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Natural Resources Committee  
February 10, 2010

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[LB993 LB1054 LB1056 CONFIRMATION]

The Committee on Natural Resources met at 1:30 p.m. on Wednesday, February 10, 2010, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB993, LB1056, and LB1054 and the confirmation of Norris Marshall to the Game and Parks Commission. Senators present: Chris Langemeier, Chairperson; Annette Dubas, Vice Chairperson; Tom Carlson; Tanya Cook; Deb Fischer; Ken Haar; Beau McCoy; and Ken Schilz. Senators absent: none. []

SENATOR LANGEMEIER: Welcome to the Natural Resources Committee. My name is Chris Langemeier and I'm the Chairman of the Natural Resources Committee. We'd like to welcome everybody that's here in the audience to take part in the hearing. We'd also like to welcome those that are watching it on the closed-captioned TV and those that are watching it on the live Internet feed. I'd like to introduce the committee. We'll start to my far right or to your far left; we have Barb Koehlmoos, who is the committee clerk. Then we have Senator Tanya Cook from Omaha, Nebraska. Then we have Senator Tom Carlson from Holdrege, Nebraska. Then we have Senator Deb Fischer from Valentine, Nebraska. Then if we go clear out to my far left we have Senator Beau McCoy from Elkhorn. And then we have Senator Haar who has...as you'll see, I'll take a little diversion here, as you'll see us get up and leave, we all have bills we introduced. I happen to be going to Revenue in a few minutes. Senator Haar is in Government testifying on a bill that he introduced there; he will be back later. Senator Ken Schilz will be joining us from Ogallala; and Senator Annette Dubas is the Vice Chair of the Committee and she will be joining us as well. Laurie Lage is the legal counsel for the committee. And that is the committee. We have two pages that will be helping us; we have Tony Pastrana from Colorado who is a freshman at Union College, will help hand things out if you'd like. And then we have Kiana Mathew from Omaha, Nebraska, and she's a sophomore at UNL. As you come up, if you have something to hand out they'll take care of that. If you're here to testify on a bill and you're going to come up and talk to us, we ask that you grab one of these green sheets located in the back corners of the room and fill it out in its entirety and when you come up to testify, please give that to Barb Koehlmoos, the committee clerk. It helps us keep an accurate record of the events here today. If you're here today and you're going to spectate but you want to be on the record of having a position, there's another piece of paper in the corner that looks kind of like a spreadsheet, matter of fact, I guess they look a little different, they're kind of at an angle, but you can sign that, your name and address and whether you support or oppose a particular bill here today. Then you will be in the record of having given us your opinion without testifying. Those that have...came in now, we have Senator Ken Schilz and Senator Annette Dubas. As you come up to testify, we ask that you state and spell your name, the first thing you can do, no matter how simple it is it helps us keep an accurate record of today's activities. We'd ask that at this point you turn your cell phones off so we don't disrupt those that came to testify. If you have copies that you'd like to hand out, we ask that you give us 12 copies. If you have something right now you

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know you don't have 12 copies, raise your hand and one of the pages will come and assist you in getting a couple more copies to finish that. Also, if you have something you'd like us to see, if you hand it to us to look at, we will keep it for the permanent record. So if it's something you want us to see, but you want to keep it, then just show it to us from the table because if you do give it to us, we'll make it part of the official record and we will keep it. And with that, we will start today with the bills as introduced...as posted on the door, but we start with a confirmation hearing. And at this time I turn it over to the Vice Chairman of the Committee as I have two bills to introduce in Revenue Committee, so you'll see me back in a little while. So with that, Senator Dubas. []

SENATOR DUBAS: Thank you, Senator Langemeier. We're starting with confirmation hearing, is that correct? We will begin the hearing today with our confirmation hearing on Norris Marshall. Mr. Marshall, if you'd like to come forward please. Welcome.  
[CONFIRMATION]

NORRIS MARSHALL: Thank you. [CONFIRMATION]

SENATOR DUBAS: Just like to share a little bit about yourself and... [CONFIRMATION]

NORRIS MARSHALL: Do you want me to spell my name? [CONFIRMATION]

SENATOR DUBAS: Please do. [CONFIRMATION]

NORRIS MARSHALL: (Exhibit 1) Okay. Norris Marshall N-o-r-r-i-s M-a-r-s-h-a-l-l. Thank you. I'm Norris Marshall, I reside at 186 W Road, Kearney, Nebraska, which is rural Kearney County, here for the purpose of your review of my appointment, of course, and confirmation to the Game and Parks. I'll give you a little background on who I am and where I came from. I grew up on a farm near Elm Creek in rural Phelps County. As a matter of fact, I like to tell people I grew up about a mile away from Senator Carlson and maybe 15 years difference because he might be a little bit older than me. But the family farm had...was a typical family farm with a feedlot, row crop production, cow/calf operation. My folks also at the same time owned a livestock market in Kearney, Kearney Livestock Commission Company, so in the summertime I spent a lot of time baling hay and watering hogs at the sale barn and those kind of things. Today I have a brother that's involved with the row crop portion of the farming. I have another brother that is involved with my dad in an agriculture, real estate and farm equipment auction business. My wife and I kind of like livestock, so we own some cows and we run some cows in the summertime on our place. I also own a business in Kearney called Marshall Engines which is an engine rebuilder, remanufacturer, we rebuild automotive truck, ag industrial and today one of our biggest projects is building EPA certified irrigation engines to be used throughout the Midwest. So that's kind of who I am. My interest in the Game and Parks Commission comes from being an outdoorsman; I like to hunt waterfowl, deer, turkeys. I live right on the Platte River, just outside of Kearney. As a

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matter of fact, I almost always lived on the Platte River, even as a child. Game and Parks would be the only state agency that I would have any real interest in because of my interest in hunting. I think there's opportunities for Game and Parks to be improved, not that it's bad, but we certainly are in a period of time where there's revenue challenges. Game and Parks, if you look at the people that buy licenses and the people that use the parks as the customers, there's fewer customers all the time. So I think there's a lot of opportunity; I think we're in a very much changing time for Game and Parks and I'd like to be part of the solutions to the problems that they face.

[CONFIRMATION]

SENATOR DUBAS: Thank you very much, Mr. Marshall. Any questions from the committee? Senator McCoy. [CONFIRMATION]

SENATOR McCOY: Thank you, Senator Dubas, and thank you, Mr. Marshall, for being here today and I don't want to catch you off guard with this question, I'm just curious to hear you mentioned you lived on the Platte River most of your life. I'm sure you're probably aware we deal with issues, as it relates to, especially, deer this particular year and, in fact, had a hearing about a week or so ago, I'd be curious to know your opinion on some ideas, if you have any, on how you would go about dealing with that issue being on the Game and Parks Commission if you wouldn't mind sharing those.

[CONFIRMATION]

NORRIS MARSHALL: Sure. I was appointed in November to fulfill a term that my predecessor had left so I've been involved with Game and Parks for basically one meeting. So, you know, I'm not completely familiar with everything that the agency can do. But I do believe the Game and Parks needs to be responsible for managing the deer population and I think the key word there is managing. I think we have to be careful not to go down any road where we cannot accurately predict the result such as, you know, too many depredation permits or something like that; and we all know what we're talking about. I think Game and Parks has the ability to influence tremendously how many deer are shot and to manage the herd. I certainly understand that the problems with deer, and there absolutely are areas in the state that have too many deer, but it's not the entire state, so that we have places in the state where the deer population isn't doing that great, although it's small areas. Along the Platte River corridor we have plenty of deer. And as a landowner and a hunter, I welcome the changes that Game and Parks wants to make with an additional October season to take some does; more opportunities, perhaps, for the bow hunters. I'm hopeful we can get it all done with hunting. I think that's the right way to do it because again, we go back to the responsibility to actually manage wildlife, not just have a free-for-all. Does that answer... [CONFIRMATION]

SENATOR McCOY: Thank you. [CONFIRMATION]

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

SENATOR CARLSON: Thank you, Senator Dubas. Norris, you've covered a little bit of your background and certainly I know you came from a good family and a good neighborhood, and I know that you've got enough ties closely to agriculture that you understand the principles of grain production and livestock and so forth. Now your property is right on the river and one of the things in hunting is access. If I had your place, I don't think I'd want anybody on there. How do you...just tell us a little bit about your thoughts on access. [CONFIRMATION]

NORRIS MARSHALL: Sure. Well, it's a good thing you and I aren't partners because we would disagree on what needs to happen on a property. I have about 12 different individuals that I let deer hunt on my property and I take a fairly proactive management approach. I mean, first of all, whether you're a hunter and you're trying to shoot a big deer or if you're in agriculture and growing corn next to it, having too many deer is not the right answer. Managing the population and making sure as a deer hunter that we shoot enough does so that we've got some competitiveness on the side of the bucks in order to breed during the rut. So I let people hunt on my property and I require them to shoot a doe, no matter what, you have to shoot a doe, and if you want to trophy hunt that's fine, but you got to hang it up on the wall. So we typically off of my river property will shoot 25 to 30 does and 3 or 4 bucks, and I don't charge anybody to do it. Most of the people I let on are my friends, although I have let people hunt on the property that just came to the door and knocked on it. Now, I would make them come to the door about five times and write a little letter explaining who they are, but I like to let people on the property. As far as too many deer and not enough hunter access, I think a lot of it could be solved with education. I think there's a great opportunity to educate landowners, and sometimes the landowners are hunters, to educate the landowners that we need to take more does to make this work. [CONFIRMATION]

SENATOR CARLSON: So have you had a pattern then the last several years of far more does taken off than bucks? [CONFIRMATION]

NORRIS MARSHALL: Yes. [CONFIRMATION]

SENATOR CARLSON: Okay. Do you have any idea of the population of your property? [CONFIRMATION]

NORRIS MARSHALL: No, I really don't. I mean, they move around a little bit so they get on other people's property too, but I've got a neighbor that doesn't allow much hunting and in the middle January we were able to see 300 deer per mile on his property. I didn't have that, but I think mine might have went over there because it's safer. (laughter) [CONFIRMATION]

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SENATOR CARLSON: They learn quickly, don't they? Yeah. Thank you.  
[CONFIRMATION]

SENATOR DUBAS: Thank you, Senator Carlson. Senator Fischer. [CONFIRMATION]

SENATOR FISCHER: Thank you, Senator Dubas. Thank you for being here today, Mr. Marshall. You mentioned that you live on the Platte River; I see that you also were involved in the Platte River Habitat Foundation. Have you been involved with or observed any of the cooperative work that's being done on the Platte River?  
[CONFIRMATION]

NORRIS MARSHALL: Yeah. Previously, well certainly I've always seen the cooperative work that's being done on the river. One of the flagship programs for whooping cranes and plovers is a piece of property pretty much where I grew up, Cottonwood Ranch at Elm Creek. So I've seen that development for the Endangered Species Act and familiar with the players in that today. The three state agreement to rehab the Platte for the endangered species is headquartered in Kearney so I know those people and I'm familiar with the work that they're doing and have partnered with Game and Parks on some projects and I've partnered with Ducks Unlimited on some projects. I've not partnered with the endangered species folks, so to speak. [CONFIRMATION]

SENATOR FISCHER: How's...how do you think the work is going with regards to state and federal cooperation? [CONFIRMATION]

NORRIS MARSHALL: I describe it as early with a lot of opportunities for growth. In particular, and I've spoken to Senator Carlson about this, the Platte River Recovery Program is charged with managing a hundred mile stretch of the Platte River from Lexington to Chapman. And their federal allocation for money is \$350 million. So it would seem to me they should be our friends and we ought to find a way to work together because they got a lot bigger budget than what we have. And I think that is going on, but absolutely I'd like to do more of that. I'd like to find a way to work more with the recovery program and maybe have them spray the weeds instead of us having to spray them. [CONFIRMATION]

SENATOR FISCHER: Aha, good idea. I also see that you have been involved with the Nebraska One Box in my district in Broken Bow. Why don't you let the group know kind of what that is. [CONFIRMATION]

NORRIS MARSHALL: Sure. [CONFIRMATION]

SENATOR FISCHER: And promote my district a little bit. [CONFIRMATION]

NORRIS MARSHALL: I'm always happy to brag, always happy to brag about Broken

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Bow, Nebraska. [CONFIRMATION]

SENATOR FISCHER: As I am. [CONFIRMATION]

NORRIS MARSHALL: A friend of mine started taking me up there for some summer sporting clay league shooting ten years ago and I just fell in love with the people and the community and because of that, I got involved with the One Box. You know, any time you have a charitable organization they're always looking for volunteers whether it's labor or cash. And so I've been involved with the One Box Hunt and the organization in Broken Bow for probably eight years. Currently I am the chairman of the foundation. And this coming fall will be the 50th anniversary for the One Box Hunt in Broken Bow and I'm hopeful that everybody in the state of Nebraska hears a lot about that because it's quite a milestone. So I'm just one of hundreds of people that have been involved, but I'm excited to stay involved with it. [CONFIRMATION]

SENATOR FISCHER: So you're going to be especially active this fall, but you're also going to be busy the first part of June because your family is hosting the Cattlemen's Ball, is that correct? [CONFIRMATION]

NORRIS MARSHALL: That is correct. So June 4th and 5th at the property where I live we're going to host Cattlemen's Ball of Nebraska. It will be the 13th year for the ball in the state. Our goal is to raise a million dollars. Ninety percent of the money goes to the Eppley Cancer Research Center in Omaha; 10 percent of it stays local for local medical needs, and I never miss an opportunity to promote the ball. People tend to think it's just for cowboys or people with cattle, but the ball is for everybody and we like to describe it as Nebraska's biggest party. So get online and buy your tickets. [CONFIRMATION]

SENATOR FISCHER: Well I thank you for your continuing service to the communities and the state and your willingness to serve on the Game and Parks Commission. Thank you. [CONFIRMATION]

NORRIS MARSHALL: You're very welcome. [CONFIRMATION]

SENATOR DUBAS: Thank you. Any other questions? Seeing none, thank you very much for coming today, Mr. Marshall. [CONFIRMATION]

NORRIS MARSHALL: All right. Thanks. [CONFIRMATION]

SENATOR DUBAS: Do we have any testifiers in support of Mr. Marshall's nomination. [CONFIRMATION]

PETE McCCLYMONT: Madam Chair, members of the committee, for the record my name

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is Pete McClymont, P-e-t-e M-c-C-l-y-m-o-n-t. I'm vice president of legislative affairs for the Nebraska Cattlemen. Mr. Marshall is a member of ours, but more importantly, to some of the questions that Senator Fischer and Senator Carlson asked, he is being very humble for all the things that he does for our state. Obviously, you mentioned the One Box and the Cattlemen's Ball, those are tremendous philanthropic endeavors. He's also on the Kearney Catholic Schools Foundation. He is very active in promoting youth hunters on his property, young adults coming out to experience hunting for the first time which I think is important for more education and more involvement in our youth to understand the importance of the relationship between wildlife and the Game and Parks Commission. So we are very much in support of his confirmation and would be happy to answer any questions if you have any. [CONFIRMATION]

SENATOR DUBAS: Thank you, Mr. McClymont. Any questions? See none, thank you. [CONFIRMATION]

PETE McCLYMONT: Thank you. [CONFIRMATION]

SENATOR DUBAS: Further testifiers in support? Is there anyone in opposition? Anyone in the neutral capacity? Seeing none, that will close the hearing for the confirmation of Mr. Norris Marshall. Thank you again for coming down today. [CONFIRMATION]

NORRIS MARSHALL: Thank you. [CONFIRMATION]

SENATOR DUBAS: Now we will move to LB993; Senator Carlson. [CONFIRMATION]

SENATOR CARLSON: Senator Dubas and members of the Natural Resources Committee, I am Tom Carlson, C-a-r-l-s-o-n, here to introduce LB993. LB993 was brought to me by my constituent NRD manager, and he will testify behind me. The bill broadens the language of Section 61-218 to enable the Department of Natural Resources to use the Water Resources Cash Fund to help pay for additional streamflow enhancement and groundwater recharge projects. The Nebraska Association of Resource Districts supports the bill and I'd be happy to attempt to answer any questions and certainly the testifier behind me will be more able than I am. [LB993]

SENATOR DUBAS: Thank you, Senator Carlson. Any questions? I see none. [LB993]

SENATOR CARLSON: Okay. Thank you. [LB993]

SENATOR DUBAS: Have our first proponent please. Welcome. [LB993]

JOHN THORBURN: (Exhibit 2) Good afternoon, Senators. My name is John Thorburn, J-o-h-n T-h-o-r-b-u-r-n. I'm the general manager of Tri-Basin Natural Resources District in Holdrege. Tri-Basin NRD and the Nebraska Association of Resources Districts are

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pleased to express our support for LB993. LB993 is a simple bill, the intent of which is to broaden the Nebraska Department of Natural Resources' authority to use funds already allocated to the Water Resources Cash Fund. State law currently limits use of the Water Resources Cash Fund to aid in management actions taken to reduce consumptive uses of water. This means that these funds can only be used to cease irrigation on cropland. Most NRDs prefer to not to retire irrigated land if other options less harmful to local economies are available. Fortunately, in spite of what some people would have you believe, Nebraska has relatively abundant water resources. The problem is that at certain times we have too much water and not enough at others. This problem can be overcome by capturing water and storing it in surface reservoirs or underground aquifers during times of high flows. These stored water resources can then be released or pumped out in drier times to augment streamflows. The existing statutory language prevents the department from cost-sharing with natural resources districts on these projects even though they are typically more cost-effective and always more beneficial to local economies than retiring irrigated cropland. I urge you to advance LB993 to the floor of the Unicameral. This bill will give NRDs and DNR more cost-effective options for utilizing existing state funds budgeted for managing our precious water resources. Thank you. [LB993]

SENATOR DUBAS: Thank you. Any questions for Mr. Thorburn? You did such a good job we don't have any questions. Thank you very much. [LB993]

JOHN THORBURN: Thank you. [LB993]

SENATOR DUBAS: (Exhibit 3) And I don't believe Senator Langemeier explained the light system. We will be using the light system today. You get five minutes for your testimony; green means go. When the yellow light comes on it means you have one minute left and when the red light comes on we'd appreciate it if you could try to wrap up as soon as possible. That time doesn't include any questions senators may ask of you so just to kind of keep things moving along, we'd appreciate your compliance with those lights please. Thank you. Next supporter of LB993. I do have one letter of support from Jay Holmquist with the Nebraska Rural Electric Association in support of LB993. Anyone in opposition to LB993? Anyone in the neutral? Senator Carlson, would you like to close? Senator Carlson waives closing. And that will take us to LB1056. Senator Carlson. [LB993]

SENATOR CARLSON: (Exhibit 4) Again, Senator Dubas and members of the Natural Resources Committee, I am Tom Carlson, spelled C-a-r-l-s-o-n, here to introduce LB1056. LB1056 would create a new section of law to be inserted into the Nebraska Groundwater Management and Protection Act. It would limit pumping of water when certain triggers are met. The bill requires the Department of Natural Resources and the Conservation and Survey Division of the Institute of Agriculture and Natural Resources of UNL to determine a way to measure aquifer and groundwater changes in each river

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basin. A comparison would be made to the base year of 1963 and reports of measurements would be made to the Legislature beginning December 31, 2010 and on each December 31 after. Very briefly, the...when an aquifer or groundwater results in depletion to an area of greater than 10 percent, then meters shall be placed on all irrigation wells in the depletion area and allocations shall be imposed on all landowners in the depletion area. Second, if the depletion results are greater than 20 percent, then that would result in the reduction in the allocation that could be used by landowners. And if the change in the aquifer results in a depletion greater than 30 percent, that would require further restrictions in the amount of allocation that could be used in that given year. Now if and when measurements demonstrate that recharge is taken place, these allocations could be restored and used by the irrigator. Now, I'd ask that you listen carefully to me on this next statement. LB1056 is not, in its present form, the answer to the problem of aquifer depletion in the state. I will recommend to the committee that the bill not advance. That doesn't mean that aquifer depletions aren't a problem. I think they are a problem. They threaten the future of agriculture in Nebraska. I'll be very disappointed if anyone testifying during this hearing would conclude that serious depletions aren't a problem that needs to be addressed. If my plan isn't the answer, I'm interested in what realistic solutions are available. I'd now ask the committee to refer to my handout. On the front page there are groundwater level change statistics from predevelopment to spring of 2009, and I've got counties in the Republican Basin listed on the left hand side as well as Box Butte County. The column that says "COUNT" is the number of wells that were measured. The column that says "MINIMUM" is a little bit misleading because that shows the biggest drop in any one well from predevelopment to spring of 2009. And the column headed "MAX" really means the least drop in any well and, in fact, some wells have increased in ground level measurement. And then the column headed "AVERAGE" is the average across the county of increase or decrease in groundwater level changes from predevelopment to 2009. Now these, I don't think, are pleasant figures to talk about, but if you look at Box Butte County, in that period of time, county-wide the drop has been 35.5 feet. Chase County, the drop has been 37 feet; Dundy 34.8; drop down to Perkins County, 32.2. And I'd ask you to look at three other counties. Gosper County during that same period had an increased water level of 36.2 feet; Phelps County had an increase of 25.2 feet; Kearney County had an increase of 5.9. And I would say that those three counties can consider themselves very, very fortunate because I believe that's the result of Central Power Public and Irrigation System bringing water down into those areas from Lake McConaughy over the last 50 or 60 years. The other counties along the Republican Basin show some declines and just because those are lower declines than the other counties doesn't mean that it doesn't deserve attention. Now I would ask you to turn to the next page which shows groundwater level changes in Nebraska, predevelopment to spring of 2000. And I'm not going to spend a lot of time on this and it's a little bit confusing when you look at this versus the next map because the colors are different. But that's prior to the year 2000. Now the last page, the next page is groundwater level changes in Nebraska, predevelopment to spring of 2009. It's different colors so you got to look at it a little more

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carefully, but I believe that we've got two areas that have significant changes and I think that those need to be addressed, as well as scanning the rest of the state to see what kind of plans are in position to see that depletions don't occur. The reasons for this bill would be to ensure sufficient water for generations to come as the Midwest is expected to double its ag production in the next few decades to feed the world. The reason for discussion of this bill is to come up with a plan to stop the long-term depletions of the aquifers in Nebraska. And I believe that the NRD managers are in a most difficult and uncomfortable position when it comes to this issue. They're hired by a board; the board generally is interested in irrigation, which they should be. And so if a manager gets overly aggressive in addressing depletions, they may be without a job. They're not in a comfortable position. And so I sympathize with the position they're in many times. They're hired by their board. It is an uncomfortable position to push for significant cutbacks on water use. It's easier for someone on the outside to push for a solution to depletions. I'm willing to do that because I think it's the right thing. This is my opening on LB1056. I'll be happy to answer any questions you may have. [LB1056]

SENATOR DUBAS: Thank you, Senator Carlson. Questions? Senator Fischer.  
[LB1056]

SENATOR FISCHER: Thank you, Senator Dubas. Senator Carlson, where did you get this information from on your handout? [LB1056]

SENATOR CARLSON: That's a UNL publication. [LB1056]

SENATOR FISCHER: Okay. [LB1056]

SENATOR CARLSON: And I just extracted the counties that we were looking at rather than all 93. [LB1056]

SENATOR FISCHER: Thank you. And what date is predevelopment? [LB1056]

SENATOR CARLSON: I, Senator Fischer, I'm not sure. I think it's...it's at least pre-1960.  
[LB1056]

SENATOR FISCHER: Okay. Thank you. [LB1056]

SENATOR DUBAS: Other questions for Senator Carlson? Seeing none, thank you.  
[LB1056]

SENATOR CARLSON: Okay. [LB1056]

SENATOR DUBAS: Support for LB1056? Welcome. [LB1056]

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KIM ROBAK: Senator Dubas and members of the Natural Resources Committee, my name is Kim Robak R-o-b-a-k. Mike Clements, the general manager of the Lower Republican NRD, could not be here today and he asked that I speak in support of LB1056 on behalf of the Lower Republican NRD. We understand that the bill in its current form is not going forward, however, we want to thank Senator Carlson for bringing this legislation forward as a discussing point, a point for bringing forth some very difficult issues to be talked about. I heard Senator Langemeier say just this morning that this year has been a year of water legislation that shows out of the box thinking and I believe this is one of those bills. Mark Twain's saying, whisky is for drinking and water is for fighting, is an expression that may have been stated specifically about this bill. One of the issues that we're all trying to grapple with across the state is how to protect, preserve and sustain our aquifers and we believe, as do all NRDs, that the economic viability of the region, as well as we would argue the entire state, is directly related to groundwater and surface water supplies. And we believe it's important to take steps necessary to make sure that we manage this precious natural resource for the benefit of generations to come. The Lower Republican is fortunate to have good recharge. Due to some management efforts over the past six years, groundwater pumping has been reduced by 60 percent in the district. And because of those efforts, the groundwater levels have recovered dramatically from a severe drought that started in 2001. But even with some substantial increase in aquifer levels, we're still below the levels that existed in 1979, even with the plentiful rains that occurred in the last two years. But we give this as an example of something that can occur if management has taken place. We acknowledge that enacting parameters, such as are set forth in LB1056, are controversial and we know that they may be considered to be arbitrary. But to some in the Lower Republican, they're just as arbitrary as shutting off all quick response wells in a water-short year when others are allowed to pump. We don't know if the percentages are the right percentages or if the base year is the correct base year, but we do believe that discussion of the issue is very important. And I would point out that the statute with regard to IMPs for fully appropriated basins sets as its goal the idea of sustaining a balance between water uses and water supplies so that the economic viabilities, social, and environmental health, safety, and welfare of the river basin, subbasin, or reach can be achieved and maintained for both the near-term and the long-term. We believe that LB1056 is a start in the direction of a long-term discussion about economic viability for the entire river basin. We support the concept and ask that continued discussions occur on how to achieve long-term viability in the basin. And with that I'd be happy to answer any questions. [LB1056]

SENATOR DUBAS: Thank you very much. Questions for Ms. Robak? Senator Fischer. [LB1056]

SENATOR FISCHER: Thank you, Senator Dubas. Thank you, Ms. Robak for being here. How many inches were pumped six years ago in the NRD? Did the Lower Republican keep track of that? [LB1056]

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KIM ROBAK: Six years ago in the NRD, I believe... [LB1056]

SENATOR FISCHER: Did I hear you correctly when you said that it's...the pumping has been... [LB1056]

KIM ROBAK: Reduced by 60 percent. [LB1056]

SENATOR FISCHER: ...reduced by 60 percent in the last six years. So how many inches on average were pumped six years ago? [LB1056]

KIM ROBAK: Senator, I don't have that number off the top of my head. I want to say that there is another member of the NRD here and I will get that information for you. [LB1056]

SENATOR FISCHER: Okay. What I'd also like to know then is how many inches, on average, are pumped now? [LB1056]

KIM ROBAK: And I believe that that amount is, on average... [LB1056]

SENATOR FISCHER: Sixty percent less. [LB1056]

KIM ROBAK: Yes, but I want to say around seven inches, but it could be nine. [LB1056]

SENATOR FISCHER: Okay. And how many inches of rainfall fall in the Lower Republican NRD Basin? [LB1056]

KIM ROBAK: I could tell you that's 22 inches on average annually in the Republican...Lower Republican area. [LB1056]

SENATOR FISCHER: And how does that compare, say, to the Upper Republican on rainfall? [LB1056]

KIM ROBAK: Lower Republican receives more rainfall than the Upper Republican does. [LB1056]

SENATOR FISCHER: Okay. [LB1056]

KIM ROBAK: And we're fortunate in the Lower Republican to have more rainfall than the Upper Republican has. [LB1056]

SENATOR FISCHER: Okay. And the local NRD board of the Lower Republican made those decisions to put restrictions on groundwater pumping, is that correct? [LB1056]

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KIM ROBAK: That's correct. [LB1056]

SENATOR FISCHER: Wouldn't this idea coming from Senator Carlson take away that flexibility of a local NRD to make those decisions? [LB1056]

KIM ROBAK: I don't think so, Senator, based on the way it is drafted, although I understand that the bill, as it's drafted, is not its final form. As it is drafted, it would give the authority to either the district or the state to make those decisions, so I don't think so. [LB1056]

SENATOR FISCHER: Who do you think should have that ultimate authority? [LB1056]

KIM ROBAK: Obviously, the district ought to have the first shot at doing that. The thing about the Republican River Basin is that...which complicates it, is because of the three-state compact which has implications for beyond those three NRDs or four NRDs in the basin, so there are other factors that come into play. [LB1056]

SENATOR FISCHER: Do you think the state should trump what a local NRD believes is necessary to implement within their own jurisdiction? [LB1056]

KIM ROBAK: I would hope not, and in most instances that's why there's an integrated management plan to talk about what efforts ought to take place so that the locals can control that before anybody else should come in and again, deal with that...that issue. But when you have a compact, again, we have to deal with the ramifications for the whole state, so the state does have some say in the matter. [LB1056]

SENATOR FISCHER: So should the state only have some say in the matter within the Republican Basin? [LB1056]

KIM ROBAK: Well, unfortunate, there's also the PRRIP and other areas of the state so they have... [LB1056]

SENATOR FISCHER: Okay. So then we're going to extend it to the Platte Basin, so should we extend it to the Loups and the Elkhorn, and the Blue, and...should we let the state trump what locally elected NRD boards decide to do when it comes to groundwater? [LB1056]

KIM ROBAK: Well, my personal opinion, Senator, and I'm going to guess that the opinion of the Lower Republican would be no, that Nebraska has a unique system of governance and the NRDs and that we're very proud of the NRD system in the state, and we think that it works well. And so we would not want the state to come in and trump what the locals decide. But we do want to look at a discussion about how to

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maintain those resources as long as possible because we don't want someone to come in and tell us what to do as some point in time. [LB1056]

SENATOR FISCHER: If that's the case, shouldn't rainfall be considered in a proposal like this because the rainfall does vary basin to basin and if you just put in that only a certain amount can be pumped no matter where you live, no matter how much rain you receive, there's an argument, is that fair to counter the argument, well, is it fair that somebody gets 13 inches and somebody gets 7? I think you have to take into account rainfall. [LB1056]

KIM ROBAK: And clearly it can be considered arbitrary, whatever number you pick. And that's part of the discussion; how do you set those numbers, where do they come from, how do you take into account all of the factors that ought to be taken into account and we would certainly say that that discussion needs to take place, yes? [LB1056]

SENATOR FISCHER: Okay. Thank you. [LB1056]

SENATOR DUBAS: Other questions? Seeing none, thank you very much. [LB1056]

KIM ROBAK: Thank you. [LB1056]

SENATOR DUBAS: Others in support of LB1056? Welcome. [LB1056]

BRAD EDGERTON: (Exhibit 5) Thank you, Senator Dubas and members of the Natural Resources Committee. My name is Brad Edgerton, E-d-g-e-r-t-o-n. I'm the manager for Frenchman-Cambridge Irrigation District and on behalf of Frenchman-Cambridge Irrigation District I'm here to offer testimony in support of LB1056. Finally, someone willing to talk about the 800-pound gorilla in the Republican River Basin and thank you, Senator Carlson, for bringing this bill forward. Last week the manager of the Upper Republican testified on LB1076 and stated that the Upper Republican has cut back depletions to approximately a 1997 level. If you'll take the handout, table 1, I've highlighted 1997 and this table represents the depletions in the Republican River Basin by NRD and then you can see where we're at in 2009 from this table. The next page of the handout labeled "Graph No. 1" is basically a plot of those depletions in the Upper Republican. Again, please note the 1997 to the 2009 level of depletions there. The next page of the handout is "Graph No. 2". This graph plots the sum of the gauged streamflow from three USGS measuring stations located on the eastern boundary of the Upper Republican NRD for the years 1990 to 2009 and compares the groundwater depletions within the Upper Republican to that streamflow. The compact, in the simplest terms, requires Nebraska deliver approximately one acre foot of water for every acre foot Nebraska consumes. This data suggests that the streamflow discharge from the Upper Republican should never be less than 80,000 acre feet just to satisfy Kansas. If they could achieve this, this would leave absolutely no water for downstream water

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users in Nebraska. H&RW and Frenchman Valley Irrigation District have already been devastated by the 800-pound gorilla. Frenchman-Cambridge Irrigation District will be next if nothing is done. I'll answer any questions. Oh, the final map is...or the final four maps is groundwater level changes in Nebraska from predevelopment to 1997 and then the next map is groundwater level changes in Nebraska predevelopment to the spring of 2009. So you can see that the mining of the aquifer is still going on and the depletions, the decline in the aquifer is still growing and it's a major concern as far as compact compliance goes and the viability of downstream water users in the Republican River Basins. Thank you. [LB1056]

SENATOR DUBAS: Thank you. Any questions? Senator Schilz. [LB1056]

SENATOR SCHILZ: Thank you. Brad, thanks for coming in today. And all of this...all of this, I think somewhat speaks for itself. As you turn to your graph on page 2 here, and understanding the numbers here on page 1... [LB1056]

BRAD EDGERTON: Okay. [LB1056]

SENATOR SCHILZ: ...at what point...at what point do you pick to start the management? And the reason I ask that is if we go back and we start...learned a lot about maps and water and what they can say if you take a snapshot in time. And if you look here from one year to the next, especially if you start to look at...if you find yourself in the middle of a drought situation or on the middle of a wet cycle, you could really change those groundwater numbers. And I...is there any thought here of...if you're going to talk about this can you, can you just...do you have to take one point in time or do you need to take a set number of data points and say, okay, where's the trend and how do we do that? [LB1056]

BRAD EDGERTON: Right. And you know, the data is out there and I guess, as you heard last week, Frenchman-Cambridge did petition the department to reevaluate the basin. It's never been evaluated. And I guess I leave it to the department to basically take a look at the data, analyze it and then inform us of where that is. Where were we sustainable or fully appropriated. [LB1056]

SENATOR SCHILZ: Be good information. [LB1056]

BRAD EDGERTON: You know, we're just guessing at it right now so. [LB1056]

SENATOR SCHILZ: It would be good information to know, wouldn't it? [LB1056]

BRAD EDGERTON: It would. [LB1056]

SENATOR SCHILZ: I appreciate that, thank you. [LB1056]

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SENATOR DUBAS: Other questions? Seeing none, thank you. [LB1056]

BRAD EDGERTON: Thank you. [LB1056]

SENATOR DUBAS: Others in support? Welcome. [LB1056]

MATT HARRISON: (Exhibit 6) Hi. My name is Matt Harrison, M-a-t-t H-a-r-r-i-s-o-n, from Naponee, N-a-p-o-n-e-e, Nebraska. I'm here to testify in support of the theory of LB1056. For me to give a total support of this bill, I believe changes need to be made before it passes out of committee. Instead of LB1056 being based only on the saturated thickness of the aquifer, I question if it should be based on streamflow depletions or a combination of both. The aquifer depletion based on saturated thickness of the aquifer has a direct effect on streamflow depletion irregardless of where the depletion occurs. What I mean by this is that if the aquifer is depleted beyond sustainable levels near a stream, the reduction in base flows to the stream will occur much sooner than if the aquifer is depleted beyond sustainable levels that are farther away from the stream. The depletion still occurs, although the timing of the depletion is different. This is called the lag effect. When the aquifer is severely depleted so is the streamflow, thus making it harder for downstream users to make up the difference. Some NRDs' rules and regulations have permitted the aquifer to be depleted beyond sustainable levels, resulting in the state of Nebraska's inability to comply with the compact. I recommend a study to determine the best option, perhaps by our own university or the United States Bureau of Reclamation. However, one of the options mentioned should be used because if something is not done to stop aquifer decline in the Republican River Basin, I cannot see how the state of Nebraska will ever be able to comply with the compact. Thank you, Senators, for the opportunity to testify on LB1056 and I would be glad to answer any questions at this time. [LB1056]

SENATOR DUBAS: Thank you very much, Mr. Harrison. Questions? Senator Fischer. [LB1056]

SENATOR FISCHER: Thank you, Senator Dubas. Please forgive my ignorance; where is Naponee? [LB1056]

MATT HARRISON: Just below the Harlan County Dam. [LB1056]

SENATOR FISCHER: Okay. Thank you. Are you suggesting with your testimony that perhaps there shouldn't be wells next to, or close to a stream, but the possibility is there that there could be wells further out from a stream due to the lag effect? [LB1056]

MATT HARRISON: I think that they both have the same depletion. It's just a timing issue. So why would we shut a well off close to the stream when it's going to show up

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later? No, I don't think that that would apply, I guess. [LB1056]

SENATOR FISCHER: When you irrigate directly from a stream, that has immediate effect on streamflow, correct? [LB1056]

MATT HARRISON: Um-hum. Sure. But in our basin, in our district anyway, there are just a handful of water rights to pump from the river that are grandfathered unless the lake is above 130,000 acre feet of capacity and then junior rights are able to irrigate. But there is hardly...there's not...very little irrigation is directly from the stream today. [LB1056]

SENATOR FISCHER: Are you an irrigator? [LB1056]

MATT HARRISON: Yes, I am. [LB1056]

SENATOR FISCHER: Do you irrigate surface or groundwater? [LB1056]

MATT HARRISON: Both. [LB1056]

SENATOR FISCHER: How close are you to the stream with your wells? [LB1056]

MATT HARRISON: Probably within... [LB1056]

SENATOR FISCHER: You don't have to answer these personal questions if you don't want. [LB1056]

MATT HARRISON: No, I'm relatively close to the stream. I would say within a half, three-quarters of a mile maybe. [LB1056]

SENATOR FISCHER: So your support for this bill...I'm trying to figure out what you're trying to tell me here. Your support for the bill is so people upstream from you wouldn't be able maybe to pump as much or what. [LB1056]

MATT HARRISON: Well, what I feel is since the aquifer in my area has not declined, that means that we're recharging what we use so what is our affect on the base flows to the stream? Now, if you look at the map that I had attached where the aquifer has declined dramatically, and I can show you a lot of other data where the streamflow has declined dramatically. The correlation in groundwater development and shortly thereafter the decline in streamflows. That's the point I guess I was trying to make. [LB1056]

SENATOR FISCHER: Do you think that instead of an individual NRD decision being made that it should be basin-wide then? And if so, how do you get to that? [LB1056]

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MATT HARRISON: No, I don't believe it should be basin-wide at all. I feel if an NRD's, we'll say for this example, the groundwater has continued to decline, it has continued to jeopardized base flows, thus jeopardizing the compact with the state of Kansas, that then maybe someone should step in. But if the base...if the depletions or if the aquifer decline is relatively stable, then it, to me, it sounds like they're doing their job. And I'm sorry, what was the second part of your question, Senator? [LB1056]

SENATOR FISCHER: I don't have any idea. (laughter) I'm trying to figure out why you tentatively support the bill and who you want to make decisions that affect, not just your livelihood, and not just the people in a NRD or a basin's livelihood, but truly affect the economy of the state of Nebraska. [LB1056]

MATT HARRISON: That leads up to the second part of your previous question.  
[LB1056]

SENATOR FISCHER: Oh, thank you. Okay. [LB1056]

MATT HARRISON: That is the local NRDs or should it be basin-wide? [LB1056]

SENATOR FISCHER: Yes, or basin-wide. [LB1056]

MATT HARRISON: And I definitely think it should be local NRDs because they're most familiar with the area. I sure wouldn't want someone from McCook or Imperial, for example, making my decisions in my area because they're not familiar with my area.  
[LB1056]

SENATOR FISCHER: Good. I agree with you on that. I happen to live in an area with an overabundance of water too according to these maps and...but there are many challenges across the state and it's...sometimes it's difficult to try and address those challenges for a specific area without it overlapping into other areas that truly don't need any kind of regulation there. So that's a concern of mine and of course, laws we pass, we can't pass specific laws for...or laws for specific areas either. They have to be more far-reaching, so it's difficult to figure out how we can help some people and not hurt others. [LB1056]

MATT HARRISON: Well the bill, to my understanding, was based on the percentage of decline in the aquifer and maybe perhaps the same example could be for percentage of decrease in streamflow depletion if you will. [LB1056]

SENATOR FISCHER: Right. [LB1056]

MATT HARRISON: But that's why I felt a study need to be made. [LB1056]

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SENATOR FISCHER: Thank you very much. [LB1056]

MATT HARRISON: Um-hum. [LB1056]

SENATOR DUBAS: Other questions? Seeing none, thank you very much for coming today, Mr. Harrison. [LB1056]

MATT HARRISON: Thank you very much. I do have something else for Senator Fischer from previous testimony. [LB1056]

SENATOR FISCHER: Uh-oh. [LB1056]

MATT HARRISON: To answer your question, I think the average allocation, I don't remember how many years ago was an average of 11.5 inches. It was 12 inches on one side of...west of Highway 183 and 11 inches east of Highway 183, average of 11.5 and the last water use in our NRD was just a little over 5 inches. [LB1056]

SENATOR FISCHER: And what was it on the other side of 183? [LB1056]

MATT HARRISON: No, that was the whole NRD. [LB1056]

SENATOR FISCHER: Oh, the whole area. [LB1056]

MATT HARRISON: All of our NRD now has the allocation of 9 inches. [LB1056]

SENATOR FISCHER: Okay. Thank you. [LB1056]

MATT HARRISON: Um-hum. [LB1056]

SENATOR DUBAS: Thank you. Next supporter. [LB1056]

CLAUDE CAPPEL: (Exhibit 7) My name is Claude Cappel C-l-a-u-d-e C-a-p-p-e-l, I'm from McCook, Nebraska. Members of the Natural Resources Committee, I'd like to thank Senator Carlson for trying to correct some of the water problems. I support the concept, but not the bill as written, but I could base upon...if it was based on streamflow. I've done some things here I'll talk to him about a little bit later on that, but streamflows, it seems, will give a lot accurate picture when restricting groundwater pumping if necessary, especially in the Republican. I don't know about the other basins. There is a direct correlation between streamflow and aquifer depletion and it's actually vice versa, the other way around. And what Senator Carlson proposed is probably Natural Resources where Conservation and Survey of Institute of Agriculture and Natural Resources at University of Nebraska for a report for a power year actually

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comes out late in the fall...late in the fall of the next year. My stuff here on inflows to the dam is based on Bureau of Reclamation stuff which is about a year behind for inflows to the dam. The percentage of aquifer will not work for the following reasons. In the area of basin, you cross the section where I live, or even otherwise, the shale, which is the base of the aquifer is considerably deeper in some areas than in others. The depth to water is more consistent with the same elevation in relation to sea level with a rounding of a dome upward from one stream to the other back down to the stream and so on. And the area across...or an area where I live, the depth to shale might be 10 feet for one stream and yet over 400 feet deep for another stream which really throws this percentage depletion off. And looking at the sheets, I have four large sheets here and one of them is based on Enders Reservoir, Medicine Creek Reservoir would be a better one to go with. What I've done here is take an area from around 1958 through 1972 and I come up with an average or a number there that gives you an average of those years of use which is basically predevelopment. Then I go on down through the years and you can look down and then I handed out the sheets to the predevelopment from 1982, different stages all the way up to the Middle Republican had no area of decline in 2000. But as you look at that, when you hit the 70 percent level of decline in the stream, you're starting to get aquifer decline and it's not very bad. When you hit 60 percent, you got a problem. On the next side and the sheet on Enders Dam, when you get to 30 percent, you're done; basically there's no more waterflow out of it. We have Enders Dam, Swanson, Red Willow and they're all down pretty low as far as water inflow. You also, Medicine Creek is also starting to decline after 2000 in that area. The other one is on Harlan County which would probably relate to the Platte, like I have writing on the back of it, and Harlan County. Harlan County is kind of deceptive because starting in about 1970 we started losing our surface water in the western part of the district; H&RW lost the surface water. People started drilling supplemental wells which would actually offset a lot of that where they could get them. As you went on, the surface water kept declining, there was another area later on that...Frenchman Valley lost its water so they drilled more supplemental wells, but there again, there was still areas some could get supplementals and some couldn't. In 2002 we lost, basically, all the water for H&RW. I think 2003 Swanson Reservoir and there was very little natural flow coming down for Frenchman Valley Irrigation District. That water there even would show up kind of in Harlan County because it wasn't being used or pumped the stuff. Also, in 2003 on the supplemental wells, a lot of them dried up in the area. What I found here, and really when I started this, I thought, well, it would be better to just use a combination of groundwater and otherwise, but it...certainly looking at it, streamflows in our area basically tell the whole story and you can predict pretty much what is going to happen by looking at a depletion and the streamflow. That's all I have to say so. [LB1056]

SENATOR DUBAS: Thank you very much, Mr. Cappel. Questions? Senator Schilz.  
[LB1056]

SENATOR SCHILZ: Thank you, Mr. Cappel, for coming in today. Thank you, Senator

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Dubas. Let me see if I understand this correctly. When you say you lost surface water, you're talking about the ability to use that water to irrigate, is that... [LB1056]

CLAUDE CAPPEL: Basically up there, we...H&RW got basically storage rights from the Enders Dam. [LB1056]

SENATOR SCHILZ: Uh-huh. [LB1056]

CLAUDE CAPPEL: And starting in 1982 they didn't have enough to do it, that was the start of the loss. In 2000, we've been shut off ever since, in fact, there's a lot of places they've closed the canal in. Frenchman Valley there gets what they call...they had storage rights too, but then it went down; I think we've been getting around an average of 2.5 to 3 inches a year. Some of the people can use it; some can't. We haven't used any water at all. We still have to pay these bills. Last year we had one district out of Swanson Reservoir; we did get water last year which was first time since 2003, but we still had to pay the bills. The bills what we had to pay for no water this year was \$5,800, something like that. We'll have to pay these continuous because we have a contract by the state. But it just keeps going down and it will keep going down until the aquifer is sustained. It...you can see that by this and the maps that I give you for the predevelopment the different stages. And if you look from 2000 up to 2009 you can see how fast it's going down. [LB1056]

SENATOR SCHILZ: Right. Um...okay. So, now those water rights are still enforced, right? I mean, they're still... [LB1056]

CLAUDE CAPPEL: Yes, yes. [LB1056]

SENATOR SCHILZ: ...they're still in good standing and everything. [LB1056]

CLAUDE CAPPEL: A lot of them are dated back to 1890. I think in the fifties is about the latest ones. They were by the bureau, they come in and put the dam in and they formed an irrigation district. You had to take water. I know people that went to Washington, D.C. to keep out of the district, but you had to go into that district or have a well sufficient capacity. If you look back there was a lot of wells drilled in the '54, '55 period for that reason. But, yes, then you have to keep on paying that or they'll sell your land; it's a tax is really what it is. [LB1056]

SENATOR SCHILZ: Right. Right. And then, okay, and then...and then you said that as that water in the stream disappeared, to be able to be diverted and used for irrigation, you said that many people went out and drilled "supplemental" wells. [LB1056]

CLAUDE CAPPEL: Yes. We drilled our first one in 1970; actually just kept drilling. We had an area that we couldn't get much wells, we probably had an area, probably had 30

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to 40 wells within a square mile and actually in 2002 we pumped them and they did work, but we pumped all the house wells dry. So then we had to do some other things different. So it didn't like that. [LB1056]

SENATOR SCHILZ: Maybe that's the definition of correlative rights, huh? When you don't have any water to drink then it's okay. But I guess..I guess my point here is that I think you understand that, you know, if you don't have any water coming down the stream and then you...that you basically take and convert that "water right" into pumping that groundwater, you can exacerbate the problem even...much farther than you would if you had said, hey, we can't get the water. Do we drill or do we take it and move forward? [LB1056]

CLAUDE CAPPEL: I guess I looked at the wells more as a supplement. We were given that water; we have to...they said we have to pay for it when they...when we don't have the water, then we drilled the wells in order to keep on irrigating. Actually, a lot of the surface here, we did that, we went in and put in reuse pits, we put in surge systems trying to have enough and then started to drill wells and then went to pivots and now it's to drip. [LB1056]

SENATOR SCHILZ: Sure. [LB1056]

CLAUDE CAPPEL: And...but, I guess we have probably just as much right. Most of those wells were drilled back in the seventies even prior to the change in the water laws. [LB1056]

SENATOR SCHILZ: Yeah. Don't get me wrong, I'm not saying that you did anything wrong, I'm just saying that hindsight being 20/20, if you'd look at it today, and in other states where we've seen the same sort of problems and I think of Colorado and their situation with GASP. I don't know if you're familiar with that or not. But they...what happened in Colorado was in 1973 when they passed a law, anytime anybody ran out of surface water they just petitioned the state, and the state would say yeah, go ahead, go ahead and drill a well. And even though the surface water wasn't there, they continued pumping those wells and here a couple of years ago the state of Colorado figured out that, hey, that's...that doesn't get you what you're trying to do. That doesn't get you recharge; that doesn't help you maintain your stream and I look at that...and a lot of those folks got shut off because of that. And I look at that and I say if we're going to go down this path, then everybody needs to understand that whether you're surface water or groundwater, you have to make sure that you have the recharge to be able to command all that. I think we're talking on the same path here, aren't we? [LB1056]

CLAUDE CAPPEL: Basically Nebraska surface water was the law up to '82 and all bills passed prior to that, even for groundwater, some legislature introduced into the...on the floor during the hearing said I want it for protection of power irrigation. Eighty-two, the

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Legislature took that away and let basically the rights there and said the NRDs could deplete the water. That's what happened there is they took...when they did that, that's what depleted the water...was our surface water. [LB1056]

SENATOR SCHILZ: Right. [LB1056]

CLAUDE CAPPEL: And so it's a question of which, who and what and... [LB1056]

SENATOR SCHILZ: Chicken or egg type? [LB1056]

CLAUDE CAPPEL: We're at this point now, we need to figure out what to do. [LB1056]

SENATOR SCHILZ: Absolutely. Well I just...I think it's a point...I think it's a point to say that, you know, if we're going to solve these things, we've got to figure out how to work together and no offense to what you or a lot of your neighbors did, because that's what you were told to do, but I think you may have more faith in the Legislature in what we've passed in water law than maybe some others do, because I've found that a lot of times, you know, when you get into this situation it becomes tough at times to do what may be found to be the right thing later on. [LB1056]

CLAUDE CAPPEL: Yeah. Basically, correlative rights was put in there in '82, which I think we talk about later and that was supposed to be the limiting factor. Now our irrigation district did look into that. In fact, they were trying to bring water over from Platte one time, which thank goodness they didn't get done because the Platte went dry. That correlative rights there has never had a way to enforce it because at that time the judge said we had to go prove which well harmed us by how much and so...but really at the point, it should have been something there that started limited the amount of irrigation that could happen, so. I mean the writing was on the wall way back then. [LB1056]

SENATOR SCHILZ: Okay, thank you. Thank you. [LB1056]

SENATOR DUBAS: Other questions? Seeing none, thank you very much for coming today. [LB1056]

CLAUDE CAPPEL: Thank you. [LB1056]

SENATOR DUBAS: (Exhibit 8, Exhibit 9) Next person in support of LB1056? We have Ray Winz of Holdrege, Ken Winston of the Sierra Club, who submitted letters in support of LB1056. Opposition. Welcome. [LB1056]

LYNDON VOGT: Good afternoon, Senator Dubas, members of the committee. My name is Lyndon Vogt, that's L-y-n-d-o-n V-o-g-t. I'm the manager of the Upper

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Niobrara-White Natural Resources District and I am testifying for the Upper Niobrara-White today and also for the Nebraska Association of Resources Districts. We are testing in...testifying in opposition to LB1056 and I promise I'll keep my testimony quite brief here. Under the current Groundwater Management and Protection Act, the NRDs have the authority to create subareas and impose a number of different restrictions or management options on groundwater pumping to address declines. And in May of 2003, the Upper Niobrara-White Natural Resource District imposed a moratorium on new well development because of groundwater declines. We often get asked why we did not do this sooner. As you guys are probably all aware, up in...Box Butte County is in Upper Niobrara-White and I kind of hesitated to testify after listening to the last few testimonies because I felt like I was maybe getting in the middle of a Republican River fight and I don't need that. We do have a problem in our NRD and we are well aware of it. But the reason we did not put on a moratorium sooner is because we did not have the authority to put on a moratorium sooner. In 2001, I believe LB108 became available to the rest of the state besides the Republican Basin, and even then we had to do it through a joint action plan. We had to request that from DNR before we could impose a moratorium. So we did that; we made that request, I believe, in 2002 under the old LB108. This was prior to the Water Policy Task Force and prior to LB962. So in May of 2003 we did impose a moratorium. But that really was the first opportunity we had to do that. Could have we went to allocations sooner? Yes, we could have, but we could not stop additional well drilling prior to that date. So that question is actually easy to answer, but most people don't understand that, that the reason we did not shut off high capacity wells was because of that. As a result of that, we also requested the department to put a moratorium on surface water rights and I don't know the exact month, but in 2004 they granted our request. So about a year after, we put on a moratorium on groundwater wells, they also put a moratorium on surface water rights and we currently have an IMP. We currently have a groundwater management plan under the Groundwater Management and Protection Act that we address our declines with and we have allocations under it. And we currently have an IMP to address some of the issues with ground and surface water interaction. And one of our concerns with LB1056 is it would not give us that authority to create them subareas and treat different areas of our NRD separately. As you can see by the map, I have four counties in my NRD and one of them counties have a decline. We don't think it's fair to put allocations on everyone in that four-county area just because of the declines in Box Butte County and we also...we're also looking at another subarea that has no declines but is along the Niobrara River. We're actually...we have meters on all the wells in our NRD and we're looking...we've been reading the meters and sending our landowners reports on what their use is, even in the areas where there's no allocations. And our board for the last two years has looked seriously at the Niobrara River of putting some allocations on our wells in that area, even though we have no declines. We know that we're not going to see declines as long as we have river flows. So our use in that area is fairly small. We actually just got done reading the meters about two weeks ago. I believe our average use this year in that area was around 9.5 inches and that may sound like a lot if you're

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from this end of the state, but in our end of the state where our rainfall is about 15 inches, 15.5 inches, we're pretty proud of a 9 and 10 inch irrigation, to be quite honest with you. So we are concerned about...not allowing us to set them subareas and manage within a subarea. You know with a 10, 20, and 30 percent, it is going to make the subareas a lot smaller, to be quite honest with you, and we feel it's going to be that much harder to manage, if we're saying these people can't pump because they have a 30 percent decline, but yet we're letting people pump in the next...we don't know what it would be; this is another concern, if it's the next township, or if it's the next section, or...we're kind of not making that problem better. I think we're hurting the people that are in that decline area. We've gotten where we're at today with local control, with a local board, and we're addressing the issue. And this local board addressed this issue as soon as state statutes gave them the authority to address the issue. I guess I'll...in closing, I'd just say that there's a number of items in this bill that are up to interpretation and we have a lot of concerns with that because usually when something comes up for interpretation there's a conflict involved and everyone knows we do not need more of that. So with that I'll close and answer any questions if I could. [LB1056]

SENATOR DUBAS: Thank you very much Mr. Vogt. Questions? Senator Schilz.  
[LB1056]

SENATOR SCHILZ: Thank you. Thanks for coming in today and welcome to Lincoln; a long trip from out in that area. This...of course this area up in Box Butte County has been there for quite some time. I mean, you've know that that's... [LB1056]

LYNDON VOGT: Yeah, you know, I think we could probably track some...from small declines even back to the '50s when some of our very first irrigation wells went in.  
[LB1056]

SENATOR SCHILZ: Sure. Do you know or have you done any looking; are those declines affecting any of the streamflows? [LB1056]

LYNDON VOGT: It's a little bit of a loaded question so I'll give you kind of a half answer. They used to. [LB1056]

SENATOR SCHILZ: Um-hum. [LB1056]

LYNDON VOGT: They don't anymore. Our streams that went into the Niobrara River from this decline area... [LB1056]

SENATOR SCHILZ: Uh-huh. [LB1056]

LYNDON VOGT: ...most of them have been dry for 20 to 30 years. So that disconnect took place, you know, most likely in the '70s and '80s. So we've already...are they

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today? They're really not today. If they are, it's very, very small and, you know, we manage the entire...since we started our IMP process under the old LB108, we actually don't follow the 10-50 boundary. It actually goes to the bound...it includes all of Box Butte County. If we did draw that 10-50 line, most of our decline area would be outside of that 10-50 line. [LB1056]

SENATOR SCHILZ: Okay. Thank you. [LB1056]

SENATOR DUBAS: Other questions? Seeing none, thank you very much. [LB1056]

LYNDON VOGT: Thank you. [LB1056]

SENATOR DUBAS: Next testifier in opposition? [LB1056]

TOM TERRYBERRY: I'm Tom Terryberry, T-o-m T-e-r-r-y-b-e-r-r-y, and I'm from Imperial and I'm a director of the Upper Republican NRD which manages water in Perkins, Chase and Dundy County and I am speaking on behalf of the board. LB1056 is not the right legislation to deal with water issues in western Nebraska. Sustainability is an important concept that we must strive to achieve. However, what is it that we are trying to sustain? Is it our communities, our economy, the water table, or as we believe, all of the above? It is a difficult balance to achieve, but a statutory limitation that arbitrarily limits the portion of groundwater that can be used does little to help find the best balance for differing local situations. The Upper Republican NRD continues working towards that important balance, incrementally allowing changes in technology to assist this through the transition to lower allocations. We do this because if we don't allow ourselves that time, our local economy will not be able to adjust to the reduced allocation and our communities will needlessly suffer. In the 1970's, the Legislature was hesitant to grant the Upper Republican NRD the authority to deal with groundwater declines. Additional development and additional declines were the result of not having the authority to impose a moratorium once groundwater declines were apparent. The Upper Republican NRD lobbied for the original Groundwater Management and Protection Act in 1977, but was not granted all of the controls desired in a timely fashion. The Upper Republican NRD did require flow meters and did impose allocations in 1980. We also greatly reduced well development through restrictive well spacing requirements called critical townships during that time frame. This greatly reduced the number of wells drilled in our district in 1980's and the early 1990's until we passed a well drilling moratorium in 1997. Nearly half of the total declines in some townships in our district existed prior to the first allocations and management in 1980, basically, during the first ten years of development. With our rules and allocations since 1980, the rate of decline has been greatly reduced. Allocations in our district have been incrementally reduced over 30 years. It is an adaptive approach which we will continue to use in the future. We know that our job of managing groundwater is far from over. We take that very seriously. We will continue to require producers to push the envelope with

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respect to producing crops to sustain our farm families and our communities while constantly using less and less water. What would the benefit be of...to this legislation? We've already started our own integrated management plans in Nebraska. Our current management of groundwater protects the local users and our economy. Our integrated management plan protect users who rely on interconnected surface and groundwater. This legislation, if intended to benefit integrated management, is a step backwards. Additionally, in one area of groundwater decline, transferring allocation to bordering areas when areas is shut down would be counterproductive. And with that, I'd take any questions that you have. Thank you. [LB1056]

SENATOR DUBAS: Thank you very much. Questions? Senator Fischer. [LB1056]

SENATOR FISCHER: Thank you, Senator Dubas. Thank you, Mr. Terryberry, for being here. I think it's always important to know is informational for us when you folks in the Upper Republican remind us of what you've done since the late '70s and early '80s and in trying to address this problem. I'm interested, at the beginning of your testimony you talked about sustainability and I always find that a difficult term to define and an even more difficult term to reach a consensus on. How do you define sustainability and I believe you talked about economic sustainability, what else did you say...you said economic sustainability, water sustainability, how do you define those? [LB1056]

TOM TERRYBERRY: Well I think all of them, none of them are perfect and they don't all, of course, coincide; they're at the opposite ends many times. But I think you have to find the best balance of that and you can and then take as far as water usage, you know, find newer and better ways to maintain an economy that you may not totally sustain, but we, you know, if you took 50 percent and cut it from anything, any budget, it would be devastating. You can't adapt that quickly. Yet we've had allocation changes over these last 30 years, you know, that would be almost 50 percent from where it originally started. If we did that in one time frame, at one point just went like that, people would have been out of business; they would have lost land and everything else. So, you know, I think it's a blending of trying to become as sustainable as we can and balance that that's not a perfect situation. [LB1056]

SENATOR FISCHER: So is sustainability a maintaining of the status quo in your view? [LB1056]

TOM TERRYBERRY: I think pretty much, but yet, you...for instance in the case of land values, and of course we border Colorado, in the past few years we've seen that land values in Colorado will be five to seven hundred dollars an acre worth more just because they don't have allocations, the very comparable ground. But it hasn't really been noticed because it was done gradually. So I don't know whether that answers that; it means it hasn't...we haven't maintained the same value as we would have without regulations, but we've done so in a way that the changes or the reductions have been

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gradual enough that it's not... [LB1056]

SENATOR FISCHER: Easier...easier to live with. [LB1056]

TOM TERRYBERRY: It's easier to live with and rather than grow it larger than we can sustain, we try through regulation to maintain a certain level. If you take corn hybrids, they would say how to grow more with less water. Here, we might be trying to grow the same amount with a lot less water in the future. [LB1056]

SENATOR FISCHER: You brought up an interesting point when you mentioned Colorado. And as I look at the maps that we've been provided by Senator Carlson and by various testifiers, you know these maps as well anybody in here. This is you guys right here. [LB1056]

TOM TERRYBERRY: Yes. [LB1056]

SENATOR FISCHER: The bad guys. (laughter) We've got...I say that in jest. I say that in jest. [LB1056]

TOM TERRYBERRY: We've been, I think, called that before. [LB1056]

SENATOR FISCHER: No, I think you folks have a situation that's very challenging. But you're next to Colorado. What does that map look like? We never see the map over here. If you have access to that, I'd like to see it sometime, what that map looks like and the impact of those wells, because it's my understanding, you said they have no moratorium, they have no controls on their wells right across the border here? [LB1056]

TOM TERRYBERRY: On their wells, yes. They had some well drilling spacing, or limitations on drilling during that time, but, yes, their wells can pump what they wish to. [LB1056]

SENATOR FISCHER: And it would be interesting to see that map next to Nebraska's and the impact that... [LB1056]

TOM TERRYBERRY: Um-hum. [LB1056]

SENATOR FISCHER: ...that's had on this area of our state that obviously we're ignoring it because we never see it. [LB1056]

TOM TERRYBERRY: Yeah. [LB1056]

SENATOR FISCHER: And that definitely plays into this. [LB1056]

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TOM TERRYBERRY: And the closer you get to that state line, the more interconnection there is. That's true. [LB1056]

SENATOR FISCHER: And how does the map of Kansas look down here? How does that look? [LB1056]

TOM TERRYBERRY: Well I know that Senator Carlson, when we talked at the legislative conference, talked about the declines in Kansas and in Texas and it does show that we have done a better job than they have to the south of us. [LB1056]

SENATOR FISCHER: But if you...I'll give you a mission to find us some maps... [LB1056]

TOM TERRYBERRY: The map has all of that. [LB1056]

SENATOR FISCHER: ...that show Colorado, that show Kansas, and how that's impacting our state and our citizens. [LB1056]

TOM TERRYBERRY: Well Jasper needs something to do, so. [LB1056]

SENATOR FISCHER: Okay. Thank you very much. [LB1056]

TOM TERRYBERRY: Okay. [LB1056]

SENATOR DUBAS: Other questions? Seeing none, thank you very much for coming today. [LB1056]

TOM TERRYBERRY: Thank you. [LB1056]

SENATOR DUBAS: Welcome. [LB1056]

DON ADAMS: (Exhibit 10, Exhibit 11) Good afternoon, Senator Dubas and members of the Natural Resources Committee. My name is Don Adams, A-d-a-m-s, executive director of Nebraskans First, a groundwater irrigators coalition, statewide membership. Senator Fischer, you got the map you just asked for. It's going to appear right now. It's from the USGS. This is their latest map on the Ogallala Aquifer and you can see in Colorado they're a darker orange than we are leading into Nebraska. Kansas is worse off, and Texas is in real bad shape. In Nebraska from predevelopment, which is I've been told, 1953, virtually no wells in this state at that time, to 2007, that's about 55 years, there's virtually been no change except for those little blemishes that obscure or...deter from an otherwise healthy looking complexion on that map. There's virtually no change and there are areas of green, their levels have actually risen. In those areas in the Upper Republican area and Box Butte, it's our view that those NRDs have

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addressed the matter; they continue to manage and regulate to slow down and ultimately stop the drawdown. I had about four pages of testimony, but...on Senator Carlson's bill, LB1056, but now I just have about a minute after he made his revelation that he wasn't going to push for this bill. Senator Carlson, a month ago, said in Holdrege that LB1054 and LB1056 would cause a "fireworks". He was right, but it looks like today he snuffed out the fuse. Headed to light the fireworks and I'm very hopeful, I don't know, but I'm hoping the same will apply for LB1056. To put it mildly, the situation in the Republican River Basin is very unstable and volatile right now. We believe that the NRDs there are doing their very best to protect the economic solvency of their communities and producers while at the same time trying to develop programs that will ultimately obtain and maintain compliance with the Republican River Compact. I'm not going to parse or dissect LB1056; there's actually no point in doing that now. I think it's okay to introduce these bills for discussion purposes, but I hope they don't linger too long in committee because I'll be getting hundreds of phone calls of people wondering do they have a chance of getting out and that just creates additional tension down there and the last thing the producers and schools and banks and NRDs down there need is additional tension at this time. They would say...Brad Edgerton mentioned the 800-pound gorilla; to me the 800-pound gorilla is the issue of compensation that is getting closer and closer to having to be decided and probably by a court. That issue will probably be litigated. We do know that surface water is a compensable property right and with LB108 which tied groundwater and surface water together, it's our view and based on research we've done, the groundwater, if taken by the state to a point where it harms productive capability and property rights, that that too would be a compensable right because it is deemed virtually the same as surface water. And with that I'll close my testimony and thank Senator Carlson very much for not pushing this bill and if he says the same thing on LB1054 I won't testify. I'll let this testimony apply to that bill too and save everybody time. [LB1056]

SENATOR DUBAS: Thank you very much, Mr. Adams. Questions? Seeing none, thank you. [LB1056]

DON ADAMS: Thank you. [LB1056]

KATHI SWANSON: (Exhibit 12) My name is Kathi Swanson, K-a-t-h-i S-w-a-n-s-o-n and I think everyone may be doing some of the same trending today. Thank you, Senator Carlson, for your opening statements on that. I'll shorten my remarks today. I actually am an irrigator's wife and an irrigator from Box Butte County. And the thing that we'd like to visit with today, in a message from Governor Heineman inviting the ag producers to the 22nd Annual Governor's Ag Conference, he noted that while the practice of agriculture continues to change and evolve, one constant is that this industry continues to play in a central role in our state economy. Thank you for your contributions to Nebraska's largest engine. What I'd really like to discuss today is that we continue to isolate the water from our economy in the state and what we really need to do is look at

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water as a complete component of our economic development plan for the state. It's not just an ag issue. This impacts the entire livelihood of Nebraska from one side of Nebraska to the other, from the main street businesses to the fertilizer to even ConAgra and others across the state. What I'd like to propose is that we really look at positive legislation coming out of our Legislature that will assist in providing us the tools to continue conservation, but also incentivizing production of the drought resistant crops and others. The University of Nebraska is one of the best in the nation with respect to agriculture. We need to tie these pieces together and really bring a plan for the state from an economic development perspective. As a farmer's wife, I'll be honest with you, we put on as little water as possible because pulling it and running those irrigation wells cost us money. We look at the economies of bringing water up, because that's where it is, and I'll be honest with you, if you could legislate God giving us rain in western Nebraska, that would be the bill that would solve our issue. We've been under severe drought conditions. Even now, the last few storms coming out of Colorado have gone around us; and I'll be honest with you, I would love to dig out a snow on a regular basis. We need to look at that in terms of the local control across the state because we have major differences. The irrigators have worked very hard because for us it is a profitability issue and I think there is an opinion on times that when, especially with pivot irrigation and others, we walk out, we turn it on, we walk off and we let it run. Everything...every time we turn it on, it costs us money, either electricity or natural gas which is what we have on the pivots. So we would appreciate...and there's quite a few from Box Butte County in the audience today that has testimony, we would appreciate thoughtful legislation that really begins to address the key issues, but also from a policy perspective in the state bringing water into the discussion. If we run down the list of economic incentives for companies, agriculture is a minuscule part of what we're actually funding in terms of economic development. We have a few dollars that talks about first time farmers and others trying to do the land, but we need to look at it from a true economic perspective. You'll hear from some others. We have crops in western Nebraska that you can't grow in other parts of the state simply because we don't have a lot of rainfall. So that's what I'd like to leave you with today. We do appreciate LB1056 being postponed indefinitely; that is a major goal in why we're here today. But we'd really like a thoughtful solution and a discussion about economic development as we move forward. Thank you. [LB1056]

SENATOR DUBAS: Thank you very much for your testimony today. Questions?  
Senator Fischer. [LB1056]

SENATOR FISCHER: Senator Dubas, thank you. Thank you, Miss Swanson, for your comments. You know, in all the time I've been here we always talk about rural economic development and I have...it's been my perception that the bills that come before the Legislature on economic development are obviously very piecemeal. [LB1056]

KATHI SWANSON: Absolutely. [LB1056]

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SENATOR FISCHER: They are...they would affect a small number of rural people in rural communities and they're easy to support because we rural senators don't ask for enough. So I would, I guess, challenge you to bring us some ideas that we can bring forth next year on true economic development for rural Nebraska. [LB1056]

KATHI SWANSON: I would absolutely love to that. And I think one of the things that we have been able to do, I think sometimes we forget...I started a company 20 years ago and we actually work with community colleges across the country. I employ about 30 people in Alliance, Nebraska and have laughingly told people that the way we got fiber optics was when the gophers ate through the cable. That brought us development on that side. We can do it and we are stewards of our land and I think sometimes that's forgotten with respect to looking at the broader picture. The other piece is, we need continued work with genetics and resistance and we need the University of Nebraska to be partners moving forward with us. But we also need incentives to make those things happen because we are still driven by economics across the entire state. [LB1056]

SENATOR FISCHER: How do you see water playing into that? [LB1056]

KATHI SWANSON: I see water as one of the resources that I have to deal with to continue to farm. It has to be there and I have to take care of it. I'm not going to put any more on than I have to. The part that seems to always be missing when we start, especially talking about the western part of the state, is the climatological changes. It's not just us that's in a drought; it's not just us with water. I think Nebraska has actually done a remarkable job because Colorado, we've got good lessons out of Colorado and California and Texas where we've diverted water out of agriculture and crippled economies that we are looking at it as a piece of economic development and that's the part I'd really like to keep forward. It's a resource we protect, but it's in our own best interest to protect it, especially the ones that are using it. [LB1056]

SENATOR FISCHER: Thank you very much. [LB1056]

KATHI SWANSON: Thank you. [LB1056]

SENATOR DUBAS: Thank you, Ms. Swanson. [LB1056]

KATHI SWANSON: Thank you. [LB1056]

SENATOR DUBAS: Questions, other questions? Thank you very much. [LB1056]

MIKE ONNEN: (Exhibit 13) Senator Dubas and members of the Natural Resources Committee, my name is Mike Onnen, that is O-n-n-e-n. I'm the general manager of the Little Blue Natural Resource District at Davenport and I'm here to express our district's

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opposition to LB1056. We oppose the bill primarily because it erodes the local control and the ability of local boards to make informed decisions about their own resources while giving the state agency authority to regulate the groundwater resources of the state. It is interesting that the bill as it is proposed suggests some decline or triggers based on decline or percentage of decline. The Little Blue NRD Groundwater Management Plan already has those triggers that are based on percentage. We simply use a different base year for implementation of those triggers or those controls. We're also opposed because we don't believe the one size fits all program of groundwater management applies to the state of Nebraska because of the diverse hydrologic...hydrogeologic conditions and weather patterns that exist. I've attached a map, I think it's probably the fourth time you've seen this map today, of the groundwater decline map from predevelopment to 2009. The map shows an area of decline that is called Development 2009 and I've outlined the boundaries of the Little Blue NRD on that map. It's the last page of your handout. You'll notice that there is a large area of our district that shows declines, mostly in the 10 to 20 foot range. The Little Blue NRD shares Fillmore County with the Upper Big Blue NRD to the north and Fillmore County is highlighted on that map as best I could with a yellow marker. Fillmore County has experienced the largest groundwater declines in our districts since predevelopment, estimates because of...or results of high rate of development and a belief, I believe at the time, that water was pretty much an inexhaustible resource. If this bill were enacted, a good portion of Fillmore County would be required to go into metering and allocation immediately based on what's called their predevelopment levels. Even though the levels have been fairly stable for 30 years, as is shown on the graph on the next page of my testimony on page 2, further the changes that have taken place since this early irrigation development in that area and around the district, I think caused us to reevaluate that situation. About 1980, a groundwater model was completed by the Nebraska Natural Resources Commission, now the DNR, which simulated and predicted groundwater levels in the aquifers of our district. According to the district's statistics, in 1980 we had approximately 535,000 acres of irrigated land. Three scenarios were modeled in the NRC modeled based on the best available science and irrigation development trends of the '60s and '70s. The three scenarios included one with a fixed state of development, one a slow rate of development, and the third a high rate of development. Based on the low rate of development, an average irrigation water application of 15.8 inches per acre, which, by the way, was fairly common applications back in those days, the model predicted that the district would have 50 foot declines in over 90 percent of the district north of the Little Blue River, which is our main aquifer in our district, by the year 2000. In early 2009 we had about 575,000 acres of irrigated lands for about a 7.5 percent increase from 1980; and that, I think, could be defined as a slow rate of development. In reality, our water levels were 4 feet higher in the year 2000 than they were in 1980 when the prediction was for 50 foot lower. And even after the extended drought we've just emerged from, our average water levels today, 30 years later, are equal to or greater than those 1980 levels. So what is the difference? How can we have additional irrigated acres and maintain a water table that over the long term does not show

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depletions? Rainfall might be one factor, but we believe there's other important factors as well. Many producers in the districts have voluntarily reported their irrigation acreage and pumpage numbers to our district for many years. On average, the past 12 years we have received reports on over 112,000 irrigated acres annually. That's nearly 20 percent of all the irrigated acres in our district. Actual irrigation applications reported through that 12-year period show that we used approximately 10.55 inches per acre or a 33 percent reduction from the 15.8 inches that were modeled. And remember that the pumpage from the last 12-year period extends through that drought period which included nearly seven years. Farmers have become much more irrigation efficient in recent years, perhaps prompted by fuel and inputs costs, perhaps due to education, or perhaps the threat of regulation and uncertainties of various political directives. But I believe today's producers are serious about protecting groundwater that lies below their land and have committed to a higher level of water conservation than ever before. Yes, even with an increase in irrigated acres in our district, our total volume of water withdrawn from the aquifer is less than it was in the 1970s and early 1980s. Another point: the chart below on page 3 of my testimony shows the acreage of conversion from gravity to pivots since 2000 reporting of those 112,000 voluntary acres. You can see that the last ten years there have been about 20,000 acres of conversions of those 112,000 acres. Based on that documented average irrigation water application of 14 inches per acre on gravity and 8.7 on pivot, that conversion translates into a reduction of about 8,833 acre feet of water per year. We are involved in irrigation efficiency tests with producers, now having about 130 producers involved. We have 50,000 acres involved in that process now and we're finding that we're able to save at least an inch of water per acre with each of those cooperators. I remember Vince Dreeszen, former director of the Conservation and Survey Division indicating that he believed in the Little Blue Basin because of the geology, because of the rainfall, because of the crop water needs and so forth that if you drew a line up Highway 281, those lands east of that line would never need to have regulation if proper irrigation management was practiced and I believe that's true. One last thought, in 2010 the Annual Evaluation Availability of Hydrologically Connected Water Supplies for the Blue River Basin indicated that the basin is not fully appropriated. The conclusion goes on to say that the department also determined that if no additional legal constraints are imposed on future developments, or hydrogeological connected surface waters and groundwaters and reasonable projections are made about the extent and location of those future developments the preliminary conclusion will not change. So in effect, future development is not anticipated to make a significant impact on our interconnected waters and with the improved irrigation efficiencies, new technologies and improved crop varieties that are being developed, we believe the mandates of this bill are not necessary. I thank you very much and I would take any questions. [LB1056]

SENATOR DUBAS: Thank you, Mr. Onnen. Any questions? [LB1056]

SENATOR HAAR: Yes. [LB1056]

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SENATOR DUBAS: Senator Haar. [LB1056]

SENATOR HAAR: For my education, on these maps when you talk about predevelopment, what does that refer to? [LB1056]

MIKE ONNEN: Well it is a little bit nebulous. Generally, the years prior to the time when irrigation development started to make some impact, probably in the 1950 range. [LB1056]

SENATOR HAAR: Okay. [LB1056]

SENATOR DUBAS: Other questions? Seeing none, thank you. [LB1056]

MIKE ONNEN: Thank you. [LB1056]

SENATOR LANGEMEIER: Thank you. Further opposition to LB1056? Welcome. [LB1056]

SHAD STAMM: Thank you committee. My name is Shad Stamm S-h-a-d S-t-a-m-m. I reside in the...I'm from Benkelman, Nebraska. I am with my mother and younger brother we own and operate a farm/ranch in the Upper Republican NRD that we irrigate approximately 1,400 acres with center pivot irrigation. I guess I'm going to change gears just a little bit. I do sit on a school board within the Upper Republican District that would be affected by LB1056. I guess with that in mind, I began thinking about some questions I had as far as how, if it was implemented, how would land values be...or property values be valued as far as people within the district? As you know, every county government including schools boards, your county, your NRD, your ESU, fire board and whatever else is on the tax rolls, would be affected by what those land values would be. Currently, there are caps in place. NRDs have levy lids, schools have levy lids, counties have levy lids, so the ability without an override election to generate more funding for those county governments would be severely limited with a severe drop in values. So I guess the question being, I don't know how they would be affected whether the producer would be allowed to...and your one deem...if they could not irrigate, they would be able to pay nonirrigated taxes. I don't know. That's a question I had. And with that being said, I'm going to tackle this a little bit from a school board's perspective and I guess maybe it's a bad word in the Legislature, state aid to schools. There are consequences to the local schools. Public schools in Nebraska, as you probably know, are funded primarily through a few mechanisms, basically existing in a raw form of property taxes, state aid and some federal money for programs. Property tax collections are obviously driven by property values within our district and we do have a \$1.05 levy limitation...schools do within the state. Thus, you can draw a conclusion from that if there's an irrigation shutdown within the district it's probably going to equal reduced land

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values over time which will obviously reduce local receipts within a school district. And so where does that leave us under the Tax Equity and Educational Opportunity Support Act or TIOSA? The basic formula for state aid is state aid equals the needs minus the local resources and obviously, if local resources which in most of the Upper Republican school districts is going to consist primarily of agricultural property of which I do not know what the current percentage of irrigated land is, but there's a considerable amount as you've seen a million maps today. If they are lowered, then there's going to be a fiscal responsibility under the current state aid formula for the state because, obviously, if we have local collections for property taxes, the state's going to be on the hook under the current formula for the remainder of state aid if it's a fully funded formula. And so I guess I was down at the state school board's legislative a couple weeks ago and I heard the sob...sad story of the biennium projections of \$600 million to a billion possible shortfalls of state...in the biennium of the state budget and I'm sure this isn't probably not another fiscal responsibility or hurdle that the state would like to take on. The other facts you can look at as far as the state aid, it can create a shift from east to west which I'm assuming we will see the number in the next three weeks, there's going to be a shift from the west to east based on the valuations of land that have occurred currently. While I do agree with somewhat of the tentative bill that groundwater declines need to be addressed, I do feel, as testimony of my board member that was up here, they have been doing a very, very thorough and very hard job of supporting that. And I just feel like this legislation in its form basically would kind of just take my local board and their 35-plus years of work and just kind of throw them under the bus and take away our local control and present it to the state level. And I'm not a fan of removing local control. And so with that, I guess I really have no other comment and I'm willing to take questions.  
[LB1056]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Stamm? Senator Fischer. [LB1056]

SENATOR FISCHER: Thank you, Chairman Langemeier. Thank you, Mr. Stamm, for being here. You're on the Dundy County School Board, is that correct? [LB1056]

SHAD STAMM: Dundy County-Stratton School Board. [LB1056]

SENATOR FISCHER: Dundy County-Stratton School Board. And can you tell me what percentage of your general fund budget is supported by property taxes right now?  
[LB1056]

SHAD STAMM: We have a budget of approximately \$5.9 million, and about \$3.7 million of that is property tax collection. [LB1056]

SENATOR FISCHER: And what have you seen with regards to your valuation increases over the past few years; what do they average in growth? [LB1056]

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SHAD STAMM: We've had some tremendous ones. I don't know what the average...I would say it's in the range of probably 8 to...probably 10 to 20 percent, if I was guessing, increases. [LB1056]

SENATOR FISCHER: And what's your levy at now? I know levies don't mean anything when you talk about those valuations. [LB1056]

SHAD STAMM: Our full levy, general fund levy is at 90...it's right at 95, 96 cents. But I guess you do have to realize we are a...we included three towns. I mean, we're a very large school district. [LB1056]

SENATOR FISCHER: You're talking to me, my school district is bigger than... [LB1056]

SHAD STAMM: Right. [LB1056]

SENATOR FISCHER: ...Delaware and Rhode Island combined. [LB1056]

SHAD STAMM: Right. Okay. Right. [LB1056]

SENATOR FISCHER: With your valuation increases where you've seen that percentage growth, and if...I would imagine what you're trying to tell us in your testimony here is that there would be a valuation decrease if there would be a change in land from irrigated to nonirrigated acres, do you have any idea on the increase in state aid that you would receive? [LB1056]

SHAD STAMM: I do not at this time, because as I said, I don't know what the total percentage of our property valuation of our school district is actually irrigated. And I guess I'm test...I'm not necessarily test...I'm testifying for myself, but I am on the school board and I understand how it works. Now I don't know where the other school districts within the Upper Republican Basin as far as how everything works out. And I wish I could answer that, but I do not know what the percentage of irrigated acres in our district is. [LB1056]

SENATOR FISCHER: My guess would be though, since you're only at 95 cents for your levy, the shift to you receiving more state aid would not be immediate. [LB1056]

SHAD STAMM: Probably not. And the other equation I had, obviously, our valuations and the way the current system is, is going to depend on sales. And that's going to take some time to catch up, but my question being is, I mean, obviously, I'm a producer and I'm not certain whether I'd fall in the 10, or 20 or 30 percent or where I would fall, but let's say I did fall within the 30 percent; am I going to have the right if I'm...if the Department of Natural Resources or the local NRD or whoever administers this, tells me

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you're not able to irrigate because you're in the 30 percent decline. So then in year one of that, do I have the ability to go into the courthouse and say hey, I'm not irrigating, so I'm not paying irrigated taxed. I obviously don't want to pay \$12 an acre, I'd rather pay \$5. I mean, I...that's a question that I have as far as how that would be handled. And obviously, if that's the case, then if you do allow an individual producer to pay nonirrigated taxes, then as a school district, are you allowed to collect on irrigated valuation or are you going to be collecting on nonirrigated valuation? [LB1056]

SENATOR FISCHER: You could only collect on what the assessor has valued it at. Okay. Thank you very much. [LB1056]

SENATOR LANGEMEIER: Are there any other questions? Senator Haar. [LB1056]

SENATOR HAAR: Yes. We've heard quite...well first of all, thank you for your service on the school board and everything, appreciate that. Talk a little bit about sustainability and how you see it as an irrigator and also having to serve on the school board. [LB1056]

SHAD STAMM: Well I guess I'll put it in persp...I'll just lay out my whole life here. My wife is a teacher in the school district. [LB1056]

SENATOR HAAR: Okay. [LB1056]

SHAD STAMM: I have two sons; I have one that is eight, a current second grader; I have one that will be six in March. So obviously, my younger brother has no children, he is...I'm 37 and he's 29 or 30. So obviously we've got, you know, I obviously want to live in the basin quite a while and I hope that I have a lot of years left, you know. So sustainability to me, yeah, the aquifer level obviously if we draw down the aquifer level to a point where irrigation is no longer possible, it's going to affect me. Now, so...and as a school district, obviously, I mean, we just had a merger with Stratton about three years ago and so, obviously, as a school board and a school district, we are looking at sustainability and we're trying to deal with it. So I agree there needs to be some discussion. I guess my personal feeling is I think those 11 board members we have on the Upper Republican Natural Resources Board have done a wonderful job and I...they are dealing with the Republican River Compact and they're also dealing with groundwater depletions, as everyone seen in the maps that are available. And in my mind, I believe that it is a partnership between the local NRD board as, I'm speaking...school board, same way; I think it is a partnership between the local and the state. But I do not believe that the local control should be thrown away and completely taken over by a state department. And so I do think that, yes, we're going to have to work on groundwater declines, which I think we currently are. I think there are, as Tom stated, the Upper Republican...I mean, it's a gradual process; technology is gradually helping us, catching up. Another issue, I sit on a committee, I don't know how many of you are aware, but the University of Nebraska owns a water resource...water research

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lab, they call it, I think that's the official name, in Brule, Nebraska. You have a gem in this state as far as water research. There are not very many with that capability in the state of Nebraska. They own...let's see, south of the interstate, they own a section which is involved with three irrigated pivots and a dryland quarter and I think on the north side, I know there's two irrigated pivots and I think a quarter of dryland. We have an invaluable resource in this state for water research on that large a scale. And I think through research, through...I mean, we read everyday about DuPont, Monsanto, Syngenta, everybody's working on drought tolerant corns and, I mean, there's drip, drip irrigation system technology. I think, you know, our groundwater use is going to continuously decline and it's going to be forced to decline, but I...we've got to get into a transition mode to where technology can catch up with, I guess, production. And I don't know for a fact, but I know our average pumpage in our NRD, I don't know what it is, if it's 10, 12 inches, whatever it is, but I heard the rainfall pattern, I think we're around 16 inches. So I feel fairly good about being able to get by on 10 or 11 inches in our part of the state too. [LB1056]

SENATOR HAAR: Thank you. [LB1056]

SENATOR LANGEMEIER: Are there any other questions for Mr. Stamm? Seeing none, thank you very much for your testimony. You did a great job. [LB1056]

SHAD STAMM: Thank you. [LB1056]

SENATOR LANGEMEIER: Further testimony in opposition to LB1056? Good afternoon. [LB1056]

JOHN TURNBULL: (Exhibit 14) Good afternoon, Senator Langemeier and other members of the committee, I'm John C. Turnbull, spelled J-o-h-n T-u-r-n-b-u-l-l. I'm the general manager of the Upper Big Blue NRD at York. Thanks for your continued interest in water management of the state. I'm testifying today in opposition to LB1056 on behalf of my board of directors. However, the bill is a good basis for discussion and there's been quite a bit of that already today. As I have watched the Legislature deal with water management and regulation in recent sessions, I'm reminded of the efforts of the board that I work for, as they went through the same discussions in establishing the first regulations of groundwater in the Upper Big Blue some 30 years ago. We went through 13 drafts before the final was accepted and that made great fodder for the local paper. What is the problem? Is there even a problem? Who caused it? What might work? What's reasonable? Can we enforce it? Will the public accept it? Do we use allocation or should irrigated acres be reduced? Do we have the same regulations across the entire NRD? Should the regulations apply only to small areas? Where are the boundaries? Do we go by counties or townships or contour lines on a map? Each time changes are considered on our regulations, we go through it all again, especially with new board members. But that's okay, because it's better that everybody understands

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what's going on. In the bill it...LB1056 directs the Department of Natural Resources to measure the groundwater changes annually across Nebraska. That's a huge undertaking for the department. The NRDs already have extensive well monitoring that works. Is the state in a position to assume the costs of measuring all those wells? Probably not. If the network is reduced in number, then it becomes more difficult to determine areas of groundwater level changes. More assumptions and interpretations occur which lead to disagreements. Another part of the bill describes what is to take place if certain percentage declines occur. What does an aquifer mean? Is an aquifer the entire Ogallala across two-thirds of Nebraska? Is it the High Plains Aquifer which lies adjacent to the Ogallala or is it both? Does the definition apply to an entire river basin or part of a basin? Does the defined aquifer extend into another river basin? Does the regulated area cover an entire NRD or just a part? Is the regulated area just that region mapped as being within the contour lines showing a 10 percent decline? If so, then that will change every year. Who defines an aquifer? Equally important, who carries out any regulating the Department of Natural Resources or the NRDs or is it a joint effort? As an old flight instructor of mine used to say, just asking. He always made me think. The saturated thickness of the aquifer varies greatly across the state and varies greatly within our NRD. In northern York County we have a saturated thickness of about 400 feet; in an area just west of the city of York it's less than 50 feet. A 5 foot decline near the town of Bradshaw is a 10 percent decline, while 5 foot decline in a deeper aquifer is about 1 percent. And those areas are within 15 miles of each other. In the area west of Geneva in Fillmore County, there's no aquifer, but the area is surrounded by an aquifer supporting irrigation. So the size of the regulated area comes into question. Do we have the same regulation across the entire district or only a small area? Where are the boundaries? Do we do counties, townships or whatever? The districts have more experience in groundwater management than any other entity in Nebraska, but it appears in this bill they're not involved in the decision making, monitoring, data collection, or enforcement. That raises a flag for us. The Upper Big Blue NRD board of directors therefore opposes the bill because it infringes on the basic local control that has been mandated to the NRDs by the Legislature as far back as 1975 with the passage of the original Groundwater Management Act. The Legislature gave the districts the authority and the responsibility to manage groundwater. That means we have a duty to regulate the groundwater when necessary. In that regard, the Upper Big Blue adopted groundwater regulations 31 years ago and has been implementing and enforcing them ever since. The goal of the Upper Big Blue NRD groundwater regulations is to hold the district groundwater level to the 1978 groundwater level, which is sustainability. In our NRD, the producers have drilled 12,000 irrigation wells and irrigated 1,150,000 irrigated acres, resulted in a total decline of one-half foot over 49 years. Then in this handout I gave you, I gave you a quick summary of our regulations. I won't go through that today unless you have questions. And we've required water-use reports from irrigators because of the point of declines in this 2009, a year ago our average water use on 1,150,000 acres was 7.1 acre inches and at 31 percent of those acres are metered, or wells are. Average groundwater level

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in the Upper Big Blue NRD was 5.8 feet above the allocation trigger in the spring of 2009. The spring 2010 measurements of some 500 wells in the observation network will begin when the snow melts, we hope by early March. We feel it's best if you let us carry out the law as you've directed us to. Local regulations must be tailored to local conditions. We try not to react to emotion; we make decisions after careful gathering of facts and due consideration. Remember what is perceived is many times different than what's actually happening. Now I've attached two things for you. One is a groundwater change map or chart for you for our natural resource district. That's the readings off those 500 wells. It compares it to precipitation changes from 1961 up through the spring reading in 2009. And on the last page then is a saturated thickness map of the groundwater aquifers in the state of Nebraska and this is from a report that the Conservation Survey Division reported or published years ago called the Groundwater Atlas of Nebraska. If you haven't seen that report, that's a good one to get a hold of. That's got a lot of good information in it that really...things that you need to take into consideration when you're considering changes in legislation. With that I'd be glad to answer your questions. [LB1056]

SENATOR LANGEMEIER: Thank you, Mr. Turnbull. Are there any questions? I'll ask...I got a question for you. [LB1056]

JOHN TURNBULL: Okay. [LB1056]

SENATOR LANGEMEIER: As I read through your testimony and you stated it really quickly and Senator Carlson will get a copy of it, so he can write down all these questions you asked. As you go through all those questions, you wonder how we can manage water with the tools we have, with all questions you brought up. [LB1056]

JOHN TURNBULL: Well, that's a good point, Senator, and I didn't sit there this morning and make those questions up; those are ones that I and my board have dealt with for the 30-some years I've been there. Each time we get into discussions somebody brings one of those or more of those up and they really get wrestled around and we decide it one way and we go back and say, no, that's not going to work, can we try another angle. Do we do it on small areas? Do we do big areas? Do we do allocation? Do we reduce the acres? It's a constant discussion. And we have another change coming up before public hearing next Thursday on our regulations. So we change them on an average of once every three years and we're right on schedule with another change. So, it's a continuous process. [LB1056]

SENATOR LANGEMEIER: Very good. Just asking. (Laughter) Senator Haar has a question. [LB1056]

SENATOR HAAR: Just asking too. Among my colleagues I hear, because water issues are kind of new to me even though I've been here two years now and the...some of my

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colleagues talk about that we need a statewide water plan, but I think we all recognize that we need that local control and so on that the NRDs give us. Just talk a little bit about what you think the state plan ought to be in contrast to the local control. [LB1056]

JOHN TURNBULL: Well, I think a plan is...ought to lay out, one, we ought to look where we're at and a plan ought to show us, or give us guidance where we ought to go, but it should not spell out specific regulations or a specific water project to build. It probably should, you know, look at things, should we be developing more water resources in the way of storage, off-season storage? And some people have talked about that. I remember in the hearings that you folks held last fall we went through some of that. And if you have regulations, what sort of regulations, what general types should they be? Should we deal with appropriative rights; should we deal with correlative rights? Do we deal with one-on-one type of water, one another such as we are? There's lots of those things that a plan ought to look at, but I think a plan has to stay away from any details. It has to set the broad outline so as what to do. And I really have felt that way about the Groundwater Management Act over the years, that you as the senators set the outline for us districts to carry out and we've got to operate within those boundaries. [LB1056]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much. We appreciate it. [LB1056]

JOHN TURNBULL: Thank you for your time. [LB1056]

SENATOR LANGEMEIER: Further testimony in opposition to LB1056. Just a show of hands; how many more do we have in opposition? Oh wow. Welcome. [LB1056]

DARBY JESPERSEN: (Exhibit 15) Good afternoon. My name is Darby Jespersen D-a-r-b-y J-e-s-p-e-r-s-e-n. And I'm here this afternoon representing the Nebraska Sugar Beet Growers in conjunction with the Box Butte County Irrigators Association. Not only am I representing 200 growers and 400 shareholders of the Western Sugar Cooperative, and also I'm representing the irrigation operators in Box Butte County, but I'm also here myself, a fourth-generation farmer in Box Butte County and my family has owned the same farm for 105 years that I operate today. Farming is in my blood and a very important part of my family and me. This is truly our life and lifeblood, as for it is all...excuse me, as for it is all farmers in the state of Nebraska. The Box Butte County Irrigators Association was formed in the early 1960s when the first irrigation wells in Box Butte County were being drilled. More than half a century ago, the early irrigators in Box Butte County were aware and concerned about the water usage and protection of the groundwater. These early water conservationists in Box Butte County actually paid to have two test wells drilled to monitor water levels prior to the development of the NRDs across the state. When NRDs were created, our local NRD took over these wells and still use them to this day to monitor water levels across Box Butte County. The association ceased to exist after the development of the NRDs because we had an

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excellent system of monitoring water usage and determining allocations, an equitable system which accounts for the variations in terrain across the state and one that is based on local control. We understand the needs and the necessity of conserving groundwater. It is the lifeblood of our county and of our livelihood. We are among the first conservationists in the state. However, due to the recent introduction of legislation, specifically LB1056, the Box Butte County Irrigation Association has been reactivated because we believe that our ability to continue to farm will soon be lost or greatly curtailed. More than 75 people attended a meeting last Friday morning to voice their concerns. As written, LB1056 would cut in half the amount of water irrigator...or, water irrigators could use if groundwater aquifers are depleted more than 20 percent compared to pre-irrigation levels. When depletion is more than 30 percent, irrigation would have to stop. There is no specific...scientific justification forthcoming for these depletion percentages nor is there any consideration of climate changes like the drought conditions that have been plaguing western Nebraska for the last few years. We believe that LB1056 as written is flawed and we ask that the committee indefinitely postpone the bill. We support and practice water conservation using the least amount of water to produce the maximum yields is profitable. Our energy and efforts should be focused on improved conservation of water, more use of wastewater and genetic improvements to crops that...so that they'd require less water. The Nebraska Sugar Beet Growers research committee in conjunction with the UNL Panhandle Research Center is actively working on reduced water usage to grow a very viable and quality sugar beet crop. Our legislation should incentivize conservation, not penalize those already conserving our water. It is in our own best interest as farmers to conserve water so that my children and grandchildren can call our farm home and make a living in Nebraska. Thank you. Any questions? [LB1056]

SENATOR LANGEMEIER: Very good. You did a great job. Senator Haar has a question. [LB1056]

SENATOR HAAR: Again, for education, I'm kind of a newcomer to these issues. When we look at Box Butte County we see all those orange and so on; tell me just a little bit about why Box Butte has had the depletion. [LB1056]

DARBY JESPERSEN: I think one of the main reasons is the Upper Niobrara is kind of a closed...it's a closed basin and I think that's where we get lots of our depletion from and we're in a very arid environment and we don't have the rainfall to recharge the aquifer quite as good as we do down here in this end of the state. [LB1056]

SENATOR HAAR: But you feel now that through the NRDs and so on that you are actually dealing to get that balance. [LB1056]

DARBY JESPERSEN: Yeah, yeah. And that's an important thing. We just...we're on our fourth year of our allocations and it's very important that we give what we have in place

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some time so that we can...and I think it will help eventually. It's just like...we didn't deplete it the very first day we started drilling it,... [LB1056]

SENATOR HAAR: Sure. [LB1056]

DARBY JESPERSEN: ...so we just need some time to work back up to where, you know, it's at a manageable level. [LB1056]

SENATOR HAAR: Okay. Thank you. [LB1056]

SENATOR LANGEMEIER: Very good. Seeing no other questions, thank you very much. [LB1056]

DARBY JESPERSEN: Thanks. [LB1056]

SENATOR LANGEMEIER: Further testimony in opposition to LB1056? Good afternoon. [LB1056]

KEVIN HALL: Hello. Thank you for the opportunity to testify. My name is Kevin Hall, K-e-v-i-n H-a-l-l. I'm the chairman of the Western Sugar Cooperative board of directors and I want to thank the Natural Resources Committee for this opportunity to address the proposed changes to the Nebraska Groundwater Management and Protection Act, more commonly known as LB1056. The Western Sugar Cooperative is a farmer-owned cooperative that operates five processing plants, seven terminals in four states of Nebraska, Colorado, Montana and Wyoming, for the purpose of manufacturing and sale of sugar from sugar beets. There are currently 1,006 active shareholders raising 135,000 acres in these four states. We're a relatively new farmer-owned cooperative which bought this company from an English-based company called Tate and Lyle in 2002. More specifically, the Western Sugar Cooperative has 341 active shareholders which I am one that raises over 54,000 acres of sugar beets in 13 counties in the state of Nebraska and it is believed that the change to LB1056 as proposed, would have a long-term devastating economic impact, not only to the industry, but to the communities and surrounding communities in which we operate. The sugar beets that are raised in these 13 western Nebraska counties provide the raw materials to produce over 1.6 million hundred weights of sugar through our Scottsbluff, Nebraska, facility and the four terminals located in Bayard, Mitchell and two in Gering, Nebraska. The potential curtailment of the production of sugar beets through LB1056 would jeopardize the economic use of these facilities. Beside the direct impact of 341 shareholders and their operating units, this past year the cooperative employed 225 full-time employees, 610 seasonal employees with a total economic impact of over \$82 million to the local economy. These dollars come in the form of payroll, unemployment, compensation, workers' compensation, local purchases, grower payments and property taxes which turns over a minimum of seven times, not only to the immediate area, but to the entire

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state and surrounding region. This employment impact does not include seasonal beet receiving station employees, quality laboratory employees of rehaul truck drivers. I need not remind the committee that these are good paying jobs in rural America which are not easy to come by. The cooperative does recognize the importance of our natural resources and agrees that being good stewards of these valuable resources is paramount for our long-term existence and prosperity. We believe that our shareholders are...also believe in these standards. So with these thoughts, we oppose LB1056 and the changes it would bring. Again, I appreciate the time and consideration the committee has allowed and would be glad to answer any questions it might have now or in the future. [LB1056]

SENATOR LANGEMEIER: Thank you. Are there any questions for Mr. Hall? Seeing none, thank you very much. [LB1056]

KEVIN HALL: Thank you. [LB1056]

SENATOR LANGEMEIER: I appreciate your testimony. Further testimony in opposition to LB1056? You can just go ahead, she'll take those; that's fine. Welcome. [LB1056]

DAVID BRIGGS: (Exhibit 16) Chairman Langemeier and committee, my name is David Briggs, D-a-v-i-d B-r-i-g-g-s, and I'm the president and CEO of Western Cooperative Company headquartered in Alliance, Nebraska. We serve the Nebraska panhandle, 1,200 stockholders that work with the farm and ranches throughout the whole panhandle. We serve ten counties in the panhandle including Box Butte County. I'm not going to read through my testimony. Most of what is in my testimony has already been covered today. I think that Lyndon, as well as my farm families that have attended, have done a good job covering being a steward. However, I do have one piece of information, the third piece of my handout, I've actually had my staff compile a calculation if we would go to a dryland county. We take our 143,000 acres and make them back to fallow ground which means we farm half the ground each year because we only get 15 inches of rain on average, which means some years you get 20, some years you get ten. We would decrease the value coming off our 143,000 acres by \$87 million which for a 12,000...12,000 citizens in our county, that would be pretty drastic. The previous person already testified about school districts and I think it would be well aware that anytime we devalue our property, that also would have an affect on our property taxes. With that, I'd be happy to take any questions, but I think most of my testimony has already been covered today. [LB1056]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Briggs? Seeing none, thank you very much. [LB1056]

DAVID BRIGGS: Thank you. [LB1056]

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SENATOR LANGEMEIER: Further testimony in opposition to LB1056? [LB1056]

STAN STAAB: (Exhibit 17) Good afternoon, Senator Langemeier, members of the Natural Resource Committee. My name is Stan Staab, S-t-a-a-b, I'm general manager of the Lower Elkhorn Natural Resource District in Norfolk and today I'm testifying in opposition to LB1056. I'm also testifying today on behalf of the Upper Elkhorn NRD in O'Neill, so we go from west to east. I'm going to shorten my testimony for you today. A lot of the things that I wanted to say are included here have been said. I do appreciate the opportunity; we do appreciate it from our area in the eastern, northeast part of the state to discuss groundwater quantity monitoring and regulation. The district began working on these important issues back in the 1970s when groundwater irrigation was on the rise. We have kept continuous track of our groundwater levels ever since. I do appreciate the willingness for dialogue and the ideas of tracking quantity. I think it's very important for our state. We have measured the depth of groundwater as I said, in about 245 irrigation wells each fall and spring since 1976. We have ongoing data. Generally, it shows that while groundwater levels may drop a few years during the dry times, but as "precip" becomes more normal, groundwater levels recover. We have about 26.5 inches average at Norfolk and as you go east, of course, it increases, from there, goes up. We have regulatory triggers that were put into our groundwater management plan in 1996. I've attached a copy of those for you on the back. And I thought it important enough, this issue, that I've asked my water resources manager to send you an e-mail, it will be about two or three pages that you can include with the rest of the volume of paper you have today to explain what we're doing in our area. The Upper Elkhorn, I need to explain since 1975 has also maintained and expanded a groundwater quantity monitoring program. They have spring and fall static water levels in about 157 wells. Also dedicated monitoring wells across their district. Their board has chosen to put in a management plan for...what they call a special management area if a significant positive or negative water level trend emerges over a five year period. Both the Upper and Lower NRDs have groundwater management plans that specify exact groundwater quality conditions and triggering mechanisms in place and have had for several years. It's important to all of us that we keep track of this. We'll continue to do this. We'll go back and look at historical data. We'll continue to, almost daily, my staff works on this issue to keep track of these things. We appreciate the efforts of the University of Nebraska Conservation and Survey and the people like the Groundwater Foundation. They think they're doing a great job of conserving water...helping to conserve water and irrigators as we go through these times. Our geology patterns have widely different across the state. In my area we have the glaciated areas; they're quite complex. It would take us several years, many years actually, to get a handle on this. That's why we oppose the one-size-fits-all state approach to regulation. We are using it a little bit in our district and we're going to change that because of what we found out just in the last few years with some complex computer modeling that we've got going on. I also want to point out in our opinion that LB1056 has some serious financial considerations and implications. For example, there are about 9,500 irrigation wells in the basin, the

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Elkhorn River Basin. Based on current flow meter cost of about \$1,500 a meter, this was about \$14 million and regardless of who pays this, whether it be landowners or the state, the NRD or whoever, the cost is prohibitive. The administrative cost for the Department of Natural Resources and NRDs to implement and manage this bill could be very, very unreasonable. We also are concerned, as everyone else who has spoken in opposition today, about the loss of local control. And I would try to answer any questions you might have. [LB1056]

SENATOR LANGEMEIER: Very Good. [LB1056]

STAN STAAB: Thank you. [LB1056]

SENATOR LANGEMEIER: Are there any questions for Mr. Staab? Seeing none, thank you very much for your testimony. [LB1056]

STAN STAAB: Thank you very much for your time. [LB1056]

SENATOR LANGEMEIER: You bet. Further testimony in opposition to LB1056? Welcome. [LB1056]

BRIAN SPECHT: (Exhibit 18) Good afternoon. My name is Brian Specht, B-r-i-a-n S-p-e-c-h-t. I'm here today to represent farmers in Box Butte County and the Nebraska Sugar Beet Growers Association. I'm going to shorten my testimony dramatically because you've heard a lot of the stuff that I was planning on talking about. I'll just give some insight on Box Butte County. Box Butte County alone accounts for 17 percent of the irrigated wheat grown in Nebraska, 46 percent of the sugar beets, 17 percent of the dry edible beans, and 20 percent of the potatoes. These four crops alone in Box Butte County contribute \$86 million to the state's farm revenues. Assume we reach a depletion level where water is shut off as called for in LB1056. Irrigated land values would plummet, which are the highest valued ag acres. Ag expenditures in the county would also plummet from \$161 million in 2007. The values of ag land, improvements, and personal property account for \$253 million of \$789 million valuation in Box Butte County. Improvements and personal...oh sorry, assuming a reduction of half the ag land value for the county, there would be a direct impact of \$1.4 million lost revenues to the schools, county and local community colleges. At this point in time, the state cannot make up those losses. The drop in ag value would not only impact local property tax, but also negatively impact the taxes collected by the state. I'm asking that LB1056 be indefinitely postponed prior to any legislation that proposes across-the-board cuts in allocations of water. Detailed economic studies should be conducted to analyze the economic impact of such drastic measures. As a member of the Sugar Beet Growers Association, we represent 51,471 acres, 200 growers, and 400 shareholders in Western Sugar Cooperative, 13 counties in Nebraska. Irrigation is required for these acres to be contracted and without Box Butte County's productions, factories most likely would be

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shut down. I guess in conclusion, as a third generation farmer on my family farm, we operate and manage over 20-some wells and I've seen over, just in the last 10 or 15 years, a great reduction in the amount of water we're using just by education; help from the NRD, genetics in the crops, and just better management practices. I guess that concludes my presentation, if you have any questions. [LB1056]

SENATOR LANGEMEIER: Very good. Are there any questions? Very good. [LB1056]

BRIAN SPECHT: Thank you. [LB1056]

SENATOR LANGEMEIER: The freelance at the end was very good testimony. [LB1056]

BRIAN SPECHT: Thank you. [LB1056]

SENATOR LANGEMEIER: We can read along. Welcome. [LB1056]

ZOE OLSON: (Exhibit 19) Thank you. Senator Langemeier and members of the Natural Resources Committee, my name is Zoe Olson, Z-o-e O-l-s-o-n; I'm the executive director of the Nebraska Wheat Growers Association. First of all I'd like to say that we thank Senator Carlson for all his tireless work on water issues in Nebraska. However, we, respectfully, are opposed to LB1056. You have our written testimony there. I won't read it to you because pretty much all the points have been covered. I would just like to say that when I started working for the Wheat Growers I learned to say moisture instead of rain or snow and one of our producers in Box Butte County one time sent me a picture of a rain gauge with moisture in it and wanted to know what that was, so this is very important out there and we're just opposed to LB1056 for a number of reasons that I've outlined. Thank you. [LB1056]

SENATOR LANGEMEIER: (Exhibits 3, 20-29) Very good. Excellent job. Are there any questions? Seeing none, thank you very much. Further testimony in opposition? Any testimony...oops, I was told to wait. Are you ready? Okay. Letters in opposition: we have Senator Mark Christensen; Jay Holmquist from the Nebraska Rural Electric Association; Ted Tietjen from Grant, Nebraska; Carl Levy from Champion; E. Tod Clark from Farmers Coop at Hemingford; Tracil Power from Minden; Steve Smith, WaterClaim; Ryan Reiber from Panhandle Rural Electric Membership Association in Alliance; Steve, sure is light writing, Ebke from the Nebraska Corn Growers Association, Jay Rempe, Nebraska Farm Bureau; Ron Cacek from North Platte NRD; and if I said those wrong, they will be right in the transcript, in opposition to LB1056. Now we move on to testimony in a neutral capacity. Is there anyone wishing to testify in a neutral capacity? Seeing none. Senator Carlson, you are recognized to close on LB1056. [LB1056]

SENATOR CARLSON: Thank you, Senator Langemeier and members of the committee and hopefully after this session and then the next one, we'll still be friends. (laughter).

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I'm going to just bring up a few comments that I heard during these testimonies. I heard a few people indicate there was a need for further study and I'm okay with that. Comments about, perhaps addressing depletions to streamflow versus the depletion of the aquifer. Mr. Cappel said that last year in 2009 he got water from Swanson for the first time in years and I'm going to tell you that they got that water partially because of the removal of the Russian olives upstream from Swanson Reservoir. We heard a manager talk about we've gotten where we are today since 2003 with local control. Unfortunately, if I'm looking at figures correctly, there's been a 20 to 30 foot drop in the aquifer since 2003 in that area. I have another manager or board member talk about sustainability and which sustainability are we talking about? Most of the time it was mentioned it is economic sustainability. There was a well moratorium put on in 1997 and talked about sustainability as maintaining the status quo. Now I don't think that's probably good enough because I believe since 2000 there's been about a 40 foot drop in the aquifer in that area. Mr. Adams talked about a map of Nebraska, and Kansas, Oklahoma, and Texas, and I'm glad that he handed that out because it shows clearly that we're in much better shape than those other states and we don't want to slip. That doesn't mean we shouldn't address the problem areas that we have. There were other testifiers that are managers that it is pretty clear to me in their testimony they've got things under control and they're in a position of water sustainability, which is what we would be aiming for. One of the testifiers, it's in our best interest as farmers to conserve water so that my children and grandchildren can call our farm home and make a living in Nebraska. That will happen with water sustainability. It won't happen unless we stop depletion. There will come a day when there is no water and then it will be disaster. So I appreciate the patience of the committee in receiving these testimonies and I would answer any questions you might have. [LB1056]

SENATOR LANGEMEIER: Are there any questions for Senator Carlson? Seeing none, thank you very much. And that concludes the hearing on LB1056. Now we'll open the hearing on LB1054. Senator Carlson, you're recognized to open on LB1054. [LB1056]

SENATOR CARLSON: Senator Langemeier and members of the committee, I am Tom Carlson, C-a-r-l-s-o-n, here to introduce LB1056. [LB1054]

SENATOR LANGEMEIER: LB1054, this time. [LB1054]

SENATOR CARLSON: Excuse me, LB1054. [LB1054]

SENATOR LANGEMEIER: I don't want to go through that again. (Laughter and inaudible) No offense, but... [LB1054]

SENATOR CARLSON: Let's try LB1054. [LB1054]

SENATOR LANGEMEIER: Thank you. [LB1054]

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SENATOR CARLSON: This bill defines correlative rights. I want to thank the Legislative Research Division for finding that the term was first used in Nebraska law in LB375 which was passed in 1982. The bill was introduced on February 19, 1981 by Senator Loran Schmit in front of the Public Works Committee chaired by Maurice Kremer. Senators Chris Beutler and Don Wesely also served on the committee. I quote from this statement of intent: "the purpose of LB375 is to provide that ever-changing legal and economic factors associated with changing groundwater conditions are dealt with in a responsive manner and consistent with sound groundwater management objectives." The use of the term is continued to this day in Section 46-702 as it began in LB375 in 1982. Every landowner shall be entitled to a reasonable and beneficial use of the groundwater underlying his or her land subject to the provisions of Chapter 46, Article VI and the Nebraska Groundwater Management and Protection Act and the correlative rights of other landowners when the groundwater supply is insufficient for all users. However, the term has never been defined in statute. This bill, LB1054, provides a definition. Correlative rights means the coequal right of each landowner over a common aquifer to extract his, her, or its share of water from the aquifer without unreasonably harming other landowners over the common aquifer through lowering of the water table; and (2) directly and substantially affecting a watercourse, or (c) reducing artesian pressure. Furthermore, the bill adopts the correlative rights doctrine as it applies to groundwater in the state. This doctrine shall apply when the DNR or NRD determines it necessary to comply with state or federal agreements or compacts. If it's determined that the correlative rights doctrine should apply, allocations of groundwater in the basin for irrigation purposes may be reduced by the district or the department so that each landowner shares equally in the shortfall. In other words, share and share alike. Concept has been mentioned in various water law journals and articles. One such article states, and I paraphrase, the California doctrine of correlative rights developed in the 19th century has continued to develop. Correlative rights doctrine is part of the groundwater jurisprudence of California and Nebraska, although its sharing feature has been incorporated into the groundwater depletion statutes of a few other western states. If the allocations of groundwater are reduced by the department to zero, landowners shall receive just and fair compensation for such reductions. Again, after the testimony of LB1054, I will not recommend that the committee advance this bill. But I think we need to look at the statute and if correlative rights means what it says, then that means in times of shortage we share and share alike. And times of shortage are much different than other times. If I looked around this table at those of us here, we're all adults, if we came to an extreme shortage and we're in trouble, and that's what happens with a water short year, and there's eight of us counting me around this...in this pattern here. And we've got eight bottles of water and that's all we've got, how are we going to share that water? I think we're going to get a bottle apiece. I think that the condition of being water short trumps a lot of other laws and a lot of other things that are followed and I think it's fair and fair enough that we share and share alike. Now if that's not what correlative rights are, we should change it in statute. The other thing that I wanted to bring forth in

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this bill which I'm not sure how well it relates, but I want to make a point that when it's deemed by the department in a water short year to shut off irrigators with no water, no surface water and no groundwater, that just and fair compensation is fair and anything short of that is not. So that's my purpose for bringing forth this bill and the discussion that would follow and perhaps study that would follow beyond that. Thank you and I'll answer any questions that you may have. [LB1054]

SENATOR LANGEMEIER: Very good. Are there any questions for Senator Carlson on LB1054? Seeing none. Thank you very much for your introduction. [LB1054]

SENATOR CARLSON: Thank you. [LB1054]

SENATOR LANGEMEIER: (Exhibit 30) You've heard the introduction on LB1054. We now move on to testifiers in a support...in support of LB1054? Just out of curiosity, how many people plan to testify in some way today on this bill? Okay. So no one in support? Come on up; otherwise we'll skip over you. While we're waiting; Ray Winz from Holdrege, Nebraska testifies...had a letter in support of LB1054. Welcome. [LB1054]

KIM ROBAK: Good afternoon, Senator Langemeier and members of the Natural Resources Committee, my name is Kim Robak, R-o-b-a-k. Mike Clements, as I mentioned earlier, who is the general manager of the Lower Republican NRD could not be here this afternoon so he asked that I come before you today to support LB1054 on behalf of the Lower Republican NRD. We've heard the term correlative rights used with regard to Nebraska water law for a long time as Senator Carlson mentioned, and I did research to see exactly what the current state of water law is in Nebraska and western states. I came across several articles that stated that Nebraska is a correlative rights state. I learned that most western states, with the exception of Texas, Nebraska, Arizona, and California, apply something called the doctrine of prior appropriation, that is the first in time has rights to groundwater so if you had the first well, you have rights to water; if you have a later well, you do not. The policy behind correlative rights is that the groundwater irrigator is treated as having an equal right to the groundwater and that the water supply...when the water supply is inadequate to meet the needs of all the users so that each user can be required to proportionately reduce usage until the shortage ends. What LB1054 does is specifically define what the correlative rights doctrine means in Nebraska and specifically states in statute that correlative rights applies to groundwater in the state. The bill would require that each landowner share equally in the shortfall. That could mean that each irrigator receive an equal percentage reduction or an equal number of inches of allocation. Shortfalls within a river basin are compounded when the state has federal agreements or compacts to comply with. However, because there have been and there will continue to be times when the basin will face shortages in the water supply, primarily because of drought conditions, we need to start talking now about what we will do the next time we have a water-short year. Making further reductions in allocations during drought conditions requires a

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tremendous sacrifice on our producers and we need to have discussed and decided on how we're going to use the limited water available. We also appreciate the language of the bill that provides that if any producer has his allocation reduced to zero so that he cannot irrigate, that there should be just and fair compensation for that reduction. We know that this language is controversial and we absolutely know that there are no resources available from the state to provide this compensation at this time. But it's important to many in the basin to have it acknowledged and that completely shutting off the right to irrigate is a drastic step and one that should not be taken lightly. We want to thank Senator Carlson for introducing this legislation if for no other reason than to start the conversation. The goal of the Lower Republican and of all NRDs in the basin and across the state is to conserve our natural resources and to work to ensure their availability for the long term and for the generations to come. We see this bill as part of the discussion that needs to take place to ensure that the precious resource of our groundwater continues to remain available. Thank you for the opportunity to speak and I would be happy to answer any questions. [LB1054]

SENATOR LANGEMEIER: Very good. Are there any questions for Ms. Robak? Senator Haar. [LB1054]

SENATOR HAAR: Yes, thank you. How are correlative rights exercised now? [LB1054]

KIM ROBAK: Well I don't believe that they have been exercised with regard to groundwater that I'm aware of, Senator. [LB1054]

SENATOR HAAR: Okay. [LB1054]

KIM ROBAK: I think that's the whole point; I think people have talked about it, but I'm not sure there's been an exercise when there has been a water short year. [LB1054]

SENATOR HAAR: Okay. [LB1054]

SENATOR LANGEMEIER: Senator Fischer. [LB1054]

SENATOR FISCHER: Thank you, Chairman Langemeier. Thank you again for coming forward on these bills, Ms. Robak. Do you know if the Lower Republican NRD has implemented any kind of reduction on pumping or a moratorium on wells? We heard that earlier that the Upper Niobrara-White has done that. Has the Lower Republican done that? [LB1054]

KIM ROBAK: There's a moratorium on wells; there are no new wells except replacement wells. There are...there is a limitation on, I think someone mentioned earlier, the allocation is 9 inches, but that the amount that was pumped in the last year was five. [LB1054]

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SENATOR FISCHER: Is that allocation of 9 inches across the board? [LB1054]

KIM ROBAK: It is across the basin. There was a time, I believe, when it was different in one-half of the district and another half of the district that it was 11 and 9, but I think it's the same across the entire Republican River Basin right now. Excuse me, the Lower Republican River Basin. [LB1054]

SENATOR FISCHER: The Lower Republican. So the Lower Republican did have the flexibility to have different allocations within their NRD at one time; they used that flexibility, right? [LB1054]

KIM ROBAK: That's correct. That's correct. [LB1054]

SENATOR FISCHER: Under this bill, they would not be able to do that, would they? [LB1054]

KIM ROBAK: This would say that when there was a water-short year... [LB1054]

SENATOR FISCHER: Right. [LB1054]

KIM ROBAK: ...when there was a time when everybody had to give something up, that that...they would all share equally in that...in that...in that pain. I don't have the exact language of the bill in front of me. I'm sorry, Senator. [LB1054]

SENATOR FISCHER: But it does then take away that flexibility. In a water-short year the Lower Republican would have to treat every groundwater user the same. They couldn't let one get 11 and one get 9. [LB1054]

KIM ROBAK: I think the distinction was that that was set up in the IMP as the allocation that was the amount that was the most anyone could use. And the difference would be that's the target in years in which we know that there's going to be water available. I think the difference, Senator, is when there is not water available, then everybody has a...it's a whole different scenario. [LB1054]

SENATOR FISCHER: But they still lose that flexibility, in my opinion. [LB1054]

KIM ROBAK: And I think the...actually, I think the flexibility is maybe gone today simply because there's not enough...there's not enough water available for everyone to meet the needs of the compact. [LB1054]

SENATOR FISCHER: Do you know how the NRD board there came up with that...with the...their regulation that one area of the district would get 11 inches and one area

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would get 9 inches? [LB1054]

KIM ROBAK: I don't, Senator, I'm assuming that it has to do with their...negotiations with the state, with the department when they set up their IMP. The Integrated Management Plan set forth those allocations so I'm assuming that that's where they came from was the discussions with the state. [LB1054]

SENATOR FISCHER: Would you assume that scientific data played a part in that... [LB1054]

KIM ROBAK: Well we... [LB1054]

SENATOR FISCHER: ...in determining who could...who could manage with the 11 inches and who could manage with 9 inches? [LB1054]

KIM ROBAK: I know that there was some discussion about what they thought would be an allocation that would allow the NRD to remain in compliance so that sufficient water was still available for the compact. I do know that those...those...that that data was not necessarily accurate and that the basin has had to change those numbers on more than one occasion, so I know that that wasn't necessarily the best scientific data available. [LB1054]

SENATOR FISCHER: I guess I would have concerns, any time you're looking at across-the-board cuts, whether it's with water or whether it's with budgets, I'd rather use a scalpel and look and have a reason why I'm making a cut in a certain area instead of saying, okay, the budget is tight so everybody is taking a 10 percent cut this year. [LB1054]

KIM ROBAK: And Senator... [LB1054]

SENATOR FISCHER: In my opinion, that's what this bill could do. [LB1054]

KIM ROBAK: I think that what this bill does is start the conversation about how we proceed in those water-short years, because I think that there's maybe a misunderstanding about how we can all survive under the compact in a water-short year; and ultimately that's the goal. I don't think anyone wants to put anyone out of business. I think everyone wants the entire basin to thrive because it's in the best interest of everyone that the communities survive and the producers survive and thrive. And so the key is, how do you do that? What do we look at and how do we make sure that the most...we get the most benefit for that water resource available. [LB1054]

SENATOR FISCHER: Okay, and I would certainly agree with you. I believe all my colleagues would agree that we are not out to harm people in any decision we make.

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We're trying to take care of the citizens of Nebraska so that they can thrive on their own. So thank you. [LB1054]

KIM ROBAK: Thank you, Senator. [LB1054]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much for your testimony. [LB1054]

KIM ROBAK: Thank you, Senator. [LB1054]

SENATOR LANGEMEIER: Further testimony in support of LB1054? Welcome. [LB1054]

MATT HARRISON: (Exhibit 31) Good afternoon, Senators. My name is Matt Harrison, M-a-t-t H-a-r-r-i-s-o-n, from Naponee, once again, N-a-p-o-n-e-e, Nebraska. I'm here to testify in support of LB1054. Correlative rights is defined as the coequal right of each landowner over a common aquifer to extract his, her or its share of water from the aquifer without (a) unreasonably harming other landowners over the common aquifer through lowering of the water table, (b) directly and substantially affecting a water course, or (c) reducing artesian pressure. It is not fair for downstream users to be punished for mismanagement of upstream waters. Some NRDs' rules and regulations have permitted the aquifer to be depleted beyond sustainable levels resulting in the state of Nebraska's inability to comply with the compact. And I've attached a map to the back of my testimony for you to refer to. That is all I have. Thank you, Senators, for the opportunity to testify in support of LB1054. If you have any further questions, I'd be more than glad to answer them at this time. [LB1054]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Harrison? Thank you very much. [LB1054]

MATT HARRISON: I have one thing to add to Senator Fischer, once again, to straighten out a couple of things from the last testimony. Sorry, Kim, I'm not picking on you. I am a director on the Lower Republican; although I am testifying on my own behalf today and we have a 45 inch allocation in five years. It's a 9 inch average per year allocation across the board in our district. It was a split allocation before that of 12 and 11 which is 11.5; but we have a 9 inch...we call it a 9 inch allocation now. And once again, we've used just a little over 5 inches last year. What bothers us, I believe, or what bothers me, is that we've stepped up to the plate and conserved the most each year, yet we're forced to reduce the most each year. We conserve the most from our first IMP to our second IMP and now they're wanting us to make a third IMP when we should be just finishing our first IMP. So we...we, by far, conserve the most, yet what the department is asking us to do at this time is we have an agreeable...agreed 26 percent of the depletions, yet they're asking us to give up 43 percent of the acres. [LB1054]

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SENATOR LANGEMEIER: Senator Fischer has a question. [LB1054]

SENATOR FISCHER: I just wanted to clarify, when you said "they", you were talking about Department of Natural Resources. [LB1054]

MATT HARRISON: Yes, I'm sorry. [LB1054]

SENATOR FISCHER: And that's with regard to the Integrated Management Plans that your board needs to work on with them, correct? [LB1054]

MATT HARRISON: Yes. [LB1054]

SENATOR FISCHER: When you talk about the 45 inches in five years, if you...if you don't use that 9 inches a year, you said you only used five last year, is that right? [LB1054]

MATT HARRISON: Yes. [LB1054]

SENATOR FISCHER: Does that carry over? [LB1054]

MATT HARRISON: We can now. But we... [LB1054]

SENATOR FISCHER: But why would you want to do that? Why would you want to do that because then if it's a...if you...if you're facing a drought, you used 5 inches this year and you got a lot of rain, right? [LB1054]

MATT HARRISON: Yes, we had some, sure. [LB1054]

SENATOR FISCHER: So next year, you got 4 more inches on that now, so you have 40 inches because you get to carry it over. [LB1054]

MATT HARRISON: Sure. [LB1054]

SENATOR FISCHER: If you don't get the rain, how much can you use? [LB1054]

MATT HARRISON: Well, we could use up to one year's worth of carry forward from one IMP to the next. [LB1054]

SENATOR FISCHER: Which would be what in inches? [LB1054]

MATT HARRISON: It would be 9 inches on top of the...we'll say, for example, the 45, so it would be 54 in five years. But... [LB1054]

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SENATOR FISCHER: So how much could you use next year to irrigate? I have questions about the carrying forward of this. [LB1054]

MATT HARRISON: Oh, I think I understand what you're saying. [LB1054]

SENATOR FISCHER: I talked to the Upper Republican NRD about it too. [LB1054]

MATT HARRISON: Well they've been carrying forward for 30 years. [LB1054]

SENATOR FISCHER: Oh I know, I have a lot of questions about this. [LB1054]

MATT HARRISON: I think I understand what you're asking, Senator. We have an allocation of 45 inches in five years and the way it is, if you use that allocation in, say, three years, then you cannot irrigate the last two years. So it's most prudent for everyone to use not more than 9 inches. And I tell everyone use far less than that. [LB1054]

SENATOR FISCHER: I understand that. [LB1054]

MATT HARRISON: Okay. [LB1054]

SENATOR FISCHER: But what if you, this year, you used 5 inches; next year you don't get any rain. [LB1054]

MATT HARRISON: Um-hum. [LB1054]

SENATOR FISCHER: So how many inches can you use? The nine plus... [LB1054]

MATT HARRISON: You could use the remainder of your 45 inch allocation next year. [LB1054]

SENATOR FISCHER: But then you're done for the next three. [LB1054]

MATT HARRISON: Sure, but I wouldn't recommend that. If we used the remainder of our allocation in one year or the majority of it, I think everyone would be in a lot of trouble. [LB1054]

SENATOR FISCHER: But when you use more water in a water-short year, that is...I would say that's harder on the aquifer and it's harder on streamflow if irrigators are using more water in a water-short year. [LB1054]

MATT HARRISON: I think I understand what you're saying; what I can say is that we've

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used far less than our allocation every year since we've had one. I mean, our producers know that it's prudent not to use that water. Don't just irrigate because the water is there. [LB1054]

SENATOR FISCHER: I'm an irrigator. [LB1054]

MATT HARRISON: So you understand that. [LB1054]

SENATOR FISCHER: I understand that. [LB1054]

MATT HARRISON: Okay. Understand the economics also. [LB1054]

SENATOR FISCHER: Exactly. Exactly. [LB1054]

MATT HARRISON: Okay. [LB1054]

SENATOR FISCHER: We'll have to talk sometime. [LB1054]

MATT HARRISON: I would love to. [LB1054]

SENATOR FISCHER: Okay. Thank you. [LB1054]

MATT HARRISON: At your convenience. [LB1054]

SENATOR FISCHER: Thank you. [LB1054]

SENATOR LANGEMEIER: Senator Schilz has a question. [LB1054]

SENATOR SCHILZ: Thank you, Senator Langemeier. Thanks for coming in today. I want to piggyback off of Senator Fischer there. You know, as we've gone on in the past, that was one way you could move forward and try to mitigate some of the loss of total irrigation water was by carrying forward and using that. Now that there are tools that are being put into place to actually...I guess my question is, will you be working to actually solidify that amount of water and identify that amount of water that the irrigators are savings and store that amount of water so that it could be used, not necessarily for irrigation, even though it wouldn't preclude that, but it could be used for a number of things to solve issues in and around the river and for compliance and things like that? [LB1054]

MATT HARRISON: What do you mean by store that amount of water? [LB1054]

SENATOR SCHILZ: I mean if you're saying that it is there, right, because you didn't use it, then can you prove it's there? [LB1054]

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MATT HARRISON: Can we prove it's there? Well I would take... [LB1054]

SENATOR SCHILZ: Well, it's a pretty big point, isn't it? [LB1054]

MATT HARRISON: Groundwater levels would prove that, I guess. I don't know how else to...how else would I prove it was there. You know, if our ground...if our water table has not declined and it stayed relatively stable. [LB1054]

SENATOR SCHILZ: But has it risen? [LB1054]

MATT HARRISON: In places, yes. [LB1054]

SENATOR SCHILZ: But has it risen on your farm where you're pumping that water? [LB1054]

MATT HARRISON: Oh, on my farm? [LB1054]

SENATOR SCHILZ: Well if you're saying that you're pumping 5 inches and you have 4 inches to carry over... [LB1054]

MATT HARRISON: Sure. [LB1054]

SENATOR SCHILZ: ...where's the water? [LB1054]

MATT HARRISON: I don't look at it as carrying over 4 inches; I just take it year by year. But that was what was drafted in our last IMP was to carry forward and we never had that before. [LB1054]

SENATOR SCHILZ: Okay. [LB1054]

MATT HARRISON: But I honestly don't look for that carry forward. [LB1054]

SENATOR SCHILZ: Oh, I understand, but I think the question that I'm asking is...I think...I don't think that you're necessarily wrong if you can show that that water is actually available to be used. But if you...if you're carrying water over and your water level stays the same or perhaps even declines, then is it real? [LB1054]

MATT HARRISON: You mean was the water there to begin with? [LB1054]

SENATOR SCHILZ: Yes, or not even that, because it may have been there, but the hydrology of the area and the situation may be that by the time you're ready to use it again, it may not be available for you to use because of movement, other factors such

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as that. [LB1054]

MATT HARRISON: Well I think according to our rules and regulations the water is there for the amount that we use. [LB1054]

SENATOR SCHILZ: Okay. [LB1054]

MATT HARRISON: That's what I think. [LB1054]

SENATOR SCHILZ: Okay. [LB1054]

MATT HARRISON: Did that... [LB1054]

SENATOR LANGEMEIER: She doesn't have any more questions. [LB1054]

MATT HARRISON: Disagree with me. [LB1054]

SENATOR LANGEMEIER: Yet to be discussed. [LB1054]

SENATOR SCHILZ: Thank you very much. [LB1054]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much for your testimony. [LB1054]

MATT HARRISON: Thank you very much. [LB1054]

SENATOR LANGEMEIER: Further testimony in support of LB1054? Welcome back, Mr. Cappel. [LB1054]

CLAUDE CAPPEL: My name is Claude Cappel, C-l-a-u-d-e C-a-p-p-e-l. Senator Langemeier, members of the committee, I'm testifying in support of the bill. I do have a couple of problems with it. I liked the definition of correlative rights. One thing that bothers me is that Section 3(1) the state of Nebraska hereby adopts correlative rights doctrine as it applies to groundwater in the state. That has been in effect since '82. I really question whether it needs to be reintroduced. In Section 3 it says...it talks about it, but it says allocations of groundwater in basin for irrigation purposes may be reduced. There's an awful lot of "mays" in the statutes now that never are enforced. I would rather see that word "shall" if I had any opinion on it because "may" is too permissive. And then Senator Carlson said that it was for all water users. I would assume that that would be groundwater and surface water. I don't know if that's the intent of it all. In relation to the carryover, probably I shouldn't go here, but on our farm in the Middle Republican we have ended up with 6,200 acre feet of carryover. We conserve, we've put in a drip system; a whole bunch of things like that. That carry over in the Middle Republican is

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being sold or transferred to other people which is transferred for money which I have fought from day one. I know DNR didn't want the allotment set that high and stuff, yet it is. Some of that water keeps being transferred from places that can't even pump it. This here seems to be wrong. I don't know whether it needs to be addressed, but Senator Fischer did ask that question. And I am not really for that, so I guess that's about all I have to say on this. We need something to enforce correlative rights. It's been there and it is the law, supposedly. I would really like to see something that would make it do, and basically I would say all through the whole basin, not just one NRD to another. So that's all I have. [LB1054]

SENATOR LANGEMEIER: Very good. Thank you, Mr. Cappel. Are there any questions? Seeing none, thank you very much for your testimony. [LB1054]

CLAUDE CAPPEL: Okay. Thank you. [LB1054]

SENATOR LANGEMEIER: Further testimony in support of LB1054? [LB1054]

JOHN HANSEN: Mr. Chairman, members of the committee, for the record my name is John K. Hansen J-o-h-n Hansen H-a-n-s-e-n, and we are in support of the concept of correlative rights as a management philosophy. And so as you look at the primary management underlying philosophies and the differential between ground and surface water from a management standpoint, when you get to a time of shortage, which is the more fair way to allocate resources? Should it be first in time, first in right? Or should it be when you have a shortage, you try to share the shortage. This is not a new discussion. It has been going on ever since I first ran for and was elected to the Lower Elkhorn NRD board in 1974. And so the difference between ground and surface water legal standing and management philosophies was also the reason we were very reluctant to support LB108 where we hooked ground and surface water together. Because at the end of the day, as you look at it from a public policy standpoint, we believe that the underlying philosophy that goes with correlative rights is a better, more fair management philosophy, and that is why we support the concept of...contained in Senator Carlson's bill, and thank him for giving us the opportunity to talk about these things and hopefully clarify them as we move forward from a management standpoint. Thank you. [LB1054]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Hansen? Seeing none, thank you very much for your testimony. [LB1054]

JOHN HANSEN: You bet. [LB1054]

SENATOR LANGEMEIER: Further testimony in support of LB1054? Seeing no other testimony in support. Testimony in opposition to LB1054? [LB1054]

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JASPER FANNING: Thank you, Chairman Langemeier. My name is Jasper Fanning, J-a-s-p-e-r F-a-n-n-i-n-g. I'm here representing the Nebraska Association of Resources Districts, and the Upper Republican Natural Resources Districts and the Upper Niobrara-White NRD. First of all, I think everyone here supports correlative rights and that's probably because it's somewhat fairer, if you will, than what Nebraska had in 1895 with the adoption of appropriative rights where the first person who comes and puts up a sign and says all the water is mine is their's unless they can't use it all and then we give a little bit to the next guy. But I think to set the record straight, correlative rights began in this state in 1933. The Supreme Court in Olson v. City of Wahoo essentially established what became modified correlative rights for the state of Nebraska. Nebraska has continued to implement correlative rights since 1975. A small Supreme Court case, Bamford v. State of Nebraska, happened out in our district and essentially upheld our ability to put on a moratorium to stop well drilling. With pure correlative rights, we would have no moratorium. Essentially, we would have had continued drilling of wells and every existing well user would had to have gotten by with less and less and less water, down to essentially nearly nothing. But we haven't went that route. We modified correlative rights and we put in place moratoriums; we've continued to put in place things like state required well spacing. That's an action, essentially, under correlative rights where we protect one water user from another. NRDs have the ability to adopt even more stringent well spacing requirements, much as my district did prior to having the authority to grant a moratorium or enforce a moratorium. And secondly, allocations by natural resources districts of groundwater are an attempt under correlative rights to share in a shortage equally amongst water users; that's what our allocations are all about. We had to restrict, because of the groundwater declines in our district, water usage. Did it in a fashion that essentially shared that water equally amongst those water users. I think we've evolved beyond, if you will, what's being presented of the committee in the name of correlative rights by significant strides already. And this, to me, would be taking us a step backwards because we've already enforced correlative rights and modified it to our benefit and to the good of the state for over 20 years through additional restrictions that the NRDs are allowed to enact. Correlative rights is already the law of the land. But it's really intended, generally, to protect one water user from another. It's about keeping one well from interfering with another well and directly impacting that other individual water user. And it seems to me that this bill attempts to somehow turn correlative rights, if you will, into some sort of aggregate management tool in how we do things at the basin level. And the discussion of carry forwards got into that a little bit and I'll address that in a moment. If you look at Section 32(c) and look at all the...we would use correlative rights and you could use water under the correlative rights unless you affect artesian pressure, have groundwater declines, or affect directly impact streamflow where...stream or water course. I think that would cover every well in the state of Nebraska. Every well out there does, essentially, one of those three things. And I'm not sure this legislation helps address things from that standpoint. Secondly, we know that within Nebraska we have very diverse hydrogeology. Even within my district, I don't think it's fair to say that we have a

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common aquifer. We have the Ogallala aquifer; we have the alluvial aquifer, we have portions of the Ogallala aquifer that have their own unique hydrogeology, and it's appropriate for natural resources districts because of that very ability in hydrogeology to have the ability to manage subareas and do things a little bit differently. And in, you know, certainly in other parts of the state, that's even more important than what it is in my district. And I, you know, I think when it gets back to the requirement to compensate that's included in Senator Carlson's, I'm not sure that an allocation of zero is the only point at which something...someone is truly giving something up. If you've lost 90 percent of the value of some right to use water, it seems to me then you've lost a lot more than that last little increment where you may take the allocation all the way to zero. So with that, all of those entities previously mentioned, you know, think that we need a little bit of work in this area if we're going to do anything with this. Thank you. I'll take any questions. [LB1054]

SENATOR LANGEMEIER: Very good. Are there any questions for Doctor Fanning?  
Senator Fischer. [LB1054]

SENATOR FISCHER: Thank you, Chairman Langemeier. Thank you, Doctor Fanning, for clearing that up. In my conversation with Ms. Robak I remembered having discussions, but I didn't recall the court cases when correlative rights were taken care of, so I do appreciate that. [LB1054]

JASPER FANNING: You're welcome. [LB1054]

SENATOR FISCHER: No question for you today. [LB1054]

SENATOR LANGEMEIER: Well that was simple. Any other questions? Seeing none, thank you very much for your testimony. [LB1054]

JASPER FANNING: Thank you. [LB1054]

SENATOR LANGEMEIER: Further testimony in opposition of LB1054? Don't be shy, come on up. We're not leaving until 5:00 anyway, so. Welcome. [LB1054]

JOE THOMPSON: (Exhibit 32, Exhibit 33) My name is Joe Thompson J-o-e T-h-o-m-p-s-o-n. I thank this Natural Resources Committee today for the opportunity to testify. I represent the Nebraska Potato Certification Association. Given this legislation, we oppose LB1054. With this legislation, the DNR could reduce the allocation to any level other than zero without compensating the producers involved. Many producers have made a financial commitment to their industry and are at great risk of having their livelihoods destroyed by LB1054. This bill also forces equal allocation to all irrigators involved. There's no regard for annual rainfall in the region that the irrigator is in. It is a fact that economic impact of irrigation gets greater as you move west within our state

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due only to annual rainfall. An inch of irrigation in Kimball has much more economic impact than an inch of irrigation in Grand Island. In the western part of the state we cannot grow these crops at all without irrigation. In the eastern part of our state, irrigation is used as a supplement to rainfall. Out in western Nebraska we depend on irrigation completely in most seasons to grow our crops. It is not by accident that potatoes, onions, carrots and other vegetables are grown in arid climates where irrigation is used to produce these crops; it is for economic reasons. In eastern Nebraska, the annual rainfall is such that it is not possible to grow the quality of crops that the American consumer demands in today's marketplace. A combination of soil type, excessive rainfall, would likely destroy the quality of a potato crop in eastern Nebraska. I personally had a customer in Wood River, Nebraska, recently quit growing potatoes for that very reason. The potato industry in Box Butte County is especially important to the state of Nebraska because that is where most of the seed potatoes in the state are produced for the other areas that produce potatoes in this state. Without the seed potato industry in Box Butte County, the rest of the potato industry would be crippled and not be at the competitive advantage in the marketplace that it has today. We oppose LB1054 because of the repercussions this bill would be financially devastating to our state and local economies. Many industries, including the potato, sugar beet, dry bean, and alfalfa could be exterminated upon implementation of this legislation. The potato industry in Nebraska alone had cash receipts of \$82 million in 2008. Over \$20 million of that was contributed by Box Butte County producers. I wanted also to comment on Senator Carlson's comment about eight bottles of water in this room and equality. That's easy to say when we're all sitting here in the same environment. If we were all in a little different environment and one of you was in a room where it was 115 degrees and 5 percent humidity, you might think you deserve a little more than the person that was sitting in a 50 degree room with 85 percent humidity. I don't think that equality in an entire river basin is necessary. Senator Fischer, you and I are in the same river basin. You likely have a problem with too much water in comparison to the people in the western part of the state. You know, there's meadows just 100 miles east of where we are that they try to drain the water off of and, you know, it's just important to us out there that it is recognized that we are in a different environment. At this time I'd take any questions. [LB1054]

SENATOR LANGEMEIER: Very good, very good testimony. Is there any questions for Mr. Thompson? Senator Fischer. [LB1054]

SENATOR FISCHER: Thank you, Chairman Langemeier. I just would like to thank you, Mr. Thompson, for coming today. I think it's always important that we keep in mind the diversity of this state. Thank you. [LB1054]

JOE THOMPSON: One thing I'd also like to point out to this committee, there's about 20,000 acres of potatoes grown in this state. About 60 percent of those potatoes are grown here by people who chose to come here. They're not here because their

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ancestors got tired of walking or the wheels fell off the wagon. We're here because we chose to come for the environment; the economic advantages. I personally came here in the mid-'90s for those reasons and at that time the state of Nebraska was advertising trying to get people to come here and, you know, with some of these legislations, there will be people that will leave. [LB1054]

SENATOR LANGEMEIER: Very good. Seeing no other questions, thank you very much for your testimony. [LB1054]

JOE THOMPSON: Thank you. [LB1054]

SENATOR LANGEMEIER: (Exhibits 3, 26, 34-38) Further testimony in opposition of to LB1054? Seeing none, Senator...I got a list: letters in opposition to LB1054 were submitted by Senator Mark Christensen; Jay Holmquist for Nebraska Rural Electric Association; Tracil Power from Minden, Nebraska; Steve Smith with WaterClaim; Ryan Reiber, with Panhandle Rural Electric Membership Association at Alliance; Jay Rempe with Nebraska Farm Bureau; and Ron Cacek with North Platte NRD; and I never say his name right. Now we'll move on to testimony in a neutral capacity. Is there anyone wishing to testify in a neutral capacity? Seeing none, Senator Carlson, you are recognized to close on LB1054 if you choose too. [LB1054]

SENATOR CARLSON: Thank you, Senator Langemeier and members of the committee. Very briefly, in, again, referring to some comments that I've heard in testimony, I believe that correlative rights really refers to the coequal right to use water. And if we're going to leave that in statute that way, then let's follow that; otherwise let's change the statute. Jasper Fanning talked about we have modified correlative rights; I wouldn't even argue with that. We've modified it to our own benefit. And we've used it for our own benefit, and when we get into a water-short year in the Republican Basin, that's where the rub is and that's where the difficulty is. Mr. Thompson talked about that if this were applied in their area that people will leave. If the water runs out, people will leave and we don't want to see that happen. So I thank those that came to testify and believe that this is an area that needs and deserves further discussion. Thank you. [LB1054]

SENATOR LANGEMEIER: Thank you, Senator Carlson. You've heard...are there any questions for Senator Carlson, first of all? Seeing none, that concludes the hearing on LB1054 and the hearings for the day, and we'd like to say thank you to all of you that have come down to testify. We appreciate your input; that's what makes this process work. (See also exhibits 39, 40, 41, 42) [LB1054]