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COMMITTEE ON NATURAL RESOURCES  
February 2, 2006  
LB 1164, 1099, 1156, 1147  
Confirmation Hearing

The Committee on Natural Resources met at 1:30 p.m. on Thursday, February 2, 2006, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 1164, LB 1099, LB 1156, LB 1147, and a gubernatorial appointment. Senators present: Ed Schrock, Chairperson; Elaine Stuhr, Vice Chairperson; Carol Hudkins; Gail Kopplin; Bob Kremer; LeRoy Louden; Vickie McDonald; and Adrian Smith. Senators absent: none.

SENATOR SCHROCK: Good afternoon. For the record, my name is Ed Schrock. I chair the Legislature's Natural Resources Committee and I'm from the Holdrege/Elm Creek area. I would like to make the introductions of the senators that are here and the staff. To my far right is Senator LeRoy Louden from Ellsworth. Next to him is Senator Gail Kopplin from Gretna. Next to Senator Kopplin is Senator Hudkins from Malcolm in a red coat. Next to me is Jody Gittins, Jody is committee counsel. Senator Elaine Stuhr, I think, is introducing a bill in another committee. She'll be late, but Senator Stuhr is the vice chair of the committee. And Senator Vickie McDonald has other commitments, too, but she will be showing up at some point in time. Senator Stuhr is from Bradshaw and Senator McDonald is from St. Paul. We have Senator Kremer who kind of looks a little lonesome over there today, all by himself.

SENATOR KREMER: Yeah, I'll hold this side down.

SENATOR SCHROCK: Senator Kremer is from Aurora. And Senator Smith, I haven't got word on him, but I would expect him to show up today. Senator Smith is from Gering. To the far end is Barb Koehlmoos, Barb is the committee clerk. A few instructions as we start, if you wish to testify on a bill, please come forward. But go to the corner of the room and get a sheet and fill that out first. We would appreciate that if you'd fill out the sheet first. As you sit down at the testifiers, why, spell your name for the record. Please print on the form. If you have a cell phone that makes a noise, please silence that. If you have information you would like to distribute to the committee, why, our page will help. And our page is Marcus Papenhausen and Marcus is a sophomore at UNL, he's from Coleridge and

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he's an elementary education major. It's a Thursday afternoon, some of us have a ways to travel if we're going to go home for the weekend. So we don't want to hurry you but if you would keep your testimony to about three minutes, it would be helpful. I see some red jackets in the front row, do we have visitors here?

Unidentified: Yeah.

SENATOR SCHROCK: Where you from?

Unidentified: Elkhorn.

SENATOR SCHROCK: Elkhorn. Well, welcome to the proceedings.

Unidentified: Thank you.

SENATOR SCHROCK: The room was full a couple days ago when we had hearings on schools so...are you here for a civics class of some kind?

Unidentified: Yeah.

SENATOR SCHROCK: But you're not here to testify on a bill.

Unidentified: I don't think so. (Laughter) We'll see.

SENATOR SCHROCK: But the teacher said, sit in the front row, right? And then you get an apple? All right, well, thank you, welcome to the proceedings. With that, we will open the hearing on LB 1164.

CONFIRMATION HEARING ON  
MICHAEL GRIFFIN TO THE  
ENVIRONMENTAL QUALITY COUNCIL

JODY GITTINS: We've got a confirmation.

SENATOR SCHROCK: Oh, confirmation first, I'm sorry. We have Mike Griffin here who is an appointee to the Environmental Quality Council. Mike, would you come forward? Just tell us a little about yourself, what you do, and why you would like to serve on the Environmental Quality

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Council.

MICHAEL GRIFFIN: (Exhibit 1) Okay. I'm Michael Louis Griffin, that's M-i-c-h-a-e-l L-o-u-i-s G-r-i-f-f-i-n. I'm from Crawford, Nebraska. My wife and I have three gorgeous, talented teenage daughters, one of them is a freshman at Chadron State in elementary education. I work for Crow Butte Resources, I've been there for about eight years. We are a solution uranium mine outside of Crawford. I have about 30 years of experience in the nuclear industry. I began as a electrical operator in a Polaris submarine. And after that, I went to nuclear power plants, spent about seven or eight years working at those doing treatment of radioactive waste streams, mostly liquid waste streams. In the early 80s, I switched over to environmental reclamation and worked mostly at uranium mill cleanups all over the west. Most of these were under Department of Energy contracts. And I was responsible for health physics, radiation protection programs at those, and environmental monitoring. Towards the end of that part of my career, I got into a lot of different types of projects. I did the Denver radium cleanup in Denver, which was a bunch of properties contaminated with radium. We did radiation protection for a NASA research facility in the bay area, a couple of steel mills that had melted down their radioactive sources. So I have a broad background in cleanup and remediation-type projects. In '98, I went to work for Crow Butte Resources. I am the manager of health, safety, and environment and I'm responsible for all of the industrial safety, radiation safety, environmental protection efforts, also, our regulatory and our permitting activities. If for those that don't know, we are a solution uranium mine. We remove uranium from the groundwater. We have a series of wells, approximately 5,000 of them, and a ring of monitor wells around the site. So it's quite an operation but it's a very environmentally benign operation. Particularly when compared with some of the conventional mining and milling that I cleaned up earlier in my career, the technology we use is very friendly environmentally. In my work there at Crow Butte, we have a great safety record. It's a very safe process. We've only had a couple minor loss time accidents in the past eight years since I've been there. We just completed a three year effort to prepare a environmental management system. At the end of December, we had that certified by the International Standards Organization. So

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Crow Butte is very progressive environmentally, too. Our program, we've gone beyond just regulatory compliance. In addition to my work, I'm also a member of the Crawford Board of Education and I'm chairman of the Mine Safety Advisory Council for the Nebraska Safety Center at UNK and I'm chairman uranium environmental subcommittee of the National Mining Association and I'm on the American National Standards Institute Working Group, revising the radiation protection standard for uranium mines. So I'm pretty busy.

SENATOR SCHROCK: Thank you, Mike. Questions? By the way, we enjoyed the tour of the mine. I forget how long ago it was, I don't think Senator Kopplin was with us. I'm not sure if Senator Smith was. So the committee has changed a little bit. It's going to change pretty drastic in another year.

MICHAEL GRIFFIN: I hear that.

SENATOR SCHROCK: So maybe the new committee can come out and see you then someday. But we enjoyed that, we enjoyed that.

MICHAEL GRIFFIN: Sure, we're always glad to show people around.

SENATOR SCHROCK: Questions? Senator Kremer.

SENATOR KREMER: I'd like to echo what Senator Schrock said, it was very interesting. We were all impressed with the opportunity to tour your mine. I noticed that you were born and moved from California. Did you move here because of the weather here, how good it is, or...? (Laughter)

MICHAEL GRIFFIN: No, no, I moved here from Colorado and mostly to get my kids in a nice small town and a place with friendly people and Nebraska is beautiful.

SENATOR KREMER: We thank you for being willing to serve on the council.

MICHAEL GRIFFIN: Oh, it's my honor.

SENATOR KREMER: And you are representing, I don't know if you mentioned that, the...

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MICHAEL GRIFFIN: Heavy industry.

SENATOR KREMER: Heavy industry, because each member has a different, is named from a different industry, different point of view. So thank you.

SENATOR SCHROCK: Senator Smith.

SENATOR SMITH: Thank you for making the trip down here.

MICHAEL GRIFFIN: Sure.

SENATOR SMITH: When we look at various issues of the day, you know, livestock in particular, we hear about risk based regulations rather than size based. Do you have any opinions on that?

MICHAEL GRIFFIN: Well, I've, obviously in the industry I'm in, I've worked with regulations for a long time. And I believe in risk based regulations. I have seen a lot of regulation and a lot of tax money spent on number based cleanups, large sums of money that really weren't based on risk to the public. And they were more political than anything else.

SENATOR SMITH: Thank you.

SENATOR SCHROCK: Do you have a question over here, Senator Louden?

SENATOR LOUDEN: Yes. Well, Michael, thanks for coming all the way from Crawford and I was at your open house, as you remember, last spring. And I think Lieutenant Governor Sheehy was also there and we toured it and was quite impressed with the site. I have one or two items before I ask you some questions. One of them is, give my regards to Dr. Stokey, of course.

MICHAEL GRIFFIN: I will.

SENATOR LOUDEN: And one other thing would be for these young men here in the audience from school, did you notice he said he had three wonderful daughters out there and they're out in western Nebraska in Crawford? So you want to

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take note of that. (Laughter) The next thing, I notice you had a lot of work with nuclear cleanups and that sort of thing and, of course, we're having some concerns and working some on this Yucca Mountain nuclear waste depository. And with being in this environmental board like this, would you be in a position to give some expertise in how some of this should be transported and what kind of facilities we need to load it and unload and that sort of thing?

MICHAEL GRIFFIN: Well, my experience is mostly with low level radioactive waste from the power plants. It was mostly contaminated trash and that type of thing. I did work for the company that runs the South Carolina disposal site, the low level site, for about 15 years. So I have some experience with it. But most of the cleanups that I worked on, we were transporting contaminated soil, large volumes out of Denver and out of Salt Lake City. And of course, that's a far cry from spent nuclear fuel.

SENATOR LOUDEN: Um-hum. Did you work, what did they call that, that Rocky Mountain whatever it was on the west side of Denver?

MICHAEL GRIFFIN: I had some projects at Rocky Flats. They mostly had to do with groundwater cleanup.

SENATOR LOUDEN: I see, um-hum, okay. Yeah, I thought with your operation going on in Crawford with your...my understanding is, you pump that up and yellow cake, as it's called, and put into drums and shipped to Canada, is that where it's shipped to for processing?

MICHAEL GRIFFIN: That's right.

SENATOR LOUDEN: Yeah, okay. Well, thank you and thanks for coming down to testify.

MICHAEL GRIFFIN: Thank you.

SENATOR SCHROCK: Other questions? Mike, you've dealt with radioactive material for a long time, apparently. Do you ever felt like you've been unnecessarily exposed to radioactive material that you shouldn't have been?

MICHAEL GRIFFIN: No, no. I think the nuclear industry is

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very safe. I always say it's one of the most highly regulated industries. But I think there's also an attitude of doing things right and whether you're made to or not. So my exposures have been very low and I've never had any concerns.

SENATOR SCHROCK: And you're a new member to the council?

MICHAEL GRIFFIN: Yes.

SENATOR SCHROCK: Well, you'll join a long list of very qualified people that come in front of the committee. We're real impressed with the candidates that have been selected. So I think you'll enjoy it, I think you'll be a good asset.

MICHAEL GRIFFIN: Thank you.

SENATOR SCHROCK: And if there's no further questions, why, thank you for being here.

MICHAEL GRIFFIN: Thank you.

SENATOR SCHROCK: I do have to ask, is there anybody who would appear in a proponent category for Mike Griffin? And you can go back to where you were. Anybody who would be opposed to Mike Griffin's appointment? Anybody who would appear in a neutral capacity? That will close the confirmation hearing on Mike Griffin to the Environmental Quality Council. Thank you for coming, Mike. It's a little ways out there. And then we will open the hearing on LB 1164.

LB 1164

JODY GITTINS: Good afternoon, Chairman Schrock, members of the Natural Resources Committee. My name is Jody Gittins, J-o-d-y G-i-t-t-i-n-s. I'm introducing LB 1164 on behalf of Senator Schrock. This bill was presented to Senator Schrock by the Nebraska Association of Resource Districts. The bill makes several changes to replacement well statutes. First, it allows old wells being replaced to be converted to monitoring wells, observation wells, livestock wells, or other nonconsumptive use of less than 50 gallons per minute. The conversion must be approved by the local natural

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resources district and remain consistent with the Groundwater Management Act and wells construction standards. The bill also shortens the time frame from one year to 180 days to properly decommission a well or convert it to its new uses. The Department of Natural Resources would be responsible for developing forms for the change in the use and it also allows natural resource districts to further define replacement wells under the Groundwater Management Act and to restrict consumptive use. There will be an amendment talked about to the bill dealing with municipal well replacement. That was an inadvertent omission when we were drafting the bill and the amendment will address that. And I believe Dan Smith will talk about that amendment and the wording that's been worked out with the concerned parties.

SENATOR SCHROCK: Thank you, Jody. Are there questions? Okay. First person who would appear in a proponent status? How many people intend to testify on this bill? Okay. Thank you, Dan.

DAN SMITH: (Exhibit 2) Good afternoon, Senator Schrock. My name is Dan Smith, D-a-n S-m-i-t-h. I'm the manager of the Middle Republican Natural Resources District but I'm here today to offer testimony on behalf of the Nebraska Association of Resources Districts on LB 1164. I do have written testimony. In the interest of time, I'll not read that. But I would like to highlight a couple of points and I think in this amendment that are good. In general, this proposal, I think, is going to have minimal impact on anybody involved with it. It addresses a lot of little issues that over time have caused problems. And really the only financial impact would be a slight impact of the water well drilling industry in that they might put in occasionally, drill occasionally less livestock wells. They'll still have the opportunity to make that conversion from a replaced irrigation well. But that should be about the only real impact. Department of Natural Resources shouldn't be impacted. The forms, the paperwork trails shouldn't change much. The natural resources districts can address the changes relatively easy through our permitting process. And the landowner occasionally can save some dollars in not having to drill a new well. It would allow the old hole, the well that's being replaced, to be continued to use as a livestock well or other nonconsumptive

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uses. One of those would be observation wells. Nearly all the natural resource districts have observation well programs where we monitor the static water level. Our district has had three instances where the well we were measuring was replaced. The new well was far enough away that we didn't figure there was a direct correlation in the data that we were going to maintain so we lost some data over time. If this bill had been in place then, we could have, with the landowner's permission, converted that old hole to an observation well and continued to track that record. The amendment, the language that got left out, there were a number of revisions to this proposal when we were putting together, deals with municipal wells. Current statutes and this proposal would both cause minor problems for municipalities in that current rules require that when a new well is constructed, a replacement well, that the old well no longer be used. Now typically in a municipal system, unless it's an emergency situation where an old well has gone bad, typically, in a municipal system, a new well is drilled, it's test pumped, there are water quality samples taken over time. And when they are satisfied with the new well that's going to meet their needs, then they bring it on line. The old well continues to pump during that time frame. The amendment that we've offered, and I noted in my testimony, would address the situation, give the municipality up to a year to bring that new well on line and shut down the old well. So with that, I'll stop and I would certainly try to answer any questions if there are any.

SENATOR SCHROCK: Thank you, Dan. Are there questions?  
Senator Louden.

SENATOR LOUDEN: Yeah, when you would use one of these irrigation wells for a stock well or something like that, does your NRD have rules on how much smaller you cover the hole or plug the hole up? How do you handle that part?

DAN SMITH: This proposal would require that either the well driller or the pump installer who does that final work would certify that the old hole that's been converted to a stock well will no longer pump more than 50 gallons a minute. So that requirement falls back onto the well industry. Our district does have a permitting program. We would simply note, rather than a replacement well, we could...with adding one line to our permit form, we can address it through the

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office.

SENATOR LOUDEN: Well, I guess I'm more concerned about, pull that column out and stick a inch pipe back down, you have a lot of extra space. And what do you do to keep something from going down, whether it's people or animals or what from going down that well? I mean, do you have something in here so that you're for sure have that plugged up like it should be?

DAN SMITH: Those provisions are already in place through the Water Well Standards and Contractors Licensing Act rules and regulations out of HHS. Those wells do have to be protected from contamination. So those statutes are already in place.

SENATOR LOUDEN: Okay, thank you.

DAN SMITH: The landowner in this case would do a change of use or a well registration modification that would change the use and the contractor would certify on there that the well meets the standards.

SENATOR LOUDEN: Okay, thank you.

SENATOR SCHROCK: Thank you, Dan. Other questions? Pretty straightforward, simple bill, is it?

DAN SMITH: I think so. I think it's kind of one of those feel-good things. It's good for everybody involved, minimal impact, corrects a lot of little problems that are out there.

SENATOR SCHROCK: All right, thank you for being with us.

DAN SMITH: Thank you, sir.

SENATOR SCHROCK: (Exhibits 3 and 4) There is...any more testimony of proponent status? I have a letter here from the Nebraska State Irrigation Association and they are in support, and the Nebraska Water Resources Association and they are in support of passage of LB 1164 and that will be entered into the record. And one from the Nebraska Well Drillers Association, so they're all on the same side this time. Thank you. Who signed that letter, the well

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drillers? Signed by Lee Orton, executive director. Is there opposition testimony? Is there neutral testimony? That will close the hearing on LB 1164 and we will proceed to LB 1099. Thank you for being with us. Good luck on your education and when you go to college, stay in Nebraska. We need you to stay here. (Laughter)

LB 1099

JODY GITTINS: Good afternoon, Chairman Schrock, members of the Natural Resources Committee. My name is Jody Gittins, J-o-d-y G-i-t-t-i-n-s, committee counsel for the Natural Resources Committee, introducing LB 1099 on behalf of Senator Schrock. This bill is another bill that has come to Senator Schrock by the Nebraska Association of Resource Districts. It clarifies that groundwater irrigation reuse pits are not subject to a surface water right. It also replaces interpretive language on intermittent streams with the standard that is currently used by the United States Geological Survey in their topographical maps. There is an amendment to the bill that is currently being worked on by the Department of Natural Resources and the natural resource districts. Rather than, conceptually, they have come to an agreement. But there wasn't enough time to get it in writing and I believe they are going to respectively ask this committee to hold the bill until such time as that amendment is prepared and available for the committee's review.

SENATOR SCHROCK: Thank you, Jody. Are there other questions? First person who would appear in a proponent category? Hi, John.

JOHN TURNBULL: (Exhibit 5) Hi. Chairman Schrock and members of the committee, I'm John Turnbull, J-o-h-n T-u-r-n-b-u-l-l. I'm the general manager of the Upper Big Blue Natural Resource District and I'm testifying in support of LB 1099. The Upper Big Blue board of directors supports the bill. I'm also representing the Nebraska Association of Resource Districts, which took action to support the bill at the conference held last week. Large scale groundwater irrigation development in the Big Blue basin began in the 1950s. Long time residents of the area tell of times when the creeks ran nearly full of irrigation runoff in July and

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LB 1099

August. Today, there's over a million irrigated acres in the Upper Big Blue. Water conservation and irrigation water management have been the district's primary goals and still are. Statutes mandate the control of irrigation runoff. Water conservation has become the norm rather than the exception. But there's still some runoff today but nothing like it was 30 or 40 years ago. Reuse pits are the primary control for runoff from gated pipe irrigation which was the main method of irrigation in the basin through the 70s. Confusion existed with the surface water right requirements for reuse pits. In 1980, the Legislature dealt with the issue. The current statute, commonly referred to as the headwaters exemption, was adopted at that time and you can see the language there in italics. Over the last 20 years, many of the existing acres irrigated with gated pipe have been converted to center pivots. Most of the new groundwater irrigation development has also been with center pivots. Irrigation runoff from pivots is much less than from gated pipe systems but, in many cases, it's not totally eliminated. An individual reuse system for each field doesn't work economically with the smaller amounts of runoff. But where an irrigation reuse pit can collect runoff from several nearby fields, the cost can be justified. Today, there are about 700 natural flow permits for use of surface water within the Upper Big Blue NRD. These permits provide irrigation to about 50,000 acres. Over 300 of these permits and over one-half of the acres irrigated covered by these permits are located on intermittent streams. These streams are classified as intermittent because they have no base flow. Many of these 300 permits were obtained because of the circumstances do not fit the current headwaters exemption statutes, even though the permit is dependent on groundwater irrigation runoff. This has led to many surface water permits being issued in order to allow individuals to catch groundwater irrigation runoff from another field. Very little natural flow water is involved. In the summer months, the flow in intermittent streams is from groundwater irrigation runoff. Without that irrigation runoff, the streams would be dry except in times of rain. In dry times like this last year, surface water rights are administered, that is shut down to provide the passing of flows to downstream surface water rights. When that happens, a groundwater irrigator is prevented from using his reuse pit even though its source of supply is groundwater runoff instead of natural flows. And

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LB 1099

LB 1099 is intended to correct this problem. We had conversations this morning with Department of Natural Resources on possible amendments that Jody Gittins just talked to you about. And we're willing to work with the department on coming up with a suitable amendment. I think we're pretty close to agreement. We have a suggested amendment we came up with yesterday, it's on the bottom of this testimony for all of us to think about. I'd be glad to answer your questions if you have any.

SENATOR SCHROCK: Thank you, John. Questions? Senator Kremer.

SENATOR KREMER: Would this include a dam that was built just to retain water from large rainfalls or something or just if they're dug for reuse?

JOHN TURNBULL: The way it's currently worded, it would be for a dam that would hold less than 15 acre feet.

SENATOR KREMER: Okay.

JOHN TURNBULL: But anything larger than 15 acre feet or where stored water is pumped up for use, they would still have to be permitted.

SENATOR KREMER: Because sometimes a dam is used to pump water out of it and pumping water in but then you get a notice in the middle of the summer, says that you can't restrict any water. But then how do you break the dam and then there's no water coming down there anyway except your own water that you've been using as a runoff from the irrigation?

JOHN TURNBULL: We have a quite a few of those where there is just a small dam that really is just another form of capture and reuse.

SENATOR KREMER: Right, but...

JOHN TURNBULL: So those...

SENATOR KREMER: ...still you get notification sometimes...

JOHN TURNBULL: Right.

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LB 1099

SENATOR KREMER: ...that you're not supposed to capture any runoff and so...

JOHN TURNBULL: Right, that's happened, particularly in the last couple of years.

SENATOR KREMER: Yeah, so that would apply to that dam under 15 acre feet also?

JOHN TURNBULL: That's one of the things we've been discussing with the department is, should there be a size limitation that's stiffer than that 15 acre feet?

SENATOR KREMER: Okay.

SENATOR SCHROCK: Other questions for John? So right now, if the stream is, if there's a call on the stream, you've got to shut down people who are using their reuse pit?

JOHN TURNBULL: If they are, if they have a surface water permit on that reuse pit.

SENATOR SCHROCK: If they have a surface water permit?

JOHN TURNBULL: Yes, yes, and there are about, we don't know how many there are total in the district but it's our guess that about 80 percent of those 300 on intermittent streams are reuse pits.

SENATOR SCHROCK: Okay, but their source of water is ground...

JOHN TURNBULL: The source of water is groundwater runoff.

SENATOR SCHROCK: Okay.

SENATOR KREMER: I have another...

SENATOR SCHROCK: Senator Kremer.

SENATOR KREMER: What if you do not have a surface water permit?

JOHN TURNBULL: Well, the way that it's actually working in

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LB 1099

the field is those without the surface water permit continue to use the water out of the pit while the ones with the permit are shut down. Not all of them are permitted. In the early years, they weren't permitted up until, oh, 20 or so years ago and then the permits started being issued on them. The other thing that has happened, too, with all these conversions is we know there's a lot of pits out there that are no longer being used. And I don't know how many of those are in this mix.

SENATOR KREMER: Some of them, the location is still there, but they don't...

JOHN TURNBULL: Yeah, somebody never filled it in...

SENATOR KREMER: Nothing runs into it because...

JOHN TURNBULL: Right.

SENATOR KREMER: ...you don't use surface water anymore.

JOHN TURNBULL: Right, and we're talking, in most cases, these things only hold one to two acre feet. So they're all, they're pretty small catchment basins.

SENATOR SCHROCK: Other questions? Okay, if you catch your own groundwater, why do you need a permit? Why do you need a permit?

JOHN TURNBULL: That's a good question. The way it's been interpreted, as I understand at this point, is if it left one property across the fence line to another property, then that's where the permit came into play.

SENATOR SCHROCK: Do you have much trouble with people surface water irrigating, running water in their neighbors', is that...

JOHN TURNBULL: Not in our district because we have so little surface irrigation water.

SENATOR SCHROCK: But groundwater, too...you can't run groundwater on your neighbor.

JOHN TURNBULL: Groundwater, under our NRD regulations,

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they're supposed to control it. And we have ordered people to build pits. We've ordered people to put in levies and dikes.

SENATOR SCHROCK: But if they...

JOHN TURNBULL: But there are cases like these where they may be two or three center pivots or four where there's a little bit of runoff from each one and it starts to accumulate in that stream and maybe two or three tracts of land involved. And somebody has got a pit and he's catching his own runoff plus the irrigation runoff from the field above him.

SENATOR SCHROCK: Okay, thank you, John.

JOHN TURNBULL: Thank you for your time.

SENATOR SCHROCK: (Exhibit 6) Is there other proponent testimony? Is there opponent testimony? We have something to read into the record here. We have a letter from Farm Bureau as a proponent and signed by Jay Rempe. Is there opponent testimony? Is there a neutral testimony? That will close the hearing on LB 1099 and we will move to LB 1156. Go ahead.

LB 1156

JODY GITTINS: Good afternoon, Chairman Schrock, members of the Natural Resources Committee. My name is Jody Gittins, J-o-d-y G-i-t-t-i-n-s. I'm committee counsel for the Natural Resources Committee and introducing LB 1156 on behalf of Senator Schrock. This is a relatively simple one-page bill. The first section of the bill talks about the intent to properly develop the water and related land resources of the state and that it's in the public interest to protect that development, preservation, and maintenance of the state's water and related land resources. Section 2 deals primarily and only with school lands. Upon the expiration of any current lease on a school land, at the effective date of this act, the lands that are in river basins, subbasins, or reaches that have been designated over appropriated according to law or determined by the department under the auspices of LB 962 to be fully

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appropriated, any subsequent lease negotiated by the Board of Educational Lands and Funds with respect to such school lands shall contain a condition that such school lands shall not be irrigated for the duration of the lease. In essence, it is putting our, the state as a responsible party for irrigation use. One of the amendments that has been talked about is limiting this to lands that are in river basins that have been the subject of litigation over an interstate compact or decree in which the state of Nebraska was a named party as of the effective date of this act. This would limit it to those areas of the state that have been involved in an interstate compact dispute. That is one suggestion that has come up as a possible restriction so that it doesn't affect the state statewide. It would only affect those areas of the state that have been the subject of litigation. Another concern that has been raised and that Senator Schrock has considered and would be amenable to an amendment looking at a restriction of that irrigation to groundwater irrigation as opposed to surface water irrigation. Surface water irrigators have, or reclamation districts have had contracts, long-standing contracts with the federal government. And the ability of the state to interfere with those federal contracts is very, very limited. And so it would be prudent to take a closer look at if, in fact, we would have legal standing to do something with the surface water irrigators. So that's another question that the bill raises as opposed to finds a solution. For the committee's information, we do have a list of counties with the number of irrigated acres on school lands per county. We also have it from the agricultural statistics, the districts of the state broken down into how much of that is dry land or gravity and center pivot, what those typically rent for under the terms of leases. So we have that information available for the committee. It's interesting to note that simply in the counties that would be affected by this, there's over 28,000 acres of irrigated educational lands. And Senator Schrock believes, and would have introduced the bill himself but he wants to be able to ask some questions of some of the testifiers, believes that this is a significant amount when you're dealing in areas of the state that have limited water resources available to the private landowner, if you will, that the state should also be impacted and share some of that burden and responsibility.

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SENATOR SCHROCK: Thank you, Jody. Are there questions?  
Senator Hudkins.

SENATOR HUDKINS: Jody, a few years back, I think that we dealt with some legislation to, at the end of the lease period of the school lands and funds, certain percentage of them were going to be sold and put back onto the tax rolls. Okay, so how does that affect this?

JODY GITTINS: If they're not currently owned by the state, those lands that have been sold off, it has no affect on them.

SENATOR HUDKINS: Okay. So, in time, won't all of the school lands be sold?

JODY GITTINS: They had to sell a certain percentage, Senator. I believe they're allowed to keep a percentage also.

SENATOR HUDKINS: Okay, all right.

JODY GITTINS: But I'm really not 100 percent sure but I'm sure there's someone here that can answer that question.

SENATOR HUDKINS: Okay, thank you.

SENATOR SCHROCK: Senator Kremer.

SENATOR KREMER: Jody, I have a follow-up a little bit on that, too. Say it was in the school lands. They were needing to quit irrigating and it was sold the next year after that or several, whatever, it came up for lease again.

JODY GITTINS: Um-hum.

SENATOR KREMER: Would that private owner then be able to irrigate after it was once discontinued the irrigation with the school lands and funds?

JODY GITTINS: As long as he obtained the appropriate permits necessary to do that and was under the restrictions for water allocation.

SENATOR KREMER: Okay.

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JODY GITTINS: And under the integrated management plans developed by the natural resource districts and DNR in those areas of the state where that's required.

SENATOR KREMER: So it would allow a little more land to come back into irrigation that was taken out of irrigation at one time then?

JODY GITTINS: Could.

SENATOR KREMER: Okay, that seems only fair, I would think, but I didn't know how it would have read in the bill.

SENATOR SCHROCK: Other questions? Thank you. Proponent testimony, please. Welcome.

RON WOLF: Chairman Schrock and members of the committee, my name is Ron Wolf, R-o-n W-o-l-f. I manage the Twin Loups Districts up in north-central Nebraska and I'm here today representing those districts and the Nebraska Water Resources Association. We do think this bill is probably timely. We would ask you to consider, hadn't thought of all the amendments that Jody mentioned, but the contractual arrangements for surface water are quite long term in some districts and can be quite onerous if the costs have to be spread amongst the other landowners should the school land become ineligible through whatever reason for irrigation. I've talked to districts in, I think, about every type of basin you've got. We're, at this time right now, the Loups are not declared either fully or overly appropriated. I've talked to districts in the Upper Platte and the Republican. I think I've pretty well covered the gamut, the types of basins. And we're all in the same boat, be there a federal contract or not, the implications of the spread of the extra expenses upon the rest of the landowners doesn't quite, isn't going to work very well for any of the districts I spoke to. And I have permission to mention names. There's Frenchman-Cambridge, Pathfinder, Sargent, and reclamation districts such as ours, like Jody mentioned. If this bill should pass, I would ask that you consider an amendment clarifying that it does apply to groundwater only. I would try to answer any questions you might have if I can.

SENATOR SCHROCK: Thank you, Ron. Are there questions?

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Whenever you introduce something, there's always pitfalls along the way.

RON WOLF: I've never been totally satisfied with any piece of legislation I've ever seen, Senator. (Laughter)

SENATOR SCHROCK: You never met a perfect piece of legislation.

RON WOLF: Not yet. You're getting close though, two pages is almost down to my level of comprehension. (Laughter)

SENATOR SCHROCK: All right, thank you, Ron.

RON WOLF: Thank you.

SENATOR SCHROCK: I failed to mention, we've been joined by Senator Stuhr, the vice chair of the committee. More proponent testimony?

TOM SCHWARZ: Good afternoon, Senators. I'm Tom Schwarz, T-o-m S-c-h-w-a-r-z, from Bertrand, here representing the Nebraska Water Users in support of this bill. I think it's very helpful for the state to contribute in this way, to help with some of our water problems that we have, particularly in the Republican and the Platte. I am concerned, as you've talked about, the limiting this to groundwater use. I think that would be very helpful with respect to our water users. The way water use works in the North Platte, under the Supreme Court decree, water that enters the state across the state line is all given to districts in the Panhandle and then the return flows from those districts are what we get into McConaughy and are used in my area. So there are some 900 acres in the Panhandle of school lands that would be impacted by this if they were lumped in together. And I guess it would be our preference if they weren't lumped into this group. We'd like to continue to have that water moving down the Platte River to us. One thing that I did want to mention, I think there could be a possibility if the state were so inclined to attach a conservation easement onto that ground so that as you market it at some time in the future, those restrictions would be carried forward with the land, if you so desired. I guess I'll keep it brief and stop at that.

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SENATOR SCHROCK: Thank you, Tom. Questions for Tom?  
Senator Hudkins.

SENATOR HUDKINS: Mr. Schwarz, we received a letter from an individual that was opposed to the bill and they say, we believe this bill unfairly puts the burden of solving our water problems with Kansas on the farmers that lease irrigated farm ground from the Board of Education Lands and Funds and main street business that will lose from the decrease of the irrigated acres in the Upper Republican NRD. What do you say to that?

TOM SCHWARZ: This will not impact farmers, as I understand it, that currently are farming that ground. Now when those leases come back up for another term, they will have the choice whether to rent that ground again or not to rent that ground again. So I guess I don't see that the impact is maybe that great. Additionally, I mean if you rent that ground to use as dryland ground, you know, there's still some benefits hopefully if you get the right lease than to do that, so. So yeah, there will be some impact for a given area. But I don't see that it would be that great.

SENATOR HUDKINS: Thank you.

SENATOR SCHROCK: Other questions for Tom? Thank you for coming down. Next proponent, please?

MICHAEL CLEMENTS: Senator Schrock and members of the Natural Resources Committee, thank you for the opportunity to speak to you today. My name is Mike Clements, M-i-k-e C-l-e-m-e-n-t-s. I'm the general manager of the Lower Republican Natural Resources District in Alma, Nebraska. And I'm here today to testify on behalf of the Lower Republican NRD in support of LB 1156. I will be brief and to the point. As you know, we have serious compact compliance challenges facing the Republican River Basin and the state of Nebraska. Over 60 percent of the flows to the Republican River come from runoff, not groundwater. One of the most severe droughts on record, riparian vegetative growth, conservation measures such as dams, terracing, and no-till farming practices have all contributed greatly to depletion of runoff to the Republican River. Couple that with irrigation usage and you see increased stream flow depletions across the Republican River Basin. As you can

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see, this is a complex issue. As you are aware, our district has halted new well drilling, stopped expansion of new irrigated acres, and implemented an integrated management plan with strict groundwater allocations, the lowest in the state. At the present time, we have very limited authority to raise additional money for incentive programs that could be targeted towards reducing consumptive use. We need to be creative and open minded as we search for ways to achieve compact compliance and conserve our water resources. Options that will have the least amount of negative economic impact to the Republican River Basin must be pursued. One such option would be to prohibit irrigation on certain educational lands in fully and over appropriated basins. We applaud Senator Schrock for introducing this idea. I have a board member who will be directly affected by this legislation and he supports the measure because he knows we need to take action during these dry times. Thirteen thousand five hundred acres of educational lands in the Republican Basin is a small amount, but we say every little bit counts. There is no one measure, other than Mother Nature, that will make this problem go away. However, if we are persistent and keep chipping away and looking for every possible solution, I'm confident we will prevail. I ask that you please advance this bill out of committee for the benefit of the Republican River Basin and the state of Nebraska. And thank you very much for giving me the opportunity to speak and I'll be glad to answer any questions.

SENATOR SCHROCK: Thank you, Mike. Senator Kremer.

SENATOR KREMER: Okay, you mentioned 13,000 acres. Is that 13,000 acres under irrigation is that the, or is that the total number of acres of educational lands?

MICHAEL CLEMENTS: I understand that to be the total number under irrigation but maybe Jody can clarify that.

SENATOR KREMER: Okay, thank you.

SENATOR SCHROCK: Other questions? Mike, is it not true that a lot of the irrigation wells we're talking on the Republican are in the Upper Republican where the groundwater has declined?

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MICHAEL CLEMENTS: True.

SENATOR SCHROCK: And that would maybe help the situation they have where they're actually pumping more water than is being replaced, it's called a mining situation?

MICHAEL CLEMENTS: That is correct.

SENATOR SCHROCK: And the Upper Republican is not here to defend themselves so I don't want you to think I'm picking on them. Other questions? Thank you for being with us.

MICHAEL CLEMENTS: Thank you.

SENATOR SCHROCK: (Exhibit 7) People who would...is there more proponent? Is there opponent testimony? We have a letter here from the Nebraska Association of Resource Districts in support, signed by Dean Edson.

HERB SCHIMEK: Mr. Chairman, members of the committee, my name is Herb Schimek, H-e-r-b S-c-h-i-m-e-k. I represent the Nebraska State Education Association. We have seen, over the years, a constant chipping at the school lands and trust situation. This is just another way to devalue the land and end up getting it sold. We are very much against that. We think the word trust means something. This land was given to the state to hold in trust for the children of the state of Nebraska. This would devalue that land. We don't see you taking the same rights away from private owners. There shouldn't be any difference between those owners and the trust land. The trust land pays taxes, Senator Hudkins. Senator Wickersham passed that law a couple of years ago. So therefore, we stand against the bill.

SENATOR SCHROCK: Thank you, Herb. Senator Hudkins.

SENATOR HUDKINS: Mr. Schimek, the property taxes that the educational land pays, is that market value? I mean, is it equal to the surrounding areas?

HERB SCHIMEK: I think it is but you would have to ask Mr. Gildersleeve who is here...

SENATOR HUDKINS: Okay, thank you.

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HERB SCHIMEK: ...from the lands and funds.

SENATOR SCHROCK: Other questions? Senator Smith.

SENATOR SMITH: What would you say is the annual revenue, so to speak?

HERB SCHIMEK: I think the annual revenue to the schools and to the children of the state is approximately \$20 million, but that's just in general.

SENATOR SCHROCK: Senator Louden.

SENATOR LOUDEN: Yeah, Herb, since you get into educational lands and funds, why, I suppose out in my district, we probably have as many as anybody. Now when you speak about devaluing and stuff, now are you talking about the bonus that's paid for these or are you talking about the equipment that's put there and valued?

HERB SCHIMEK: Basically, I'm talking about if a piece of land is valued at \$1,500 an acre, then it's irrigated, and that would go down to maybe \$500. That's a devaluation of that land that's held in trust for the children of the state of Nebraska.

SENATOR LOUDEN: Well, I don't know if I agree with you if it would drop that much. But what about the equipment that's on that land? Who owns that, the person that leases that land?

HERB SCHIMEK: You can check with Jay Gildersleeve on that. I believe...is it combined?

JAY GILDERSLEEVE: Generally, the leasees are.

HERB SCHIMEK: Lessee.

SENATOR LOUDEN: Okay. Now what I'm getting at, I've lived around school lands all my life and I know that if you get a school land and lease it and if you put enough equipment on there, then when that comes up for sale and you put that cash value of that equipment on there, chances are you won't get any bidders against it. So have you ever, have they

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increased the bonus bids after this irrigated land has had this, the irrigation wells and that sort of thing put down on it?

HERB SCHIMEK: Senator, that kind of question, you're going to have to ask Mr. Gildersleeve.

SENATOR LOUDEN: Okay, thank you.

SENATOR SCHROCK: Other questions for Herb? Herb just making an observation you can comment on. But until you get to the western part of the state, there isn't much school land left. They sold it all off.

HERB SCHIMEK: Yeah, that's true. They did steal it and send it to their friends.

SENATOR SCHROCK: I don't know the history of that. Sometime if you've got time, you might tell me about that.

HERB SCHIMEK: It's pretty brutal.

SENATOR SCHROCK: But...all right. Thank you, Herb.

HERB SCHIMEK: Thank you.

SENATOR SCHROCK: (Exhibits 8 and 9) Other people who would testify in opposition? I have some letters here of opposition. One is signed by Claude Cappel and Claude Cappel is from McCook, I believe. And then Wayne Haarberg from Imperial. Is there other opponent testimony? Welcome.

LOWELL SCHMIDT: (Exhibits 10 and 11) Hello, Senators. My name is Lowell Schmidt, L-o-w-e-l-l S-c-h-m-i-d-t. I'm a farmer and my wife, Kathy, and I and our three young children, school age children, have an irrigated farming operation in Frontier County. We are in the Middle Republican Natural Resource District. Our farmstead is located on 240 acres of deeded land out of Section 16. We rent the remaining 400 acres of school land. The school land has approximately 310 acres which is irrigated and has been watered since 1973. In the last seven years, I have made a \$300,000 investment to upgrade the land using a new pivot, new well, including a bonus to retain the land. I still have a very large portion of debt to pay off. If I

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have to stop irrigating this land, I will greatly affect our personal operation. This land is very valuable to our survival. If I had any idea going into this that you were going to take away my livelihood, I would have not made this investment. I feel that it is unfair to pick out farmers in Sections 16 and 32 and pull the rug out from underneath these farmers when they have made significant investments to the land. If this passes, I feel that the money that has been put into the irrigated operation by the farmer should be compensated for in some way. If you force us to cease irrigating this land, we will be stuck with equipment that we cannot use and the land will not bring the income into our operations requiring to cash flow it. Instead of shutting down these operations, why not spend the money on a CREP program which is a voluntary method of setting aside irrigated land as opposed to forcing farmers to give up valuable land which they depend upon to survive? You would fill that 100,000 acre goal and possibly more if it were a voluntary program instead of a forced issue to Sections 16 and 32. The net result of taking away my right to irrigate the school land may push me to sell out and quit farming. This will force my family and I to move away off the land that I lived on and farmed for 38 years. Please consider that our lives are at stake here. It's not just land to us and please do not pass the bill. It will only hurt family farmers. I thank you for your time and if you have any questions, I'll try to answer them.

SENATOR SCHROCK: Thank you, Lowell. Are there questions?  
Senator Stuhr.

SENATOR STUHR: Yes, could you explain, as you were beginning your testimony, you mentioned your investment and a bonus just to retain the land?

LOWELL SCHMIDT: I'm on my second lease currently and upon the first lease and second lease, I both paid bonuses to get the land.

SENATOR STUHR: And what do you...okay, explain that to me, please.

LOWELL SCHMIDT: Well, that's in a bidding process when the piece of land comes up for lease. Anybody interested in it can bid a dollar an acre or just a dollar to get the lease

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or it's opened up for bid. And then people interested in bidding bid it up until someone finally gets the highest bid, pay, and then they become the new leasee.

SENATOR STUHR: I see. Are those closed bids or is this a day when people just, it's like an auction, you come and...

LOWELL SCHMIDT: It's like an auction. They advertise the leasing of the land and anybody interested can show up at that auction and bid on that lease publicly.

SENATOR STUHR: Okay, all right, thank you.

SENATOR SCHROCK: Senator Kremer.

SENATOR KREMER: And if you should lose the lease, then you would just sell the equipment to the new leasee or sell it off?

LOWELL SCHMIDT: That would be, yes, that would be a possibility.

SENATOR KREMER: How long is the lease, what's the duration of the lease?

LOWELL SCHMIDT: My lease was for seven years.

SENATOR KREMER: Okay.

LOWELL SCHMIDT: And I have five years left.

SENATOR KREMER: And then you'd have to go through the bidding process again. So you could irrigate on it until that time that it came up for the new lease agreement then.

LOWELL SCHMIDT: As I understand it, I could.

SENATOR KREMER: And you just started on your seven years now or how long have been in it?

LOWELL SCHMIDT: Two years ago.

SENATOR KREMER: So you've got five years remaining, then?

LOWELL SCHMIDT: Yes.

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SENATOR KREMER: Thank you.

SENATOR SCHROCK: Senator Hudkins.

SENATOR HUDKINS: I still don't understand the bonus that you had to pay. Is this in order for you to be able to bid on the lease?

LOWELL SCHMIDT: The bidding process of paying the bonus is just the right to get the lease to rent, rent the property. And it's a process that all leases go through, as near as I understand. And on this piece of property, I, like I said in the original part here, we own 240 acres out of it. The remaining 400 acres of the section is school land. And my property that I've had has been irrigated since 1956 and it was all gravity irrigated. But because of the way it lays and fits with the school land, it was more desirable to go pivot irrigating and become more efficient with the water usage on that land. And in doing so, that's why I decided that, you know, it was important to me and our operation to retain this school land lease and continue operating it as we have. And it makes up a considerable portion of my farming operation.

JAY GILDERSLEEVE: Lowell, excuse me, I knew you were coming today. I handed out the picture...

SENATOR SCHROCK: Jay...

JAY GILDERSLEEVE: ...of your operation there.

SENATOR SCHROCK: Jay, would you like to wait until it's your turn to testify? For one reason, the transcribers can't pick you up back there.

JAY GILDERSLEEVE: I just wanted you to know that you had the picture.

SENATOR SCHROCK: Yeah, we have it. Other questions?  
Senator Louden.

SENATOR LOUDEN: Yeah, well, yeah, I'm glad you came to testify on this, Mr. Schmidt. I'm from western Nebraska and we have a lot of school lands out there. In fact, a lot of

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our townships will have three sections in them. So I'll explain to the senators afterwards exactly what bonus bids is because I've seen a lot of friendships go down the tube over bonus bidding. So this is part of my question. You say you already have 240 acres deeded. When did you buy that or how did you come about getting the 240 acres out of the school land and when was it sold?

LOWELL SCHMIDT: I can't answer...when we bought the place '66, it was a deeded land situation. And I would have to look on the county records to see when...

SENATOR LOUDEN: But somebody had purchased that sometime or another...

LOWELL SCHMIDT: Yes.

SENATOR LOUDEN: ...probably in the 30s...

LOWELL SCHMIDT: Might have been.

SENATOR LOUDEN: ...or late 20s...

LOWELL SCHMIDT: I don't know...

SENATOR LOUDEN: ...when it was sold before.

LOWELL SCHMIDT: ...don't know why they just sold 240 out of it or what the process was, I don't know.

SENATOR LOUDEN: Well, yeah, this has happened in the ranch country. I know why they did it. They took the best land first and left school land for the rest. When you mentioned that you bought the pivot and, did you put the well down? Did you pay for the well and do you own the well or did the Board of Education Lands and Funds buy the well?

LOWELL SCHMIDT: I, because of where my boundary lines was with the school land, I put the well on my side of the property line so that I own the well. And that way I paid for the well solely on my own.

SENATOR LOUDEN: Yeah, well, that's agreeable. Most people do it that way. Then do you use this same well to irrigate your own 240 acres?

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LOWELL SCHMIDT: Yes, I do.

SENATOR LOUDEN: Okay.

LOWELL SCHMIDT: Out of that 240, there's approximately 125 acres that actually pivot irrigates. Before that, there was around 150 acres that was gravity irrigated.

SENATOR LOUDEN: Then you're trying to irrigate the whole, what do you got here, 600 and some acres? Yeah, 310 or whatever you have on your...you're trying to, well, not trying. But you are irrigating that whole part with one well? Is that what you're telling me?

LOWELL SCHMIDT: Yes.

SENATOR LOUDEN: Yeah, okay. So if you lost the school land, it wouldn't be, you wouldn't be losing your well because you would still be irrigating your own deeded land that's there. You just wouldn't be able to sprinkle the school land. Do you mind telling me how much bonus you had to pay?

LOWELL SCHMIDT: Well, I don't like telling you this. But the first go-around, I paid \$65,000 bonus to get the land. And the last time around, I paid \$55,000. And I based it on an economic situation as far as whether it was something that was justifiable to our operation as it existed at that time and it was. So that's why I went as far as I did.

SENATOR LOUDEN: Okay, was there an adjoining neighbor that had his sights set on that or...

LOWELL SCHMIDT: Yes.

SENATOR LOUDEN: ...was it somebody in from...okay.

LOWELL SCHMIDT: No, it was an adjoining neighbor.

SENATOR LOUDEN: I see. I guess that part of it, I think, probably answered my question. Do you know if, are you close to where there can be any CREP programs where you live or farm?

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LOWELL SCHMIDT: My property is approximately 68 miles away from CREP...

SENATOR LOUDEN: Okay.

LOWELL SCHMIDT: ...as far as that goes.

SENATOR LOUDEN: And are there any school lands in your area that, oh, what do you call this thing here several years ago when you could put it into ACR program? What were those programs, you could turn it back to grass and not...

SENATOR SMITH: CRP?

SENATOR LOUDEN: What?

SENATOR SMITH: CRP.

SENATOR LOUDEN: CRP, yeah. Is there any school lands right in your area that has CRP?

LOWELL SCHMIDT: I don't know of any currently.

SENATOR LOUDEN: Okay, well, thank you.

SENATOR SCHROCK: Senator Hudkins.

SENATOR HUDKINS: Mr. Schmidt, I appreciate Senator Louden's offer to explain to us about the bonus bidding later. But I want to get this on the record. The bonus that you had to pay, who did that money go to?

LOWELL SCHMIDT: I wrote the check out to the Board of Educational Lands and Funds.

SENATOR HUDKINS: Okay.

LOWELL SCHMIDT: So I assume it went down here to Lincoln.

SENATOR HUDKINS: So that gave you the opportunity to bid on this land, is that right?

LOWELL SCHMIDT: No, I got the lease of it for seven years. The first lease was only six years; this last lease was seven years.

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SENATOR HUDKINS: So the bonus then, was that part of the auction process?

LOWELL SCHMIDT: Yes.

SENATOR HUDKINS: Okay.

SENATOR LOUDEN: Tough world out there.

SENATOR HUDKINS: Yeah. I guess what I'm trying to say is, if it were not for the bonus that went to the Educational Lands, then why do they call it a bonus? Why don't they just call it a lease, this is what you're paying for the lease?

LOWELL SCHMIDT: I pay a yearly lease, rental fee every single year.

SENATOR HUDKINS: Okay.

LOWELL SCHMIDT: Just like anybody else would. But the bonus is the right for me to get the lease through an auction, an auctioning process that they have.

SENATOR HUDKINS: Yeah, and I don't have any of these lands in my area...

LOWELL SCHMIDT: No.

SENATOR HUDKINS: ...so I don't understand it. It sounds to me like there's something rotten in Denmark. (Laughter)

LOWELL SCHMIDT: The thing I might also add is that, and this is my understanding, that and where I'm in an upland area away from the, what they call quick response areas, that it may take as much as 100 years for what I do there in either not using any water or using less water to actually make it down to the point where it gets to a quick response stream. So you know, the impacts that you create on people far away from the stream are very severe and affect them a lot. But it takes so long for that to finally actually come down to the point where it may make it worthwhile to actual in-stream flow or in those areas. And I think that that should be at least thought of in the process. Any other

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questions?

SENATOR SCHROCK: Other questions for Lowell? Senator Kremer.

SENATOR KREMER: Were you going to explain the map or was somebody else going to do that? I was...

LOWELL SCHMIDT: I didn't know...

SENATOR KREMER: Okay.

LOWELL SCHMIDT: ...someone brought a map.

SENATOR KREMER: Okay, that was probably going to be someone after you then, so thank you.

SENATOR SCHROCK: Lowell, that was my...is this the map of your farm?

LOWELL SCHMIDT: Yes.

SENATOR SCHROCK: I'm not quite sure. It looks like there's a pivot on the southeast quarter. Is that correct?

LOWELL SCHMIDT: There's...that was probably an old picture of an old map.

SENATOR SCHROCK: Okay, but do you have a half mile system, a section system...

LOWELL SCHMIDT: Yes.

SENATOR SCHROCK: ...on it that you windshield wipe?

LOWELL SCHMIDT: Yes, I do.

SENATOR SCHROCK: And part of that irrigates school land and part of it irrigates your land?

LOWELL SCHMIDT: Yes, my deeded land is the southwest quarter and the south half of the northeast quarter, northwest quarter.

SENATOR SCHROCK: I have no idea who all of the committee

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and the body is going to look with favor on this bill. But I know that I've talked to counsel, I've not talked to the rest of the committee, about a possibility where exempting some land where private property and school land is conjunctively involved.

LOWELL SCHMIDT: I see. That would certainly help.

SENATOR SCHROCK: And obviously, nobody here wants to affect your livelihood but that could be affected next time it comes up for lease if somebody blows you away on the bid, too.

LOWELL SCHMIDT: That's always...

SENATOR SCHROCK: And like Senator Louden, I've been to several of these auctions and, in fact, I used to rent some school land but we don't anymore. Senator Hudkins.

SENATOR HUDKINS: A couple more questions, if you don't mind. How many people pay this bonus? Everyone who has a lease from...

LOWELL SCHMIDT: Yes, anyone that has a lease coming up for re-lease, it goes up for auction. And they, you know, if there's no other bidders, they can get it for, as my understanding, is for a dollar.

SENATOR HUDKINS: Okay. If you didn't get the lease, then you wouldn't have to pay a bonus?

LOWELL SCHMIDT: No.

SENATOR HUDKINS: Okay. All right, thank you.

SENATOR SCHROCK: Other questions? We appreciate you being with us...

LOWELL SCHMIDT: Okay, thank you.

SENATOR SCHROCK: ...hearing your situation. Next opponent? Remember the old, you're too young to remember the television program, "To Tell the Truth," where they had to look at each before they'd stand up and say who the real McCoy was, I guess, so...(Laughter)

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CURTIS STALLBAUMER: Hello, my name is Curtis Stallbaumer, C-u-r-t-i-s S-t-a-l-l-b-a-u-m-e-r. I live southeast of Oconto, Nebraska, in Custer County. I have a school lease and it consists of approximately 341 acres and of that, about 312 or so are irrigated. And I guess I'm here to put a face to people who it would affect. Right now, this piece of ground is a very highly productive piece of ground. It is all Board of Education land that, on this tract, and there is no case where my well irrigates some school ground. It's all a unit to me. And I guess I feel like this ground should be treated just like any other privately owned ground because, yes, it is state Board of Education Lands and Funds ground. But just because it's owned by a state organization, I guess, I feel like that doesn't mean that it should be up for the first ground that should be denied water. I have, my wife is sitting with me and we have three children. And this is a very vital piece of ground to my operation. It's afforded me an opportunity to get started farming and I just don't think it's fair to remove those water rights from this Board of Educational Lands and Funds ground.

SENATOR SCHROCK: Thank you, Curtis. You're the one that called me the other day, is that correct?

CURTIS STALLBAUMER: Correct. I'd like to answer any questions.

SENATOR SCHROCK: Questions for Curtis? Senator Louden.

SENATOR LOUDEN: Yeah, thanks for coming forward. You say you have how many irrigated acres, 200 and what?

CURTIS STALLBAUMER: On this particular piece of ground there's about 312 acres.

SENATOR LOUDEN: Three hundred twelve on the school land?

CURTIS STALLBAUMER: Right.

SENATOR LOUDEN: And it's a 640 acre section?

CURTIS STALLBAUMER: No, it's a 341 acre...I believe the 341 acres is on that piece.

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SENATOR LOUDEN: I see. Is there other school land next to it or anything or...

CURTIS STALLBAUMER: No, sir.

SENATOR LOUDEN: It's just the 341 acre piece of school land sitting out there?

CURTIS STALLBAUMER: Correct, it's directly to the east side of Oconto, Nebraska.

SENATOR LOUDEN: Section 36 or 16 or...

CURTIS STALLBAUMER: I'm not sure what the section...

SENATOR LOUDEN: It don't matter. I guess I'm wondering how come it hasn't...well, I guess that isn't important. I thought they were selling those small pieces of ground around. I thought those were the first ones to be sold. When did you put a pivot under it or start irrigating on it? Is this something been for years or is this something new or...

CURTIS STALLBAUMER: This ground has been irrigated, I believe in the 70s it was developed. I guess I should give you some history on this particular piece. How it came to be school land was, it was, I believe it was traded. Someone previous to me lived on a piece of ground that was school lands and he wanted to trade this piece of irrigated ground for where he lived so he would own his own home. And that's how this ground became Board of Education land. That was done long before I was around.

SENATOR LOUDEN: Okay. You put the pivot on it?

CURTIS STALLBAUMER: When I bought this...when I bought the lease or I got the lease, the pivot was, the existing irrigation was all on it. I have not increased any irrigated acres on it. I did buy a new pivot a year ago to eliminate some headaches for me because the older machine was getting to the end of its useful life. And I have made some very, I feel, some very high investment in this ground in order to keep it producing and paying for itself.

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SENATOR LOUDEN: Now when you took over that lease, did you have to buy that well from somebody?

CURTIS STALLBAUMER: I...when I purchased was, I purchased the equipment, the personal property which is like the center pivot system and the irrigation pipe and the pumps and motors. That's what I...and the fence, I guess.

SENATOR LOUDEN: Okay, and the Board of Educational Lands and Funds owned the whole...

CURTIS STALLBAUMER: Board of Educational Lands and Funds owns the whole, yes.

SENATOR LOUDEN: Is this joint ground that you own now or, I mean, are you living on this or is this a few miles away or how is it situated?

CURTIS STALLBAUMER: I live approximately one and one-half miles away. It is close in our proximity to our farming operation. It works well with us, yes.

SENATOR LOUDEN: There's a, what, river down through there, what is it, Wood River or...

CURTIS STALLBAUMER: Wood River, yes.

SENATOR LOUDEN: Yeah, how far from the river is this?

CURTIS STALLBAUMER: It's right on the Wood River.

SENATOR LOUDEN: I mean, when you say on, now, I mean, is this 50 feet?

CURTIS STALLBAUMER: The Wood River passes through it.

SENATOR LOUDEN: Through the property?

CURTIS STALLBAUMER: I should say that that creek is a dry creek...

SENATOR LOUDEN: Yeah.

CURTIS STALLBAUMER: ...except for when it rains. There's no live stream in it.

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SENATOR LOUDEN: Ash Creek, is that what it's called, or is it the Wood River?

CURTIS STALLBAUMER: The Wood River is the name of the creek.

SENATOR LOUDEN: Okay.

CURTIS STALLBAUMER: Ash Creek, I believe, is further north.

SENATOR LOUDEN: Okay, and it goes right through this property?

CURTIS STALLBAUMER: Correct.

SENATOR LOUDEN: Okay, how big of a pump is it? How much does it pump?

CURTIS STALLBAUMER: There are four irrigation wells on that piece and I believe of the four, the high pumping one is probably in that 1,000 gallons per minute. The low pumping one is probably in that 600 gallons per minute.

SENATOR LOUDEN: I mean, you've got four wells to do the 315 acres, is that what you're telling me?

CURTIS STALLBAUMER: Correct.

SENATOR LOUDEN: I see. Four wells...

CURTIS STALLBAUMER: Four irrigation wells, yes.

SENATOR LOUDEN: ...to do the 315 acres. And they all run just one pivot then?

CURTIS STALLBAUMER: No, there's one center pivot and then there's a combination of...five, I believe it's five other fields that are gravity irrigated...

SENATOR LOUDEN: I see.

CURTIS STALLBAUMER: ...with those wells.

SENATOR LOUDEN: Okay, thank you.

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SENATOR SCHROCK: Other questions? Senator Stuhr.

SENATOR STUHR: Yes, Curtis, how old are you?

CURTIS STALLBAUMER: I am 30 years old.

SENATOR STUHR: Thirty?

CURTIS STALLBAUMER: Thirty, correct.

SENATOR STUHR: Right, well, it's very nice to see young people still involved in farming and...

CURTIS STALLBAUMER: Well, thank you.

SENATOR STUHR: ...thank you for coming.

CURTIS STALLBAUMER: I guess I just want to let you know that there is a lot of, lot more than just saying we're not going to irrigate this ground. I don't think taking the water off of this, off the Board of Educational Lands and Funds ground is going to solve anything. I think it's pretty much a drop in the bucket as far as a solution. I don't, I guess I don't know what the answer is but I don't think affecting the lives of farmers who are on this ground, it's kind of sacrificing the few, I guess. We're all in it together, I believe.

SENATOR SCHROCK: Senator Kremer.

SENATOR KREMER: Well, I just want to say, I think you make some real good points because you happen to be the tenant of a different owner for somebody else other than school lands, why, it would be a different situation. But just because you happen to be renting it from them, that puts you out of business pretty much.

CURTIS STALLBAUMER: That's correct.

SENATOR KREMER: Yeah, thanks for coming down. We appreciate that.

SENATOR SCHROCK: Just a minute. Yeah, I want to thank you for coming down. I don't know the answer to this. I would

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be interested to know what stage of your lease you're in.

CURTIS STALLBAUMER: This fall, this is my last year. This fall it's going to re-lease.

SENATOR SCHROCK: Okay. Just a comment. Unfortunately, certain areas of the state we have probably allowed more development than we should have and now we're paying a price. And fortunately, it's not statewide, it's just certain areas of the state. And we're looking for ways to reduce consumptive use and there's no solution that isn't painful. And so we appreciate you coming forward. Thank you.

CURTIS STALLBAUMER: Okay, thank you.

SENATOR SCHROCK: (Exhibit 12) Is there other opposition testimony? We have neutral testimony submitted by Farm Bureau. And I believe that is signed by Jay Rempe. Jay, are in you neutral testimony?

JAY GILDERSLEEVE: Yes, sir.

SENATOR SCHROCK: Okay.

JAY GILDERSLEEVE: Good afternoon. My name is Jay Gildersleeve. I'm the chief operating officer for the Board of Educational Lands and Funds. I'm also an attorney, but I won't tell anybody if you don't.

SENATOR SCHROCK: Would you spell your name for us?

JAY GILDERSLEEVE: J-a-y, last name is Gildersleeve, G-i-l-d-e-r-s-l-e-e-v-e. I'm appearing here neutral today. I may have a statement at the end, but first I'd like to answer your questions, and I think there probably are several. Your question first on the auction. The way the thing works is this. When the old lease expired, the new lease is now going to be offered. All leases are offered publicly. We establish the rent, so as you come to the auction, you know what the rent will be for the first year only. You don't know what it will be for subsequent years. And then if more than...then we have to have a process, you see, to determine who gets the lease if more than one person is willing to pay that much rent. And so the way that's

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done is simply an oral auction. And now this is a statutory process which you folks established. There are basically two ways to do it. One way is to bid rent, so you could just be bidding the rent for each year. Some states' school trusts do it that way under their statutes. Here in Nebraska, what you have established is that you simply bid one time up front cash bonus for the privilege of holding the lease. Now, you still have to pay the rent for the first year and you will also pay the rent for the second and subsequent years, but the up front bonus simply is how you determine the winner at the auction. So when this gentleman says he bid \$55,000 or whatever, that would mean that somebody else bid \$54,000 or \$54,500 or \$54,900, see? And wherever it ends, that's just the end of it for that auction. And the bonus is paid one time up front. The rent for the first year is paid at that time, and then the rent thereafter is paid semiannually. It's annual rent paid, half of it in January and half of it in July of each year. And all leases on the state are offered the same way. Now, when he says a dollar, what that means is if you have somebody, the field rep is conducting the auction, starting at the rent he'll say if there is nobody who wishes to bid, will anybody bid a dollar more, see. And if no one bids any more, well, then whoever pays the rent is going to get it. If only one person wants it, they get it for the rent.

SENATOR HUDKINS: Is that rent equivalent to other rental of farm ground in the area?

JAY GILDERSLEEVE: Yes, ma'am; yes, ma'am. It's our duty to charge a rent which matches the private sector as closely as we can. Our top irrigated rent, what we're talking about today, our top irrigated rent in the state today right now would be about \$150 an acre. And that's what we are receiving and that is what the lessee furnishing the pivot and the pump and the motor and in some cases also the irrigation wells. So it's pretty good. About the highest private sector rent that we see is \$25,000 for a quarter section. And that \$25,000 landowner is generally furnishing the quarter section of ground and the pivot and the pump and the motor, and you're leasing the whole business from them. Other questions? I'm sure there are.

SENATOR SCHROCK: Okay, Senator Kremer.

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JAY GILDERSLEEVE: Yes, Senator.

SENATOR KREMER: Is that basic rent adjusted each year then?

JAY GILDERSLEEVE: Yes, sir; yes, sir; yes, sir.

SENATOR KREMER: I know the bonus would be that total \$55,000 would be all he pay on the bonus,...

JAY GILDERSLEEVE: Right.

SENATOR KREMER: ...but then each year he would be subject to whatever adjustment there would be.

JAY GILDERSLEEVE: Correct. The rent for every lease is adjusted every year.

SENATOR KREMER: Every year; okay.

JAY GILDERSLEEVE: Right.

SENATOR KREMER: But the bonus is for the whole duration of the lease.

JAY GILDERSLEEVE: Right; right. And now we'll have staggered lease expirations, so we will have, in a given year, 400 to 450 to 500 leases expiring, and we will average approximately \$1 million a year in bonus in addition to the rent. One of the most consistent numbers that we see is our bonus number. It will average about \$2,000 per lease offered, give or take, and that's been fairly steady for the last 20 years. Now, that doesn't mean every lease brings \$2,000. In other words, one might bring \$10,000 and four others might not bring any, but it will average about \$2,000 per lease offered. Now, the crop leases...of course, the thing about crop ground is it's more accessible. Crop ground, by definition, is on a road. That's how you get the crops in and out and how you get the farm implements in and out, so it's more accessible to folks. And so we see more competitive bidding in crop ground areas than we do pasture areas. Up in the Sandhills, for example, we'll have some pieces of ground that are wholly surrounded within ranches, and obviously the only logical user is the owner of that ranch. But crop ground is a different situation. And so most of the competitive bidding, or much of the competitive

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bidding will come on crop ground; much of the bonuses will come on crop ground. The highest yielding rent, of course, is in irrigated crop ground, and the highest bonuses we see tend to be there also.

SENATOR SCHROCK: Senator Stuhr.

SENATOR STUHR: Could you share with us where the distribution of these school lands are, just generally, because there's been some...

JAY GILDERSLEEVE: Well, first of all, we started off with every section 16 and every section 36 checkerboarded across the state. And in total, that was approximately 2.9 million acres. And that was an original grant from the federal government. It comes because the United States, of course, at one time owned all of the land, having acquired it in the Louisiana Purchase. And so as Nebraska was formed, and as other states were formed in the west, lands were given to each of those states, in trust, for what's called a common, which we today call the K-12 public schools. And again, Nebraska received every section 16 and 36. Now, we're gridded year into townships six miles square. So six miles by six miles is a township, and there are 36 sections in that township. And section 16 is just about in the center and 36 is in one of the corners, roughly. And so that would give you a checkerboard pattern across the state. Now, in the early years of statehood, the lands were available for purchase if you wanted them, in many cases for \$7 an acre; if you'd like to buy it, raise your hand. And what happened there, of course, is that the land that was sold was the land in and near all the major population centers. Omaha, of course, was on the river, Nebraska City and all of that, and along the Platte River valley because that's, of course, where there was the original pioneer routes. And we have to remember now, in those years we didn't even have wells. In other words, the water that you got was out of the rivers. And so most of the land that was sold from inception until around the turn of the century was in and near the major population centers and along the Platte River valley. So if you ever see the map of the over appropriated river basin, you show the Platte Valley as a part of that, you know, there is just a little outline on that map. But a lot of the lands, particularly the lands that would be closest to the river, we don't own anymore. See, those were so'd

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early. Today we have left approximately 1.4 million acres, so we still have roughly half of that grant left. If you would draw a diagonal line from the northeast corner of the state to the southwest corner, so I'm going from northeast to southwest, and as you're looking at that map the bulk of the lines will lie northwesterly of that line. And again, that's just an accident of where the people were at the time that you could buy it for \$7 by raising your hand. Of course, initially, anything that would logically have been crop ground would have been sold. If we would have had pivot irrigation back in those years, of course we wouldn't have any irrigated land today. But you must remember that a lot of irrigation came later. So the holdings distributed today, we have approximately 61,000 irrigated acres, something over 200,000 acres of dryland crop ground, and something over 1.2 million acres of pasture. And from an income perspective, the pasture will generate approximately half of the income and the crop ground approximately the other half. And of the crop ground, the 61,000 irrigated acres will generate about half of that rent or about a fourth of the total. And the 250,000 plus dryland acres will generate the other half of the crop ground rent, or again, about a fourth of the total. And the situation, of course, is that you have irrigated rents as high as \$150 an acre. Much of the crop ground is in the far west in what we call the summer fallow wheat area, which means that you get a crop every other year instead of every year. And so we have a considerable amount of the dryland crop ground falling into that category.

SENATOR SCHROCK: Senator Stuhr.

SENATOR STUHR: Yes. Several years ago I believe the Education Committee directed a more evenly portfolio, and said so many acres should be sold each year. Is that still happening?

JAY GILDERSLEEVE: The bill that you are referring to was passed in, as I recall, about 1997. And what it said was that the board, this board, our board, should sell the lands down to the point that the land comprised one-fourth of the total portfolio, and the fund comprised the other three-fourths to the extent that that was consistent with mandatory fiduciary duty. In other words, that was sort of a target that we would like to see you do to the extent that

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it's consistent with mandatory fiduciary duty. And since that time we have been selling. We have sold over the last seven years approximately \$35 million worth of land. Now, during that period, of course one of the things that we looked at in terms of the fiduciary duty question is simply this, that we looked at what appeared to us to be an overheated stock market...and we weren't the only ones saying that. You may remember Warren Buffet was saying the same thing, and what appeared to be some undervalued real estate holdings, quite frankly. So we have sold very judiciously. We sold approximately \$35 million in the time since this law has been in force. In that time, the total additions to the Permanent School Fund have been about \$73 million, roughly half of that from land sales and roughly half of that from other sources, royalties, and other kinds of things. And if you take the value of the Permanent Fund seven years ago and you take the \$70 million that's been added, you will find that the fund as law, and then you compare that to the market value today, you will find that the fund has lost about \$30 million. Now, that's, of course, one of the things with the stock market. See, sometimes it goes up and sometimes it goes down. At the same...so what we have is, the stock side is dropping. Even though we're selling land and putting money in, it's still dropping. Now, on the other side, the land in the same period has appreciated about \$85 million. That's the remaining land. So what you've got is, you started off with the land in stockholding, well, the land is going up and the stock is going down, you see. So that's kind of...you know, if your question is, are we going to reach 25 percent by next year or the year after? Not unless that changes. I mean, the land is going up, quite frankly, faster than it's being sold. And the stock market is doing...well, you know how it's doing, see, so. So the answer as to whether that target is going to be met is, candidly, probably not, but, again, we can't control what happens in those outside factors. But that was the notion. The total amount sold now in that period is about 139,000 acres. And, of course, most of that will be pasture because that's mostly what we have. Eighty percent of our holdings are pasture, and so, of course, most of what we sell will be pasture. Yes.

SENATOR SCHROCK: Senator Louden.

SENATOR LOUDEN: Yeah, thank you, Chairman Schrock. As you

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are...I presume you're testifying in a neutral position so I guess, then, it doesn't matter to you whether or not this bill advances or not. When you talk about the 61,000 acres, how much of that is pumped from the ground and how much of it is surface irrigated all over the state of Nebraska. You're lumping in everything all over the state, right?

JAY GILDERSLEEVE: Yes. Yes, I have that number, but it's less than 4,000 surface acres; the rest is groundwater.

SENATOR LOUDEN: Well, according to the stuff we had, there is over 2,100 acres alone, or 20-some hundred acres in Morrill County alone that is surface irrigated.

JAY GILDERSLEEVE: Well, that would be right, but most of the surface irrigated is out west.

SENATOR LOUDEN: Okay. There's none in Calamus or any of those areas like that where they do that?

JAY GILDERSLEEVE: Pardon me?

SENATOR LOUDEN: There's no surface water irrigation in...I think the Calamus River has some irrigation projects. At Mirage Flats and all those areas up there don't have any surface water irrigation?

JAY GILDERSLEEVE: Well, Senator, what I can tell you is this. I mean, I can give you the breakdown of the figures if you want, but the canal-irrigated land total in Nebraska in the School Trust, is approximately 3,000 acres. Now, we have 61,000 total acres. Out of that, 3,000 out of canals are out of water projects; a little over 5,000 is flood-irrigated or gravity-irrigated, whichever you wish, out of groundwater; and the rest is pivots from groundwater. And we have about 19,000 acres of pivots with lessee owned wells, and about 34,000 acres of pivots with trust owned wells.

SENATOR LOUDEN: Now, getting back to this one young fellow where he has had his pivot right on Wood River is what it is, this is kind of what this bill is about, is to get the Board of Educational Lands and Funds to not be irrigating in some of these areas that probably have an effect on some of the surface water flowing. If that's that small 315 acre

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piece, I was under the impression that the Board of Educational Lands and Funds was trying to more or less sell the smaller pieces like that. If he wanted to buy that, could he go ahead and petition for it to be sold and be bought?

JAY GILDERSLEEVE: If he wished to, he could ask us, yes. We have a picture of that if you would like. But the history of it is this. The young man is right; we acquired it in a land trade. It was irrigated while it was in private ownership. And the private owner wanted to...owned this and wanted to trade it for some other School Trust land. And because it was irrigated, of course, it had higher rent per acre and that sort of thing than our pasture holdings would. And so we engaged in the land trade and thereby acquired the land. Now, this particular land, the pivot is less than normal size. We have some pictures if you would like. I happened to know he was coming because he called ahead. Most of it is flood irrigated. I don't believe the river actually runs through it. It's right outside of the village of Oconto. Now, the sewage lagoon for the village of Oconto is actually in the middle of the property. There is a buried pipeline that runs under the field to service it. There is a ditch that runs through it but it's not the river because the sewage lagoon couldn't be put on an active river.

SENATOR LOUDEN: Do they pump that lagoon onto this to irrigate the property?

JAY GILDERSLEEVE: Oh, no. No, no. No, no. No, the city...again, the city sewage lagoon...or I don't know what you call it; sewage lagoon is what I call them...was there at the time we acquired the thing in trade. It's about a quarter to a half mile from the actual border of the community. Again, we have a picture here if want...if the page wants to go...and there is buried pipe that brings it over there. And, of course, there's never been...there is a small road that the community can get in to service it, and it's never been a problem for us. And as far as the sale, again, it's about 340 acres, but it would yield, I mean, obviously in terms of income, much more than several sections of pasture would yield. If the young person is interested in buying it, yes, that would be something that he could certainly take up with us. Now, I want to come

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back to a...

SENATOR LOUDEN: Now, wait, I've got another question.

JAY GILDERSLEEVE: Okay, go ahead.

SENATOR LOUDEN: I get to the ask the questions.

JAY GILDERSLEEVE: Okay, that's fine, and I get to answer them.

SENATOR LOUDEN: Did he have to pay a high bonus bid or how did he acquire that? He said his lease had come up and it's going to be up now. How...are you familiar with these?

JAY GILDERSLEEVE: Well, of course, I don't from memory know. I can tell you it was auctioned like they all were, and if there was competitive bidding then he would pay a bonus, yes. But I don't know how much it was; I wouldn't remember that.

SENATOR LOUDEN: Um-hum. Yeah. On these, when you mentioned every...just for common knowledge I guess, some of the townships I live in, section 17 is also the school lands. I mean, we have townships out there that have more than two school lands.

JAY GILDERSLEEVE: Well, if you do, that would be unusual...

SENATOR LOUDEN: Yeah, I know.

JAY GILDERSLEEVE: ...because the original grant here in Nebraska was strictly 16s and 36s. Now, there are a few places where we receive what's called in lieu land. If you would have, say, the national forest is there, and you don't get your 16s and 36s, and maybe you're owed three or four or five or six sections, then they might...

SENATOR LOUDEN: And they were given, in the early days before the homestead days.

JAY GILDERSLEEVE: Right. And then they might give you an odd numbered one.

SENATOR LOUDEN: There's areas out there that have the two

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and three...have three sections, or so, on it.

JAY GILDERSLEEVE: Right. Sure.

SENATOR LOUDEN: On your opinion, then, do you think that the Board of Educational Lands and Funds would want to be a party to trying to cut down on the amount of pumping, or something like that, that's going in these over appropriated NRDs or river basins? Is this something that you would be willing to work with, along with...?

JAY GILDERSLEEVE: Okay, now I get to come back to your prior question, which is do we care whether it advances? We're here in a neutral position and we have, I guess, a question, and then depending on the answer, we have something that we'd like to chat with you about. But the question simply is this. If we were to sell the land tomorrow, would the buyer be allowed to irrigate? And I think that...now, a couple of the people testifying here have touched on that question, and I think Herb Schimek also touched on it. In other words, the question is this. The bill, as presently drafted, of course, as I understand it, simply says that our next lessee cannot irrigate the land. It doesn't talk about what happens if we sell the land. Would the purchaser be allowed to irrigate it? The reason I asked the question is simply this, that today...and now I'm coming back to something that Mr. Schimek touched on...today the School Trust will own, let's say a quarter section of pivot-irrigated land that will be worth, if we put it on the market, \$1,500 to \$2,000 an acre, give or take. It depends on where it is and that kind of thing. Now, if the bill, as it goes into effect, and we still own that land, then it will be worth, in certain places of the state, maybe \$800 an acre as dryland crop ground. In part of the western portions of the state where we have a lot of our land, maybe \$400 or \$500 an acre, or in some cases less than zero. We have less...

SENATOR LOUDEN: Now, may I interrupt you?

JAY GILDERSLEEVE: Sure.

SENATOR LOUDEN: How much irrigated cropland do you have in some of the counties in the western part of the state?

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JAY GILDERSLEEVE: Okay, let's talk about that.

SENATOR LOUDEN: The numbers we have, there isn't that much.

JAY GILDERSLEEVE: Okay, well,...

SENATOR LOUDEN: Like in the 49th District that I represent, there is very little irrigated cropland in there.

JAY GILDERSLEEVE: Okay. All right, let's talk about it. In the Republican Basin, which is where we have, I take it, the gravest emergency at the present time, the School Trust has approximately 13,796 irrigated acres, and that's in the entire Republican Basin, and that's over 11 counties. But 70 percent of that is in two counties. Nearly 10,000 acres of that is in Chase and Dundy counties, which, of course, is in the Upper Republican. And there, as I say, if we...today, if we were to sell that, those pivots or pivot-irrigated quarter sections would be worth approximately, give or take, \$1,500 an acre. Now in that area, if you remove irrigation, in some cases you will have dryland crop ground; in some cases you will have blow sand. In some cases, it will be worth less than nothing. It would be pasture if you had grass, but we'll have no grass.

SENATOR LOUDEN: Now, let's get to that. Let's talk about that. Because they were...in some places where they put in circle pivots that irrigation didn't belong, but it was able to put them in and raise some crops on there which should have been probably pastureland. And that's the reason I asked how much CRP land? Do you have any of those circles that you put into CRP?

JAY GILDERSLEEVE: Oh, sure. Sure, we have some that we put back in... We have a number of...we have some that we put back in as long as ten, 15 years ago when the program first started, and we continue to put some in at times. But we have...

SENATOR LOUDEN: Now, when you put that in, that took that...whoever was put the machinery or whatever, I mean, that land went off the market and went out of production...

JAY GILDERSLEEVE: Well, the tenant did that.

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SENATOR LOUDEN: ...and whoever had it before,...

JAY GILDERSLEEVE: No, no, no, no. We did it with the tenant.

SENATOR LOUDEN: ...they were out, right?

JAY GILDERSLEEVE: No, we did it with the tenant. We did it with the tenant. The tenant agreed, in those kinds of cases, said, you know, this is not really good land, maybe it should have never been broken. And there are things like that on our land, although not so much anymore, but just as there were on private sector land. And so we said, how about if we put the thing into the CRP. Now, one of the things about do in that, if you're on that kind of piece of ground is, you're going to see grass, it's a really good deal if you can water it up in the first year, and maybe even a little bit the second year with the pivot, because in some of those areas if you don't do that, you may spend \$200, \$300 an acre seeding costs, the wind may blow, and in three or four years you may do it again.

SENATOR LOUDEN: Now, who got the revenue from the CRP, the Board of Educational Lands and Funds or the lessee?

JAY GILDERSLEEVE: We each got part.

SENATOR LOUDEN: Okay. Right; I agree.

JAY GILDERSLEEVE: We each got a part. And so the lessee, in those cases, would...actually, in many cases, would be the person who signed the contract. The person who is doing the cost sharing, the federal government would put up 50 percent of the cost and we structured the rents, usually one-third/two-thirds.

SENATOR LOUDEN: Now, can...

JAY GILDERSLEEVE: The lessee received two-thirds of the rent and we received one-third of the rent, and that helped cover the fact that they had the seeding costs involved.

SENATOR LOUDEN: Yeah. Now, can you...do you have information to show in that area how many of those wells were put in after 2001 or from that day forward?

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JAY GILDERSLEEVE: Very few; very few.

SENATOR LOUDEN: They were all put in...

JAY GILDERSLEEVE: The Upper Republican, let's talk about the Upper Republican: Chase and Dundy. They've had water controls out there for almost 25 years and water allocations. Now, the other NRDs have not, but five-year water allocations. And we have our irrigated lands have gone through three or four, or in some cases five cycles of that. And you would have an allocation of, let's say, 75 inches over five years. That would average 15 inches a year, and that's not enough to grow corn, but it is if it rains. If you have that much water plus some rain you can grow corn out there. And under good management they allowed you to have what's called a carry-over, so if you didn't use all of your 75 inches of water, you could maybe have ten inches left and go into the next cycle and you would get your next allocation of 75 inches of water. And we have pivots out in those NRDs, in the Upper Republican NRDs we have pivots in Chase and Dundy County that today have 100 inches of carry-over--of carry-over, mind you. And the average carry-over on our leases is something like between 25 and 50 inches, besides the normal allocations, and we actively manage that.

SENATOR LOUDEN: Now, are those people that have those leases then, do they...can they transfer those allocations to some private land or anything?

JAY GILDERSLEEVE: No.

SENATOR LOUDEN: It's got to stay on that?

JAY GILDERSLEEVE: No, those allocations belong to the School Trust land, and we actively manage that. What I mean by that is this. Out in that area, as I told you the 15 inches makes it difficult to grow corn, so frequently what you will have is two or three pivots pooled or maybe ten or 15 or 20 pooled. If you want to pool with the school trust, you pool under a written contract which we write, and we will write in that contract usage restrictions. And we were doing this ten and 15 years ago when the Republican was running plenty full. We were writing restrictions into

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those pooling contracts and filing them with the NRD, who cosigned them and approved them, and we monitored that and we've treated that groundwater as an asset of the School Trust which we've actively managed. And we have had a couple of cases now, not very many because we have usually very good tenants and they usually are very good at what they do...but we've had a couple of instances where they failed to meet the requirements that we wrote up, by small amounts, usually say an inch, an inch and a half of groundwater. We went into the local NRD and that groundwater was transferred from their wells to ours to meet our requirements that we had when they pooled with us. We treat this as a very important, actively managed asset of the School Trust. Now, as I say, in Chase and Dundy County, we will have, out of that 10,000 acres, if you take the water off of there you may have half of them that will literally be blow sand. What I mean by that...and the way you can tell this when you go out and see a pivot in the private sector...and those of you that live in the northeast, you will see this up in Holt County, at times...when you see a pivot where the corners are grass...

SENATOR LOUDEN: I don't have any more questions.

JAY GILDERSLEEVE: Okay, if you see a pivot where the corners are grass, then you know...

SENATOR SCHROCK: Other questions.

JAY GILDERSLEEVE: ...then you know that there is difficulty.

SENATOR KREMER: I've got just a short question. What kind of return do you expect to get off of this? Do you set your rents on a projected return?

JAY GILDERSLEEVE: We set our rents to match the private sector as well as we can.

SENATOR KREMER: Okay. Because I was just wondering what kind of a return you get off the land leases after you take off taxes and management fees and all that?

JAY GILDERSLEEVE: Um-hum.

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SENATOR KREMER: What kind of return do you get, do you know? Just a simple answer.

JAY GILDERSLEEVE: After taxes?

SENATOR KREMER: Sure.

JAY GILDERSLEEVE: Five percent, maybe.

SENATOR KREMER: Okay. Because I remember the discussion, I think it was after LB 77, that was Senator Baker's bill if I remember right, when it was trying to get some of this land to be sold, that the return on the nonagricultural investments was greater than the agriculture. And I remember at the time...

JAY GILDERSLEEVE: Well, of course, now you're speaking just the income part. There is also an appreciation part, too. In other words, if you go to the fund and don't count the appreciation, the land will beat it easily. In the fund, you count the appreciation of the stock market and the land...

SENATOR KREMER: Because I know there are a lot of people that have been trying to buy the land and felt like it was appropriate. If I remember right, that there was a lobbyist hired at that time that everybody felt was pretty inappropriate.

JAY GILDERSLEEVE: Well, I don't know. It was Tom Vickers. I don't know if he is here or not. Okay. Are there any more questions?

SENATOR SCHROCK: Yes, I have a question.

JAY GILDERSLEEVE: Okay.

SENATOR SCHROCK: The law that was passed instructed you to sell what percent of the school land?

JAY GILDERSLEEVE: It did not instruct anything specific to be sold or any specific percentage. What it said was, sell the land down to where the land is 25 percent of the total portfolio to the extent that that is consistent with fiduciary duty. Now, at the time...and as I said a moment

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ago, at the...

SENATOR SCHROCK: And what percent have you sold down?

JAY GILDERSLEEVE: Well,...

SENATOR SCHROCK: What percent are you at?

JAY GILDERSLEEVE: Okay. Just about what it was when we started. About the time that this bill was passed, the spread was about 60-40. It was about 60 percent land and about 40 percent in the fund, which would be stocks and bonds. Now, what's happened since that time, as I was mentioning a little bit ago, is we've been selling land and moving it to the fund side. But the land is appreciating and the fund where we're moving the money has been under performing,...

SENATOR SCHROCK: So the ratio hasn't changed any.

JAY GILDERSLEEVE: ...so actually the ratio is still 60-40.

SENATOR SCHROCK: All right. Thank you, Jay. Senator Smith.

SENATOR SMITH: Who paid for the lobbyist back in '99?

JAY GILDERSLEEVE: The School Trust.

SENATOR SMITH: The trust did.

JAY GILDERSLEEVE: Um-hum.

SENATOR SMITH: Thank you.

JAY GILDERSLEEVE: Um-hum.

SENATOR SCHROCK: Other questions?

JAY GILDERSLEEVE: I have then a closing comment, if I could.

SENATOR SCHROCK: All right.

JAY GILDERSLEEVE: Okay. The position of the School Trust

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is simply this: This is a thing which we believe that you can do if you are willing...if you wish to do it and are willing to pay the costs of doing it. The cost that we refer to is simply the following: that before this happens you would have a pivot-irrigated quarter section that is worth, let's \$1,500 an acre. That is an asset of the School Trust in the same manner as stocks or bonds or any other asset that the School Trust might own. When...if this law is passed, now, if the School Trust can then sell that land and the buyer can go ahead and irrigate, then I could make an argument that no value has been lost. I could also make an argument that no water will be saved. I mean, if this bill...if the purpose of this bill is to conserve water, it seems to us that there will have to be a prohibition against a purchaser irrigating or no water will be saved. And if that is true, then once the bill goes into effect, the School Trust would then have an asset that is worth maybe \$500 an acre, maybe \$800 an acre, maybe \$300, maybe nothing, maybe less than nothing in the case of pivots that will blow. And that is a reduction in value of the School Trust, reduction in value of the School Trust asset, and that is something which...that's, in our view, that would be a taking in the same manner as if the trust were a private sector owner. And if that is something that you all want to do and that the body feels is appropriate, then you could certainly...the general fund can certainly furnish the money to be deposited in the Permanent School Trust Fund the same as if we were to sell the land. In other words, if we sold that land today, received the \$1,500 an acre, it would be deposited into the Permanent School Trust Fund. If that value, then, becomes diminished or becomes zero, the general fund can make that same deposit. Now, the Permanent School Trust Fund will, of course, then earn income which will be distributed to the schools. You understand that. But at least that preserves the asset structure of the School Trust. And if you are willing to do that, then we think you can do it.

SENATOR SCHROCK: Thank you, Jay.

JAY GILDERSLEEVE: You're welcome.

SENATOR SCHROCK: Do we have other neutral testimony? Dan, please come forward.

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DAN SMITH: Senator Schrock, members of the committee, my name is Dan Smith, D-a-n S-m-i-t-h. I'm the manager of the Middle Republican Natural Resources District and testifying in a neutral capacity, primarily because the board hasn't had the opportunity to take a formal action on this. I did want to point out several things that have already been discussed. It won't take much more of your time other than to hit them real quick. The issue over surface water, we do have some school lands that have surface water contracts in our district. And as Mr. Gildersleeve was talking about here, at the last...in our district, our rules, should the school lands decide to sell these lands, say, tomorrow, that allocation, that certification of acres would go with that well and the new buyer. I also wanted to emphasize, as Mr. Schmidt testified, there you have a private well that irrigates school land and he discussed his issue very well. But in our district, we have about 1,700 acres of school land that has a well on it, another 900 acres that are school land that's irrigated with a private well. As I said, about 300 or so of those are, have surface water rights and supplemental wells. They have both rights on some of those lands. So the 13,000 acres represents slightly more than one percent of the irrigated acres in the Republican Basin. While that doesn't seem like a whole lot, we're getting down to the point where one percent means a lot when it comes to compliance. So thank you for your time. I won't take any more of it. I would be glad to try and answer questions about my district if there are any. Otherwise, I will thank you for the opportunity.

SENATOR SCHROCK: Thank you, Dan. Questions? Appreciate you being with us. Is there other neutral testimony? If not, that will close the hearing on LB 1156 and we will move to LB 1147.

LB 1147

SENATOR KREMER: Are you ready?

SENATOR SCHROCK: Yes, we are.

SENATOR KREMER: Okay. Thank you, Senator Schrock and members of the committee. My name is Bob Kremer. I represent District 34. I'm here to introduce LB 1147. It's

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a very simple bill and very straightforward and it won't take long. LB 1147 outright repeals Section 61-201. And this section designates the qualifications for the director of the Department of Natural Resources. As I understand, the directors of all the other agencies have not spelled out qualifications and so this puts them on the same level as the other directors that are appointed to the other agencies. Be glad to answer any questions or the rest of the testimony.

SENATOR SCHROCK: Thank you, Senator Kremer. Questions for Senator Kremer? Senator McDonald.

SENATOR McDONALD: What are those qualifications?

SENATOR LOUDEN: I don't have the original bill in front of me but I don't know. You can ask somebody else maybe. I think, I looked in there...

SENATOR McDONALD: I looked, it's not here.

SENATOR KREMER: ...I looked in there and all it is is my bill which deletes that section. So I'm sorry, I do not know what it is.

SENATOR McDONALD: So you want to remove them but you don't know what they are? (Laughter)

SENATOR KREMER: Yes.

SENATOR McDONALD: I'm sorry to embarrass you.

SENATOR KREMER: You're right, you're not embarrassing me... (Laughter)

SENATOR McDONALD: Okay, I'll ask somebody else.

SENATOR KREMER: The counsel could probably tell you but she doesn't want to speak.

SENATOR McDONALD: Okay.

SENATOR SCHROCK: I think I know, but we'll let somebody else answer.

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SENATOR KREMER: All right.

SENATOR SCHROCK: I could be wrong.

SENATOR KREMER: I'm just a messenger.

SENATOR McDONALD: Okay. (Laughter)

SENATOR SCHROCK: Thank you, Senator Kremer. Do we have proponents for LB 1147?

RON BISHOP: (Exhibit 13) Yes, you do, Senator. Mr. Chairman and Senators, my name is Ron Bishop, R-o-n B-i-s-h-o-p, and I'm general manager for the Central Platte Natural Resource District, located out at Grand Island, Nebraska, that's where our headquarters is, appearing here today in support of LB 1147, in support of it as far as our natural resource district is concerned and also on behalf of the Nebraska Association of Resource Districts. When I appeared before the committee last year, I testified on LB 359 that the current qualification requirements is a carryover from the old Department of Water Resources, which is now only a part of the current Department of Natural Resources since Water Resources and the Natural Resource Commission were merged a couple years ago. And what I told you was true. But there is more to the story and the rest of the story is that that requirement for the director of the old Department of Water Resources was also a carryover. It was a carryover from the old Department of Roads and Irrigation. No matter how we change the agency or responsibilities, we just keep seem to repeating that old requirement of Roads and Irrigation, even though the Department of Water Resources and the newer Department of Natural Resources haven't ever had to design a highway, a bridge, or an overpass. Prior to the more recent merger, the Department of Water Resources dealt with surface water rights and their approval, adjudications, and administration. The Natural Resource Commission that is now a part of the new department, however, dealt with quite a wide variety of other activities, resource development, soil conservation, water conservation, flood plain management, flood prevention and control, watershed protection, and administration of state resources, grants, and cost-share funds. While the director of Water Resources was required to be a professional engineer, the director of the other

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department that was merged, the director of the Natural Resource Commission, was required to be experienced in natural resource conservation, natural resource development, and natural resources use. With the merger of the two agencies and the combining of programs and responsibilities as well as combining the staff, the duty and responsibilities of the director of the new Department of the Natural Resources have greatly expanded over those of the director of the old department. Management and supervision became larger and more important jobs. New and additional responsibilities include negotiations, and that's been an important job recently, soil and water conservation programs, natural resource development and planning, especially planning, takes on new importance of the new department and the director. In addition, the need to develop and maintain a good and close working relationship with 23 natural resource districts is another major change and a major job from the old Department of Water Resources. If one were to develop a qualification requirement that would cover the responsibilities of the new director of Department of Natural Resources, you would require a degree in water resource management, a degree in soil conservation, a degree in natural resource planning, a degree in economics, and a degree in water law, as well as a degree in personnel management and a degree in ag or civil engineering. Requiring one individual to have seven to ten different degrees, however, is not practical. So a better approach and a better solution is to select an individual with training and experience in as many of those fields that they're responsible for as possible and then let him hire staff to fill the other responsibilities. Roger Patterson was an engineer and he had on staff people with expertise in planning and in soil conservation, in engineering, and in economics, as well as water law. Roger was doing a good job and I'd like to have kept him indefinitely. But that didn't happen. Ann Bleed, who was Roger's assistant, is now serving as acting director. Soon we'll have to start a search for a permanent director and when we do, let's not paint ourselves into a corner by limiting ourselves by requiring that he or she be a professional engineer. The best person for the job may be an engineer who, like Roger, has a staff with expertise in the other fields. It is, however, just as likely that the best person out there may have training and expertise in water law and would have staff trained in the other fields or perhaps water resource

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management or natural resource planning. With a wide field of responsibilities invested with the Department of Natural Resources and its director, it's not in Nebraska's best interest to confine our choice to just those individuals with training in just one of the fields of responsibility. In closing, I'd like to point out one other major shortcoming of the current law. Professional engineers, which is a requirement as required in the current law, is applied to a whole host of different fields in the engineer profession. You can be licensed as a professional engineer in the following fields: agriculture, architectural, chemical, civil, control systems, electrical, computer, environmental, fire protection, mechanical, metallurgical, mining and mineral, naval architecture, nuclear, petroleum, and a couple of different structural fields. The current law on director's qualifications doesn't distinguish between the fields, only that he be a professional engineer with five years' experience in a position of responsibility in irrigation work. Under the current law, a professional electrical engineer that operated the family's irrigated farm before going off to college would meet the qualification requirements, but Jim Cook, who's been the department's attorney and has worked in the field all of his working life, wouldn't qualify. A mechanical engineer who works in design for a center pivot firm for five years would qualify, but Dave Cookson, who heads the natural resource section of the Attorney General's office, would not. And I could go on and on with examples of how, with just a little experience in some water field, one of these other professional engineers could qualify. It's not logical and I don't think it's prudent and it should be changed now while we have time and before we have to make the next selection. I want to thank you for your time and, in closing, I'd like to thank the committee for the efforts that they go through, but especially those of you who are through after this year because of term limits. It's, I'm going to miss seeing you. I hope to get back down here before the session is over but in case I don't, I do want to say thank you for your time and your effort over these years. Thank you.

SENATOR SCHROCK: Thank you, Ron. We've enjoyed your presence, too. The feeling is mutual. Questions for Ron? Senator McDonald.

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SENATOR McDONALD: You mentioned Roger Patterson...

RON BISHOP: Yes.

SENATOR McDONALD: ...was in the director of Natural Resources.

RON BISHOP: Yes.

SENATOR McDONALD: Was he an engineer?

RON BISHOP: He was an engineer, yes.

SENATOR McDONALD: What kind of an engineer was he?

RON BISHOP: It is required that he be an engineer. Whether Roger was a civil engineer or ag engineer, I'm not sure.

SENATOR McDONALD: But he had the qualifications because he had the experience?

RON BISHOP: He met the requirements by law, yes.

SENATOR McDONALD: Ann Bleed, is she an engineer?

RON BISHOP: Yes, she is.

SENATOR McDONALD: Okay.

RON BISHOP: And I cannot tell you what kind of an engineer she is. I know her, well, I won't say what kind of an engineer she is because I'm not absolutely sure.

SENATOR McDONALD: In order to get a degree as an engineer, do you get a degree as an engineer and then specify with additional training to get whatever type of engineer you are? It's kind of like an attorney and you can have a divorce attorney or specify what your engineer is, but you have to have that basic engineer degree, regardless of if you're civil or electrical or whatever?

RON BISHOP: Your training as...

SENATOR McDONALD: Is uniform?

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RON BISHOP: ...is in the field...no, the training is more specific to the field that you're getting your degree in. For example, if you are, if you have a degree as an ag engineer and are a professional engineer, with your training as an ag engineer, there are different classes that you take as versus an electrical engineer or a sanitary engineer.

SENATOR McDONALD: But some of them would be the same?

RON BISHOP: I suppose some of them might be the same, yes. Just as somebody with a water resources management degree would have some of the same classes that somebody in one of the engineering fields might have.

SENATOR McDONALD: Has there been a problem finding applicants for these positions because we qualify, we have specified they have to be an engineer?

RON BISHOP: In my opinion, yes, there has been. And I was not directly, but indirectly involved in the search when Roger Patterson was selected and it was not easy finding people that were capable and qualified and, in fact, that position had to require quite a pay jump to attract somebody like Roger. And there aren't many Rogers out there.

SENATOR McDONALD: But we found a Roger and we found an Ann. So chances are, we have been able to fill that position as an engineer.

RON BISHOP: That position hasn't always been filled, yes.

SENATOR McDONALD: Okay, thank you.

SENATOR SCHROCK: Senator Louden.

SENATOR LOUDEN: Yes, Ron, what's the requirement in education and everything for, you know, to be a general manager of an NRD?

RON BISHOP: There is no general requirement. Many of the natural resource districts, when they advertise for a manager, they will ask for a degree in a relative field. But there's no requirement. Some of the managers are engineers. Some of the managers have degrees in soil conservation. Some of the managers have degrees in water

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resources planning or administration. Some of the managers have degrees in geography and earth science. So there's quite a range of...

SENATOR LOUDEN: All the way to being a relative of some of the board members, hmm?

RON BISHOP: I would hope not but I don't know.

SENATOR LOUDEN: Okay, thank you.

SENATOR SCHROCK: Senator Stuhr.

SENATOR STUHR: Yes, Ron, well, actually what you were pointing out in the beginning of your testimony that none of the other agencies have requirements. Is that correct?

RON BISHOP: To my knowledge, most of the other agencies do not have specific requirements as a director. I don't know about Health and Human Services. I don't know about Department of Roads. The Department of Roads may still or may not require that the director be a "engineer."

SENATOR STUHR: Okay, thank you.

SENATOR SCHROCK: Other questions? Thank you, Ron.

RON BISHOP: You bet.

SENATOR SCHROCK: Next proponent? Ron, do you represent yourself or do you represent...

RON BISHOP: I represent myself. I represent Central Platte Natural Resource District.

SENATOR SCHROCK: Okay.

RON BISHOP: And I represent the Nebraska Association of Resource Districts.

SENATOR SCHROCK: All right, thank you.

RON BISHOP: Yes.

SENATOR SCHROCK: Next proponent, please? Opponent

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testimony?

MICHAEL DRAIN: Senator Schrock, members of the committee, my name is Michael Drain, M-i-c-h-a-e-l D-r-a-i-n. I'm from Holdrege, Nebraska. Before I start, I want to apologize if my eyes are more on the table than on the committee. It is in my effort to try to keep my time limit down by going off my outline. Also, as I begin, I believe I need to disclose to you that I am a professional engineer and also disclose for you that, though I work for the Central Nebraska Public Power and Irrigation District, I am here today to testify on my own behalf. You will have to ask Mr. Tim Anderson as to whether or not any of my comments line up with that of our district. I am here to testify obviously in opposition to LB 1147, to eliminate the requirements to the director of Natural Resources. It is a bill that would have similar effects to LB 359, which carried over from last year, to modify some of the requirements. And therefore, my reasons for opposition are similar to the reasons I've given in the past on LB 359. The director of the Department of Natural Resources position is a highly technical position in nature. It is not an accident that this is a position that has a requirement for a professional engineer. It is true that there is a history behind it, carrying over from the Department of Roads and Irrigation to the Department of Water Resources to today's Department of Natural Resources. But those decisions were made because it was felt that it was a need to have somewhat of a technical competence in those positions. This is, by a layperson's term, known as the state engineer position. And while it may be true that other departments of the state of Nebraska do not have qualifications, similar qualification guidelines, I can tell you that the, most of the surrounding states of the state of Nebraska, in fact, most of the states west of the Mississippi River also have a position that is one way or another, either formally or informally, called the state engineer position and almost all of those states have requirements that the state engineer be a licensed engineer. The position is, as I mentioned, dealing with technical, complex issues. These are not unique to the surface water issues which have come from the Department of Water Resources. Recently, we are now adding to the plate of the Department of Natural Resources the need to deal with groundwater issues as well. I can assure you that groundwater is not less technical in nature than surface

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water and we believe that, or, I believe, since I'm testifying on my own behalf, that it's just important to have someone technically qualified to deal with the groundwater issues in the future. It is important to keep in mind that the director serves also as a first court in Nebraska on issues of water. The director makes findings, makes determinations regarding water rights. The director's determinations are appealable to the Court of Appeals in Nebraska directly and on questions of law, the courts, I can assure you, will take their own interpretation. But on questions of fact, it is the director to whom the courts will defer because the expectation is the department will act on issues of fact. I agree that there are other qualifications necessary for any director, such as communications skills, such as good management skills. But first and foremost is the need to have our water resources managed in a way that is technically accurate. I would also suggest to you that the current licensure requirements in the statute provides Nebraskans with a specific protection. Because the director is required to be a professional engineer licensed under the State Engineers and Architects Regulation Act, that means that the director is subject to all the rules of the Board of Engineers and Architects and the code of practice established under Nebraska law. These cover requirements for competence, conflicts of interest, full disclosure, and professional conduct. If you violate these code of ethics, your license can be subject to suspension or revocation. And as a consequence of the combination of the code of practice and the need for the director to be licensed, it makes it very tenuous for any director to make a factual determination based upon a policy or a political preference or any kind of other outside influence rather than based upon engineering principles because that director runs the risk of being brought before the Board of Engineers and Architects for a violation of the code and having their license suspended or revoked and, therefore, their ability to continue as the director put into jeopardy. This is an important check or balance placed on the director to the benefit of all Nebraskans. It is not adequate, as has been suggested by some, to have other licensed engineers work under the director, because it is the director that makes the orders and it's the director that can overrule or ignore the recommendations of the engineers underneath him or her. It is only with the director him- or herself being the licensed engineer that

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the check provided by the Engineers and Architects Regulation Act that the check and balance on the benefit of all Nebraskans is maintained. I think that arguments for the need to eliminate are overstated or misplaced. I don't believe that a problem has truly been shown to exist. I understand there is some anxiousness at this time with an upcoming Governor's election, and with the recent departure of the most recent director. But I will tell you this. Nebraska has been well served by having a state engineer for longer than we have had a Unicameral. There has been historic stability as a consequence of the current requirements. And in fact, we have had fewer state engineers in the history of Nebraska than we have had governors. And state engineers typically are able to go from one governorship to the next and indeed from governorship of one party to another because they are insulated in great part from the policy and the influence afforded other agencies because of the requirements of the code of practice. I would suggest that the change here being suggested goes against a good faith agreement that was made on behalf of a number of parties who reached agreement on the merger of the Department of Water Resources and the Natural Resources Commission a few years ago. It was not an accident that this requirement was carried over. There were a number of parties who would have opposed the merger of these two agencies had they removed the requirements for the engineer at that time. And I think that that was understood by the parties involved in that agreeing to that merger. Concerns over the size of the pool of candidates is not a good reason for us to weaken our standards for water management in Nebraska. I would argue that rather, we should not lower our standards but increase our incentives. I am fearful, I have no evidence of it, but I believe that the intent here may be more to try to influence the future decisions of the department by eliminating someone subject to the code of practice rather than to just allow for someone who's otherwise very well qualified to serve in the position. I would agree that there are some possible minor modifications that could be made to the qualifications now or in the future. Right now, there is a requirement that the director not only be a licensed professional engineer, but have five years of "irrigation work" for experience. I would argue that you could expand that to water resources or natural resources to open up the field to a number of qualified engineers who currently work for municipalities

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for some of the eastern NRDs who's primary work is not irrigation and for a number of consulting engineers, consulting practice. I also think, while I would not push personally strongly for this, I think it would be acceptable to not only include licensed engineers as possible candidates for the directorship but also licensed professional geologists. Like engineers, professional geologists in Nebraska have much the same requirements. There is a Geologist Regulation Act, a board of geologists, and a code of practice with the possibility for license suspension/revocation. Both geologists and engineers, as part of that code of practice, could not be the director and make decisions on issues involving water if their background, if their experience, if their education was in something other than water resources. As a conclusion, it is my belief that the licensure requirements as currently exist protect all Nebraskans. The current requirements have worked well for coming on, I believe, a century or more. Nebraska has currently on its plate enough water management problems already so this is not the time to interject one more change in Nebraska management, particularly with regard to a position that seems to have served the state so well for so long. I fear that this is a short-term political fix that we will look back on with long-term consequences as we have so many other problems that we are now facing today based on decisions of the past. I urge you to vote against LB 1147 and any similar legislation. I thank you for the opportunity to testify. I apologize if I went on too long.

SENATOR SCHROCK: Apology accepted. Questions? Senator Louden.

SENATOR LOUDEN: If this bill advanced and passed, it doesn't necessarily mean that they couldn't still hire an engineer, right?

MICHAEL DRAIN: It doesn't mean that they couldn't hire an engineer. But if they don't hire an engineer, you lose that protection of the code of practice. Today, if the director makes a determination on stream flow loss, transit loss, transit times, offset obligations, new depletions, lag time, anything else where that decision is not based upon engineering principles but public influence, anything else, we can appeal them.

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SENATOR LOUDEN: Okay, now what about, I mean, we happen to be fortunate now that Ann Bleed is an engineer, I guess, and fill the spot. But what happens if we, somewhere along the line we didn't happen to have that person in there and we would be operating for, with an interim person that wasn't an engineer? Now this could go on for a matter of time if the person wasn't available. I mean, just because the law is passed doesn't mean we can't look for this person with those qualifications, is it?

MICHAEL DRAIN: Yeah, it doesn't mean you couldn't look for a person with those qualifications. But we think it should be an...I keep saying we, we is Mike Drain. I think this should be an absolute requirement and you're correct. If Ann were to depart, we would need to have another engineer. I would suggest to you, there are a number of engineers at the department and perhaps the need to fix that problem is either some sort of internal promotion mechanism within the department or a statute which would serve to cover the requirements of an interim director for a set period of time.

SENATOR LOUDEN: Okay, thank you.

SENATOR SCHROCK: Senator McDonald.

SENATOR McDONALD: My question is the same question that I asked Ron Bishop about. I mean, since you are an engineer, tell me how you get to be either a civil engineer or electrical engineer. How does all that work?

MICHAEL DRAIN: Yeah, you take a field of study, which is specific to the area of engineering you're going to study. So civil engineers take a civil engineering degree with set courses, mechanical the same, electrical the same. In the first approximately two years of your studies, the courses will typically line up with engineers of other degrees. So I would typically take the same mathematics and calculus courses, same physics, advanced physics courses, and others as electrical engineers and mechanical engineers. Coming on to about your third year is when you start going into the specialized courses that are distinct to the particular area of practice. So in my case, as a civil engineer, I was a civil engineer with a water resources focus. And so I took a number of hydraulics, hydrologic, groundwater modelling,

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and other types of courses that would have been more specific to that area and not a part of the mechanical or the electrical field.

SENATOR McDONALD: Why would someone want to weaken the qualifications?

MICHAEL DRAIN: I would not want to suggest anything bad about any particular persons or groups pushing for this. But it does seem to me that one of the things that you could do is if you got rid of this requirement of the engineer and have the director no longer subject to the code of practice, there are a number of factual determinations that are made constantly by the director. Historically, they've been with regard to surface water resources. In the future, I believe that they will encompass the groundwater areas as well. I can give you some very specific examples from my work where the entity that I would represent would be before the department with another entity, both water right holders, both of which have some interest with regard to how much stream flow loss is assigned when water is transported down the river through canals. The determination of how much stream flow loss assigned to natural flow or storage water means that one entity will end up with more water and one entity will end up with less. It was a policy determination made a long time ago that stream flow in Nebraska would be subject to prior appropriation. I think the courts indicated that there's the policy of futile call. But the calculation of how much water any individual is able to get, allowed to get on a particular day is a determination by the department. And when there are disputes on those things, they go to the director. When you are before the director and the director is subject to the code of ethics and the code of practice and knows that they can be called on anything that they make a determination, not based on engineering principles but based on other influences, then it doesn't matter if I'm a lone irrigator up against the largest irrigation district in the state. It doesn't matter whether or not the question is how much water should be in the stream for in-stream flows versus irrigation. It doesn't matter whether or not the governor gives the director a call and says, I would like to see more water in one place or the other. The only thing that I know when I go before the director is I lay out the facts. And the decision will be made based upon engineering principles.

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And if the director makes a decision based on anything other than engineering principles, as an engineer, I can put that person before the Board of Engineers and Architects, subject to a complaint under the code of conduct, and say that it was inappropriate to make to the decision based upon other factors and have that person held to account. So there's a valuable check in the system there.

SENATOR SCHROCK: Senator Smith.

SENATOR SMITH: Very briefly, what would you say is the percentage of decisions made by the director that are based on fact and would need the engineering background?

MICHAEL DRAIN: In terms of sheer number, I see more decisions from the department being of a technical nature than of any other type. Now that would a better...

SENATOR SMITH: Fifty-one percent?

MICHAEL DRAIN: I do not know. That would be a better question for the department. Certainly, there are a number of them. They might not be the big ones that you're hearing about today like whether or not something is a 10/50 or 20/40 or things like that. But most of the policy decisions are actually determined before it gets to the department and the department then is the regulator who makes the determinations of how something is to be implemented. And we think...I apologize, I keep saying we. I speak for other entities most of the time.

SENATOR SMITH: Right, right. If we could delineate those decisions needing to be made by an engineer and state that as such and allow the director, perhaps with a legal background...I mean, is it safe to say that not all engineers would like to be director but if they could still be in a leadership capacity and we could defer to them for those issues of substance relevant to engineering...

MICHAEL DRAIN: Certainly. I think that it would be possible. I would argue it would probably very complicated for you to go through all of the statutory authorities of the department of the director and parse out. These are things that the department decides that will not be a decision of the director. These are the things that the

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department decides that would be a decision of whoever is the senior engineer at the department. I think that's possible. I think that would be very difficult. I also think...

SENATOR SMITH: Okay, that's good.

MICHAEL DRAIN: Sorry.

SENATOR SMITH: Thank you.

SENATOR SCHROCK: Senator Hudkins.

SENATOR HUDKINS: You're a professional engineer. Would you be interested in pursuing this position?

MICHAEL DRAIN: (Laugh) I got to tell you, I don't know that I would. I would be honored if someone would suggest it. But I would suspect, first of all, it might be about as hard as getting through the Supreme Court hearing process right now. The entity I work for, I believe, would create baggage for me with a number of other entities that would help in making the nominations, selection process. And while personally I don't think that you can judge how I would act as a representative of the state based upon how I represent the current district, I think that that would be some baggage. The other thing I have to tell you is that, while my wife and I both grew up in Omaha, we have lived in Holdrege now for ten years. We really love the small town community. My wife really enjoys where we're at. We're raising children in a good area. So I think that there would be some question. And finally, you know, I have to have a pretty big ego to think that I have the management and the communications qualifications necessary to be engineer.

SENATOR HUDKINS: I'll follow up on that. Let's assume then that you're not going to be a candidate and I wanted to separate these two questions. In your opinion, do you think that this bill would therefore expand the pool of candidates and, from the state's point of view, bring the salary down?

MICHAEL DRAIN: I think that it probably would expand the pool of candidates if you were to eliminate the qualifications. I do think it's possible to hire a less

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qualified person for less money. I also would argue that you get what you pay for. Part of my testimony was that if you're worried about the pool of candidates, you don't weaken your standards, you improve your incentives. And there's no question that engineers are high paid individuals and if you want to get someone who is the equivalent of a leader of a consulting firm, if you want to get someone who would be an engineer that would be an outstanding NRD manager, you want to get it drawn...you know, I think you all know what some of the engineers at, for example, NPPD get paid. Sometimes I wish I worked there because we're not on the same salary levels. But I think you know the types of salaries you're talking about. But water resources in Nebraska is worth literally billions of dollars to this state. It is the second most important resource we have other than our people. And so I don't think you try to find a way to save costs on the salaries of one individual leading one of the most important agencies we have.

SENATOR HUDKINS: Thank you.

MICHAEL DRAIN: I would just suggest raising the price.

SENATOR SCHROCK: Other questions? And your philosophy of getting what you pay for, I assume you'll vote for salary increases for senators when you get a chance. (Laughter)

MICHAEL DRAIN: I...when is the term limits over?

SENATOR SCHROCK: May. (Laughter) But it isn't retroactive so it doesn't help...four of us up here. Thanks, Mike.

MICHAEL DRAIN: Thank you for the opportunity to testify.

SENATOR SCHROCK: He knows where paradise is. It's Holdrege, I guess. Some days it is, some days it isn't. Next opponent? Is this the last testifier? We are running slow; Mike took all your time.

GREG WOOD: I will be brief.

SENATOR SCHROCK: All right.

GREG WOOD: Mike pretty much summed up what I had to say. And let me start off by, I am a professional engineer, but

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my area of expertise is in roadway design and land development. But I'm here representing...Senator Schrock, members of the...

SENATOR SCHROCK: Did you spell your name, please?

GREG WOOD: Oh, I'm heading right there, Senator...and members of the Natural Resources Committee, my name is Greg Wood, spelled G-r-e-g W-o-o-d. I am a licensed professional engineer and today I appear before you on behalf of the Professional Engineers Coalition in opposition to LB 1147. We've been before you before but to kind of go through who we represent, we represent four constituent organizations, the American Council of Engineering Companies, the Nebraska Society of Professional Engineers, the American Society of Civil Engineers, and the Professional Surveyors Association of Nebraska, as well. We represent the American Society of Mechanical Engineers, who are an association member. The Professional Engineers Coalition was formed as an alliance to coordinate and promote the legislative interest of the constituent organizations represented in the coalition by providing unified effort devoted to the advancement of professional, technical, educational, and ethical interests and standards of professional organizations engaged in the various branches of engineering. The Professional Engineers Coalition is opposing eliminating the qualifications of the director of the Natural Resources District (sic), as proposed in LB 1147. It is the Professional Engineers Coalition's mission to protect and promote public health, welfare, and safety through sound engineer practices. The Department of the Natural Resources as well as the citizens of Nebraska would be better served if the director has the technical background and knowledge of practice of engineering and it is extremely important that the director fully understand the scientific reasoning behind the development of the policies and procedures, standards, and regulations which govern the department. Members of the Professional Engineers Coalition are concerned, having recently witnessed, on a national level, FEMA's response to Hurricane Katrina and what can happen if the director of an agency does not have the technical expertise or experience to respond appropriately. The coalition fully understands this position is a political appointed to be served at the pleasure of the governor. However, sustaining the qualifications, especially the requirement the director be a

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licensed professional engineer, ensures the director has a scientific background, specialized skills, and credentials to provide the governor with sound counsel. The Professional Engineers Coalition and its member organizations pledge to work with the executive branch to find qualified candidates to fill this position and we encourage the committee to indefinitely postpone LB 1147.

SENATOR SCHROCK: Thank you, Greg. Are there questions? Do engineers generally follow the instructions quite well?

GREG WOOD: They follow the scientific practice, yes.

SENATOR SCHROCK: Well, at the start of this hearing, I said, if you're going to testify on a bill, you should move to the front of the room. (Laughter)

MICHAEL DRAIN: I did.

SENATOR SCHROCK: So I assume anybody willing to testify in this room is already sitting in the front. Thanks, Greg, we appreciate your testimony.

GREG WOOD: Thank you.

SENATOR SCHROCK: Next person that would testify? If you're going to testify on this bill, move to the front of the room, please. And considering the hour of the day, I think we get the message, don't repeat what has been said.

TOM SCHWARZ: I'm Tom Schwarz again, T-o-m S-c-h-w-a-r-z, from Bertrand, a farmer, representing the Nebraska Water Users. We've historically supported maintaining the position of the director being a professional engineer due to the things you've already heard, I guess. I think you'll find that generally Nebraska, or the natural resources districts who regulate groundwater are in support of this bill and surface water users who are regulated by the Department of Natural Resources are all opposed to this bill. So I'd just like you to consider why that might be. Senator Hudkins, I would like to add that Mike Drain would make a great state engineer but...I've had a little experience with him and I know one thing. Everything he did would be decided by sound science.

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SENATOR HUDKINS: Thank you.

SENATOR SCHROCK: I just have a problem with that state engineer having the last name of Drain. (Laughter)

MICHAEL DRAIN: It rhymes with rain, Senator. (Laughter)

SENATOR SCHROCK: Thank you, Tom. Next opponent, please?

JOHN CAMBRIDGE: (Exhibit 14) Thank you, Senator Schrock and other senators. My name is John Cambridge, J-o-h-n C-a-m-b-r-i-d-g-e. I'm a professional engineer in the state of Nebraska with over 25 years' experience in water resources issues. Resolving groundwater and surface water issues is going to continue to be an issue in the state, even when the drought does break. Difficult decisions will need to be made by the director of Natural Resources that may be very unpopular to some of our citizens and to our upstream and downstream neighboring states. It is important that the director make tough decisions to best serve the interests of the entire state. Professional engineers are bound by our code of ethics to serve our client but more importantly in my opinion, we are bound to serve the public health, safety, and welfare of the public. We make decisions on sound science, scientific information, and most importantly, experience. Professional engineers are educated and have experience to evaluate issues and dispassionately make decisions that serve the health, safety, and welfare of the public. If the director of the Natural Resources is not a professional engineer with water resources experience, it creates the possibility that sound decisions may be overridden by other outside influences. I urge you to reject the bill to eliminate qualifications for the director of Natural Resource. It's in the best interest of the citizens of Nebraska to preserve the current qualifications. Thank you and I'm willing to take any questions.

SENATOR SCHROCK: Thank you, John. Are there questions?  
Senator Hudkins.

SENATOR HUDKINS: Very quickly, professional engineer in what field?

JOHN CAMBRIDGE: Civil engineering.

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SENATOR HUDKINS: Thank you.

SENATOR SCHROCK: Next opponent, please? We're back to "To Tell the Truth," you don't know which one is going to stand up first. (Laughter)

JAY REMPE: Senator Schrock, members of the committee, my name is Jay Rempe, that's R-e-m-p-e. I am state director of governmental relations for Nebraska Farm Bureau here on behalf of Nebraska Farm Bureau in opposition to this bill. I also come before you as a person that served on the search committee when Governor Mike Johanns was elected and when Roger Patterson was hired. So I have experience through that as well. This is going to sound like funny opposition testimony. But we took this issue...of course, Senator Kremer introduced the bill last year to look at the changing the requirements. And we took that issue to our members last fall during our policy development process and they had quite a discussion about it, and ultimately ended up saying that they believe that we shouldn't remove the engineering requirement altogether out of the department, that there needs to be the engineering requirement still there. And that's why I am here opposed to this bill today, because it repeals that language altogether. What our members like is the bill that was introduced last year that would remove the engineering requirement for the director but keep the engineering requirement on somebody, either the assistant director or the head of the administration of surface water rights. And I think Senator Smith started outlining in his questioning earlier, I think, a way that maybe we can forge a middle ground on this a little bit, perhaps, in that you could remove the requirement on the director but still maybe make the decisions, those technical decisions, have an engineer involved in that process. From our viewpoint, having the engineering requirement is limiting the candidates that you can look at, that the state can look at, to hire for that position. And as we see the role and that position, it's changing over time, it's growing. There's a lot more involved in that decision now or in that position now that maybe hasn't occurred in the past. And you look at the recent history, negotiations with Kansas, the Missouri River issues, the Nebraska v. Wyoming, cooperative agreement, a whole host of things where there's a lot of different issues beyond the technical issues that are

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involved. And so we think the position is growing and having the engineering requirement is limiting what we can look at in looking at the field, so to speak. And from my experience serving on the search committee, we did get good candidates. But the depth, from my perception, was not very great. And I fear, we fear in the future that, if some changes aren't made, that that could cause some issues and problems in the future. So with that, I would be happy to answer any questions you might have.

SENATOR SCHROCK: Questions for Jay? You don't have any fear that a senator would resign and take the position if offered by the Governor, do you?

JAY REMPE: I have never thought of that, Senator Schrock. (Laugh) No, I guess I...

SENATOR SCHROCK: They're more apt to get in a lobbying position, right?

JAY REMPE: Yeah, that's probably a little more lucrative it appears, at this point.

SENATOR SCHROCK: All right, thanks, Jay.

JAY REMPE: Yeah.

SENATOR SCHROCK: Next opponent?

RON WOLF: Chairman Schrock, members of the committee, my name is Ron Wolf, W-o-l-f. I reside near North Loup, Nebraska. I'm here representing the Twin Loups Districts. I also represent the Nebraska State Irrigation Association, represent surface water interests for the last 100 years or a little over, statewide, and the Nebraska Water Resources Association, a very broadly-based constituency statewide. I'm here in opposition of this bill. I don't want to...first, let me apologize. I know how my one old broken mouth cow feels coming into the corral last after following Ron Bishop and Mike Drain and Jay Rempe. So bear with me, please. I am a licensed driver in the state, that's about the only license I hold. (Laughter) However, Senator, that bill would qualify me to, I don't mean to scare you, but that would qualify me to be director if it would pass. And I think that's part of the problem. I'm neither intelligent

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enough nor competent to handle that. I think we're opening the door to a more political massaging, I guess, of the position. I'm going to shoot myself in the foot now, don't want to repeat anything, but I would like to address some of the statements that have been made. Mr. Drain is quite impressive, sharp young man. I'm old enough, I disagree with his statement that a degree or a membership or certification from some society tightens your ethics. I've met ethical people without even grade school educations. I disagree with that statement. Holding an engineering degree does not make you any more ethical than farming, being a nurse...

SENATOR SCHROCK: Politician?

RON WOLF: Politician... (Laughter), legal advisor to a legislative committee. You're either ethical or you're not. And I have enough confidence in our elected officials that I doubt that ethics will be a problem with an appointed official in that high of a position. I've also heard Mr. Bishop state that experience in irrigation should not be a requirement because with the merging of two state agencies it makes a lot broader range of responsibilities. But from what I've heard just today in this committee and in other committee hearings here before you, Senator Schrock, this committee seems to feel that irrigation and surface water flows are the big water problem in this state. So I would submit to you that if you're going to have a director who's responsibility is to factually determine these matters, irrigation experience is important. I believe the engineering degree is important, be it as a civil engineer, electrical engineer, sewage engineer. The math courses and the engineering degree experience does confer somewhat like law. You get the basics. An engineering degree will help you understand technicalities in many fields, even though they may not be your specific field of endeavor. But that degree and training will help you understand these technicalities. Mr. Rempe mentioned having staff that is a certified engineer. If you don't understand the technicalities, you're probably placing too much reliance on a staff member and staff members do change and have a small crew and good people are hard to get, they...and hard to keep. They leave for reasons for everything from health to family reasons. So every time they do, you start over. The lack of experience, the director as an engineer with

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experience in irrigation is important in this.

SENATOR SCHROCK: We're done if you are.

RON WOLF: That sounds good to me, Senator. (Laughter)  
Thank you.

SENATOR SCHROCK: All right. Thanks, Ron. Any questions?

RON WOLF: I can't read my own notes.

SENATOR SCHROCK: All right. Thanks, Ron. We appreciate your insight in that.

RON WOLF: Thank you folks very much and I appreciate your endurance. It's impressed me over the years. Thank you.

SENATOR SCHROCK: Next opponent testimony? Neutral testimony? She's wearing a badge, this could be bad.

MELINDA PEARSON: I sat at the front of the room so I can listen to instructions. Melinda Pearson, M-e-l-i-n-d-a P-e-a-r-s-o-n. I am the new executive director for the Nebraska Board of Engineers and Architects. And so I am here mostly to introduce myself and also to answer any of the questions you might have of us. I am a licensed architect in the state of Nebraska. I would offer just one clarification, is that there is a difference between the engineering degree and an engineering license. They call it the three-legged stool for an engineering license. And that is education, experience, and examination. And an education requires an accredited degree and luckily, the University of Nebraska is one of the best engineering schools in the country. Their pass rate on the FE exam is pretty close to 90 percent. Nationwide, it's less than 60. So the University of Nebraska, good school, and it's accredited, so a four-year degree. And then the students are allowed to take the FE, the fundamentals, which covers, I think your question, the basics of engineering; thermodynamics to water, all kinds of different things. Okay, and then they do a four-year internship under a licensed engineer and then they can, that's called their experience. And then they can take the PE exam in their field. And it is true, there are many disciplines in Nebraska that we do license. So I hope I'm, if I can answer some questions, that's why I'm here.

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SENATOR SCHROCK: Thank you, Melinda.

MELINDA PEARSON: Um-hum.

SENATOR SCHROCK: Senator McDonald.

SENATOR McDONALD: When they talk about the code of ethics, so, you know, going to a higher standard, if they can be called on the line, so to speak, on their code of ethics, could they lose their license for being an engineer if they are unethical, so to speak?

MELINDA PEARSON: Yes, absolutely. The Engineers and Architects Regulation Act, which was written in 1935 and updated in 1997, has in it a code of ethics, rules of conduct. And if an engineer or architect would violate any of those, yes, there would be a complaint filed and that would go, first, to the director and then to the board. And they would take disciplinary action and that includes anything from a suspension to a revocation of their license to a civil penalty of up to \$10,000.

SENATOR SCHROCK: Senator Stuhr.

SENATOR STUHR: Yes, just for interest. Are you from Nebraska or...

MELINDA PEARSON: Yes, born and raised. I was born in Arnold and raised out in Sidney. And I went to school at the university.

SENATOR STUHR: Okay, great. Thank you.

SENATOR SCHROCK: Other questions? Thank you, Melinda.

MELINDA PEARSON: Thank you.

SENATOR SCHROCK: Other neutral testimony? Senator Kremer.

SENATOR KREMER: Thank you, Senator Schrock. I wasn't going to close but then I just heard a couple things I'd like to reiterate that, and I heard several times, why would we weaken this position? And I think the whole purpose is to strengthen it because we'd have a broader field. If it's so

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narrow that you have one candidate that happens to be an engineer and might be not qualified to anything else. In fact, I heard the one testifier say that if you had a driver's license you could qualify to be the director. No, I don't think so. You can qualify to be a candidate but that doesn't make you be qualified to be the director. Because I have a driver's license and I wouldn't qualify for being the director. So I think the whole idea is, and if I think there are two equally qualified people out there and one of them was an engineer and one was not, I would just, I would be very confident the engineer would be chosen from that group. And I just think there's so many other things that are so important in the job of the director of the Natural Resources that we'd really narrow the scope down. What I think we do is weaken the position on that. So and then somebody talked about staff and I just wanted to say that I couldn't operate without staff. So I depend on them, they're more important than I am. I have to say that because Barb is here. So thank you.

SENATOR SCHROCK: Are there questions for Bob? Maybe a comment, Bob. All things considered, I'd rather be fishing.

SENATOR KREMER: That's right, thank you.

SENATOR SCHROCK: That will close the hearing on LB 1147.