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COMMITTEE ON NATURAL RESOURCES
February 15, 2006
LB 1127, 1095, 1225

The Committee on Natural Resources met at 1:30 p.m. on Wednesday, February 15, 2006, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 1127, LB 1095, and LB 1225. 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 STUHR: I am vice chair of the committee, Elaine Stuhr. And to my far right is Senator LeRoy Louden. Also Senator Gail Kopplin and Senator Carol Hudkins. Jody Gittins, who is the legal counsel. And to my left, we're missing a few senators who are probably introducing bills and we'll try to introduce them as they arrive. And Barb Koehlmoos, who is serving as our committee clerk. And Marcus Papenhausen, sophomore from UNL, will be serving as our page today. Also please turn off any cell phones that you might have or any pagers. Those wishing to testify, we'd like to have you come towards the front of the room. It helps to speed up the process. Green sign-in sheets for testifiers are on the tables at each door. So please have those filled out before you come up to testify. And as you are testifying, please spell your name, your first and your last name. That does help for the transcribers. I believe that's...if you have any handout materials, the page will assist. And I believe that is about all of the explanation we need. And we will open the hearing, then. And joining us are, excuse me, Senator Bob Kremer and Senator Adrian Smith have joined us. So we will open the hearing then on LB 1127 and Senator Schrock is next door introducing some bills so Jody Gittins will be opening on those bills. First this bill, LB 1127. Welcome.

LB 1127

JODY GITTINS: Thank you, Senator Stuhr, members of the 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 1127 on behalf of Senator Schrock. The purpose of LB 1127 is to allow public power and irrigation districts to pay by electronic fund transfer those payments

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that have been authorized or approved by the board of directors. The NREA brought this issue to Senator Schrock early in the session and had a bill drafted to address the potential problem. Making payments by electronic funds transfer has become a common business practice. When the statutes authorizing the public power districts to make payments were enacted, the technology did not exist. NREA attorney, as well as many independent attorneys, have made a determination that the existing statutes do adequately provide that authority and while electronic transfers are not specifically mentioned in it, it is believed that the authority is broad enough to include electronic transfers and LB 1127 is no longer necessary. Senator Schrock would respectfully ask the committee to IPP this bill.

SENATOR SMITH: So moved...no, I'm just kidding. (Laughter)

SENATOR STUHR: Thank you. I didn't know anything about that so it's taking me by surprise. But...all right, thank you. Are there any questions? All right, those wishing to testify as proponents in support of the bill? Are there those wishing to testify in opposition? Those wishing to testify in a neutral capacity? Do you waive closing? (Laughter) All right, thank you. That closes the hearing on LB 1127. If they were all that easy. Okay, we will open the hearing now on LB 1095.

LB 1095

JODY GITTINS: Good afternoon, Senator Stuhr, members of the Natural Resource Committee. My name is Jody Gittins, J-o-d-y G-i-t-t-i-n-s, committee counsel for the Natural Resources Committee and introducing LB 1095 at the request of Senator Schrock. This bill strikes an exemption currently existing in the Geologist Regulation Act. Current statute exempts anyone practicing geology for a program requiring state approval or permitting from being licensed as a professional geologist. The reason this exemption is of concern is that a large percentage of the practice of geology in Nebraska is performed for state-permitted programs involving such issues as landfills, underground storage tanks, livestock waste, hazardous waste, and water resources. As a result, it is difficult to ensure that geologists practicing in such programs are properly

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qualified and licensed. If the exemption is stricken, the Board of Geologists will have greater flexibility to ensure that the practice of geology in Nebraska will be performed by competent professionals, thus meeting the overall intent of the act which is to safeguard the health, life, property, and to promote public welfare of the people of the state of Nebraska. There are others representing the Board of Geology who will follow me who can further identify this issue and clarify it for the committee.

SENATOR SCHROCK: Okay, are there any questions for Jody? If not, thank you. Those wishing to testify as proponents, first proponent? And joining us has been Senator Vickie McDonald. Welcome.

JEFFREY JOHNSON: (Exhibit 1) Thank you, good afternoon. My name is Dr. Jeff Johnson, J-e-f-f J-o-h-n-s-o-n. I'm vice president, regional manager of Olsson Associates here in Lincoln, Nebraska. I am currently serving as a board member of the Nebraska Board of Geologists and I am registered professional geologist. I'd like to offer this testimony on behalf of the board in support of LB 1095. The Board of Geologists was created by the passage of the Geologist Regulation Act in 1998 to regulate the profession of geology "in order to safeguard life, health, and property and to promote the public welfare." This concern for the public and property remains the board's first priority as it continues its oversight of the licensure of professional geologists and geologist interns in Nebraska. Currently, the board lists 293 licensed professional geologists and seven geologist interns. A fundamental reason for the existence of the board is to ensure that geologic work in Nebraska is performed by qualified, competent professionals. However, in current statute at Section 81-3541, Subsection L, individuals performing "work for which state approval or permitting is required, if such activity is in accordance with other requirements of law, rules, or regulations pertaining to the use of a geologist" are exempted from licensure requirements. This exemption is of great concern to the board, mainly because of the numerous state-approved or permitted programs that geologists work under also make up the majority of the geologic work which is currently performed in Nebraska. In addition, state-approved or permitted work under environmental and natural resources programs administered by various state

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agencies is very closely linked to the safeguarding of health, life, and property and promotion of the public welfare as outlined in the Geologist Regulation Act. Therefore, the board feels that this state permit exemption is in conflict with the basic premises of the act and make it very difficult to ensure that a large portion of the geologic work performed in Nebraska is, in fact, being performed by competent, qualified professionals. As a result, the Board of Geologists supports striking this exemption as proposed in LB 1095. The board understands that striking this exemption may be of concern to other entities which might be involved in the practice of geology. To address those concerns, we have met the representatives of such organizations as the Nebraska Farm Bureau, Nebraska Cattlemen, the Petroleum Marketers Association, the League of Nebraska Municipalities, the Nebraska Association of Resources Districts, and the Nebraska Department of Environmental Quality. We understand that these and other concerned entities may have different opinions or ideas regarding the state permit exemption and the board is committed to working with any interested organizations and individuals over the long term to make sure that their concerns are addressed. Thank you very much for the opportunity to present this testimony and I'll be happy to try to answer any questions.

SENATOR STUHR: Are there any questions? Senator Hudkins.

SENATOR HUDKINS: Dr. Johnson, what is necessary to be licensed as a professional geologist?

JEFFREY JOHNSON: There's a long list of requirements. The keys are having a bachelor degree from an accredited university as well as work experience. And it's five years' experience, but there's quite a few things that go along with it, but those are the basic requirements. So a college degree and experience.

SENATOR HUDKINS: Okay. So someone could practice geology and not be licensed?

JEFFREY JOHNSON: Correct.

SENATOR HUDKINS: Okay, thank you.

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SENATOR STUHR: Are there any other questions? Senator Smith.

SENATOR SMITH: Is there a particular case that went awry because of lack of certification?

JEFFREY JOHNSON: No, it's been more just realizing, focusing on the fact that we deal with issues that affect the health and we're trying to preempt any of those issues coming forward.

SENATOR SMITH: So there doesn't seem to be a problem right now.

JEFFREY JOHNSON: We don't know of any existing problems but we do know there are people practicing geology without the regulation or the background or the degree, essentially what it would take to become licensed. But there...

SENATOR SMITH: Are they rogue actors? I mean, are there any behaviors that are unbecoming or certainly hazardous to the public?

JEFFREY JOHNSON: We don't know of anything specific but that's also kind of a relative term. As far as we know, there is nothing that has happened to date. But once again, we're trying to preempt anything from happening.

SENATOR SMITH: And is it possible for someone to practice in a competent manner without being licensed?

JEFFREY JOHNSON: Yes, so you're essentially saying not being licensed, but they're acting...

SENATOR SMITH: I mean, if they're performing the functions that you would like to fall under a regulated act, are they performing them competently without being licensed?

JEFFREY JOHNSON: I can't tell you if they are or not. It's, once again, it's one of those things that, they may be doing things at this level right now that's okay with just basic understanding. But at some point in the future, they make an interpretation that affects a groundwater issue with a well, public drinking water supply, make an interpretation of what happens with, you know, groundwater-surface water

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interaction, that type of thing.

SENATOR SMITH: Okay, thank you.

SENATOR STUHR: Are there any other questions? Senator Louden.

SENATOR LOUDEN: Yeah, are you familiar with the bill? Have you read the bill through and that sort of thing?

JEFFREY JOHNSON: Yes.

SENATOR LOUDEN: Well, I've gotten to look at it some and I guess, to me, it's what I call a bassackwards bill because it, more or less, defines what you don't have to do to be a...and not have to be a geologist. And I'm wondering, when you get down to the part then, the board determines with respect to a particular function that the public is adequately protected without the necessity of a professional geologist. Does that more or less, you know, negate, whatever you want to say, the whole thing that you're trying to do? Because then it, down in the bill there, and it gives the board some place authority to go ahead and do something without a geologist.

JEFFREY JOHNSON: I guess I'd have to specifically look at that because I'm not...

SENATOR LOUDEN: Okay.

JEFFREY JOHNSON: ...I'm not sure if I understand what you're asking.

SENATOR LOUDEN: Well, do you have to have a geologist then to go and build a lagoon for a feedlot, then?

JEFFREY JOHNSON: No.

SENATOR LOUDEN: Will that make a difference with this bill, will you have to after this bill goes into...

JEFFREY JOHNSON: No, that would be an engineering aspect in terms of design of a lagoon. We're dealing with the, more of what happens underground and down, you know, dealing with groundwater, landfill, what happens with contamination that

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could leech out of a landfill, that type of thing. Not within the actual design of the landfill or the design of the lagoon.

SENATOR LOUDEN: Would you have to have one, then, to dig that lagoon?

JEFFREY JOHNSON: No, we're dealing with the interpretation of the subservice, the geology of what's happening, how things move through the ground.

SENATOR LOUDEN: Okay. It doesn't have anything to do then with the type of soil or anything you're working in? They have to decide that ahead of time or anything?

JEFFREY JOHNSON: If it...maybe. In terms of like designing a lagoon, dealing with the soils, that's probably more of a geotechnical engineering component that understands how the soil is going to behave to stresses, whether that's a weight or water flowing or water impounding on top of it or something like that. If the soils have anything to do with how the water or leachate percolates down through it and could impact a well or something like that. That is geology.

SENATOR LOUDEN: Well, I see they took out the part that, what was it, state approval where something has to have state approval or permitting and that was one of the things that came to mind. And I was hoping we weren't passing something so that you not only had to have an engineer to do this, but you also had to have a geologist, too.

JEFFREY JOHNSON: No, we do, in my profession, in my consulting profession, we do quite a bit of work that does not involve an engineer. For example, looking at a municipal water supply. A geologist will help identify good quality with quantity that meets the needs for that municipality. That's a geologist's role. If that water is going to be used then by the town and we need to get that water out of the ground, then the engineer will come in at the design phase. So they kind of piggyback right off of what we do. And so we find the water and make sure it's a good quality, make sure it meets the needs of the municipality, make sure it meets the needs of the Safe Drinking Water Act. The engineer would come in and do the

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design and get it into town.

SENATOR LOUDEN: Okay, you say you guys find the water?

JEFFREY JOHNSON: Yes.

SENATOR LOUDEN: Do you use the stick or do you... (Laughter)

JEFFREY JOHNSON: Nobody has ever caught me with a photo, caught me by photo using that.

SENATOR LOUDEN: Okay, thank you.

SENATOR STUHR: Are there any other questions? Senator Smith...or Senator Kremer, since you have not had a chance yet.

SENATOR KREMER: Oh, thank you. It does mention livestock waste and when would a geologist be involved in the livestock waste issues?

JEFFREY JOHNSON: What we are proposing is, at the point where there is monitoring of the groundwater, so that's one of the regulations at the Department of Environmental Quality right now that livestock facilities of a certain size have to do groundwater monitoring. We would propose that that's an area of geology. And in fact...

SENATOR KREMER: What would the geologist do that can be to monitor or if you'd take a sample of the water and determine if there was nitrates or something? And what would be in that procedure that would require to be a geologist?

JEFFREY JOHNSON: Excellent question, because this has come up. When the regulations for monitoring facilities were enacted, there were many consulting firms, and I know of one personally, that was attempting to meet the needs of the regulations or comply with the regulations in terms of identifying an upgradient point to sample the groundwater so you get water quality before it flows underneath the facility. And then you put monitoring points downstream or downgradient of the facility. And so you find out what's upstream, so you get the good water quality, and you find out what impact the facility could be having on groundwater by sampling downstream.

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SENATOR KREMER: So it would be more than location of the monitoring wells?

JEFFREY JOHNSON: Right, that would be one example, interpreting what's happening with the groundwater, interpreting the gradient of the groundwater, how fast it could impact something. But there were situations arising and this firm that I know personally of is hiring geologists now because they were struggling with meeting the compliance.

SENATOR KREMER: Okay, thank you.

SENATOR STUHR: Senator Smith.

SENATOR SMITH: How many geologists in Nebraska?

JEFFREY JOHNSON: Licensed, there are 293.

SENATOR SMITH: Two hundred ninety-three, and how many of those, roughly, would be in the Panhandle?

JEFFREY JOHNSON: Boy, I don't know but it would certainly be the smaller percentage. Most of your geologists are going to be Grand Island east, and then quite a few out of state come up from Denver serving Nebraska. So right now, when I say 293 licensed. That does not mean all of them are in Nebraska. I'd have to break that out.

SENATOR SMITH: And how many individuals would you say are practicing geology without a license?

JEFFREY JOHNSON: I don't know. I don't know, there has never been a search or, you know, any type of record search to try to identify that.

SENATOR SMITH: And we're talking about a fee for service, right?

JEFFREY JOHNSON: For geologists to...

SENATOR SMITH: Right.

JEFFREY JOHNSON: ...work on some...

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SENATOR SMITH: Geologists...

JEFFREY JOHNSON: Yes, yes.

SENATOR SMITH: Okay, is there any difference in cost of the service coming from a nonlicensed person compared to a licensed person?

JEFFREY JOHNSON: I don't...I can't say specifically that there is. But just based off of what it takes to become a licensed geologist, you're talking about training, you're talking about degrees. Somebody will likely charge more for that because they have more invested in getting, you know, the requirements as well as getting licensure versus somebody that wouldn't. So I would guess some, you know, that it would be very likely that somebody that didn't meet the needs or didn't have a geology degree would not charge as much.

SENATOR SMITH: Um-hum, okay, so there could be an increase in costs?

JEFFREY JOHNSON: Yes, it could be.

SENATOR SMITH: But that increase in cost would go to a license geologist, right?

JEFFREY JOHNSON: Well, if I understand your question right, the increase in cost could also be attributed to the amount of training a geologist would go through or the degree that you're achieving, you know, just the time to stay in tune with everything that's going on.

SENATOR SMITH: So even among licensed geologists, there would be a spectrum of experience and background?

JEFFREY JOHNSON: Yes, but there would be a minimum requirement of that experience and background.

SENATOR SMITH: That would be up to the state to decide, not the consumer of the service?

JEFFREY JOHNSON: It's up to the state to decide whether they meet the basic requirements to become licensed, if

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that's what you're asking.

SENATOR SMITH: Right, but, I mean, generally someone seeking a service, you know, shops around and is, you know, satisfied generally with whoever provides the service. They're satisfied with the background and experience that they offer, that the service provider offers. But we would be basically forcing the consumers of the service to accept a minimum standard whether they want to or not. Is that accurate?

JEFFREY JOHNSON: Well, I wouldn't use the word forcing. I mean, essentially you're saying, yes, it would be a requirement. But at the same time, it's to their benefit to use a professional geologist because you're bringing in somebody that has that background and understanding to make the interpretations of the subsurface that they need to deal with compliance issues or whatever.

SENATOR SMITH: Even though someone might have that background without the minimum qualifications?

JEFFREY JOHNSON: It's possible.

SENATOR SMITH: It's possible. Okay, thank you.

SENATOR STUHR: Are there any other questions? Senator McDonald.

SENATOR McDONALD: And you say you're a licensed geologist?

JEFFREY JOHNSON: Yes.

SENATOR McDONALD: And we had testimony before with concerning architects, that they have a code of ethics. Do geologists have that same type of code of ethics?

JEFFREY JOHNSON: Yes, it's in the regulations.

SENATOR McDONALD: If it could be, it would be something that was, say, doing something less than what the standards would be, you could lose your licensing?

JEFFREY JOHNSON: Correct, correct.

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SENATOR STUHR: Any other questions? I was just interested a little bit. Did you mention that the licensure act was adopted in 1998?

JEFFREY JOHNSON: The regulation act.

SENATOR STUHR: The regulation for licensing of geologists?

JEFFREY JOHNSON: Yes, yes.

SENATOR STUHR: Okay, and then this is, is this part of those regulations?

JEFFREY JOHNSON: The exemption?

SENATOR STUHR: Yes.

JEFFREY JOHNSON: Yes.

SENATOR STUHR: Okay, that was my understanding.

JEFFREY JOHNSON: It was one of those 11th hour discussions that got slipped in there.

SENATOR STUHR: Yes, the exemptions are quite long, that's what was curious to me. Any other questions? If not, thank you very much.

JEFFREY JOHNSON: I've got records of the testimony. I don't know if I can drop those off or...

SENATOR STUHR: Yes, we could have the page...do you have copies for everyone?

JEFFREY JOHNSON: I've got, I brought 12 copies.

SENATOR STUHR: All right, yes. Something happened to our page so, yes. Thank you very much for being with us. Next proponent. Any others wishing to testify as proponents? If not, opponents? Please come forward. Welcome.

CRAIG HEAD: (Exhibit 2) Good afternoon, Senator Stuhr and members of the committee. My name is Craig Head, it's C-r-a-i-g H-e-a-d, and I'm the assistant director of government relations for the Nebraska Farm Bureau

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Federation. And I'm here today on behalf of the organization in opposition to LB 1095. Our concern with the bill stems predominantly back to some of the line of questioning earlier in relation to the costs associated with having to use a licensed geologist, particularly from our aspect or concerns when it relates to the livestock permitting program. One of the concerns that we hear all the time from our members is the growing concern about the cost of compliance with environmental regulation and I know this committee is very familiar with that from your experiences in hearing testimony from a number of folks as a lot of producers out there, particularly cattle producers, deal with some of the new federal EPA requirements for livestock operations. And so I won't rehash that because you know that concern is out there. And that's really our concern is we're unsure of what the additional costs would be, the burden would be in terms of producers as they move to comply. You know, you add an engineer requirement to the livestock permitting program, that adds cost. We add a licensed geologist requirement, that adds cost. And so from that aspect, I guess we're unsure what some of those costs would be today. But I guess from our standpoint, what we encourage the committee to do at this point is possibly give consideration to making this a study issue so we could continue to work with some of those interests who have brought the bill to talk about what this really means ultimately for us at the end of the day because that is a concern that's out there. And we have been engaged in conversation with them previously and look forward to continuing to do that. But at this point, we would certainly more in favor of not doing anything this session but having more discussions about what it means.

SENATOR STUHR: Okay, thank you very much. Are there questions for Mr. Head? Thank you.

CRAIG HEAD: Great, thank you

SENATOR STUHR: Others wishing to testify in opposition? Welcome.

DUANE GANGWISH: Good afternoon, Senator Stuhr, members of the committee. My name is Duane Gangwish, D-u-a-n-e G-a-n-g-w-i-s-h. And I'm a registered lobbyist and speak for and on behalf of the Nebraska Cattlemen. I appear

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before you in mild opposition to LB 1095. We have met with several parties representing the interests of geologists and discussed their concerns. We've also met with senior leadership within DEQ and discussed the implications of what this might be in terms of permit processing and enforcement. Our legislative committee met in late February and decided to vote to oppose this bill on the concern of the unintended consequences that can sometimes creep out of these. And specifically, the additional layers of costs and regulatory compliance, much as what Mr. Head has described. The language specifically being struck says that any work for which the state approval or permitting process is required, although this would pertain to a multitude of operations, multitude of projects, it would specifically impact livestock, we feel. Mr. Johnson stated the bill would not impact the building of holding ponds that are sometimes incorrectly referred to as lagoons. And that is accurate, it wouldn't impact the design and construction of them. However, groundwater monitoring is often a requirement of that permit process. And contrary to popular belief, it's not a...groundwater monitoring is not a size-based decision. It is a decision based upon discretion within DEQ. I agree that it would not affect, as he said, the design of them. But it would affect the process of permitting. These duties are currently carried out by engineers within the state that have to be licensed and their work is reviewed by both the ag section engineers within DEQ and the groundwater section, when groundwater monitoring is involved. We urge you, the committee, not to advance at this point. But we also would be willing to work out trying to find any solutions that might be necessary. With that, I'd be happy to answer any questions.

SENATOR STUHR: Okay, thank you very much. Are there questions for Mr. Gangwish? Senator Schrock.

SENATOR SCHROCK: Did you talk to the introducer of the bill before you decided to come in and oppose the bill?

DUANE GANGWISH: No, we did not.

SENATOR SCHROCK: Okay. I noticed in another committee I serve in somebody was irate because they hadn't talked to the introducer of the bill before the...I'm not irate.

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DUANE GANGWISH: I was informed of that.

SENATOR STUHR: All right, are there other questions?

SENATOR KREMER: Yeah, I...

SENATOR STUHR: Oh, Senator Kremer.

SENATOR KREMER: I should have asked that to the proponent. What qualifications do you have to have to be a geologist, licensed or nonlicensed? I mean...

DUANE GANGWISH: I know that I am not one.

SENATOR KREMER: You probably can't answer that.

DUANE GANGWISH: No, Senator, I'm sorry. I don't know the qualifications necessary.

SENATOR KREMER: I guess you could be a life geologist and you could be a licensed geologist the way it sounds, I don't know if that's true or not. Okay.

SENATOR STUHR: If I might just answer, I believe they said degrees plus work experience.

SENATOR KREMER: So it's just an extension of what the degree, then. Okay, thank you. I wasn't listening probably.

SENATOR STUHR: Any other questions?

SENATOR SCHROCK: I think you have to have a little shovel and a little pick, too. I'm not sure how that all works...and a brush.

SENATOR LOUDEN: Those are masons, Ed. (Laughter)

SENATOR STUHR: Are there any other opponents? Opponents? Those wishing to testify in a neutral capacity? Were you an opponent?

NAN LINDSLEY-GRIFFIN: I'm a neutral.

SENATOR STUHR: All right, please come forward.

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NAN LINDSLEY-GRIFFIN: I haven't actually filled out the form.

SENATOR STUHR: That's all right, you can do it later and then place it in the box. So welcome.

NAN LINDSLEY-GRIFFIN: Good afternoon. My name is Nan Lindsley-Griffin, spelled N-a-n L-i-n-d-s-l-e-y-(hyphen)-G-r-i-f-f-i-n. I have to take a breath after that. I'm a professor at the University of Nebraska - Lincoln, Department of Geosciences. I'm a registered professional geologist in this state and in other states I have maintained a continuous registration as a professional since 1978. I was involved in writing the original legislation which we are discussing now. I was on the committee that wrote that proposal and participated in seeing it through. And then I was appointed to the first Board of State Geologists. And I chaired that board for several years while we were in our formative stage. So I'm the institutionalized memory. I would like to clarify a point about what is required to become a licensed geologist in Nebraska. What you need to have is a bachelor of science degree in geology from a recognized university. In this state, that would UN-Omaha and UN-Lincoln are the only two departments that we recognize at present. You are required to complete 30 semester hours including core courses, physical geology, minerology, petrology, stratigraphy, structural geology, hydrogeology, and summer field geology. Once you have completed those and graduated with your baccalaureate, you may apply to be registered as an intern, a geological intern. And then after five years of work, you may apply to be registered as a full professional. Along the way, you must also pass two internationally-recognized exams created by the Association of State Boards of Geologists, ASBOG is the acronym. And these are written by a national workshop here in the U.S. and the exams are given in two parts. One part is for fundamentals of geology, you may take that after receiving your bachelor's degree. The second part is the practice of geology. You may take that in this state only after you complete your five years of work experience under the direct supervision of a registered geologist. So this is a very rigorous exam and it is accepted in over 30 states in this country and a number of Canadian provinces as well as being sort of the

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archetype licensing requirement. So this is all that goes into becoming a geologist. There was also a question about whether there were actually any problems with nonlicensed people. In my recollection, the board has sanctioned at least two people for practicing improperly in Nebraska after we received complaints from either the public, in one case, or from other geologists who had observed an individual practicing unsafe so-called pseudo-science. And both of these people were sanctioned, I believe both of those were before Mr. Johnson became a member of the board so he was not aware of them. So I hope I've helped clarify these things. If anyone has any questions, I'd be happy to answer.

SENATOR STUHR: Thank you very much. Senator Schrock.

SENATOR SCHROCK: Well, thank you for coming forward and providing us with that information. I had the opportunity to take two geology classes when I was at Nebraska Wesleyan and my professor was Robert Stoddard, whose daughter is a reporter here.

NAN LINDSLEY-GRIFFIN: Cool.

SENATOR SCHROCK: And you probably know who he is.

NAN LINDSLEY-GRIFFIN: I do.

SENATOR SCHROCK: Because I think he went to the university then.

NAN LINDSLEY-GRIFFIN: Yes.

SENATOR SCHROCK: And so it's very interesting subject matter.

SENATOR STUHR: Are there other questions? Senator Kremer.

SENATOR KREMER: You're the perfect person to answer my question then, the difference between a geologist and a licensed geologist then is the five years plus the tests that are taken between that baccalaureate and the license?

NAN LINDSLEY-GRIFFIN: Yes, the main difference between an ordinary geologist like my student who graduated last year

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and someone with a license is that they have an additional five years of experience under another licensed professional and they've passed two exams.

SENATOR KREMER: Okay.

NAN LINDSLEY-GRIFFIN: Quite tough exams, I'm not sure I could pass both of them. I know I could pass one of them.

SENATOR KREMER: But you could teach them how to pass those.

NAN LINDSLEY-GRIFFIN: Yes...(Laughter) I could pass the one that's connected with what I'm teaching fortunately.

SENATOR KREMER: Yeah, so a geologist without, a nonlicensed geologist would be performing some of these duties but they would be under the supervision of a licensed geologist at that time?

NAN LINDSLEY-GRIFFIN: Yes, if you're a geologist intern, then you will be working with someone like either me or Mr. Johnson or something like that.

SENATOR KREMER: Do you know how many geologists are out there that are nonlicensed that are practicing? And is it quite common that some of these duties that they perform are just by geologists that are nonlicensed and not under the supervision of a licensed geologist?

NAN LINDSLEY-GRIFFIN: The State Conservation and Survey Division about ten years ago tried to take a census of geologists in the state or people who claimed to be geologists. And there were approximately 500, as I recall.

SENATOR KREMER: In Nebraska?

NAN LINDSLEY-GRIFFIN: In Nebraska. That was some time ago and may have included some people who live elsewhere but come here to work. I think quite a few of those were coming in from outside to work. We have now only 290 some odd of those are registered so we can keep track of them. We don't know about the others.

SENATOR KREMER: Okay, thank you, very helpful.

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SENATOR STUHR: Senator McDonald.

SENATOR McDONALD: Does each state have their own licensing or if you're licensed, you're licensed for all the states?

NAN LINDSLEY-GRIFFIN: Each state that has adopted licensing standards has their own law. Most of them are based on a model law that was put together some years ago, about 1990, by five states in southeastern U.S.; Georgia, Florida, the two Carolinas, and Arizona I believe was the fifth state, not really in the southeast. And based on their model law, most other states have written very similar laws with minor modifications. In our case, we adapted ours to parallel the engineers law in this state because we felt like we're very close to the engineers in what we do and we wanted to mirror their law as much as we could. As I recall, 35 states in the nation have licensed geologist acts. Approximately four others have bills under consideration or in the writing stage or have attempted to pass one and been sent back for revision. In Canada, there are several provinces who have requirements and several others who are passing or investigating passing such bills. And internationally, there's growing interest in combining with the ASBOG exam, which is worldwide recognized as the gold standard and beginning to license geologists worldwide because of just basic problems all over the world with incompetent practice. So this is the coming thing.

SENATOR STUHR: Are there other questions? Senator Louden.

SENATOR LOUDEN: Yes. I guess you wrote the bill, then you're probably familiar with part of what's in here. Now this is kind of a hypothetical question, but the way the bill works, it more or less describes what you can do and not have a geologist. Am I correct on assuming that part of it?

NAN LINDSLEY-GRIFFIN: With all due respect, sir, I don't think that's quite accurate. You probably noticed the exemptions part. What the bill mainly intended to do, the original Geologist Regulation Act, it described what a geologist is, how to set up the licensing and the supervision, and what a geologist is permitted to do. In discussions people's concerns from a number of different venues, for example, water chemists had a concern. During

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the original study group that was set up to develop this legislation, we wrote exemptions to satisfy a number of groups with concerns that it would impact them. So we specifically excluded water chemists who are pursuing activities that are consistent with the normal practice of water chemistry. In the case of the bill that is before you now, that was an exemption that was added after the Geologist Regulation Act had originally passed some time later without any previous discussion or without contacting us.

SENATOR LOUDEN: Then this grocery list in there, what it does...

NAN LINDSLEY-GRIFFIN: And this exemption that we are asking to have stricken was added by someone after the fact. And we feel that the exemption is contrary to the intent of the act. So what we're actually saying is, we need to have the state-permitted activities that pertain to geology actually be supervised.

SENATOR LOUDEN: Okay, what I'm wondering, because when it goes through here, say if somebody had a contract to build a right-of-way fence along a highway or something like that, would they have to have a geologist in order to go out there, dig the post holes?

NAN LINDSLEY-GRIFFIN: Heavens, no.

SENATOR LOUDEN: Why not? Because it is in our...

NAN LINDSLEY-GRIFFIN: You're not doing geology.

SENATOR LOUDEN: ...grocery list though.

NAN LINDSLEY-GRIFFIN: No, geology specifically pertains to dealing with rock materials, natural earth materials in the Earth's subsurface. Digging a post hole, that's not geology. Even my granddaddy could dig a post hole without my help.

SENATOR LOUDEN: Well, maybe he's part geologist?

NAN LINDSLEY-GRIFFIN: Well...

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SENATOR LOUDEN: I mean, when you get down to the bottom and hit a rock, well, you got to have...

NAN LINDSLEY-GRIFFIN: But if the rock is loose, then I don't think it counts.

SENATOR LOUDEN: Okay, thank you.

SENATOR STUHR: Okay, are there any other questions? I'm just interested how long it took you to formulate the bill. I've been working on a bill for about four years in licensing.

NAN LINDSLEY-GRIFFIN: There was a committee put together starting in 1994, when I was president of the Nebraska Geological Society. So that was 12 years ago when we began work and we basically appointed two cochairs, one in Lincoln and one in Omaha, and said, how many of you want to help? And we had about a dozen young turks stick their hand up. And I was ex officio on that committee as president of the society so I had to attend every meeting. And I watched the whole process...

SENATOR STUHR: Yes.

NAN LINDSLEY-GRIFFIN: ...and these young turks got busy and they researched. They called colleagues in other states. They got copies of other geologist acts. They sat down together and they spent weeks, literally weeks, going through and comparing all these sample acts and deciding, Nebraska doesn't need that, but this is really good, we'll put that in. And then once they had that, we began meeting with the Engineers and Architects Board. They were working on revising their bill and we got a lot of tips from them. And for a variety of reasons, it went into a study session with a lot of input from other people and we didn't succeed in passing it the first year. But we rewrote it and rewrote it and rewrote it.

SENATOR STUHR: Right, sounds familiar.

NAN LINDSLEY-GRIFFIN: So if you've been working on this for a couple of years, you may be getting close and I hope you are because it may take that.

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SENATOR STUHR: Right, okay. Any other questions? Senator Schrock.

SENATOR SCHROCK: Maybe this was asked. How many licensed geologists do we have in the state? How many do you have in your undergraduate program? And is there any graduate classes offered at the university?

NAN LINDSLEY-GRIFFIN: Oh, yes. We have graduate classes offered at the university. Let me see...your first questions, how many licensed geologists. I believe, of record today, 293. In the undergraduate program...

SENATOR SCHROCK: How many do you think are practicing?

NAN LINDSLEY-GRIFFIN: How many are practicing?

SENATOR SCHROCK: Yeah, the profession or...

NAN LINDSLEY-GRIFFIN: People practicing the profession of geology, you would have somewhere between 290 licensed ones and the, more or less, fictitious number of about 500 people in the state that Conservation and Survey Division came up with ten years ago. So I don't think anybody has taken a census; we don't know. For the undergraduate program at the University of Nebraska - Lincoln, we have approximately 50 undergraduate geology majors. I do not have any current data on how many undergraduates are at Omaha. But I believe that they probably have a pretty good program, 30 or 40 at least, in that department. And we do have graduate students at UNL. We have approximately 60 geology graduate students. Not all of them are in residence right now. And some of them have already begun taking the first steps to become registered. We have several geologist interns among this group and in the class that I'm teaching this semester, I have three relatively older people who are technically graduate students, they have their bachelor's degrees, and they have come back to take my course because they're being told by companies, we cannot hire you until you've completed all of the required core courses to make you capable of being licensed. And so I've got three people studying to be licensed geologists this semester.

SENATOR SCHROCK: What course would that be you're teaching?

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NAN LINDSLEY-GRIFFIN: Structural geology.

SENATOR SCHROCK: All right, thank you.

NAN LINDSLEY-GRIFFIN: You're welcome.

SENATOR STUHR: Any other questions? I have just one quick one. You mentioned registered and licensed. Is there a difference?

NAN LINDSLEY-GRIFFIN: I'm sorry, I probably should have been more careful with my terminology. You're correct to jerk my chain. There really is no difference.

SENATOR STUHR: Okay.

NAN LINDSLEY-GRIFFIN: We are licensed and it is a professional registration. And in our act, the term is license rather than registration. But nationally, the terms are used interchangeably.

SENATOR STUHR: All right.

NAN LINDSLEY-GRIFFIN: But we don't use certification, certify is, well, this person is okay but they haven't passed an exam. If you have a license and you are professionally registered, you have passed the exam. Or you date back before the exam existed, like I do.

SENATOR STUHR: All right, thank you. There aren't any more questions. Thank you very much for providing that extra information. It's very helpful.

NAN LINDSLEY-GRIFFIN: Thank you very much for your attention.

SENATOR STUHR: Is there anyone else wishing to testify in a neutral capacity? Okay, please come forward. Welcome.

KAREN AMEN: My name is Karen Amen, A-m-e-n, resident of Lincoln. And I'm coming here in a neutral capacity because, for 20 years professionally, I have worked as a neutral facilitator and I will tie that in at the end of my very quick comments. But I also have to admit, I have a slight bias from my eight years of being the public member on the

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Board of Geologists. When Nan started the board, she recruited me to be the member-at-large to represent the public. And during the years that I was on the board, I learned more and more about the practice of geology. But what I really think we're dealing with here, and Senator Loudon, the points you brought up are so relevant. We're dealing with a bigger issue, which is, how do we license professionals compared to the things that we, especially as Nebraskans, have been accustomed to doing on our own? And I can go back to my four grandparents who were all four immigrants to Nebraska in the 1880s and 90s. And I've got to tell you, I am sure that my grandfather on my mother's side, who built bridges for the Burlington, never used a geologist in the early 1900s. And my other grandfather who, here in Lincoln, had a grocery store and a coal business and also had some gas stations, he was not using licensed geologists. So I've asked myself in my adult years in Nebraska, why do we need to license specialists when we're pretty independent people and we're pretty competent people in a lot of different ways? But what I have learned from my eight years on this board is that the science of geology has become ever more effective, ever more productive, both in this state and nationwide. If you're wondering about that, think of nothing more than the challenges you all are facing this year and future years with water issues and the knowledge we have now of the Ogallala Aquifer that came from professional geologists doing that research. And we're going to have to figure out public policy based on much more complicated knowledge. So in the end, what I would ask of you, and my final message of you, is this. It's my understanding you're considering tabling this for now or you're not sure what to do with this. But there is certainly valid opposition because there are valid concerns. But if you do table this, I would ask you to connect with that some kind of strong statement that is asking the people who have their concerns about this legislation to sit down in really good will with the Board of Geologists and perhaps a neutral facilitator, not me, and try to come up with something that still honors the intent of this law and the increasing knowledge of geology that we have in this state and nationwide. And also, the powerful commitment of the practicing licensed geologists who are doing their work using the best science available for the health and safety and welfare of all Nebraskans.

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SENATOR STUHR: Thank you very much. Are there any questions? If not, thank you very much for coming.

KAREN AMEN: Thank you.

SENATOR STUHR: Ms. Amen, did you fill out a sheet?

KAREN AMEN: Oh, no, I didn't.

SENATOR STUHR: Would you do that please? Is there anyone else wishing to testify in a neutral capacity? If not, that closes the hearing on LB 1095 and I will turn the proceedings back over to Senator Schrock.

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SENATOR SCHROCK: Thank you, Senator Stuhr. You're going to be a hard act to follow here. We will now move to LB 1225 and we have Senator Langemeier with us. So welcome.

SENATOR LANGEMEIER: Chairman Schrock, members of the Natural Resources Committee, thank you for the opportunity to come before you with LB 1225. As we just concluded in geology, now we move to hydrology. This bill defines hydrology, hydrologically-connected waters to mean waters limited to those areas within a land surface drainage basin of a single stream from which 28 percent of the groundwater is withdrawn from wells with a consistent pumping rate over 40 years. This particular portion of LB 962 was not addressed by the Water Policy Task Force. They did talk about it in great detail, but I think you'll find in the testimony that is to follow, there were perceptions that this particular item would be handled in a certain way, similar to the Republican River Compact. And when it came about that it was chosen by NDNR to go at the 10/50 rate, I think you'll see that the testimony will define that that was a shock to some and maybe not so much to others. So I ask you to listen to the information behind. We'll create a record here of who's on what side of this issue. And with that, I will turn it over to those that testify behind me unless there's any questions.

SENATOR SCHROCK: Do you have any technical geological questions to ask Senator Langemeier?

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SENATOR LANGEMEIER: I would ask that Senator Schrock ask the same question he asked on his return to the testifiers that follow me as well.

SENATOR SCHROCK: Thank you, Senator Langemeier. Those who are in support?

RON BISHOP: (Exhibit 3) Mr. Chairman, Senators, my name is Ron Bishop and I am general manager for the Central Platte Natural Resource District. The name is still spelled B-i-s-h-o-p. I'm appearing here today in support of LB 1225 on behalf of our Central Platte Natural Resource District, but also on behalf of the Nebraska Association of Resource Districts. LB 1225 establishes the geographic boundary within which groundwater is managed for the benefit of surface water. That boundary as proposed in the bill is at the 40-year, 28 percent point. In other words, it's a point out from a river or stream where a well, if it were to be drilled at that location and pumped for 40 years would deplete flows in the river or stream by an amount equal to 28 percent of the total amount pumped by that well in that 40-year period. We fully expected the 40/28 line to be used by the Department of Natural Resources as the outside boundary for groundwater management. We expected that because 40/28 has a long history of use in and by the state of Nebraska. In the North Platte River lawsuit settlement, Wyoming proposed and Nebraska agreed to use 40/28 in managing Wyoming groundwater and wells that may impact the North Platte River and flows into Nebraska. In the Platte River Cooperative Agreement, Wyoming again used, and Nebraska and Colorado concurred, with a 40/28 line as a boundary for groundwater management. Also in the Platte River Cooperative Agreement, Nebraska proposed in the Nebraska's New Depletion Plan to use the 40-year, 28 line as the boundary for that area that would be used for requiring offsets for future new uses. In the late summer of 2003 when Roger Patterson, then the director of Department of Natural Resources, came before our Central Platte NRD board of directors, he asked our board to temporarily suspend issuing new well permits and to do that within the 40-year, 28 percent boundary. The next year, in the summer of '04, the department formally declared our NRD fully appropriated and state-imposed stays on new wells and expansion of irrigated acres. That state-imposed stay was also placed on

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land within the 40-year, 28 percent line. One month later, the department came in and declared part of our NRD, that part above Elm Creek, overappropriated. In their order, they designated the overappropriated area as the area above Elm Creek that, again, lies within the 40-year, 28 percent line. Little wonder then that the ag community and municipalities, the industrial development interests, and our board of directors expected the 40-year, 28 percent standard that had been repeatedly used by the state both within and outside our boundaries. The department, however, in their rule making process, chose to change from the long-standing 40/28 and instead established a new 50-year, ten percent criteria for identifying the outer management boundary. That new 50/10 line is the location where if a well drilled and pumped for 50 years, ten percent of the total volume pumped in that 50 years would have shown up as a depletion to the river. That new standard moves the management line out considerably and can, in some cases, involve tens of thousands of additional acres of land being brought in the management process. LB 1225 moves that standard back, back to the 40/28. That standard the state found acceptable to apply to Wyoming in the lawsuit settlement, acceptable to apply to the Platte River Cooperative Agreement, acceptable to apply to Central Platte and Twin Platte Natural Resource Districts when they requested a suspension on well drilling, and found acceptable later when they placed stays on new wells and expansion of irrigated acres when they declared our NRDs fully or overappropriated. We'd urge your support of LB 1225. Thank you.

SENATOR SCHROCK: Thank you, Ron. Are there questions? I see none...oh, Senator Kremer.

SENATOR KREMER: Thanks for coming, Ron. Has the Water Policy Task Force discussed this issue and did they come to any conclusion?

RON BISHOP: No, they have not.

SENATOR KREMER: Okay.

SENATOR SCHROCK: No on both accounts? They have not discussed it?

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RON BISHOP: No, they have not discussed this issue.

SENATOR SCHROCK: All right. Senator McDonald.

SENATOR McDONALD: In going from the 40/28 to the 50/10, changing that, that is basically more proactive in conservation, so to speak?

RON BISHOP: It involves a lot more land area and potentially involves a lot more wells or a lot more land area where, if new wells go in, would have to be managed but aren't managed now and wouldn't be managed under the 40/28. It expands the management area considerably across the state.

SENATOR McDONALD: So in essence, what it's doing is, by moving it back, we're being less conservative, so to speak? Would you say that?

RON BISHOP: It involves less, undoubtedly involves fewer wells and undoubtedly involves less depletion to the river. That is correct.

SENATOR McDONALD: Thank you.

RON BISHOP: It is, however, our argument that it's the standard that has been used historically by the state and it's the standard that we expected to be used.

SENATOR McDONALD: Okay.

SENATOR SCHROCK: Other questions? Thank you, Ron.

RON BISHOP: Thank you.

SENATOR SCHROCK: Next proponent? How many proponent testifiers do we have? Okay, try and make your testimony brief. How many opponent testifiers do we have? Okay, I'm going to allocate about three minutes per testifier here. If you can do it quicker, that's fine.

LEE KLEIN: (Exhibits 4 and 5) We can do her, sir. I'm handing out a copy of my testimony and also a copy of a map that shows Lower Elkhorn district and the areas that would end up being in more than one watershed with using the

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10/50. Good afternoon, Senator Schrock and members of the Natural Resources Committee. My name is Lee Klein, L-e-e K-l-e-i-n. I'm a member of the Lower Elkhorn Natural Resources District board of directors based in Norfolk. I'm appearing today in support of LB 1225. The bill clarifies two issues in the Groundwater Management and Protection Act that are very important to my district and many other NRDs as well. First, LB 1225 establishes a 28/40 standard for delineating the boundary of any area that the state declares to have hydrologically-connected ground and surface water rather than leaving this to the discretion of the director of the Nebraska Department of Natural Resources. Incorporating this standard into state statutes make good sense. During the development of LB 962, many people presumed that the 28/40 standard would be used to draw any boundary for regulation, which led NRDs that formed temporary well drilling suspension areas to frame their boundaries based on this standard. DNR then decided to use a different standard that took in more area, placing the NRDs at an awkward and difficult position and sending a confusing message to the public. The 28/40 standard is widely supported in hydrologic experts and is an accepted regulatory criterion in Nebraska and other states. It is the recognized standard for the 1981 Missouri River Basin States Association study, Nebraska's New Depletion Plan for the Platte River Cooperative Agreement, Nebraska v. Wyoming settlement, and the DNR's ruling of overappropriated sections of the Platte River. The 28/40 standard has worked well in these areas. It is a legal precedent and it is a standard of state's NRDs through the resolution by the Nebraska Association of Resource Districts have endorsed. Second, LB 1225 clarifies the concept and meaning of offset water. Current law states that existing water users will be protected from new water uses if an area is declared fully appropriated. This implies that some unknown volume of water will be required to offset these new uses. But there's not direct mention of this in the law. New uses of water will most certainly occur in an area that is declared fully appropriated. LB 1225 will help NRDs by making this volume of water somewhat predictable. Much of the clamor over LB 962 in northeast Nebraska last year resulted from a complex law being interpreted differently by the state, NRDs, and many private groups and individuals. Defining the boundaries of hydrologically-connected waters by the 28/40 standard and establishing a basic definition for the concept

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of offset water will greatly help everyone interpret the law more consistently. I thank you, Senator Schrock and members of the Natural Resources Committee, for letting me testify today and I would be happy to try to answer any question you have.

SENATOR SCHROCK: Questions for Lee?

LEE KLEIN: Thank you.

SENATOR SCHROCK: Thank you, Lee. If you have written testimony...Lee, you did a fine job of reading that. But if you have written testimony, if you can tell us what's in the testimony rather than read it, it would help, I think.

ROGER KOERTNER: (Exhibit 6) Good afternoon, Senator Schrock, members of the Natural Resource Committee. My name is Roger Koertner, spelled R-o-g-e-r K-o-e-r-t-n-e-r. I live in Saunders County near Fremont, just south of Fremont. I am a director for the Lower Platte North NRD and today my testimony represents both my views and those of the Lower Platte North NRD and also those of numerous landowners and farm operators I represent and work with as a professional farm manager in 16 counties in eastern and central Nebraska. This past year, I've closely followed the discussions concerning the definition of hydrologically connected water and was present at the Department of Natural Resource rules and regulations hearing held on August 11, 2005, in Kearney. We as an NRD and many of the landowners and operators I work with do not believe we were dealt with in good faith in those hearings. During the meetings, the Water Policy Task Force and the negotiating rule making, the only numbers that were used for depletion was the COHYST quantities of 28 percent depletion over a 40-year time span. We were all shocked when the draft rules and regulations were released at ten percent use over a 50-year time span as the standard. Roger Patterson has explained that the comments supporting both numbers at the rules and regulations hearing was evenly split. However, for those of us who were in attendance that were present at that hearing, we listened to overwhelmingly ten to one support for the 28/40 standard versus the ten percent, 50-year option used by DNR. The set standard for western Nebraska where the COHYST model is being used, used a 28 percent, 40-year standard. This water short, overappropriated area is being held to a lower standard than

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those residing in eastern Nebraska where our districts are not yet declared fully appropriated. This is not a fair or consistent treatment of the natural resource districts or the patrons within those districts and appears to be an exploitation of authority by the DNR. In our NRD, the difference between the ten percent and the 20 percent depletion lines can be as great as 600 percent difference, where a boundary line of one-and-a-half miles for the 28 percent line versus over nine miles when using the ten percent line. Furthermore, the glacial variability of eastern Nebraska geographic formations greatly challenges the accuracy of the model being used and increases the importance of using a more conservative 28 percent over 40-year standard. The Lower Platte North NRD will carry out our duties to regulate our water users when necessary. But as an elected official, it is very difficult to regulate an area in good faith when inside I know that that area is six times larger than what is actually needed. Senators, I encourage you to support LB 1225 and define a consistent depletion standard for the DNR to use in all watersheds throughout the state of Nebraska. Thank you, Senators, for your...

SENATOR SCHROCK: Thank you, Roger. Are there questions? Roger, what you're telling us is you think that they overstepped their boundaries and that if the 10/50 line is used, your basin will be declared overappropriated or fully appropriated quicker and the area involved will be greater. Is that what you're telling us?

ROGER KOERTNER: The area of impact will be greater on the 10/50 line, yes. And there will be overlaps in our watershed basin with the adjacent watersheds as well that will create potential conflicts.

SENATOR SCHROCK: Okay. Are there other questions? Senator McDonald.

SENATOR McDONALD: I've always had a question and I'm not sure that I've clarified this yet. Can you tell me the difference between the Department of Natural Resources and the NRDs, which is the natural resource districts?

ROGER KOERTNER: The main difference is the water being regulated or controlled. The Department of Natural

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Resources is the regulatory authority for surface water as opposed to the NRDs are responsible for groundwater regulations. I mean, when we're talking water specifically, that's the difference, Senator McDonald.

SENATOR McDONALD: So NRDs is surface...

ROGER KOERTNER: No, NRDs are groundwater.

SENATOR McDONALD: Ground, and department is the surface.

ROGER KOERTNER: That's correct.

SENATOR McDONALD: Okay.

SENATOR SCHROCK: Senator Louden.

SENATOR LOUDEN: Yeah, do you have irrigation well drillings in your NRD?

ROGER KOERTNER: Yes, we do have.

SENATOR LOUDEN: Are they drilling more or do you have any moratorium on the number or anything like that? Or is it whoever gets the permit gets to drill or how are you addressing that?

ROGER KOERTNER: There currently is not any moratorium in our district. DNR's report indicates we would still have, at our current rate of drilling, we would still have approximately 20-25 years before we would become technically fully appropriated. That's subject to their review each year as variables in that model change. But currently, we do have specific groundwater management areas but we have not regulated anything at this time.

SENATOR LOUDEN: Do you have areas that you have regulated for well drilling?

ROGER KOERTNER: Not for well drilling at this time.

SENATOR LOUDEN: Okay, how many wells are you drilling each year there, I mean, like this year compared to last year and years before and that sort of thing. Do you know offhand?

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ROGER KOERTNER: We did not have a big run on drilling of wells at the end of the year. I think last year, there was a total of approximately 200. Larry Angle, our water manager, will be testifying after me and he would probably be able to give you a more accurate number on exactly the number of those. The other thing on that, when I say 200 well permits issued, some of those well permits were replacement wells, some of those were not necessarily irrigation wells. So I think if you'd defer that question to Larry, I think he can more accurately...

SENATOR LOUDEN: Okay, thank you.

SENATOR SCHROCK: Other questions? Thank you, Roger.

ROGER KOERTNER: Thank you.

SENATOR SCHROCK: Next proponent? And if you can tell us about your testimony rather than read it, it will be helpful.

LARRY ANGLE: I do not have a handout so it will be all verbal. Good afternoon, Senators and Natural Resource Committee. My name is Larry Angle, that's L-a-r-r-y A-n-g-l-e. I am the water resources manager for the Lower Platte North NRD. Basically, as Ron mentioned earlier, the 28/40 line, the 28 percent and 40 years, is what the NRDs have been going on for years and this is what, even though we are in the eastern portion of the state, this is what we expected as well. And it was only until last summer that we realized that this might be changing to the ten percent and 50 years. That would essentially double the area that might fall under any moratorium for integrated management. Again, the 28 percent and 40 years was used by the COHYST model with the Platte River Co-op Agreement and, again, that's what we expected to use. Now with the 10/50, essentially from a management standpoint, our Shell Creek Watershed would fall under the system for the Lower Loup and Lower Elkhorn NRD. And those are more than like to become fully appropriated before the Lower Platte. However, because of the 10/50 boundary lines, that entire Shell Creek Watershed would be...or, I should say, the upper portion of that watershed would be under either Lower Loup, Lower Elkhorn, or Lower Platte North. It's a real confusing issue if indeed this may happen next year or the year after, is who's

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managing the Shell Creek area? Is it us, is it Lower Loup, or the Lower Elkhorn? Obviously, it would have to be an integrated plan not just with DNR, but also the other NRDs. And I think this would be a very complex issue to work out because each NRD has a little different philosophy in how they manage their groundwater. We, for example, base ours on saturated thickness while other NRDs use a temporary, like a foot drop. But we base ours on the aquifer at the sub-area level. That's essentially all I have to say. It would be a management headache but I think Lower Platte North would be very much forward thinking in handling if that's what is necessary. Thank you.

SENATOR SCHROCK: Thank you, Larry. Questions? I guess not. Appreciate you being with us. Next proponent?

DON BLANKENAU: Good afternoon, Senator Schrock, members of the committee. My name is Don Blankenau, my last name is spelled B-l-a-n-k-e-n-a-u. And I'm appearing here today primarily on behalf of the Nebraska Association of Resource Districts. But secondarily, on behalf of the League of Municipalities. I don't want to reiterate a lot of what you have already heard. I think it's important, though, to emphasize that that 28/40 line was the expectation of many of the members who provided the political support for LB 962. When DNR changed direction on that, I think it harmed the relationship between the NRDs and cities with the DNR and I think that that harmed relationship still continues somewhat to do this day and creates an air of mistrust. And I think it's important that this committee be aware of that and consider that in this light. In addition, I wanted to just address a few questions that I had heard. Senator McDonald, you asked about the difference between the DNR and NRDs. And just to build a little bit upon what you heard, the DNR is a state agency. It has a wide variety of duties, including dam inspections and dam approval all the way to, in this context, determining what basin is fully appropriated. Once the DNR makes that determination and they do that based upon wells within the 10/50 line now along with the surface water uses, they then must work with the natural resource districts which are political subdivisions of the state with separately elected boards to develop an integrated management plan to try to manage the ground and surface waters of those basins in a way that will ensure that the supply remains sustainable. I think what

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you'll hear from some of the opponents is that if you shrink down that 28/40 line, you could adversely impact stream flow and result in much water not being accounted for. And that may be a valid point, but I think it overstates and probably oversimplifies the analysis that goes into this. Whether you choose 10/50 or 28/40, that is really just a hydrogeologic concept. Whether a well is located within that line doesn't mean that it will adversely impact stream flow. There's more to the effect of a stream flow than how much water comes out of that well. What matters, at least in an agricultural context, is how that water is consumed on the surface surrounding that well. And a nice, for instance, in the part of the state where I grew up in the eastern portion, you had native grasses which consumed and trapped precipitation at a rate much greater than the crops that would eventually replace those grasses. Regular corn, for instance, consumed less water than those native grasses. That affected the groundwater table. There was greater recharge and greater runoff so you had stream flows that were positively impacted by the elimination of those native grasses. When you placed a well down and began to irrigate that corn, that corn consumed more water than the dryland corn that was there before but still less than the original native grasses. So you still had a positive impact on the stream flow. That's certainly not the case statewide and there are many places in the state where the native grasses did not consume water that way. But the point is that you need to look at the well's location, but also how water was being consumed there both before and after that well went in place. It is the consumption of water that affects where the water table is and it is the water table elevation that affects how water is discharged to stream flow. And just one parting thought on that, the U.S. Geological Survey prepares maps where they compare predevelopment groundwater levels to what they are at various snapshots in time. If you look at their maps that compare predevelopment groundwater levels to what they were in 1995, you would see in most areas of the state no change at all. There were some pockets in the Upper Republican and around the Alliance area where they declined, some areas along the Platte where they increased. But elsewhere in the state, they were essentially unchanged. Five years later, those predevelopment comparisons, the water level was higher than in predevelopment times because we had a period of high rainfall. If you looked at it today, I would suspect you

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would see those groundwater levels are lower than predevelopment. What that illustrates is you've got a dynamic system here. It increases and decreases over time. I mean, just because your well is located at the 10/50 line or 28/40 line doesn't mean that all the water pumped out of it will come from stream flow. And I think with that in mind, the NRDs and the League would like to see the 28/40 line adopted as a matter of state law because it is a more manageable line and probably takes into account this dynamic nature of the system. I'm probably over three minutes so I apologize, Senator.

SENATOR SCHROCK: Did you check with the city of Lincoln before you brought your testimony?

DON BLANKENAU: No, I represent the League of Municipalities, not the city of Lincoln.

SENATOR SCHROCK: All right; questions for Don? Senator Louden.

SENATOR LOUDEN: Did I understand you correctly, you're telling me, then, if you put an irrigation well a little ways from a stream that you can pump that and that won't affect that stream flow, is that what you're telling me?

DON BLANKENAU: No, that's not what I'm telling you. What I'm saying, Senator, is that with each specific well, you need to look at how water was consumed in that area both before that well was in place and after. And with each specific situation, you will have a different answer.

SENATOR LOUDEN: In other words, if you pump the water and pump it back into the stream, it won't affect the flow, is that what you're telling me then?

DON BLANKENAU: That would be correct.

SENATOR LOUDEN: But if, how come most people don't do it that way? They usually pump it up on a side hill someplace and some of your areas like along the Niobrara River and that sort of thing, you can dry that river up with putting irrigation wells 100 yards from the river or so. By going from this whether you use 28/40 or you use 50/10, that still decides on how much water, what effect those wells have,

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wouldn't make any difference which model you used?

DON BLANKENAU: No, the 28/40 would take into account, probably, those wells that you're speaking of.

SENATOR LOUDEN: But so would the 50/10.

DON BLANKENAU: Yeah, it would. Fifty/ten would take those wells that may be five, ten, 15 miles from the river.

SENATOR LOUDEN: Yeah, providing they were up there.

DON BLANKENAU: Provided they were up there, sure.

SENATOR LOUDEN: Yeah, okay, thank you.

DON BLANKENAU: And it's really just a question of degree and the analysis that has to go into that. Twenty-eight/forty is still a pretty complicated calculation but it's believed that, given the dynamic nature of the system, that 28/40 will be able to adequately manage the system in perpetuity.

SENATOR LOUDEN: Now you mentioned that you have some places where the water level hasn't changed that much in five years. Are you talking primarily like, oh, down here, I guess you might say where the Loup Rivers more or less drain? I guess my question is, are you talking about water and streams below the Sandhills?

DON BLANKENAU: Yes, on a statewide basis...and again, this is always changing. But if you looked at the USGS's survey, their calculation of predevelopment compared to 1995, there was essentially no change anywhere in the state other than those areas I mentioned.

SENATOR LOUDEN: In other words, you're talking about when you say other than the areas you mentioned, when you say Alliance then, that's all on the west side of the Sandhills? In other words, the Sandhills is probably the aquifer that delivers your water to eastern Nebraska. Would you agree to that?

DON BLANKENAU: No, I wouldn't necessarily. In the area around Alliance, I want to careful about, is a very discrete

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area. It's a very small area relative to the whole Sandhills. Most of the Sandhills have remained essentially unchanged.

SENATOR LOUDEN: But the area around Alliance isn't in the Sandhills, it's west of them.

DON BLANKENAU: No, it is farther west.

SENATOR LOUDEN: I mean, it's in a different aquifer. It isn't, there's no drainage from the Alliance area that comes down through your Loup Rivers and that sort of thing.

DON BLANKENAU: That is correct, yes.

SENATOR LOUDEN: Okay, thank you.

SENATOR SCHROCK: Other questions for Don? Thank you for being with us.

DON BLANKENAU: All right, thank you.

SENATOR SCHROCK: Is there more proponents? Is this the last proponent?

DAVE NELSON: I have no written testimony so I might end up being very brief. My name is Dave Nelson, D-a-v-e N-e-l-s-o-n. I'm president of the NARD association but I'm here today as a member of the Tri-Basin board. I'm here to support LB 1225. Our district is probably, it is the most unique out of all the districts in Nebraska. Tri-Basin, we have the Platte, Republican, Little Blue, and what I'm trying to say is the 28/40 line, I think, is a good standard. It makes it a lot easier for us because we have three basins within our district. If you go the 10/50 line, it makes almost a nightmare to try to run or enforce. And basically I'm here to say to you as a committee, we just need some good common sense in our water laws in Nebraska. We've done a good job. I think we can do better. Thank you.

SENATOR SCHROCK: (Exhibits 7, 8, and 9) Questions for Dave? Thank you for being with us. I like your comment about being unique. Opponents? Oh, we have...in support, Dennis Schueth, Upper Elkhorn Natural Resource District.

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And is he the one that couldn't be here because it's snowing? And we have a letter from Dan Smith, Middle Republican NRD. He is in support. And Clint Johannes, Nebraska Electric Generation and Transmission Cooperative. Welcome, Ann Bleed.

ANN BLEED: Thank you, Senator.

SENATOR SCHROCK: I was thinking during neutral testimony I was going to call up here and defend what you did. (Laughter)

ANN BLEED: (Exhibit 10) Well, you can ask me whatever questions you want during my testimony. My name is Ann Bleed, that's A-n-n B-l-e-e-d, just like when you cut yourself. And I am the acting director of the Department of Natural Resources. I am here opposing LB 1225. I'll try to be brief. I have written testimony which you can read at your leisure. It will probably put you to sleep. But the first comment is that the literal reading of the language in the bill would essentially mean no water is hydrologically connected. And I don't think that was the intent but that's what the language says to a hydrologist. And so I think that is a major problem with the bill itself. The second concern I have is that the bill talks about, and I assume this is the intent of the bill, restricting the integrated management plan itself to an area that's defined by the surface water boundary shed or the boundary of the district. And that is a major problem in many respects because it ignores wells that are actually impacting a stream. If you look at the map with the testimony, you'll see there the boundary, the surface water boundary shed is that black line. This happens to be of the Loup River Basin. That shows the black line around the basin. The blue area is the area that is considered hydrologically connected as a result of a rule making process and a formal hearing and a formally promulgated rule saying that hydrologically connected should be as defined at the 10/50 line. You'll notice there are areas outside of the surface water boundary that would not be included in an integrated management plan if the surface water boundary was used to delineate hydrologically connected water for groundwater. Why is that a problem? Well, if you go to the next figure, and I know you've seen this before but let me just go over this very quickly. What this figure shows is the percentage of the amount of water

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that's pumped and removed from the system by a well that would show up as a depletion to stream flow. The percentage depletion to the stream flow is the vertical axis. The horizontal axis is years over time. And what that shows is the, if you were on a 28/40 line, that's the red line, first few years of pumping would not have very much depletion to the stream. But as you go up, by year 40 you'll notice that almost half of what is being pumped will show up as a depletion to the stream. And that, in my mind, is a significant amount of water. And when you get to my age, 40 years doesn't seem very long. The department was concerned that that would cause depletions to the stream that would adversely affect existing users within the area that was considered to be fully appropriated. The green line is the line that the department chose after going through a negotiated rule making process and public hearings. And that's the 10/50 line you'll notice in year 40, 18 percent of what would be pumped by that well would show up as a depletion to the stream. But that's significantly less than almost 50 percent. I might mention that the, just in passing, that the rule making hearing, we had both written and oral testimony. And we considered both written and oral, not just the oral testimony, in the hearing. It has been mentioned that the 28/40 line is the standard that was adopted in a number of different cases. And I would like to review a little bit about what did in fact happen during the Nebraska v. Wyoming negotiations. I was a member of the negotiating team for the state of Nebraska. We used the 28/40 line above Guernsey Reservoir because, in Wyoming, most of the streams go through bedrock, the alluvial aquifers that do form along the stream were well within any 28/40 line and therefore, in that area of the state, the 28/40 line captured and included all the wells that would be impacting the stream. Below Guernsey where the aquifers are quite a bit different and much more similar to those in Nebraska, we did not use the 28/40 standard. We used another standard because it would not have been adequate. Now when I say 28/40 standard, that is, the only reason that 28/40 is used a lot is because it happens to be the result of a fairly commonly used formula if you substitute certain unit values of one into the formula. There's nothing magical beyond that about the 28/40 line. In terms of the cooperative agreement, we used a simple formula again. And at the same time, however, from all the state's perspective in the cooperative agreement in

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dealing with the federal government, as far as we were concerned, we wanted to keep the federal government's intrusion into our business as small as possible. So we had no problems adopting a narrower standard for the cooperative agreement. However, we are certainly aware that the wells beyond the 28/40 line are going to have an impact on the stream. Our major concern is that if you do not include wells that have (inaudible) stream, the difference between 18 percent and, say, almost 50 percent is that you will end up with an integrated management plan that has significant numbers of wells which are not regulated. If that occurs, you might have wells in an area that are increasing, they're being used fairly heavily. You will be causing depletions to the stream within the hydrologically connected area and the people within that area are the ones charged with the responsibility of sustaining a balance between the supply and use. It's kind of like if you had your own water supply for your house coming in and you paid for a certain amount of water to come in every day based on your demands and then your neighbor comes in and taps into your line, takes your water, and you have no recourse to go to the city and say to your neighbor, you can't take my water. That's essentially what would happen if we have wells that were not being regulated in an integrated management plan that did significantly impact the stream. My major concern with that, the department's major concern is that having such unregulated wells is contrary to LB 962, contrary to the major intent of the Water Policy Task Force which was to be proactive in regulating streams so we avoid the situation where we have an overappropriated stream. And the determination that a basin is fully appropriated is a determination that says it's time now to start managing that stream. Within the management plan, there's a lot of flexibility the NRD and DNR would have on how they manage. This is simply an indication that it's time to start managing. The other major concern with the bill is that there is a section that says that we should only require offsets for the first 40 years of pumping for a well. If you look at Figure 2, you notice that there's still impacts to the stream occurring after year 40. And in fact, those impacts would still be increasing. The concern I have there is that there is no required offset now and 40 years from now, who's going to pay for those offsets? Is the state going to come in and submit fund money to retire uses so that the stream can be, the balance between supply and use

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can be sustained? Or alternatively, are we simply going to let the streams and the depletions occur without worrying about sustaining a balance? Again, I think this is contrary to the whole intent of what the Water Policy Task Force was trying to do when they recommended to the Legislature LB 962. And I know I've taken a fair amount of time but if you have questions, I'll try to answer them.

SENATOR SCHROCK: Thank you, Ann. Senator Kremer.

SENATOR KREMER: Ann, I was to the water roundtable the other day when, really an interesting presentation on the models being used. It seemed there's a lot of work need to be done yet. Is there enough research that we have data to know that these lines are very accurate? Or in the effort to be proactive, are we erring on the safe side sometimes? And I'm for being proactive but I'm just wondering if, thinking that we don't really know, let's go a lot further than we think we need to do. And I know the Upper Big Blue had some research, had some data that other NRDs did not have and it backed off that area because the data that they had. So I was just wondering, are we still needing a lot more data to prove this or is this pretty accurate, do you feel?

ANN BLEED: We definitely need more data and that's why I emphasize the fact that what we do when we say an area is fully appropriated...what we're doing is saying based on the available data, we see that the balance of supply and use is about equal. And to me, that's the time to start managing. And what we do, then, if an area is fully appropriated, we have a temporary suspension on new uses. Those suspensions go away once an integrated management plan is put in place. And when you put an integrated management plan in place, I would argue that a good plan is not set in stone. It has got to be a plan that, one, has good monitoring and good studies incorporated into the plan itself that need to be done. I would argue the plan would probably want to do groundwater modelling to get a much better handling and a much better understanding of the system. And then the plan should be flexible so that, as conditions change or our understanding changes, we can change the plan. So really what we're doing with the fully appropriated determination is saying, we're at the point where supply and uses are now about in balance. And if we want to sustain that balance

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and protect existing users from having their supply eroded, we'd better start managing. If we have erred and declared the basin fully appropriated too soon and our models then show there is extra water to be developed, there's nothing in the law that would prevent the natural resources district and DNR saying, it is safe to develop this extra water supply in this area and by doing so we won't adversely affect an existing user. The contrary, however, is the problem we get into in the Republican and the Platte above Elm Creek where it's overappropriated. In those situations, we have people who have made investments in various irrigation systems, other economic systems, whatever it might be, industrial systems in municipalities. But the supply cannot sustain those uses. And eventually, if you continue on that track, we're going to have to start, the uses will start going away. This is happening in Upper Republican as we speak and it has happened in western Texas and western Kansas where there are even municipalities who now have to import municipal supplies for their towns. That's what we're trying to avoid with LB 962.

SENATOR KREMER: So if you would err, you'd rather err on the over regulation rather than under regulation?

ANN BLEED: Well, remember, it's only over regulation until the integrated management plan is in place and until we have better information to say that there is extra water.

SENATOR KREMER: But that might take years, too.

ANN BLEED: Well, hopefully we'll get lots of money to do some studies so it won't take very long. (Laughter)

SENATOR KREMER: Took advantage of that opportunity to talk about some money, didn't you.

SENATOR SCHROCK: Senator Stuhr.

SENATOR STUHR: Yes, I'm hoping that you can explain the process a little bit. We talked about the hearing. I think that was the hearing that was held out in Kearney. Was it in Kearney on the 28/40?

ANN BLEED: Um-hum, I believe so, yes.

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SENATOR STUHR: And you talked about written and oral testimony. I don't recall, I was there that day. Did you read into the record the written testimony that you had received or what is that process? Was there a longer length of time to take written testimony?

ANN BLEED: Yes, we had the record open for, I've forgotten just how many days after the actual hearing, for further written testimony. And we did receive a significant amount of written testimony.

SENATOR STUHR: Okay, and then...

ANN BLEED: And we had testimony that ranged from saying that 28/40 should be the line to as little as one-tenth of one percent in 100 years, which happens to be the standard used in Colorado.

SENATOR STUHR: I just know that day it seemed the testimony was overwhelmingly in support of the 28/40.

ANN BLEED: You're correct, Senator. In listening to the testimony...

SENATOR STUHR: Yes.

ANN BLEED: ...the oral testimony, if you simply counted the number of people who came up, was overwhelmingly in support of the 28/40. But that was not true of all the testimony.

SENATOR STUHR: Yes, and then you talk about the negotiated rule making. Now is that, how does that take place? Is that the process after the hearing?

ANN BLEED: No, that occurred before the hearing. It was...a negotiated rule making process was requested and we did form a committee. We solicited names and, in fact, we had everybody who wanted to be on the committee was put onto the committee. And we went through a process of trying to come to consensus on a rule and I will tell you, we did not have consensus on the 28/40 line. There were some people who felt that it should be a lot farther out or include a lot more wells than the 28/40 line. There was no consensus on that. So the department did come to a ruling.

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SENATOR STUHR: All right, thank you for that clarification.

SENATOR SCHROCK: Ann, we have an agreement with Colorado and Wyoming on the Platte River and that was based, I believe, in 1997. Is that correct?

ANN BLEED: Well, the 1997, the agreement with Colorado and Wyoming for the Platte River for the endangered species program uses the year of 1997 to indicate which uses are grandfathered in. In that agreement, if we should sign it, every use prior to 1997 would be grandfathered in and would not have to go through Section 7 compliance of the Endangered Species Act. Every use after that that adversely affects the target flows to the endangered species would have to be offset.

SENATOR SCHROCK: But there was an agreement that we would not have any new use or more...there wasn't an agreement that our consumption couldn't exceed that time and...

ANN BLEED: Right, under the cooperative agreement, you're absolutely right. We said that, as a state, we would offset any depletions over and above the 1997 level of development.

SENATOR SCHROCK: Why didn't anybody at that time recommend knowing the uses to the Legislature and say, we shouldn't be drilling any more wells? Or we had this agreement that said no new consumptive use, and yet we kept developing.

ANN BLEED: I can't answer that, Senator. I don't know. I don't know if there was discussion of that at that time or not.

SENATOR SCHROCK: And of course, if you drill new wells, then the only way to get back to the level is not to use as much which the price of fuel is helping, I would say that.

ANN BLEED: Unfortunately, you're probably correct.

SENATOR SCHROCK: Am I to interpret from this graph that you have handed out that actually the 10/50 line basin would be less apt to become fully appropriated or become full appropriated at a later point in time than the 28/40?

ANN BLEED: No, the actual timing of when you're fully

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appropriated does not depend on the area included under the management plan.

SENATOR SCHROCK: And in the basins that have not been declared fully appropriated, you're saying we need a lot more information and that's why you need some appropriations from the Legislature?

ANN BLEED: Senator, you know I'm a scientist. I always want more information. We would, I think to do appropriate groundwater and surface water management plans, integrated management plans, especially in the eastern part of the state, we should have more information.

SENATOR SCHROCK: Okay. If there's no...Senator McDonald.

SENATOR McDONALD: This might seem like a dumb question but...

SENATOR SCHROCK: It's dumb if you don't ask it.

SENATOR McDONALD: You're the active director of the Department of Natural Resources.

ANN BLEED: Right.

SENATOR McDONALD: And can you tell me briefly what your qualifications are?

ANN BLEED: I have a professional engineering license in civil engineering. I have a master's degree in management systems engineering from the University of Nebraska. I have a Ph.D. from the University of Wisconsin in ecology and a master's degree from Penn State University in ecology and a bachelor's degree.

SENATOR McDONALD: Okay, and in order to be on the NRD, how do they get there and what qualifications do they have?

ANN BLEED: To be on an NRD board?

SENATOR McDONALD: NRD board.

ANN BLEED: I think they get elected. I don't know that there's any qualifications beyond what would be required to

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a citizen to be elected to the board.

SENATOR McDONALD: Okay, all right, thanks.

SENATOR SCHROCK: Other questions? Ann, thank you for your work for the state of Nebraska...

ANN BLEED: Thank you, Senator.

SENATOR SCHROCK: ...on the Water Policy Task Force and for being our director of Department of Natural Resources.

ANN BLEED: Senator, I will thank you for all your work on the Water Policy Task Force and also Senator Stuhr. Thank you.

SENATOR SCHROCK: Next opponent? Considering the time of day, it would be nice to have an exec session.

TOM SCHWARZ: Senator, I'm Tom Schwarz, T-o-m S-c-h-w-a-r-z, from Bertrand, a farmer, here representing myself. I am a member of the Water Policy Task Force as well as several other water boards. I guess I'm here to talk a little more about the property rights aspect of this. What really spurred me to become more involved in water issues was a determination by the Federal Energy Regulatory Commission back in the 1989 that was going to force Central and NPPD to release our water for endangered species. And I was very concerned because we do have a property right to that water and I did not want to see a federal agency come in and take my water away from me without paying for it, just ultimately make that decision. What I see here today with 28/40 and 10/50 is the same thing. Instead of the federal government taking my water away from me, I fear it's my own natural resources districts that may be doing it. And I guess if you look at it from a property rights perspective, I think you have to defend a property right regardless of whether it's a federal agency that's causing you a problem or whether it's a state or local agency. Any time we allow property rights to be diminished, I think it lessens all our property rights. So I'm just going to explain a little bit on 28/40 and 10/50 and it's hard to understand these concepts. But what I'm going to do is liken it to land. And let's say Senator Stuhr's land holdings are here. Okay, I'm going to institute a rule that over 40 years, I can only

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take 27 percent of her land. That's okay if I take 27 percent of her land over 40 years. Now, I don't think that's the approach we should take, I guess. I don't think that's right, I don't think it's fair. I'm not too crazy about 10/50 because there we're saying it's okay if I take ten percent of her land over 50 years. And we're going to have to get our arms around our water problems in this state at some point. We've got to stop pretending that wells that are going to impact the river aren't really going to impact it. And we're going to have to really get serious about this. We need to be more cautious than we've ever been. If, as Ann said, if we find after research that there's more water available in the basin, we can open the door up and we can allow more development. But I think we're going to have to start getting ahead of the curve instead of being behind it like we've been consistently in the Platte and the Republican. We've got to start looking long term. It's tough, I mean, you guys have to look one year at a time here in the Legislature. But this water issue demands that you look at a 50- or even 100-year period and that's hard to do. But I really would encourage you to take the long look here and encourage the NRDs to be cautious.

SENATOR SCHROCK: Thank you, Tom. How about 25, that's probably about all the good years I might have left. (Laughter) Next opponent, please. I'm optimistic. How many other opponents are there? All right.

MARK BROHMAN: Chairman Schrock and members of the Natural Resources Committee, my name is Mark Brohman. For the record, that's B-r-o-h-m-a-n. And I'm here today representing the Nebraska Game and Parks Commission. And between Ann and Tom's testimony, I'm just going to reemphasize two points and so I'm just going to be real short and to the point. The Department of Natural Resources went through...and by the way, we are in opposition of LB 1225, the 28/40 rule. The Department of Natural Resources established the 10/50 rule through a negotiated rule making process which we participated in. And the standard they used was the best scientific data and information readily available. When we went into those negotiated rule making situation, the information we had, we were looking at a one percent and we were willing to go up to a two percent in 50 years. So we were the extreme, or not, there were people even beyond where we were. But

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that's what we would have liked to see that end up at 2.5 percent. And so, as you can see, the ten percent was a lot more than we wanted. But there is compromise involved in this world and that's what happened there. It was also mentioned the Nebraska/Wyoming situation, I'm glad Ann went through that because the 28/40 rule out there basically encompassed all the wells. So it didn't matter whether it was 28/40 or whether it was ten percent or even 2.5 percent because 98-99 percent of those wells out there were encompassed inside of that boundary. And so that's why that was a little bit different situation. And so I guess we're just here to say that if we're not willing to protect our surface waters of the state of Nebraska, the other streams, we're going to end up just like we are in the Platte River right now with a big headache, some financial obligations. And so with that, we would continue to support the 10/50 rule even though we'd prefer the 2.5/50 rule. But we can live with the ten percent/50 rule at this time. With that, I'd answer any questions.

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

SENATOR KREMER: When you said the problem with the Platte, did you mean Republican?

MARK BROHMAN: Well, actually the Platte and Republican River, you know, with the three-state compact right now, the Platte, you know, the river basin, the problems we're getting into and the depletions after '97, you know, whatever that compromise ends up being. The three-state agreement, you know, we're going to have to live by whatever we end up settling there. And so the Loups and the Elkhorns and those other rivers, we're going to end up with problems there eventually. It just happens to be these are interstate problems that we're dealing with on the Platte and the Republican right now.

SENATOR KREMER: Okay, when you talked about negotiating agreements, who were those negotiations with?

MARK BROHMAN: Well, that was the Department of Natural Resources and they used the scientific information which we provided input to that. And then the hearings that Senator Stuhr was referring to.

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SENATOR KREMER: But when it was negotiated...

MARK BROHMAN: Well, they call it negotiated rule making.

SENATOR KREMER: ...it was not a consensus or anything, so...

MARK BROHMAN: And they have to use the best scientific...the way that, my understanding is, it's the best scientific data and information readily available. So they took all that input, both written and recorded from the meetings and they took all that information and used it. But the negotiated rule making, you know, they had to use the scientific information and, of course, that's what Game and Parks provided was scientific information along with other users. But Senator Stuhr was correct in the hearing that there was a lot of people that were users that were there. They probably weren't providing scientific data but there were there to support the 28/40 rule because that protected them, allowed them to continue to put wells in.

SENATOR KREMER: When I think of negotiation, I think of there's an agreement. But it doesn't seem like there was really an agreement though, was there?

MARK BROHMAN: No, I don't think you could say there was an agreement. They used information and came to a conclusion.

SENATOR KREMER: Okay.

SENATOR SCHROCK: Senator Stuhr.

SENATOR STUHR: Just for my information, do you remember who was on that rule making committee or what groups were involved?

MARK BROHMAN: No, I was not part of it so I can't tell you, you know, we had staff...

SENATOR STUHR: Oh, you just provided the information.

MARK BROHMAN: We provided information to the Department of Natural Resources.

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SENATOR STUHR: All right.

MARK BROHMAN: Yeah, you would have to ask Ann or someone who was part of that process.

SENATOR SCHROCK: Other questions? Thank you, Mark.

MARK BROHMAN: Thank you.

SENATOR SCHROCK: Next opponent?

DUANE HOVORKA: Good afternoon, Duane Hovorka, D-u-a-n-e H-o-v-o-r-k-a, from Elmwood, Nebraska, here on behalf of the Nebraska Wildlife Federation to testify in opposition to the bill. The key thing I want to leave you with is to remember that water in Nebraska is a public resource. It's a public resource and when you're dealing with a public resource, when we err, we ought to err on the side of protecting that resource. One of the problems with using the tighter 28 percent/40 line, the standard that's in the bill, in determining when a watershed is fully appropriated is that by the time you make that determination and begin the watershed planning process, it's already too late. Because you've already got enough water uses in that basin that, even if you stop it right there and mitigate everything, all the development that comes in the future, you're going to have declining stream flows because you're going to have increasing impacts from those wells, as Ann showed you with the charts that she showed you. A second problem is that if the NRDs then use those 28 percent, 40-year lines as the basis for rules and regulations for management within the district, you can create more problems because you're narrowing the band of landowners and water users that have to address the problem. The broader that you can capture the people who are having an impact on the river and spread out the costs and the burdens of dealing with the problem, the less any single landowner has to put in to help achieve the goals of reducing those problems. And the narrower you make that band, the more you put those costs on a smaller number of people. My recollection of the Governor's task force discussions was that there was no agreement on 28 percent/40, that everything we could agree on, we put in the bill and we wrote right in the bill. And where we couldn't agree, we didn't put it in the bill because there wasn't consensus. Basically, the same folks who were

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involved in the Governor's task force in proposing that bill then moved on to the negotiated rule making session to try to determine, maybe we can get agreement on this narrow issue. Again, we failed. I was not part of it but Chad Smith with American Rivers also represented us on that negotiating rule making committee. And again, we failed to reach an agreement. The DNR had to pick a standard and they picked one based on their reading of the science and their reading on the hydrology. Other states, as Ann mentioned, that have dealt with these issues longer than Nebraska has, states like Colorado have picked much higher standards. Those standards have survived court challenges. They become accepted practice in those states and we ought to look to those states and those standards when we establish ours. I don't think NRDs yet have the authority to impose rules and regulations outside of their boundaries. So I don't think you'll see a single water user being subject to two or three different plans. They're going to be subject to one plan that's developed by their NRD with the Department of Natural Resource. Where there's overlapping watershed situations, where a watershed goes outside of an NRD boundary, you're going to have to work between those NRDs and the Department of Natural Resources. But I'm confident they can do that. They can come up with fair and reasonable standards that those folks in those small areas will be able to meet. With respect to the cooperative agreement, I unfortunately have been one of the folks trying to negotiate that agreement for years. And let me tell you that the reason that that Nebraska depletion plan was actually acceptable, including the 28 percent/40 line, it was something we fought over literally for years over whether that was going to be acceptable part of that cooperative agreement. It was ultimately agreed to that...we ultimately agreed that it could be in there, at least in the draft program, for a couple of reasons. One was that the depletions between 1997, when the agreement essentially was agreed to, and the end of last year, when we essentially had the program almost written, would be that those depletions would be mitigated by the state of Nebraska without respect to the 28 percent/40 line. So there's no line in that agreement. And what we're mitigating isn't every depletion to river flows, it's only depletions to specific flows that are designed to meet fish and wildlife target flows. And I won't go any further than that other than if you want to talk about that, I'd be glad to try to put you to sleep with

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that one. But, and the second reason that that depletion plan was acceptable was because the state DNR had already adopted the ten percent, 50-year rule and had assured us that the integrated management plans, which are closely connected with the depletion plan, were based on that ten percent/50 rule. So going forward from 2006 on, those depletions would be mitigated based on the Nebraska integrated management plans. And so that's the short background of why it may look like 28 percent/40 is the golden rule but, in fact, it's really not near as consistent as you would be led to believe. I'll stop there and...

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

SENATOR KREMER: Several times you said, we decided, we mitigated...who are we and what was your involvement?

DUANE HOVORKA: Right, the original, you're talking about the cooperative agreement?

SENATOR KREMER: You just said we several times.

DUANE HOVORKA: Right, the decisions made in the cooperative agreement are being made by a governance committee, essentially a negotiating committee that involves representatives from all three states, from the federal government, from water users, upstream, downstream, and from environmental groups.

SENATOR KREMER: And you were part of that...

DUANE HOVORKA: And I'm one of the representatives, yeah.

SENATOR KREMER: ...you were part of that group. Thank you.

SENATOR SCHROCK: Senator Smith.

SENATOR SMITH: Who has priority use over the water?

DUANE HOVORKA: Who has priority use? The water, it's the people of Nebraska, the water resource belongs to the people of Nebraska. And it's a public policy choice to decide how that water is going to be best put to beneficial use. So in terms of who gets first priority, that's essentially a

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legislative decision within the boundaries of the public trust doctrine, which is a common law legal doctrine that goes back to Roman times which says that the legislature and other public bodies have a responsibility to protect the public trust, to protect the water flows, to protect the fish and wildlife that depend on those flows.

SENATOR SMITH: So if it comes down to a consumption for agriculture or water flows for wildlife, which one is more important?

DUANE HOVORKA: Well, they're both important.

SENATOR SMITH: Which one is more important?

DUANE HOVORKA: They're both important. And the one which is more important, I guess, depends on the context on a particular stream, on a particular use. That's why these are being decided within those integrated management plans. And, I mean, the unfortunate part is that in Nebraska we're not protecting for all fish and wildlife uses. We're only protecting for those instream flow water rights. So on the Niobrara where we have no instream flow rights, the integrated management plans can ignore the needs of fish and wildlife. We think that's a real mistake but that's the law as it's written.

SENATOR SMITH: Okay, thank you.

SENATOR SCHROCK: Other questions? Duane, do you think the fact that the director of the Department of Natural Resources is an engineer helped her in making this decision whether to do the 10/50 or the 28/40?

DUANE HOVORKA: I have no idea.

SENATOR SCHROCK: All right.

DUANE HOVORKA: She has far more degrees than I have so she must be a lot smarter than me.

SENATOR SCHROCK: (Exhibits 11 and 12) Thank you for being here and thank you for serving on the Water Policy Task Force. Is this the last opponent? I will read into the record opposition from the city of Lincoln signed by Steve

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Huggenberger which, by the way, is a member of the Task Force. And we have opposition from Steve Smith, surface water irrigators above Lake McConaughy. My guess is that's not the Steve Smith...that is the Steve Smith from Imperial?

SENATOR STUHR: No.

SENATOR SCHROCK: (Exhibits 13, 14, and 15) That is not the Steve Smith from Imperial I'm hearing. And we have opposition from Central Nebraska Public Power and Irrigation District, signed by Tim Anderson who is present. We have opposition from the Nebraska Water Resources Association and the Nebraska State Irrigators Association, signed by Ron Wolf. We have opposition from the Middle Loup Public Power and Irrigation District, signed by Allan Schmidt. I think Al was on the Task Force, too.

BARB KOEHLMOOS: Senator Schrock, would you slow down, please? I'm numbering these as you go.

SENATOR SCHROCK: (Exhibits 16, 17, and 18) Do you want me to repeat any of them? The first one is city of Lincoln, Steve Smith, Central Nebraska Public Power and Irrigation District, Tim Anderson, Ron Wolf, Nebraska Water Resources Association and the Nebraska State Irrigators Association, Allan Schmidt of the Middle Loup Public Power and Irrigation District. And Dennis Strauch of the Pathfinder Irrigation District, both of those are on the Task Force. Dave Aiken, professor of water and ag law specialist of the University of Nebraska Department of Agricultural Economics. And Brian Barels from the Nebraska Public Power District and Brian is on the Water Task Force. Do we have neutral testimony?

SENATOR LOUDEN: The Steve Smith, Ed, I think is legal counsel for like Pathfinder and some of the surface irrigation districts in western Nebraska.

SENATOR SCHROCK: Okay. Well, you know, when you have a common name like that, why, sometimes you get mixed up.

SENATOR LOUDEN: Well, he gives it away on his letterhead when he says Pahlke and Smith and Snyder and all them.

SENATOR SCHROCK: All right.

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SENATOR LOUDEN: That's who they are, I know those guys. No relation to Adrian.

SENATOR SCHROCK: All right. Thank you, Senator Louden. If not, that will conclude the hearing on LB 1225. Thank you.