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Natural Resources Committee  
January 20, 2011

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[LB154 LB208 CONFIRMATION]

The Committee on Natural Resources met at 1:30 p.m. on Thursday, January 20, 2011, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB154 and LB208 and confirmation of Mark Graham and Thomas Knutson. Senators present: Chris Langemeier, Chairperson; Ken Schilz, Vice Chairperson; Tom Carlson; Mark Christensen; Annette Dubas; Ken Haar; Beau McCoy; and Jim Smith. Senators absent: None.

SENATOR LANGEMEIER: Good afternoon and welcome to the Natural Resources Committee. We'd like to welcome everyone here in the crowd and those watching on the Internet and closed-caption throughout the building. My name is Chris Langemeier, I'm the Chairman of the Natural Resources Committee. At this time I'd like to introduce the committee that are with us today. Starting to my far left, or your far right, we have Senator Jim Smith from Papillion. Next to him we have Senator Ken Haar from Malcolm. We have Senator Mark Christensen from Imperial, Nebraska. We have Senator Ken Schilz and Vice Chairman of the committee from Ogallala, Nebraska. We have Laurie Lage is the legal counsel for the committee. Moving to my right we have Senator Annette Dubas from Fullerton. We have Senator Tom Carlson from Holdrege. And we have Senator Beau McCoy from Omaha, west Douglas County. He doesn't have a pinpointed spot that I can use. And then clear to the right is Barb Koehlmoos, the committee clerk for the committee. As you come up to testify in front of us today, in the corners of the room is a green sheet that we ask that you fill out and fill it out in its entirety and give that to Barb as you come up to testify. If you're here and you want to be on the record of being in support or opposition of a bill, there's another form back there, and don't want to testify, there's another form back there that looks like a spreadsheet that you can give us your name and address and whether you support or oppose the particular piece of legislation out before us today. As you come forward to testify, we ask that you...first thing you do is tell us and spell your name. It helps us keep an accurate record of the proceedings today and to make sure we get it correct. If you have anything to hand out, we ask that you have 12 copies. If you know right now you're short a few, please raise your hand and one of our two pages will come up to help you. And at this time I would like to introduce our two pages. We have Katie DeLashmutt who is a senior from UNL and from Burwell, Nebraska. And then we have a page I think we're just going to have on Thursdays, right? And that's Ian Vosburg who is a sophomore at UNL, studying political science, from Holdrege, Nebraska. And so they will be assisting us today. If you have something you would like to pass out...they're smiling, I must not have said it right.

SENATOR CARLSON: No, he's from Holdrege.

SENATOR LANGEMEIER: Oh, okay. I was like, man, I've been practicing that. (laughter) Little cheering section, I understand. Anyway, if you have something to hand

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out, if you do give it to us, and we will make it part of the record. You will not get it back. If it's something that you'd like us to see, but you want to retain it, we ask that you show it to us at the counter and not actually give it to us because we will keep it. At this time I'd like everybody to look at their cell phone and make sure it's off or in vibrate mode. We had a testifier yesterday before even sitting at the stand and it went off. I didn't point that out to him, but it happened. With that, we have before us today we have two confirmations and both individuals are here and we will then take up LB208 and LB154. So we will start with our first confirmation which is Mark Graham who has been appointed to the Power Review Board. Welcome.

MARK GRAHAM: Thanks a lot. Thanks everyone. It's a...I'm Mark... [CONFIRMATION]

SENATOR LANGEMEIER: Oh, go ahead, you need... [CONFIRMATION]

MARK GRAHAM: You want to sit down? [CONFIRMATION]

SENATOR LANGEMEIER: Yep, have a seat. [CONFIRMATION]

MARK GRAHAM: Is that how you want me to do it? [CONFIRMATION]

SENATOR LANGEMEIER: Yep, you got to feel the hot chair. [CONFIRMATION]

MARK GRAHAM: Okay. Is this good? All right, I'm Mark Graham, M-a-r-k G-r-a-h-a-m and thanks a lot. [CONFIRMATION]

SENATOR LANGEMEIER: Do you want to tell us a little bit about...first appointment...reappointment. [CONFIRMATION]

MARK GRAHAM: Sure. I'll be happy to do that. [CONFIRMATION]

SENATOR LANGEMEIER: Tell us a little thought of being on the Power Review Board, some of your background. [CONFIRMATION]

MARK GRAHAM: (Exhibit 1) Sure. I'll be happy to. Again, I'm Mark Graham and this is a reappointment. I've been serving on the Power Review Board for the past four years. I am the vice chair, currently, of the Power Review Board. My background is that I'm a transplant, but really love it here in Nebraska. Been here now, this time, for 11 years; it was two and a half time before. Married a girl from Henderson so I'm pretty grounded here. She keeps...makes sure of that. So as part of the Power Review Board we've had some certain changes, as you all know, over the past four years with respect to the Southwest Power Pool; with respect to what's going on, as you guys know, with wind energy and other renewables and see this as a...quite a great asset for what's happening in our state, right now, as far as what we're doing with respect to some of the

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renewables as it exists today. You'll see my background, I'm pretty much a businessman. I'm a serial entrepreneur, owned several businesses here in town and have come up through the database and direct marketing world. I've a masters degree in quantitative business analysis with an emphasis in statistics. So if you want to talk baseball, I can do that as well. That's it. I'm happy to be here. Thank you, Senator.  
[CONFIRMATION]

SENATOR LANGEMEIER: Very good. Very good. Are there any questions for Mr. Graham? We'll start with Senator Carlson and work our way around. [CONFIRMATION]

SENATOR CARLSON: Thank you, Senator Langemeier. Mark, yesterday we had...our hearing went to 7:00 and we want to try and set a record today so I've got 16 questions here that I want to ask you. (laughter) [CONFIRMATION]

MARK GRAHAM: Did you bring the hors d'oeuvres? [CONFIRMATION]

SENATOR CARLSON: No, we didn't have those either. No...and this is a light-hearted question because I know a little bit about your background and you graduated from Delta State, you played baseball there. Before your time I was helping coach a team that went down and stopped at Cleveland and beat Delta State. [CONFIRMATION]

MARK GRAHAM: Oh. [CONFIRMATION]

SENATOR CARLSON: But I've got some fond memories of Cleveland, Mississippi. What's Cleveland like today or how long has it been since you've been there? That was quite an experience when we were back there in the late '60s. [CONFIRMATION]

MARK GRAHAM: I'd go back...I was pretty blessed, I think you know that. I was pretty blessed to have played them in the Hall of Fame there, so I get back at least once a year and then every other year we get to play in what we have affectionately dubbed the old timers game. So I get back for that and was back a year ago for that and back once last year. Cleveland now is still about 16,000 people. It's still, I think, the island amongst everything within the most...one of the most impoverished areas in America. So when we're sitting there talking about people, those are some of the salt of the earth people I've ever known. And to this day, they call me once, twice a week just to see how I'm doing and make sure everything is going well up here and check on those girls, I have three daughters, and make sure they're all taken care of. But it is a great big family, it's a nice place to be. I'll tell you a quick story. About ten minutes outside of Cleveland, every time I drive there, you have to fly into somewhere else, usually it's Little Rock to get there because that's the best prices, you know, with Southwest. And I get there and about ten minutes out I get so excited I think what can I do for this place; how can I help out? They wanted me to be athletic director one time and I get down, I'm so excited, and, you know, I'm there about, oh, 24, 30 hours, I'm wondering how can I get out of

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here. So, I mean I will be honest with you, so, but the salt of the earth people.  
[CONFIRMATION]

SENATOR CARLSON: Let's go back to something in relationship to power. How do you feel about our public power system? And do you see any challenges to it?  
[CONFIRMATION]

MARK GRAHAM: Oh, I think it's the best in the nation. I'll confirm that based off of even a telephone call two days ago from good friends of mine in another area where I used to live down in Atlanta. He goes, what are you paying for your electric bill right now? I told him...I said, you know, we don't get much over 150 bucks, \$200, whatever. He said, wow, I need to move there. I said, what kind of a system are you using down there? He said, I'm using a co-op. I said, do you know who is on cooperative committee? He said, I don't have a clue. I go, well, you ought to be on public power. I'm a big proponent of that. I think we're doing a great job. We rank, as you know, near the top five every year in what we're doing for cost savings and what we're here to do is to help the consumers is people of the great state to keep that low. And I think what we're doing is fabulous in how we're maintaining that. And I also think it's neat in a way of which now we're putting the bills forward that's going to allow us to test the waters in what we have as far as one of our greatest assets and that's wind, so. See what we can do. [CONFIRMATION]

SENATOR CARLSON: Well thank you for what you're doing, thank you.  
[CONFIRMATION]

MARK GRAHAM: Thanks. [CONFIRMATION]

SENATOR LANGEMEIER: Senator Dubas. [CONFIRMATION]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Mr. Graham for the service you have given us. What is it that peaks your interest or brought you to the Power Review Board in the first place. [CONFIRMATION]

MARK GRAHAM: Well I think it was a little bit of a couple things. It's public service and actually trying to help establish what we can do going forward and adding a little value. I think you can probably see a little bit from my resume that I like to try to add a little value to different organizations. I think this was a great opportunity. Having served on the committee prior to looking at some other things with the governor, I thought this was a great opportunity. It allows me to do it. [CONFIRMATION]

SENATOR DUBAS: I think you came in in 2007, is that correct? [CONFIRMATION]

MARK GRAHAM: Boy, now see, I'm a math major, you got to give me a minute. But, that would be about right. [CONFIRMATION]

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SENATOR DUBAS: So that's when I joined the Legislature also and I remember visiting with Mr. Texel, I was keenly interested in renewable energy, particularly wind, and, you know, having him share his expertise with how the Power Review Board works and how our public power system works and the challenges we were going to face to bring renewables in. And I've just been so pleased with what he's brought to help us make that happen and I know he has referenced the members of the Power Review Board in my conversations with him and I knew that that was something that you wanted to do, but also didn't want to do anything that would, in any way, give an opportunity to dismantle our public power system or the work that the Power Review Board does. So I'm very appreciative of your view and perspective to help move us into this new arena for ourselves. So thank you again for your service. [CONFIRMATION]

MARK GRAHAM: Thank you. I'm an evangelist for that. I'm an evangelist for Mr. Texel as well. [CONFIRMATION]

SENATOR LANGEMEIER: Senator Haar. [CONFIRMATION]

SENATOR HAAR: Well thank you very much for being here. And I was a math major, minor, I can't remember which as well. And also did work with computers for many, many years so. We probably think a little bit the same. [CONFIRMATION]

MARK GRAHAM: That's great. [CONFIRMATION]

SENATOR HAAR: Very interesting background and your present company, would like to hear more about that sometime, but I'd just contact you. [CONFIRMATION]

MARK GRAHAM: Sure. [CONFIRMATION]

SENATOR HAAR: What...just to pick your brain, I'm not trying to put you on the spot, but to pick your brain, where do you think we're going with wind energy and what are the biggest challenges right now? [CONFIRMATION]

MARK GRAHAM: Well I think right now the opportunity that we have is to...in the export world, I know you're very keenly involved with that, and Senator Langemeier is as well, he's done a great job helping us out to understand and navigate this. We've got an opportunity to provide wind energy right now because we've got some of the greatest...that is the greatest asset that we have. Now us being a public power state is a little bit of a challenge. It's a little bit of a challenge for people who are going to invest here. They've got to go through a several step process to do that. We've got one now, I think, that has started that process and has gotten that initial conditional done. We can't get any, you know, we're not getting any of the state tax breaks because there's no taxing on that so that makes a little bit of a challenge for people to understand as being

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a private equity investor what I'm going to do. And then we're going to continue to have an issue, if you guys are watching this, you know, with what's going on in Little Rock with the SPP and how we're actually going to be dealing with transmission issues along with generation. I think the wind is there. As you know, you and I can't predict wind. We can't tell you what it's going to be, but I think there's an opportunity and I think this bill that we passed last year is a great first step. And I think, as Senator Langemeier told us in his office one day, he said, you know, there's going to be amendments to it, we're going to hear about some today. I think it's a great opportunity for us as a state to say this is one of our precious assets and let's put it out there. And for those people that are engaged right now in the RPSs of the world, if they can identify that they're getting wind from Nebraska, I mean that would be great. I'm not sure how we're going to do that on the grid, but you know, I think we're headed towards the right, positive step. Now I don't know if I've answered your questions, so correct me if I haven't. [CONFIRMATION]

SENATOR HAAR: No, but I'd like to...I don't know if you have any cards with you today, but I'd like your card and we'll set up a meeting and sit down and talk.  
[CONFIRMATION]

MARK GRAHAM: Okay. I, you know, I travel and I have cards, so. [CONFIRMATION]

SENATOR HAAR: Great, thanks so much. [CONFIRMATION]

MARK GRAHAM: You bet. [CONFIRMATION]

SENATOR LANGEMEIER: Senator Smith. [CONFIRMATION]

SENATOR SMITH: Yes, I have a number of years in electric utility operations, both investor-owned in the last 20 years in public power so I am a big champion of public power as well. But public power isn't without its challenges and I'm just curious from you, sir, of what you see as some of the big challenges facing public power in Nebraska. What big items keep you up at night, and if you would, and kind of big picture. [CONFIRMATION]

MARK GRAHAM: Right. Boy, I'm not sure I'm not as detailed as that's going to get. I love that question, what keeps you up at night. I use that all the time, so I appreciate that. I think maintaining the cost is what we're here to do. I think that if we cannot differentiate ourselves from the investor-owns; if we can't differentiate ourselves from the municipalities that are setting the rates that there's going to be some issues associated with that, then I think we lose. I think one of the beauties of what public power does, it allows us to have a nice checks and balances for what's going on out there with respect to people paying attention. Now I will tell you, I'm one of the guys that sits on the board and will put some hard questions to these...presentations that are made about what we're going to do and how much money we're going to spend and,

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you know, I've been told before that we've got MBAs that will show us this and all that. And yet, sometimes we don't get the answers we want. I'm not going to tell you we always rubber stamp that, because we don't. But the biggest challenge, I think, that we have right now is that we're heavily relied on coal and if we have some type of a mandate against...moving away from that and forcing us, and make sure you're very clear with this, I know, Senator Haar, you're very big on the wind, and I am too, but if we're forced to go into something that's going to put us at a percentage for an RPS, then it's not going to be great for our consumers right now. I'm just going to say right now. We may be three years, five years away, we'll be fine, but right now it's not just the least cost out there right now. But we've got to be invested like we're doing, so. I think the biggest issue right now is something coming from Washington that's going to force us into something. [CONFIRMATION]

SENATOR SMITH: Good answer, thank you. [CONFIRMATION]

MARK GRAHAM: You bet. [CONFIRMATION]

SENATOR LANGEMEIER: Are there any other questions for Mr. Graham? Seeing none. Thank you very much for your testimony, well done. [CONFIRMATION]

MARK GRAHAM: All right. Thank you guys. Have a great day. [CONFIRMATION]

SENATOR LANGEMEIER: Thanks. Is there anyone wishing to testify in support of the appointment of Mr. Graham to the Power Review Board? Is there anyone wanting to testify in opposition? Kind of a big guy for that. Anybody want to testify in a neutral capacity? Seeing none. That will close the confirmation for Mr. Mark Graham to the Power Review Board. Now we'll open up the confirmation, thank you for coming, by the way. [CONFIRMATION]

MARK GRAHAM: Thanks a lot. [CONFIRMATION]

SENATOR LANGEMEIER: And now we'll open up the confirmation for Thomas Knutson to the Natural Resources Commission. Welcome to the Natural Resources Committee. [CONFIRMATION]

TOM KNUTSON: Thank you. [CONFIRMATION]

SENATOR LANGEMEIER: Again, I should say. [CONFIRMATION]

TOM KNUTSON: (Exhibit 2) I'm Tom Knutson, T-o-m K-n-u-t-s-o-n and I appreciate the opportunity for the committee to take the time to consider appointment to the Natural Resources Commission. Myself, I've been in the water business since 1974. I started with surface water projects back in the state of South Dakota, trying to build an irrigation

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project that never got built. I worked for a couple of governors, learned a little bit about the political arena, if you will, came down to Nebraska and I've been general manager of the Loup Basin Reclamation District, Farwell and Sargent Irrigation District for the past 26 years. Prior to that I did work in Omaha for the Missouri River Basin Commission for two years and learned about the surface and groundwater issues throughout ten states. I've been involved in just about every state group there is. Served as president of Nebraska State Irrigation Association at least two times; vice president of the Nebraska Water Resources Association. I'm currently chairman of the Nebraska Water Leadership Academy in which we're very proud of that's come out as a result of the Nebraska State Irrigation Association initiating that effort and looking forward, hopefully, to seeing some young people get more involved in water issues as we proceed into the next number of years. Nationally I'm chairman of the National Water Resource Association and Irrigation Caucus which is about 478 irrigation districts, and we hold meetings about four times a year throughout the western states. I serve as an advisor to the Family Farm Alliance on surface water issues for irrigation projects also for the 17 western states. I would very much enjoy working with the commission. I was thrilled when they called me and asked whether or not I would be interested and I said, yes, I would be. And I guess from there I would be more than happy to answer any questions. [CONFIRMATION]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Knutson?  
Senator Haar. [CONFIRMATION]

SENATOR HAAR: Yeah, this is to educate me. What does the commission do, just real broadly? [CONFIRMATION]

TOM KNUTSON: I'm still trying to figure that out, quite frankly. I've only been to two meetings and I couldn't vote in either one. [CONFIRMATION]

SENATOR HAAR: Okay, well that's fair. [CONFIRMATION]

TOM KNUTSON: But I know they have different funds to assist in regard to natural resource activities. One is a Natural Resources Development Fund, which they say they're short of money in. And of course we all know that every fund right is short of money. I know that they have some other funds that deal with soil and water. The fund I just talked about, previous to the soil and water, is a fund that is utilized for the purpose of assisting NRDs... [CONFIRMATION]

SENATOR HAAR: Okay. [CONFIRMATION]

TOM KNUTSON: ...and others in the state from the standpoint of infrastructure, if you will, grants, loans, etcetera. [CONFIRMATION]

SENATOR HAAR: Um-hum. South Dakota, do you know where Freeman, South

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Dakota, do you ever...? [CONFIRMATION]

TOM KNUTSON: I sure do, yes sir. [CONFIRMATION]

SENATOR HAAR: Fred Haar Implement Company, that's my family. [CONFIRMATION]

TOM KNUTSON: Oh, okay. Great. [CONFIRMATION]

SENATOR HAAR: Thank you. [CONFIRMATION]

TOM KNUTSON: You bet. [CONFIRMATION]

SENATOR LANGEMEIER: Senator Schilz. [CONFIRMATION]

SENATOR SCHILZ: Thank you, Senator Langemeier. Tom, thanks for coming in. Congratulations. Having known you for quite a number of years and worked with you on specific water issues and stuff, can you go through, just as a...I mean, you saw some of the hearing that we had yesterday and what's going on around the state with all the needs for resources and, you know, need to get things moving and get things done. Can you, you know, as you...as you sit on these committees and things, what do you feel, looking around the state as a whole, are some of our biggest environmental issues and how...I guess if you had to prioritize, what would you say are the top three priorities? [CONFIRMATION]

TOM KNUTSON: Well say, I look at water issues in general, I think I first look at the state of Nebraska as the number one leading state in the nation with irrigation. And I think it's just like our football team, when you're number one everybody is after you. From the environmental standpoint, I've dealt with those environmental laws since the 1970s. I remember when they passed and I was in college and I was kind of excited about the Endangered Species Act, the Safe Drinking Water Act, and Clean Water Act, etcetera. I think what has happened, unfortunately, through the years as rules and regulations that have come through different administrations have created a lot of consternation, if you will, with the states' local governments, rules and regulations, in some cases, shouldn't be there. But to change that is difficult sometimes. I think those are things that I would list as an issue for this state, rules and regs by the feds. I should say the federal government. I think that probably funding issues, I see infrastructure throughout Nebraska, as well as all the western states, as a real issue as far as irrigation districts. And I see infrastructure even with local entities, whether you're talking about NRDs, counties with bridges, etcetera. I think somehow we need to, in my opinion, calm down and let's look at the real pluses that we do have, because it's not a situation that I see that we're in a disaster-type mode. I think that there's ways to solve these things. I'd like to see local governments work a lot closer. I see sometimes, in this state, local governments attempting to take local control away from other local control

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entities. That's not the way to try and solve our issues between whether it's groundwater and surface water, etcetera. We got to work together. I emphasize that in the groups that I'm involved in. And I think planning is really important. Of course, I started out as a water resource planner for state government so I happen to have a little heart for that, if you will. But it's pretty simple; if you got a glass of water that's part of the basin and half of that water is being used, there's still the other half that could be utilized provided that you're using it wisely. And I think as we move forward in this state we need to work together; we need to get people to work together, and we need to make sure that the federal arms don't get all the way around you. [CONFIRMATION]

SENATOR SCHILZ: Right. Thank you. And that's a great segue into my next question or comment. And, you know, in your situation on the Loup and with your project that you have, I mean, and if I remember right, you're one of the very few projects in the whole country that's been able to get title transfer from the federal government to your local thing. And I think that...you can explain, you can expound on it if you want to, but I think that that shows that willingness to work together, that willingness to go to the federal government and be able to negotiate and not give up and get some of those things done. Are there any other projects in the country now that have received title transfer as your project did? [CONFIRMATION]

TOM KNUTSON: We're the only ones that bought a reservoir, two diversion dams in the entire project in the west. It took us nine years. I spent a lot of time logging into Washington, D.C. and I had to work with a lot of agencies, a lot of folks at the state and local level, and it's a...it was a great experience. I think there's other projects that need to do so. We paid \$2.6 million to purchase our project from the federal government and I argued that they ought to give it to us. They wanted \$38.5 million when we started. Since we bought our project, we've gotten over \$3.4 million in grants that we couldn't get before because of the fact that we were owned by the federal government, and the federal government said these are the rules and regulations. Every other agency said you have to go to the one that owns you to get the money to get the help. They didn't have any money. [CONFIRMATION]

SENATOR SCHILZ: Thank you. Well I think it's something that should be said and you've...when you speak of the federal government and the regulations, when you speak of the local entities that you have to work with, you've done it and I just wanted the people to understand that, to point that out. Thank you. [CONFIRMATION]

TOM KNUTSON: Thank you. [CONFIRMATION]

SENATOR LANGEMEIER: Senator Carlson. [CONFIRMATION]

SENATOR CARLSON: Thank you, Senator Langemeier. Tom, you've answered a little bit of what I was going to ask, but statewide, what are our biggest challenges and how

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should we approach those? [CONFIRMATION]

TOM KNUTSON: Well I don't pretend to be any authority, but I think...our challenges, I would say, is, number one, hang on to what we have which is the great resource of water, the great resource of the people that are managing it. But with that being said, I think the challenge also is to make sure that we got good people to follow the great people that are there because that's what I look at this leadership program for. Our aging infrastructure as far as management is there as well. And that brain trust in another ten years, a number of us won't be in the business. I think that in addition to that, certainly Senator, we're going to see continued consternation whether we like it or not with other states like Kansas. And hopefully we're maybe at that point where we can start sliding down the hill rather than keep going up the hill. But we'll still have, in my opinion, some consternation there. I think that, again, the federal issues with endangered species, I'm involved with the Lower Platte situation on some species, the NRDs, irrigation districts, public power districts, etcetera, are concerned about how far the folks might push that particular issue. We try to work with them and I worked with those folks since the 1970s and you learn, basically, that they're as passionate about what they believe as we are about what we believe in regard to water and agriculture. And with that in mind, you have to sit down and appreciate their passion, but then, hopefully, get them to appreciate ours. [CONFIRMATION]

SENATOR CARLSON: Okay, thank you. [CONFIRMATION]

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

TOM KNUTSON: Thank you very much. [CONFIRMATION]

SENATOR LANGEMEIER: Is there anyone that would like to testify in support of Mr. Knutson's appointment? Seeing none. Is there anyone that would like to testify in opposition? Seeing none. Anyone that would like to testify in a neutral capacity? Seeing none. That concludes the confirmation for Mr. Thomas Knutson to the Natural Resources Commission and we'd like to thank you for taking the time to coming before us today. So at this time I'll turn the committee over the Vice Chair. [CONFIRMATION]

SENATOR SCHILZ: Thank you, everyone. And at this point, we'd invited Senator Langemeier to introduce LB208. [LB208]

SENATOR LANGEMEIER: My name is Chris Langemeier, it's C-h-r-i-s L-a-n-g-e-m-e-i-e-r. It gives me great pleasure to come before this committee to introduce LB208. Last year we passed LB1048, a very comprehensive bill and I want to commend this committee for putting the bill together, because LB208 is a correction bill to come in and fix the little things that we didn't get right the first time. And as you read

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through LB208, there wasn't much. So I'm really proud of the committee and the work they've done on this. LB208 does two things. It first it clarifies that the Power Review Board has the authority to request injunctive relief for an owner-operator of a wind export facility in violation of the provisions within LB1048. And so what does that mean? It allows the Power Review Board to enforce things that were a requirement in LB1048. So if the permit is granted, you're up and building and you're...I should say, past building, you're in final stage, you're operating, you don't do something, you lose your power purchase agreement, for example, and you don't do anything about that, it allows the Power Review Board to actually have some ability to do what we've asked them to do to enforce you through the AG's office to do that. Very similar to what they have today with public power. The second one allows the Power Review Board to waive the conditional approval hearing. We currently allow the waiver of this process if there's been no objections filed to an obligation or their application is correct. With our public power we can waive this. So what we're asking to do is to make that...cover over within LB1048 to a wind export project. So if you have an application, everything is in, there's no objections from anyone filed, it would allow them to waive that and give you a conditional approval until you have everything met and ready to go for a final approval. So I'm really proud. That's it. And so I would open it up for questions. I know Tim Texel will be here to testify behind me if there's any technical things you want to ask him about how it is going or things like that. [LB208]

SENATOR SCHILZ: Thanks, Senator Langemeier. Questions? Senator Haar. [LB208]

SENATOR HAAR: Requesting injunctive relief, would, you know, LB1048 gave the ability to exercise eminent domain if people lost their PPA and so on. Is that an example of injunctive relief or is that...is this in addition to that? [LB208]

SENATOR LANGEMEIER: In simple terms, it would be sending the cops out to go do what needs to be done. If you don't meet all the requirements, you lose your PPA, your power purchase agreement, and you make no effort to do anything. It was in the bill, but it wasn't just perfectly clear that they could go to the Attorney General and ask the Attorney General to cease and assist in that manner to clear that matter up. [LB208]

SENATOR HAAR: And is this after the one-year time period...or maybe I need to ask Tim some? [LB208]

SENATOR LANGEMEIER: Right. They have a...you wouldn't be in violation until after the time period of allowance to get the new PPA. This is after you're in violation of something that was within LB1048. So any export facility, if you lose your PPA you have that year to go out and get a new PPA. And so until that year has passed, you're not in violation of anything, but once you are, this would give them the teeth to actually go do something about it. [LB208]

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SENATOR HAAR: Okay. [LB208]

SENATOR SCHILZ: Senator Christensen. [LB208]

SENATOR CHRISTENSEN: Thank you, Chairman. So basically, following up on Senator Haar's question, there's not been people out of compliance that you're...that's been causing a problem for this change, you're just clarifying the language ahead of time? [LB208]

SENATOR LANGEMEIER: Exactly. We want to make sure they have the tools to do what we've asked them to do within LB1048. [LB208]

SENATOR CHRISTENSEN: Thank you. [LB208]

SENATOR SCHILZ: Senator Carlson. [LB208]

SENATOR CARLSON: Thank you, Senator Schilz. It looks like the bulk of what's in here is on the last two lines on page 14 and the addition of the lines on page 15. Can you summarize what that says in a couple of sentences, what that really does? [LB208]

SENATOR LANGEMEIER: It basically says that an individual that has been approved and is in the process of operating a wind or renewable facility for export becomes in violation. So for example, they lose their PPA, they make no effort to go out and get a new one. LB1048 requires you have a PPA; it also requires that if you lose it within a year you have to prove that you have another one or you have to shut your turbines down or make some new arrangements. What we're saying in there is that you have to...upon that violation the Power Review Board can ask the Attorney General to put the teeth into it, or actually go in and shut your operation down. [LB208]

SENATOR CARLSON: And that's what it allows, doesn't it, to shut it down until the violation has been taken care of. [LB208]

SENATOR LANGEMEIER: Right. Until they get a PPA. Correct. [LB208]

SENATOR CARLSON: Okay. Thank you. [LB208]

SENATOR SCHILZ: Senator Haar. [LB208]

SENATOR HAAR: Yeah, Just so I'm really clear on this. The other option, if they don't have a PPA in a year, would be to exercise eminent domain, is that correct? I'm just trying to recall the specifics of that. [LB208]

SENATOR LANGEMEIER: That would be a further option, not by the Power Review

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Board, that would be an option could be looked at by public power. [LB208]

SENATOR HAAR: Of public power. Gotcha. Okay. [LB208]

SENATOR LANGEMEIER: And let me give you another example here is let's say I build a 80-megawatt facility, pick a town, Fullerton, Nebraska. I build a 80-megawatt facility, I'm under wind for export, I currently have a PPA, I'm out and going, I lose my PPA. And within that year I could look around the country to find another PPA... [LB208]

SENATOR HAAR: Sure. [LB208]

SENATOR LANGEMEIER: ...or I could also go to the board of, say, Nebraska Public Power. And let's say we're three years down the road, three years from today down the road and I go to public power and say, you know, I'm trying to find a PPA and we're looking around the country, but I can offer you this wind for X-price and if public power likes it and buys it, then it's not a wind for export project anymore. And then you're no longer in violation and you're no longer under LB1048. [LB208]

SENATOR HAAR: Okay. [LB208]

SENATOR LANGEMEIER: You'd be where many of our projects are today, Albion, the Ainsworth wind farm. So you always have that option that if for some reason you don't have your PPA and you have an affordable product that Nebraska Public Power wants to invest in, I should say public power wants to invest in, because it could be any of them... [LB208]

SENATOR HAAR: Sure, sure. [LB208]

SENATOR LANGEMEIER: ...they would have that right to come in and work a deal with you. [LB208]

SENATOR HAAR: Okay. [LB208]

SENATOR SCHILZ: Any other questions for Senator Langemeier? Thank you, Senator Langemeier. [LB208]

SENATOR LANGEMEIER: Thank you. [LB208]

SENATOR SCHILZ: At this time we'll take proponents for LB208. Welcome, Mr. Texel. [LB208]

TIM TEXEL: Thank you, Senator Schilz, members of the committee. My name is Tim Texel, T-i-m, last name is T-e-x-e-l and I'm the executive director and general counsel

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for the Nebraska Power Review Board. As Senator Langemeier mentioned, he introduced this bill on our behalf and we appreciate him doing that. The senator did a terrific job of explaining the bill. I have a couple definitional changes then that I'll explain, but on the first two I had prepared testimony and I think Senator Langemeier went through it very capably and handled most of what I was going to say. I think I'll try and go through this and be quick. I don't have very long testimony on this. I think it can fairly be accurately described as a cleanup bill, in my opinion, on this. As Senator Langemeier said, we aren't asking to expand our jurisdiction or to have anything we didn't already have. Essentially, we're asking to take the jurisdiction we already had prior to LB1048, and apply that to the provisions of LB1048 and then a couple of definitional changes. In addition to the injunctive relief and the conditional waiver, ability to waive a conditional waiver hearing, or a conditional approval hearing, I'm sorry, there's two minor changes on definitions. The first one is...creates what I refer to as a cross reference between two definitions that...of the same term within the same article in our statutes. I think that's confusing and we wanted to address that and that's why we went with a cross reference. We don't change the definitions, we just make sure you know they're both out there. And then the second one is a definition of a decommissioning security in another article in Section 76-3001(1) and to be consistent with the use of that term "decommissioning security" as it's in LB1048, now, the main provisions of which are in Section 70-1014.02. And on the injunctive relief, as I said, Senator Langemeier very ably described that. Current statutes allow the board to seek an injunction if a power supplier commences construction of a generation or transmission facility or tries to acquire one without obtaining PRB approval first, or if a supplier serves a customer in violation of the PRB statutes. That isn't really an issue with the retail customers with export facilities so that's not in play here. But LB1048 gave the board jurisdiction past the construction phase. We've always had jurisdiction to approve a facility. Prior to construction you had to get our approval. Well now there's decommissioning oversight and there's oversight on the PPA. That's past construction phase. Our current injunctive statute doesn't address that, and so we wanted to specifically address that in this statute because my concern was a judge would say, well, the Legislature in passing LB1048 didn't give you injunctive relief over this part. They could have and they didn't. And that's my concern. I would probably take the position we inherently have it. In my opinion, I don't think that would be successful and that was a concern to me if someone were to decide to flagrantly violate the statute and say you can't do anything about it. It would leave this state with the option of having our public power do what Senator Haar indicated, exercise eminent domain. But that wouldn't be our enforcement ability, that would be public power doing it. And if our public power entity said we don't want it or it's too large, we don't need it, it's in the wrong place, whatever, and they don't want to purchase it, then the state would have no ability to enforce it. So we're asking for that injunctive relief as a backstop. It's not something my board or I would ever want to use, but it needs to be there just as any enforcement authority if somebody didn't want to do what they're required to do. I think the regulatory body needs to be able to say we can stop you if we need to. And also, in

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drafting this and talking to some other developers' attorneys, we made it so it is flexible and we can ask the court to take less than a total shutdown approach and fashion a flexible remedy that might involve their profits or something like that, or that portion of it that's in wrong doing. So we want to be as flexible as we can, but have the ultimate, sort of, nuclear bomb to step in if we would have to. Does that address your question on eminent domain? [LB208]

SENATOR HAAR: It does, thank you. [LB208]

TIM TEXEL: Okay. On the waiver of the conditional hearing, again as Senator Langemeier said, we already have that authority now for our current applications or our public power entities have before us if two prerequisites are met. If all other interested parties have filed a consent and waiver form showing they consent to approval of the application and waive their right to a hearing, and if the board finds it can make the necessary findings for approval without the need for a hearing. And so we're asking to allow the board to have the discretion to do that with the conditional approval hearings for the certified renewable export facilities. My board has made clear or did make clear when we discussed this at our public meeting, they do not intend to exercise this probably in the near future. It's a brand new statute. We've only had one application. We've gone through the conditional approval once and they said they aren't comfortable enough at this point probably waiving it for a while until they've been through it a few times. But it seems fair to have that ability just out of equity so that the same opportunities are available to the private developers as to our public power institutions now. so it would just give us that ability to waive that hearing if the board makes those same findings. And those same provisions and prerequisites I mentioned are applicable to this. It only has a few words that changes in that statute. The two definitional parts, the part I refer to as a cross reference, the term "power supplier" has two different definitions within Chapter 70, Article 10, the Power Review Board's main statutes. And I think that is, in my experience, extremely rare in the statues to have the same term with two different definitions in one article. You occasionally have two in different parts of different statutes. I haven't run across where you ever do it in the same article. Now we did that when we drafted it because of the litany of power suppliers we would have to list out and that was unwieldy and so this was the best way to do it as in LB1048. But my concern is having those two, if a lawyer or a member of the public, finds one of those definitions, they're probably not going to look further for another one in the statutes. And I've already had one conversation with a lawyer where they were citing me things about the bill and I had to correct that they were using the wrong definition. The other one applied. So to be proactive, we wanted to step in and make sure there was a cross reference and so the Revisor's Office helped come up with language that cites both of them to the other. So if you find one you can't miss the other, and I believe that's appropriate and probably necessary to avoid any ongoing problems. The definition of "decommissioning security" in the last part of the bill, this would take out the "prior to construction" language that's in the definition for decommissioning security in Section

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76-3001(1). In LB1048 now in our current statute it does not need...the security does not need to be posted until ten years after final approval. So in one statute, now these are in different articles again, but in our statute you don't have to do it until after ten years, at least at the end of ten years. You could do it earlier. And in the other statute, you have to do it prior to construction. So the developers brought this up to us and asked if we would include it in our bill. And so we agreed that it seemed appropriate to have more consistency with the definitions of the terms even if they are in different articles. It is always good, I think, to have the definitions similarly defined. I think if the Legislature would want to put that requirement, the timing requirement of prior to construction in that other statute, you could do that in another statute, but I don't think it's a definition. It's still a decommissioning security to me whether it's done prior to construction or after ten years. It's a timing mechanism and that seems to me a more appropriate to place somewhere else and say here's the time. But the definition is still...deals with the financial security that you post for what its purposes are. So with those explanations, I think these are cleanup, in my opinion, and we would ask the committee to forward this on to the floor. [LB208]

SENATOR SCHILZ: Thank you, Mr. Texel. Any questions for Mr. Texel? Senator Haar. [LB208]

SENATOR HAAR: Tim, so you're saying it is ten years after... [LB208]

TIM TEXEL: For the decommissioning security, yes. They don't have to post it until...at the latest...at least by the tenth year. [LB208]

SENATOR HAAR: Okay. And then the PRB wants a nuclear bomb, right? [LB208]

TIM TEXEL: Well if...if, well, ultimately yes in that... [LB208]

SENATOR HAAR: Not a serious question. [LB208]

TIM TEXEL: But to give us that backstop authority, yes. [LB208]

SENATOR HAAR: Sure. I understand. [LB208]

SENATOR SCHILZ: Any other questions? Senator Carlson. [LB208]

SENATOR CARLSON: Thank you, Senator Schilz. How many on the Power Review Board? [LB208]

TIM TEXEL: How many members? [LB208]

SENATOR CARLSON: Yes. [LB208]

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TIM TEXEL: Five. [LB208]

SENATOR CARLSON: I thought it was five. Now, Mr. Graham made it pretty clear that he would be very concerned about not losing the position that we're in in terms of power rates for the state of Nebraska. Would you say that the rest of your board feels that same way? [LB208]

TIM TEXEL: Yes, absolutely. [LB208]

SENATOR CARLSON: Okay. [LB208]

TIM TEXEL: And that's our mandate under the statutes and one of our primary duties is to ensure the lowest possible rates using sound business practices for the ratepayers in Nebraska. So that's not only their mind-set, but I think the board's mandate to try...everything we do is to try and keep the rates low and reduce conflict between our utilities in Nebraska. [LB208]

SENATOR CARLSON: Good. Thank you. [LB208]

SENATOR SCHILZ: Any other questions for Mr. Texel? If not, thank you, sir. [LB208]

TIM TEXEL: Thank you. [LB208]

SENATOR SCHILZ: (Exhibit 3) Other proponents for LB208? Proponents? Oh, we have a letter, yes, from Ken Winston representing the Nebraska Sierra Club. He submitted a letter in support of LB208 for the record. Any opponents for LB208? Any neutral testimony? Okay, with that we will; you waive hearing...waive closing so with that we will close the hearing on LB208. Thank you very much, Senator Langemeier. And I'll turn it back over to you. [LB208]

SENATOR LANGEMEIER: Thank you. Now we'll open the hearing on LB154 and Senator Janssen is here. Welcome back to the Natural Resources Committee. [LB154]

SENATOR JANSSEN: Always love it here. Senator Langemeier and members of the Natural Resources Committee, my name is Charlie Janssen, C-h-a-r-l-i-e J-a-n-s-s-e-n. I represent the 15th Legislative District from Fremont. That includes all of Dodge County and abuts your Chairman Langemeier's district as well. I thank you for the opportunity to introduce LB154 and also congratulations to Vice Chair Schilz this year. [LB154]

SENATOR SCHILZ: Thank you. [LB154]

SENATOR JANSSEN: A little bit of change up on the committee. LB154 would change

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the process for filling vacancies on the natural resource districts' boards. Presently if a vacancy occurs on a board, the remaining board members select a new member to fill out the remainder of the term. LB154 would change NRD vacancy provisions to mirror the process for state senators, which we're all familiar with or should be familiar with. If a person is appointed to fill a vacancy in the first or second year of a term, that individual would have to run for the next general election. NRD boards are no longer the little noticed, little publicized public bodies of yesteryear. They are making hugely important and sometimes hugely expensive decisions that affect thousands of taxpayers. The property tax levy assessed to each property owner is becoming more noticed and scrutinized. Since this is the case, I think it may be time to examine how we treat vacancies. Appointees to the boards should have to face the voters at the next available opportunity in order to ensure that the boards are truly representative of the districts they represent. I think the vacancy provisions currently in place for state senators would also serve the NRD boards well. I thank you for considering this idea. Also thank you for passing this bill out...this very similar bill out last year. We didn't have time to vote on it last year so it kind of just faded away so I'm reintroducing it this year with hopes that it will pass out of the committee again and we can get it voted on and debated on on the floor this year. Happy to entertain questions with you. I would like to...some things that came up last year was some voter confusion on whether it is a four-year term, six-year term, I think we've all see a ballot. I brought a sample ballot where they always list the term on there. It says right here for board of regents, six-year term, member of board of regents University of Nebraska, District 7, four-year term. So that's already meted out in there. For those, I don't know if we had any appointees in here, but we've had...I know Senator Lautenbaugh was an appointee and he had to go through the similar type of election process. Senator Bloomfield now and also I believe Senator Fulton was also someone who fell under that when he took over for Auditor Foley. So happy to answer any questions. And thank you for the time. [LB154]

SENATOR LANGEMEIER: And Senator Krist. [LB154]

SENATOR JANSSEN: Oh. [LB154]

SENATOR LANGEMEIER: Senator Haar. [LB154]

SENATOR HAAR: Thank you for the bill. Now the mirror of the process is just that they have to run in the next election, not that they're appointed by the Governor or whatever. They'd still be appointed by the board, is that correct? [LB154]

SENATOR JANSSEN: The provision is the same for the appointment. It is just...I have it all listed in the green copy which I'd be happy to get you a copy of. [LB154]

SENATOR HAAR: Sure. [LB154]

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SENATOR JANSSEN: The only thing I did change is I moved some dates and there is some notice to the Secretary of State, kind of cleaned up the bill a little bit which probably would have been done on the floor last year had we had time to do it, and just allows for notification. I've also heard the argument that it makes the elections more expensive. And I hear that a lot in my time in Government Committee. Here we're talking about a piece of paper. Rarely do they have to start a new column for that. So I was happy to see there's absolutely no fiscal bill on this particular bill. That's very good this year. [LB154]

SENATOR HAAR: Thank you, okay. [LB154]

SENATOR JANSSEN: Thank you, Senator Haar. [LB154]

SENATOR LANGEMEIER: Senator Dubas. [LB154]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you Senator Janssen for bringing this. Is the Legislature the only elected body that does their process the way we do it with having to run for election if you're appointed in the first two years. Do the rest...other government entities, do they follow the same process that the NRDs do now? [LB154]

SENATOR JANSSEN: You know, I can't speak to all of them. I know in Fremont we're very similar to the way we do it in the Legislature when somebody leaves and it's a Class I city. I don't know that all cities do it the exact same way though. And I don't know if the dates are exactly the same, but it does come to the next election where you would fill out the term. For instance, when I ran for this seat, I was two years into a four-year term. My seat was appointed by the mayor and that individual councilman ran again when my term would have been up, which was the next available election. But it was, instead I got elected here, so it was...he got the most out of that possible term at two years, but had it been a inner-year term, probably like Lincoln, and that would have been different. It would have been a shorter term before they...that person would have stood election. [LB154]

SENATOR DUBAS: I'm going to assume, and I'll let you correct me if my assumption is wrong, that you're introducing this because you feel someone who is appointed early on in a term maybe not necessarily will reflect the will of the voters, so that gives that...the voters the opportunity to put someone in that position that they want to have there. [LB154]

SENATOR JANSSEN: Especially in a case where...like you said, these are becoming much more scrutinized, and in some cases they may not be as well known so a person that has been there for awhile perhaps could, on name recognition alone, say, well, I'll just go ahead and get reelected. I know, you know, the NRD board will appoint

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so-and-so and they won't have to go through the election process. So, yeah, basically so that there's more transparency for the voters and the voters have an opportunity to vote on it. [LB154]

SENATOR DUBAS: Thank you. [LB154]

SENATOR LANGEMEIER: Any other questions? Senator Smith. [LB154]

SENATOR SMITH: Yes, Senator Janssen, have any ideas as to the frequency of these types of vacancies and appointments and particularly to this particular application and any type of situations that you're aware of in which the current practice has been detrimental to the will of the people? [LB154]

SENATOR JANSSEN: You know, I don't have the exact NRD. This bill was brought to me by somebody that had an exact situation that didn't work out, that they thought it really didn't look as transparent as it, perhaps, it should have. I would suspect certain areas...some NRD boards are very big and they would have a lot more turnover. In some cases it's tough to find people to even run. So I understand the appointment process. But if there is...if that's the case, the person could still be on the ballot and run and be voted in by the people. [LB154]

SENATOR SMITH: Thank you. [LB154]

SENATOR JANSSEN: Thank you, Senator Smith, and welcome to the NRD. [LB154]

SENATOR SMITH: Thank you. [LB154]

SENATOR LANGEMEIER: Any other questions? [LB154]

SENATOR JANSSEN: NRD, Natural Resources. [LB154]

SENATOR LANGEMEIER: Out in the world we kind of get blended together. Seeing no other questions, thank you very much for your introduction. Well done. [LB154]

CHARLIE JANSSEN: Thank you, Senator Langemeier. [LB154]

SENATOR LANGEMEIER: Now we'll move on to testimony in support of LB154 and welcome back to the Natural Resources Committee in 2011. [LB154]

SHAWN MELOTZ: (Exhibit 4) Same to you. Here we go again. Good afternoon. My name is Shawn Melotz, S-h-a-w-n M-e-l-o-t-z, and I'm here representing the Papio Valley Preservation Association. We're a group of over 600 members that are involved in trying to protect the natural resources within the Papio Valley in Omaha and southern

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Washington County down into Sarpy County. Good afternoon, Senator Langemeier, it's good to be back, and the members of the Natural Resources Committee. I come to you...before you to testify in support of LB154 and therefore, respectfully, request this committee to advance this bill to the floor. LB154, as you know, is a very simple bill so my testimony, hopefully, will be brief. Please note, as Senator Janssen discussed, LB154 is the 2011 version of LB895 from last year with one modification and that is the trigger date, or the last date where this change would occur. And this was due, from my understanding, upon recommendation of the Secretary of State. LB895 advanced out of this committee to the floor and just didn't have the time to...for floor debate. Under existing law the NRD director vacancies are filled by NRD board appointment. And as such, should a vacancy occur the citizens in the vacated NRD subdistrict are represented by basically a nonelected official. And therefore, a lack of representation could occur over a four-year....up to a four-year period which is the term of an NRD director. This process differs from many other elected bodies who go through the election process as outlined in LB154. I'd like to thank Senator Janssen for recognizing this deficiency and the democratic process by introducing LB154. This bill would remedy the current practice by legislating a method for replacing NRD director vacancies. And as far as Senator Smith's question, in our NRD, which is the Papio-Missouri River NRD, there has been two such vacancies that have occurred since I've been following the group over the last six years. The most recent occurred in July of 2010 and the process that occurred within our NRD was that an ad-hoc committee was formed with, I believe, two or three members of the NRD board. That committee heard testimony from the appointee or the individuals that were interested in filling the position. Then the ad-hoc committee recommends two of those individuals to the board for a vote. And I was a little bit disappointed in that process this last year, and this has been since LB895, because one of your fellow members of this legislative body, Senator Don Preister, put his name into the hat for appointment and he did not have the opportunity to go on to the board for approval. So, you know, I was disappointed because we had the potential to have a well-rounded individual to represent the citizens of Sarpy County but that was not afforded to him. And had we had a bill such as this in place, the citizens of Sarpy County who have recognized his importance to natural resource by putting him into the Legislature, could have had the ability to have him represent them, as well, in the Papio NRD in the next election process. So I think this is very important so that the voters get the opportunity for representation. Therefore, I just believe this bill is a huge enhancement of the democratic process and I respectfully ask this committee to pass LB154 to the floor. Thank you and if you have any questions I'd be happy to answer them. [LB154]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing...oh, Senator Carlson. [LB154]

SENATOR CARLSON: Thank you, Senator Langemeier. This is a question you might not expect, but you referred to Senator Preister. Do you approve of our current system

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of term limits of two four-year terms? [LB154]

SHAWN MELOTZ: Oh, that's a loaded question. Personally I do not, because I feel that the background that that individual in office has gained over the years is tremendous. And I think the new senators coming in have a learning process that we're losing by those senators. And if the senator is not doing what the constituents want, then they should be elected out, you know, they should be voted out. [LB154]

SENATOR CARLSON: Okay, so you would really prefer no term limits. [LB154]

SHAWN MELOTZ: Yes, I would. [LB154]

SENATOR CARLSON: Okay, okay. Thank you. [LB154]

SHAWN MELOTZ: You bet. [LB154]

SENATOR LANGEMEIER: Any other questions? Seeing none. Thank you very much for your testimony. [LB154]

SHAWN MELOTZ: Thank you. [LB154]

SENATOR LANGEMEIER: Further testimony in support of LB154? Seeing none. Is there any testimony in opposition to LB154? Seeing none. Is there any testimony in a neutral position to LB154? And welcome back to the committee in 2011. [LB154]

JOHN WINKLER: (Exhibit 5) Thank you, Senator Langemeier. It's good to see everybody again after a long summer break. Dear, Chairman Langemeier and members of the Natural Resources Committee, once again it's good to see you all again. Congratulations on the elections and reappointments to this committee. Senator Smith, Senator Christensen, good to see you again as well. My name is John Winkler, J-o-h-n W-i-n-k-l-e-r, I'm the general manager of the Papio-Missouri River Natural Resources District. Today I'm appearing in a neutral capacity on LB154. I have personal experience in dealing with the recent vacancy on our board, as well as the process under which the vacancy was filled and would be happy to respond to any questions that you may have in regard to that process. The Papio NRD has an established policy, it's number 2.1, and it is attached on your information, for filling vacancies on the board of directors. In addition, I've attached the timetable and process utilized by the district to fill a vacancy in 2006 and 2010. Although I'm testifying in a neutral capacity, I do have concerns about this legislation. Given my experience with the current process and what I know of the experience in other districts, I would have to question the need for the proposed change in the current statutes governing NRD board vacancies. I'm not aware that the system is broken or needs to be fixed. Second, we wonder whether, and if so, why the NRDs are being singled out for this change. It is my understanding that vacancies on the Learning

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Community Board, also the Public Service Commission, the Accountability and Disclosure Commission and the State Board of Education are also filled for the remainder of the unexpired term. To answer Senator Dubas, I don't know about cities and counties and first in class and villages and things like that. I do know that I served on the village board of my town and I did fill an unexpired term and I served that term until the next election which I did run and succeeded in the election. Also, NRDs are...these other boards are significant boards with significant budgets and responsibilities. If, in fact, the process of filling vacancies is in need of any modification, I would put the question shouldn't all of these particular boards and entities be included in changing how those vacancies are filled. The Papio NRD obviously supports an open and fair election process, but finds it difficult to see how LB154 would improve the process or fix some yet undefined problem or deficiency. In addition, LB154 appears to be aimed exclusively at NRDs and not an effort to improve the filling of vacancies of all publicly elected bodies. I'd be happy to respond to any questions that the committee may have. Thank you. [LB154]

SENATOR LANGEMEIER: Are there any questions? Senator Christensen. [LB154]

SENATOR CHRISTENSEN: Thank you, Mr. Chairman. Thank you, John. Your re-elections are every four years? [LB154]

JOHN WINKLER: Yes. [LB154]

SENATOR CHRISTENSEN: So the person that was appointed in 2006 has re-run already? [LB154]

JOHN WINKLER: No, he's still filling a term, an expired term. [LB154]

SENATOR CHRISTENSEN: So, I was just curious if got re-elected just to see if there was any trend of people not liking who you appointed. [LB154]

JOHN WINKLER: No. In my experience, I've only been with the district for four years now and...but over the 30-year period I've, obviously, have staff that have been around since the districts were formed and this issue is...a vacant filled vacancy has only happened less than half a dozen times. So it's not...when we get people, they usually serve out their terms. It isn't something at we're facing every two years or every four years. I mean, everybody is pretty consistent. So it...and I can't speak for other districts, but our district, it doesn't happen very often. [LB154]

SENATOR CHRISTENSEN: Did you have complaints come in about either one of your appointees? [LB154]

JOHN WINKLER: No. Up until this point I didn't know there was a problem with Mr.

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Erickson who was appointed to fill out that term, former Bellevue city councilman, very involved in the community. Obviously the ad hoc committee went through...each candidate had time to respond to the committee and present their qualifications and, you know, the committee vetted those and presented two names to the full board. In addition, there was other board members at the ad hoc subcommittee that had the ability to ask questions and to hear what the candidates said. And it was, actually, a quorum that was present that could hear that. So it wasn't just limited to the subcommittee that was appointed to vet the candidates, it was actually opened to all the board members at a public meeting. So, I mean, there was time to hear the qualifications. [LB154]

SENATOR CHRISTENSEN: Was the public available to ask questions of the three different candidates originally? [LB154]

JOHN WINKLER: No, it was just the board was, yeah. [LB154]

SENATOR CHRISTENSEN: Thank you. [LB154]

SENATOR LANGEMEIER: Senator Haar. [LB154]

SENATOR HAAR: Good to see you again. Does it scare people? I mean, running for election is a scary process. Does it...did you find it scared anybody...do you think it would have scared anybody off to say you got to run in two years? [LB154]

JOHN WINKLER: I don't know, you know, everybody has their different feelings about that. We had six candidates that applied and we had very qualified people and Senator Preister was, you know, mentioned as a candidate and, you know, there was an issue there, he served on the Bellevue City Council. So, I mean, there was a question there of, you know, and they served that area. And we worked very closely with the city of Bellevue. Would there be a conflict...I mean, there's questions, I'm sure, that popped up... [LB154]

SENATOR HAAR: Sure. [LB154]

JOHN WINKLER: ...in people's minds is that...was that appropriate type of appointment. So those things all are taken into account when you reach...I'm not here to speak for each individual board member's preference of why they forwarded the names they did, but I wanted to let you know that it was...that information was exchanged and it was a very thoughtful, thought out process. So, I know if people are afraid they had to run again I don't think...I think once you make that determination you want to serve on a board, I would hope that you make that determination, that you're there to serve the interests of the people you represent for up...as long as you can. And so I'm assuming that each candidate thought that. [LB154]

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SENATOR HAAR: Are you term limited? Are NRD boards term limited or not? [LB154]

JOHN WINKLER: No. [LB154]

SENATOR LANGEMEIER: Any other questions? I can give you one example. I left with two years on my term on the Lower Platte North NRD Board; they appointed someone. He stood for election because there was just two years left and was not re-elected, so. Elections do funny things. Thank you very much for your testimony. [LB154]

JOHN WINKLER: Okay. Thank you very, appreciate it. Thank you. [LB154]

SENATOR SMITH: Excuse me, Chairman. [LB154]

SENATOR LANGEMEIER: Oh, Senator Smith. [LB154]

SENATOR SMITH: A quick question. On...whenever you've had elections, had you had any indication of reduction in the number of qualified candidates wanting to put their names into the hat and run for public office? Have you had any uncontested races in the past? [LB154]

JOHN WINKLER: We've had uncontested races and I don't know if it's the sign of the times, but I don't...I see a lot more of those, and not just NRD offices, but in city councils and village boards and it's...I don't know if it's just because of peoples' schedules and they don't want to get involved, but I think it's systematic, around for many offices, not just the NRD boards. But we do have quite a few that...you know, where just a single candidate. [LB154]

SENATOR SMITH: Just this last election cycle, you had at least one that was just no one opposing re-election. [LB154]

JOHN WINKLER: Yep, there were several. Yes. Two actually. Yep. [LB154]

SENATOR SMITH: And yet you had six individuals expressed their interest in filling that vacancy. [LB154]

JOHN WINKLER: In that particular seat. [LB154]

SENATOR SMITH: So that's great. That's remarkable. [LB154]

JOHN WINKLER: And I think...and also in the part of the district you're at, you know, Bellevue, obviously, is a community that we...work very closely with, but also they're, what we call at the bottom of the watershed. And they have a big stake in what goes on

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in other parts of the district. And I think that may have brought some interest too is they would like to see their community protected and their community involved in these decisions that have a big impact on the citizens. So I think from district to district you're going to see...your subdistrict, you're going to see various interests because of those. [LB154]

SENATOR SMITH: Thank you. [LB154]

SENATOR LANGEMEIER: Any other questions? Seeing none. Thank you very much. [LB154]

JOHN WINKLER: Thank you, sir. [LB154]

SENATOR LANGEMEIER: Further testimony in neutral capacity on LB154? I think you're the last one John. Welcome back to 2011 to you too. [LB154]

JOHN K. HANSEN: Mr. Chairman, members of the committee, for the record my name is John K. Hansen, Hansen, H-a-n-s-e-n. I'm the president of Nebraska Farmers Union and appear before you today as their president and also our lobbyist. I've debated on this bill whether I should be opposed or neutral. So I guess I'm neutral with some reservations. The argument of putting folks before the voters as soon as you can within the cycle is a, I think, a compelling argument. Going back to the start of the NRDs in '74 when I first ran, it was the first public election of the entire board where you took all of those old 14 different governmental entities that were merged into one, I believe, in our Lower Elkhorn NRD which I was a part of. I think we had a total of 69 directors that sat on the various boards that were all a part of the NRD from '72 to '74. And then those who wanted to continue on ran. And so the way that the original initial process worked is that the top vote getter got a four-year term and the second leading vote getter got a two-year term. And so my first election was a two-year. So I started out on a two-year term and then ran every time after that. So there's some precedent for a two-year term within the NRDs going back to the beginning. The reservation comes from the fact that it is an increasingly difficult task to get good, qualified people to take the time and be willing to subject themselves to the rigors of the responsibilities to run for these kinds of positions. So our biggest challenge in a lot of cases is to find good qualified folks who are willing to run and willing to serve. And it does take time and it is...in the case of the NRDs, increasingly challenging, sometimes, from the conflicts that are in play in natural resources and certainly from the beginning until now, certainly there's more pressure on water issues and a lot of those things. There's just a lot more political heat; a lot of tough decisions to be made; a lot of conflicts to try to work your way through. And the reservation is that in our view, based on what we've seen, the process we have now works pretty darn good and we're not aware of any problems that we've had from our membership thinking that the NRDs were overstepping their bounds or things were not working as they should. So, that's the nature of neutral testimony. I can make a fairly

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good case for both cases, but I just thought it might be good to weigh in and share a little bit of that at least history and experience. I'd be glad to answer any questions if I could. [LB154]

SENATOR LANGEMEIER: Very good. Senator McCoy. [LB154]

SENATOR McCOY: Thank you, Chairman and thank you Mr. Hansen. Did you come testify on LB895 last year, Mr. Hansen? [LB154]

JOHN K. HANSEN: We did not. [LB154]

SENATOR McCOY: Would you care to elaborate, was there any particular reason why you are on LB154 and did not last year? [LB154]

JOHN K. HANSEN: Well it got our attention last year after it went out and we kind of looked at it and we were, you know, a little conflicted last year whether we were in favor or against. And sometimes, especially in the hearing process, it's hard for me to be multiple places at one time. And so you kind of pick whatever is the hottest bill in whichever committee you feel like you need to weight in on. [LB154]

SENATOR McCOY: Thank you. [LB154]

SENATOR LANGEMEIER: Senator Christensen. [LB154]

SENATOR CHRISTENSEN: Thank you, Chairman. John, thank you. Wouldn't you just say when there's total open office they had, I don't know if it's six candidates, I believe John said, that's going to be pretty normal and even at the two-year period if he's got to re-run they're now an incumbent, it's going to be easier for them to get in, probably going to be less people enter the race? Do you think that affects it any? [LB154]

JOHN K. HANSEN: Perhaps. I think that there's some advantages to incumbency and, you know, there's some advantages because as a candidate you get to know more of what goes on and you can do a little better job of being knowledgeable on the issues and the challenges. And, you know, I think there's...if you're in there and folks get to know you for a while, then they think that they're comfortable with you, it takes away some uncertainty about maybe where you're at on issues. So, you know, depending on whether you're kind of with the majority of the voters or against them, (laughter) it could help you or hurt you. [LB154]

SENATOR CHRISTENSEN: Well I agree, it can help or hurt you. I just look at this, I think it's great from the standpoint of lets the people decide. But on second side of it, I'm not sure there's going to be a lot of challenges unless they're...haven't done a good job in their first two years. [LB154]

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JOHN K. HANSEN: I've been involved in the process where I've been on the committee that fielded candidates to fill a vacancy on my NRD. We had good candidates; we really considered the qualifications of the candidates and in our case the candidates that we filled the vacancies with, that I was involved with, won re-election. So apparently the voters agreed, at least in those cases. [LB154]

SENATOR CHRISTENSEN: Thank you. [LB154]

SENATOR LANGEMEIER: We'll go back and forth; Senator Carlson. [LB154]

SENATOR CARLSON: Thank you, Senator Langemeier. John, one of the reservations you gave for being semi-negative was the difficulty in finding good people to run for an office. I don't see how that enters here. If there's...somebody leaves office then the NRD has to find somebody to fill that position. So they do. And if the difficulty is finding good people, then when the next election comes up, and that person files to run and maybe doesn't have a candidate, how does your concern enter here? Because unless it would be you have three years left on a term and they convince me to fill that position and then I decide after a year in there I don't want this. So I don't file to run. Whereas otherwise, I could have agreed to serve for three years and probably wouldn't have backed out. Otherwise I don't really see the concern there. [LB154]

JOHN K. HANSEN: Well, Senator, I...I don't disagree with your analysis. The greater problem, generally, with NRD positions is just to find people who will run or either get appointed or run period, or fill the position because the position takes time and is increasingly demanding. So in terms of...I think the process will work either way. Whether you're appointed and you got the short straw or whether you fill out the term, I think it works either way. I think it might...if I were going to be consider myself going for a position that was a...you're going to be up to the next election and you had a fairly short amount of time, you might ask yourself the question, do I want to put myself through that or do I want to apply if I'm going to be up right away anyway or not. But on the other hand, if they're not really committed to doing the job, maybe that's not a good reason. So I wouldn't disagree with your assessment. [LB154]

SENATOR CARLSON: Okay. [LB154]

JOHN K. HANSEN: My point generally was that...it just...we find it's tougher and tougher to find folks to run for public office generally. It's not as much...I don't know how much fun it used to be, but it's less fun now than it used to be pretty much across the board. [LB154]

SENATOR CARLSON: Thank you. [LB154]

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SENATOR LANGEMEIER: Very good. Senator Haar. [LB154]

SENATOR HAAR: No, I didn't have a question. [LB154]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much for your testimony. [LB154]

JOHN K. HANSEN: And thank members of the committee. [LB154]

SENATOR LANGEMEIER: Thank you. Any other testimony in a neutral capacity? Seeing none. Senator Janssen, you're recognized to close. [LB154]

SENATOR JANSSEN: Thank you, Senator Langemeier, members of the committee. This is...it's...thank you for all the questions, even Mr. Winkler and Mr. Hansen in their neutral which I appreciated, it was neutral this year. That's good neutral. This is, actually, it brings up a lot of questions and we deal with this, like I said, in Government Committee quite a bit and it's interesting to us, I think, because we've all gone through the process, so we have similar type of questions that come up about campaigning and whatnot. Some interesting things came up in the neutral testimony, but, you know, our natural resources being pointed out, singled out, no, that's not the case. It's certainly not my case; I have nothing against natural resource districts at all. In fact, I followed it and I even knew that Senator Langemeier was on one while he was on it, which was probably...makes me one of very few people...people just don't notice. And I think you could draw more awareness to these very important positions. For instance, the Papio NRD has a...I think it has a tax base of \$50 billion drawing \$16 million a year in real estate tax. So they're making some pretty serious decisions with some pretty serious money. That rivals up against...close to a Class 1 city's budget in Fremont. So, I think you should have people that face an election and I'd be fine...I think most cities do use the similar type approach that we use in the Legislature of facing the voters. And when you talk about term limits, another thing, this could get younger people involved in a chance to see government and draw awareness again to the NRDs. Knocking on doors for your NRD, I think a lot of people would be surprised to even learn what NRD they're in and a little bit about it instead of just showing up. Also if you're this younger guy, maybe with the exception of Senator Larson, which it didn't deter him, but this would give you an entry point and learn quite a bit about a governmental agency and running against somebody, whereas if somebody is appointed for four years to a spot and maybe that person is a little more well-known, we always hear about "good ol' boys network", I think it's tougher to unseat that person just on name recognition alone. I think it's a...obviously it drew a lot of questions from this committee and I think it's worthy of being passed out again. I think it will draw a lot of questions on the floor as well, and I think we'll have a good debate. I'm hopeful it would pass. But I just hope it gets out of committee. I'd answer any questions if you'd like. [LB154]

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SENATOR LANGEMEIER: Very good. We'll let you off the hook. [LB154]

SENATOR JANSSEN: I'm going back to Government to debate Daylight Savings Time. [LB154]

SENATOR LANGEMEIER: I heard you could just kill that and move on. With that, that concludes the hearing on LB154. We'd like to thank everybody for coming and testifying and being a part of the process. We appreciate it. (See also Exhibit 6 and Exhibit 7) [LB154]