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Natural Resources Committee
January 29, 2015

[LB206 LB207 CONFIRMATION]

The Committee on Natural Resources met at 1:30 p.m. on Thursday, January 29, 2015, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on confirmations for the Nebraska Natural Resources Commission, LB206, and LB207. Senators present: Ken Schilz, Chairperson; Curt Friesen, Vice Chairperson; Dan Hughes; Jerry Johnson; Rick Kolowski; Brett Lindstrom; John McCollister; and David Schnoor. Senators absent: None.

SENATOR SCHILZ: Good afternoon, everyone, and welcome to the Natural Resources Committee. I am Ken Schilz, the Chair of the committee, serve District 47 from Ogallala. I will go ahead and allow folks starting with Senator Kolowski over there to introduce themselves.

SENATOR KOLOWSKI: Rick Kolowski, District 31, from southwest Omaha. Thank you.

SENATOR McCOLLISTER: John McCollister, District 20, central Omaha.

SENATOR SCHNOOR: Dave Schnoor, District 15 which is Dodge County.

SENATOR LINDSTROM: Brett Lindstrom, District 18, northwest Omaha.

SENATOR FRIESEN: District 34 which is Hamilton, Merrick, Nance County, part of Hall County.

SENATOR JOHNSON: Jerry Johnson, District 23, Butler, Saunders, and Colfax Counties.

SENATOR HUGHES: Dan Hughes, District 44, southwest Nebraska, Perkins, Chase, Dundy, Hayes, Hitchcock, Frontier, Red Willow, Furnas, Gosper, and Harlan.

SENATOR SCHILZ: There we go. Thank you very much and thank you to all for being here today. Today we've got a number of appointments, confirmations that we will take up, as well as two bills, LB206 and LB207, I believe. If you're planning on testifying today, please pick up a green sign-in sheet that's on the table at the back of the room. If you do not wish to testify, but would like your name entered into the official record as being present at the hearing, there's a form on the table that you can also sign. This will be part of the official record of the hearing. When you do get your sheets, please fill out the sheet in its entirety; print and give the sign-in sheet to Barb as you come up. If you do not choose to testify, you may submit comments in writing and have them read into the official record. And if you have handouts, please make sure you have 12 copies for the pages to hand out to the committee. When you come up to testify, please speak clearly into the microphone. Tell us your name and spell both your first and last names,

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even if it's an easy one. Please turn off or turn to silent all your cell phones, pagers, or anything else that might make noise here in the committee. And please keep your conversations to a minimum or please take them outside into the hallway. We don't allow any displays of support or opposition to a bill, either vocal or otherwise, so we don't allow any of that in the hearing. We will use the light system. We use...you'll be given a total of five minutes to make your point to the committee. The light will start out green. When you've spoken four minutes it will change to orange. And at that point conclude your remarks and when the five minutes are up, the light will change to red and you will be asked to stop, so try to gauge that as it goes. We've got a few other people here today that I also want to introduce. First of all, to my far right is Barb Koehlmoos; she is the committee clerk for the committee. To my direct left is Laurie Lage; she is the legal counsel for the committee. And we have one page again today, J.T. (sic) Kawamoto from Omaha who is a sophomore in political science. So thank you for being here today. That's right isn't it?

JAKE KAWAMOTO: Jake. It's all right.

SENATOR SCHILZ: Jake. I got one, then the other, okay, I'll figure it out one of these days. So with that I believe we will start out with gubernatorial appointments. And the first one on our list is Brian Barels. Mr. Barels, you're welcome to come on up.

BRIAN BARELS: Thank you, Senator Schilz, members of the committee. As the senator said, I was appointed to be the public power representative to the Natural Resources Commission. [CONFIRMATION]

SENATOR SCHILZ: Brian, can you spell your name, can you spell your name.
[CONFIRMATION]

BRIAN BARELS: (Exhibit 1) Oh, I'm sorry. Brian, B-r-i-a-n, Barels, B-a-r-e-l-s. A little bit from my background is I grew up in northwest Iowa, grew up on a lake. Did my master's work in Minnesota on a river and had a love for water that brought me to Nebraska to work for Nebraska Public Power District on the Sutherland project and a variety of activities like that. Been involved in the Platte River issues, Missouri River. Had the opportunity to gain a lot of respect for what we have as a water resource, and natural resources within the state of Nebraska. From a water perspective, we're very fortunate. Unfortunately, our soil doesn't hold water quite as well as other parts of the country, but we found ways to make water work. So you might say I have somewhat of a passion for water. I did participate in the Water Policy Task Force work that was done in 2004. I also has the opportunity to participate in the Water Funding Task Force recently that is now in front of the Natural Resources Commission to adopt rules and regulations to carry out the direction we received from you folks, from the Legislature last year. The group is working real hard on putting those together, learning as we go forward and hopefully we'll have a good package to put forward in the not-too-distant future. I

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appreciate the opportunity to serve on the Natural Resources Commission. I think there's a lot of great things that we can do related to water sustainability and the other natural resources we have within the state. With that, I'd be glad to answer any questions you might have. [CONFIRMATION]

SENATOR SCHILZ: Thank you, Brian. Any questions for Mr. Barels? Brian, how...just talking...you talked about the Water Policy Task Force and how well that went down. Just for my curiosity, how many years have you been working on water issues? Do you know? [CONFIRMATION]

BRIAN BARELS: I've been at it for about 38 years for...within the state of Nebraska here. [CONFIRMATION]

SENATOR SCHILZ: Right. Some would say that maybe that passion has turned...is it still there? I mean, are you still... [CONFIRMATION]

BRIAN BARELS: Oh, it is. We have such a great resource, folks, and we're very blessed with our groundwater and surface water resources and how we can get and utilize those to benefit all the residents of the state is such a great opportunity for us. [CONFIRMATION]

SENATOR SCHILZ: Great, thanks, Brian. Senator Friesen. [CONFIRMATION]

SENATOR FRIESEN: Brian, I know I've had the opportunity to work with you and I've always appreciated how you're willing to work with everyone involved. And so looking forward on the Natural Resources Commission and having to decide where this large pot of money gets spent and what kind of projects, I'm looking forward to your expertise on it. And I guess I just wish you well. I think it's going to be interesting and I want to impress upon everybody, I guess, the importance of making wise choices when you choose those projects. So we want to continue that and hopefully it goes good in the future. [CONFIRMATION]

BRIAN BARELS: And that's what we're working...we'll do is to set up the rules and regulations that allows us to make those wise choices. So I'm sure you always get an opportunity to look at things a different way. And I think the group of folks that I'm with on the Nature Resources Commission will all make those wise choices. [CONFIRMATION]

SENATOR FRIESEN: Thank you. [CONFIRMATION]

SENATOR SCHILZ: Senator McCollister. [CONFIRMATION]

SENATOR MCCOLLISTER: I have a question for you, Senator Schilz. This gentleman

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was appointed in June of '14. [CONFIRMATION]

SENATOR SCHILZ: Um-hum. [CONFIRMATION]

SENATOR McCOLLISTER: And his term will last until May 31, 2016. [CONFIRMATION]

SENATOR SCHILZ: Um-hum. [CONFIRMATION]

SENATOR McCOLLISTER: And here we are reviewing the appointment, is this because the Governor asked everybody to submit their resignation? What is the reason we're doing this? [CONFIRMATION]

SENATOR SCHILZ: No. This has come about because of legislation that was passed last year, LB1098,... [CONFIRMATION]

SENATOR McCOLLISTER: Okay. [CONFIRMATION]

SENATOR SCHILZ: ...which increased the size of the Natural Resources Commission. So some of these folks will be new appointees; some of these folks, I think, if I look, maybe not...some will be new, some will be reappointments, and so that's why that's there because we expanded that commission. [CONFIRMATION]

SENATOR McCOLLISTER: It's curious that we are reviewing the...this would be considered a reappointment. Correct? Even though his term hasn't ended? [CONFIRMATION]

SENATOR SCHILZ: Is this...you're new aren't you? [CONFIRMATION]

BRIAN BARELS: No, this is a new appointment. [CONFIRMATION]

SENATOR SCHILZ: Yeah, this is a new appointment. [CONFIRMATION]

SENATOR McCOLLISTER: New appointment. Okay. I understand. [CONFIRMATION]

BRIAN BARELS: This is a new position. [CONFIRMATION]

SENATOR McCOLLISTER: Thank you. [CONFIRMATION]

SENATOR SCHILZ: Yep, okay, thank you. Any other questions? Senator Kolowski. [CONFIRMATION]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. And thank you for that clarification on what took place last year. I think it is very important also that as a committee we

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understand where we're reconfiguring compared to where we were before. Brian, thank you for your dedication to water and for the work that you've done in our state; look forward to your continued work in all this. My one comment I want to make right now because you're number one coming up today is that this committee and this Legislature needs to continue to fund on a yearly basis for about 20 years, if not more, the work that we have before us. And it's extremely important we don't drop that ball. We have a continuation of making the difference on our water, surface and all kinds, that has to be there. And if we don't do that, then all of our work in this last year, which was very, very significant, would be lost. I don't want to see that happen. [CONFIRMATION]

BRIAN BARELS: And not only just last year, Senator, but the Water Policy Task Force in putting together the plans for how we look at surface water and groundwater and the interrelationship realized that it was going to take financial support when that recommendation was made in 2004. And a number of senators, they're here, and Senator Carlson from last year, as we all know, took that passion of their own to try to find a way that we could get the funding we need to maintain our water resources and make sure they are sustainable into the future. And so you are exactly correct, we all need to work real close to make sure we can maintain that funding so we can do those things that are necessary. [CONFIRMATION]

SENATOR KOLOWSKI: And I'd like to jump on a paid political announcement if I could, I will be bringing forward the bonding bill for NRDs again that we did a year ago so we can multiply the money to get the jobs done in all watersheds across the state. No one says you must do it, but you'd have the opportunity if you so desire. I hope we can keep that alive and let that be another tool in our tool chest. Thank you. [CONFIRMATION]

BRIAN BARELS: Absolutely. [CONFIRMATION]

SENATOR SCHILZ: Thank you, Senator Kolowski. Any other questions? Seeing none, thank you, Mr. Barels. [CONFIRMATION]

BRIAN BARELS: Thank you. [CONFIRMATION]

SENATOR SCHILZ: Our next appointment is Stan Clouse. Good afternoon, Stan. How are you? [CONFIRMATION]

STANLEY CLOUSE: (Exhibit 2) Stan Clouse, S-t-a-n...actually Stanley, l-e-y, and Clouse, C-l-o-u-s-e. And I do appreciate the opportunity to come to speak to you. Mine would be a reappointment, so Senator McCollister, I don't know how that fits in here...because mine is a reappointment to the commission. [CONFIRMATION]

SENATOR MCCOLLISTER: Okay. [CONFIRMATION]

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STANLEY CLOUSE: And I prepared or had some short bios, but I didn't bring 12 copies, I only brought 9. So I'll just kind of go over this. My role as an appointment is to represent the municipal water users. And I am the mayor of the city of Kearney and I've been the mayor of the city of Kearney for...since 200...I've been on the council since 2003 and mayor since 2006. Prior to that I had served on the Shelton village board, North Platte planning commission, and a lifelong Nebraska resident. My interest in the water is from a municipality perspective. When I served on the Shelton village board we had nitrates issues. We were always trying to make sure that we had adequate water supply for the village. And then, of course, Kearney is a large growing community; we want to make sure we have adequate water and good quality. My father, I grew up in Brady, in North Platte area, my father worked for Central Nebraska Public Power and Irrigation District for a number of years. And as such, I grew up on the Platte River. I've been in every hydro on the Platte River system, whether it's NPPD's or Central Nebraska's. My late wife, she was the administrative assistant when they built the Kingsley Hydro. And I went with my dad when I was a kid, into the Morning Glory, when he was doing maintenance on the gates at Lake McConaughy. And so I have a pretty good background on the water issues, at least on the Platte River Basin. And I also served on the Water Funding Task Force, worked those issues. And as Brian said, my colleagues here on the commission, you know, we've been working long and hard, under Scott Smathers' direction on creating these rules and regulations and we'll be reviewing those. So we just ask for your consideration to continue this appointment. And I think you do have a letter from the League of Municipalities that I serve on the executive board for the League of Municipalities. And at conferences, it was utilities or the League annual conference, I do periodically provide updates to breakout sessions on where we're at with the water funding and water funding issues and the commission in general. So I act as a liaison with that board as we move forward too. I'd entertain any questions. [CONFIRMATION]

SENATOR SCHILZ: Thank you, Mr. Clouse. Any questions? [CONFIRMATION]

STANLEY CLOUSE: Thank you. [CONFIRMATION]

SENATOR SCHILZ: Yeah, now I do need to apologize, I didn't give folks that might want to come up as proponents or opponents for Mr. Barels, so I will correct that now, at least with Stan here, and we will go, and if anybody would like to get up and comment on Brian, now would be the time to do that as well. So if there are any... [CONFIRMATION]

STANLEY CLOUSE: I'll just get out. (Laughter) [CONFIRMATION]

SENATOR SCHILZ: (Laughter) Proponents go first. [CONFIRMATION]

STANLEY CLOUSE: My real job is with the Nebraska Public Power District, who just

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like you, but Brian is our water guy. I'm in another division. [CONFIRMATION]

SENATOR SCHILZ: Thank you, Mr. Clouse. Would there be anybody to testify as a proponent for either of the first two gentlemen that came up? Seeing none, would there be any folks that would like to testify in opposition to the appointments? Seeing none, anybody in the neutral capacity? Seeing none, okay, now we'll move on. I apologize, Brian. Our third person on the list is Steven Huggenberger. Good afternoon. [CONFIRMATION]

STEVEN HUGGENBERGER: (Exhibit 3) Good afternoon, Senators. Steven Huggenberger, S-t-e-v-e-n H-u-g-g-e-n-b-e-r-g-e-r. I'm one of the assistant city attorneys for Lincoln. I have a bachelor of science in ag education and ag economics. I have worked on a master's in entomology for a couple of years and then I...after I lost my way there, I went to law school and I'm an attorney now. So I've been working on municipal water interests for the entirety of the time that I've been with the city attorney's office, over 30 years. I too, like Brian, had served on the Water Policy Task Force representing municipal interests. And that is my purpose on this committee, Natural Resources Commission, to represent municipalities. I don't know that I have a particular goal on the commission, other than I'm very interested in seeing how the rules and regulations for the sustainability fund are worked out. And I want to bring a municipal perspective to that. I love working with the rest of the diverse groups, done it in the past, still do it. I enjoy that very much. [CONFIRMATION]

SENATOR SCHILZ: Very good. Thank you. Any questions for Mr. Huggenberger? Oh, you're going to get off easy. [CONFIRMATION]

STEVEN HUGGENBERGER: Thank you. [CONFIRMATION]

SENATOR SCHILZ: Any proponents? Seeing none, any opponents? Seeing none, neutral? None. Okay, we'll move on to the next one. Thank you very much. Next person is Thomas Knutson. Good afternoon. [CONFIRMATION]

TOM KNUTSON: (Exhibit 4) Good afternoon, Mr. Chairman and members of the committee. I'm Tom Knutson, T-o-m K-n-u-t-s-o-n. I represent surface water on the Natural Resources Commission and this would be a reappointment; I've been on the commission for a few years. Background--I'm a Minnesota farm boy, but I've been in Nebraska working for over 32 years. I once worked in Omaha for the Missouri River Basin Commission which is a 10-state organization working on water issues. And I worked for nearly 30 years as general manager for the Loup Basin Reclamation District, Farwell Sargent Irrigation District out of Farwell, Nebraska. I've served on the Nebraska State Irrigation Association Board of Directors, president twice; Nebraska Water Resource Association Board of Directors; National Water Resource Association for a number of years; and of course, on the task force as far as the water funding. Been

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involved in helping create the Nebraska Leaders Academy which is going well for the state, and I encourage people to participate. And I'm the token Norwegian on the commission so I hope I get reappointed. (Laughter) And appreciate the opportunity to serve and would be happy to answer any questions. [CONFIRMATION]

SENATOR SCHILZ: Thank you, Mr. Knutson. Any questions for Tom? Senator McCollister. [CONFIRMATION]

SENATOR McCOLLISTER: Thank you, Mr. Chairman. Another question for you, sir. How many times can a person be reappointed? [CONFIRMATION]

SENATOR SCHILZ: That's a good question. I don't know if there is any...Mr. Knutson, do you know? [CONFIRMATION]

TOM KNUTSON: I don't know. [CONFIRMATION]

SENATOR SCHILZ: I don't know if there any restrictions or not. [CONFIRMATION]

STANLEY CLOUSE: I think it's seven. I think they said that. [CONFIRMATION]

SENATOR SCHILZ: I'll find that out for you. [CONFIRMATION]

SENATOR McCOLLISTER: I guess I do have a question then. [CONFIRMATION]

TOM KNUTSON: Sure. [CONFIRMATION]

SENATOR McCOLLISTER: How many times have you been reappointed?
[CONFIRMATION]

TOM KNUTSON: This will be my first time...reappointed. [CONFIRMATION]

SENATOR McCOLLISTER: Okay, gotcha, thank you. [CONFIRMATION]

TOM KNUTSON: You bet. [CONFIRMATION]

SENATOR SCHILZ: Thank you. Any other questions for Mr. Knutson? Seeing none, thank you, sir, and congratulations. [CONFIRMATION]

TOM KNUTSON: Thank you. [CONFIRMATION]

SENATOR SCHILZ: Any proponents for Mr. Knutson? Any opponents to his confirmation? Anybody neutral, just wants to tell us a few stories? Okay, seeing none, we'll move on. Next one on the list is Don Kraus. Good afternoon. [CONFIRMATION]

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DON KRAUS: (Exhibit 5) Good afternoon. Thank you, Senator Schilz, members of the committee. My name is Don Kraus, D-o-n K-r-a-u-s. Appreciate the opportunity to visit with you today. And I represent public power and irrigation districts on the Natural Resources Commission. Stepping back to Stan Clouse, I worked with Stan's father, Jack Clouse, at Central. I started working for Central Nebraska Public Power and Irrigation District in 1971. And back up, graduated from Sargent High School; degree in electrical engineering from the University of Nebraska. First job was with Central. And I remember working many times with Jack Clouse. If something broke, Jack Clouse could fix it. He was an excellent mechanic. We were very pleased to have a person of his stature with Central. Been employed, as I said, since '71; general manager since 1993. I've served as chair of the Cooperative Hydrology Study since about 1998. It's taken too long to try to develop a model of the water resources--surface water and groundwater, in the Platte River, but we're making progress. And so I have a little background in that area. As Brian indicated, and a number of you, I've served on the Water Policy Task Force. One of the important things that has already been mentioned, and I certainly concur with, is the recommendation that we provide a sustainable source of funding. And I think that's what LB1098 did. I think it was a very good first step. I appreciate the Legislature's efforts in that regard. With that, I'll stop and open up for questions. [CONFIRMATION]

SENATOR SCHILZ: Thank you, Mr. Kraus. Any questions? Seeing none, did you ever happen to help him out inside the Morning Glory or anything like that where you... [CONFIRMATION]

DON KRAUS: I've been in the Morning Glory. Usually, I wouldn't...they wouldn't give me a wrench when I was in the Morning Glory. (Laughter) I'd get in there and I'd say--Jack, you can fix this stuff and he would take care of it. [CONFIRMATION]

SENATOR SCHILZ: There you go. Thank you, Don. Any other questions? Seeing none, thank you, sir. [CONFIRMATION]

DON KRAUS: Yes. [CONFIRMATION]

SENATOR SCHILZ: Any proponents? Seeing none, any opponents? Seeing none, neutral? Seeing none, next person on the list, we move on to Tom Palmertree. Good afternoon and welcome. [CONFIRMATION]

TOM PALMERTREE: (Exhibit 6) Good afternoon. Tom Palmertree, first name T-o-m, last name P-a-l-m-e-r-t-r-e-e. I'm currently the director of marketing at Reinke Manufacturing Corporation located in Deshler, Nebraska. This is my first appointment to the commission. And I was appointed to represent manufacturing. I am a Nebraska transplant, was born and raised in the state of Idaho, graduated from Boise State

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University. But when you marry a small-town Nebraska girl, this is where you end up. (Laughter) Fortunately...fortunately. (Laughter) [CONFIRMATION]

SENATOR SCHILZ: Good save. (Laughter) [CONFIRMATION]

TOM PALMERTREE: I will admit that I know I'm probably surrounded by a lot of red, but I self admit, I do bleed blue. I am a Bronco and I do like the blue turf at Boise State. (Laughter) Obviously, water sustainability and natural resources is very important to Reinke. It's important to the state of Nebraska. And it's important to us from a business and economic model as well. And because of that I'm excited to serve. I find myself very fortunate to serve. And I'm excited about the things that we can get done with the passage of LB1098 and the continued funding in that direction. Thank you. [CONFIRMATION]

SENATOR SCHILZ: Thank you, Tom. Any questions? Seeing none, you're going to get off pretty easy too. [CONFIRMATION]

TOM PALMERTREE: Thank you. [CONFIRMATION]

SENATOR SCHILZ: Thank you for your interest and your service. Anyone to testify in support for Mr. Palmertree? Anyone here to testify as an opponent? Anyone here in neutral testimony? Seeing none, that will end Mr. Palmertree's. And now we move to Scott Smathers. Good afternoon and welcome. [CONFIRMATION]

SCOTT SMATHERS: (Exhibit 7) Good afternoon, Chairman Schilz, members of the Natural Resources Committee. My name is Scott Smathers, S-c-o-t-t S-m-a-t-h-e-r-s. I am executive director of the Nebraska Sportsmen's Foundation. I am also a transplanted Nebraskan, but a little longer term than Mr. Palmertree. I'm originally from the East Coast. I'm constantly reminded, as of yesterday, also to slow down my speech. (Laughter) With that said, I've been in Nebraska since 1974, so I consider myself a Nebraskan. I am a lifelong outdoorsman and sportsman, hunting and angling, conservationist; dare I say an environmentalist since the ripe old age of 10. That's where my passions for the outdoors has drawn me to the water conservation and sustainability. And five years ago, someone I consider...used to consider a friend, but no longer, introduced me to water and the issues of water in the state. And I was on the Senator Langemeier's interim study, LR314, and was appointed to LB517, the Water Funding Task Force, and subsequently appointed to the Natural Resources Commission where I'm excited to work with my 26 fellow colleagues who have graced me with the great pleasure of being the chair of the rules committee. And we have a lot of work in front of us. I am an outdoorsman; lifelong. I'm a life member of Pheasants Forever. Also stand as an executive board member of the Nebraska Land Trust. Life member of Ducks Unlimited; executive board member of Pheasants Forever; and also a founding member and executive board member of the Nebraska Big Game

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Conservation Association. So my passions run from the outdoor users' standpoint and that's what I'm representing on the Natural Resources Commission. I'm excited for what we're attempting to do on the Natural Resources Commission. As been stated prior by some of my colleagues, LB962 really defined the framework of what we really needed in the state. It was lacking one component and that was the funding aspect. And through LB517 and several of the senators on this committee and Senator Carlson and a lot of hard work by good folks, we were able to achieve that funding mechanism at the conclusion of last year's session. Now it's up to us to create the rules, put forth the applications, and put forth good projects for funding to come back to this body to ask for additional funding, as Senator Kolowski has suggested in the sustainable funding. So I'm excited for that work. It is a passion, has become a passion, and I look forward to the future with the opportunities. With that I'd answer any questions. [CONFIRMATION]

SENATOR SCHILZ: Thank you, Mr. Smathers. Any questions? Senator Kolowski. [CONFIRMATION]

SENATOR KOLOWSKI: Thanks, Mr. Chairman. Scott, congratulations also; good to see you again. [CONFIRMATION]

SCOTT SMATHERS: You too, Senator. [CONFIRMATION]

SENATOR KOLOWSKI: And it's hard to put into words for all of our new members on the committee what the full group went through last year--many, many, many meeting locations, great coming together of mutual minds toward the efforts we're trying to get in place for water. And I hope we can keep that spirit alive as you get into the tough times that are all ahead of you, because it will happen, and keep our heads out of our silos. Remember the big picture and forget about your own personal turf, but let's think about Nebraska and what we need to do for this Midwest area. [CONFIRMATION]

SCOTT SMATHERS: I would agree with you, Senator Kolowski. As you know, currently we have 17 of the natural resources commissioners that were on the Water Funding Task Force. We just had two individuals that have...did not seek reappointment through the NRD system, so we had 19 members, so we had great unity. And as you said, Senator Kolowski, when you put 27 different stakeholders with varying degrees of responsibilities and/or interests, it was interesting, as you know, and Senator Schilz is aware of the fact that those first several meetings of the Water Funding Task Force were extremely territorial and then the shift came and everybody said, okay, let's roll up our sleeves and go back to work. Stakeholder representation is important, but at the end of the day, the state of Nebraska was what was represented by those 27 members and the senators that sat down. And we're continuing that work. Yes, there's times that we're going to have disagreements, but any time you put 27 people of varying groups in a room, it's not all peaches and cream, but we'll work through it. [CONFIRMATION]

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SENATOR KOLOWSKI: Thank you. [CONFIRMATION]

SENATOR SCHILZ: Thank you, Senator Kolowski. Any other questions? Mr. Smathers, could you give us just a little bit of a...I know that I've had the opportunity to see a little bit of what the rules committee had done, and you are the chair of the rules committee right now. [CONFIRMATION]

SCOTT SMATHERS: Yes, sir. [CONFIRMATION]

SENATOR SCHILZ: Can you just give us a little bit of an update of where that's at. You don't have to get into specific or anything, but just kind of a... [CONFIRMATION]

SCOTT SMATHERS: We met for the first time as the new Natural Resources Commission in June of this past summer in Chadron. At that point, we established a series of meetings throughout the summer months, realizing the task in front of the rules committee, which is consisted of nine members of the Natural Resources Commission, a subcommittee, which one, two, three, four, five of those...my eight other colleagues on that rules committee are sitting here today. Since that time frame, we have held a series of 11 meetings. Some of those are face to face. Due to our geographical footprints around the state, we utilize GoToMeeting for an hour and a half to three hours at a time to utilize the best time and expense factor. We have established a series of white papers which we have vetted down through the full Natural Resources Commission into a rough draft set of rules that we're continuing to modify, add, and clarify rules. It's been a yeomen's effort by the nine folks and then even more of a yeomen's effort for the full Natural Resources Commission, take that information and fully vet it and have further discussions in addition to those issues. So we are at the point where we will be having another meeting, what we'd say,... [CONFIRMATION]

MIKE ONNEN: (Inaudible) of February. [CONFIRMATION]

SCOTT SMATHERS: Thank you. We talked about nine meetings yesterday, but we'll get together again here in several weeks to revise again another set of draft rules. And we're getting to that point where we're within 45 to 60 days of submitting our formal draft rules to the Governor's Policy Research Office. Our intent, hopefully, is that by the end of this year, after public comment, that we will be closer to finalizing our rules and having them approved so that we can start to take applications within 90 days after final rules approval into 2016. So that is our goal. A lot of factors will control whether we succeed at that goal or not, but we're working in that direction. [CONFIRMATION]

SENATOR SCHILZ: Okay. Thank you. Any last questions for Scott? Seeing none, thank you, sir. [CONFIRMATION]

SCOTT SMATHERS: Thank you. [CONFIRMATION]

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SENATOR SCHILZ: Any proponents for Mr. Smathers? Any opponents? Any neutral? Okay, we will move on to Lindsey Smith. Good afternoon, welcome. [CONFIRMATION]

LINDSEY SMITH: (Exhibit 8) Thank you so much. Again, my name is Lindsey Smith and that's L-i-n-d-s-e-y S-m-i-t-h and I'm really excited to be here. And I'm actually from Broken Bow. And I'm passionate about my job in agriculture. I'm very fortunate to do what I love every day, which is working on our commercial cattle operation in the Sandhills, north of Burwell. And I actually graduated from Oklahoma State University in 2008. And we've been back now for about four years, so I'm really glad to be back in Nebraska. And on the Resources Commission board, I represent livestock producers. And so I'm really excited to be here to be confirmed today. And I'm...and this has been a whole new experience for me and it's been really interesting so far and I'm really excited. I'm most excited about sharing a lot of the same goals...or most of the same goals already with my fellow members and what's in the statute of LB1098 and I'm so proud of LB1098. I think every state should be...should have a similar law like this one because I have...for the sake of my generation I have a lot of concerns about what's happening with our water. And so I think everyone from my generation should care about this and this opportunity. So I'm most excited that I feel like I already share a lot of the same goals and what we have a chance to accomplish and what we can do as a state. And I think we've set the bar high and as a good example for what other states can and should be doing. [CONFIRMATION]

SENATOR SCHILZ: Thank you, Miss Smith, appreciate that. Any questions? Seeing none, thank you. [CONFIRMATION]

LINDSEY SMITH: Thank you so much, I appreciate it. [CONFIRMATION]

SENATOR SCHILZ: Have a good day. [CONFIRMATION]

LINDSEY SMITH: You too. [CONFIRMATION]

SENATOR SCHILZ: Okay. We will move on to Walter Dennis Strauch. [CONFIRMATION]

LAURA FIELD: (Inaudible.) [CONFIRMATION]

SENATOR SCHILZ: I am so sorry. Did I do that again? [CONFIRMATION]

LAURA FIELD: That's okay. [CONFIRMATION]

SENATOR SCHILZ: Come on up. Support. There we go. I just... [CONFIRMATION]

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LAURA FIELD: It's okay. No problem. [CONFIRMATION]

SENATOR SCHILZ: ...sorry, Laura, excuse me. [CONFIRMATION]

LAURA FIELD: No, that's okay. This will be very quick. I'm Laura Field, L-a-u-r-a F-i-e-l-d, I'm here on behalf of the Nebraska Cattlemen. Lindsey is a member of ours and we are really excited for her appointment and she'll be a great representative for our range and grassland members. And just wanted to let you know that.
[CONFIRMATION]

SENATOR SCHILZ: I appreciate that. Thanks for interrupting me and making sure that I let you get in. Any others in support? Anybody in opposition? Okay, anybody neutral? Okay, seeing none, Dennis, have a seat, please. Sorry. We'll get through this.
[CONFIRMATION]

WALTER DENNIS STRAUCH: (Exhibit 9) Thank you, Chairman Schilz and members of the committee. My name is Walter Dennis Strauch, W-a-l-t-e-r D-e-n-n-i-s, last name is spelled S-t-r-a-u-c-h. I go by Dennis; you call me Walter, I may not answer. That was my dad's name. I was born and raised in western Nebraska, growing up and living in the Scottsbluff area all my life. After high school, I attended college for about three years in pre-engineering classes. In the meantime, I got married, got a summertime job with Pathfinder Irrigation District which turned into a full-time position in 1976, and I've been there ever since. Started out as a...the water conservation program manager for the district. And in 1990, I became general manager, a position I hold now. Pathfinder Irrigation District is one of the largest districts in the state, surface water irrigation districts in the state. We actually divert our water in Wyoming and bring it into the state of Nebraska and we serve about 100,000 acres in western Nebraska. I've been involved with the Water Policy Task Force, as several other people have. I also served on the Water Funding Task Force. I'm also the water user representative to the Platte River Recovery Implementation Program for the extreme water users. I've served in that capacity since 1997. I also serve on the water advisory committee for that group and have gone through an extensive reconnaissance level review of water projects throughout western Nebraska, central Nebraska, as well as Wyoming and Colorado, looking at what are the opportunities out there to provide water for species, in this case, for endangered species. And so I know it's a very difficult job to find water and to produce it and make it available for uses. So I really look forward to working with the commission. I have a lot of years experience, a lot of knowledge and background. And I think if we all as a group pull together, we can take the money that this Legislature has approved for funding and really do some good things for Nebraska and I look forward to that. With that I'll close and answer questions. [CONFIRMATION]

SENATOR SCHILZ: Thank you, Mr. Strauch. Any questions? Once again, seeing none, thank you, appreciate it. [CONFIRMATION]

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WALTER DENNIS STRAUCH: Thank you, Senator. [CONFIRMATION]

SENATOR SCHILZ: Thanks for making the trip. [CONFIRMATION]

WALTER DENNIS STRAUCH: Sure. [CONFIRMATION]

SENATOR SCHILZ: Any proponents for Mr. Strauch? Woo-hoo, got it right this time. Good afternoon and welcome. Oh, are...okay, anyway...are you Loren?
[CONFIRMATION]

LOREN TAYLOR: Yes. [CONFIRMATION]

SENATOR SCHILZ: Loren, okay, just wanted...go ahead. We'll pick it up on the...
[CONFIRMATION]

LOREN TAYLOR: (Exhibit 10) Mr. Chairman, members of the committee, I'm Loren Taylor, L-o-r-e-n T-a-y-l-o-r, 1119 South 3rd Avenue, Broken Bow, Nebraska. I represent the groundwater irrigators on the commission; was appointed last fall, so I'm new on this. Being the last and probably several people ahead of me was very highly educated. I, basically, got my education at the "University of Hard Knocks", if you will. I've been involved with water well issues, groundwater issues for a long time. I was...I belong to the National Ground Water Association and the Nebraska Well Drillers Association. And in 1985, it became apparent that the Nebraska Well Drillers needed licensed with the Clean Water Drinking Act out of Washington, D.C., we could see it was coming. I was on the committee that drafted LB310, got it introduced in the Legislature; in 1986 we got it passed. That was for the protection of groundwater from contamination, basically what the bill was about. I was appointed by three different governors to serve on that board until my term limits run out. Since then I've still been active in it. I started my water well drilling career as a 19-year-old laborer with a very young and aggressive well drilling firm, Sargent Irrigation. I've been with them all these years; worked up into management, took every opportunity I could to improve my position with the company. I did, basically, everything in the company. In fact, I did run the manufacturing division there in Broken Bow for 25 years as general manager of that. But back up a little bit, every time the University of Nebraska Conservation and Survey would put on any kind of short course or anything on the geology in Nebraska for people like me, I took advantage of it. Also, recognized Vince Dreeszen, who is deceased, was a lifetime member of...on conservation and survey and worked up to be the director of it. And Jim Goeke, I'm sure a lot of you people have heard of him, another very passionate man on underground water and I took every advantage I could, learning from them what Nebraska's groundwater was all about. I have got a real interest in the Ogallala formation, I'm sure you all are familiar with that, how it was formed something like 17 million years ago and washed sand and gravel out across the high plains. I say the

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Ogallala Formation should be divided in two formations--the haves and the have-nots. The have-nots are the people that...where the Ogallala kind of run to the...difference in the Ogallala from the southern part of Nebraska across Texas, Oklahoma, Kansas, part of New Mexico, part of Colorado, where they have, basically, no recharge. On the north side of that which encompasses a big part of the state of Nebraska, south of the Niobrara River down even to the south of the Platte River in places, we have a very unique situation in that we get recharge. The recharge of this whole area out of the rainfall that falls in the Sandhills. I say we have the "haves" up here. I'm very passionate about that. By getting on the commission, I hope I can be of some benefit because if we're going to sustain our water, which I definitely know that we've got to do, and we got the people in the metropolitan area that depend on drinking water, of course all of us out west do too, but if we spend the money--and, folks, it's not going to be cheap--if we spend the money and can control the runoff where we bring in one million acre-feet a year from the west and we discharge 8...9...10 million acre-feet a year to the east, we need to put that water in storage above ground and below ground for now, for the short term and the long term. That is my goal on the Natural Resources Commission is to promote groundwater storage. I thank you. [CONFIRMATION]

SENATOR SCHILZ: (Exhibits 11, 12, and 13) Thank you, sir. Any questions? Seeing none, thank you. And we will take either proponent testimony for Mr. Strauch and/or Mr. Taylor. Any proponents? Any opponents? Any neutral? Seeing none, we do have some support letters. One is in support of Stan Clouse from Lynn Rex, the League of Municipalities. Steven Huggenberger, also a support letter from the League of Municipalities. And Brian Barel, Tom Knutson, Don Kraus, and Dennis Strauch, support from Mike Delka, manager of the Bostwick Irrigation District. And with that, that will close our confirmation hearings for the day. Thank you very much for your attendance. Congratulations to everyone that has been nominated. And we will probably talk about these and see if we can't get them kicked out sometime here soon. So thank you very much, folks, have a good day. [CONFIRMATION]

SENATOR KOLOWSKI: Mr. Chairman. [CONFIRMATION]

SENATOR SCHILZ: Yes. [CONFIRMATION]

SENATOR KOLOWSKI: If I may, I thought of something when everyone was talking. It's a very impressive group of individuals in this class so thank you for that. But again, one thing to think about, it's not about your personal turf, it's about our collective water. Without water, we would not have turf. Thank you. [CONFIRMATION]

SENATOR SCHILZ: Thanks, folks. And now we will move on to introduction of bills. We have two bills today, LB206 and LB207. Both of those are mine, so I will...let's see, who's next...I will turn it over to...I see that our...is he coming right back? Okay, I'll do my own thing nice and slow. [CONFIRMATION]

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SENATOR FRIESEN: Welcome, Senator Schilz. [LB206]

SENATOR SCHILZ: Thank you, Senator Friesen. My name is Ken Schilz, it's spelled K-e-n S-c-h-i-l-z and I'm bringing LB206 to complete work that Senator Tom Carlson began last session with LB896. LB206 is identical to the version of LB896 that advanced unanimously to the floor last year with the Natural Resources Committee recommended amendments attached. Unfortunately, due to the short session and large amount of issues, we were unable to pass this innocuous, yet exceptionally important piece of legislation. A bit of background for everyone: In 1986, the Legislature passed the Erosion and Sediment Control Act which required the state to create a comprehensive erosion and sediment control program designed to reduce soil erosion to tolerable levels. The act also required natural resources district to adopt a plan to implement the state's program and provided them with the authority to receive soil erosion and sedimentation complaints by landowners. Since then, the conversion and development of marginal and highly erodible lands from conservation reserve program lands, pastures and rangeland, and riparian lands to cropland raised the potential for increased erosion and sedimentation problems. This led to greater frustrations for landowners whose lands were being damaged by storm runoff and sedimentation. As a result, the NARD adopted a resolution to request changes to the Erosion and Sediment Control Act because the act, as currently written, provided a limited ability for the natural resources district to effectively address the erosion and sedimentation problems that were causing them. There's an amendment being discussed and I think it's being worked on right now regarding concerns brought by NPPD and others. And I understand that everyone involved with this is working and I think they've got...I think they've got that amendment pretty well tightened up. So we'll see that when we get it printed up. I'll make sure that all the committee members get that. A representative from the natural resources districts will testify after me to explain the problems that they're faced with enforcing the act and to explain the specific changes to the act that will provide them with the authority they need to effectively handle the complaints. Thank you. [LB206]

SENATOR FRIESEN: Thank you, Senator Schilz. Any questions from the committee? Senator Schnoor. [LB206]

SENATOR SCHNOOR: Thank you. Senator Schilz, just some explanation of the wording of the bill, if you would, make sure I pull the right one up. [LB206]

SENATOR SCHILZ: Sure. [LB206]

SENATOR SCHNOOR: There's a lot of wording in here: is just changing "shall"... "the commission means" versus "shall mean" and I'm not too...really worried about that one. There's also one we're changing the word "limit" to "tolerance level." Can you give a

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little better explanation of that? [LB206]

SENATOR SCHILZ: And I'll do my best, but there's folks behind me that will be able to explain that much better. But I think a lot of it comes down to there were certain situations, and they can correct me if I'm mistaken, but there's certain situations that the language as it's in the law today didn't give them the opportunity to be flexible. Let's say you have a big flood or something like that and all of a sudden you have something that's in one of these erosion programs and all of a sudden it erodes. They may not have the opportunity to look at that and say, okay, that was caused by a flood and we should understand that. I believe that's what it is, but you can ask others behind me. [LB206]

SENATOR SCHNOOR: Okay. That would be fine. Thank you. [LB206]

SENATOR SCHILZ: Okay. [LB206]

SENATOR FRIESEN: Any other questions from the committee? Thank you, Senator Schilz. [LB206]

SENATOR SCHILZ: Thanks. [LB206]

SENATOR FRIESEN: Any proponents? Welcome. [LB206]

MIKE ONNEN: (Exhibit 1) Thank you. Senator Friesen, Senator Schilz, members of the Natural Resources Committee, my name is Mike Onnen, it's spelled M-i-k-e O-n-n-e-n. I am the manager of the Little Blue NRD at Davenport, and I'm offering testimony today in support of LB206 on behalf of our district and also on behalf of the Nebraska Association of Resource Districts. Erosion and Sediment Control Act, as pointed out by Senator Schilz, was passed in 1986 to address erosion and sedimentation problems throughout the state. Subsequently, the NRDs and Natural Resource Conservation Service and Nebraska Natural Resources Commission developed a program to address damages from wind and water erosion and to reduce nonpoint pollution from sediment and related pollutants. Violations of the act have been handled on a complaint basis. If a property owner was damaged by sediment deposition from an upstream landowner and their attempt to remedy the situation proved futile, they could contact the NRD for assistance and file a formal complaint if they chose to do so. The NRD and NRCS would investigate the problem site to determine if soil loss fits the sheet and rill erosion standards of the law, was exceeding the tolerable limits, and if an approved conservation plan or erosion control practices were in place. If a violation was found, the NRD tried to work with the alleged violator to develop a plan of action to control the erosion and prevent further sediment damage. Most times, the upstream landowners recognized these problems and accepted responsibility to resolve them. The act does, however, provide procedures if the violator refuses to take the proper actions. However,

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if sedimentation was caused by what we call an ephemeral erosion, which oftentimes contribute a greater amount of sediment to downstream lands, the current act does not cover it. Current legislation only allows for the calculations of sheet and rill erosion, those superficial soil erosions which are shown on some attached photos, and I might just refer you to page 3 and 4 of the handout. The top pictures of page 3 show the rill sheet and rill erosion which are small rills or, basically, eroded lines through fields. The bottom of that sheet shows what is called ephemeral and gully erosion. Typically, this is a consolidation of numerous rills to form, kind of, a smaller gully and a washout. And I might also point to photos on the next page which just shows some of the typical erosion and sedimentation problems that we've had to deal with over the years. The top page are just some of those overland runoff sediment problems that have occurred on private lands. And the two photos on the bottom of that page show sediment damage that's occurred in county road ditches as a result of this erosion off of these lands. Oftentimes, the NRDs are called on to investigate sediment damage resulting from this ephemeral erosion which is not calculated in the current law. And, despite the obvious downstream sediment damage, the NRD would have no authority to force an alleged violator to take corrective actions. The bill, LB206, provides several important changes to the act. It better defines excessive erosion, the soil loss tolerance levels, the measures which determine if soil loss from a field exceeds those loss standards. It proposes including ephemeral erosion in the calculation for soil loss. It gives the NRDs the ability to petition the district court for assistance when immediate discontinuance of an activity is necessary to reduce or eliminate damage to a neighboring property from erosion. The bill eliminates a problematic clause in the statutes that states that a violator of the act is not required to reduce or eliminate documented erosion problems unless there's 90 percent cost share available. Such wording rewards the violator for being uncooperative or resistant to conservation implementation regardless of the damages that are occurring. In some cases, violators have encouraged neighbors to file complaints so they can take advantage of this 90 percent cost share. Cost share would still be available under the law, providing corrective action based on the current standards or current cost share rates of the district, typically 50 percent to 75 percent. The original bill, as indicated by Senator Schilz, did not address normal operations of irrigation districts and NPPD. So we have been working with them to include an exemption for their operations. So any of the normal flushing of head gates and so forth in their operations would not be considered erosion sediment under this law. We are working on some language. I think what I have listed in this paragraph is not entirely accurate because we believe there is probably some additional wording that might be more...clean up some of the vagueness. The statement that we would suggest adding to this legislation as an amendment to those land...non-agricultural land disturbing activities would be activities related to the operation, construction, or maintenance of industrial or commercial public power and irrigation district facilities or sites. When such activity is conducted pursuant to the federal law or is part of the operational plan for the facility or the site. [LB206]

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SENATOR FRIESEN: Are you pretty close to wrapping up? [LB206]

MIKE ONNEN: Yes. So in conclusion, recent years have seen historic numbers of acres taken out of CRP and marginal lands broken for farm production. Greater soil erosion, sedimentation damage and stream degradation are all very real threats from soil erosion and sediment in our environment. This is a very important bill for the NRDs and we would encourage the committee to support the bill and ask that you forward it to the floor. Thank you very much. [LB206]

SENATOR FRIESEN: Thank you, Mr. Onnen. Any questions from the committee?
Senator Schnoor. [LB206]

SENATOR SCHNOOR: Have you ever had to take action on somebody that didn't follow their conservation plan? [LB206]

MIKE ONNEN: We have had only one case that we had to file a formal complaint. Most complaints are handled cooperatively with the landowners. We've had one, though, that we actually had to file a cease and desist order on. [LB206]

SENATOR SCHNOOR: You know, ultimate...what it used to be is the common threat was, we'll get you pulled from the farm program and you won't get any payments. Well, since that's gone away, you know, is...you know, you say there's legal action, but is...will the NRDs really go to that level to make people comply? [LB206]

MIKE ONNEN: There have been some cases in other districts that they've actually gone to court. [LB206]

SENATOR SCHNOOR: Yeah. [LB206]

MIKE ONNEN: We have not in our district. [LB206]

SENATOR SCHNOOR: All right, thank you. [LB206]

SENATOR FRIESEN: Thank you, Senator Schnoor. Senator Kolowski. [LB206]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Sir, on budgetary help for getting the farms within your own budget, how do you manage that and do you have enough and is it going far enough to do the job? [LB206]

MIKE ONNEN: Typically, between funds that are provided by the Nebraska Soil and Water Conservation program and at our own tax levy in our district, we have had adequate funding to provide that. But the concern we've had with the 90 percent in the past is, simply, that it rewards the violators and oftentimes it doesn't get to the problem

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unless you go the entire process. And our goal would be to try to get there before we get...require some kind of formal action. [LB206]

SENATOR KOLOWSKI: If needing more money, do you have enough to raise your levy and do the right things? [LB206]

MIKE ONNEN: Yes, we do. [LB206]

SENATOR KOLOWSKI: Thank you very much. [LB206]

SENATOR FRIESEN: Thank you, Senator Kolowski. Senator McCollister. [LB206]

SENATOR McCOLLISTER: Thank you, Senator. I'm probably going to display my ignorance and my new existence on this committee, but what happens with a natural disaster like the events that occur in the Missouri River or something that can't be tracked back to a specific operator? [LB206]

MIKE ONNEN: Typically, the law, the way we've implemented it in the past, if you have, for example, a 7- or 8-inch rain and you have erosion off those tracks, most...those things are kind of acts of God that...which we give some consideration to. But if they are activities that continue to go on and on and they're...it doesn't appear to be any effort to try and control those, those are the kind of things we like to get at. [LB206]

SENATOR McCOLLISTER: I kind of recall that even though a big rain storm of that magnitude would come down, if some landowner had changed the course of the river in some way, they were held to be liable and had to make changes. Isn't that correct? [LB206]

MIKE ONNEN: Typically, and I know these days, the Corps of Engineers are much more aware of channel changes and things like that. So if there has been something like that done in the past, may contribute to a problem, we actually can confer with the Corps about those kind of issues as well, if it's been a channel change for example. [LB206]

SENATOR McCOLLISTER: Thank you very much. [LB206]

SENATOR FRIESEN: Any other questions? Senator Hughes. [LB206]

SENATOR HUGHES: Thanks for coming in today, Mike. I'd like to expand a little...have you expand a little bit on the sheet and rill erosion, if you could, please. What...who develops those standards and, you know, I understand the enforcement mechanism, but, expand on those a little bit if you would, please. [LB206]

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MIKE ONNEN: Okay. Sheet and rill erosion and gully ephemeral erosion are terminology of the Natural Resources Conservation Service. And I think in answer to the question you had earlier, the law typically...the calculations that the NRCS can make that apply to this law only apply to sheet and rill erosion because that's the way their program is set up. It's general terminology for those kind of minor actions. Although they recognize ephemeral gully erosion, the calculations that they make in the field don't calculate the tons of the soil lost. And that's something that they're very willing to work with us on to develop a process for evaluating and calculating what the tons per acre loss for fields are. Sheet and rill erosion is fairly common. One of the things that we've noticed, especially since many farmers have gone to no till is that a general covering of the land with crop residues limits or reduces a lot of the sheet and rill erosion, but it kind of concentrates it in low spots. And those low spots in the field are where we see the gully erosion starting to develop. We've even had folks from NRCS admit there is some problems there. But under the current law, there was nothing we could do with it. And if a person was implementing a plan that had residue management as part of his plan, then they were in compliance for all practical purposes, even though there was consistent damage occurring downstream. So, I don't know if that entirely addressed your questions. Most of this is terminology that the NRCS uses in calculating soil loss in tons per acre. [LB206]

SENATOR HUGHES: Right. Thank you. I guess for my urban colleagues, there are a lot of...and Senator McCollister, you touched on it a little bit there, when you're dealing with Mother Nature, it's very difficult to anticipate events that are completely out of your control. I do have a concern about this. I do know there are individuals in different offices interpret laws differently. They do have standards that they have to meet, but the rigor which was they like to enforce them on private property owners, private property rights is a concern in areas. So that's my concern. To me, you know, when my neighbor's soil blows over on me, I'm very glad to take it because I trap that with my residue. When the big rain comes and, you know, you cannot control what Mother Nature deals with you. You can try to mitigate it as best you can, but there are instances where it cannot be controlled. And, you know, this...I have a concern with this. Thank you. [LB206]

SENATOR FRIESEN: Thank you, Senator Hughes. Any other questions from the committee? I do have a couple of questions. So when you're setting the tolerance level, does each NRD is going to set its own tolerance level? [LB206]

MIKE ONNEN: The levels that were set before were based on NRCS standards for the specific soil types. So that's kind of a state-applied objective. [LB206]

SENATOR FRIESEN: So those numbers are already in place... [LB206]

MIKE ONNEN: Typically for various soil types, yes. [LB206]

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SENATOR FRIESEN: So then if you would...you're not really going to go out and look for problems, you're waiting for other people to report problems and then you will go out and investigate them, is that the idea of how this will work? [LB206]

MIKE ONNEN: We've handled...and most of the districts I know have handled them on a complaint basis. The law does provide that the NRDs can initiate a complaint if they see it, but the only time...I don't know that any district has really gone looking for the trouble, but they've waited for complaints to come from residents. [LB206]

SENATOR FRIESEN: So if you would find a violation, do you...I take it you work with the NRCS office then which...the new federal farm bill puts you...you have to be in compliance with all conservation efforts to purchase federal crop insurance, so those two are tied together. The farm program otherwise is probably not a big impact, but the federal crop insurance is. So do you work with NRCS office then and find that any violations have occurred and... [LB206]

MIKE ONNEN: Yes, we...they are the people we go to to go in the field with as each time we investigate a complaint. [LB206]

SENATOR FRIESEN: Okay. So do you...is there a...there's the whole hearing process then if somebody finds that they're...if you find that they're in violation, they have access to a hearing process. [LB206]

MIKE ONNEN: Yes. [LB206]

SENATOR FRIESEN: Okay. Those are usually set up within each NRD, the process that you follow? [LB206]

MIKE ONNEN: Yes. And actually if I can talk a little bit about our history. We've only had two hearings, I think, since this law has been enacted. So in most cases, we work with the person who is a violator, point out the problems, we work with the NRCS to try to develop a plan for them. And they offer a schedule of compliance and take care of the issues. So there's not a lot of cases where we've had to pursue other action, because most times they can see the problems that exist. But, like I said, ephemeral and gully erosion are just out of the realm of our grasp right now with the act. [LB206]

SENATOR FRIESEN: So in your past experience, when you get one of these large rain events, 4 or 5 inches, how do you address that at that point? [LB206]

MIKE ONNEN: We had one of those last year, as a matter of fact, and the problem is not entirely resolved. We had two landowners, one had just broken up a lot of fairly marginal ground for irrigation. And he got, I think it was around 5.5 inches of rain, had

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significant runoff that went across another neighbor's, and actually enough runoff that it changed a natural channel across...and he had gravity-irrigated field below him, and it deposited a lot of sediment in a county road ditch. He was aware of the problem. He did not...his conservation plan had been written, but it wasn't fully enforced. And I don't know if the NRCS had given him a waiver because there was not time to apply the cover crops and those more...the steeper areas of the field. So it was just one of those things that kind of fell between the gap there with timing as far as his implementation of his conservation plan. We've since worked with him. There was some actual land damage that was done on his because of it that had to go in and be repaired too. But, again, he understood the problem; his neighbor understood the problem. There was just...it was a little bit more difficult getting...helping the neighbor to get his gravity field back in shape as a result of it. [LB206]

SENATOR FRIESEN: Okay. Thank you. Senator Schnoor. [LB206]

SENATOR SCHNOOR: So if I'm understanding this correctly, in most cases we're hearing legislation to make bills more strict to take out the vagueness of it to make it more clear. In this case, we're asking to make it a little more vague to allow the NRDs more flexibility to enforce the rules. Am I understanding that correctly? [LB206]

MIKE ONNEN: Well, the standards will have to be adopted...or worked on between us and the NRCS to actually determine how that calculation of gully erosion would be determined, because that's not a set standard right now. [LB206]

SENATOR SCHNOOR: Because I do agree with Senator Hughes, there are members of NRDs that, I guess in my opinion, tend to flex their muscle sometimes. And in this, which seemed to...I guess, with the making it a little more vague would give them more opportunity to do so. You know, granted, they're human, everybody is human, and there's a lot of interpretation on everything, just as there are in those pictures, and this, I could see, could increase that as well, you know, possible. [LB206]

MIKE ONNEN: Possibly. Remember, we are responsible for soil conservation is one of our authorities as well, so. [LB206]

SENATOR SCHNOOR: I understand, understand. Thank you. [LB206]

SENATOR FRIESEN: Thank you. Any other questions? Senator Hughes. [LB206]

SENATOR HUGHES: One last question. If we were to pass this out of committee and go through the legislative process and become law, any speculation on your part as to what you think the increase in incidents? As you've said, you've dealt with two in the past. I mean would this...is there a problem out there that this specific language would allow you to do more of what you're chartered to do, or is this just language that could

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be considered preventative, that if there is an issue in the future, you would have the tools to do with what you need? [LB206]

MIKE ONNEN: I think there would be more cases that we would be able to find solutions. There has been a number of cases in the past that we have had complaints from downstream landowners. We've gone to NRCS, we've investigated and found that sheet and rill erosion was not a problem, or they may have had adequate land cover for their conservation plan, but they've still got a problem that continues. And the downstream people are paying the price because of the sedimentation. I think we will see more situations where we actually are able to get at the problem and either work with them to put on some kind of a sediment control structure, terraces with tile drains to reduce that kind of runoff or something like that, to prevent those kind of long-term impacts. So I do see...I see the program in this format actually giving us an opportunity to work with more farmers in solving problems. [LB206]

SENATOR HUGHES: So the two incidents you have worked, with approximately how many with this new language would you have worked with during that same time frame in the past? Approximately. [LB206]

MIKE ONNEN: Well, we've worked with more than two. There's only been two that have gone the full process. [LB206]

SENATOR HUGHES: Right. [LB206]

MIKE ONNEN: We've worked with probably 20 or 30...as a matter of fact, we probably get two or three a year that are complaints to us that we're able to work with them. I suspect this would include...increase our load at least 50 to 75 percent. [LB206]

SENATOR HUGHES: Okay. [LB206]

MIKE ONNEN: Because we do have a number of complaints that are made that oftentimes we've looked at and said there's not anything we can do with (inaudible) to help you. And that always frustrates the downstream people because they see us as the parties responsible for some of this erosion problems...or responsible to help control them, not (inaudible) them. [LB206]

SENATOR HUGHES: Thank you. [LB206]

SENATOR FRIESEN: Thank you, Senator Hughes. Senator Kolowski. [LB206]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Sir, on the...what anticipatory things do you do with contour plowing, classes or showcases for farmers in no till to hold the soil in place? Do you do a lot of things with all those areas? Because I don't think...I

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can't imagine any farmer that would like to lose half inch or inch of his best topsoil by letting those rains wash that away all the time and the end result of all that is extended bayous down in Louisiana. We all know where this goes. So what do you do to proact...to help the farmers realize they could do something differently and hold that ground? [LB206]

MIKE ONNEN: Well, we have an ongoing conservation program, newsletters, news releases that we use. And just this last year we adopted a district-wide mandatory operator training. We've applied that mostly to groundwater training, but our first two training events have had speakers that have talked about soil health which has been one of the things that I think, along within NRCS, we really like to focus in our district, because many of the things the NRDs do from soil-water conservation to water retention, saving water for less irrigation application, cover crops and soil health can support many of those goals and objectives of the NRDs. [LB206]

SENATOR KOLOWSKI: Thank you, appreciate it. [LB206]

SENATOR FRIESEN: Any other questions from the committee? I have one more. If this gets enacted, then your...the NRDs' regulations would be stricter than NRCS? Typically, a person could be totally in compliance with NRCS, but not in compliance with the NRD? [LB206]

MIKE ONNEN: Right now their standard only allows them to measure sheet and rill erosion. They recognize there are problems with that formula. They recognize that there are some things that they could do with this bill that would actually help them and prevent erosion as well. But yes, I suppose you could say our standard may be, depending on our board of directors' views of things, they may be a little bit more strict than the NRCS's. [LB206]

SENATOR FRIESEN: Because I was just trying to tie the two together again. You know, if somebody was in compliance with NRCS and therefore there would be no effect on their crop insurance or any other programs, that they could still be found out of compliance with the NRD? [LB206]

MIKE ONNEN: Yes. [LB206]

SENATOR FRIESEN: Okay. [LB206]

MIKE ONNEN: If there's an ongoing problem that should be resolved. [LB206]

SENATOR FRIESEN: Okay. Thank you. Any other questions? Thank you, Mr. Onnen. [LB206]

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MIKE ONNEN: Thank you. [LB206]

SENATOR FRIESEN: Any other proponents? [LB206]

ROBERT HILSKE: (Exhibit 2) Good afternoon. My name is Robert Hilske, R-o-b-e-r-t H-i-l-s-k-e. I'm the general manager of the Nemaha Natural Resources District, and I'm here today in support of LB206. And I'm also representing the Nebraska Association of Resources Districts and the Nebraska Water Resources Association. All of these entities also support the efforts that Senator Schilz is making with the amendment that is going to address the irrigation district and power district concerns on the releases for...when they do their normal operational activities. We've looked at some of those, the wording on that, and we're okay with it. As Mike had mentioned, the Erosion and Sediment Control Act was passed back in 1986. At the time, it was a dramatic step forward in the management and protection of soil resources in Nebraska. The complaint process provided for in the act allowed NRDs to address many situations where excessive erosion had created unnecessary economic damage downstream to downstream ag producers, landowners, businesses, and homeowners. The past 30 years we've handled numerous complaints and throughout that process we've learned the strengths and weaknesses and the shortcomings of the process. And what we're trying to do here with LB206 is address some of those shortcomings. What, as Mike noted, what the bill would do, it would give us a broader spectrum of sediment sources by allowing the ephemeral gully and gully erosion where it could be calculated when handling complaints from landowners. There have been a number of times when we look at situations where there's definitely economic damage. And that's the key to this particular process. There has to be economic damage to a downstream landowner. And typically we're handling complaints from neighboring landowners and if the downstream landowner is getting economic damage from sediment, that's when the complaint process can get...kick in. And there are a number of times when it's clearly economic damage, but we cannot go through the complaint process and it has to be dropped because of the limitations in the act. It does offer NRDs to establish soil tolerance levels that better reflect potential for erosion and sedimentation. The NRCS formulas are based on the soil's production capability, not necessarily the potential for erosion. Two major concerns that this will also address is the ability for a cease and desist order in situations where we have poorly planned, nonagricultural activities that are causing situations to a downstream landowner of economic damages. This does not include situations where...this does not include normal agricultural activities, cultivation and that sort of thing. It would be a construction project, that type of thing. Also as Mike noted in the previous testimony, that it would eliminate the 90 percent cost share requirement that is in the present act. And I can tell you that there are...have been situations where landowners have asked downstream landowners to file a complaint so they can get the 90 percent cost share. And the philosophy is from NRDs, after 30 years, that we shouldn't be awarding violators for something they are doing wrong by giving them a greater amount of cost share than a person that's doing the things the right way should

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get. But over the past 30 years, we've worked hard with agriculture producers, contractors, businesses, and we've been in the forefront with these groups to assure that we have the...to help protect Nebraska soil resources. And we want to be the best stewards of our soil and the proposed changes here will help us carry out our mission. So on behalf of the Nebraska Association of Resources Districts, Nemaha NRD, and the Nebraska Water Resource Association, I would hope that you would adopt the changes that are proposed in this bill. Any questions? [LB206]

SENATOR FRIESEN: Thank you, Mr. Hilske. Any questions from the committee? Senator Schnoor. [LB206]

SENATOR SCHNOOR: I guess not so much a question, I do like the fact that it does get rid of that cost share issue that you brought up because it just seems that people that are in violation of this do tend to find every loophole they can to help fix a problem that they've caused originally. Thank you. [LB206]

SENATOR FRIESEN: Thank you. Any other questions? Senator Hughes. [LB206]

SENATOR HUGHES: A couple of the same questions that we asked Mike, in your years as an NRD manager, how many times have you had to go through the full process to...or adjudication or...? [LB206]

ROBERT HILSKE: I went through the whole process one time and it went all the way through court and we lost. And it was lost because it was a situation that...in this case, this wouldn't even have covered. It does say clearly in the act that you cannot have stream bank erosion and sediment from stream bank erosion in the process. And when we went to court in that particular case, I think there were 16 points; the judge ruled in our favor on 15 and the only one that he ruled against us on was that we clearly could not define whether...how much of the soil...the erosion that was occurring or the sedimentation that was occurring came from the stream bank erosion. So we felt like he had to throw the case out. So I did go through the process one time all the way. [LB206]

SENATOR HUGHES: If this were to become law, how much of an increased incidence would that require in your...do you think that would require in your NRD, just based on past experience? [LB206]

ROBERT HILSKE: Again, like Mike had mentioned, we probably get two or three a year. I'm guessing we probably would see two or three more a year that we could address under this situation where we would go out and now and say, you know, we can't address that because it doesn't fit within the scope of the act. [LB206]

SENATOR HUGHES: So it probably would double. [LB206]

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ROBERT HILSKE: Double, right. [LB206]

SENATOR HUGHES: Okay, that's all that I have. [LB206]

SENATOR FRIESEN: All right. Any other questions from the committee? Thank you, Mr. Hilske. Any other proponents? Welcome back. [LB206]

BRIAN BARELS: Thank you. Senator Friesen, members of the committee, my name is Brian Barels, B-r-i-a-n B-a-r-e-l-s. I'm the water resources manager for Nebraska Public Power District, and I appreciate the opportunity to support this bill. As you know, we operate a number of power generation transmission and irrigation facilities located throughout the state of Nebraska. Last year, with the introduction of LB896, it proposed similar revisions to the Erosion and Sediment Control Act as LB206 does. I testified in a neutral position last year on LB896, but identified certain issues of concerns how this bill may or may not affect the facilities we own and operate, whether they be a diversion structure for irrigation or a diversion structure for hydroelectric or the operation of a hydroelectric dam. Those items have been addressed within LB296 and the proposed amendment that Senator Schilz introduced, and basically it clarifies how the bill does not really apply to those. Mostly because those activities are governed under either DEQ regulations or some other manner, some other...Department of Natural Resources rules regarding the operation of dams and the permitting of those facilities. And so it identifies that it's not the intent of the bill to cover those and I guess I would call it kind of a clarification. I'd like to thank last year's committee along with Senator Schilz, Mike and Bob for the work they did with me, and Dean Edson with the NARD for working with me to understand our concerns and helping to recommend solutions that are being proposed in the amendment. With that I'd urge your support to move the bill forward and would be glad to answer any questions you have. [LB206]

SENATOR FRIESEN: Thank you, Mr. Barels. Any questions from the committee? Seeing none, thank you. [LB206]

BRIAN BARELS: Thank you. [LB206]

SENATOR FRIESEN: Any other proponents? [LB206]

JOE KOHOUT: (Exhibit 3) Vice Chairman Friesen and members of the Natural Resources Committee, my name is Joe Kohout, K-o-h-o-u-t, registered lobbyist appearing today on behalf of our client, the Professional Engineers Coalition of Nebraska. The coalition includes the Nebraska Society of Professional Engineers, the Nebraska section of the American Society of Civil Engineers, the Professional Surveyors, and the Structural Engineers (Association) of Nebraska. President of the organization, Dan Thiele, could not join you today to testify. We did want to put ourselves on record, though, in support of LB206. And I'm passing out a letter from Mr.

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Thiele to the same. So with that I'll end my testimony and try to answer any questions that you might have, understanding that I'm an Omaha kid. (Laughter) [LB206]

SENATOR FRIESEN: Thank you. Any questions from the committee? Seeing none, thank you very much. [LB206]

JOE KOHOUT: Thank you, Senator. [LB206]

SENATOR FRIESEN: Any other proponents? Are there any opponents? Seeing none, does anyone wish to testify in the neutral capacity? Seeing none, we will close the hearing on LB...oh, Senator Schilz. [LB206]

SENATOR SCHILZ: I'll waive my closing. [LB206]

SENATOR FRIESEN: He'll waive the closing. Senator Schnoor. [LB206]

SENATOR SCHNOOR: Can I make one statement in the closing? [LB206]

SENATOR FRIESEN: He was going to waive closing. [LB206]

SENATOR SCHNOOR: First off, Mike, if I...if I led you to believe that...we're trying to undermine your authority, I apologize for that. That was not my intent at all; just trying to get some clarification on this. I do agree with Senator Hughes that there are some problems in some areas. But that was not my intent. You know, when you show that there are...these problems exist, I farm, I see it all the time. Some of them can be helped, some of them can't. Some of the people, you wonder how they get away with it all the time. So if this is something that will help you with that, I'm all in favor of that. So I just wanted to pass that on. [LB206]

SENATOR FRIESEN: Okay. Senator Schilz has waived closing and we'll move on to the next bill. Welcome, Senator Schilz. [LB206]

SENATOR SCHILZ: Thank you, Senator Friesen. Good afternoon again. I'm Ken Schilz, spelled K-e-n S-c-h-i-l-z. LB207 is a pretty simple, straightforward piece of legislation to bring penalties in the state Chemigation Act up to date. Since its establishment in 1986, the Nebraska Chemigation Act has served to help assist with water management as chemigation or application of fertilizer and other farming chemicals through irrigation became more prevalent. LB207 would raise the penalty ceiling from \$1,000 per fine per occurrence per day to a \$5,000 fine per occurrence per day. That's the green copy. This, essentially, reflects the changes in inflation over the last 29 years and ensures the penalties still "bite" those who would intentionally violation the act and potentially jeopardize the water quality in their areas. There's been some discussion with Farm Bureau and the NRDs regarding keeping the first offense at that \$1,000 level. I'm more

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than open to this. That works for me. And we have an amendment that goes with that that will be distributed to committee members for addition into LB207 before this bill should get to the floor. So I would encourage you to advance LB207 for consideration before the entire Legislature. Thank you. [LB207]

SENATOR FRIESEN: Thank you, Senator Schilz. Anybody have any questions from the committee? Senator McCollister. [LB207]

SENATOR McCOLLISTER: Thank you, Vice Chair. Will there be some additional proponents speaking on behalf of the (inaudible)? [LB207]

SENATOR SCHILZ: Yeah, I believe so. I think they're behind me. So there will be folks behind me. But part of what's happening is that the thousand dollars, when you go out and you tell somebody it's a thousand dollars, they're just going ahead and keep doing what they're doing, because by the time they get their cease and desist, they're already done chemigating and then they just pay the fine and move on. That's the way I understand it anyway. But there will be people behind me that will... [LB207]

SENATOR McCOLLISTER: We heard this morning that raising the marriage tax 300 percent, (laughter) was a fairly significant change. This is up 500 percent? [LB207]

SENATOR SCHILZ: Yeah. Well, this is supposed to be a fine though, whereas a marriage license is supposed to be...(laughter). [LB207]

SENATOR McCOLLISTER: Can we talk about the difference between a fee and a license...a tax. [LB207]

SENATOR SCHILZ: Not...not...maybe in exec. (Laughter) [LB207]

SENATOR FRIESEN: Are there any other serious questions? (Laughter) Thank you. Any proponents wish to come forward? Welcome. [LB207]

JOHN MIYOSHI: (Exhibits 1 and 2) Vice Chairman Friesen and members of the Natural Resources Committee, my name is John Miyoshi, J-o-h-n M-i-y-o-s-h-i. I'm the general manager for the Lower Platte North Natural Resources District located in Wahoo. Today I'm giving testimony on behalf of my NRD, the Nebraska Association of Resource Districts in support of LB207. Nebraska Chemigation Act was created by state statute to allow irrigators to safely apply pesticides, fungicides, and fertilizers through their irrigation systems, while providing protection to our groundwater. The act specifically lists the equipment and safety devices that irrigators must have in place before chemigation is allowed. The act further requires that each NRD approve rules and regulations for properly carrying out the requirements of the Nebraska Chemigation Act. One of the required rules is that NRDs inspect each chemigation system prior to

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operation to see that the required safety equipment is installed and working correctly. Once a system passes this inspection, the NRD certifies the site for use. The operator must report the amount of chemical applied by the system and renew the chemigation application on an annual basis. The NRD must reinspect the chemigation system at least once every three years. As with any government requirement, there are a small percentage that do not comply with the law. We have experience with unregistered chemigation sites, chemigating without renewing a permit, and chemigating where the system had failed inspection. There are times when we have found it necessary to file a complaint due to a chemigation violation. The process involves investigation by NRD staff and then working with the county attorney and sheriff to issue a citation and prosecution. Each of these cases has the same...has resulted in the...pardon me, each of these cases has involved over 50 man hours of NRD time plus county attorney time and law enforcement. The same results have occurred in each case: the defendant has pled guilty and the judge has imposed a \$100 fine. Our cost for chemigation permits have remained the same since 1987 and that is a \$30 initial fee, \$10 for a permit renewal, and \$100 for an emergency permit. We have had producers tell us they are better off not obtaining a permit and if they are caught, they just pay the fine. This is not a good situation for our groundwater resource. We have producers not motivated to obtain the needed permit; NRD staff and board members who question the value of following through on known violations; and county attorney's who have overloaded schedules and question the use of their time for so small a penalty. Our board has endorsed a solution that would have a violation of the Nebraska Chemigation Act receive the same penalty as a violation for the Nebraska Ground Water Management and Protection Act, which is a civil penalty of not less than \$1,000 or more than \$5,000 per each day a violation occurs. Our district currently has 496 chemigation sites and has successfully ran the program for 27 years. Over this time, we have worked with fewer than ten chemigation violators and have chosen to prosecute four. While this is an extremely small number, one accident could pollute a regional aquifer for decades. We ask your assistance in assuring that our precious water resource is passed to future generations with equal or better quality than we have today. [LB207]

SENATOR FRIESEN: Thank you, Mr. Miyoshi. Any questions? Senator Schnoor. [LB207]

SENATOR SCHNOOR: Thank you, John. First off, one thing I'd like to point out, it's always good to see when the NRD comes, it's usually the boss; it's not the number two guy or it's not a lobbyist, it's always the boss coming here to voice his concerns. So...and honestly, that goes a long way, so thank you. If you could...I am not...I mean I know what chemigation is, I have no experience with it. Obviously, if somebody is doing it without a permit, that's a violation. Could you give me some other examples. [LB207]

JOHN MIYOSHI: Well, as far as the...how it works or? [LB207]

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SENATOR SCHNOOR: No, just an example of a violation. [LB207]

JOHN MIYOSHI: Well, this past summer, we had a lot of rain in June. And a lot of the nitrogen was either not fully applied or the corn got too large to apply it and so we had some people with irrigation systems that just chose to put nitrate nitrogen on through their chemigation system. We don't go out and look for these violators, but if we are out on other business and see it, a board member sees it or a neighbor reports it, we need to follow through on that. The ones that were turned in to us this past summer, we handled in our normal method which is just about every irrigator in the district one of our staff knows. And we just call them up, say it's been reported that you're chemigating out there. We don't have an approved permit for you. When can we schedule an inspection within the next week? And at the inspection...and we also let them know if there's more than one site we need to inspect and approve all those at that time. We say...tell them when we get there, we expect all the safety equipment will be in place. We do a normal inspection. If they haven't paid the fee for the year, we collect that at the time. Normally, that works; once in awhile they need to be pushed a little bit more. And those are the times when we need to get the legal system involved. We do...if there's push back, we tell them to contact their attorney. We've educated several attorneys over the year on the chemigation act. [LB207]

SENATOR SCHNOOR: So are most of your violations...they're literally doing it when they...when they're not supposed to be? Or is it equipment violations, like they don't have proper check valves in place? [LB207]

JOHN MIYOSHI: Most of them, especially this year, just did not have a permit to do it. They had not been inspected. We've had some over the years that had been inspected in previous years; they did not do their renewal. We've had others that failed the inspection so they were not certified. And when they fail the inspection, there's equipment they need to fix on the system. They did not make the repairs and began chemigating without a permit. [LB207]

SENATOR SCHNOOR: Thank you. [LB207]

SENATOR FRIESEN: Senator McCollister. [LB207]

SENATOR MCCOLLISTER: Thank you, Senator. Your testimony, John, indicates that the permit process is primarily directed to the equipment. I would guess that part of the permit process, somebody has to be trained and determined to be competent. Isn't...is that part of the permit process? [LB207]

JOHN MIYOSHI: Yes, again, by state statute they need to be a certified chemigator applicator. And it's either the landowner or the tenant on the property or they can hire a firm also to do the chemigation for them. But one of the people in that line need to be a

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certified chemigation applicator. [LB207]

SENATOR McCOLLISTER: How often do they go through retraining or continuing education? [LB207]

JOHN MIYOSHI: Good question. On chemigation, that's a five-year time span. Some of the other programs are not consistent with that, they're four, but it's five years. They can either do that at a class, or there is an on-line course that they can take and pass it that way. [LB207]

SENATOR McCOLLISTER: In your experience, have you found them to be pretty competent? [LB207]

JOHN MIYOSHI: Most of them are. You know, despite what some people think, most of our irrigators are extremely competent, they're businessmen out there that are running that business. They're working with big dollars and they know what needs to be done. [LB207]

SENATOR McCOLLISTER: Thank you, John. [LB207]

SENATOR FRIESEN: Senator Johnson. [LB207]

SENATOR JOHNSON: Thank you. Thank you, John, for coming in. Been 10 years or 11 years since I've been involved in the industry directly. I know at times, dry years and they have ample time to get the chemicals on through the system, wet years and they wouldn't run them, what's the trend now? Is there more people going to this or is this...as far as chemigation? How popular is it now? [LB207]

JOHN MIYOSHI: Three years ago, and I'd say for the ten years before that, we averaged in the low three hundreds, and we've jumped up to almost five hundred. In the past three years, we've added two hundred in the last three years. And 95 percent of the chemical applied is nitrogen, it's fertilizer. Now there's a little bit of Lorsban. Last summer, we did pick up some on the fungicide, but it's mostly nitrogen fertilizer. And the trend is up, not just our district, but across the state. [LB207]

SENATOR JOHNSON: Okay, one more, this...the penalty, the fine, that is per...I mean, the permit for the applicator is for all their systems. There's a permit fee for each system? [LB207]

JOHN MIYOSHI: Yes. [LB207]

SENATOR JOHNSON: And the fine, if they have five systems and they're running, there's five fines? [LB207]

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JOHN MIYOSHI: That's one of the items we're talking about now. I think there will be some type of amendment to make that clear. There was a violation out west where there was an owner with five unregistered systems. The NRDs, we always felt that that was five separate violations. When it went to court, the judge gave him a single \$100 fine. [LB207]

SENATOR JOHNSON: So they're going to work on that? [LB207]

JOHN MIYOSHI: And so we...yes, that's one thing we'd like to add. The amendment offered with...we're working on with Farm Bureau, we look at that as a friendly amendment. [LB207]

SENATOR JOHNSON: Okay. [LB207]

JOHN MIYOSHI: So Senator Schilz will work that out with...between Dean Edson and Farm Bureau. [LB207]

SENATOR JOHNSON: Thank you. That's all I have. [LB207]

SENATOR FRIESEN: Are there any other questions? So, one question from me is...have you ever run into a situation where there's been a co-op or somebody that offers a service that did the fertigation and did not have the equipment in place? Have they all...there's been some commercial operations, I know, in our area that...I know they're saying that the farmer needs to have his system inspected, or anything, but I was wondering if there had been any violations from them? [LB207]

JOHN MIYOSHI: No, the people that are doing this commercially, I think they cannot afford to fail. And those have been very good at educating our farmers and carrying through on the responsibilities. [LB207]

SENATOR FRIESEN: Okay. [LB207]

SENATOR SCHNOOR: I do have one question to add on to that. Who does the reliability...reliability...the liability go to, then, if they hire a commercial company to come take care of their chemigation? [LB207]

JOHN MIYOSHI: Well, ultimately it's back on the landlord. Now it's between the landlord and the company he hires if there's problems with that. There's a violation, I'm sure we would have both of them in front of us. But, ultimately, it is the landowner. [LB207]

SENATOR SCHNOOR: Okay. [LB207]

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SENATOR FRIESEN: Seeing no further questions, thank you, John. [LB207]

JOHN MIYOSHI: Okay. Thank you. [LB207]

SENATOR FRIESEN: Any other proponents? [LB207]

PAT O'BRIEN: Good afternoon, Senator Friesen, Chairman Schilz, members of the Natural Resources Commission...or committee, jeez...commission all morning, so. My name is Pat O'Brien, P-a-t O-'-B-r-i-e-n and I'm the general manager of the Upper Niobrara White NRD out of Chadron, Nebraska. And I did have a written testimony prepared today, but John covered a lot of it. But I would like to answer a couple of the questions that were brought forward. Senator Friesen, we have over 1,200 systems in our area and it takes us quite a bit of time each year to do the inspections on those and to make sure that we have a lot of compliance. We also get about 15 inches of rain a year, so irrigation is much more necessary to produce crops out there. Senator Schnoor, some of the other violations are...that can occur, not just with a permit, but you do have an uncertified applicator doing that; you have failed equipment, like the mainline check valve; you have a chemigation injection valve;... [LB207]

SENATOR SCHNOOR: Okay. [LB207]

PAT O'BRIEN: ...and then an interlock device which prevents both the pivot and the chemigation system to shut down, if one shuts down so you're not having chemical being pumped in or water being pumped when there is no...one of them has quit. So...and there's also an electrical issue too where it's a safety issue for both the operator and our inspectors, etcetera, so. And John did mention that we did have the occurrence out this year, that was my NRD, where one of my inspectors found five systems that were not permitted. One of them had a failed mainline check valve as well. And the operator was chemigating with it. We turned that over to the county attorney and we got a \$100 fine out of it. So as he indicated, it's really not...it seems to be not worth the county attorney's time. I don't think they understand it very well because it's not very common, which is a good thing that it's not very common. The Attorney General usually wants to defer it back to the county attorney because, again, it seems to be small potatoes to them. So it boils down to--do I pay \$100 fine or do I get the \$150 permits that I would spend, saving \$50. So it's a financial situation. With advancement of LB272 last year, the districts were able to set their own permit fees to try to cover some of the inspection costs. So it would have been from a \$375 application, so he's looking at saving even more money without doing that and then taking the chance, so. With that I would answer any more questions. Hope that was a little helpful. Yes, Senator. [LB207]

SENATOR FRIESEN: Senator Schnoor. [LB207]

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SENATOR SCHNOOR: So, Pat, so a person...a farmer could have a thousand-gallon fertilizer tank and his mainline check valve fails and it can syphon all that back into the well and contaminate the entire water system for who knows how many people and there's a \$100 fine? [LB207]

PAT O'BRIEN: Correct... [LB207]

SENATOR SCHNOOR: Okay. [LB207]

PAT O'BRIEN: ...or five times in a situation. If it would have happened that we didn't catch it and inspect them on the day we did. [LB207]

SENATOR SCHNOOR: Okay, thank you. [LB207]

PAT O'BRIEN: Yep. [LB207]

SENATOR FRIESEN: Senator Kolowski. [LB207]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Pat, I'm just wondering about the nitrate levels in the water...with the testing that NRDs do around the whole state, are they going down? Are we getting any results that are positive because there's been some modification over time as far as better equipment and everything else as far as usage? [LB207]

PAT O'BRIEN: I think the answer is you've got 23 different districts. You have multiple soil types. You've got a lot of different ways of doing things. So yes and no. I think we're certainly getting some advantage on everything. And chemigation or fertigation is one way that we're actually protecting the groundwater from over "nitritization" if that's a word even. But with the flood irrigation and being...putting it down all in the spring, you're forcing it down...usually, especially if you get some spring rains. So they are making advances. I do know Central Platte NRD is seeing about a 20 percent decrease in some areas by their programs with chemigation being one of them. [LB207]

SENATOR KOLOWSKI: We've had our issues with our neighbors across the...to the north of us with the Papio and Kennard and other locations where their water is almost undrinkable. [LB207]

PAT O'BRIEN: And most of the producers, as John said, are businessmen and they realize that if they're pushing their nitrogen past their root zone they just lost money. [LB207]

SENATOR KOLOWSKI: Thank you. [LB207]

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SENATOR FRIESEN: Are there any other questions? One question I had I guess was if...clarify a little bit, like you said, the mainline check valve had failed, wasn't working, but that doesn't mean that there was any leakage back to the aquifer. In his case, his system didn't break down. But if, for instance, you would catch a system that contaminated the groundwater, is there any cleanup that's required then of that operator? [LB207]

PAT O'BRIEN: Yeah, we can require cleanups. We'd work with the Department of Environmental Quality to determine how much was lost and what the level of cleanup could be. The good thing about it if it's nitrogen, it tends to float, if you will, so cleaning it up could be, actually, irrigating more and using it. But then making sure that you're not putting additional nitrogen in your system so you're actually pumping it out of the ground at the same time. If it's a chemical that is a pesticide or something that's registered or labeled, actually FIFRA can get involved and so that elevates it even more to EPA. [LB207]

SENATOR FRIESEN: So sometimes it's not just as simple as a hundred dollar fine. There's also cleanup costs involved if contamination occurs. [LB207]

SENATOR SCHNOOR: Yeah, thanks. [LB207]

SENATOR FRIESEN: Not quite as cheap as getting off as it sounded. [LB207]

SENATOR SCHNOOR: I have no experience with chemigation, so just like to get some clarification on all of it. [LB207]

SENATOR FRIESEN: Yes. Any other questions from the committee? Thank you, Pat. [LB207]

PAT O'BRIEN: Thank you. [LB207]

SENATOR FRIESEN: Any other proponents? Welcome. [LB207]

JAY REMPE: Thank you, Senator Friesen and members of the Natural Resources Committee. My name is Jay Rempe, J-a-y R-e-m-p-e. I'm with Nebraska Farm Bureau here today in support of LB207. And just real quick, we do support the bill. We recognize the problems that exist under the current law. And it doesn't always serve as a deterrent to those that choose to violate it. When we visited with our legislative committee a little bit about this issue, they were very supportive of raising the fine levels. The only concern they had was for somebody on a first offense. The idea of going up to \$5,000 for a first offense per day for a violation seemed a little steep for the first time. So worked with Dean and many of the NRD managers and came up with the language that's before you that would set the fine at \$1,000 per day for each violation

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for first offense, and then after that throw the book at them and do the \$5,000. So, and I'll leave it at that. [LB207]

SENATOR FRIESEN: (Exhibit 3) Thank you, Jay. Any questions from the committee? Seeing no questions, thank you, Jay. Any other proponents? Are there any opponents? Anybody wish to testify in the neutral? Okay, we have one letter here from Central Platte NRD in support of LB207. And with that we'll close the hearing on LB207. [LB207]

SENATOR SCHILZ: I'll waive closing. [LB207]

SENATOR FRIESEN: Oh, sorry, again. [LB207]

SENATOR SCHILZ: That's fine. I was going to waive anyway. [LB207]