs are making the determination that it is acceptable for an in-stream flow to be reduced to zero within a 500-year period. But more alarming is the 28/40 designation. The NRDs suggest that corrective steps be taken when in-stream flows are subject to 28 percent depletion in a 40-year period. Under 28/40, a flowing river could be reduced to a bed of sand within 150 years. Such a formula denies any concern for a sustainable system of rivers, streams, and surface waters in any part of the state. This is sustainable? I ask. Or is this acceptable? It's encouraging that only one major step is necessary to correct Nebraska's water management dilemma. We must finally admit to the foolishness of allowing the fox to guard the henhouse. NRD governance must be changed significantly so the entire state is not subject to a system whereby self-interests can jeopardize the viability of our precious and finite publicly owned water resources. Is there a solution? Well, we believe that most of the 23 NRD offices presently employ well-trained, competent staff. Under authority given the Nebraska Department of Natural Resources, each district office could continue in the capacity of water management within the district while all 23 offices would coordinate data in a cooperative, rather than a competitive, atmosphere. All districts would then be free to work toward reasonable methods of fair, equitable, and sustainable water distribution throughout the entire state

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and in the best interest of all Nebraskans. Thank you. [LR128]

SENATOR LANGEMEIER: Very good. And we...as your testimony stated, we'll put that in the record for LR128 and LR181. [LR128]

TED THIEMAN: Thank you, Senator. [LR128]

SENATOR LANGEMEIER: Okay. Are there any questions for Mr. Thieman? Senator Christensen. [LR128]

SENATOR CHRISTENSEN: Thank you, Chairman. Do you live in a district where NRDs elect people? [LR128]

TED THIEMAN: Of course. I think we all...Lower Loup...yes, we...I do. [LR128]

SENATOR CHRISTENSEN: Have you run for that office? [LR128]

TED THIEMAN: No. [LR128]

SENATOR CHRISTENSEN: I guess I struggle a little bit when people pick on local control and yet aren't willing to run for the office. Why don't you run for that office? [LR128]

TED THIEMAN: Well, I...that's interesting. I didn't run for the office because I made a mistake in not knowing that being an incumbent of a public power district, I had to file early. I thought I would have to be an incumbent of the NRD. So when I showed up to do the filing, they told me I couldn't do it, I was too late. [LR128]

SENATOR CHRISTENSEN: Well, you know, I've been... [LR128]

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TED THIEMAN: So I am willing, but if you can get past that for me, I'll be glad to serve.  
[LR128]

SENATOR CHRISTENSEN: But, you know, I guess what I'm looking at is a...I think people need to take control of their own destiny, you know. I've heard people say their NRDs are self-serving, but there's a lot of people that live in areas of that NRD that could run for that office. It's not closed to irrigators; it's not closed to anybody. Anybody can file that's in that NRD district, so maybe you need to recruit people to run if you don't feel like it's representing your view. Or run yourself, because I'm a strong proponent of local control, because other than our national defense, I don't think there's anything government can run better than local people. So that's my opinion. Thank you.  
[LR128]

TED THIEMAN: Well, thank you. I might respond. Local control is fine as long as it is involved with the local issues. But in this case, the issues tend to spread across the state. So, you know, that is not necessarily always the best way to be represented.  
[LR128]

SENATOR LANGEMEIER: Senator Schilz. [LR128]

SENATOR SCHILZ: Thank you, Senator Langemeier. Mr. Thieman, thank you for coming in this morning. Do you, in your opinion, do you have a definition for sustainability? [LR128]

TED THIEMAN: Well, there's always the long-term versus short-term issues, I agree. But sustainability, you know, in water at least ought to be something that would be consistent with the recharge. Although even then the water running out of the state is our responsibility to keep running out of the state, because, you know, we're fighting with Kansas because we don't let enough water run into Kansas. At the same time, we're fighting with Colorado and Wyoming because they aren't letting enough water run

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into Nebraska. [LR128]

SENATOR SCHILZ: Right. [LR128]

TED THIEMAN: So, so, you know, sustainability is something to me that can last, you know, for generations to come and it isn't obviously depleting a resource that's going to jeopardize or threaten the future generations. [LR128]

SENATOR SCHILZ: Sure. Do you think there are ways to get to sustainability by working with folks and working with the NRDs rather than purely regulatory and shutting people off? [LR128]

TED THIEMAN: Well, if you allow local--too much local control, probably no. [LR128]

SENATOR SCHILZ: Okay. Do you think the state could better handle that on a...from east to west, north to south? [LR128]

TED THIEMAN: The state is not going to keep everybody happy. But if the state looks at it from a statewide perspective... [LR128]

SENATOR SCHILZ: Obviously, sir, the NRDs haven't kept everybody happy either. [LR128]

TED THIEMAN: Right. That's correct. [LR128]

SENATOR SCHILZ: Okay. [LR128]

TED THIEMAN: But I'm not trying to imply... [LR128]

SENATOR SCHILZ: That's okay. [LR128]

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TED THIEMAN: ...that it would make everybody happy. [LR128]

SENATOR SCHILZ: Right. [LR128]

TED THIEMAN: But I am saying that they should, properly directed, they should be able to look at the issue on at least a statewide basis and then a regional basis. [LR128]

SENATOR SCHILZ: Okay. And then do you believe, too, that there are different areas in the state that have different issues and need to look at things on a little different level than other areas? [LR128]

TED THIEMAN: I certainly do; they have different issues--although we do believe that the waters of Nebraska are one. [LR128]

SENATOR SCHILZ: Sure. Well, they may be one, but they all react differently to different situations. [LR128]

TED THIEMAN: If they're one, they react interconnectedly. [LR128]

SENATOR SCHILZ: Right. And so in a place where you get 12 inches of rain, the water and the geology is different than a place where you get 30 inches of rain? Do you think that that can all be taken care of with one big-box solution? [LR128]

TED THIEMAN: Probably not. But there's no water we can't irrigate. And if...it has to be managed in a holistic fashion. [LR128]

SENATOR SCHILZ: I do not disagree that there has to be water to irrigate. That's for sure. And I hope that you agree, too, that shutting people off is not necessarily the best course to take to coming into sustainability. [LR128]



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TED THIEMAN: I believe sustainability requires doing what must be done. [LR128]

SENATOR SCHILZ: Right. And so if you could find ways to find excess water in times and find some way to store that water in the aquifer and then use that for irrigation later on, would that be another tool that could be used to come to sustainability? [LR128]

TED THIEMAN: Possibly, but probably not, because it's all interconnected. [LR128]

SENATOR SCHILZ: Okay. So it's not... [LR128]

TED THIEMAN: You're just taking from one place and...you're going to rob Peter to pay Paul. [LR128]

SENATOR SCHILZ: There's no timing issues that are going on there to where it really doesn't...to where you can take off some of those tops? [LR128]

TED THIEMAN: Hold it back--according to how you recharge the underground, I'm going to affect the surface. [LR128]

SENATOR SCHILZ: Okay. In all instances? [LR128]

TED THIEMAN: Well, generally speaking. No, not in all instances. [LR128]

SENATOR SCHILZ: But not in all instances. Okay. Thank you very much. [LR128]

TED THIEMAN: There are very few absolutes in this world. [LR128]

SENATOR SCHILZ: Okay. I appreciate that. Thank you. [LR128]

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SENATOR LANGEMEIER: Senator Carlson. [LR128]

SENATOR CARLSON: Thank you, Senator Langemeier. Mr. Thieman, in your statement here: Republican River NRD boards of directors past and present have placed all Nebraskans in legal and financial jeopardy through manipulative, self-indulgent, self-serving single-interest management of their area ground water resource. Would you expand on that a little bit? [LR128]

TED THIEMAN: Well, it's probably self-evident that there's a certain amount of self-serving going on when it comes to irrigation in the Republican River valley--and the fact that wells were drilled near the river that affected the flow of the river. I mean, I guess that's pretty well established. I'm not a geologist or an expert in that. What I know is what I read. But decisions were made along the way that were self-serving that caused the problem to turn out to be a state problem. [LR128]

SENATOR CARLSON: Do you believe the concept that punishment should fit the crime? [LR128]

TED THIEMAN: In general terms? Well, there ought to be some relationship, yes. [LR128]

SENATOR CARLSON: Should there be a crime before there's punishment? [LR128]

TED THIEMAN: Well, I don't know...I don't want to answer...I guess I'm trying to anticipate where you're leading me. But I don't know that I was punishing anybody for any crime. We're trying to fix this going forward. [LR128]

SENATOR CARLSON: Well, if somebody commits a crime, there should be just punishment. I think we both probably agree on that. [LR128]

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TED THIEMAN: Yeah, we'd first have to agree there was a crime. [LR128]

SENATOR CARLSON: Your wording is in such a way that I think you're indicating that the Republican River NRD boards are criminals because they placed everybody in legal and financial jeopardy. Now, I'm putting words in your mouth, but has there been a crime committed in the Republican basin? [LR128]

TED THIEMAN: I am not qualified to call anything a crime, in that regard. [LR128]

SENATOR CARLSON: Do you think that any of these wells were drilled in such a way that the law was broken? [LR128]

TED THIEMAN: No, I certainly don't. [LR128]

SENATOR CARLSON: Okay. We're in agreement on that. [LR128]

TED THIEMAN: That's correct. [LR128]

SENATOR CARLSON: You made the statement that in order to reach sustainability, you have to do what must be done. Do you think that it's okay for somebody in a centralized position--because really you're leaning toward taking away local decision making and putting it at a level so that doing what must be done can be done, and that means a decision made by somebody that's in a position above any local interests. So if something must be done, do you think it is okay to shut the door on somebody's business with no compensation if they haven't committed a crime? [LR128]

TED THIEMAN: That certainly isn't...you haven't given me anywhere near enough information to make a judgment like that. [LR128]

SENATOR CARLSON: Well, wouldn't you say that shutting off a well and not allowing

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somebody to irrigate is punishment and is a severe decision? [LR128]

TED THIEMAN: I would say someone making a decision that there isn't enough water to go around, which would result in shutting off a well, is an okay thing to do. [LR128]

SENATOR CARLSON: So it's okay to shut that off with no compensation. [LR128]

TED THIEMAN: Of course, I don't see water rights as being a right to water per se. It's a right to pump water--just to pump and distribute water. But if the water isn't there, that right doesn't exist, doesn't extend to the right of...to water itself. [LR128]

SENATOR CARLSON: And somebody has to make the decision that the water isn't there. And if they can turn on the pump and there's water, apparently there's water there. So all I'm getting at is that these decision that are severe in terms of taking the rights away from people to earn a living and removing their lifeblood I think we'll both agree is a serious decision. [LR128]

TED THIEMAN: It would be a serious decision; I agree. [LR128]

SENATOR CARLSON: And I think that we've got to be very, very careful about how we make those decisions. You do state here that we believe most of the 23 offices presently employ well-trained, competent staff. I would agree with you. And...but I think our system that we allow elections and we allow people to run for offices and we allow them to be elected to be in a position to make decisions, we better be very careful about coming to a conclusion: Well, that really doesn't work anymore, so let's put this decision making in the hands of a single individual or very few people, and let's do away with the democratic process. And I don't agree with that at all. I appreciate your honesty and your testimony, and certainly one of the things that's so important about our system of having hearings and having people come to testify is that we don't have to agree, and we probably won't agree. You have every right to express your opinion, and I'm taking

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my right to respond to your opinion. Thank you. [LR128]

TED THIEMAN: Thank you. It all relates back to holistic thinking, doesn't it, and long-term? [LR128]

SENATOR LANGEMEIER: Senator Christensen. [LR128]

SENATOR CHRISTENSEN: Thank you. Your statement here: Some NRDs are currently engaged in costly projects to eradicate trees--all trees near streambeds. I'd saved that for Senator Carlson; he passed on it. You know, we have seen where we're moving trees--and I don't care if we're in the Platte, Republican, Nine-Mile--we're putting water back in that stream strictly by removing trees that are in the bed, that we don't want, thinning them out along the riverbanks. We have found increased amount of wildlife; we've found increased grass. I haven't found any negatives to it. Would you explain why you think that's so bad to eradicate trees. And I don't even know anywhere we've taken all trees, unless it was in the streambed. So could you explain that statement right there--top of the second page, third line down. [LR128]

TED THIEMAN: Yes. I don't believe the statement meant that it was all that bad to, you know, control trees. It was just a statement that it's a costly project that is related to overconsumption in other areas of the whole system, namely, irrigation. [LR128]

SENATOR CHRISTENSEN: Okay. I guess I...my opinion is, in going out and looking at riversheds, and I'm going to pick on myself. I used to go out and disc the ditches shut, so my dad could drill wheat. And we had a gully 4 or 5 foot deep, 4 or 5 foot wide running down through a pasture to a dam. In 1983 we went to spraying the stubble and leaving it there, plant the second crop. In '95 we went to wheat, corn, wheat, corn; we never worked the ground. We have not touched that ditch in that pasture. We can drive out in that pasture; we can drive through anywhere where that ditch was. We never have to work that ditch shut to drill wheat. We just go drilling. I have taken my wheat

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yields from the 30s to the 60s. I'm producing a corn crop in the 80s, and a year like this could be in the 140s. And I did that by holding the water on the land and utilizing the water instead of it running off. And I get a little upset when people think irrigators have stolen all the water. I'm a drylander; I'll guarantee you I've stolen a lot of water out of that stream. I've got a pasture that is 300 acres I have nine dams in. I've stolen a lot of water out of that stream. All I'm telling you is there's a lot of things stealing water from that stream, not just the wells the NRDs manage. NRDs are responsible to get water back into that stream, because I have kept the water on my land and utilized it and because I let trees grow up along the river. And they...I call them an irrigation well; I call them trees water pumps. You can look out there how big that canopy of that tree is, coming out of the 3-4 foot area. You took that tree out, the area of consumptive use going out of there, would go back to 3-4 foot, instead of how many square feet is in the canopy of that tree out there. 100? 200? And I encouraged people yesterday in the hearing: Go back and look to the Bureau of Reclamation Web site when these dams were put in and see how many trees were there. We used to have prairie fires that cleaned up things. We used to have animals running all over. This is a very complex problem. Are wells part of the problem? You bet. Are trees that's growing and been added? Out here trees are beautiful. But it's like I said yesterday: If there's a corn plant in my beanfield, it's a weed. If there's a tree in my riverbed, it's a weed. And I think you've got to look at everything. And that's why this is not an easy solution. That's why it's hard to get the surface and ground water people together. And I have almost as much surface as ground water myself. I'm just torn. There's times I get reduced surface supplies. I'm torn. But I know it's just not a single-focus problem. And that's why there's not been a decision made in the three years I've been in the Legislature on how to solve this. And I think that's why there's not been an easy plan--is there's a lot of things here. And NRD members can't...boards can't control everything. And if we put it up to a single water czar, you're going to have the problem it's easy to shut off irrigation. We had a proposal here not very long ago that we were just going to shut off the quick-response and surface guys to meet compliance. To me, that's not an option. I will have to fight that. You know, it's a very difficult situation. I hope you'll think about what I'm saying. I'm

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not saying wells haven't caused problems. But I know terraces have caused problems; I know no-till has caused problems; I know the way I farm has reduced water running; and I know my dams cause problems, you know. I'll point the finger at myself. There's a reason, and I am a reason why water don't flow in the Republican like it used to. You know, I'm just picking on myself, but there is a lot of factors here, and I'd just like to spread the blame a little bit. Thank you. [LR128]

SENATOR LANGEMEIER: Senator Dubas has a question. [LR128]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Ted, for being here this morning. I would just like you to clarify--in the last paragraph you talk about the NRDs: They have good staff, people who really have understanding and knowledge. So are you...is your thought that we really do need to keep those offices and those staff employees, we just don't need the elected boards in place--that we would use these offices kind of as oversight or management of the local issues? I guess I'd just like a little more clarification on what you would see the NRDs' role. [LR128]

TED THIEMAN: Well, essentially, the NRD boards create local policy. The NRD staff are data-gathering experts, and they do a really good job at that. But it all relates back to the--really the crux of the matter for us is the fact that locally elected boards serve local issues, when we're talking about one statewide resource that's all interconnected. So that's why in this case--and I'm all for local control; don't get me wrong; I don't believe the group I represent has any qualms at all about saying they think local control in Nebraska, the way it runs, is good. But there are always those outliers where it doesn't necessarily work that well. You can't have one player who has the opportunity to upset the apple cart for all the other 22 and just leave that go. You somehow need, you know--for, as bad as it sounds--some kind of centralized decision-making, policy-setting force. When Omaha and Lincoln wake up to what's going on, we probably will have some change. I mean, you know, we contaminate and use up their water too. In Nebraska, fortunately, water is a public resource. We tend to lose track of that. We tend

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to think the ground, the water under our feet is ours. It is Nebraska's. [LR128]

SENATOR DUBAS: Thank you. [LR128]

SENATOR LANGEMEIER: Seeing no other questions, I could ask a jillion, but we have a lot of people who want to testify... [LR128]

TED THIEMAN: All right. [LR128]

SENATOR LANGEMEIER: ...so we will keep rolling. So thank you very much for your testimony. We appreciate it. [LR128]

TED THIEMAN: Okay. [LR128]

SENATOR LANGEMEIER: Thank you. [LR128]

TED THIEMAN: Thank you. [LR128]

SENATOR LANGEMEIER: Further testifiers. Are we done already? Come on up, or I'll quit and we'll move on to the next one. And we are, hopefully, still on LR128. We kind of jumped to 181 there, but we need to be on LR128. Welcome. [LR128]

GARY WESTPHAL: Senator Langemeier and members of the committee, my name is Gary Westphal, G-a-r-y W-e-s-t-p-h-a-l. I'm the president of the Nebraska Water Resources Association. It's made up of a very diverse group of folks around the state of Nebraska, all very interested in water. No doubt that agriculture is the key to the success of Nebraska, and water is the key to that success. And so we feel it's really important to be engaged deeply in shaping a water plan that's good for the whole state. NWRA, again, is made up of municipalities, recreation, environmental, power, ag, surface water and ground water folks. We'd like to be deeply involved in helping solve



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this issue. We recommend that we consider using very good science--and the university has a long history of providing data, information about water, the relationship between ground water and surface water--and feel very strongly that the university should be deeply involved in helping solve this issue. Like the testimony previous to me, Mr. Bishop mentioned splitting, and we also feel that you should give consideration to splitting what is now the DNR, having a state water planning and advocacy group and then the separate one that deals with administration and regulatory. I respect what I heard my friend Senator Hansen say about maybe adding cost to it, and that is an issue. A lot of us in the state feel that funding a state water plan will cost more than what...how it's been funded recently. And we think not only funding it but an ongoing funding of...may cost--and I'm making a W-A-G, but it could be \$1 million a year to fund something that is so enormous. And because the state water hydrology is different throughout Nebraska, it's just a very complex issue. So I just wanted to support the direction you folks are going. We like to be involved and be helpful and would answer any questions you have. [LR128]

SENATOR LANGEMEIER: Thank you, Mr. Westphal. Are there any questions? No questions. Thank you very much. [LR128]

GARY WESTPHAL: Thank you very much. [LR128]

SENATOR LANGEMEIER: You did a great job. Further testimony on LR128. Welcome. [LR128]

JOHN MIYOSHI: (Exhibit 6) Thank you. Senator Langemeier and members of the Natural Resources Committee, my name is John Miyoshi, J-o-h-n M-i-y-o-s-h-i. I'm the general manager of the Lower Platte North Natural Resources District, located in Wahoo. And today my testimony is in support of a state water plan. In recent years Nebraska has caught up with or even passed some of the other Western states dealing with water disputes. At our borders, within our borders, above ground, below ground,

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quality problems, quantity problems, people, crops, economics, fish. Our current method to handle water problems is to deal with them as they arise. Some of these problems have simple, sensible solutions. But many turn into knock-down, drag-out problems, and decisions are made in crisis mode, which leaves no winners. Just as the state requires NRDs to have a master plan and long-range plan, so should Nebraska have a state water plan. This simple statement has led to much discussion since LR128 was passed. As you delve into the topic, there seems to be more questions than answers. Question 1: Who authors and owns a plan? Is it going to be the Governor? The legislative Natural Resources Committee? The Department of Natural Resources? Water Policy Task Force? An appointed committee? Or a combination of the above? What is the goal of the water plan? How much detail is needed in the plan? Who will pay for the plan? And how often is the plan updated? All of those questions need to be answered. Some suggested chapters for the plan: We need basin goals; the economic impacts, if no plan is prepared, on municipal needs, industrial opportunities, agriculture needs, and wildlife needs. We need to identify conflicts and potential resolutions, in-stream flows. We need to maximize benefits of available water. Need to include the NRD integrated management plans. We need to identify potential projects across the state that impact water, both state-sponsored and non-state-sponsored. We need to protect our borders and comply with the state compacts and decrees. We need to identify the potential partners to assist with the plan implementation. We need to address surface and ground water conflicts, threatened and endangered species. And we need to suggest tools that regulators need to better regulate the available water. The best decisions are never made in crisis mode. Now more than ever, a solid plan is needed to direct our limited water resources into the future. Perhaps Mark Twain said it best: Few things are harder to put up with than the annoyance of a good example. The time is right for the state to set a good example. [LR128]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Miyoshi?  
Senator Hansen. [LR128]

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SENATOR HANSEN: Thank you, Chairman Langemeier. John, thanks for being here today. In your list of...that you have on your first page, especially Question 1--who owns the plan? The groups that you list here other than "appointed committee" are all political. Would you accept the idea that this plan belongs to the people of the state of Nebraska, just like the water belongs to the people of the state, and take politics out of it, to some extent? [LR128]

JOHN MIYOSHI: That would be ideal. You'd never take the politics out. But just like the NRDs--when we do an integrated management plan--are required to have public hearings, have the public involved in setting up those plans, it would be ideal, again, to have involvement of the people in that plan. [LR128]

SENATOR HANSEN: Thank you. [LR128]

SENATOR LANGEMEIER: Other questions? Senator Carlson. [LR128]

SENATOR CARLSON: Thank you, Senator Langemeier; and, John, thank you for being here. The first sentence in your last paragraph here, "The best decisions are never made in crisis mode," really carries a lot of truth. But we are funny people as individuals, and we're slow to recognize a problem until it's our problem. And as long as you've got one and there's some distance between us, I'd just as soon let you handle your own problems, and it doesn't affect me. But, unfortunately, water--as well as many other things--it does affect everybody. And if we can somehow make some of these decisions outside of a crisis mode, they're going to be better decisions. So I appreciate your testimony. [LR128]

JOHN MIYOSHI: Thank you. [LR128]

SENATOR LANGEMEIER: Senator Haar. [LR128]

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SENATOR HAAR: Thank you. I'm new to this whole legislative process, having been in the Legislature only one year, so I'm trying to use this as my education as well. What happens if there are disputes between NRDs? Is there...because I'm starting to see in state government when elected bodies go up against elected bodies and start suing each other and that sort of thing, it seems like a waste of resources. How do NRDs resolve differences between themselves? [LR128]

JOHN MIYOSHI: Well, hopefully, the boards and the staff will sit down together and appoint committees and sit down and come up with a common solution for the problem. I think overall...we work very, very hard to work with our neighboring NRDs. Quite often, if we have a similar problem, we might even have an inter-local agreement that we would use so that we don't duplicate the service, but we do get the problem solved. It comes down to even cost-sharing on trees. We try to look at the neighboring NRDs--what are they charging? Let's all provide the same service for our constituents. And so, hopefully...and, again, our situation is probably a little bit different in eastern Nebraska, but we work awfully hard to work together. Our state association meets on an annual basis. Our managers get together. We try not to reinvent the wheel. If something is working for one district, we try to replicate that in others. So we work very hard not to have those conflicts. [LR128]

SENATOR HAAR: And if a conflict can't be resolved, is the next solution the court system, or how does that work? [LR128]

JOHN MIYOSHI: I don't know of a case when an NRD has ever gone to court against another NRD. And, again, with these locally elected boards, I think there's a meeting of the minds. I know our board...going to court is a last-case scenario. [LR128]

SENATOR HAAR: Um-hum. [LR128]

JOHN MIYOSHI: You know, we all have better places to spend the money than with

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lawyers and the courts. [LR128]

SENATOR HAAR: Okay. Thank you. [LR128]

SENATOR LANGEMEIER: Senator McCoy. [LR128]

SENATOR McCOY: Thank you, Chairman Langemeier; and thank you for being here this morning, Mr. Miyoshi. Do you believe we're in a water crisis at this point in our state? [LR128]

JOHN MIYOSHI: There's definitely some conflicts out there that I would call "crisis." And in our own particular basin, we had a preliminary determination of "fully appropriated" last year. At the public hearings--we had hundreds of people show up at those hearings. Especially the one at Norfolk and the one at Fremont had a large number of people--so a lot of interest there. Happy to report, though, that that decision was reversed. The Legislature passed some new rules and regulations to allow some limited development within those basins. In our particular case, it's 2,500 acres per year over a four-year period coming out of that preliminary determination. At our board meeting next Monday we're going to approve 2,200 acres of additional irrigation for 2009. We did not even go up to the limit of the 2,500 acres. And we did not, I don't believe...the recommendation from the committee is not to approve all the applications that came in. There was some ground where development was being asked for that we felt was highly erodable ground, that we should not allow pivots to go on that ground. And those applications will not be approved. [LR128]

SENATOR McCoy: Would you characterize how we've handled water problems in the state is reactive in the past and until now? [LR128]

JOHN MIYOSHI: Yes. Yes, it has been. Especially the last 10 to 15 years, we've been very reactive to the problems. And it's been necessary. Those problems have come to a

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head. Solutions were needed. Fortunately, the legislative committee worked with the irrigation districts and the NRDs to come up with, generally, some pretty sensible solutions. [LR128]

SENATOR McCoy: Thank you. [LR128]

SENATOR LANGEMEIER: John, thank you for your testimony. I don't typically ask a lot of questions, because I'm kind of on the forefront of these issues. I get hit with this every day, so I don't usually have questions. But I think your testimony, with the questions you put on here as well as the outline that follows, really emphasizes why I think LR128 is the starting process to just talk about this. You know, we've had testimony in Valentine are all like: What are you going to do for legislation? I don't foresee LR128 ever becoming legislation for this next session. I think it's...what the goal is is to try and do exactly what you put on there is start to flesh out these kind of questions: Who does what? How you do it. And where do you go? [LR128]

JOHN MIYOSHI: I would hope we could get back into that mode. Back in the '60s, '70s, and '80s, there was a lot of planning, a lot of preparation for the future--the Level B plan. But as issues seemed to come to the forefront, we got out of the planning mode, more into the reactive mode. And it probably hasn't been as efficient as it could have been if we would have had a planning process with an annual or semiannual update of that plan. [LR128]

SENATOR LANGEMEIER: Any other questions? Senator Haar. [LR128]

SENATOR HAAR: Thank you. One of the interesting issues that's come up this morning is the whole issue of self-interest. And I learned long ago, because I served on the Lincoln City Council for eight years, not to be surprised when people come to the table with their self-interest. That's what democracy is all about. But then we also have a responsibility to the state as a whole; all of us do. There was some debate in the

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Legislature as to whether Senator Carlson's program of, you know, taking out invasive species was a statewide or a local issue. And I voted...I think it's a statewide issue; it belongs to all of us. How does that resolve itself on your boards? Do you think that people keep this balance in mind of self-interest versus we're-all-in-this-together? [LR128]

JOHN MIYOSHI: Well, I think we've had a lot of directors--newly elected directors--come on to our board, and they want to change the world. And they have one specific reason--one thing they know about the NRD is the reason that they run for that. Just as some state senators, I'm sure, were...really had their eyes opened when they got involved in the job. And every director that's come on board didn't realize the full gamut of activities that the NRD takes in. And we have never had a director on our board that stayed as one special interest, that they're only concerned with dams or only concerned with trails. Everyone that's come on has stepped up to the plate and understood the broader picture in what we're trying to accomplish. [LR128]

SENATOR HAAR: Thank you. [LR128]

JOHN MIYOSHI: So it's been self-education. [LR128]

SENATOR HAAR: That's good to hear. [LR128]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much for your testimony. [LR128]

JOHN MIYOSHI: I think the five minutes are up. [LR128]

SENATOR LANGEMEIER: Did great. Did great. Further testimony? Don, how are you? [LR128]

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DON KRAUS: (Exhibit 7) Good, good. Senator Langemeier and members of the Natural Resources Committee, my name is Don Kraus, D-o-n K-r-a-u-s, and I'm here to testify on LR128. I want to go back a little bit and talk about some of the events over the last seven or eight years. In 2002 the Legislature found that there were significant issues regarding integrated management of surface water and ground water and passed LB1003, which created the Water Policy Task Force. Governor Mike Johanns appointed a 49-member task force to discuss issues, identify options, and make recommendations. Specifically, the task force was asked to review existing laws and identify changes, evaluate permanent and temporary transfers, and determine how to address inequity between surface water and ground water users. LB962 was passed in 2004. And over the past five years, integrated management plans have been developed. The Water Policy Task Force, I believe in general and throughout, believed there needed to be a dedicated funding approach. That wasn't...we weren't able to pursue or put that into action or implement that view. Over the last couple days I've heard comments that there is not going to be state funding and that local funding is uncertain. You're leaving few options on the table for implementation of integrated management plans, and the one that jumps up is regulation, and I heard concerns about that. The inequities identified in 2002-2003--some of those are still out there. And the typical example...and I have copies of some information I'm going to hand out. But you've seen this before; it's the X Chart, Pumpkin Creek watershed, where you have increased pumping and loss of stream flows. Some of those losses of stream flows are still out there. And we can talk about the difficulty of implementing regulation, implementing these management plans. But you also have the inequities that are still out there that we need to keep working on, and so I keep coming back to the funding. I understand it's a difficult issue and a difficult question. The purpose of today's hearing is development of a state water plan. I support the concept, but I want to make it clear that my support is conditioned on adequate funding. I think that's a principal measure we have to identify up front and find a way to deal with it. We don't want to take funds away from the existing Department of Natural Resources to develop new planning. I mean, we have to find a way to provide the new funds. And I don't know, it may not be a lot; we



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may be able to use a lot of existing staff. But I want to emphasize we need to find that funding for a new planning agency. I would request--I know, it's...you get lots of requests--that the committee take the leadership on the funding. If this committee doesn't take the leadership, I can't see how...to me this is the prime place it should be. And I would request or suggest that you think about taking the leadership to support that funding approach, whether it's for the existing LB962 or the new water plan. I've got an example, and I'm not suggesting you...I'm a little concerned about even suggesting you look at the California water plan, but nonetheless California has been doing water planning for a number of years. We're going to provide examples for everybody just as a...here's what one might look like. And try to not focus on California there. With that, I'll close and answer any questions. [LR128]

SENATOR LANGEMEIER: Are there any questions for...Senator Christensen. [LR128]

SENATOR McCOY: Don, thank you. Do you have suggestions how you think this ought to be funded? [LR128]

DON KRAUS: Gosh, there's lots of ideas, you know, we talked about in the task force. Some type of a sales tax adder, and that was felt kind of dead on arrival. And...I don't know; I don't have the political sense that you folks do, and so I look to you for leadership and having that...those ideas. We're willing to work to help you. I don't know the best road to take there, but, you know, we certainly are willing to work on that issue. I think the TAB (phonetic) people--Ron Bishop, his committee, I think we all feel that's important, but... [LR128]

SENATOR CHRISTENSEN: I can tell you my scars are pretty deep, you know, when you look at trying to get it funding, whether it be state dollars, property tax dollars, occupation tax dollars. I've been beat to death. [LR128]

DON KRAUS: Sure. [LR128]

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SENATOR CHRISTENSEN: And... [LR128]

DON KRAUS: And you know what? Nobody said it was going to be easy. [LR128]

SENATOR CHRISTENSEN: No. And you know what? [LR128]

DON KRAUS: And so I think that's the challenge. That is a challenge, but I don't want us to shy away. I think we have to think about it and say: Hey, we think this is important; we have to find the funding. And sure, we need to be efficient; I respect that. Senator Hansen and...do believe that's important. [LR128]

SENATOR LANGEMEIER: Senator Carlson. [LR128]

SENATOR CARLSON: Thank you, Senator Langemeier. Don, I've read your letters in the last few days and think you've done a good job there. This is a good example of a conflict between surface water interest and ground water interest. Should we have a dictator at the state level making decisions one way or another on this? [LR128]

DON KRAUS: No, I don't...we don't have a proposal, but what we think is, you know, we've through the five years of the integrated management plan as it relates to, and I'm going to focus on NRD. I hate to pick on them, but that is the area that provides the return flows for Lake McConaughy. And so that is our primary area of concern. We had issues in the integrated management plan. We supplied comments. Those were, you know, in the...the way it was set up, the state and the NRD have the power to say yes or no, and they take input and then they move forward. I would like to look at other options, you know. Where is the...you know, how do you protect...if there were ways to protect surface water appropriations, that would be a good start. I mean, those that are...or if there are ways to try to limit withdrawals where you've got inequities, and I don't have a proposal, Tom, but those are things I think about. [LR128]

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SENATOR CARLSON: Well, this is...it is a prime example of the NRD has its thoughts and ideas and strong feelings about what they believe their irrigators have a right to, and you have your position, and it's not an easy solution. But I hope that the end result can be something that is somehow mutually beneficial and that again as a state we can move forward and keep water available for the people who need it to produce the crops that make us number one in agriculture. But I appreciate your efforts. [LR128]

SENATOR LANGEMEIER: Other questions? Senator Schilz. [LR128]

SENATOR SCHILZ: Don, good morning. How are you today? [LR128]

DON KRAUS: Good. [LR128]

SENATOR SCHILZ: Say, just and you've been around for the last couple of days of testimony and stuff, and you've heard a lot of what's going on as far as water planning. Do you see any merit in some of the things where we've been talking about trying to capture excess flows if and when they're available and doing some of that kind of stuff to be more proactive in trying to make what Senator Carlson was talking about a win-win situation? [LR128]

DON KRAUS: Sure. I mean those are all things we should look at, and there was one comment I thought about yesterday, and I mentioned it to Senator Langemeier just briefly yesterday. But, you know, as we look at the three-state program and they are doing studies; they are doing planning. They have a challenge to reduce shortages, the target flows by 130,000 to 150,000 acre feet over the 10 to 13 years, and they're looking at water projects. And the state of Nebraska when they stepped...you know, agreed to that approach for looking at water projects in the state, said we want to reserve 50 percent of the yield, you know, have the option for reserving 50 percent of the yield. So there is a point at which, and the state is looking and evaluating those and may want to

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participate. But is there going to be funding to help make that happen? Just a challenge, I think we need to...some of those are going to be ongoing, and we need to be planning for how would we step up, how would we provide for the ability to reserve 50 percent of a water project. [LR128]

SENATOR SCHILZ: Sure. I guess I would contend that there's probably areas out there right now that if they could just find some...get some certainty from being able to start a project by a recharge project or something. And I think private districts or whatever would be very interested in stepping aboard and doing some pilot projects. [LR128]

DON KRAUS: That's possible. [LR128]

SENATOR SCHILZ: I hope that we can get to that point where that can happen. Thank you very much, Don. [LR128]

SENATOR LANGEMEIER: Any other questions? Seeing none, thank you very much. Welcome. Did you get a green sheet by chance? [LR128]

MICHAEL JESS: No, I didn't. I'll get a green sheet and I'll promise to deliver that. Mr. Chairman and committee members, I'm Michael Jess, J-e-s-s. I'm self employed, and I live in Lincoln, Nebraska. I'm here at the request of the members of the board of directors of the Nebraska State Irrigation Association. The association, if you're not familiar, was organized in 1893 in North Platte, and it is composed of a few individuals like myself, but for the most part, irrigation districts, reclamation districts, public power and irrigation districts and a couple of canal companies. And from the sustainable flows of our rivers and streams and reservoirs that the entities own, they supply irrigation water to about a million acres of land in Nebraska's river valleys. We support the idea behind LR128, a comprehensive planning effort, that should be reinitiated, we believe. We have talked a number of times about what is state planning, and we look at the 1971 framework study that was put together by the organization at the time called the

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Soil and Water Conservation Commission. And we look at the words of commission member Bell who described a study as a continuing process of inventorying resources, defining needs, problems, and opportunities, setting objectives, and examining available alternatives to meet the objectives orderly and efficient development of Nebraska's water and related land resources. Since the 1971 framework study was done, we see our state as having taken a change in direction. We now see ourselves spending a great deal of time devoted to integrated resources plans, integrated resource management plans which I think as Mr. Dunnigan described to you are fairly narrow in their focus. They don't go to broader issues which might help us avoid the necessity of regulation that a number of people have talked about earlier. When you think about the plans, they don't go to the broader issues such as should Nebraska on average allow some seven million acre feet to flow out of our state into the Missouri River and ultimately to the Gulf of Mexico? Should our state have more instream flow permits other than just on the Long Pine Creek and in portions of the Platte River? And when it comes to allocating financial resources for the construction of projects, should those decisions be guided by important resource issues in locations such as the Platte or the Republican where water supplies are limited rather than in areas, perhaps urban areas where they go more for reservoirs for flood control or for recreation values? Some fairly heavy issues that we think should be considered in a state water planning effort. Some of you probably are aware, I've for a number of years was Brian's...one of his predecessors, and one of the things I took away from that experience was oftentimes our state's planning efforts are by...sort of by implication and by coincidence, and they do not reflect conscious decisionmaking. The association...irrigation association thinks we should go back to conscious decisionmaking which we saw being done in the 1971 framework study and in efforts like that. Mr. Kraus, I think, distributed to you copies of...a brief copy of the California planning effort. I've spent some time looking at the California effort and California has a lot of examples like Nebraska. It's very complicated. Groups are pitted against one another. Their planning effort has had some measure of success in overcoming those obstacles, and I think it's worthy of our support as well. [LR128]

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SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Jess? Senator Carlson? No. No questions. [LR128]

MICHAEL JESS: Sure. [LR128]

SENATOR LANGEMEIER: Thank you very much. Well done. Further testimony on LR128? Seeing none, oh, a little hesitant. Welcome. [LR128]

BRAD EDGERTON: Good morning, Senator Langemeier and committee members. Thank you for the opportunity to speak today about this important issue. My name is Brad Edgerton, E-d-g-e-r-t-o-n. I'm the manager of Frenchman Cambridge Irrigation District located in the Republican River Basin. I also serve on the Nebraska Water Resource Association board of directors as representative for the Republican River Basin. Today I'm speaking on behalf of the water users of the Frenchman Cambridge Irrigation District. Frenchman Cambridge holds 41 natural flow permits with priority dates ranging from 1890 to 1987. Water users in the irrigation district have paid and are still paying for the construction of reclamation projects including the federal dams that provide flood control and recreation for many people up and down the valley. Each year Frenchman Cambridge water users are assessed a fee for the operation and maintenance of these dams. We have contracts with the federal government for 143,000 acre feet of storage water. Tomorrow in Alma, Dean \_\_\_\_\_ will release details on how they plan to comply with the Republican River compact. In Holdrege last month, they indicated that they would curtail surface water and ground water use if needed so that Nebraska can comply with this federal water right of 1943. The sad fact is Nebraska knew by provisions of the '43 compact when fully appropriated would be achieved. They knew we were appropriated 49 percent of the computed supply. They knew each sub-basin had an allocation. Reclamation designed and built these projects because they knew there were flows unallocated in 1943. The state knew ground water counted in the Republican River compact. In 1959, the first compact meeting was held and

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ground water was included in the calculations. The bottom line is, Nebraska was asleep at the wheel on this one. Nebraska, the state, needs to step up and fix this, not the Nebraska of the Republican River Basin. The NRDs did exactly what the state asked them to do--go and develop the state's economy, and someday we'll lead the nation in irrigated agriculture. Nebraska must honor this federal water right of 1943. It should also be the policy of Nebraska to honor the water rights in the Republican River Basin. Don't make the Republican River Basin pay for Nebraska's oversight. Thank you. [LR128]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Edgerton?  
Senator Carlson. [LR128]

SENATOR CARLSON: Thank you, Senator Langemeier. Brad, your last statement. Don't make Republican River irrigators pay for this, and I appreciate your brief comments here. Would you expand on that last statement a little bit? [LR128]

BRAD EDGERTON: Well, you know, the basin has been overappropriated. To what extent we don't know. There hasn't been an evaluation to see at what level we're at. I think that would be an important step in determining what the real problem is. But the Louisville area ground water users that are also water users of surface water, most of them within my district, are going to be asked to curtail their use in times when we need to comply with the compact. We have some old water rights and, you know, Nebraska has a water right. We get 49 percent of the water supplies of the basin, and now that the decision is, who has the right to consume that water? You know, we have first in time, first in right for our water rights. You know, ground water is being asked to cut back, you know, maybe 10 or 20 percent. We don't know what that number is, but yet surface water is being asked to cut back 100 percent. With first in time, first in right, we cut back, you know, probably 10 to 20 percent a year just by putting a call on the river and when there's a shortage, junior permits are closed so that the senior permit can benefit from that. So it's...the economics--it's just hard to imagine what it will do to the Louisville area and the small towns up and down the valley. You know, they're the ones that are

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going to pay for this. [LR128]

SENATOR CARLSON: All right. In regulations that would shut surface water irrigators and ground water irrigators down, the rules that have been in place for years on surface water, you would...and we're talking about who gets to use the 49 percent. So you'd be okay with some surface water irrigators being shut off. [LR128]

BRAD EDGERTON: Yes, and that, you know, that has happened in the past. When we're short, we place a call on the river and some of those water rights are curtailed for the benefit of the senior permits. That's already in place. [LR128]

SENATOR CARLSON: Okay. And that's established law through the years. Then are you okay also with some ground water irrigators being shut off? [LR128]

BRAD EDGERTON: Well, there's only really two ways to solve the problem in the Republican River Basin. We have to reduce our consumptive use or we have to increase our supply. Taking water from other parts of the state doesn't seem to be an option, but it would solve the problem. If we could get a recharge project in the headwaters of the Republican River, get those stream flows back to a level that would allow us to pass enough water to the state of Kansas, then, you know, that would be one solution. But if we don't do that, then reduction in consumption is the only answer. You know, we can sell water from our reservoirs to avoid the water short year and get out of the two-year accounting and get into the five year, but you know, that doesn't increase the supply in the basin. You know, the water is whatever it is. You know, it's based on, you know, what comes from base flow out of the aquifer or what comes from rainfall and runoff so it is what it is. We can't change that. The only thing we have control of is the consumption of the water. [LR128]

SENATOR CARLSON: All right. Two, and I'm not asking this because I think the answer is obvious. I'm just asking it for my own clarification as well as probably several others



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here. But you talk about the headwaters affecting supply, that would be augmentation, correct? [LR128]

BRAD EDGERTON: It could be, yes. I mean that... [LR128]

SENATOR CARLSON: That's one of the possibilities would be augmentation. [LR128]

BRAD EDGERTON: Yes. [LR128]

SENATOR CARLSON: Well, whether it's augmentation or something else, whatever it is costs money. [LR128]

BRAD EDGERTON: That's true. [LR128]

SENATOR CARLSON: And so we are...our backs are to the wall as to what's our funding source to put things into place to avoid these drastic steps. [LR128]

BRAD EDGERTON: Well, sir, we're in contempt of court with the U.S. Supreme Court. That's going to be a pretty expensive option too, so really don't have a lot of choices. [LR128]

SENATOR CARLSON: We're going to pay it one way or the other. [LR128]

BRAD EDGERTON: That's right. [LR128]

SENATOR CARLSON: And, hopefully, we'd pay it in such a way that would keep water in the hands of as many producers as possible. Okay, Brad, appreciate your testimony. [LR128]

BRAD EDGERTON: Yes, sir. Thank you. [LR128]

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SENATOR CARLSON: Thank you. [LR128]

SENATOR LANGEMEIER: Any other questions? Senator Christensen. [LR128]

SENATOR CHRISTENSEN: Brad, how would the water balance...I know, have you seen the water balance plans have been put together by twin (inaudible). It's even into the Perkins County. Have you seen that before? Do you know how that would affect (inaudible)? [LR128]

BRAD EDGERTON: I haven't seen that. I'm sorry. [LR128]

SENATOR CHRISTENSEN: Thank you. [LR128]

SENATOR LANGEMEIER: Any other questions? Seeing none, thank you very much for your testimony. Welcome, Don. [LR128]

DON ADAMS: Good afternoon, Senator Langemeier and members of the committee and other senators that are here. My name is Don Adams, D-o-n A-d-a-m-s. I'm executive director of Nebraskans First Statewide Ground Water Irrigators Coalition. And I'm not sure if I'm opposed or support or neutral on this. I'm not sure exactly where we're going with this, but I'd like to just make a few comments on LR128. I wasn't going to say anything until I heard Mr. Thieman testify. And I just can't let that go, I think, (laughter) without, you know, having a few truth seeds interjected here. First of all, we are in compliance with the Republican River Compact. We are in compliance. We're not in contempt of court. Second, it's an irrefutable fact that we are a production state. Those who use the water to irrigate, they do so to produce food for those who consume it, including Mr. Thieman. We're the number one irrigation state in the country. I think we just moved ahead of Texas. Irrigation sustains our ag-based economy. The only new wealth created in this state, not recycled wealth, is created by producers. That is new

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wealth that sustains our economy, churns through the local communities, sustains the high quality of life we have here and, frankly, has got us through this recession a whole lot better than we would have gotten through it if we had excessive restrictions on irrigation. What we need, and I said this yesterday, I'll make it short. We desperately need a twenty-first century water policy. It seems the policy we have now is in a period of... [LR128]

SENATOR LANGEMEIER: I got to stop you. I got to have you slide that away from you a little bit. A little more, there you go. We'll try that. It's not recording. [LR128]

DON ADAMS: Okay. It seems to me that the policy we have now is in times of drought or water short periods that we frantically go around trying to shut down irrigation, which again sustains our economy. It doesn't make any sense. I think a twenty-first century water policy must be founded on the basic facts that every year 2 million acre feet of water enter our state, 90 million acre feet fall on our state, and we allow 8 million acre feet every year to flow out of our state. If we could just save and bank a small percentage of that 8 million, we could go a long way to solving whatever problems we have. We are not in a water crisis mode. A recent study by the USGS on the Ogallala Aquifer in Nebraska, from predevelopment, when there was no wells, 1950 basically to 2007, the water level under Nebraska has dropped only .06 percent. That includes seven years of terrible, severe drought. Doesn't include the healing years of 2008 and 2009. When the next study is done the news will be even better. I guess, our plan would stress allowing the NRDs to do their job unfettered by excessive state interference. The general managers are excellent, they know their basins, their staff is good. And the board members work very hard to do what is best not only for their basin but for the state, it's an extremely difficult job. They can do it but they don't need any additional state interference. I would like to see LB962 repealed and I would like us to get out of the cooperative agreement Platte River Endangered Species Program before it's too late. Because when phase II and phase III of that program kick in, the impact to this basin will be upwards of \$400 million annually to the economy, as we will be forced to

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retire a third of a million acres from production. Finally, do not be swayed or intimidated by the Omaha World-Herald. They obviously have an agenda and they're pushing it hard and they're trying to get you to do things that would suit their agenda. Centralizing more control in Lincoln will result in water policy being made by a single nonelected bureaucrat and greater influence will flow to the environmental groups, Game and Parks Commission, U.S. Fish and Wildlife Service and the media. Thank you. [LR128]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Adams? Senator Christensen. [LR128]

SENATOR CHRISTENSEN: I appreciate your statement there: What would the impact have been on the state? We read the paper, say we're going to be in a special session to cut spending. We had six water short years in the Republican this decade. If we would have shut off all the quick response, be it four of them or six of them, depends whether the plan worked, shut off 200,000, 300,000 acres, we don't have the exacts given to us, been a huge hit on the Nebraska economy all over not having a state water plan or transfer plan or something. I think that's a good point. I appreciate you bringing that up because right now this group up here is thinking, where are we going to cut money out of this budget? And we already would have had less money if we took on the plan that's proposed. [LR128]

DON ADAMS: That is correct. Cutting off...the Kansas plan of forcing us to cut off 300,000 acres plus down there would, we've calculated when you factor in multiplier and the devaluation of the property tax base, be a \$1 billion hit to the economy. The communities down there could not sustain one year of that. That would do them in. That...the Red Box Proposal they call it, needs to be completely off the table, not even consider it as an option. [LR128]

SENATOR CHRISTENSEN: I appreciate that because what this group needs to think about too in that deal is when the property tax valuations leave, the school funding

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formula will change drastically and shift tons of money west. And if this group is not ready to deal with that, then we better get some water issues taken care of. [LR128]

DON ADAMS: I agree, Senator. [LR128]

SENATOR LANGEMEIER: Senator Carlson. [LR128]

SENATOR CARLSON: Thank you, Senator Langemeier. Don, I'm always interested in listening to what you have to say. I don't agree with you all the time and that's okay. But one of the things, both yesterday and today, I really do agree with, you talked about that map that shows changes in aquifer levels from predevelopment to current date. And you look at the state of Nebraska, and overall we don't look too bad. Now if you take the state by itself, we've got a couple areas that I think deserve real concern because we don't want to mine the aquifer. And so I think we've got areas of concern. But I'd like you to comment on how do we compare with going south Kansas, Oklahoma, and Texas on that similar map? [LR128]

DON ADAMS: Oh, we're in a far, far better situation than they are, which indicates to me that the local NRDs have done an excellent job in managing our ground water resources. There has been no change from, it's amazing, 50 plus years. Yet Box Butte County, that's a bad area, but that's not related to stream flow and western Republican. But other than that, it's unchanged or even green in increasing, Central Platte and then going to the Lower Platte the levels are increasing. [LR128]

SENATOR CARLSON: Well, I think it's important that we keep in mind we're not perfect and we're trying to strive to do even better. But sometimes we beat ourselves up unnecessarily when we look at what some of the other states aren't doing that are really affecting the aquifer. [LR128]

DON ADAMS: That is correct. [LR128]

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SENATOR CARLSON: So we're not doing everything wrong. [LR128]

DON ADAMS: We beat ourselves up when we read the newspapers and hear this incredibly bad news that isn't factual. It's a global warming type thing, the longer they keep telling you we have a water crisis in this state, I guess, people some day will believe it. We do not. The crisis is allowing 8 million acre feet to flow out of the state, that's the crisis, to turn into salt water. [LR128]

SENATOR CARLSON: Okay, thank you. [LR128]

DON ADAMS: Thank you. [LR128]

SENATOR DUBAS: Other questions? Seeing none, thank you, Mr. Adams. Next testifier. [LR128]

RORIC PAULMAN: Roric Paulman, R-o-r-i-c P-a-u-l-m-a-n. I'm a producer from western Nebraska. I testified yesterday. And I got kind of beat up later on in a couple of other presents. And I kind of wanted to take a shot at that. But also I wanted to (laugh) also reiterate some of the thoughts that were out here. And Don Kraus mentioned the California water plan. And in the documentation that I provided you yesterday, there is a six page kind of an implementation, kind of a high level look at how a water plan could be started, evaluated, some of the material that we looked at. And one of those was the California water plan. Another one was the U.S. Geological Survey that was recently released water budgets, "Foundations for effective water resources and environmental management." We looked at the Colorado River Basin, we looked at the High Plains Aquifer, we looked at the San Pedro River Basin. We looked at a lot of things. And we also looked at data that is right here in our own home state, and that was from Shaefer and Bentol (phonetic) in the sixties and seventies, that a lot of that information still applies today. And so we moved through that. And I'm not going to go over the

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document again. I provided that yesterday, but there's guiding principles in here. There's an implementation process and it involved all the things that we've talked about. I was present in Valentine, but it involves all of the questions, concerns and thought, almost in its entirety, of how to look at a water budget process. I have a lot of respect for the people that take the time and the effort. And in there, there is a spreadsheet that I think Senator Christensen alluded to. There's a breakdown of the Twin Platte, over 50 years of average data and what its impacts were to stream flow. Now it's draft form. I don't necessarily agree with all of it, but it was prior to and up through a huge development time in the Twin Platte NRD. And then also there's another spreadsheet in there that...of a water supply assessment that is statewide. I mean, we took a stab in the dark. We did a high level assessment of what that is. And really, that's the bulk of what I wanted to add here today was that that presentation that I gave you yesterday, that that document is included in that. And again, it's in what I call laymen's terms for myself to get a handle on what the potential could be or how that could go about being a part of a water budget process. With that, I had one more response. Senator Carlson, I did not have time last night to address that savings. And then also on the water meters, I didn't want to leave that I was opposed to having a tool in the toolbox because absolutely in our IMP, water, you know, removal of water from the ground is absolutely measured. But in the realm of the consumptive use I think there's other tools that are less intrusive. And I'll just pick in my particular instance if it was mandated that I had to have a meter on every well, that's a \$50,000 or \$60,000 obligation to my operation. Again, it's a large operation, so maybe that's peanuts. I don't know. But I think that if you take it down to an individual producer with five wells, that's still a huge investment. Then the added cost of looking at the maintenance and how it's reported and the validity of that report. And so...and I know that there's various ways that that is being assessed across the state, whether it's by individual NRD and the upper, they take care of all of it. I get a report that says, here is what you used for the year and here is what your remaining allocation is. But as we look at how we manage irrigation wells, there is...the technology...I know that the Central Platte and also Twin Platte both have portable meters that you can come out and basically certify your well and tie it to an hour meter.

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That's all equipment that is existing as opposed to imposing another expense that may or may not be any less or anymore accurate. In my experience of irrigation, if I put in a well, I expect that well to last 20 years. And if I set it up for 700 gallon a minute, it pretty much stays that way for 25 years. So if we certify it one time and revisit it, you know, maybe that's a potential. But then that's going back on Mr. Miller's statements about the available funding. If a program in the Twin Platte, even if all they did was administer it, let's say it cost a couple hundred thousand dollars, and he only has \$600,000 available per year, then that takes away from some of those other programs or possibilities that could be funded. So again, I'm just kind of looking at it in a perspective of the technology and the things that are coming about that I believe could be a tool as well in that toolbox. But I didn't want to leave you with it that I was against accounting for withdrawal of ground water. [LR128]

SENATOR DUBAS: Thank you, Mr. Paulman. Questions? Seeing none, we'll let you off the hook. Thank you. [LR128]

RORIC PAULMAN: Thank you. [LR128]

REX NELSON: Good morning. I'm Rex Nelson, N-e-l-s-o-n. I'm the executive director of McCook Economic Development, from southwest Nebraska, obviously. I'm not a water expert. I'm a community expert, but I do have some history with this. I'm also a landowner and an irrigator. And my father was a charter member of the Middle Republic NRD board. And when we speak of history and the need for planning, I can relate to you as a high school student my father handing me a letter from Kansas water interests. I believe there were 22 attorneys on the letterhead. And the essence of it was, we want you to shut off enough stream flow, enough irrigation wells to restore normal stream flow. He said, we're going to have to change the way we manage irrigation water. I submit that the planning wasn't done aggressively enough, soon enough to have the impact it needed to have. I was called in to a group of community people in our area. And it was really a broad based group of lenders, ag suppliers, rural power districts,



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businesses, and of course some farmers. And I would sense the deeper level of concern on water issues than I'd ever seen before. And a lot of the concern was sparked by the plan that had been at least released in a sketch from the Governor and the Department of Natural Resources that suggested that we would rely heavily on shutting off alluvial wells and surface stream flow to...in water short years to deal with restoring the flows to the Republican for the Kansas-Nebraska Compact. And we think that's problematic. We've run some quick numbers. And in the last 34 years that the Harlan County Reservoir, 54 percent of the time the river would have triggered the shut down of alluvial wells. Now if you're running a business and you're going to be shut down fairly capriciously 54 percent of the time, you're not going to continue to operate that business that way but essentially would shut down some of the best irrigation in southwest Nebraska, in Nebraska, and oftentimes with the oldest water rights. We think that places an unfair burden on the shoulders of a select group of irrigators in designated areas and yet enables continued pumping in other parts of the basin. The unpredictable nature of the water short year creates a persistent level of uncertainty, which reduces the financial performance of the affected farms and the area businesses far more than would have reduced a predictable allocation. It can be expected to further depress the economy and reduce the value of the farmland and the tax base. We think the plan is a short-term fix. It fails to address the long-term issues. The proposed plan is fundamentally flawed and I think it invites continued political and economical turmoil. The proposed time line is too close and it doesn't give us time to have a full discourse on the issue. In this group we really acknowledge that the solutions must be found to address the water issues and believe that a majority of the residents and irrigators fully expect to play a part in the solution. A workable plan, though, should treat all irrigators equally, spreading the burden of compliance across the entire basin. And should not secure compliance...only secure compliance with the Compact, but should assure long-term sustainability of our natural water resources. So with that, I guess, I would entertain questions. Certainly, we're in favor of better planning. [LR128]

SENATOR DUBAS: Thank you very much, Mr. Nelson. Questions. Senator Schilz.

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[LR128]

SENATOR SCHILZ: Thank you, Senator Dubas. Rex, thanks for coming in today. Obviously, this has to be very concerning to you being the Economic Development director? Is that right? [LR128]

REX NELSON: Yes. [LR128]

SENATOR SCHILZ: Yeah, for McCook. And then I understand what you're saying in your testimony. And basically, you're basically saying that if you're going to go down this path and you're going to regulate ground water irrigators, that you believe the tenets of (inaudible) right should be maintained all the way through that and not just a select few shut off, correct? [LR128]

REX NELSON: Yes. [LR128]

SENATOR SCHILZ: Okay, thank you very much. [LR128]

SENATOR DUBAS: Other questions? Senator Carlson. [LR128]

SENATOR CARLSON: Thank you, Senator Dubas. In your initial statement, on your figures over how many years would this have triggered the shut down 54 percent of the time? [LR128]

REX NELSON: It was 34 years. [LR128]

SENATOR CARLSON: Okay. [LR128]

REX NELSON: When the Harlan...in the last 34 years, Harlan County Reservoir dropped below the 119,000 acre feet threshold that would trigger that. [LR128]

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SENATOR CARLSON: Okay, thank you. [LR128]

SENATOR DUBAS: Other questions? Senator Christensen. [LR128]

SENATOR CHRISTENSEN: I think if you look at that plan where there's a 10,000 acre cushion in there, you'll find the number of years increases drastically. I'll just let you know it's worse than what you're saying. [LR128]

REX NELSON: Yeah. We discussed that too. [LR128]

SENATOR DUBAS: Other questions? Seeing none, thank you very much, Mr. Nelson. [LR128]

REX NELSON: Thank you. [LR128]

SENATOR DUBAS: Next testifier. [LR128]

BUTCH HUGHES: Yes, I'm Butch Hughes, H-u-g-h-e-s, 4135 East Hadco Road in Hastings, Nebraska. And I'd say I probably represent the individual farmers, business owners and everybody in your rural communities. And I think this thing is so simple and everybody is trying to make it so complicated. It's been proven that cleaning up the waterways, you get more water in stream flows. Yet the Legislature didn't have the courage to fund that. Okay, that's a...it's a pretty unexpensive increase of water. And those...the vegetation stuff can be taken care of basically from bank to bank when you go the entire valley. Anything that will get into that aquifer where that, you know, creates surface water could be game to remove. And for those people worried about wildlife, a deer don't care if the haystack is on the hill or down in a hole. So it's not going to affect wildlife but it is going to affect the water flow. So it's proven to work and it needs to be done not only in the Republican but also in the Platte. I don't know how many billions of

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gallons of water those invasive species and trees and nonagricultural vegetation take, but it's got to be in the billions an billions of gallons. So it needs to be done. And I certainly agree with one of the prior testifiers that we've got to get out of this tri-state water thing that's going to take a lot of our water away from agriculture. For those who are in economics, all wealth comes out of the earth. And anytime you start taking it away out of the earth, you're going to have economic, you know, domino effect to the entire state. So it's really important that we let our agriculture have free reign to produce as they can and do. So I think that also as a committee here I encourage you to please stand up against the executive branch at the state. I think we got...our Governor is starting to become very heavy-handed. This is a reflection from some of the NRDs. They're being told, you need to come up with a script and this is what you're going to write, and if you don't go along with it we're going to put you out of business. You know that's a little bit over the top. So I hope that you will stand up against the executive branch so that...and start representing the people in your district. So the solutions that I see are the vegetation removal from all tributaries as needed. And then the other thing that's pretty simple is taking water out of the Platte, which can be done. You have to tell the feds that they can stay out of our business. But from the Platte River down around Ashland and take it down where it goes into Kansas. So if you have to...if you run a little short some summer, well, then shut down a quarter of your state ag production, just flip the switch and give them water they need. I mean that's...there's nothing too hard about that to do. So I just...I pray that you folks will keep it simple. And so at this point, with the resolution 128, I would say I probably would support that plan, that statewide plan if that plan is to clean the streambeds and come up with another...with an auxiliary source of water into that Republican, you know, down there where it goes into Kansas. Yeah, we have to do with it. And I also encourage the folks to keep away from any statewide mandate that takes away from local control. We saw this with, I think, the way I interpret it anyway, with the nuclear waste dump up in Boyd County. Those people really had no say and it got forced down their throat. And eventually, there was enough trouble created and it was pulled out. And it eventually cost the state \$156 million. Now we could avoid that by making sure that local people have their say. And that's what the

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NRDs are about. Thank you. [LR128]

SENATOR DUBAS: Thank you, Mr. Hughes. Questions? Senator Carlson. [LR128]

SENATOR CARLSON: Thank you, Senator Dubas. Mr. Hughes, I appreciate what you said about vegetation. But I think it brings out a point that whatever you do, whether it's that or something else, there is a cost. But there's a cost to not doing something. And what I would like to hear and see as we go along here with any kind of a plan if it's to shut the faucet off so that people can't irrigate, what is that cost? And that cost is not in terms of state tax dollars but it's in terms of producer dollars. What is that cost? There is a cost. And we should know that. And that would be the kind of thing that I think would help in some decisionmaking. But thank you for your testimony. [LR128]

BUTCH HUGHES: Well, I think that as far as the cost, you know, they've got these little programs where state sales tax stays in the area it's generated, like the Qwest Center. Now the Qwest Center really don't create a whole lot of business other than something for Omaha. But you could take state sales tax revenues, you know, it an apply it in the Republican watershed and leave those in the local areas and let them fund their own water stuff. Now that may mean some other programs are going to be cut, but if they can do it for the Qwest Center, I think we could do it. Because that stream flow that is tremendously inexpensive for what you was really accomplished. So I think you can look at other resources and let that fund itself. But for water policy, and this is where the state got into trouble before, where you pick on the Republican people to pay for a state water policy is vividly unconstitutional. So anything you do about the Republican watershed or the Platte River has got to be funded universally across the state, so you're not picking on some irrigator in Alma, Orleans, or out at Imperial. [LR128]

SENATOR DUBAS: Thank you, Mr. Hughes. Other questions? Seeing none, thank you very much. [LR128]

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BUTCH HUGHES: You're welcome. [LR128]

SENATOR DUBAS: Next testifier. [LR128]

TOM KNUTSON: (Exhibit 8) Good morning. Mr. Chairman and members of the committee, my name is Tom Knutson. I'm general manager of the Loup Basin Reclamation District in Farwell, Nebraska. Our district owns the facilities that provide water to the Farwell and Sargent irrigation districts and parts of four counties in the Loup Basin area. We've been in business since the 1950's. And we became owners through title transfer in 2002. I've held the position for 25 years and I've worked on state and federal water issues for more than 35 years. My position out of college was first as a water resource planner on a state water plan in the state of South Dakota in 1973. In 1977, I became the supervisor of the State Water Plan Division for the Department of Natural Resources in South Dakota. We had 17 river basins that we worked on and we completed the work in 1978. And we had hearings on those plans and took public feedback. My involvement in their state water plan was very useful for my career in setting the side bars for what a person needs to consider in making decisions in water resource management. Those side bars are, in simple terms, how much water do you have in a basin, how much is being used, how many projects do you have that need water, and are there any legal rules and regulations that you may have to adhere to that complicate the process like compacts? When I went to work for the Missouri River Basin Commission, in Omaha, Nebraska, in the fall of 1980, I learned that the state of Nebraska had a water plan and that it had been worked on in the 1970's. And we had two water laws, one for surface water, and one for ground water. I really didn't think a whole lot about it at the time, until I went to work in Farwell, Nebraska, in January of 1985. In my opinion, you cannot do water planning unless you do it by river basin. I'll go back to the principles that I first learned in water planning. How much water do you have in the basin and how much is being used, etcetera. In Nebraska I think in a number of cases we are still guessing. If we're not, we're probably...we would probably know all the answers and things would be a lot simpler to the questions that are being asked.

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Yes, we have numerous studies that have been done in Nebraska. And, yes, we've had a lot of data from those studies. But yet we continue to argue and discuss the merits and probably the validity of those numbers based upon the views of those who want to argue about it. In addition, the Legislature has provided the power to 23 natural resource districts to do water planning, to the Department of Natural Resources to do water planning, but the emphasis is not fully on river basin planning but more so on the 23 plans within the 13 river basins. A good case in point would be LB962, which provides the vehicle to do integrated water management planning for fully appropriated river basins. In addition, the Legislature provided the power to 63 irrigation districts, companies from reclamation districts to manage surface water in the western two-thirds of the state with regulatory oversight from the Department of Natural Resources. All these districts were formed from...pardon me, were formed in the early 1900's through the 1950's. The oversight by the state has never been an issue for our district because we've grown up leaning that that's the way we do business. My view on local control is that we need to keep it in place. But do you think, Mr. Chairman and members of the committee, that there are times in this state that local control sometimes goes across a pasture and impedes local control for other districts? I think so. Is there an easy fix? Nothing is ever easy in water resource management. However, I would suggest to you that we need to start by recognizing that the boat going down river today is not the boat we want to be in without further defining the roles, the responsibilities and the fact that we need a state water plan. I would suggest to you that we need to move forward with the plan, we need to do it by river basin, we need to have a planning director at the state level that leads the effort, we need all the local water management entities involved in the process. We need to focus on not what it will cost but what it will cost us if do not have a state water plan. In other words, how much money has been spent thus far on attorneys and lawsuits between states, local entities, coalitions, and I could go on and on. Other states around us are sometimes ahead of us in regard to having worked on state water planning. I'm familiar with South Dakota, having worked there years ago. And I'm submitted to you in my testimony copies of information that I would hope would be useful to you. Wyoming also has a good program going, with excellent funding and

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direct involvement by members of the Appropriations Committee in their process. Back to South Dakota, they have seven water development districts that cover the state, locally elected boards with five to nine board members. The size of the boards is based upon population within the respective districts. They work with other local entities on project activities. The state has a seven-man...the state has a seven member board of water and natural resources, whom all are appointed by the Governor. The board makes the decisions on funding with the assistance of the state staff. The amount of funds they normally have is about \$8 million per year, and it's called dedicated funding for their project activities. Please refer to the sheet that has HB1238 at the top for your information on how they tax it and their programs. Attached is an e-mail link for information on their programs in South Dakota. In summary, I do feel we need to move forward with the right leadership, with the proper legislation, with adequate funding to allow projects and programs to move forward to benefit Nebraskans. And I feel this way, too, that local control by the natural resource district, by the irrigation districts is very important and we need to keep that in place. And I think we need to look at it like this, let's work together with an attitude of can-do. And I thank you, Mr. Chairman and members of the committee. And I'd be more than happy to try and answer any questions. [LR128]

SENATOR DUBAS: Thank you, Mr. Knutson. Questions? Senator Schilz. [LR128]

SENATOR SCHILZ: Tom, good morning. How are you today? [LR128]

TOM KNUTSON: Very good, thank you. [LR128]

SENATOR SCHILZ: Good. Hey, just to digress just a little bit, first of all I know it was in 2002, but congratulations on the title transfer. I know it's a very intensive and hard thing to get done. Do you know, can you tell me how many years that has worked on that? [LR128]



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TOM KNUTSON: We worked on it eight years. [LR128]

SENATOR SCHILZ: Eight years. And how many other, and I know this is way off the subject. But how many other title transfers have there been in the U.S.? [LR128]

TOM KNUTSON: We're the only ones that got total title transfer with a reservoir and all the dams and canals. There are several others that have gotten title to their canal systems, but not their reservoir and dams. [LR128]

SENATOR SCHILZ: Has it reduced your headaches any? [LR128]

TOM KNUTSON: Yes. [LR128]

SENATOR SCHILZ: (Laugh) Okay. Now you talked about there may be times when local control just can't take care of what's going on. Do you think the mechanisms that were established in LB962, do they address some of those issues? Is it adequately addressed in that? Do we need to revisit that as far as...or does it go too far? [LR128]

TOM KNUTSON: I'm going to qualify that answer by saying that I probably am not an expert on LB962. I think that there's probably some good language in there that can help the issues as far as local control. There may be some that are still questionable, and may be some that we need to work on as we move forward. [LR128]

SENATOR SCHILZ: Okay, thank you very much. [LR128]

SENATOR DUBAS: Other questions? Seeing none, thank you, Mr. Knudson, for coming today. [LR128]

TOM KNUTSON: You bet. [LR128]

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SENATOR DUBAS: Any other testifiers on LR128? Seeing none,... [LR128]

SENATOR LANGEMEIER: Seeing none, we'll close the hearing on LR128. I want to thank everybody that participated. Hopefully, we can get some air moving through here with the doors open, because it is quite a bit warmer at this end than this end. Now we'll move on to LR...open the hearing on LR181. And Senator McCoy is going to come up and do his opening. [LR128 LR181]

SENATOR McCOY: (Exhibits 9-14) Thank you, Chairman Langemeier. And good morning again to everyone. I am Beau McCoy, B-e-a-u M-c-C-o-y and I represent the 39th District in the Legislature, here to introduce LR181, which is an interim study to examine the feasibility and benefits of restructuring the natural resource districts to potentially encompass the entirety of a river basin or specific area of the state. This study also seeks to analyze and explore the processes and ramifications of realigning and perhaps reducing the number of natural resource districts. Since 1972, natural resource districts have protected and managed water as the most precious natural resource to our state. During the discussion in 1969 on LB1357 that created the natural resource districts, Warren Fairchild, who was the executive secretary of the Nebraska Soil and Water Conservation Commission, states, and I quote, now what is the objective of LB1357? Well, the objective of any natural resource bill should be twofold. It should be for efficient and effective government, and it should be to accelerate the natural resource programs, end quote. This is fundamentally why I introduced LR181 and one part brings us here today. To evaluate the efficiency and effectiveness of our natural resource districts in meeting the challenges of today in regards to the stewardship of our natural resources. Without question, one of the most public challenges facing our natural resource district system revolves around the Republican River Compact with the state of Kansas and the ongoing litigation between our two states. It is difficult to properly understand the strain this water management situation has caused for the stakeholders and communities in this river basin. Compliance with the compact is the responsibility of the NRDs involved, but ultimately rests at the feet of the Legislature and

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the state of Nebraska, according to the arbitrator's ruling earlier this year. This issue, however, goes beyond any single river basin. Management of our water resources affects truly every Nebraskan from Scottsbluff to Omaha. We cannot afford to leave any stone unturned, in my judgment, nor any option unexplored as we endeavor to preserve and maintain our state's agriculture and overall economy. This interim study seeks to develop and examine one of those options. Changes have been made and will continue to be made in the march towards long-term compliance with our water compact responsibilities. We must be visionary in our thinking and willing to look at long range solutions to this very complex and multifaceted situation. I look forward to the discussion that we've already started and will continue to have and the ideas and thoughts that hopefully it will foster. We can find the right solutions to the problem before us if we're willing to work together cooperatively with that can-do spirit that has been talked about this morning. Thank you. [LR181]

SENATOR LANGEMEIER: Thank you very much. Are there any questions for Senator McCoy? Seeing none, we're going to ask that Steve Chick come up and testify, then we'll open it up. Welcome to the committee. [LR181]

STEVE CHICK: (Exhibits 15-17) Thank you, Senator Langemeier and other senators. Appreciate the opportunity to speak to you. Before I start, I'd like to point out there's a couple of hand... [LR181]

SENATOR LANGEMEIER: I need your name. [LR181]

STEVE CHICK: Oh, I'm sorry. Steve Chick, and it's C-h-i-c-k, state conservationist for USDA's Natural Resources Conservation Service, spelled just like the bird, C-h-i-c-k. [LR181]

SENATOR LANGEMEIER: Thank you. [LR181]

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STEVE CHICK: There should be some handouts in front of you. So I just show those to you, make sure you have them. They would be my statement and this handout and then this map. And I'll refer to those as I go through my testimony. In 1935, the Soil Conservation Service was created within the United States Department of Agriculture to provide assistance to farmers and ranchers to address natural resource concerns. Chief Hugh Hammond Bennett, at the time, recognized that a federal agency needed a local conduit to deliver assistance to local landowners. In 1937, President Roosevelt signed enabling legislation allowing the creation of local conservation districts. Within a few years, the country was blanketed with nearly 3,000 county-based conservation districts. Conservation districts, as you know, provide leadership through locally elected boards who establish the priorities for soil, water and related natural resource concerns. Districts were encouraged to leverage the federal efforts in any way that they could. As you know, in 1972, traditional county-based conservation districts were into watershed-based natural resource districts in Nebraska. All other states, as far as I know, continue today to operate as county-based conservation districts. In the mid-1990's, Nebraska NRCS, formerly the Soil Conservation Service, reorganized from a county-based approach to 23 administrative boundaries to align with NRD boundaries. And that would be the map that I shared with you, this map, shows the alignment of our boundaries that are very close to NRD boundaries. NRCS established one district conservationist per NRD with all the NRCS employees in our 77 field offices reporting to those district conservationists. Within Nebraska we allocate our 200 field employees and our \$50 million, on average, in annual cost share funds by NRD. NRDs provide our 77 field office district secretaries and in some cases district technicians to help take full advantage of USDA conservation programs. NRCS provides the technical assistance for the state and local cost share funds administered by the NRDs. In addition, NRCS-NRDs share many cooperative agreements for providing additional technical assistance. Following a tour last week in Nebraska by our NRCS regional conservationist, Tom Christensen, he reported to the chief of NRCS that NRCS is one of the best operations he has seen in his 30-year career, and he specifically cited the NRD-NRCS partnership as being the strength of that operations. In summary, the NRD

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watershed approach is the envy of all other NRCS state conservationists in this country and most conservation districts. The NRD-NRCS partnership leverage each other's resources. And the NRCS organizational structure along NRD boundaries creates, in my opinion, the most effective and efficient delivery system in this country. I'd gladly take some questions from the committee. [LR181]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Chick? Seeing none...oh, Senator Carlson. [LR181]

SENATOR CARLSON: Thank you, Senator Langemeier. Steve, in talking about this partnership, would you just maybe tell a little bit about what's happened in the last few months in Nebraska. [LR181]

STEVE CHICK: I think Senator Carlson is referring to probably the Conservation Cooperative Partnership Initiative that we worked on in concert with state and the NRDs. We provided about \$1.5 million in funding this year through that program for invasive species control. And it blended in really well with the efforts that the state was making. It's just another example of how we partner together. We actually ended up receiving \$2.9 million in requests for invasive species control along, primarily along riparian areas in the fully appropriated and over appropriated watersheds. We were able to get some additional funds from other states, so we ended up funding a little over \$1.6 million for that purpose in long-term contracts to manage those invasive species. That's just an example of the kind of partnership that we have with the state and the NRDs. [LR181]

SENATOR CARLSON: Well, thank you. I appreciate your efforts on that. And if there hadn't been cooperation it wouldn't have happened. And the fact that some of the money there came from other states who didn't really have their act together proves that it's important that we had ours together, and you're a big part of that and I thank you for it. [LR181]

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STEVE CHICK: I can cite one other example. There's a new program, it's called AWEP, it's Agricultural Water Enhancement Program, 189 project proposals were submitted around the nation primarily for water, quality of water conservation projects. Nineteen of those proposals came from Nebraska and we ended up getting five of those funded, second only to California in number of projects funded. Those are again local projects working with the NRDs, primarily in our case, to work on conservation...water conservation to convert from irrigated to dryland and more efficient irrigation practices. [LR181]

SENATOR CARLSON: Okay, thank you. [LR181]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much. [LR181]

STEVE CHICK: Thank you. [LR181]

SENATOR LANGEMEIER: Thank you very much for your testimony. I'll open it up to further testimony on LR181. Welcome. [LR181]

MIKE DOBESH: Hello. Thank you for giving me the time. My name is Mike Dobesh, M-i-k-e D-o-b-e-s-h. I'm from Wood River, Nebraska, 68883. I'm here on my own behalf, as well as I'm an elected director of the Central Platte NRD. Although maybe some of my views may not always be all of theirs, but anyway. Ladies and gentlemen of the Natural Resources Committee, we are here today to discuss the idea combining the NRD districts. First of all, let's examine the advantages of leaving things as they are. Programs and activities are primarily locally funded by local property tax dollars, thus the thought of combining NRDs would save tax dollars is false. Two directors located in each of the subdistricts allows for people in those subdistricts to know their directors. Thus it makes it easier for them to be contacted over concerns in the district. As it is

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now, someone waiting or wanting to address a board may have to drive an hour or so to the meeting, but that's still reasonably a close drive. With the many districts address local issues, they implement programs that deal with water quality and quantity and we deal with issues with compliance and regulation, not to mention the many cost share programs that benefit local producers. With the many districts we have now it's easier to deal with issues that are unique to each of our areas and enact regulations that fairly regulate those that need regulation and not impose regulations that do not. Even at times our areas are too big as how ridiculous is it that we are considered fully appropriated in the Grand Island area, yet Grand Island has considered "dewatering" the city of Grand Island to the tune of over \$12 million. The Republican districts are the best example of this. As the water table in the Lower Republican has not varied more than four feet in 40 years, but the water table in the Upper Republican continues to drop, with the Middle Republican somewhere in between. Our district works with producers on a daily basis for a wide variety of reasons. Not counting the other committee meetings we have, our regular meeting may take an afternoon or maybe the major part of a day with just our local issues. If we combine the NRDs, it would take two- to three-day meetings may be required to address all the issues that need to be dealt with. And since we are not career politicians, we cannot afford to be away from our jobs for that length of time. Having actual producers on the board is very important as they are in touch with reality, know what's really going on, and haven't bought into the environmentalist's agenda that is frequently preached in the Omaha World-Herald and the Lincoln Journal Star. A large portion of Nebraska's fully or over appropriated NRD districts have absolutely nothing to do with the water table or sound science from studies being done but pure politics. LB962 was passed because the state government felt that something had to be done. The Platte River recovery was signed because the Governor lost his stomach to fight for its people, just as he has now in the Republican Districts. It will be virtually impossible to provide all the program services and carry out all the compliance issues connected with variances, water banking, inspecting chemigation systems, as well as addressing all the other issues which we previously weren't responsible for. It would be easier for someone against irrigation, like the

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Governor, who may declare areas fully appropriated when they shouldn't be, like the Lower Loup, Lower Platte and Elkhorn districts that were proven to be not fully appropriated, which makes one wonder, how many other unfounded claims has the DNR made? It would force producers to drive for hours to conduct business at our office. It would be hard to regulate fairly when conditions at one end of the district are vastly different than the other end. When the FSA offices consolidated it was bad for them and it will be bad for us. Our NRD districts are the envy of neighboring states, so why try and fix something that isn't broken. This isn't a sentiment from taxpayers on the way up but rather those who have no conscience and are frustrated because they can't control us as they wish they could. The Governor has made the comment to more than one NRD manager that we better change our tune or with a few votes we could be done away with. This isn't a very good atmosphere to work in. Some time back, I had a conversation with a state senator as well as Todd Sneller, the state Ethanol Board director, about my concerns on the Platte River recovery, as well as facts I had learned that might be helpful in combatting that unneeded program. Together they were going to meet with the Governor to present reasons for pulling out of the program. I phoned both their offices to find out the outcome. Since that time, neither of them will return my phone calls. And when I ask their staff about the meeting they have no knowledge of it. Obviously, the Governor told them never talk to me again. As you can see, I'm a pretty dangerous guy, and Mark Christensen can tell you that. (Laugh) My only ammunition is facts I have learned from the NRD hydrologists, Nebraska Game and Parks, a former U.S. Fish and Wildlife employee, the Whooping Crane Trust, Army Corps of Engineers, and a hydrologist in Colorado who specializes in forestry. There has been made the comment that ground water pumping should be shut off from Grand Island west. According to COHYST, shutting down irrigation only affects stream flow 2.4 percent. The hydrologist at Central Platte has told me, if you shut down all irrigation in our district, that would not guarantee to raise the level of the Platte River one inch. The executive director of the Whooping Crane Trust has told me that he "animately" disagrees with U.S. Fish and Wild Life over how much water should be in the river. In fact, they won't even tell him how they come up with their figures. Reducing irrigation in



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this magnitude would devastate our economy, put thousands of producers and agri-businessmen out of business, as well as severely damage the banking and finance institutions. In most cases, large blue stem, the native grass that blanketed Nebraska, have the same consumptive use as irrigated corn. So does that mean when the Indians occupied the prairies we were fully appropriated? If this were true, I guess that explains the disappearance of the Indians as the state DNR must have run them off for not providing offsets. (Laughter) In closing, we must remember that it's government by and for the people, through irrigation and ever-improving farming practices the farmer has turned the Great American Desert into the productive farmland with a robust ag economy that is the envy of other states. In fact, in 2003, Charles Lamphere did a study that shows that the economic impact of irrigation was \$4.5 billion. To put that into perspective, it would have been \$2,646 for every man, woman and child in the state in 2003. Purchases of irrigation equipment, farm machinery and computer software by irrigators generated a total economic impact of \$293 million and created over 3,200 jobs in 2003. How many other industries in Nebraska can say that? Central Power and other entities have no authority over ground water irrigation, just as we have no authority over them. To use the scapegoat of a drought is a laugh. By implementing the occupation tax as a safety valve during times of drought we can augment flows to the Republican or to the Platte River to stay in compliance without shutting down irrigation, which would force farmers out of business as well as devastate local economies. There are those entities, such as Central Power and Irrigation, DNR, NPPD, as well as the Governor who wouldn't bat an eye shutting down irrigation for selfish or political reasons, even if it meant producers going broke and potentially devastating local communities. Even though these folks have broken no laws, been good stewards of the land, and added to the state's economy, please do not change our present system. And I have one final thought. [LR181]

SENATOR LANGEMEIER: You're past your time, so be quick. [LR181]

MIKE DOBESH: Oh, sorry. There was a mention earlier about highly erodible lands,

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what's interesting is in the eastern part of the state where they do not need irrigation, you can develop any type of land you wish. But if you're irrigating it they do not allow transferring water to Class VI soils, which are highly erodible. And if you have grandfathered in high erodible soil, Soil Conservation has a list of rules and regulations that you must abide by. And they will spot check you. And you can also lose your government payment and permission to use water. But the thing of it is if we don't allow, what do you call it, transferring water to Class VI soils, dryland corn on Class VI soils, you cannot have enough residue to meet their criteria. But if you allow the transfer of water then you will...irrigated corn does have enough. But that's just my personal opinion. I wanted to share that with you. Thank you. [LR181]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Dobesh? Seeing none, thank you very much. [LR181]

MIKE DOBESH: Thank you. [LR181]

SENATOR LANGEMEIER: And drive safely back to the combine, as he told me he was going back to combine. [LR181]

MIKE DOBESH: Yeah, yep. [LR181]

SENATOR LANGEMEIER: Further testimony? Welcome. [LR181]

RODALE EMKEN: I was hoping I'd get here this morning so I could say good morning. (Laugh) [LR181]

\_\_\_\_\_ : It still is. [LR181]

SENATOR LANGEMEIER: We've got ten minutes. [LR181]

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RODALE EMKEN: We'll make it. Well, I'm Rodale Emken, R-o-d-a-l-e E-m-k-e-n. I'm a former county supervisor from Phelps County. And I'm here today to tell you about cooperation between Phelps County and our local NRD facilities. About 12 years ago, Phelps County lost their weed superintendent, a position which was not really full-time, but in order to keep someone in that position had to make it full-time. At that time, I was approached by John Thorburn, head of the Tri-Basin NRD, about sharing this position with them, as they needed someone halftime for their tree program and other duties and thought it would be a good fit with sharing with Phelps County's weed program. We got together several times and worked out the details. And they filled this position and billed Phelps County for half his salary and benefits each month. This has worked out really well. And this position is still in place today. By sharing this position with the NRD over 12 years it has been a savings of approximately \$15,000 a year, totalling \$182,000 in salary and Phelps County and the taxpayers. Phelps County has always had a good working relationship with the NRD regarding their water issues we have had and maintain county roads and bridges, which can be a real problem when it rains too much. I'd be happy to answer any questions you might have regarding this arrangement. And I thank you for your time today. [LR181]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Christensen, oh Carlson, excuse me. He's going to have a question, trust me. (Laughter) Senator Carlson. [LR181]

SENATOR CARLSON: Thank you, Senator Langemeier. And, Rodale, thank you for being here to testify today. Review a little bit again the fact that you cooperated on filling a full position and what kind of tax savings did that involve and apparently, obviously over time the position has still be effective, even though it's a shared position. [LR181]

RODALE EMKEN: Yes. Well, basically, what happened NRD took over the position. And we contract with them for halftime and we reimburse them for their labor and the benefits and so forth that go with it. We furnish a pickup for the Weed Department, they

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furnish a pickup for their other side. And the county pays for all the weed stuff and the spraying and this sort of thing, which is part of our budget. But it's basically just a salary that is contracted with them. So gives a full-time job, you might say, throughout the whole year at a cost savings to both of us. [LR181]

SENATOR CARLSON: Okay, thank you. [LR181]

SENATOR LANGEMEIER: Senator Christensen, do you have one question since I recognized you? [LR181]

SENATOR CHRISTENSEN: No. [LR181]

SENATOR LANGEMEIER: No? No question. (Laugh) Okay. Seeing no other questions, thank you very much for your testimony. [LR181]

RODALE EMKEN: You're welcome. Thank you for letting me be here today. [LR181]

SENATOR LANGEMEIER: We appreciate it. Further testimony on LR181. Mr. Cappel, welcome. [LR181]

CLAUDE CAPPEL: Senator Langemeier, members of the committee, my name is Claude Cappel, C-l-a-u-d-e C-a-p-p-e-l. I'd sent in stuff earlier on our Water Policy Task Force. But I just had a thing since this Republican issue come up. I don't know if the NRDs want more authority or not, but they better think about some of the ramifications that will come from the over development. The cutbacks will come from meeting court orders. I've seen the ugliness that comes from reduction in allotments or changes in rules and regulation. Without state legislative mandates or rules or regulations, requirements, reason goes out the window. The ones who holler the loudest are the most likely to win. The other concern is, which in most cases of water, board members generally have a financial interest in the outcome of their vote or with their vote. It

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becomes really hard to vote for or against something that you really have a vested interest in. Another problem, I guess, the NRDs face and the state faces is that there's been at least three bills, LB375 in '82, LB108 in '96, and LB375 in 2004, that basically needed sufficient funding that never came. This has caused additional problems probably. Funding has been a problem that's been addressed here today earlier. Basically, when LB375, in 1982, was passed to allow depletion of the aquifer, correlative rights was supposed to be a limiting factor. The Legislature never did pass any bill that provided any avenue to enforce correlative rights or make it so it could be enforced even though it's still in the statutes as a requirement. Now we're to the point that there's not enough water to meet the state compact requirement. I know no statutes that the NRDs have violated or allowed something they should have done wrong in (inaudible). I never heard or seen anything where state government required the NRDs to meet a compact requirement or meet the compact requirement. There was a time...it was if they did anything it would show a sign of weakness back when Kansas started suing or was suing. Now it sounds like the state government is going to require 300,000 acres to be shut off in water short years with no compensation. It sounds like the NRDs could possibly have a decision on how to meet the requirements. In the Middle Republican I can see each NRD could have a different solution. It's just a question of who's ox is going to get gored. The Legislature could require correlative rights where each NRD in relation to their depletion to share shortages equally by giving each irrigator in a particular NRD the same allotment, treat everybody equal as this (inaudible) says. The Legislature sets mandates, rules and regulations for county commissioners, county assessors, law enforcement, etcetera. My opinion is the Legislature needs to set water rules and mandates like they do for other state agencies and let the NRDs police and carry out the Legislature's requirements. Thank you.  
[LR181]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Cappel? Senator Christensen. (Laughter) I had to try it. I wanted to see what your reaction would be. Senator Carlson. [LR181]

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SENATOR CARLSON: Thank you, Senator Langemeier. Claude, I know you've got disagreements with how you see NRDs carrying out their function. But I have trouble that...believing that there's a better system to elect a board to carry out a function. And you indicate part of your criticism is that every board member has a self-interest in...that's on an NRD board. Well, what kind of a board would it be if we...we don't want this, I don't think, if we had a requirement that everybody that runs for an NRD board cannot own any land, cannot have any interest in irrigation, cannot have any property on a river where they're concerned about natural resources and so forth and conservation. If there's no self-interest in there, how effective would they be on a board?  
[LR181]

CLAUDE CAPPEL: I'm not saying that, Senator. I think what you got is the way it is now. What I'm saying is like a county assessor or county commissioner, they cannot go out there in the county and set the levy for the taxes. If you had them where they could do their own thing, you could put all farmers on there, they'd tax the heck out of city people, etcetera. Somewhere here the Legislature has to set rules. In the statutes almost all the rules are "may" or "intend" or things like that. I think there's only four "shall's" in the main part of the body. And the NRDs pick out these rules. In the Middle Republican we are elected at-large. Basically, the upland irrigators control the district. I can see this next time it's going to go to the area down in the quick response. The whole attitude will change. Upper Republican is elected by precincts or however they call that. The people over along the Republican River have virtually no vote, where the people over in the other part control the thing. It's a problem, you know, it's a problem. I'm not saying there's going to be a solution for it that's easy. But I think in some way the Legislature has to take control of the water and then let them decide what, you know, how to police it. [LR181]

SENATOR CARLSON: Well, I think in the time that I've gotten acquainted with you I know that your frustrated with problems that you see exist. I even agree with you on

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what the problems are, but probably not in the way you go about coming to solution. You've apparently crossed the bridge that it's okay with you if regulations for NRDs are dictated from a position at the state level. [LR181]

CLAUDE CAPPEL: I don't know if they need to be dictated. But if you go back to the past and said, we've got to be sustainable, you know, somewhere here you've got to balance the water. That would have been a lot better solution, even (inaudible) would be a better solution. They're talking, you know, they tried putting the tax on the occupational tax. I know from the studies and looking back to history and stuff where we got the Upper Republican basically has supplied all the water. And if you look at the studies done in '76, '78 and '95, it showed ground water percolated most of the water into the streams, almost all of it predominantly is what they say. So if you get up there, each NRD...I kind of lost my train of thought. But it's just somewhere it's got to be where the state sets a rule and stuff. If you go ahead and let the NRDs keep on pumping water, why you tax the people that are going to get shut off. And I know, in looking at the charts...look at the dam charts, that we will not have water. Basically, we'll be shut off most of the time on a quick response. I really don't know what the answer is. I think that's part of your answer, but I can see being a quick response irrigator or anywhere close to the stream, because quick response has no boundaries. I mean, it can be extended out further and further as you need to. [LR181]

SENATOR CARLSON: You believe in correlative rights. [LR181]

CLAUDE CAPPEL: Yes, I do. [LR181]

SENATOR CARLSON: So do I. If you were king, what would your rules be for the basin next year? [LR181]

CLAUDE CAPPEL: Next year, I would say each NRD has a specific depletion amount as set by the...the way they are now. Each NRD would do whatever it takes to meet the

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compact. I think Roger Patterson told me at different times that Kansas has 400,000 acres and has 40 percent of the water. Nebraska has 49 percent and 1.2 million. Kansas gets 18 inches, we'd have to go back to some number of inches that we could use. I don't know what that number is. I've seen all the way from 5 to 7. But basically, you would set an allotment of 5 or 7. We'd learn how to work with it. On our farm, we've got about 14, 15 inches of carryover now, over a period of years. Basically, we have 4,000 acres irrigated. We got 6,200 acres of carryover at the end of this year. It's worth a lot of money to sell. I don't want to sell it, because it's cutting my own throat. It goes up to areas that will take it out. [LR181]

SENATOR CARLSON: Okay, if you had the ability to make that decision and the power to make that decision, you'd be 5 to 7 inches. [LR181]

CLAUDE CAPPEL: Yes. [LR181]

SENATOR CARLSON: You wouldn't be at zero for anybody, would you? [LR181]

CLAUDE CAPPEL: No. Everybody would be treated equal. [LR181]

SENATOR CARLSON: And yet if a central authority is able to make decisions for the whole state, that's the kind of decision we may well have. [LR181]

CLAUDE CAPPEL: It's probably fair. Fairest that you're going to get when you start shutting down people. [LR181]

SENATOR CARLSON: It's fair to put somebody to zero? [LR181]

CLAUDE CAPPEL: No, not zero. [LR181]

SENATOR CARLSON: No, I didn't think so. [LR181]



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CLAUDE CAPPEL: Well, I thought you said everybody shares equal. [LR181]

SENATOR CARLSON: I'm agreeing with you on correlative rights. But if you were the king, you'd have an allocation between 5 and 7 inches. That's one person making a decision. And if we centralize decision making so that one person, in fact, in the state can make the decision, that well might be zero. You don't like that decision, and I don't like it either. [LR181]

CLAUDE CAPPEL: If it would be zero for that well, it'd be everybody's well would be zero. [LR181]

SENATOR CARLSON: But that's not the way it works, unfortunately, and that's why it's important that we have local control, so that, hopefully, we've got a balance of input there that we don't reach that decision. [LR181]

CLAUDE CAPPEL: I believe in local control; I really do. But there again, they have to have some...to me, it's like counting a census; you just can't go out here and let each one, or everybody, make their own rules out there. And NRDs can make their own rules. That's the problem I see. I don't know... [LR181]

SENATOR CARLSON: Okay. All right. Thank you. [LR181]

CLAUDE CAPPEL: Okay. [LR181]

SENATOR LANGEMEIER: Other questions? Senator Dubas. [LR181]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Mr. Cappel, for being here. I'm hearing this from other people too. If you could change the election process, how...would you change the election process for NRD board members? Is there a way

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you could get a more balanced representation? [LR181]

CLAUDE CAPPEL: It could work...it works bad both ways. I'd look into our district, probably we would have, out of the whatever board members there are, probably there'd only be two from outside of the counties right along the river--Red Willow and Hitchcock. So it can...it would work the opposite way. I don't know...I just don't... [LR181]

SENATOR DUBAS: So there's not necessarily a better way of doing the election process to try to get... [LR181]

CLAUDE CAPPEL: Probably not. [LR181]

SENATOR DUBAS: ...a different type of representation on the boards. I mean, you know, it's an election process, so basically anybody that wants to run can run. Is that correct? [LR181]

CLAUDE CAPPEL: Right. [LR181]

SENATOR DUBAS: And so it's just maybe getting more people interested and willing to step up to the plate and serve in this capacity to get different viewpoints represented. [LR181]

CLAUDE CAPPEL: Basically, we have the viewpoint like I have in the basin, you're not going to get elected to the NRD board. Well, maybe now, but...(laughter) [LR181]

SENATOR DUBAS: I hear you. It's all about politics. Thank you very much. [LR181]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much, Mr. Cappel. [LR181]

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CLAUDE CAPPEL: Thank you. [LR181]

SENATOR LANGEMEIER: Further testimony. Come on up. They're not going to run you down from behind. [LR181]

DEAN EDSON: I got somebody running me down. [LR181]

SENATOR LANGEMEIER: You kind of had that look, like... []

DEAN EDSON: I'm looking for some assistance here. []

SENATOR LANGEMEIER: Okay. Okay. []

DEAN EDSON: (Exhibits 18 and 19) Senator Langemeier and members of the committee and other senators here joining us today, my name is Dean Edson, spelled D-e-a-n E-d-s-o-n, and I'm the executive director for the Nebraska Association of Resources Districts. I have some packets of information--just hand them to the clerk there; she'll take care of them. I'm providing each one of you a copy of a resource booklet on all the NRDs and the NRD programs for your information. And I'm not going to go through the entire book, but I'm going to go through quickly what's in the booklet. And you can take a look at that information at your leisure and ask questions of me after I'm completed here. I also have another letter that I want to provide to you that came from the U.S. Army Corps of Engineers in Washington, D.C. Mr. Larry Prather, assistant director of civil works, out of Washington, D.C., sent me a letter and requested that it be placed as part of the record. He's provided some information about a paper entitled "A History of the United States Water Resources Planning and Development" by Warren Veissman Jr., associate dean, College of Engineering, University of Florida. And in that, there's an attachment to that of part of that paper that talks about how two states are considered to be the leaders in addressing water problems. And that is the state of

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Nebraska with its NRD system and the state of Florida with its Water Management Districts. And also Larry goes on to explain the partnerships that we have with the Corps of Engineers on a lot of projects in Nebraska and the requirement of having local sponsors. Over to the booklet--first of all, what we have in there is contact information for each one of the NRD offices, so you can contact the managers there as well. I've included our Nebraska Association of Resources Districts board member list, so you can feel free to contact any one of those. Also, in that first tab is how the district directors are elected and what the subdistrict ratios are if they're elected by subdistrict. So you can take a look at that at your leisure. What I also have in there is the 2008 ground water management summary by district. And this one--it was last updated in December of 2008; we're going to update another one in December of 2009 that will reflect the changes done with 483 last year and where the districts are at. That summary also provides you a time line of major legislation passed dealing with water management, so you can see when authorities were granted to NRDs as far as moratoriums and other water management activities and authorizations that they were granted. Also included in here is the information sheets on each one of the NRDs. There's one in general for all of the NRDs, and then each one of the river basins is broken down too. So if you have a particular interest in a river basin, you can go to that tab, and then there's the top three projects that they're working on in that district in those information sheets. Also included in this is a tab on the development fund--the Natural (sic) Resources Development Fund--and the projects that we're sponsoring at the local level and what dollars are involved in it, what the projects are, a one-page summary of each one of the projects. Toward the back of the book, what is the last thing that's in that booklet in the back is our property tax information, and this was collected by the Nebraska Department of Revenue. It provides you tax information by political subdivision, and so you can compare the districts to all other political subdivisions. I've provided the one-page sheet; there is about a 85-page report that's available online, too, that you can get to break out that tax further if you want to. I took that information from the one-page sheet and provided a graph for you to show what the NRDs' tax increases were last year. And what this shows is that we've decreased property tax

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asking by 2.1 percent in 2008 and 2009. The state average change...increase in property tax was about a 5.5 percent increase. The last chart in here gives you a pie chart to tell you what the breakdown is of property taxes; and for NRDs, we collect 1.9 percent of the property taxes--of all property taxes collected in the state. Inside your folder is another piece of information that includes a map of the NRDs in the center and then more information about specific programs that each NRD may undertake. With that, I will try to close. There will be other districts that will follow me--individual districts--and they can answer specific questions about their district projects. And I wanted to give you this general information and then answer any questions you may have. [LR181]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Haar. [LR181]

SENATOR HAAR: Thank you. Just for the record, if any of you saw an exchange of money between Dean and me in the back, he was loaning me a quarter for...to buy a pop (laughter)--but charging me 50 percent interest per day. So thank you very much. [LR181]

DEAN EDSON: I also loaned a pen to another state senator, and that's all going to get recorded on...(laughter)... [LR181]

SENATOR UTTER: I'd like (inaudible). [LR181]

DEAN EDSON: ...but it's all going to get reported on my Accountability and Disclosure forms. [LR181]

SENATOR HAAR: But seriously, I'm fascinated by...who determined the number of board members per NRD? Who, and when was that done? [LR181]

DEAN EDSON: That...I looked back at the history of that. And when they merged the

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districts back in--the 154 political subdivisions in 1972. At that time there was up to 49 members were allowed on an NRD. And the state came in...or state law got changed to reduce that number but to allow the districts to choose between 6 and 21 board members. And then they could divide it up on sub-basin... [LR181]

SENATOR HAAR: Um-hum. [LR181]

DEAN EDSON: ...and they could do their...allow for an at-large position. So that was done, probably, way back in the early '70s... [LR181]

SENATOR HAAR: Um-hum. [LR181]

DEAN EDSON: And then the districts choose how to do that. [LR181]

SENATOR HAAR: And I know some of them changed the number of board members. Didn't that happen in the Papio-Missouri, that they increased the number, I think? [LR181]

DEAN EDSON: I don't know for sure on that. [LR181]

SENATOR HAAR: Okay. [LR181]

DEAN EDSON: I know John Winkler is going to testify here following me... [LR181]

SENATOR HAAR: I can ask him that too. []

DEAN EDSON: ...and you can ask him about that. []

SENATOR HAAR: Okay. And thanks for the loan. [LR181]

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DEAN EDSON: Okay, yeah. [LR181]

SENATOR LANGEMEIER: Other questions? Seeing none, thank you very much for your testimony. [LR181]

DEAN EDSON: Thank you. [LR181]

SENATOR LANGEMEIER: Further testimony on LR 181? Mr. Paulman, welcome back. [LR181]

RORIC PAULMAN: Roric Paulman, R-o-r-i-c P-a-u-l-m-a-n, testifying for myself. Thank you again for the opportunity, Senator Langemeier and senators, as a former board member of the Twin Platte NRD and, as I've stated before, a stakeholder in the IMP process for that district and also for the overappropriated portion of the Platte basin from border to border. And what we're talking about here is education and a steep learning curve. And everything that we're talking about here: whether it's appropriate or whether we have the right mix of people--and I guess I look at it...Senator Carlson stated: the democratic way. And whether it's a school board or whether it's a hospital board, which I'm also on--the second-largest employer in Lincoln County--but when you enter that, it has a level...when you commit to that, it has a level of education that each and every one of us as Nebraskans I think has a responsibility to. And you do go in with some ideas, and that's why you run for that board. And when we get to that point, I got my eyes woke up. But I'll tell you that in the IMP process, as stakeholders, the board was absolutely adamant about the mix. There was municipalities; there was bankers; there was an HR representative from the hospital. There was a whole myriad of people. And the same with the OA basin level. That was a huge group; in fact, it was difficult to get anything done. I'm not a consensus builder; I determined that as a result of that process I'm not...it's tough for me to be in a consensus-building process. But they came from everywhere. And I have developed some relationships with the Game and Parks and people that we've kind of trashed today in reference to our own local NRDs. And they've

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done a good job. They have a huge task in front of them. And again, the level of indoctrination and education is huge. And I enjoyed that, but I also felt I got off the NRD board because I wasn't sure that we could talk about what needed to be done at the level that I've brought to you in the last two days could be accomplished at the NRD. And that's okay. And I moved off and out of that position to accomplish that goal. It was a different level of education; it was a different direction. So in every piece of this, it's more about education. I'm opposed to spending a lot of time on this. It's a good system. Steve Chick did a great job. I work with the NRCS. The municipalities work with the NRCS. Everybody has an opportunity to work with those interlocal agreements. It isn't exclusive to agriculture. It's a process that is great. You have the same opportunity to get a tree in town through the NRD as you do as an agricultural person or as a rancher or any other person or constituent or taxpayer in that district. You have equal access. And it drives you, whether you want to be there or not and whether you want to take the time and the effort to get that kind of education. That's really all I have to add. The single thing that bothers me the most is the North Platte World-Herald (sic) ran an article--and I'm not that kind of person, but I've taken about all I can stand with remarks about local control and specifically people that are in our district that I felt we were supposed to be working with. I'm not going to name names; it's in the newsprint: North Platte officials consider revamping Natural Resources Districts. And there's comments in there that I think are inappropriate. I thought that we're in this as one, that we're in this for a resolution, and we can do it together. And in my relationship and my partnership in the overappropriated as a stakeholder, that wasn't the case always, that there was always something behind that drove a wedge between surface and ground water and consistently surface and ground water. Little statements--or we'd go outside the realms of what we were charged with, and that to me was a single disappointment, was that inability to reconcile the differences between surface and ground water. And I really--in particular one outfit but not all of them but in particular one outfit. Thank you. With that, I'd entertain any questions. [LR181]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Paulman?



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[LR181]

RORIC PAULMAN: Thank you. [LR181]

SENATOR LANGEMEIER: Seeing none, thank you very much. Further testimony?  
[LR181]

RON BISHOP: (Exhibits 20 and 21) Chairman Langemeier and members of the committee, I'm Ron Bishop, B-i-s-h-o-p, manager of the Central Platte Natural Resources District, and I won't take a lot of your time by reading all of my testimony. I have a copy of it for you. I'll go through and try to summarize. In addition to my testimony, though, I brought a letter from Marlan Ferguson, who is the executive director (sic) for the Grand Island Area Economic Development, that he wanted to share with you. Over the 40-plus years that Central Platte NRD has been in existence, we've carried out numerous projects and programs that have been critical to the health, safety, and well-being of the people and natural resources of the Platte Basin and the state of Nebraska. The success of those projects and programs is due in large part to the strong personal relationships and trust that have been developed between the NRD staff, board, and local landowners, local municipalities, local county boards, and local public in general. The NRDs are large enough to get the job done but small enough to be able to develop and maintain those strong personal relationships and level of trust that are so important to the success of the projects that ensure the well-being of the basin, its people, and its resources. I'd like to just give you a few examples. One is the Platte River Recovery Program. The state of Nebraska joined in with the other two states and the Department of the Interior. That project that the state committed to--we've got a significant role in carrying out that project--that project calls for acquisition of 130,000 to 150,000 acre-feet of water in the first 13-year increment, to put back in the river at critical times. Some of that water is already there; it just comes at the wrong times. Some of that water isn't there; it is going to have to be acquired. And so we've got a program that we've joined with the state of Nebraska, and our partners are the

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Department of Natural Resources, the Game and Parks Commission, and the five NRDs in the basin. And through that program--we call it PBHEP, Platte Basin Habitat Improvement (sic) Program--we got a grant from the Environmental Trust. And with that grant money--which amounts to about \$1 million a year, plus \$2 million from the state and \$2 million from the Natural Resources Districts--we're going to go out and acquire from willing sellers and willing buyers the water rights that we need to get us in compliance with the requirements of that Platte River program that the state signed onto. So it's a cooperative effort between the states and the locals--Natural Resources Districts--to achieve the commitment that the state made in that Platte River Habitat program. The acquisition is going to be done by the Natural Resources Districts, and that's only possible because of that close working relationship and that level of trust that the NRDs have developed out there in the area. Another example is LB962. Through that program we were declared fully or, in part of the district, overappropriated. And we've had a suspension of drilling of new wells and development of new acres within the Natural Resources District. In order to fulfill the requirements, especially in the upper part, getting back to fully appropriated, we've developed a water bank. A water bank is what we call it; we're acquiring water rights from willing seller, willing buyer and doing it that way because we think we can do it a lot more economically that way, with less economic impact to the area, by working with willing sellers and acquiring it in the locations that do us the most good, where we get the biggest bang for the retirement of a single irrigated acre, which is generally close to the river. By doing it that way, we hope to not have to implement regulations that would spread it across a much larger area that would encompass some folks whose contribution to the river is even less from irrigation than it is close to the river. And so by doing it on a willing seller and choosing and picking where we do it, we can get the most water with less disruption to the ag economy. The U.S. department of Natural Resources Conservation Service has partnered with the water bank program in some of the USDA programs. We have a special EQIP program out there where we partner with USDA, and they pay to retire short-term irrigated lands, and then we come in and add to it with funds to make that temporary retirement a permanent retirement. Again, the success of that program

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depends upon the good working relationship that we have developed in the area. We've also got a ground water quality management program. We've had nitrate problems in the valley there for years. We have a working relationship with the 800-plus operators that farm within about a 700,000-acre area across the district that has nitrates at or above the 10 parts per million the Public Health Service says is the maximum safe level. We had, when we started, nitrate levels up to 60 parts per million there. But we've developed a good working relationship, and we have contact with each of those 800-plus operators in that problem area at least twice a year, sometimes a lot more often. And because of that close working relationship and those personal contacts twice a year, we've dropped nitrate levels from an average of about 19.5 parts per million down to 15 parts per million within that problem area since we started the program. The success of that program, though, is only due to the personal contact that we've had with those folks. In closing, I just...we've had a number of flood control projects and other activities, but the success of our program has been because of the local trust and the local cooperation that we have developed over time. If you were to choose--if the Legislature were to choose to make us a lot larger, my concern is that we would lose that local contact ability and that we would lose some of that close working relationship that we have not only with the individual producers but individual communities and leaders in the communities. And there would go some of the cooperation, and there would go some of the efficiencies. We're big enough now, 185 miles long--we're sitting close to the middle of our Natural Resources District. We run clear out to the other side of Gothenburg and clear down to Columbus on the east end. We're close enough now that I've toyed from time to time with the idea of setting up a suboffice in perhaps Lexington or somewhere in the western part of the district, because we're headquartered in Grand Island. But I have kept from making that recommendation to the board, because there's a lot of benefits from having the group in one location. If we were to be larger, there'd be no question we'd have to set up suboffices. And so while you may...by combining some NRDs, you may eliminate a manager's position, I would argue that to get the job done you wouldn't eliminate any of the other positions. But in the doing that, you would have the additional cost of additional office space and

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additional secretarial help in the other offices. And I'm a little hard-pressed to see any savings if you were to do the kind of job that I think needs to be done and is being done. With that, I'll stop, and maybe there's a question or two that I can try to answer. [LR181]

SENATOR LANGEMEIER: You bet. Are there any...Senator Dubas. [LR181]

SENATOR DUBAS: Senator Langemeier, thank you. Thank you, Mr. Bishop. Over the course of the last two days, we've taken a lot of testimony, and there's been a lot of ideas thrown out there. And there's been, maybe, some questions raised as to: Is it really the best economic decision to be taking irrigated ground out of production and, you know, converting it to dryland or whatever. And I know you have obtained quite a few acres in this buyout. [LR181]

RON BISHOP: Yes, we have. [LR181]

SENATOR DUBAS: Are these good, highly productive farms that are converting out of irrigation? Are these marginal lands? And do you think that it's economically a good decision? [LR181]

RON BISHOP: I think it's...we think it's an excellent decision, Senator. If we have to do it through regulation--and we're required by statute to get ourselves back to fully appropriated--we only have two choices: We either acquire the water for the offsets, or we regulate to get the water to move us back. And if we regulate, we have the correlative rights systems, where we try to treat everybody equal and fair. And so we have to include a group into that regulation and say: You have to cut back 5 percent or 8 percent or 10 percent, whatever it might be, to get the amount of water that you want. And in doing that, you're cutting back 8 percent on a farm that may only impact the river 25 percent as well as cutting back 8 percent on a guy whose pumping irrigates (sic)[?] the river and the water by 90 percent. And so you've got a whole mix of impacts from one blanket regulation. Where, this way we can go out and concentrate on the fellows

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that have the 90 percent impact or the 85 percent impact. And generally what we're finding, most of the stuff that we're getting is things like corners on center pivot. A guy wants to put in a center pivot, and he's thinking about putting in an underground sprinkler system or a seep system on the corners; he's thinking about stringing pipe and just irrigating it, but it's got a lot of point rows; it's very difficult. So rather than do that, he sells us the water rights off those three corners or four corners, whatever it is, that he might want to. In other cases, it's odd-shaped fields, where he's got a field where the highway or a railroad or a stream makes it an odd shape, and it doesn't lend itself well to a center pivot, and the rows are all different lengths. And so we end up buying the whole field in that case. So we've had all kinds of different...another example: A fellow was primarily cattle, and he had a lone 100 acres of irrigated land down in the valley, and he needed more pasture, especially for wintering stuff. And so he sold us the water rights off it and seeded it back to grass. And he was happy, and we were happy. And we got closer to getting back to fully appropriated. So there's all kinds of situations, but generally it's the stuff that fellows don't want to fool with irrigating, or they're odd-shaped and it's difficult to irrigate, or it's odd-shaped and it doesn't lend itself to a center pivot; and his operation would do better if he sold off the water rights, bought a piece, and put a center pivot on it, took care of it that way. [LR181]

SENATOR DUBAS: Thank you. [LR181]

SENATOR LANGEMEIER: Any other questions? Senator Hansen. [LR181]

SENATOR HANSEN: Thank you, Senator Langemeier. Ron, you mentioned that the district is 185 miles long. What's the population of the district? [LR181]

RON BISHOP: About 125,000 people. [LR181]

SENATOR HANSEN: Okay. With the advent of passage of LB962, when you were claimed to be overappropriated, how many wells went in? [LR181]

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RON BISHOP: How many wells went in? [LR181]

SENATOR HANSEN: How many new acres? How many wells? [LR181]

RON BISHOP: No new wells went in after we were declared...in fact, a year before we were declared fully appropriated, we put a ban on--at the request of the department. They felt that it was likely that our area was to be declared--at least the western part--overappropriated. Yeah. Sorry. [LR181]

SENATOR LANGEMEIER: They can't record you if you don't talk to our mike. [R181]

RON BISHOP: Yeah. So the director of the department of water resources came to our district and said: It looks like we may have to declare you overappropriated when 962 passes, and we think it's going to pass, and so we would like you to consider stopping new wells now so that you and us don't have a further road to go to get back to fully appropriated. []

SENATOR HANSEN: So there was no lag time in there where people could drill some wells. [R181]

RON BISHOP: No. Our district adopted that in--I think the ban went into effect in November the year before we were declared overappropriated. And so the only wells that went in after that time were replacement wells or wells where they provided offset to the river to offset what they were going to use and pump. And that's the only wells that have gone in since that time is wells that are offset, the depletion of the river is offset. [LR181]

SENATOR HANSEN: Thank you. [LR181]

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SENATOR LANGEMEIER: Seeing no other questions, thank you very much for your testimony. Further testimony on LR181? Thank you. [LR181]

KENT MILLER: (Exhibit 22) Senator Langemeier, members of the committee, Senators, my name is Kent Miller, K-e-n-t M-i-l-l-e-r. I'm the general manager of the Twin Platte Natural Resources District. The Twin Platte Natural Resources District covers most...about two-thirds of Lincoln County, the city of North Platte, all of Keith County, the city of Ogallala, Arthur County, and the western two-thirds of McPherson County. I'm submitting for the record a letter that I provided to Senator McCoy dated September 3. I copied each of you at that time, but I still wanted to submit that letter for the record, and I do not plan to review that letter in my testimony today. The Twin Platte NRD board believes that local control of its own water should be maintained by the current 23 NRDs. If we were to combine the NRDs in the Platte River Basin, that would have an NRD stretching from the Missouri River to Wyoming. In essence, that would be state control. And we don't feel that that would reduce costs if current programs are kept in place; and, in fact, it may increase costs if you attempted to do that. In the Twin Platte NRD, we only have 11 employees. Each of these employees have their individual responsibility; we do not have duplication. We only have one person in our office who provides the office support in the accounting. Administratively, we essentially have one administrative person, and that's me, and I also have individual responsibilities that other employees do not have. So we're not duplicating responsibilities of employees within our office. It's a small operation, but we think it's an effective operation. What I wanted to focus on in that letter that I submitted to Senator McCoy and each of you was that...in regard to interlocal agreements. And I indicated in that letter that we have 21 interlocal agreements in place at this time. We are currently participating in...and examples of those--because what it points out is we are working together where we can. Anywhere we can, we want to work together, because that saves dollars; it saves personnel; and it...we can accomplish more by working together. Examples of that is all of the NRDs in the state work together for medical insurance for our employees. We have all 23 working for that. We have a ground water modeler in our office that's shared

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with the Tri-Basin NRD and the Central Platte NRD. There is the Cooperative Hydrology Study, which you guys have heard much about--the COHYST. That was put in place a number of years ago to develop the tools to deal with the management decisions we're dealing with today. And today that involves five NRDs as well as other agencies. We have an interlocal agreement in place in regard to the South Platte Compact, in looking at what opportunities there may be with that compact between Nebraska and Colorado, because there's provisions that are not currently implemented that I visited with you about yesterday. There's an interlocal agreement with all of the NRDs for purchasing trees, for tree-planting programs. That's just a small example of the 21 that we have in place now. The other that I wanted to point out to you is that even in addition to those interlocal cooperation agreements, NRDs almost daily have interaction in working with each other. Just as an example, just yesterday an employee of the Central Platte NRD was in our office working with staff in our office in regard to software that was developed with a grant that was funneled through the Central Platte NRD in regard to water banking. That software is being shared by other districts in the basin. That employee was in our office working with our staff as to how to use that software, Number 1--and Number 2, opportunities to improve that software. You know, we may see some things that we'd like to improve that software that we can share back. Those things happen every day in NRD offices across the state. So I just wanted to conclude: Yesterday I talked to you about my visit with the Arthur County commissioners in regard to raising our taxes. And they had been reading in the news media that this hearing was going to be held, that there was going to be discussions about consolidating NRDs. And those three county commissioners--and that's what I want to leave with you today--they said: You go down there and you tell those state senators: Leave the NRD structure alone; local control is good. And that's coming from a county of 600 people. Thank you.

[LR181]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Miller? Seeing none, thank you very much. Further testimony on LR181? [LR181]



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JOHN WINKLER: (Exhibit 23) Chairman Langemeier, members of the committee, and other senators in attendance, my name is John Winkler, J-o-h-n W-i-n-k-l-e-r. I am the general manager of the Papio-Missouri River NRD, located in Omaha, Nebraska. As always, I appreciate the opportunity before the committee to discuss issues of common interest here in the state. I have prepared testimony, but I'm not going to go through it. It's...mine is similar to the letter that I responded to Senator McCoy with our programs. There is a couple things I wanted to address, though: With efficiency and effectiveness of the NRDs and not only the NRDs themselves and among themselves, but also I believe we make our partners more efficient and effective. And you've heard previous testimony on our interlocal agreements and how we can leverage resources from other--either state or federal resources or local resources or foundation resources even. I've also, as part of your packet I've provided a budget expenditure breakout. There's some confusion sometimes on the Papio's budget, of what we actually spend funds on, so I thought I would provide this to you. It gives a breakout of the percentage of our funding and where our board directs the majority of our resources. I also brought a copy of our budget, which I supplied to every state senator in the state. Because after the bonding bill, it seemed like our budget was probably the most watched budget out there. So I had a copy of this, and I can answer any specific question you have on funding. This past September the Papio NRD board adopted a budget that lowered our property tax levy for the third consecutive year. Right now we're at 0.03275, which would mean the owner of a \$100,000 piece of property would pay \$2.72 a month in property taxes to the district. And this really became evident to me when I took my 9-year-old girls basketball team to McDonald's, and they all wanted Happy Meals. A Happy Meal is more than \$2.72, and so I...it kind of struck me as--we'll pay \$5 for a hamburger, but when it comes to protecting life, property, and our natural resources, \$2.72 seems a little high to some people. So I thought that that was kind of a...something I'd bring to your attention. A couple of the...also as part of this packet I brought--what we file with the state is a Report of Joint Public Agency and Interlocal Agreements. And the Papio NRD probably has either between 30 and 40 interlocal agreements per year, either ongoing or just a one-year type of agreement. And you can go through these, but they

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range from levee repairs to watershed management to flood plain management to addressing federal mandates like the Clean Water Act, flood control, wastewater treatment. It's a whole host of projects, and I listed them also in the letter. But one of the main issues, I believe, is we probably at the district leverage anywhere from \$3 to \$4 per every dollar of property taxes that we spend. And Steve Chick, I think, touched on it very clearly. The Corps of Engineers--we work very closely with them, but we work closely with our cities, our counties, our villages, our SIDs, our rural landowners. One instance is the village of Waterloo. And we talked about this during testimony on the bonding bill. They were approached by the Corps and FEMA that their levee was not meeting current standards, and if they didn't repair it or rehab it they would no longer be protected from a 100-year flood, and then the whole community would be required to buy flood insurance. It was about a \$4 million tab to do that. And that exceeded any resource that the community had. The community themselves could not even bond that amount. So obviously they came to the district, and they said: We need your assistance. Our board agreed to cost-share 50/50 with that community and provide \$2 million to bring that levee up into compliance. And also as part of that story is they approached the federal government for stimulus funds--none available. They approached the state of Nebraska for assistance; obviously none was available there. So without the Papio NRD structure--without the NRD structure--that community would have been \$2 million short on providing flood protection for their community. Another example, real quickly, is the Papillion Creek Watershed Partnership. We're partners with cities and counties in our district to meet the federal Clean Water Act. The Papio NRD provides not only services to those communities, as far as reviewing stormwater permits, but also we share staff, we share resources, we share equipment. And that's with all of our communities; that's with all of our other NRDs. Also weed management: We were not fully appropriated or overappropriated, but the NRDs--Lower Platte South, Lower Platte North, and the Papio--found it appropriate to begin to be proactive in attacking the invasive species in the lower Platte River, so we funded that ourselves. We worked with our counties to do that. Counties themselves--the weed control authorities--would not have the ability to even begin to approach that. Because of the interlocal agreements

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and the ability of the district to leverage resources together and as three or four of us, we were able to accomplish that. We're in the third year of the program; we're mechanically removing the invasive species now, clearing sandbars for not only habitat but also for flood prevention, and also to put more water back into the streams. So that will conclude my testimony, and I'll answer any questions that you might have. [LR181]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Winkler? [LR181]

JOHN WINKLER: To answer... [LR181]

SENATOR LANGEMEIER: Seeing... [LR181]

JOHN WINKLER: ...Senator Haar's question, our district originally had 21 directors, and then they went to a one-person, one-vote; and it's now 11. And they changed that before I was the general manager. So that's how it got to where...so currently we're at 11 directors. [LR181]

SENATOR HAAR: Okay. [LR181]

SENATOR LANGEMEIER: Are there any questions? Seeing none, thank you very much. [LR181]

JOHN WINKLER: Okay. Thank you. [LR181]

SENATOR LANGEMEIER: Further testimony on LR181? Just as a quick poll, how many more do we have to testify? Welcome. [LR181]

MIKE CLEMENTS: (Exhibits 24) Good afternoon. Senator Langemeier and members of the Natural Resources Committee, my name is Mike Clements, that's C-I-e-m-e-n-t-s.

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I'm the general manager of the Lower Republican Natural Resources District, and we're located in Alma, Nebraska, on the shoreline of beautiful Harlan County Reservoir. I'll try and keep my testimony brief. The NRD system is unique in Nebraska in that it offers local control to local issues that can vary greatly from one part of the state to another--or from one part of a river basin to another. The Republican basin is a perfect example. It not only stretches through two time zones but is nearly 250 miles long. The soil types, geology, climate, rainfall, and ground water levels vary greatly from one end of the basin to the other. The NRD system allows local districts to use local tax dollars to tailor plans to deal with specific local concerns, rather than using a blanketwide approach, as other states do. The Lower Republican NRD works very closely with a number of other districts across the state as well as numerous local, state, and federal agencies. We presently have 15 interlocal and joint agency agreements that range from controlling noxious and invasive weeds in the Republican River to sharing salaries for joint field office personnel. Many of the agreements allow for pool resources and joint participation by numerous partners. The end result is better utilization of funding for a common goal. The rural water project that we installed four years ago is a perfect example of numerous local, state, and federal agencies working together to achieve a common goal; and that was to provide safe and abundant drinking water for domestic and livestock use in the eastern end of the Republican River Basin. The Lower Republican rural water project is a success story that reaches 150 rural subscribers plus the community of Guide Rock. Water issues across the state are huge, and they are not going away. The NRDs in the Republican basin have stepped up to the plate by implementing integrated management plans nearly five years ago. Each district worked closely with the Department of Natural Resources to develop a plan that is tailored to the local area. Although the plans may be different in nature, the common goal is the same. I guess the message that I'm trying to convey is that the present system is working very well: Local control to deal with local issues for a common goal. Thanks for giving me the opportunity to speak, and I would be glad to answer any questions if I could. [LR181]

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SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Clements?  
Seeing none. Welcome. [LR181]

DAVID SAALFELD: (Exhibit 25) Senator Langemeier, other members of the state Legislature, I want to thank you for the opportunity to speak to you today. My name is Dave Saalfeld, D-a-v-e S-a-a-l-f-e-l-d. I am the chair of the Lower Platte North Natural Resources District, located in Wahoo, Nebraska. My testimony is in opposition to LR181. You can often judge the value of an employee by the additional responsibility their boss places on them over time. This employee must perform outstanding work while maintaining quality output. The same can be said for political subdivisions. In 1969, the legislative vision of the NRDs was broad. Maurice Kramer and Nebraska saw a better, more efficient way of getting natural resources business accomplished. And when we began business in 1972, that vision was already expanded. But looking back, we now know we are just looking at the tip of the iceberg. In the early years, the NRDs began by taking over duties from county soil and water conservation districts and from local watershed districts. The locally elected board members were able to set priorities that matched the needs of their specific basins. These districts were the model of local efficiency and kept close contact statewide so programs were coordinated and good ideas could be replicated. As natural resources issues have arisen over the last 37 years, the Legislature has continued to look for local, efficient solutions. NRDs were quite often the solution for the problem at hand. Just like your star employee, I like to believe the NRDs have been repeatedly called upon due to our past history of performing these mandates in an efficient manner. Our general manager has submitted a letter to Senator McCoy--and that's one of the inserts that you have in the packet that was given to you--which introduces our district and outlines our most pressing projects and programs. I will not go over all these projects, but I have attached a copy of this letter to my testimony so it can be introduced for the record and for your review at a more convenient time. The points I would wish to add is our NRD is one of the smallest but one of the most busiest. Due to our location we have an active flood control program, heavy soil conservation needs; and one-third of our district is irrigated, and

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there is public demand for recreation. We are heavy users of interlocal agreements, with over 40 in place currently. Most of these agreements are to spread the funding and work for construction projects, studies, or to prevent duplication of services. Examples of non-public (sic) interlocal agreements include the Lower Platte River Corridor Alliance; that, of course, assists with environmental decisions. The Eastern Nebraska Water Resources Assessment deals with regional ground water assessments. The Platte River ice monitoring and blasting--monitor and prepare for dynamiting the ice jams when they occur. The Lower Platte riparian weed management for aerial spraying of invasive species. We are a shining example of leveraging property tax funds; our current budget is \$16 million and uses \$2.3 million of property tax for a 7-to-1 ratio. Without Lake Wanahoo--a very large construction project, by the way, that's going on--our ratio of outside dollars to property value (sic) still is greater than 4 to 1. We are an eastern Nebraska leader in ground water management. We have five stay management areas closed to irrigation expansion while the portion of our NRD that can sustain additional development remains open, truly through local control. We have two portions of our district that due to elevating nitrate levels have forced education and sampling by area producers, and we are the local watchdog for the Superfund cleanup at the Nebraska Ordnance Plant at Mead. The highlight of our projects is the \$30.5 million Sand Creek Environmental Restoration Project, of which Lake Wanahoo is the focal point. We are busy protecting lives and property and the future with all-hazards mitigation plans for seven counties and 29 cities, sponsoring U.S. Corps of Engineers 205 studies for Fremont, Schuyler, and Woodcliff--which is just a residential area, for those who are not familiar with it, on the other side of the river from Fremont; and currently cost-sharing with projects in David City, Fremont, Newman Grove, North Bend, Platte Center, Schuyler, Wahoo, and Yutan. And we are the lead agency for spraying over 50 miles of the Platte River for invasive weeds last month; this group includes four NRDs and nine counties. We are meeting today to see if there are ideas that can make the NRD system better and if we even need NRDs. Of course, we welcome new ideas which have merit and serve our citizens better and more efficiently. From my perspective, it appears that there is a few citizens across the state upset due to their

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local NRD planning a project in their backyard, and they are taking their dissatisfaction to a higher level. I hope as legislators you understand that at the local level it is very important (sic) to make a vote which will undoubtedly create animosity among our neighbors, friends, and relatives. As an NRD board member it is my duty to always carefully weigh the cost to an individual to the benefit of the many, and it is not always an easy and pleasant task. I believe the NRDs are the most efficient method of delivering local government programs in our state. NRDs have let (sic) our egos prevent us from being efficient but have worked together when problems are better solved by using interlocal agreements. My constituents enjoy being able to work with locally elected officials and having access to a staff of experts. The Franklin Planner quote yesterday was: Someone's sitting in the shade today because someone planted a tree a long time ago, stated by Warren Buffett. I appreciate the opportunity to share my thoughts with you today. If further discussion is needed on NRD efficiency, we stand ready to assist you. Maurice Kramer, the father of NRDs, planted a tree a long time ago, and I believe the state of Nebraska is sitting in its shade today. And I'm through with my testimony, and I would welcome any questions. [LR181]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Saalfeld?  
Senator Dubas. [LR181]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Mr. Saalfeld. How long have you served on your board? [LR181]

DAVID SAALFELD: I have been on the board for 12 years. [LR181]

SENATOR DUBAS: There is a thought that maybe many of these boards are too heavily weighted towards irrigation interests and aren't conducive to a diverse perspective of ideas. Is that something that you have felt has been an issue on your board? Do you see it maybe in other areas? Do you see other ways that these types of boards can be more inclusive of all perspectives that deal with water issues? [LR181]

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DAVID SAALFELD: Obviously, elected to the board, of course, are people that are interested in water issues in our district. And I guess whoever has--let's say--a better campaign (laugh) will normally get elected to it. But I understand your point. And I think currently, personally myself, I think our board represents a diverse area, with dryland farmers and irrigated farmers currently. So to answer your question, I think we're well represented right now. [LR181]

SENATOR DUBAS: Thank you. [LR181]

DAVID SAALFELD: Um-hum. [LR181]

SENATOR LANGEMEIER: Any other questions? Seeing none, thank you very much for your testimony. And I'll be following you home. [LR181]

DAVID SAALFELD: Right. [LR181]

ROBERT HILSKE: (Exhibit 26) Chairman Langemeier, committee, the day's getting long; I'll try to be brief here today. We've already heard a little bit about partnerships, and that was where I was going to direct the focus of my testimony today. And I handed out written testimony, and so I'll try to kind of sprint over it a little bit. But Andrew Carnegie, the famous industrialist, once said: No man will make a great leader who... [LR181]

SENATOR LANGEMEIER: I need to stop you. You need to do your name and spell it. [LR181]

ROBERT HILSKE: Oh. Bob Hilske, general manager, Nemaha Natural Resources District, H-i-l-s-k-e. I'm sorry. [LR181]



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SENATOR LANGEMEIER: Thank you. Okay. Now go. [LR181]

ROBERT HILSKE: The famous industrialist Andrew Carnegie once said: No man will make a great leader who wants to do it all himself. NRDs learned this lesson many years ago. That's why we've actively and historically approved many...gone into many partnerships with counties, cities, school districts, and other entities, and private groups. NRD partnerships can be as simple as the South Platte NRD working with a Pheasants Forever chapter to buy a grass drill or as complex as the Lower Platte South NRD working with UNL, Lancaster County, and the city of Lincoln to put together the Antelope Valley Project. In our district, the Nemaha NRD--which has been attached to the testimony--we have over 15 active interlocal agreements. Some of the more recent partnerships that we've pursued: We've worked with communities such as Nebraska City, Sterling, Pawnee City, and Falls City to develop trails and wetlands in their local parks so they can be enjoyed by future generations. We've worked with counties to help replace aging bridges with road dams, which are far safer and increase the safety of local transportation systems. We've worked with communities such as Julian, Rulo, Humboldt, and Verdon to abandon 65 wells which were a danger to the public in those communities. Right now we're teaming up with five other NRDs, the state and USGS to evaluate the geology in eastern Nebraska so we can better manage our ground water resources. And recently we completed a project with the Boy Scouts of America to renovate a lake at their Boy Scout camp down near Humboldt, Nebraska. A couple of years ago the state faced a daunting task. FEMA was requiring that all local entities develop an all-hazards mitigation plan so that they would qualify for many future FEMA funding programs. In most states, that meant going with county plans. That would have meant 93 plans in the state of Nebraska. The Nebraska Emergency Management Agency--they were looking for another option. They found one: Nebraska's NRDs. Most NRDs never had worked with FEMA before, but we willingly took on this task. So in the Nemaha NRD, we're working with five counties in southeast Nebraska to develop one plan. And that alone saved \$200,000, because a typical county plan would cost \$80,000 for one plan, at a minimum cost. One thing we've discovered: Our district is a very rural

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district; most communities, even counties, don't have a lot of staffing; they don't have a lot of funding to put together agreements. A lot of counties or communities we work with, we might be working with a part-time village clerk. That's where we can be a great benefit to those communities, because we've got the staff, and we have some of the funding that we can put partnerships together and get projects done, like I mentioned, in some of these local communities. We've put together kind of a unique niche in local government. It's ironic that 40 years ago, when NRDs were formed, southeast Nebraska probably fought hardest against the formation of NRDs. Citizens groups were formed; the local papers said NRDs would never work. But today if you ask those people, they would still fight to keep the things the way they are. But instead of saying NRDs are a bad idea, they'd probably say NRDs are probably one of Nebraska's best ideas. A few things I'd like to mention: I'm one of the few staff people in the NRD system that can claim to have worked with three different NRDs; I've worked for 27 years for NRDs. I worked...the first job I had was for an NRD that worked with ground water management, protecting ground water levels. The second district I worked with, range management was their key priority. Today I work with a district where flood control is our key priority. The amazing thing is that if we were in another state, that would have to be three different governmental entities formed to do those three things. In Nebraska, that's one. And that's what amazes me, that 40 years ago people had the forethought to put this together so that that one entity could do all these different things. There was a question that came up--Senator Dubas asked about directors' make-up of boards. We've got a 21-member board. We're a very rural district, mostly farming. Of my 21-member board, I believe only 7 of those board members are active in farming. The rest are bankers, insurance salesmen, Corps of Engineers employee, retired engineers, so we've got a great diversity among board members on our district's board. So I think that gives us a great feel for what the local community wants, what they need, and how we can provide benefits to them. So that's what I had for my testimony; I'd be willing to answer any questions that you have today. [LR181]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, thank

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you very much for your testimony. Welcome. [LR181]

RON CACEK: (Exhibit 27) Thank you. Senator Langemeier and members of the committee, I'm Ron Cacek, R-o-n C-a-c-e-k. I am general manager of the North Platte Natural Resources District, located in Scottsbluff. The district encompasses approximately 3 million acres in Banner, Scotts Bluff, Morrill, Garden, and a portion of Sioux counties. Agriculture is the predominant industry in the district, with approximately 440,000 surface-water- and ground-water-irrigated acres. Irrigation is essential to agriculture within the North Platte NRD, where the average annual rainfall for the entire district is about 16.5 inches. During the last decade, the Panhandle was in the midst of a drought of historic magnitude. Ground water quantity management and integrated management became a top priority for the NRD. For example, in response to declining ground water levels, management in the Pumpkin Creek Basin began in 2001, and a districtwide moratorium on new irrigation wells was instituted in 2002. The NRD also has a host of other programs and responsibilities, which have not faltered during this time, even though water management has taken center stage. On September 14 of this year, 2009, the joint NRD-Department of Natural Resources integrated management plan became effective. In addition, the NRD along with DNR and the other four overappropriated Platte basin NRDs has adopted a basinwide plan, which became effective on September 11, 2009. In order to meet the first-increment goal in the IMP of addressing stream-flow depletions due to uses initiated after 1997, the IMP includes a commitment to implement a 56-acre-inch ground water allocation over a four-year period. And that translates into a basic allocation of 14 acre-inches per year. This will start with the 2010 irrigation season. And currently the NRD has a 12-inch allocation in the Pumpkin Creek Basin and an 18-inch allocation in the overappropriated portion of the NRD, which is essentially the North Platte River valley. In order to implement allocations within the NRD, flow meters have been installed in the entirety of the overappropriated area, and that includes Pumpkin Creek. Implementing actions such as allocations over a large geographic area take considerable time and resources. In order to ensure compliance with such regulations, the geographic area regulated by a single

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entity must remain workable. The geographic size of an NRD must allow for equal representation of all citizens of the district and not to make it prohibitive for directors to travel to meetings or for citizens to travel to the district office. There is a great diversity throughout the state of Nebraska with regards to climate, topography, and cropping patterns. Given these differences, one integrated management approach for the entire state would not be practical. For example, the Panhandle has significantly different climatic conditions than the eastern part of the state. The difference in climate affects how people use water for irrigation and what types of crops are grown. The physical conditions in the Panhandle, particularly the scarcity of water, are something that local people have been dealing with since the area was settled. Thus, they are very aware of the challenges related to water management, and therefore they'd know best to manage the limited amount of water for optimum use. The citizens of the North Platte NRD are committed to managing water resources so that the socioeconomic viability of the area will be maintained and the statutory obligations will be met. In addition, the NRD board understands the statutory obligations of water management and has risen to the challenge by recently adopting the IMP and the basinwide plan--both in concert with DNR--which are in compliance with current statute. The NRD is committed to working together with DNR going forward in implementing the IMP and developing the best available science through studies and additional modeling efforts to allow for adaptive management. There are a number of other actions related to compliance with the goals and objectives of the current IMP, and the NRD and DNR, in several instances with the other appropriated (sic) Platte basin NRDs, are either already taking or looking into this. Since management of our limited water resources is of utmost importance to the North Platte NRD, a large portion of the district's budget has been committed to integrated water management. In summary, the best chance for successful integrated management is to have the local people working together with DNR to develop and implement integrated management solutions that are appropriate for the local area. I'd be happy to answer any questions. [LR181]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, thank

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you very much for your testimony. [LR181]

RON CACEK: Thank you. [LR181]

SENATOR LANGEMEIER: We have two more? Three more? We're going to conclude at 1:30, no matter what happens. We've got to get to another one. [LR181]

MIKE ONNEN: (Exhibit 28) Senator Langemeier, I'm Mike Onnen, manger of the Little Blue Natural Resources District in Davenport. That's M-i-k-e O-n-n-e-n. My wife is a schoolteacher, and she tells her kids it's a five-letter name that goes on and on and on and on. But I won't try to do that today. I've got a copy of my testimony for you; I've also included a copy of a letter that I sent to Senator McCoy addressing some of the questions he had about Natural Resources District projects. And we've talked a lot about water today and particularly ground water and ground water management. But I'd like to visit with you just about a few of the projects from the Little Blue NRD that are maybe a little different twist on water. Mike Clements mentioned from the Lower Republican their involvement in the rural water district. In 1975 the Little Blue NRD became the sponsor for one of the very first rural water districts in the state that was owned and operated entirely by the NRDs. Working closely with many rural residents, the city of Fairbury, and two small villages, we developed a system that addressed poor water quality issues and even poor availability of water in a portion of our district. In our project we purchased water from the city of Fairbury, and we distributed it through miles of service pipeline to serve domestic, livestock, and business uses in Jefferson and Thayer Counties in Nebraska and also in Washington County, Kansas. Today the district maintains a system that contains about 250 buried miles of pipeline, two rural water towers, and three booster stations. We serve over 400 rural service customers, one of those being the Endicott Clay Products brickyard, which is south of Fairbury--one of the major employers for the area. We also serve 70 customers across the state line in Kansas. These are people who, because of their location, were not able to get rural water from other sources, but they do business in the Fairbury area, so it made sense

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that we would serve them even across the state line. This is a self-supporting project, funded entirely by the water payments of its customers. And the people of the area will tell you that the project has been one of the greatest blessings in protecting the rural health, increasing property values, and stimulating the area's economy. The Little Blue NRD is also a leader in assisting many of our communities in understanding and becoming engaged in wellhead protection measures. The purpose of wellhead protection is to formulate and initiate actions to protect the community's source water and their investment in their public water supply. Our NRD contains 38 communities, and we have currently assisted 21 of those in getting plans developed and approved by DEQ. We have two more community plans that are nearing approval and two more community plans that we've just started on. We also are working collaboratively with the city of Hastings, our largest community, with a population of about 24,000 people, developing measures to protect their water supply for their residents. And not only are we doing the...working with communities so they understand the complex issues surrounding the source water protection, but we've assisted them in securing grant funds that then are used for implementing best management practices, both in the cities and in the rural areas as well. And this has been, really, a tremendous program for our Natural Resources District as we establish some outstanding cooperative relationships with those communities--both the villages and the cities. One other project I'd like to highlight is a cooperative effort between the Little Blue NRD, the city of Hastings, and the U.S. Army Corps of Engineers on a ground water cleanup effort southeast of Hastings. Due to the extensive ground water contamination resulting from World War II ordnance production in the Naval Ammunition Depot, the Corps of Engineers has developed plans to pump and treat contaminated water from the area's aquifer. The plan calls for pumping nearly 4,000 gallons a minute from approximately 20 wells. And that would amount to about 6,450 acre-feet per year. It's estimated that the pump and treat process may take as many as 45 years. The district's concern for the aquifer mining that may take place in that case has positioned us to be a critical partner in identifying reasonable alternatives for the reuse and recycling of the water so it's not simply pumped, treated, and then dumped to waste someplace. The consultant we've

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hired is examining various alternatives. Some of those that we're looking at are the new power-generation station in Hastings, business and manufacturing in the industrial park southeast of Hastings, livestock use, reinjection, and wetland development. With a broader and more regional impact in mind, we're even evaluating the option of piping some of the excess water or perhaps discharge water from the cooling towers of the energy center to the Republican basin to help with their compact requirements. That may be a far-fetched idea, but we thought: Let's take a look at it. We felt that it was important to do that. There has been discussion a lot about the water regulations of the districts, and one that I just want to highlight that I don't have in the script here: Our district took on about five years ago a small area of our district where it's an isolated aquifer. We...our ground water plan divides our district into about nine different regions based on their similar hydrology. But one area has separate hydrology. And we recognize that that's the only area of our district where the ground water decline seemed to be fairly consistent from year to year. So we were able to get together with the landowners there in a meeting, which probably nearly 70 landowners were involved--almost all of the folks that represented that area. And in discussions with them, we agreed mutually to put a moratorium on well development and irrigation development on that area for this point in time. And then we are doing some continuing studies to try to determine how we might be able to balance things out. The people were very willing to do that. And I think it showed that the NRD board was willing to work with the people and in this case maybe do something that, if control is done by the state, for example, that cooperative venture on that local level may not have happened. So we're very pleased that the neighbors in that area have worked very cooperatively with us. In conclusion, as you receive the testimony, you've heard a lot of things--the good things--about the NRDs and what they're doing to protect lives and property and the future of our resources. It's my hope that you recognize the great treasure that we have in the Natural Resources Districts here in the state of Nebraska. And I would answer any questions you have. [LR181]

SENATOR LANGEMEIER: Very good. Are there any...? Senator Carlson. [LR181]

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SENATOR CARLSON: Thank you, Senator Langemeier. Mike, on this...on the munition property, right now you are using all of the water that you're pumping? Finding a use? [LR181]

MIKE ONNEN: Actually, the project is in the planning stage. [LR181]

SENATOR CARLSON: Okay. Yeah. [LR181]

MIKE ONNEN: The Corps has not...they're looking at a probably a 2012 implementation. [LR181]

SENATOR CARLSON: Okay. Okay. And all that would take to get part of it to the Republican basin is money. [LR181]

MIKE ONNEN: Money. A lot of money. [LR181]

SENATOR CARLSON: Yeah. [LR181]

MIKE ONNEN: And also there's going to be some political issues, obviously, in the Hastings area as we try to look for the best solutions to that without creating some additional mining problems in the area. So it's one of those issues the local board is going to have to wrestle with a little. [LR181]

SENATOR CARLSON: But those are the kinds of things that we need to look at seriously--counting the cost. But what's the costs of the problem if we don't solve it? Like in the Republican basin. So I appreciate those thoughts. Thank you. [LR181]

SENATOR LANGEMEIER: Very good. Are there any other questions? Are we getting any credit for the water--municipal wells that are in Kansas? Your 70...? [LR181]



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MIKE ONNEN: Well, actually the municipal wells are in Nebraska. [LR181]

SENATOR LANGEMEIER: No, but you...in your testimony you have 70... [LR181]

MIKE ONNEN: Yeah, we meter all the water that goes across the line, though, and they pay for it. [LR181]

SENATOR LANGEMEIER: Okay. [LR181]

MIKE ONNEN: And, actually, if you have one more minute... [LR181]

SENATOR LANGEMEIER: Barely. [LR181]

MIKE ONNEN: Because of the association that we had with the Kansas residents and because the income level on Washington County side--the state line--was lower than Nebraska side, they actually were able to get block development funds that offset some of the cost of expanding our lines to provide them water. So they actually reduced the cost of our project for the Nebraska folks in making this project work. It was a great collaborative effort that couldn't have been done without the NRDs, I believe. [LR181]

SENATOR LANGEMEIER: Very good. Thank you very much. [LR181]

DARROL EICHNER: (Exhibit 29) Excuse me. I don't have more copies... [LR181]

SENATOR LANGEMEIER: No, that's fine; we'll distribute it. Okay. Let them look at it now; we'll get it to them. [LR181]

DARROL EICHNER: You want out of here; I want out of here; let's help each other here. [LR181]

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SENATOR LANGEMEIER: Your name first, though. [LR181]

DARROL EICHNER: Darrol Eichner. [LR181]

SENATOR LANGEMEIER: Thank you. [LR181]

DARROL EICHNER: D-a-r-r-o-l E-i-c-h-n-e-r. I'm representing myself and my family and our private--or our dryland farming operation in Keith County, a dryland farm and rangeland. Appreciate your patience for a little longer on an issue that's of concern to me and has been very frustrating--my contact with the Twin Platte NRD involving my well, a domestic well issue. And I had work done on my domestic well in 2002; I had to replace some delivery line. One thing led to another; I had to put in a new submersible pump motor, on and on. It got expensive. At that time I asked the man doing the work the depth of my well, water level, so forth. And I was told I had a 275-foot-deep well with about 18 foot of static over it. Of interest was the pump was at the bottom of the well, could not be lowered. Time went on. And there's a pivot across the road from me, and that pivot runs 24/7, never shuts off, whether it rains or it doesn't. Just one example: I've taken a photo of a rain event. That's water in the ditch, not from a pivot; that's from rain, and that picture was taken a couple minutes later. That's from the night before. The pivot is running. I contacted Jim Goeke. I wondered, you know, 18 foot of water is not a lot of water. Everything is relative. I contacted Jim Goeke, asked his opinion. I said: Is this something I need to be concerned about? And he said: Definitely. You...we don't know a lot about the water under where you live in Keith County, but you're not sitting on a wealth of water. Contact your local NRD and have them start measuring your water level. Well, I have the domestic well that serves the house and dual-purpose for livestock, and then I have two livestock wells on pasture in the neighborhood. I contacted the Twin Platte NRD in January of 2004, approximately, and contacted an individual and asked if I could get my well water level measured. He said: Yeah, no problem; be out there in a couple of weeks. Well, it got to mid-2004, nobody had

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contacted me. I stopped in at the North Platte...Twin Platte NRD office, spoke to the manager, told him my concern, what I was there for. He apologized. He said: We will have somebody out there in a couple of weeks. That was mid-2004. January of 2006, nobody has contacted me from the Twin Platte NRD. I gave testimony on January 19, 2006, to the Twin Platte NRD board; still nobody comes to my door to ask to measure my water level. May 31 of 2006, I embarrassed myself and the Twin Platte NRD by making comments to the Water Policy Task Force in North Platte, expressing my concern and my frustration. That was May 31. June 2 the Twin Platte NRD was at my door wanting to measure my water level. I showed the individual where to take the measurement, asked if everything was appropriate from what they would use for information. He says: Most definitely. This will now be incorporated into our data set; this will be checked spring and fall, data recorded one year to the next. Time went on. I was not sure if they followed up for the fall reading. Time got away from me. I contacted that individual in early 2007, asked if he had made it for the setback for the second reading on my well. He said: I'm sorry, forgot, didn't get it done, apologize. I said that's fine. I forget myself, but, by the way, could you give me the reading from the first time when you were here? Well, he couldn't. He looked for it; he couldn't find it. He said: I'll call you back. He never did. To this day, he's never called back. Do you understand the frustration that I have in dealing with the NRD in what I am...is a very serious concern? I contacted the...an attorney, Blankenau. I've had a conversation with him. He says: You can't begin to have legal...pursue anything legal you can't afford; you're one of the little people; you can't jump into that venue. I talked to DNR--legal counsel with DNR--and they have told me that mine is a similar comment/request. They have a number of people that have contacted them about having to replace or lower a domestic well, and we do...they do not want to be bothered with it, because there is not their area of responsibility. It is the responsibility of the NRDs. Well, you can understand why people like myself, out of frustration, are contacting the DNR. Very briefly, I had one conversation with Ed Schrock, and I relayed my concerns when he was the committee Chairman, Natural Resources Committee, explained what I've essentially just told you and asked him: What do I do? And here was his answer. Again, do you understand my

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frustration? The...I hate to throw stones at the Twin Platte NRD, but why do they not follow up with my request? Am I...are they busy? As one of the little people, are there more important things for them to do? Doesn't stop them from accepting my tax levy on a couple of thousand acres. Does a problem like mine, if I do have a declining water level that continues, does my problem threaten the bigger scope of things with irrigated agriculture as we know it? I, obviously, am not in favor of the NRDs having any authority with ground water management. That, again, is my opinion. There's...Nebraska is under correlative water right law. Each landowner has access to an equal amount of water. That pivot across the road is a 1,040-gallon-a-minute well. If it pumps for a thousand hours per season--normal season as identified to me by some irrigators--that's 62 million gallons that pumps in one season. If you use a 500-gallon-per-day water use that my wife and I would use for domestic purposes, that's 182,000--a little over 182,000 gallons. You divide that latter number into the 62 million used in one season by that pivot, that pivot uses enough water to supply my wife and my needs for 242 years. I appreciate your time. Again, do you understand my frustration? And I won't bother you with the question on what do I do. [LR181]

SENATOR LANGEMEIER: Are there...thank you very much. Are there any questions? And, Darrol, I'd also...a little different note is Senator Haar introduced LR101, which is an interim study to examine issues related to the impact of your domestic well on irrigation water around it, so we will be having another hearing on that, so we'll take your testimony over to that one as well... [LR181]

DARROL EICHNER: Okay. []

SENATOR LANGEMEIER: ...if you...so fit...it would fit there really well. So we will take that as well. []

DARROL EICHNER: Is there any possibility that the Legislature would create a database of people like myself that have had or that could have a problem, that have

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already had a problem? I know of four individuals in my area that have had to lower or replace a well. Based on the DNR legal counsel, she never did quantify how many calls that they had gotten other than a lot, and it was to the point that it was a nuisance, because it's not their responsibility. Is a database of domestic, livestock wells that had to have been lowered or replaced, is that of any value with future decisions? [LR181]

SENATOR LANGEMEIER: That's a good question. We'll add that to that discussion as well. Any... [LR181]

DARROL EICHNER: Thank you. [LR181]

SENATOR LANGEMEIER: ...other questions? Seeing none, thank you very much. Thank you for your patience. One more? Good afternoon. [LR181]

JOHN TURNBULL: (Exhibit 30) Good afternoon, Senator Langemeier and members of the committee. I'll be quick; you want to get on the road and do other things. I just want today...first off, I'm John C. Turnbull, T-u-r-n-b-u-l-l. I am the general manager of the Upper Big Blue NRD at York. I've managed NRDs for 34 years. I have today a copy I'll present to you of our interlocal agreements, and this is a report that is submitted to the state auditor on an annual basis. We have 29 existing agreements, as of the end of the fiscal year of 2009. There was a question raised earlier today about board size and the make-up of the boards. Our board of directors is 17 members in size, and it's been that way since the district was formed in '72. Currently we have one well driller, an air quality specialist from Department of Environmental Quality, a retired banker, a school nurse, and the rest are farmers who irrigate. So it's a pretty good cross section. And as a manager, I appreciate those cross sections. Because of all of the complex things we deal with, I need advice from more than just any one particular interest. There needs to be a cross section of advice to make good decisions. The board does deal with and make hard decisions. An example is we require large-water-user studies for any water user who's going to pump more than 500 acre-feet a year from a tract of land. That

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includes ethanol plants or cities. The board has had to deal with several of those in the past three years. They made a decision recently on a city new wellfield not to allow the city as much water as they had requested. So they are willing to tackle a hard issue like that and try to make some sort of fair decision and still protect the aquifer and the surrounding operators. With that, I think the last thing I'd say is the emphasis over the years in the districts that I've managed has shifted from mostly rural type of projects and assisting rural farmers or rural landowners to now a mix of rural and urban projects. We need to deal with the folks in villages and cities just as well as we deal with the folks in the rural lands--can be from flood control, can be water management, all of those other things that we have responsibilities for. And with that, I'll close and answer any questions you have. [LR181]

SENATOR LANGEMEIER: You did great. Are there any questions for John? Seeing none... [LR181]

JOHN TURNBULL: Well, we do appreciate you holding these hearings, Senator and the committee, and I think that we've got a lot of things that both of us learn on both sides of this table. And I hope it's been helpful to you and your committee. [LR181]

SENATOR LANGEMEIER: It's been a great three days, and we appreciate the hospitality we've seen as we've traveled the state. To read into the record we have a number of letters, and my e-mail is going off...I'm getting more e-mails. So as we get back to our office, we will add those e-mails. Yeah, more towards LR181--we'll add those to the record as we get back to the office and can print them. But I have one from Tom Moser with Lewis & Clark Natural Resources District; we have Lowell Johnson from Wayne, Nebraska; Jim Suttle, mayor of Omaha; Jackie McCullough, American Council of Engineering Companies; John Thorburn from Tri-Basin NRD. And as Dean had mentioned earlier, we got one from Larry Prather from the U.S. Corps of Engineers. And we will have a number to read in that were sent via e-mail today or while we were traveling the last two days. We'll add those to the record as soon as we can get back

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and print those. With that, we'd like to thank everybody for coming and your participation. And have a great day. Thank you very much. [LR181]