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Transcriber's Office

Natural Resources Committee
February 06, 2015

[LB203 CONFIRMATION]

The Committee on Natural Resources met at 1:30 p.m. on Friday, February 6, 2015, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB203 and gubernatorial appointments. Senators present: Ken Schilz, Chairperson; Curt Friesen, Vice Chairperson; Dan Hughes; Jerry Johnson; Rick Kolowski; John McCollister; and David Schnoor. Senators absent: Brett Lindstrom.

SENATOR SCHILZ: Good afternoon, everyone, and welcome to the Natural Resources Committee. Today, we have one bill and a confirmation hearing. I'm Senator Ken Schilz from Ogallala and I represent District 47. I also Chair the committee. I'll go around and let Senator Kolowski start with introductions for the rest of the committee members.

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

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

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

SENATOR FRIESEN: Curt Friesen, District 34, Hamilton, Merrick, Nance, part of Hall County.

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

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

SENATOR SCHILZ: There you go. Thank you. And Senator Lindstrom, Brett Lindstrom from Omaha, is introducing a bill and he will probably not make it here today. We also have with us today Barb Koehlmoos, who is the committee clerk, and Laurie Lage, who is legal counsel for the committee. We have our page today, Jake Kawamoto from...he goes to school at UNL. He's a sophomore studying political science. And on the agenda today, we have confirmation of Thomas Oliver, to the Oil and Gas Conservation Commission, and we also have LB203. And if you're planning on testifying, please pick up a green sheet that's on either side of the room on the table back there. 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 sign as well, and this will make it part of the official record. Please fill out the sign-in sheet before you testify. Please print and it's important to complete the form in its entirety. When it's your turn to testify, give the sign-in sheet to the committee clerk and this will help us make a more accurate public

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record. If you do not choose to testify, you may submit comments in writing and have them read into the official record. If you have handouts, please make sure you have 12 copies for the pages to hand out to the committee. And when you come up to testify, please speak clearly into the microphone. Tell us your name and spell your first and last name even if it's an easy name. Please turn off your cell phones, pagers, or anything else that makes noise, and please keep your conversations to a minimum or take them out into the hallway if you have to. No displays of support or opposition to a bill, vocal or otherwise, is allowed in a public hearing. We do use the light system in the Natural Resources Committee, a total of five minutes. If...you get a green light for four minutes, you get a yellow light for one minute, and when that's done, the red light comes on and that's five minutes and we would ask you to stop at that time. And with that, we will go ahead and take off and start out with the confirmation of Mr. Thomas Oliver. Mr. Oliver, welcome to the Natural Resources Committee. [CONFIRMATION]

THOMAS OLIVER: Thank you. [CONFIRMATION]

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

THOMAS OLIVER: Committee, staff, glad to be here. [CONFIRMATION]

SENATOR SCHILZ: Go ahead whenever you're ready. [CONFIRMATION]

THOMAS OLIVER: Well, if you'd permit me, I'd like to give a little bit of personal background, professional background. [CONFIRMATION]

SENATOR SCHILZ: Your name, please. [CONFIRMATION]

THOMAS OLIVER: (Exhibit 1) Thomas Oliver, T-h-o-m-a-s O-l-i-v-e-r. I'm an attorney from Bridgeport. I was born and raised in Bridgeport. Went to the University of Nebraska in Lincoln and after I graduated from there, went to Nebraska College of Law. Practiced a couple of years in a small practice in Colorado, then went to work for Chevron, and then Seagull Energy for 18 years in Denver and Houston. At the end of...well, 1998, we decided, for several reasons, to move back to Bridgeport. My wife is from Lincoln. Our parents were aging and we thought we should be closer to help support them. I was commuting about three hours a day and our daughters were 13 and 16, I wanted to be able to be more involved in their lives and their activities and Bridgeport certainly gave me that opportunity--opened a private practice there. Now in my time at Chevron and Seagull, I was involved in negotiating and drafting contracts with other companies, with individuals, with government entities, and Indian tribes. I also had opportunity to represent Chevron before the Federal Energy Regulatory Commission in several

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matters in the California Public Utilities Commission. So, I have a lot of experience on the industry side, understanding issues, working with various parties. When moved to Bridgeport, and that was in 1998, since then I've had quite ample opportunity to work with landowners and mineral owners in representing them in various issues that they face. So, I feel like I bring kind of a balanced experience and background to this position, if you would see fit to confirm me. I think that's one of the purposes of the statutes for oil and gas and the commission is to make sure that we protect the correlative rights of interested parties. And so, of course, that not only involves applicants that might come for various developments, but also the landowners and the mineral interest owners, so that we develop our oil and gas resources, but we do it in a manner that we protect the interested parties in that also. [CONFIRMATION]

SENATOR SCHILZ: Great. Thank you, sir. Any questions for Mr. Oliver? Well, I guess...why don't you just start out a little bit by maybe explaining...we've got quite a few new members on the committee. Is this a reappointment or is this a new appointment? [CONFIRMATION]

THOMAS OLIVER: New appointment. [CONFIRMATION]

SENATOR SCHILZ: New appointment. Are you familiar with the commission and its workings and... [CONFIRMATION]

THOMAS OLIVER: I've had a couple of meetings with the commission so far.
[CONFIRMATION]

SENATOR SCHILZ: I see. Well, why don't you do us a favor and just kind of explain what the commission does, what their function is, and what you feel your role will be in the commission.
[CONFIRMATION]

THOMAS OLIVER: Sure. I think a lot of the operational factors are taken care of by the director and his staff and I've been really impressed with the professionalism there, their background and knowledge in exploring issues, particularly their willingness to talk to people that have called in about questions or applicants. Where the commission would probably be involved would be hearings to change, say, spacing units. There are statutes and regulations that provide for how oil and gas is to be developed to make sure it's done in a manner that will ensure the most recovery. For instance, if one drills too many wells into a formation, you lose the pressure and you're not able to recover the maximum amount. So, we have some standard spacing rules, 40 acres for an oil well, for instance. And sometimes you'll have occasion to have exceptions to that and, of course, in those situations then we require evidence to be presented, parties to come and testify pro and con against that, and then make determinations in that. That's changed a little bit with the advent of horizontal drilling, which is the...instead of just drilling straight down to a formation,

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you drill down at a curve and that permits you to access more of a formation. That may be in one specific place you may not be able to recover that much, but by going through...it's quite amazing engineering, but that requires larger tracts of space. And then in addition to that, what one would be looking for is proofing all the owners in that so that they have the percentages according to their interest, their...the acreage that they own so that they can all participate in that and that requires a hearing and unitization of that development. So, again, it goes back to protecting the correlative rights, making sure that the operational aspects are overseen by the technical people, that legal issues and development issues are examined by the commission. [CONFIRMATION]

SENATOR SCHILZ: Very good. Senator McCollister. [CONFIRMATION]

SENATOR McCOLLISTER: Thanks and thanks for being here. Thank you, Mr. Chairman. Just three or four questions that...so you've got quasi-regulatory function in your office, is that correct? [CONFIRMATION]

THOMAS OLIVER: That's correct. [CONFIRMATION]

SENATOR McCOLLISTER: And you...do you have any environmental responsibilities as well? [CONFIRMATION]

THOMAS OLIVER: I don't believe so other than what would be under the statutes in making sure that parties development or the developers, operators comply with the environmental safeguards that are built into drilling a well, producing it, and plugging it. [CONFIRMATION]

SENATOR McCOLLISTER: And we've heard a lot about fracking and whether or not that's environmentally safe. Do you make a judgment on that at all, or is that part of your charge? [CONFIRMATION]

THOMAS OLIVER: I think that it would fall under the area of the technical and making sure that it complies with existing regulations. I don't think that we would necessarily decide whether an operator could frack a well or not, but I think they would have to be compliant as the commission. If issues came before the commission, then we'd certainly hear the evidence on, you know, whether there was a problem, a safety problem with that. [CONFIRMATION]

SENATOR McCOLLISTER: So, if there was a problem, you'd simply call the DEQ? Is that what you would do? [CONFIRMATION]

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THOMAS OLIVER: I think that would be what the director would do if the question came up to make sure we went to the right authorities on that. [CONFIRMATION]

SENATOR McCOLLISTER: Okay. Is there much drilling activity going on in western Nebraska? [CONFIRMATION]

THOMAS OLIVER: Well, at this point, what had happened, to give you a little background, a well was developed in northern Colorado that went into the Niobrara, which is a different formation than the Denver-Julesburg Basin, which is in the traditional producer in western Nebraska. And that was a horizontal well that was a great producer and it kicked off a big oil and gas play in northern Colorado and Wyoming and in Nebraska. So, that in the last three or four years, we've seen a lot of leasing activity, a lot of interest and a number of wells drilled. Some of those were an attempt to see if that Niobrara would produce in western Nebraska. Others were just, I think, a reaction to higher oil prices. Like anything else when the prices go up, that may make it more economical to drill something. Back when...as that, I think in the last year what I've seen is a number of wells were drilled and unfortunately they were dry wells and so the producers, I think, kind of pulled back. Now we're seeing a decline in prices. So, I think things have cooled off a little bit that way. [CONFIRMATION]

SENATOR McCOLLISTER: Now Nebraska doesn't have a severance tax like Wyoming, do we? [CONFIRMATION]

THOMAS OLIVER: No, I actually believe they do. [CONFIRMATION]

SENATOR McCOLLISTER: Okay. Yeah, but, unfortunately, we just don't develop, we just don't produce much oil. [CONFIRMATION]

THOMAS OLIVER: No, and I think right now that the most interest in the new development is happening down in Senator Hughes' area right along the Kansas border, and I think that will probably spur some interesting issues working with Kansas to make sure that that's approached in a joint matter, to best produce that to protect both states and the landowners and the producers down there. But I think right now that's where the biggest development is going on. [CONFIRMATION]

SENATOR McCOLLISTER: You're continuing to live in Bridgeport? [CONFIRMATION]

THOMAS OLIVER: Yes. [CONFIRMATION]

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SENATOR McCOLLISTER: Now, does the state have an office there or do you commute?
[CONFIRMATION]

THOMAS OLIVER: Actually, the office is in Sidney. I should have probably mentioned that,
but... [CONFIRMATION]

SENATOR McCOLLISTER: I see. [CONFIRMATION]

THOMAS OLIVER: ...because I think...probably because that's where the operations have been
in western Nebraska and southwest Nebraska that found it to be more expeditious to have the
office there, so, yeah, it's 35 miles from Bridgeport. [CONFIRMATION]

SENATOR McCOLLISTER: I see. [CONFIRMATION]

THOMAS OLIVER: We're about in the middle of the Panhandle. I should have
mentioned...where Bridgeport is. [CONFIRMATION]

SENATOR McCOLLISTER: Thank you and thanks for being here. And thank you, Mr.
Chairman. [CONFIRMATION]

SENATOR SCHILZ: Thank you, Senator McCollister. Any others? Senator Hughes.
[CONFIRMATION]

SENATOR HUGHES: Yes, thank you, Mr. Oliver, for coming. I did have a question on...there is
quite an oil boom going on in those southern tier counties. And just for a point of reference for
my colleagues, last...in 2013, the royalties and revenues off of oil production in Dundly County,
one county, to the school land...Board of Educational Lands and Funds, between \$800,000 and
\$900,000 for one county. So it's going...and that's royalties and lease payments. Back to my
question. You talked about the...only drilling one well on 40 acres in the state of Nebraska and
I've had several comments, complaints from people who live right along the state line and in
Kansas, apparently they have a much...ability to much...drill at a much greater density. Is there
any talk of this commission of looking at adjoining states in an oil patch and seeing that maybe
we need to update our standards, or is that pretty much set in stone, and no pun intended there?
[CONFIRMATION]

THOMAS OLIVER: I think that would be driven by scientific facts whether a reservoir could
support more drilling and, again, I think that's what I'm certainly going to try to do as a
commissioner is make sure we have evidence to support whatever action has been requested.

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That's pretty interesting that they do that now. Often what happens is there will be infield drilling, but it still has to comply with that spacing, but if a well...if a field supports higher density, then that would be one of the things they would come to the commission to ask for that to be changed, but I think that would certainly behoove us to be looking at that. And again, we...we're more, I hate to say reactionary, but...and my experience is limited because Governor Heineman appointed me this fall, but it would just seem like kind of from my point of view that if Kansas is drilling more wells on their side of the border, that they're going to recover more oil than we are. [CONFIRMATION]

SENATOR HUGHES: Right. [CONFIRMATION]

THOMAS OLIVER: So we wouldn't want that to be happening. I would sort of presume that there would be some parties down there that...if they were concerned, that they would come to us, file an application for any increased density, so. But I'll discuss that with the director because I think that's an interesting issue. [CONFIRMATION]

SENATOR HUGHES: And I have not been down there. But, you know, it's not firsthand, my eyes on it, but I've had several people who have producing wells in that area have commented that, yeah, we can only have, you know, one well at this spacing, but yet across the line, they seem to be, you know, a lot more numerous in a smaller amount of area. Thank you.
[CONFIRMATION]

SENATOR SCHILZ: Thank you, Senator Hughes. Any other questions? Just one and this is...I know, you're new, but it's come up on our radar and it's about other states delivering us fracking water that's coming in and then us storing it in deep aquifers and trying to take care of it that way. Is that an issue for the commission to take care of, or is that an issue for DEQ, or both?
[CONFIRMATION]

THOMAS OLIVER: Well, I suspect it crosses several lines of jurisdiction, but there is an application before us. We have a hearing February 24 on that application for...I think we'd prefer to call it produced water because it's not necessarily and maybe a small part of it is actual water from a fracking operation. [CONFIRMATION]

SENATOR SCHILZ: I gotcha. Okay. [CONFIRMATION]

THOMAS OLIVER: And so I think and we...in fact, we discussed this a little bit at our last commission meeting and the commissioners have encouraged our director to contact Colorado and Wyoming where these waters come from because there's really some problems that they're

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having with dealing with their own situation and making sure...what happens when you produce oil is that water is produced with that. So you have to...depending on the well and the formation, and you have to do something with that water, a lot of times it is...it is produced back into some salt formation that's sealed from any kind of water...water table, anything that would affect drinking water. But Colorado and Wyoming have kind of dropped the ball as far as making sure they, you know, provide those opportunities or have some kind of...address to make sure they have enough water disposal wells to enable them to keep up with their growing production. And I think that's what spurred, as I understand it, a group from Colorado to look at disposing in wells in Nebraska. So, yes, an aspect of that will be before our commission. And understand there's a lot of interest in that and so, I really can't comment anymore until we see evidence on the concern there. I think the Oil and Gas Commission's aspect of that is going to make sure that any disposal well...we have several other disposal wells in Nebraska, is to make sure it is...protects the water tables, the other zones, so there's no commingling in any kind of aquifer that is being used. All that technical part of that complies. But again, we already do have water disposal wells in Nebraska and so we just need to make sure that our part isn't out there. If there's zoning problems or environmental problems, then those agencies, whether it's local county commissioners or it's the DEQ, you know, they will have jurisdiction for their issues too.
[CONFIRMATION]

SENATOR SCHILZ: Thank you. Senator McCollister. [CONFIRMATION]

SENATOR MCCOLLISTER: In my old oil days, you used to have to treat the water. You get a certificate of analysis so you know what the material is and either through reverse osmosis or some kind of filtration system, you recycled the oil...or the water, and in some cases, the material left over had value to some people. Do we know what the material that they want to inject into the wells looks like? Have you seen a certificate or have an analysis of that? [CONFIRMATION]

THOMAS OLIVER: I have not. You know, again, we have the application and so we would hear evidence on that, but I think that would be one issue that I think our technical people would be looking at to say, what does this water consist of? And, because I think we do have an interest in making sure that something harmful isn't being injected. And, of course, it's in their best interest to make sure that any hydrocarbons are stripped out of that for commercial purposes.
[CONFIRMATION]

SENATOR MCCOLLISTER: Well, you know, water is so short in that country that you would think they would recycle it if they could. And I'm curious to know why they'd simply want to run across the Nebraska-Colorado border and dump it in our wells. [CONFIRMATION]

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THOMAS OLIVER: I think from my...my experience in oil and gas, a lot of times it tends to be salt water that has been produced with those formations. And so that might be part of it. Then maybe it's not commercial to actually strip out the salt part of it. [CONFIRMATION]

SENATOR McCOLLISTER: Well, a membrane...reverse osmosis can strip all that stuff out and it's...you know, if some jurisdictions start questioning what the material looks like and the safety of injection of disposal, that's, I think, something...Nebraska and a lot of other states should have a look at. [CONFIRMATION]

THOMAS OLIVER: Yeah, I think we'd be very interested in that and I think that would be...that would fall under our jurisdiction of what are they putting in there in testing those. As I understand that certainly the integrity of the disposal well itself is tested frequently, but I think that the water would be tested also. [CONFIRMATION]

SENATOR McCOLLISTER: Thank you. [CONFIRMATION]

SENATOR SCHILZ: Thank you, Senator McCollister. Senator Friesen. [CONFIRMATION]

SENATOR FRIESEN: Mr. Oliver, I saw that you had a case concerning water law in the Spear T. Was that involved with the Pumpkin Creek? [CONFIRMATION]

THOMAS OLIVER: Yes, that's correct. [CONFIRMATION]

SENATOR FRIESEN: Okay. Just curious, I guess, because that gives you pretty good knowledge of our underground water supply out in that area and how our aquifer works. So I think that would fit well with what you're doing, so. [CONFIRMATION]

THOMAS OLIVER: Well, I didn't mention that, but I do think it also shows that I have an interest in protecting our environment and our resources. And so, again, I hopefully will bring a good balance to the...and wait until I hear the evidence before I make decisions on it. [CONFIRMATION]

SENATOR FRIESEN: Yeah, thank you. [CONFIRMATION]

SENATOR SCHILZ: Thank you, Senator Friesen. Any other questions? Seeing none, thank you for making the trip here today, and thank you for your interest in serving. We appreciate it. [CONFIRMATION]

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THOMAS OLIVER: Thank you, Senator. [CONFIRMATION]

SENATOR SCHILZ: Have a good day. [CONFIRMATION]

THOMAS OLIVER: Thank you, Senators. [CONFIRMATION]

SENATOR SCHILZ: With that, that will end our hearing on the confirmation of...oh, do we have any supporters? Sorry, I don't want to shortchange you. Seeing none, do we have any opponents to the confirmation? Seeing none, any folks in a neutral capacity? Seeing none, that will end our hearing and thank you very much for coming in today. And at this time, we'll move to LB203. [CONFIRMATION]

SENATOR FRIESEN: Welcome, Senator Schilz. [LB203]

SENATOR SCHILZ: Thank you, Senator Friesen, and good afternoon, members of the committee. My name is Ken Schilz, spelled K-e-n S-c-h-i-l-z, and I'm here today to introduce LB203. LB203 was an attempt...well, let me just back up. LB203 is an issue that's been out there for a long time. Clear back in the early '90s on the Garden County Game Preserve, which is west of Lake McConaughy, and at that time there was a court case that made it necessary to define the boundaries of that reserve...the preserve. And those...and that case went before the court. Senator Erdman, in 2004, worked to try to find a solution that, one, would satisfy the issues there; and two, would satisfy the constitutional questions that were brought up in the lawsuit. In doing that, what they found out was that in order to have those boundaries put in place, they needed to make sure that there was a bright line so that people could understand where the boundary of that preserve was. And what they did was...and I don't know if it's a combination of both, but they used the high bank of the river as well as the flood plain, if I understand it right. And that...that has caused problems because in certain areas, what some people believe is the river, other people believe is a canal and not part of the river. And so we've gone on and on and on with the issue here. And in...and then there were two subsequent lawsuits in the mid-2000s that also upheld the language that Senator Erdman had put in place. And so, this bill that I introduced was an attempt to try to get at that. Unfortunately, with the language that I had in the bill, in some people's minds and in my mind as well, it looked like it would have significantly reduced the size of that preserve, not just in this area, but all along wherever the preserve was. And I know for a fact that when I talked to everyone, including the proponents that wanted this bill introduced, nobody was in favor of reducing the size of the preserve as drastically as that was. So, here we are. And so, having sat down with a number of people, talked to both proponents and opponents, I have decided to ask the committee to indefinitely postpone the bill, kill the bill sometime here soon, and then I will come back with interested parties and try to sit down and try to figure out some other way to address these issues and get to the problems so that maybe we can finally get some

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resolution of this. So, that's where we're at today. It's been frustrating for me. This has been an issue and I've, since I've gotten into the Legislature, it has not gone away and it's still there, but LB203 is not the cure that I had hoped for. So, that's where we're at today. And I do know...I do know there's at least one person here that would like to come up and say a few words. So with that, I'll stop and if you have any questions I can answer, otherwise I will be happy to just step back and keep my mouth shut. [LB203]

SENATOR FRIESEN: Okay. Thank you, Senator Schilz. Are there any questions from the committee? Senator Johnson. [LB203]

SENATOR JOHNSON: Just curious. Are you looking at maybe doing it internally within the group or with a study to...? [LB203]

SENATOR SCHILZ: It may be both. [LB203]

SENATOR JOHNSON: Okay. [LB203]

SENATOR SCHILZ: And so, we'll see how that shapes out. There may be an interim study to look at that. There may not have to be. We'll just see how things work from here until the end of session and then we'll know. [LB203]

SENATOR JOHNSON: Okay. [LB203]

SENATOR FRIESEN: Thank you, Senator Johnson. Any questions? Senator Kolowski. [LB203]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Senator Schilz, thank you for your wisdom of backing off at this point in time. [LB203]

SENATOR SCHILZ: I guess that depends on who you talk to. (Laughter) [LB203]

SENATOR KOLOWSKI: Well, from the e-mails I received, it was the right time. As a member of Ducks Unlimited, it's not because I hunt ducks or geese, but I believe in the environment, what we set up, the wetlands and everything else of how important all that is. And I think you have described very well what has been going on out there for quite a long time. I hate to see people playing games with arbitrary boundaries. And to some people, it feels that way and are we talking about where the middle of the river is, where the river has six or seven channels, all those kind of things get manipulated, I think. And that's...it's very unfortunate. I think we need to try to

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expand the wetland as much as we possibly can for the migrating geese and ducks. And there seems to always be enough places for people to hunt if they can get into different locations and do what they want to do. So I...a personal bias, but I thank you for your move on this at this point and I wish you well for the future on that. [LB203]

SENATOR SCHILZ: Yeah. Well, and I think it should be noted that that area out there around Oshkosh is some of the best waterfowl hunting there is in the nation. I mean, it's just absolutely incredible for that, and we want to make sure that...especially for the economy, for the recreation, for those communities out there, that we keep that as healthy and as viable as possible moving into the future. [LB203]

SENATOR KOLOWSKI: Okay. Thank you. [LB203]

SENATOR FRIESEN: Thank you, Senator Kolowski. Senator Schnoor. [LB203]

SENATOR SCHNOOR: Senator Schilz, just for my own education, you know, I'm not from western Nebraska; I don't understand the original bill or the legislation that's in place. But I guess my question--when that was first established, did that take away land from the private property owners? [LB203]

SENATOR SCHILZ: I don't think it necessarily took away land from the owners. What it did is--restricted what they could do on that land. So, I mean, you can't hunt on the reserve, you can't do those kind of things. At certain times of the year, you can't be in there to do certain things. So, it does require some things. It was put in place in 1925, and it's been there ever since. [LB203]

SENATOR SCHNOOR: Oh, so it wasn't like this happened five years ago? [LB203]

SENATOR SCHILZ: Oh, no, oh, no. The preserve has been there a long time... [LB203]

SENATOR SCHNOOR: Okay. All right. [LB203]

SENATOR SCHILZ: ...and the public...the public completely supports it. [LB203]

SENATOR SCHNOOR: Okay. [LB203]

SENATOR SCHILZ: I mean, overall, the public supports it. They just...there's just certain areas where it just doesn't quite fit like certain people would like it to. [LB203]

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SENATOR SCHNOOR: Yeah. You know what, I guess in my opinion, I look at your proposed bill and I'm like, okay, that...I think that puts a little more common sense to it where you can definitely, you know, tell where the boundaries start at least, but I, too, have gotten many, many e-mails about it, people aren't in favor. But I guess your history of it helps me a lot that this goes back a long ways. It's not just something that was legislation that started ten years ago. [LB203]

SENATOR SCHILZ: No. And I should say that once the bill was introduced and we looked at it and we started asking questions and talking to people, we were informed that some of that language in there is...if you use the main channel language, that would be seen...probably would be seen by the courts as arbitrary and so you run back into the same problems that we had before. So, not being an attorney and not understanding all that stuff, why, I will defer to those that know more than I. [LB203]

SENATOR SCHNOOR: Well, and I think the point is, no matter which way it's...if it stays the original way or is changed, it's open to...it's a matter of interpretation. [LB203]

SENATOR SCHILZ: Yeah. I think you're...I think that's right. [LB203]

SENATOR SCHNOOR: And therein lies the problem. [LB203]

SENATOR SCHILZ: Yeah, that's right. [LB203]

SENATOR SCHNOOR: Okay. Thank you. [LB203]

SENATOR SCHILZ: Yep. [LB203]

SENATOR FRIESEN: Thank you, Senator Schnoor. Any other questions from the committee? Seeing none, thank you, Senator Schilz. Are there any proponents who wish to come forward? Welcome. [LB203]

CHERRIE BEAM-CALLAWAY: Thank you, Senators. Thanks for hearing me. I'm Cherrie, C-h-e-r-r-i-e, Beam, B-e-a-m, hyphen, Callaway, C-a-l-l-a-w-a-y. I think maybe I can clear up a few things for Senator Schnoor, too, and maybe some of the rest of you. The reason I'm here, and now that I know the bill is being killed, but I think maybe I can give you a little bit of insight to this. The reason I'm here is due to the words that were going to be placed in the bill that were going to be "the main channel of" said stream. I'm a fourth generation Nebraskan, originally from Oshkosh, Garden County. I live in Fremont, Dodge County now, but my family owned the land that you're kind of talking about on the north side of the North Platte River in Garden

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County. And we sold our homestead property several years back to Ducks Unlimited. In 1925, the game refuge was created in Garden County and it extended 55 yards from the river bank. Two years later in 1927, when irrigation water became a need, a ditch was dug. The Midland Overland Canal was dug across ours and others' land. In 1947, the game refuge boundaries were doubled and they extended 110 yards from the river bank. In 1979, a Game and Parks law enforcement officer, without authorization, moved the refuge boundary sign, which had been there for 32 years. And it changed the boundaries to 110 yards from the irrigation ditch instead of from the river bank. You see, if that refuge was extended on the north side, and hunters were kept farther away from the river, it caused less disturbance for his hunting on the other side of the river. A legal battle began with my family along with four other landowners over that man-made irrigation ditch. In 2002, a court-approved stipulation said, quote, the Midland Overland Canal will not be recognized or utilized as the bank or channel of the North Platte River for purposes of determining the boundary of the Garden County Refuge, unquote. This was the agreement. The U.S. District Court also issued a similar decision. The reason that I am here is due to the words in the bill, "the main channel of said stream." It should have additional language in it such as-- the main channel of said stream is land that does not have any previous irrigation or easements from prior years. This needs to have definite language that supports what the main channel of the river is. We went to court and had numerous meetings with the Governor's policy department and senators, and Attorney General, and Game and Parks, DNR, and on and on. And the state of Nebraska agreed that they could never change the boundary on our land again. And they agreed that the irrigation ditch was not a channel of the river. Respectfully, Senator Schilz, you walked the Overland Canal with my brother and you even stated that it's not a river channel. Michael Jess, who was a DWR engineer, walked the entire three miles of the ditch and wrote a statement determining that it couldn't possibly be a river channel. Yet, the refuge sign was never changed and the Game and Parks refused moving it. We paid an attorney once again until Attorney General Stenberg said that the Game and Parks Commission had to move the sign back to its original place. Then a new bill was introduced by Senator Erdman. The bill was supposed to include the word "natural" banks of the river to determine the game refuge boundaries. That didn't happen. And in the meantime, the DNR made a GPS reading of the river when that irrigation ditch was full. It's hardly ever full. It's dry most of the year. And because it was full, they declared it as part of the old...as a river channel. So the court stipulation that we'd been given declaring that it was not, was completely ignored. The rewording that is proposed now doesn't change a thing because the main channel of the river has not been defined. For 35 years, this has been a battle for my family. So, how will the Garden County Refuge and the landowners around there be affected by this? Well, if the irrigation ditch remains to be used as a main channel in which to measure 150 yards for a game refuge, some gain and some lose. The loudest opposition against having the refuge revert to its original boundary would affect the commercial hunting operations on the south side of the river. Having a much smaller refuge on the north puts hunters closer to the river which disturbs the hunters on the south. On the north, if the boundary changes back closer to the river, it leaves more land to hunt, thus making property values higher

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and hunting worth more. Some claim that if the boundaries are changed in Garden County, that it might hurt the hunting economy. I really don't believe that at all. There are few refuges in the North Platte and Platte Rivers. We don't have any in Keith or Scotts Bluff or Morrill Counties, or all the way from Kearney to North Platte. In ending, I want to ask you, what are the considerations here? Is it monetary gain and manipulation of game refuge boundaries that are intended for habitat protection, or are we talking about habitat use for personal gain? Hunting is big business and greed drives the opinions. Someone needs to finally define the banks of the river, and the refuge boundaries need to be put back where it was court ordered to do so. And most importantly, it needs to be determined by people that aren't self-serving. I rest my case. [LB203]

SENATOR FRIESEN: Thank you very much. [LB203]

CHERRIE BEAM-CALLAWAY: Thank you. [LB203]

SENATOR FRIESEN: Any questions from the committee? Senator Johnson. [LB203]

SENATOR JOHNSON: I just want to make a comment. I appreciate you coming in. Senator Schilz could have explained it and explained it, and, you know, and I would have understood it, but hearing it from you, I'll be able to answer some questions and I'll tell them why the bill is not moving forward by... [LB203]

CHERRIE BEAM-CALLAWAY: Thank you. It's been a real big bur in our tail. (Laughter) [LB203]

SENATOR JOHNSON: I appreciate you coming in. [LB203]

CHERRIE BEAM-CALLAWAY: Thank you. [LB203]

SENATOR FRIESEN: Thank you, Senator Johnson. Senator Schnoor. [LB203]

SENATOR SCHNOOR: So, I guess the bill is still...I mean, the bill is still here, nothing has been enacted on it. Are you in favor of this or not? I guess I didn't quite understand that. [LB203]

CHERRIE BEAM-CALLAWAY: You know, I don't think I'm the one to determine when I'm kind of staying neutral, because I really don't know what to do. I think from my own family and because I know darn well that that is an irrigation canal, we have a man testify that he was there

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when they dug it. I guess, I feel that we need to do the right thing and put the boundary back where it was. But I'm a little torn, mostly because I've been contacted a lot by commercial hunters on the south side that have very loud voices, that are really mostly worried about if that boundary is...goes back to the original state, the hunting on that side, the north side, is going to affect his hunting on the south. So, I'm a little torn between, I guess, people's greed in this and using the refuge boundaries for that. So I can't...I think it needs to go back to its original...its original refuge. We have a court stipulation. We've been told over and over that that's what it is. Why isn't that happening? [LB203]

SENATOR SCHNOOR: But you would...so you do agree there should still be a refuge but... [LB203]

CHERRIE BEAM-CALLAWAY: Absolutely. [LB203]

SENATOR SCHNOOR: ...the boundaries need to be more clearly defined. [LB203]

CHERRIE BEAM-CALLAWAY: Our land has the largest wetland...never grazed, never plowed meadow on the North Platte River. We have a very rare piece of property...used to, Ducks Unlimited has it now, but it needs to be protected, and it's also a place where many of the Canada and snow geese come in. It's just like a tornado there, it's a very special piece of property. It needs to be protected and when you have all these hunter interests, all the way around, that are just dying to shoot anything that's moving...and I'm not anti-hunting, please don't misunderstand that. I know there's a place for that, but I think our family and all the other landowners along this canal have been wronged. [LB203]

SENATOR SCHNOOR: Okay. Thank you. [LB203]

SENATOR FRIESEN: Thank you, Senator Schnoor. Any other questions from the committee? Thank you very much for clarifying things for us. [LB203]

CHERRIE BEAM-CALLAWAY: Thank you. Thank you. [LB203]

SENATOR FRIESEN: (Exhibits 1 and 2) Are there any other proponents that wish to come forward? Any opponents wish to testify? We have letters from Steven Smith from Scottsbluff; Steve Farris with Circle Famo Ranch, Circle Famo Huntclub, Little Lake Ranch, Prairie Swamp and Rivercamp. [LB203]

SENATOR SCHNOOR: That...I'm sorry, and he was in favor of this bill? [LB203]

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SENATOR FRIESEN: In opposition. [LB203]

SENATOR SCHNOOR: In opposition. Okay, thank you. [LB203]

SENATOR FRIESEN: Are there any other opponents who wish to come forward? Anyone wish to testify in a neutral capacity? Senator Schilz, do you wish to close? Senator Schilz waives closing. We'll now close the hearing on LB203. [LB203]

SENATOR SCHILZ: Thank you, everyone, and that will close our hearings for today, and I think it's the weekend now, so everybody have a good one.