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Natural Resources Committee
February 23, 2011

[LB103 LB458 LB487]

The Committee on Natural Resources met at 1:30 p.m. on Wednesday, February 23, 2011, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB103, LB458, and LB487. 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, ladies and gentlemen, and welcome to the Natural Resources Committee. We'd like to welcome everyone that's here in the audience, as well as those that are watching the action on closed-captioned television and our live Web stream from the committee hearing. My name is Chris Langemeier, I'm the Chairman of the Natural Resources Committee. I'd like to introduce the committee members that are here with us for the audience's benefit here. We hit a day where everybody has got bills in other committees. So I have a couple of committee members with us now, but you'll see them leave as they go introduce bills in other committees, so you're going to see more than normal activity from the committee members in and out today. We will start to my far left, Senator Jim Smith from Papillion will be with us after he introduces his bill; he will be with us shortly. Then we have Senator Ken Haar from Malcolm. And then we have Senator Mark Christensen from Imperial. We have the Vice Chair of the committee Senator Ken Schilz from Ogallala. And then we have Laurie Lage who is the legal counsel for the committee. To my immediate right, or to your left, we have Senator Annette Dubas from Fullerton. Then we have Senator Tom Carlson from Holdrege. And then we have Senator Beau McCoy who is currently introducing a bill in another committee from the Elkhorn, west Omaha area. And at the end of the table we have Barb Koehlmoos is the committee clerk. As you come in to testify, you'll give her your information sheet. Our page today is Katie DeLashmutt from Burwell, Nebraska; she is a senior at UNL. And as you come up to testify today, you'll see in the corner of the room there are these green sheets; we ask that you fill these out in their entirety. It helps us keep a more accurate record of today's hearings. When you come forward, please give that to the committee clerk, Barb, and that will aid us in creating a record. If you're here today and you want to be on the record as of being here, but you're not planning to testify, you'll see these spreadsheet looking forms in the corners as well. Please sign in; you don't have to do both. If you've done a green one, you don't have to do this and vice versa. As you come forward to testify today, if you have handouts we would ask that you give us 12 copies. If you know right now you need a couple of copies, if you raise your hand, Katie, the page, will help you get enough copies. Another things is, is if you have something you want us to see, if you give it to the committee for us to review, we will keep it and make it part of the official record. If it is a photo or something you would like to keep in your possession, please show it to us from the testifiers' stand and then allow the committee members if they would like to look at it in more detail to come and look at it after the hearing. We do use the light

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system in Natural Resources. You have five minutes to testify, the green light will stay on for four minutes; when the yellow light comes on, that is your one-minute warning. And when the red light comes on we ask that you cease your testimony and open yourself up for questions if there are any from the committee. And so with that said, I'd like everybody to grab your cell phone and pull it out and look at it and make sure it's either turned to vibrate or off so we don't disrupt the testifier as they have our attention, as they testify before us, we ask that you give them that respect. I also ask that when you come up to testify, the first thing you do is say and spell your name. That helps us also with the transcription and to make a good permanent record of this hearing today. So please come up, say and spell it, no matter how simple it is, we've learned over the years that even simple names are spelled a lot of different ways. So we ask that you say it and spell your name. And at this time we will open...and we're going to have the hearing as posted on the door. Senator Schilz is LB103, then LB458 and then we'll move to LB487. So at this time, Senator Schilz, you are recognized to open on LB103.

SENATOR SCHILZ: Thank you, Senator Langemeier and members of the Natural Resources Committee. For the record my name is Ken Schilz, spelled K-e-n S-c-h-i-l-z, and I represent District 47. LB103 removes the ability of a political subdivision to apply or maintain an instream flow right if a basin is already fully or overappropriated. Currently the Department of Natural Resources is required to confirm five separate findings in order to grant an instream flow appropriation. LB103 will include the additional finding that an instream appropriation may not be granted in a river basin, subbasin, or reach that has been determined by the department to be fully appropriated or overappropriated. This bill will not prohibit the approval of proposed transfer or change of a natural flow appropriation. If a river basin, subbasin, or reach is under an integrated management plan, I would contend, and we know, that because of the ruling of DNR under LB962 there is no water available to appropriate. And I think that this is extremely important realization there. And as I've looked at the law, and I've sat there and been through the negotiations on LB962 and worked through the Water Policy Task Force process, it becomes somewhat problematic to have this remain in place while that's there. We know that through the IMP process, the integrated management plans, that there have been very...many negotiations that have gone on to find the balance and define the processes that we will put in place as individual NRDs to get us back to 1997 levels. And I believe that this bill maintains the integrity of LB962 by making sure that somebody can't come in later on and say, hey, we want to throw a new appropriation in here and protect water that is...that ostensibly is not available. And that's the basic...it's a simple bill and that's the basic thing of what it does and with that I will be open to answer any of your questions. Thank you. [LB103]

SENATOR LANGEMEIER: (Exhibits 1, 2, 3, 4, 5, 6, and 7) Very good. Are there any questions for Senator Schilz? Seeing none at this time, thank you. You have heard the opening on LB103, we will now move to proponents, those that would like to testify in support of LB103. Seeing none. Now we'll move to opponents, those that would like to

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testify as opponents to LB103. I do have a number of letters. I have one from the U.S. Fish and Wildlife Service; National Park Service; Barbara Bailey from Lincoln; Larry Hutchinson with the Nebraska American Fisheries Society; Wes Sheets with the Nebraska Division of Izaak Walton League; and Stu Luttich from Geneva; and Bruce Kennedy from Malcolm in opposition to LB103. Are you in opposition or to neutral? [LB103]

DUANE HOVORKA: I am in opposition. [LB103]

SENATOR LANGEMEIER: Okay. Welcome. [LB103]

DUANE HOVORKA: Good afternoon, Senators. Duane Hovorka, D-u-a-n-e H-o-v-o-r-k-a, I'm executive director of the Nebraska Wildlife Federation. I'm from Elmwood, Nebraska, here to oppose LB103. And I appreciate the opportunity to get up here and kind of give our views on water policy in the state. But there are, I think, at least two reasons why we oppose the bill. One is, I do think it could make it more difficult to carry out the things that we said we were going to do with the Platte River Recovery Program and with our other interstate agreements that having an instream flow water right in place is one of the ways we can protect water and will, under this program, need to protect water that is coming down from Wyoming and from Colorado. We need to get it to the Central Platte, that's what we've agreed to do, under those programs...under that program, and this is one tool that would help us protect the water not only when it gets to the Central Platte, but also when it gets to and through the Central Platte. And so...but the other reason is I think more just a straight ahead policy reason of why the bill is a bad idea. And if you think about the purposes of our water laws, it's in part to resolve disputes. If there's more than one person that wants water out of the same river, the law provides a way of figuring out who gets the water and who gets shut off. Well that's pretty basic. The other thing it does is it helps protect investments. So before an irrigator decides to spend thousands of dollars on a tube and a center pivot and all the rest to put water to beneficial use or an ethanol plant decides to spend millions of dollars on a plant to put beneficial use of that water to use, they need to have some certainty that that investment is going to be protected. That the water that they're basing that investment on is going to be available to them in the future and that some new project isn't going to come in, sweep that water away and leave them holding the bag with a huge investment. Well, we have that situation now. We now have people in places like the Niobrara, but also on other rivers who are investing thousands of dollars in canoes, facilities, staff, marketing, all the rest, on the premise that there's going to be water in that river for their canoe operations or for the outfitting that they do. So that's a really important investment that they're making. Right now those individuals have no ability to go and ask for a water right to protect that water that's the basis of their investment. And under this bill, the state and local agencies, which are the natural resource districts and the Game and Parks Commission, that have the authority to come in and to make...to ask for that protection for those flows would be

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prohibited from...well they would prohibit the Department of Natural Resources from approving those applications. So those people would be forever in the position of being...of trying to make investments, trying to bring jobs to the community, trying to bring tourists into the area, trying to make a living without having the water that they so depend on have any kind of protection. And so that's really I think the fatal flaw of LB103 is that it doesn't treat those people who have...have made those investments, who are making those investments, who are bringing those jobs, it leaves them without that kind of protection in those watersheds that have been declared fully or overappropriated. So I'm going to end my statement there. I'd be glad to try and answer any questions you have. [LB103]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Hovorka?
Senator Carlson. [LB103]

SENATOR CARLSON: Thank you, Senator Langemeier. You used a couple of examples, but you're opposed, you would like to see an outfitter be able to apply for an instream appropriation when it's fully appropriated? [LB103]

DUANE HOVORKA: Well, ideally an individual with an economic interest could go in and ask for their own water right, but that's not how our law is currently structured. Currently they have to rely on the Game and Parks Commission or an NRD to do that for them and I don't object to that structure, but the bill would even make that impossible. [LB103]

SENATOR CARLSON: Because it is fully appropriated, fully or overappropriated.
[LB103]

DUANE HOVORKA: Right. Correct. [LB103]

SENATOR CARLSON: And of course...I understand what your concern was, thank you.
[LB103]

SENATOR LANGEMEIER: Any other questions? Senator Haar. [LB103]

SENATOR HAAR: Well we're always getting educated on these issues. And so, go back one step, before...and so what I'm hearing is that currently Game and Parks or who else can ask for the... [LB103]

DUANE HOVORKA: Natural Resources. [LB103]

SENATOR HAAR: Okay, NRDs, and this law says that if a bill is appropriated that's no longer possible, that they are prohibited from doing that. [LB103]

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DUANE HOVORKA: Right. They could not get approval for one. [LB103]

SENATOR HAAR: Okay. Has this created a problem in the past, do you know? [LB103]

DUANE HOVORKA: I don't think it's been an issue yet, in part because the system of designating watersheds as fully appropriated is pretty new because we didn't have this whole system of designating things as fully or overappropriated until we passed LB962 several years ago. [LB103]

SENATOR HAAR: So other than like canoeing, outfitters, or whatever, who else might be affected by this? [LB103]

DUANE HOVORKA: You certainly would have fish and wildlife interests like ours, so you would have anyone who relies on those flows; you'd have the fish and the wildlife in the stream that depend on those flows as well. So it's not just people who are affected, but certainly most of our laws are designed to protect people. [LB103]

SENATOR LANGEMEIER: I do have one question. If our designation of a stream is fully or overappropriated, that means the use of all that water is full or extended. How do you expect to give out an instream flow where there is none to give? [LB103]

DUANE HOVORKA: That's a great question. And the answer is that our designation of a watershed as fully appropriated doesn't mean that every drop of water in that river is spoken for. What it means is that the Department of Natural Resources has done a careful evaluation and looked at the existing uses and looked at the impacts of additional new uses, consumptive uses. And if you get down into the test, what they really do is they say what's the most likely new applicant? It's somebody coming in who wants to grow corn. So we look at an irrigation right and that's the test and they say how much water in this area do...how much irrigation water do you need to grow a good crop of corn? And if you got a water right, how often would we have to shut it off at the state level so you wouldn't get that water? And so that's basically the test is, could a new irrigation water right, that's part of the test, could a new irrigation water right be economically useful to the person who got it if we're constantly shutting it off because of senior appropriators? And that captures, again, if you're a corn irrigator and you want to go in and get a new water right, then for you it's probably fully appropriated; that there's probably no unappropriated water available for you to grow corn in the summer in that location. But, that doesn't mean there's no unappropriated water, because if, I'll give you an example, if a large Canadian company wanted to build a pipeline across the Sandhills and they put in their draft environmental impact statement that once it's built, we're going to pressure test it with water, and one of the places we expect to get the water is from the Niobrara River. Well, presuming they'll need a water right to do that. And if they go in and they say, we want to pump this water in the middle of July when the river is low, every irrigation pump is going and Spencer Dam is cranking out hydro,

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there probably is no unappropriated water for them to have that month at that time for that use. But if they said, we want to do this in February, when nobody is pumping, when Spencer Dam is running, but the water is...the river is running pretty full and it's more than meeting that Spencer Dam requirement down stream, well, there's unappropriated water in the river for that purpose at that time. And so I would hope...I hope they don't build the pipeline, but if they do, I would hope they would be able to get a water right to pump water out of the Niobrara to test the pipeline. And so that's why when you say it's fully appropriated so there's no water left, that's just not the case; that there are cases, in fact, when there is unappropriated water in the river. And if you look especially at the Niobrara, what's now triggering, in part, the designation as fully appropriated is the use of water at Spencer Dam in a fairly large volume compared to the river and it's the use of water at that dam that's triggering the fully appropriated designation, along with all the uses upstream. Well, if you, for instance, could figure out a way to pump water out of Gavins Point Dam, pump it upstream to Spencer, dump it in the water, dump it in the river right above Spencer Dam, and you have met that NPPD obligation for water, presumably that would free up a bunch of water upstream that the Spender Hydro Power folks would no longer need. And so you could free up...I hate to give people ideas, but I think there are lots of different ways that that could work and that you could, under an integrated management plan, free up a whole lot of water that could then be pumped out of the Niobrara, could reduce the flows, could directly impact those outfitters and at the same time still meet all the requirements of the law to protect existing water users, existing water rights holders, and that's the problem. If they don't have that protection, if they don't have that right in place, then it's at risk. [LB103]

SENATOR LANGEMEIER: Well, I'm well aware of the system that you described. But you went where I wanted you to go, is you talk about the outfitters and the need to shut off and a fully appropriated is usually July, August time frame,... [LB103]

DUANE HOVORKA: Uh-huh. [LB103]

SENATOR LANGEMEIER: ...when those shutoffs, and that's what triggers the fully appropriated. But in those two months, as you eloquently discussed, is probably the same two months the outfitters want the water going down the Niobrara. We can give you all the streamflow you want in February. [LB103]

DUANE HOVORKA: Sure. [LB103]

SENATOR LANGEMEIER: But that's not what you want. You want it year-round. You want it during the recreational times which is in direct conflict to the other uses that make it fully appropriated. [LB103]

DUANE HOVORKA: The recreation season does run pretty concurrent with the growing season, I think that's true, yes. And in those cases, that water right is inferior, it's first in

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time, first in right, so it would be inferior to those other uses during the summer. So the... [LB103]

SENATOR LANGEMEIER: But then you don't have anything either. [LB103]

DUANE HOVORKA: Well you do in some...that's in part why the DNR has the procedures that they do is to determine is there water there in order to meet the purposes? And if from May through September, there's enough water, enough times in the river that are above those other uses to justify putting in place that instream flow right because at some times it will protect some flows, then the DNR will say, okay, yeah, that's a water right that we can approve. If you're right and if through that whole period it's always well below what other folks would have, then it's possible that DNR would say, you know, the water is just not there enough to say there's water to have a right. But what the bill does is prejudice that. It says we're automatically going to say there's no water available for an instream flow right, versus letting the normal procedure with the department and all the fact finding and all the rest make that decision. [LB103]

SENATOR LANGEMEIER: With that note, I'm going to diverge here a little bit. You testified the other day on LB229 which would have taken money to put in the Cash Fund to allow the director and DNR to spend it as will, but you didn't want to let them to have that authority, but yet you want them to keep having the authority to make these decisions so we don't preempt them. [LB103]

DUANE HOVORKA: I do want the DNR to have enough money to spend on that Platte River depletions plan; I just would prefer it not come from the Nebraska Environmental Trust. [LB103]

SENATOR LANGEMEIER: Okay. Very good. Senator Carlson. [LB103]

SENATOR CARLSON: Thank you, Senator Langemeier. If you don't know the answer to this, that's okay. What do you think...what kind of a CFS flow would it take in the Niobrara for an outfitter to have a successful season? [LB103]

DUANE HOVORKA: Those numbers are available. I don't have them. But the Game and Parks Commission did a fairly extensive study of those recreation flows and of how low they can go before canoes start bumping bottom and you start losing business, so I don't have that number, but I think that study is available and I would guess the Game and Parks Commission folks could get that for you. [LB103]

SENATOR CARLSON: Okay. Thank you. [LB103]

SENATOR LANGEMEIER: Very good, well done. [LB103]

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DUANE HOVORKA: Thank you, sir. [LB103]

SENATOR LANGEMEIER: Other testifiers in opposition. Good afternoon. [LB103]

GENE ZUERLEIN: (Exhibit 8) Good afternoon. My name is Gene Zuerlein and I spell it G-e-n-e Z-u-e-r-l-e-i-n. Are you ready? [LB103]

SENATOR LANGEMEIER: Yep. [LB103]

GENE ZUERLEIN: Senator Langemeier and Natural Resources Committee members, as you just heard I'm Gene Zuerlein, assistant fisheries division administrator for the Nebraska Game and Parks Commission. I am here on behalf of the commission in opposition to LB103 which would amend state Statute 46-2,115 as follows. Currently there are five criteria the director of the Nebraska Department of Natural Resources must consider before granting a nonconsumptive instream flow appropriation. LB103 would add a sixth criteria which the director of DNR must consider before he or she could approve an application. The sixth criteria outlined in LB103 is the instream appropriation is not in a river basin, subbasin or reach that has been determined or designated by the department to be fully appropriated or overappropriated. Nothing in this subdivision shall be construed to prohibit the approval of a proposed transfer or change of a natural-flow appropriation pursuant to subdivision of (3)(c) of Section 46-290. So the implications for the proposed changes, if passed, currently state law allows a nonconsumptive instream appropriation to be granted if a variance is first approved by the NDR and all other criteria are met, according to the instream flow law. If enacted, LB103 provisions would prohibit the director of DNR from granting a nonconsumptive instream appropriation to the Nebraska Game and Parks on the Niobrara River because the above reach is in a fully appropriated basin. In May, 2006, the Nebraska Game and Parks Commission passed a resolution, which is attached as Attachment A, directing agency staff to develop instream flow recommendations for fish, wildlife, and recreational purposes on the Niobrara River. An Environmental Trust grant was received in 2007 to help conduct the necessary scientific studies with which to develop recommended flow regimes for fish, wildlife, and recreation. This competitive grant funds from anglers and hunters through sportfish and wildlife restoration funds, in addition to considerable agency staff time, travel, and expenses have been invested to date to determine the flow requirements of fish, wildlife, and recreation on the Niobrara. No general funds have been utilized for this endeavor. This investment of citizen and sportsmen and sportswomen dollars can only be capitalized on if the current process to obtain an instream flow is allowed to run its course for the state of Nebraska. In Nebraska there are 23,686 miles of streams and canals, in attachment B if you're interested. Of these, 12,371 miles support fish populations suitable for sport fishing. And since 1984 when instream flow legislation was passed, LB1106, there's only been 285 miles, or 2.3 percent of Nebraska's 12,371 miles of fishable streams and rivers which have been protected with instream appropriations. The mission of the Nebraska Game

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and Parks is stewardship of public trust natural resources including protecting streams and rivers with instream flow appropriations. If passed, LB103 would hinder, rather than help protect the Niobrara River. We urge you to reconsider making it easier to protect the public water in Nebraska streams and rivers rather than making it more difficult. Sincerely...or respectfully submitted, Gene Zuerlein. And there's two attachments which I will not read. [LB103]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Zuerlein? Senator Haar. [LB103]

SENATOR HAAR: Okay, again trying to understand what's going on here; right now this would directly impact the Niobrara, is that? [LB103]

GENE ZUERLEIN: That's correct. [LB103]

SENATOR HAAR: Okay. And according to Mr. Hovorka's testimony, there are certain times of the year when there is water, even though a stream is appropriated or overappropriated, there's water available. And under the current conditions you could look at that and say, okay, now this is an additional protected amount for that time of year or whatever? [LB103]

GENE ZUERLEIN: Yeah. Our effort is to look at...do the scientific study so that we are prepared to apply for an instream flow application. And the law is real rigorous. We've got about a million dollars worth of scientific studies conducted and waiting and we're in the process of finishing up the seventh one. And that's how meticulous and hard it is to get an instream flow. And you can see, we started in 2006. So we will figure out the availability of water; how much the resource needs, not only for the fish and wildlife, but to keep the habitat thriving because it's an ecosystem, you know, and it needs water all year round basically. And, of course, this would be a junior right and it's a nonconsumptive. So...but the science we're prepared to introduce is down the road. But this bill would prohibit...no matter how much science you have, this bill would prohibit the director of DNR from granting because it's in a basin that's been declared fully appropriated. [LB103]

SENATOR HAAR: Okay. So does the current...does the current...who does the current system hurt that we need a fix here? [LB103]

GENE ZUERLEIN: It hurts all Nebraska citizens because the water and the fish and wildlife in Nebraska are public resources. When the state of Nebraska became a state, the public trust was automatically handed down from the federal government to the state government. So the state of Nebraska has a fiduciary responsibility to manage the resource for all the citizens of the state, not just some of them. So subject to the rules and laws that we pass. For instance, if we can get this stream, the Niobrara in

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particular, protected, I think the National Park Service, I don't know what they said in their testimony, but I think they would be satisfied and not worry about going for a federal reserve water right. If we push them against the wall, you know, who knows what they'll do? I don't claim to be an expert, but I've been involved in every instream flow application and process since 1984. We talked about instream flows for a decade in the '70s before the bill was passed. And the bill that was passed was very meticulous, very hard to meet, very high standards. Only one NRD in the entire 20-some years have even tried to protect the main stream in their particular basin. So. [LB103]

SENATOR HAAR: What is a federal reserve water right? [LB103]

GENE ZUERLEIN: A federal reserve water right is a congressional mandated water right that goes with a congressional action. Let me give you a good example. On the Niobrara, it was declared...the 70-some miles that were declared national wild and scenic, I think was in 1991. [LB103]

SENATOR HAAR: Okay. [LB103]

GENE ZUERLEIN: So, if the federal reserve water right was pushed, they would have a priority of 1991, however that came in first in time, first in right. But if that happened, then the DNR would have to reallocate all the surface water permits that were issued after that. They would, in essence, jump to the middle of the line or the middle of the, you know, the first in time, first in right. [LB103]

SENATOR HAAR: Do they have a right to do that? [LB103]

GENE ZUERLEIN: Yes, they do. [LB103]

SENATOR HAAR: And right now they haven't done that? [LB103]

GENE ZUERLEIN: Well, they haven't done it because they're working with us as partners, they wanted to be good neighbors. They would rather see us, the state get the instream flow right. They have a lot of natural resources, so to speak, on the line. They got a lot of outstanding, remarkable values for the river. That's why the river was designated by Congress. And so there's a implied reserve water right. They just haven't executed it up to this point. [LB103]

SENATOR HAAR: Okay. And if, in place now, if a...if the state gives an instream flow right, then it becomes junior. [LB103]

GENE ZUERLEIN: It's junior to everybody, all senior rights. I mean, we're not jumping in front of anybody. It's just...this is a state with first in time, first in right. So if we got one in, let's say, 2012, that would be the priority date and everybody who has one prior to

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that would be senior to that particular right. [LB103]

SENATOR HAAR: Whereas if the feds come in it could be 1991, then it jumps ahead. [LB103]

GENE ZUERLEIN: It could be, or whatever year Congress... [LB103]

SENATOR HAAR: If they chose to do that. [LB103]

GENE ZUERLEIN: Yeah. [LB103]

SENATOR HAAR: Does the current system hurt, let's say agriculture, in your opinion? [LB103]

GENE ZUERLEIN: I don't think so. I think most people have got as much water as they want. In fact, one of the studies we've done is the socioeconomics of floating. There's about 40,000, 45,000 people float that river and it's keeping Valentine and the local area alive. It's just for the economy, but we have two or three other socioeconomic studies that we've done through Doctor Shultz at UNO. And that's part of the information we would provide through an IMP or an instream flow process. [LB103]

SENATOR HAAR: So from your standpoint, and I'll ask Senator Schilz when he finishes up with this, but why do we need this law now? [LB103]

GENE ZUERLEIN: Why do we need...I don't think we need it at all. If you want to, in my opinion, if you want to make it better, a positive, don't add that sixth criteria on. And if...the one stickler in that law, you could take off the first criteria which means, I think you have to have 20 percent exceedance in there, and that means the water has to be there 20 percent of the time. That particular aspect hurt us on the Lower Platte, because our agency has instream flows and we lost out on about 200 CFS because of that little rule there. So I mean that would be a positive thing for the committee if you wanted to do that. [LB103]

SENATOR HAAR: Okay, thank you. [LB103]

SENATOR LANGEMEIER: Senator Carlson. [LB103]

SENATOR CARLSON: Thank you, Senator Langemeier. Gene, do you have an idea of kind of a CFS flow it would take...that you'd like to see in the Niobrara all year long? [LB103]

GENE ZUERLEIN: Well I think what we got to do... [LB103]

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SENATOR CARLSON: Let's go minimum. [LB103]

GENE ZUERLEIN: Every stream has a natural flow regime and there's some variability around it so we would look at that, even though we have the science. I don't have a particular number, but for floating, for instance, anywhere from around 900 CFS, optimum type thing. But we would look at, you got to look at the availability of the resource too. And flows really keep the geomorphology of the bank alive. I mean, the water...if you take all the water out, the river can't do its natural function, so by keeping some water in there all year round, even the ice jams provide a vital function for the river. [LB103]

SENATOR CARLSON: Okay. Thank you. [LB103]

SENATOR LANGEMEIER: Any other questions? Seeing none, thank you very much for your testimony. [LB103]

GENE ZUERLEIN: Um-hum. [LB103]

SENATOR LANGEMEIER: Further testimony in opposition. [LB103]

KEN WINSTON: (Exhibit 9) Good afternoon, Senator Langemeier, members of the committee. My name is Ken Winston, K-e-n W-i-n-s-t-o-n appearing on behalf of the Nebraska Chapter of the Sierra Club in opposition to LB103. We're aware of the arguments about the idea that an instream flow appropriation that there is an argument that it might not be granted in a fully or overappropriated river basin. But we believe that you need to take into account the variances that may be granted as part of the process in developing an integrated management plan. The things that I wanted to focus on in my testimony is just to talk a little bit about the idea of instream flow appropriations being a tool that could be used in the process of dealing with some of the water issues that are currently facing us. One example would be the Platte River Recovery Implementation Program. We know there is a lot of interest among the members of the committee and other members of the Legislature and the public about addressing the needs of that program. And, obviously, one of the issues is making sure that there is enough water in the Platte River in order to meet the needs of that program. And we believe that an instream flow appropriation may be something that could be used to make sure that there is enough water to meet that requirement. And then similarly, there's a number of issues about maintaining adequate flows in the Republican River and I know that Senator Carlson knows a great deal more about this issue than I do related to the Republican River so hopefully he won't ask me any questions because... [LB103]

SENATOR CARLSON: I will. [LB103]

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KEN WINSTON: ...about that issue, but, so, but, we believe that making sure that there's instream flows can be a way of addressing some of those kinds of things. And we'd like to see that the tool of an instream flow appropriation be available for addressing these kinds of concerns. Thank you. [LB103]

SENATOR LANGEMEIER: Very good. Seeing no...just kidding. Senator Carlson. [LB103]

KEN WINSTON: I shouldn't have said anything. [LB103]

SENATOR CARLSON: Thank you, Senator Langemeier. No, you challenged me. [LB103]

KEN WINSTON: I didn't challenge you, Senator. [LB103]

SENATOR CARLSON: No, no. [LB103]

KEN WINSTON: I acknowledged your superior knowledge. [LB103]

SENATOR CARLSON: There you go. Do you have a problem on the Platte River in times of excess flow if the excess flow is transferred to another basin so that we didn't send any more down to the Missouri River than necessary? [LB103]

KEN WINSTON: I think I'd have to know more about all the factors that would be involved. I guess...I'm always leery about saying yes or no to something where there may be a situation where...that I haven't considered that would be, that would be...you know, so I guess, I'm not quite sure what you're getting at. [LB103]

SENATOR CARLSON: Well, let me ask it a different way. We have excess flow. [LB103]

KEN WINSTON: Yeah. [LB103]

SENATOR CARLSON: Which there's quite a range of what excess flow could mean. [LB103]

KEN WINSTON: Sure. [LB103]

SENATOR CARLSON: And then we've got flood stage. [LB103]

KEN WINSTON: Okay. [LB103]

SENATOR CARLSON: And we've got something in between. If it's near flood stage, do

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you have a problem with water being transferred out of the Platte to the Republican or another basin where it could be better utilized? [LB103]

KEN WINSTON: I'm not sure how that would happen. I guess I'm a little concerned about...I do think that we need to make good use of whatever water we have. And we need to prevent things from...there's, obviously, a concern about protecting against flooding and things like that. And, I mean, I think I see what you're getting at and I think if there's a way that we can make good use of the water that we've got to address whatever needs are out there, we need to look at those things. I guess I'm just reluctant to give an affirmative answer and then do some more research and come back and go, gee, that...that...there's some implications here that I wasn't thinking about at the time. [LB103]

SENATOR CARLSON: Would you agree on the Platte River if the needs are taken care of that water that runs down the Platte beyond that and goes into the Missouri and is lost that maybe we haven't managed it as well as we could? [LB103]

KEN WINSTON: I'd like to make sure that we...yeah, I would...well, yeah, I would agree that we need to manage the water the best way that we can and to make sure that we meet whatever flow requirements are necessary. And, yeah, we want to make sure that, you know, for example, Lake McConaughy has enough water in it and there's water available through that resource to provide irrigation, etcetera. [LB103]

SENATOR CARLSON: Okay. This is related to instream flows, so I appreciate your answers. Thank you. [LB103]

KEN WINSTON: Okay. [LB103]

SENATOR LANGEMEIER: Senator Haar. [LB103]

KEN WINSTON: Thank you, Senator. And if we need to continue this conversation later, I'd be glad to...I mean, in more detail, I'd be glad to do that. [LB103]

SENATOR CARLSON: You can come back another session and testify in support of a bill that might take care of this. [LB103]

KEN WINSTON: Okay. Well, I'd be glad to visit with you about that. [LB103]

SENATOR CARLSON: Okay. Thank you. [LB103]

SENATOR LANGEMEIER: We'll record your testimony now. Senator Haar. [LB103]

KEN WINSTON: I knew he was trying to lead me, anyway, thank you, Senator. [LB103]

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SENATOR HAAR: Well, looking at Ken, I would like to reply to you that I think that we need to look at all kinds of options, realizing that there are...that sometimes overflow means scouring the river and stuff. But it sounds like we have a great deal of science available and it would seem to me that we need to be looking at all kinds of options, Senators. [LB103]

KEN WINSTON: Yes, I would agree with that and I wasn't trying to be too cagey with Senator Carlson. [LB103]

SENATOR HAAR: Right, yeah. [LB103]

KEN WINSTON: I just wanted to indicate that there are sometimes some ramifications of things that when you're sitting here on the witness chair you don't think about. [LB103]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much for your testimony. [LB103]

KEN WINSTON: Thank you. [LB103]

SENATOR LANGEMEIER: Further testimony in opposition. Just out of curiosity, how many more opposition testimony do we have? Okay. Come on up, there's empty seats up here. We got to keep this rolling. [LB103]

BRUCE KENNEDY: Mr. Chairman, members of the committee, my name is Bruce Kennedy, B-r-u-c-e K-e-n-n-e-d-y. I'm going to be very brief because I have already submitted to the committee my letter of opposition. I'm appearing before you this afternoon as an individual nonconsumptive user of Nebraska streams and rivers. We believe that there is adequate legislation on the books already to take care of the problems. We know that our Nebraska Game and Parks Commission is the one that is entrusted to manage our streams and rivers for fish, wildlife, and recreation. And we just simply ask that between them and the Department of Natural Resources that we let them do their job under the current statutes that we have and not further incur them with any more legislation. So we are opposed to...my wife and I are opposed to LB103. [LB103]

SENATOR LANGEMEIER: Good job. Are there any questions? Seeing none, thank you very much, well done. [LB103]

BRUCE KENNEDY: Senator, I wanted to thank you for creating an environment that is very friendly to testifiers. I have seen a great improvement in this committee and I really do appreciate it. Thank you. [LB103]

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SENATOR LANGEMEIER: We hope so. Thank you. Further testimony in opposition. Welcome. [LB103]

MARIAN MAAS: Good afternoon. My name is Marian Maas, M-a-r-i-a-n M-a-a-s and I will be brief. I'll just hit on a couple of things. I oppose LB103. It will prevent the Nebraska Department of Natural Resources from approving an instream flow right in the Niobrara and this means that even though none of this water would ever be actually withdrawn or taken to irrigated fields or used for any other consumptive use, it still wouldn't be allowed. Instream flow for fish and wildlife is so vital to their protection and having an instream flow water right would not interfere with current water users. This bill would also reduce the instream flow availability possibly that might be needed for Nebraska's obligations for the three-state Platte River Recovery Program which was mentioned earlier. In general, the water withdrawals have resulted in some of the rivers having declining flows, impacting recreation and the economic benefits of recreation and we need to protect the remaining flows of the Niobrara. It is in the interest of our state and of our treasured rivers and streams to protect a certain portion of the flows in our rivers for fish and wildlife, for those who will follow us in generations to come. This is the public trust that Gene referred to. It is our responsibility as the present-day stewards of our waters and wildlife to ensure that our natural resources and natural fauna and flora are not depleted, used up or eliminated altogether. I appreciate your time. Thank you very much. [LB103]

SENATOR LANGEMEIER: Very good. Are there any questions for Marian? Senator Haar. [LB103]

SENATOR HAAR: Yes, I appreciate Mr. Kennedy's description of he's a nonconsumptive user of water. What is your interest and where are you from? [LB103]

MARIAN MAAS: I'm actually on the board of directors for the Nebraska Wildlife Federation, but I'm also testifying just as a citizen. [LB103]

SENATOR HAAR: Okay. Thank you. [LB103]

MARIAN MAAS: Um-hum. [LB103]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you, did a great job. [LB103]

MARIAN MAAS: You bet. [LB103]

SENATOR LANGEMEIER: Further testimony in opposition. Welcome back. [LB103]

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MELVIN THORNTON: Thank you. My name is Melvin, M-e-l-v-i-n, Thornton, T-h-o-r-n-t-o-n. It just struck me, there are advantages and disadvantages to going relatively far down the list. Most of my points have already been covered, but then I have an opportunity to expand on some and answer some implied and really asked questions. My wife and I are residents of northwest...excuse me, southwest Keya Paha County and still residents of Lincoln and I'm testifying against LB103 as an area...a Niobrara area resident as an enthusiastic kayaker and as president of the Friends of the Niobrara. This is a nonprofit organization which is the remnants of the old Save the Niobrara Association that successfully stopped the Norden Dam and stopped the flooding of a good share of the Niobrara Basin. My testimony also represents the views of over a million Nebraskans like myself whose only way of having legal use of surface water in Nebraska rivers is by way of an instream flow appropriation. Let me explain where the claim for a million other Nebraskans comes from. After the Niobrara was declared fully appropriated, which was in January, final declaration was January, 2008, in October, 2008, a study was made by the UNL Bureau of Socioecological Research. They found that 81 percent of Nebraskans supported protecting flows for fish and wildlife and 69 percent of Nebraskans supported protecting flows for recreation. And they're talking about instream flow appropriations. When you take that survey and restrict it just to the counties that are right along the Niobrara River...in the Niobrara River Valley, you only lose 4 percentage points. That is, 77 percent of those folks, we folks up there, are in favor of protecting for fish and wildlife and 65 percent are in favor of protection for recreation. And in...this was in 2008; 2008 the population of Nebraska was 1,700,000 and some. And so you use the smallest value and it's well over a million people that are really in favor of this kind of protection. My three reasons for opposing this are first in terms of fairness and common sense. Fairness has already been covered as talking about the 12...at least 12 outfitters in the Niobrara in Valentine that do not have any legal standing to use the water they've been using for decades. And the common sense, it just struck me, our water laws such that if...well let me back up and give some cubic feet per second figures, so what I'm about to say will make a little more sense. I just reviewed this morning Steve Shultz's study on the recreational use and I'd like to respond to Senator Carlson with some figures. In that study he determined that between 460 to 600 cubic feet per second, this would be as measured at the Sparks Station, would give you an adequate flow; and an optimal would be about 600 to 900. And just for comparison, the average in June, July, and August for the flows is around 600 cubic feet per second. Compare that with a total of 530 cubic feet per second which is the total appropriation for pumping water directly out of the whole stretch of the Niobrara. And also, then compare that with the 2,035 cubic feet per second that represents the inflow right that the public power district has at Spencer Dam. And also compare that with 65 cubic feet per second that is pending. That 65 cubic feet per second was applied for in the first six months of 2007 right after everyone finally discovered that the Game and Parks was heading towards working on an instream flow application. So you see that there was a really huge spike there and unfortunately I see that my time is up. Thank you very much. [LB103]

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SENATOR LANGEMEIER: Are there any questions? Seeing none, very good. Good job. [LB103]

MELVIN THORNTON: Thank you. [LB103]

SENATOR LANGEMEIER: Further testimony in opposition to LB103. And welcome back. [LB103]

ROB SCHUPBACH: (Exhibit 10) Thank you. My name is Rob Schupbach, R-o-b S-c-h-u-p-b-a-c-h. I'm speaking today as a user of recreational water in Nebraska for most of my life. I'd like to thank you for having this hearing today. As I understand it, LB103 would not allow instream flow appropriations in a river basin, a subbasin, or a reach that has been determined to be or designated to be fully appropriated or overappropriated. The designation of fully appropriated or overappropriated indicates that the river basin, subbasin or reaches are experiencing water quantity problems whether they're in the very beginning or something very severe. Fish and other wildlife are dependent on minimum amounts of water quantity to live. Instream flow appropriation is a protection tool that is necessary for wildlife management. River basins, subbasins, and reaches are designated as fully appropriated or overappropriated when they have water quantity problems. To not protect fish and wildlife habitat in times of stress is a bad idea and sends the wrong message. I'd please like to ask you to either kill this bill or provide for a study so that further knowledge of how instream flow as a management tool works. Thank you for your time. Any questions? [LB103]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Schupbach. Senator Carlson. [LB103]

SENATOR CARLSON: Thank you, Senator Langemeier. I don't have a question, I just have a statement. Last time I gave you a pretty bad time. I told you I hoped you'd come back and you did, so thank you. [LB103]

ROB SCHUPBACH: Well I am. Takes more than that to scare me off. [LB103]

SENATOR CARLSON: Okay. [LB103]

SENATOR LANGEMEIER: Very good. Further testimony in opposition. Seeing none. I skipped a gal one day and I don't want to do that again. Seeing no other opposition, is there anyone that would like to testify in a neutral capacity? Seeing none. Senator Schilz, you're recognized to close on LB103. [LB103]

SENATOR SCHILZ: Thank you, Senator Langemeier. First of all I'd like to just say thank

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you to everybody that came in and gave their opinion on this bill. I think it helps to outline exactly what we're talking about. Fully appropriated, what does that mean? Does it mean that there's water in the river at certain times, but not others? Quite possibly. The question that I have is how do we rise out of a fully appropriated designation? How do we do that? Is it the point that we put more water in the river so that we can get there? Everybody says today that according to instream flow applications it would be a junior permit. If we, as the state of Nebraska, or as individual users, or as NRDs, or anyone else put water in the river that would happen to be under an instream flow obligation, it would then be able to utilize that water that's there and once that is under that instream flow obligation during the times when it is in force, you would not be able to divert that water for anything else. And as we talk about the solutions of where we need to go and what we need to do in the future to retime the water to get to the 150,000 to 130,000 acre feet for the program, Platte River Recovery Program, or to come up with the water that we need to comply with LB962, or Nebraska's new depletions program under the program, we're going to want to be able to divert some of that water to be able to retime it possibly. So it could get us into a pretty serious pickle and we might not be able to comply with program flows at times because here's the thing, okay, you can't just protect the water to and through the habitat. What we're going to have to do is we're going to have to retime water all the way down through that. That means we're going to have to divert water at certain times, store it underground, and then use it at other times to put it back in the river. If we can't divert it, then we can't manage it, can we? And that's a huge issue. And the other thing is, the IMP process. Everybody came into those IMP processes under the idea that it was a collaborative process where all stakeholders were allowed to bring their views to the table and sit and talk about what's needed to get back to those '97 flows. That's just the first step. The next step will be how do we get back to fully appropriated if you're overappropriated, or how do we remove that designation at all? We need the tools in place to do that. We need to have the understanding that we have that flexibility to be able to do it. Like I said, the IMP process allows for tools and management scenarios to get to those '97 levels. Everyone had the opportunity to become part of those negotiations. Those negotiations were not easy. Those negotiations lasted for some up to two to three years to figure that out. As I asked many NRD managers and members, I said, what would happen today if an instream flow application was plunked down on your section of the river? Almost to a person, everyone of them told me the IMP process would be blown out of the water because now we're dealing with all new scenarios on where that water is going to go and who is going to be able to use it and how that's going to work. You know, we talk about nonconsumptive use and that's correct in the fact that it stays in the river, okay, but to someone that may want to apply for a permit going forward, apply for a water right permit, it could be serious and you wouldn't be able to get it going forward. Instream flows are not just put on for a certain amount of time. They last and they are there. And I understand completely that the fish and wildlife need flows and they need to have some certainty there. But as the state of Nebraska, and as the NRDs and as individual irrigation districts and stuff, we need that flexibility to be able to move forward

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with the solutions that we're starting to come up with. You know, it's the same thing with...oh, okay, and then just one last thing. You know, up on the Niobrara River and I don't know what the average flows are all the time, but the Niobrara River is one of the most consistently flowing rivers in the state of Nebraska. Okay. It's different than the Platte River. There's times on the Platte River where there was never any water there. We've created a new kind of river. And we've created that through management scenarios. Should there be flows in the Platte River at certain times? It's a question that should be asked, because there are times when...you know, we wonder why there were never any trees growing along the Platte River. I'm guessing that it's not because there was water flowing there all the time. We've had that for the last 50 years. I'm guessing that it got so dry at times that the trees couldn't take root and couldn't grow. So we need to be careful of what we define ourselves as a natural river and what the environment actually saw as a natural river in the past. With that, I would very much appreciate your support on this. I would appreciate everyone going and looking into the issue and getting up to speed on what this actually means going forward, because we are into a new day and a new age when it comes to water management in the state of Nebraska. And the state of Nebraska and our laws need to keep up with the new times. Thank you very much. [LB103]

SENATOR LANGEMEIER: (Exhibit 11) Very good. Seeing no questions. I did get one more letter in opposition from Trout Unlimited signed by Mr. Olson, president. With that, that concludes the hearing on LB103. We will now move...since Senator Schilz is handy there, we'll move to LB458 and you're recognized to open. Welcome back. [LB103]

SENATOR SCHILZ: Thank you, Senator Langemeier. Hello again, Chairman Langemeier, and members of the Natural Resources Committee. My name is Ken Schilz, spelled K-e-n S-c-h-i-l-z and I represent District 47 and I bring LB458 before you today. LB458 is a bill that would change the manner in how holdouts on oil leases are handled. It should be noted that this bill brings no harm to the those who are in that situation. Rather, it will protect their interests and will allow others that want to proceed in oil exploration the ability to entice developers to take the risk necessary to develop our Nebraska resources. This bill provides a process to make sure that everyone's interests are protected throughout the entire process. This bill can actually provide a win-win scenario for all individuals involved and we'll have some folks here that can help explain that. And like I said, there are others here that can provide you with more specific information and can probably answer any questions you may have. Thank you and I would be happy to try to answer any questions that you might have for me. [LB458]

SENATOR LANGEMEIER: Are there any questions? I do have one. [LB458]

SENATOR SCHILZ: Yes. [LB458]

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SENATOR LANGEMEIER: Last time we heard the testimony from, I assume, who is going to testify next, we talked about the use of water and putting it down wells to bring the oil up. [LB458]

SENATOR SCHILZ: Um-hum. [LB458]

SENATOR LANGEMEIER: And now we just had a bill telling about we don't have any water. And now we have a bill to talk about incentivizing more drilling that potentially may need more water to get the oil out of the ground. [LB458]

SENATOR SCHILZ: Right. [LB458]

SENATOR LANGEMEIER: Kind of in a vicious cycle here that at some point we got to say, no. [LB458]

SENATOR SCHILZ: Well, I can tell you this, that...and the folks behind me would better be able to explain that than I would, but I think that there are probably ways to do that; probably sources of water that...just like when we had the mining bill here, to talk about that. A lot of that water is confined water that's in confined aquifers and things like that and I would guess that any of the water that they are using would be able to be reused over and over and over. But that's just my opinion. Not being in the industry, I can't go from there. [LB458]

SENATOR LANGEMEIER: I just threw it out as a thought. My brain works funny in that regard. Seeing no other questions, good job. [LB458]

SENATOR SCHILZ: Thanks. [LB458]

SENATOR LANGEMEIER: You've heard the opening on LB458. We will now move to proponents. Welcome back to Lincoln. [LB458]

BILL SYDOW: Thank you, Mr. Chairman. For the record my name is Bill Sydow, B-i-l-l S-y-d-o-w and I'm serving as the director of the Nebraska Oil and Gas Conservation Commission with headquarters in Sidney. Our commission supports the passage of LB458 since it would promote the development of Nebraska's oil and gas resources. Our commission is the only legal authority which would impose the recovery factors that are dealt with in the current law, as well as, LB458. The bill amends the cost recovery factors that the participants of a force-pooled well can recover if a well is successful. The current factors have been in place, I believe, since 1959 and are probably based upon the model legislation of the Interstate Oil and Gas Compact Commission. We believe that they are, in fact, outdated, given the deeper, higher risk and higher-cost wells that are required to explore for oil and gas today in Nebraska. These cost reimbursement factors are significantly higher than our neighboring states and that's by

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design. They will serve to attract companies who are willing to come to our state and invest their risk dollars in exploration in Nebraska. Perhaps the next two exploration plays that may develop are in the Niobrara Chalk in the western part of the state, as well as the deeper Paleozoic formations also in the Denver-Julesburg Basin. We believe that well costs of those types of wells for the Niobrara wells could be in excess of \$3.5 million. If we could ever develop a play in the deeper rocks, those are going to be a more expensive wells. The current leasing activity, and we've had quite a bit in the Panhandle of Nebraska in the last year and a half, have seen a number of competing companies come to town, so to speak, and obtaining leases. And that fact of just increased competition and the fact that we are continuing to see ever-increasing amounts of severed mineral interests, minerals severed from the surface, may combine to increase the number of applications that we have on a calendar year basis for forced-pooling applications. So LB458, we believe, will serve to convince the wildcatters, the risktakers of the oil and gas industry, that Nebraska law provides two things. It provides recognition for their risk venture, as well as a reward if they are successful. That's all I have to say and I would be glad to answer any questions. [LB458]

SENATOR LANGEMEIER: Senator Dubas. [LB458]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Mr. Sydow, good to see you. You touched on it a little bit in your testimony. Do we have potential for a lot more findings of oil and natural gas in the state in those particular areas? [LB458]

BILL SYDOW: The potential exists. And so maybe we could say it's a resource. This particular Niobrara formation has been, I'd say, known about for a number of years. Every well in the Denver-Julesburg Basin for the most part has drilled through this formation. So it probably will not be productive all over on a regional basis, but there are certain areas and my favorite is in Banner County. But I believe it has potential there. It has potential based upon applying the technology, it's really not new anymore, but to drill horizontal wells. Sometimes it would be probably confined to a section, but a well that has 4,000 feet of displacement from the surface location to where the well is terminated. And so that potential exists. The deeper potential that we have in the Denver-Julesburg Basin has been attempted. We have about 350 wells that have drilled into this Paleozoic section in the Nebraska Panhandle which is about only one per township. And many of those were development wells. So we have probably found about six fields that are pretty good. Right now every one of those fields is unique. And I'm a guy who believes that there can't be just one. There's got to be other ones. And so I think that does have potential there. The drilling problems are pretty tough. We have a lot of bedded salts. We have, in fact, part of the Permian Basin in west Texas, there were basins in western Nebraska during that time and so there are bedded salts that still exist and remain, but the shales were; and they're really not shales in those salts, they are still muds. They're not "dewatered," so to speak. And so those wells are tough

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to drill. In Kimball County we have a nice field, it's called Kleinholz, it's going to make about six million barrels of oil. And in that county we probably have 60 or 70 penetrations into the Paleozoic Section. When you go north into Banner County, we only have five. And at least two of the wells I've looked at were...I called them man-eater wells. You could drill the first 7,000 feet in four days and 50 days later you drilled another 1,000 feet and it's trying to get through this salt and these formations that are overpressured. When you drill them it's like toothpaste, you squeeze it into the well bore, sticks your bit, and then you have what is called a fishing operation. So in my opinion, yep, there is more potential in our state. [LB458]

SENATOR DUBAS: So the only way for us to really know what's down...there's no test other than drilling to determine what's there? [LB458]

BILL SYDOW: Ultimately, that is the only way to test it is with the drill bit. [LB458]

SENATOR DUBAS: And then what you just referenced about the difficulty of those drills, so I'm assuming that makes those types of drills, test drills very expensive and that's why we're looking to do what we're doing with this bill? [LB458]

BILL SYDOW: Yes, and this particular bill, I'll just say for the record, it protects everybody and that's one of the missions of our commission is to protect correlative rights. But in certain instances, there are people, given the situation today with severed minerals, there are people that live in all parts of the United States that they don't care if they lease or not, on a particular section say. But many times they own a significant portion so that the cost to develop that...or to drill a well and complete a well out there, or basically any place, if those people do not execute an oil and gas lease, then they will be considered as a...have the opportunity to participate in that well and write a check. Well, they don't want to do that. So somebody, if they want the well drilled, somebody is going to have to, in effect, put up the money for them to get that well drilled and this is the bill and these are the cost-recovery factors that LB458 addresses. [LB458]

SENATOR DUBAS: Thank you. [LB458]

SENATOR LANGEMEIER: Senator Haar. [LB458]

SENATOR HAAR: Again, a little bit on a tangent, but is there any fracking going on in Nebraska right now? [LB458]

BILL SYDOW: Yeah. I'll say yes. Our activity is really probably confined to acidizing, in effect, smaller volumes of fluid, but yes, fracture stimulation has gone on in Nebraska virtually, probably, since the 1950s. Everything that you read, or most things that you read about fracture stimulation, I believe are not factual, Senator Haar, and I think many times they're there to scare people. So fracture stimulation has been done in western

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Nebraska, southwestern Nebraska since the 1950s. The fluids that are generally pumped, especially today with our natural gas development, the fluid is water based, fresh water based, and it is a foamed fluid. So to foam it we have an introduction of a soap like a high grade of Tide. We may have an energy component which would be carbon dioxide to help it flow back so that would be an energized fluid. The viscosifier that thickens the fluid so that we can place the sand in the fractures wherever they go and whatever they look like, we don't know, but that viscosifying fluid is typically a guar. And a guar can be naturally occurring or it can be artificial, but guar is a thickening agent and it's...literally it's in ice cream, it's in jello, so that's the carrying fluid. Sometimes to break that guar gum, they will put in a fluid and it is a borate solution which by itself might be kind of not a nice thing, borate, but we have the Borax 20 Mule Team soap and I like to put it all out there on a simple system, those are borates. And once in a while they may use what is called a surfactant that reduces the friction as the fluid is going down the tubing or casing. And that may be a very light oil, maybe much like WD-40. So our fracture treatments in Nebraska are typically done on our Niobrara Chalk wells; they're not very big. But they do require fracture stimulation to complete a well so that you have an economic flow rate of gas. [LB458]

SENATOR HAAR: Okay. Thanks. [LB458]

SENATOR LANGEMEIER: Now I have a question. I talked a little bit with Senator Schilz about water. And as we try to incentivize or push for more drilling, what is the water requirement for some of these particular areas? [LB458]

BILL SYDOW: Okay. I think, Senator Langemeier, to drill a well would generally take about one barrel or 42 gallons of a U.S. gallon for a foot of well-bore. [LB458]

SENATOR LANGEMEIER: Right. I'm not so worried about the drilling, I understand that; I'm talking about operations. I know some of the wells are taking water to pressurize, to... [LB458]

BILL SYDOW: Okay, so...like we talked about a couple of weeks ago. [LB458]

SENATOR LANGEMEIER: Like we talked about a couple of weeks ago, exactly. [LB458]

BILL SYDOW: Okay. [LB458]

SENATOR LANGEMEIER: I understand the use of the water. [LB458]

BILL SYDOW: Okay. In Nebraska, we will authorize what we call secondary recovery units. And typically those may be referred to as water floods. And so they're normally implemented after actually a legal process at our commission, but there will be selected

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injection wells where we will inject water down the tubing underneath a packer and we will begin to form an oil bank in the reservoir, as well as we'll increase the reservoir pressure. We, in Nebraska, have a very high amount of our daily production is from water floods. When we initially start a water flood, yes, there is always that water requirement. Typically it is from the Ogallala Formation. In any counties that we have under water flood, the initial rates that we put in, and I believe this would be a good value, a well that could produce 50 gallons a minute would be enough to contribute to that water flood. We're looking at a couple hundred barrels of injection per day until the reservoir pressure increases. So typically those have come from...they may drill a well right there on the lease. There are certain instances now where...of course you need to register every kind of a well that you drill. If it was a new well for a water flood, it's going to have to be registered and authorized as an industrial well. And for the most part, I believe at least the North Platte Natural Resources District, Middle Republican, and maybe if there's an Upper Republican, they may have put almost a total moratorium on the larger irrigation wells, but have some room for those smaller volume wells. So, I mean, after a few years we will still need to make up a little bit of water, but the consumptive use of that water is reduced because what we'll do is when we produce the oil and then eventually the oil and the water together, those have to be separated, we'll take the produced water and reinject that. So we basically cycle that water through the reservoir, but there will always be a little bit of bleed off where you have to have some makeup water. [LB458]

SENATOR LANGEMEIER: Okay. Are there any other questions? Seeing none, thank you very much. [LB458]

BILL SYDOW: Thank you. [LB458]

SENATOR LANGEMEIER: Appreciate your testimony. Further testimony in support of LB458. Welcome. [LB458]

BRIAN BLOME: Good afternoon. My name is Brian Blome, B-r-i-a-n B-l-o-m-e and I'm here today to testify in favor of LB458. I am an independent petroleum geologist with over 37 years of industry experience working for both large and small major oil companies. I am a native Nebraskan and I've grown up in Sidney, Nebraska, and have worked the Denver Basin quite consistently throughout my career off and on. I've generated oil and gas prospects throughout the United States, primarily the western half. And briefly a job description, I generate prospects; I'm a working independent developing prospects currently in the western part of Nebraska in the Denver Basin. I utilize existing well control where in the past the historical well base that's out there that's stored and kept at our commission, as Mr. Sydow has just testified, they have all the data there for any past history that you would ever want, and that allows me to put together ideas of...by using this existing control to develop geologic ideas and prospects. When I'm convinced that I have a prospect or an idea that I feel I can take to

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industry or go try to find a partner to drill a well, I then go to the courthouses. I search the title, the record, and find out who owns the minerals. And as Mr. Sydow has briefly touched on, through time these mineral interests have become severely split. And if the title is fairly simple, not thousands of people, I then try to negotiate oil and gas leases and pay bonuses to those mineral owners for the rights to explore on their land and drill a well. That's the ultimate goal. I might add that throughout this whole process, I'm spending money and I'm making investments that I may not recover because I'm now trying to put together a project that I can then turn to an industry partner that has much more resource than I do to actually invest and drill a well which at this day and age is no simple matter. It's very expensive. Even in the Denver Basin, wells are easily a half a million dollars to get to the point of putting together a prospect and evaluating it with a drill bit. So let's say I've established a leasehold. I then seek out this partner. And due to the risk that's involved here, our current rate of success in the Denver Basin in the western part of Nebraska is about one out of 20 wells hit. So it's difficult, to say the least, to go find partners with those kind of risk. You had better have a pretty good reward on the other side that they're looking at to...willing to go forward and make that investment to spend that half million or more to try to test this idea. So in order to sell this deal, my prospect has to have good geologic merit. Deal terms to that investor have to be acceptable and I have to have the leasehold, good title, and usually 100 percent of the ownership. If you don't have any of that, you won't sell your deal; if you don't have those three things, you will not sell the prospect. So I can control the geologic merit, I can control the deal terms, but I can't make someone sign an oil and gas lease. So if I can have a mechanism that's favorable to investors to...where they feel at least comfortable to carry an unleased interest, then I think I can test more wells, get more wells drilled, create more jobs for drilling contractors, various dirt workers, people that are involved in all aspects of this industry. The oil industry employs 9.2 million people in this country and it's a viable, strong, one of the last viable, strong industries we have. If I'm unable to lease this interest and if my investors will not go forward, I'm in trouble and I can't test for oil and gas and a lot of oil and gas is not found. With that, I'll conclude that the industry in Nebraska would find this law very favorable. People, such as myself, would come here, drill wells, invest money, create jobs, which in turn would lead to tax revenue if we're successful in finding oil. More wells would get drilled, more oil would be found which helps our country and the best part of this whole thing is that no one would be penalized. The royalty owners would still be royalty owners. And they would eventually come back as working interest owners, but after the guy who took the risk received his reward. With that I strongly urge you to accept this bill. [LB458]

SENATOR LANGEMEIER: Very good, are there any questions? Senator Haar. [LB458]

SENATOR HAAR: So, in laymen's terms, tell me what this bill does. [LB458]

BRIAN BLOME: This bill allows for an investor to recoup his cost at a higher rate than he would right now. We have a forced pooling law in Nebraska. It's so slim that if I

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asked you to invest a dollar to get a dollar back, you'd say I don't really think I'd take the risk that you're talking about to get my money back. You already have your money, why would you risk to go out there and get it back and carry someone along with it? So this incentivizes drilling and explorationists to come forward, generate prospects and ideas, and make something happen that wouldn't happen otherwise. [LB458]

SENATOR LANGEMEIER: I do have one question, just out of curiosity. As an appraiser, is what I do, as I look at those records and I see so many properties have sold their mineral rights off and I have to note that in my report, that there's...are those companies that bought those years and years and years ago, most of them were in the '40s, can you track them down to find out if they're dead and gone who should have gotten the next ownership of that? [LB458]

BRIAN BLOME: For the most part, yes. [LB458]

SENATOR LANGEMEIER: So somewhere there's some records, because it's not at the courthouse. [LB458]

BRIAN BLOME: In every court there's a chain of title. [LB458]

SENATOR LANGEMEIER: Right. [LB458]

BRIAN BLOME: And they no doubt filed of record their interest when they bought it so that they would be found and I could approach them for a oil and gas lease someday. [LB458]

SENATOR LANGEMEIER: But those companies...I guess my question is, there's a lot of companies that bought those rights back in the '40s, late '40s, early '50s. [LB458]

BRIAN BLOME: Right. [LB458]

SENATOR LANGEMEIER: I see a lot of them filed, you're telling me those companies still exist somewhere? [LB458]

BRIAN BLOME: They probably have sold them again or divested of them to someone else who was interested in owning minerals, but there is a record and there is a chain of how it goes. And in this country everything is recorded in the courthouses all the way from when the U.S. government patented the lands to the very first homesteaders. They then have either divided or subdivided those minerals out numerous times and most of the time it's within their own family, heirs, and the such. [LB458]

SENATOR LANGEMEIER: Sure. [LB458]

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BRIAN BLOME: But a lot of times, desperate times, ranchers, farmers sold their minerals or parts of their minerals to get by, to survive. And so wealthier or industry or those kind of people bought that type of investment and saw it as a resource, thinking time would prevail and that someone would eventually come forward and either drill on it or buy it from them. [LB458]

SENATOR LANGEMEIER: Sure. [LB458]

BRIAN BLOME: Yeah. [LB458]

SENATOR LANGEMEIER: Any other questions? Seeing none, thank you very much. [LB458]

BRIAN BLOME: Thank you. [LB458]

SENATOR LANGEMEIER: Appreciate your testimony. [LB458]

BRIAN BLOME: You're welcome. [LB458]

SENATOR LANGEMEIER: Further testimony in support of LB458. Welcome. [LB458]

PHILLIP KRIZ: Thank you. Thank you, Senators, for your time and your service to Nebraska. My name is Phillip Kriz, spelled P-h-i-l-l-i-p K-r-i-z. And I'm an engineer for the Evertson Companies which is currently the largest oil and gas producer in the state of Nebraska. We're headquartered in Kimball, Nebraska. We've been in business since about 1974. Evertson supports LB458. The main benefits will be to promote increased exploration which creates tax revenue and jobs for the state of Nebraska. The purpose of this bill is to increase the cost recouping for a nonconsenting party's interest in an exploratory well drilled in Nebraska. To put it in more laymen terms, the current reimbursement of 200 percent of the intangible costs, those are costs for drilling the well, things you can't sell like drilling the well, mud, stuff like that; and 100 percent of the tangible costs for things like tangible things that you can sell, like a pumping unit or tanks. And currently right now it's so slim, as mentioned before, it's not worth taking the risk of drilling an exploratory well. Exploring for oil is a high-risk business. In Nebraska, 1 in 20 wells find an oil field; 19 failures for 1 success. To make it into an analogy, how many farmers are going to rent ground knowing at best they're going to get one and a half times their money back one year and the next 19 years they're going to get nothing? You need more rewards to take that kind of a risk. So the normal outcome is if an exploratory company like ours comes and finds a project and it's not 100 percent leased, then we walk away from it. Why is this needed now? There's really two reasons and it's already been mentioned that mineral estates are becoming more and more split up, you know, grandparents leave theirs to their kids and then they leave it to their kids and it gets very split up over time. And it's not every time that we have a split-up interest

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like that, but it's becoming more and more all the time. And, Senator, there are times when we can't find people. It's just the facts. Sometimes people do disappear; as you say, it gets very complicated. And the second reason is, as we drill deeper wells, you know, the shallow wells in Nebraska, most of them were spaced in 40 acres. As we drill deeper, there's more pressure and we space bigger units, you know, up to 160 acres, then 320 acres, horizontal wells are 640 acres. We've drilled wells in North Dakota on two square miles. So you can imagine how one 40-acre tract gets split up. Now you try to get all those 40-acre tracts underneath two square miles, it becomes very, very onerous to get everybody to lease. And that makes it where people don't come and explore in our state. The greatest part of this bill, in my mind, is that no one really gets hurt. The nonleasing party will still get their proportionate share of the royalty if the well hits. Royalty is a negotiated percentage revenue the people leasing get off the top. In Nebraska that's normally an eighth, or 12.5 percent. So even if they went nonconsent, or they don't want to lease, they're still going to get their royalty check just like everybody else. So if Aunt Mary in California who is mad at Uncle Jimmy in Nebraska, still farming on the land and doesn't want to get along, you know, she doesn't block, you know, a non...a small party can't block something getting done. How do the state and counties benefit? An average oil field in Nebraska, after we drill 19 holes, we normally have to drill 19 dry holes to find one, average field is about 250,000 barrels of oil. That creates about \$1.4 million in severance and ad valorem taxes, severance to the state, ad valorem to the counties. And there is state income tax on top of that. An exploratory well that does not work, or dry hole, still creates about 3,000 man hours, high-paying jobs for a dry hole. For a successful well that generates about 33,000 man hours of work over the life of the well. In these tough economic times, I think you'll agree with me that Nebraska needs all the better paying jobs they can get and the state could certainly use more tax revenue. And I hope that you guys will support and vote for this bill. I'm open for any questions. [LB458]

SENATOR LANGEMEIER: I do have one question. I'm still trying to grasp this whole concept here. But, if I'm in Banner County and I own a big ranch and you talked about you're drilling 19 holes, and so you've drilled four holes and the fifth hole, each one kind of gets a little better, but now you've hit my fence line and I own my mineral rights, I own my full mineral of rights in my ranch. You want to be able to keep coming on to me to drill? [LB458]

PHILLIP KRIZ: Normally, of those 19 ideas, there are 19 ideas all over the place. So they're all individual ideas. Normally it's not...we're going to come and drill 19 ideas, or 20 ideas on your ranch. They're going to be scattered all over six different counties. [LB458]

SENATOR LANGEMEIER: But what if I don't want you on my ranch at all? [LB458]

PHILLIP KRIZ: Well, if you have 100 percent, we're going to sit there and not be able to

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come on. [LB458]

SENATOR LANGEMEIER: Okay. So this wouldn't allow you some leverage to get on? [LB458]

PHILLIP KRIZ: Let's look at a practical situation. If I only get 5 percent, only get 5 percent someone to sign up, I'm still not going to do the deal, because why am I going to want to carry 95 percent. It still comes down to, we need to get the majority or it's not worth our time. If I find a big field and it's like Prudhoe Bay, why am I going to do it for a small percentage and then all those farmers get to come back in and be the owners? So it's really for helping us when 10 percent, 20 percent, 15 percent aren't wanting to go along. And, like I said, in these bigger spacing units, can you imagine how complicated the land is if you try and go sit there and space a square mile on how fractionated everything is going on? And as we drill these more deeper and complicated wells, we are spacing more and more land. [LB458]

SENATOR LANGEMEIER: Sure. Are there any other questions? Seeing none, thank you, well done. [LB458]

PHILLIP KRIZ: Thank you. [LB458]

SENATOR LANGEMEIER: Further testimony in support of LB458. Welcome. [LB458]

BRUCE EVERTSON: Good afternoon. Bruce Evertson, B-r-u-c-e E-v-e-r-t-s-o-n. As you heard, we are the largest producer in the state of Nebraska and have been for a number of years and I just thought it would be fair on my part to address you today as the largest producer, so if you have any questions of somebody like us, we have been...our home base has been out of Kimball, Nebraska since 1974. I heard you had some water questions a little bit ago and I'd be more than willing to answer them after a bit, on secondary water floods. I think what this is all about, that it's been touched on, but not really hit hard, is fairness. If you have...you mentioned you had a ranch. If you only had 85 percent of those minerals on that ranch, and I couldn't lease the other 15, and we had prospects on your ranch, we probably wouldn't drill your ranch. So it's a fairness issue is what it is. And the other 15...if it were vice versa, where we could do something else and the 15 was the holdout and we could get this bill through, they would still collect their revenue all the way through. This is not an issue where it's going to financially impact anybody that doesn't go along. What it's going to do is let other people develop their own resources, or let us develop them for them without some minority interest holding it up. It's not like we're taking a big hammer over somebody, but you put a...as we're currently right now putting a lot of seismic work together which is very expensive, 3-D seismic, you've all heard the term. It's about \$50,000 a square mile and we have to do at least 10 to 15 miles to get a picture. We get that picture, then we go in and try to lease all the minerals up. And what's happened to us with these severed

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minerals, not a lot, but there is quite a bit out there that you have a holdout that don't want anything done. It's not money; they just don't want it done. And then everybody else that has their minerals want to be developed is the one suffering because we can't develop them; they can't get them developed, and nobody is willing to carry that type of an interest. So this is more of a fairness issue the way I look at it, and an issue that would make Nebraska industry-friendly. We've been all halfway around the world, we basically came back home with our exploration company because Nebraska is a good state to work in. Most of the minerals are fee minerals. You don't have to go through all the issues on federal land which are a lot. And one of the main issues is these severed minerals is shutting a lot of the projects down because people just aren't willing to take that risk. And that's pretty much my testimony. And I'll be glad to answer any questions. Like I said, I came here today just to be fair. [LB458]

SENATOR LANGEMEIER: Senator Haar has a question. [LB458]

SENATOR HAAR: So going back to Senator Langemeier's land, if he had a square mile of land and he owned 85 percent and somebody else owned 15 percent of the mineral rights, or the other way around, you could drill on that property, is that the deal? [LB458]

BRUCE EVERTSON: Yes, sir, right now we could. But as you heard other testimony, if he had 85 percent, we would have to carry that other 15 percent plus the normal 12.5 percent, so now you're carrying 27.5 percent of that, your total risk to get 100 percent of your money back. Well, it's one to one. It doesn't make any sense. And then I'm going to look at that deal and say no, we can't get that other 15 percent or make some kind of a deal on it, why would I do that? Because then if we are successful, and we do make an oil field on it, then once I get my money back, I inherit this other person who didn't want me there to start with as a partner. [LB458]

SENATOR HAAR: But, so you could actually wind up drilling on someone's property that didn't want you to drill there if someone else owned the minerals rights. [LB458]

BRUCE EVERTSON: Yes, that's true. But you wouldn't do it. I think the only thing you're coming up with here is that the minority interest is what you're looking at. If you have a majority interest that doesn't want you there, you're not going to do that because if you are fortunate enough to find something good, once you get your money back, they're going to own more of the project than you did and they didn't take one risk dollar. So that wouldn't make any sense at all. So this is basically trying to clean up the title on minority interest out there to get it where it is a drillable location. [LB458]

SENATOR HAAR: Okay. So once you clear up that title though, it could be that he didn't even own any of those mineral rights, but then you had a right to drill on his property, if he didn't own the... [LB458]

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BRUCE EVERTSON: Yes, that's...yeah, in Nebraska as in most states, that minerals take precedent over surface. [LB458]

SENATOR HAAR: Okay. [LB458]

BRUCE EVERTSON: That's in a lot of states. And a lot of people don't like it, but that's the law. I mean, we try not to do that. If we can't get along with the surface owner, we don't want to be out there fighting with anybody. [LB458]

SENATOR HAAR: Okay. [LB458]

BRUCE EVERTSON: But I'm not...that's us, that's not everyone. [LB458]

SENATOR LANGEMEIER: There must not be a lot of people that are worried about that or they would come to us to change that law. [LB458]

BRUCE EVERTSON: Yeah. [LB458]

SENATOR LANGEMEIER: I'm going to go back to that water. And not that I'm trying to discourage this project in any way, I'm just trying to grasp onto this. As the largest driller in Nebraska, or production I should say, not necessarily driller, what percentage of your wells are water based, that method of extraction? [LB458]

BRUCE EVERTSON: A lot of our stuff, except the new stuff the last few years, we call them kind of old tired stuff that gots...our water floods. And to make you at ease with us, I hope I can, is what you've asked is a common question from a lot of land owners and mineral interest owners, how much of my water are you going to use? You relate it to a normal water flood is approximately, like they estimated, is, say, 400 barrels a day. That's about a minute's worth of time on one center pivot. So I try to relate it to what you see all the time. You know, most center pivots 800, 900 gallons a minute, that's about what we use, one minute of that a day in a water flood. Until you get your reservoir pressured, then you recirculate it and you don't use a lot of water after that. Early on you do, but it's minimal compared to what...and that's a good question, a lot of people have the same thing you had. I mean I've answered this hundreds of times. And they'll say, oh really, that much, that little. I say, yeah, when you turn your pivot on, it's about one minute of that is what we use a day. And they say, okay. Because people...it's not like we're using, you know, a thousand cubic feet per second or something like that, you know, it's pretty small. [LB458]

SENATOR LANGEMEIER: And then my next question is, is in this projected new development area, we've heard of two particular areas, whether it's in that Niobrara Basin area or it's more of this Denver Basin, what percent of those wells do you think will need that flood-type system or is new technology out there? As you talked about

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these being the antique kind of wells, are there new systems out there that maybe we won't have to use this method at all in the future? [LB458]

BRUCE EVERTSON: Well I don't think you'll see it on the Niobrara. It is a shale gas; it's a fractured...you won't see it there. Now in your deeper Paleozoic stuff, like we had, they mentioned Kleinholz field, Terrestrial field, those are ours, and yes, they were water flooded. But it was still, you know, the first couple of years you put in 400 barrels a day, which is not a lot, you know, 50 gallons a minute for a little while. And then after that it's pretty much been circulated for the last ten years. [LB458]

SENATOR LANGEMEIER: Sure. And I don't want to beat this to a dead horse, I'm just trying to get a grasp of this, the future wells that might be out there... [LB458]

BRUCE EVERTSON: Uh-huh. [LB458]

SENATOR LANGEMEIER: ...are they going to have to be flood-type wells or will they be some other method into the future because of technology changes and what not? [LB458]

BRUCE EVERTSON: We would hope they'd be flood-type wells, because a lot of times you get the same amount of oil on the secondary...the flood that you did on primary. [LB458]

SENATOR LANGEMEIER: Okay. [LB458]

BRUCE EVERTSON: When you repressure the reservoirs, the rule of thumb is, hopefully you'll get the same amount the second time around as you did the first time. [LB458]

SENATOR LANGEMEIER: Okay. Thank you. Any other questions? Seeing none, thank you for coming in, we appreciate it. Further testimony in support of LB458. Welcome back. [LB458]

DARWIN PIERSON: Thank you. I'm Darwin Pierson, D-a-r-w-i-n P-i-e-r-s-o-n and I represent the Nebraska Independent Oil and Gas Association. And we are in favor of this bill. I think all of the details have been pretty well presented here by the other folks. And we would just like to put our support behind this bill as it is now proposed. And I would answer any questions if you have others. [LB458]

SENATOR LANGEMEIER: Okay. Are there any other questions for Darwin? Seeing none, thank you very much for your testimony. Further testimony in support of LB458. Is there any test...seeing none, is there any testimony in opposition? Seeing none. Is there any testimony in a neutral capacity? Seeing none. Senator Schilz, would you like to

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close? [LB458]

SENATOR SCHILZ: Thank you, Senator Langemeier. And I'd just like to say thanks to everybody coming in today to give their perspectives and their testimony on this bill. I think that as we look at this and as I look at my district and what we're talking about here, the majority of what we're talking about is going on in the 47th District and Panhandle areas in southwest Nebraska, so it's very close to home. You've heard me talk about it before, the population decline, the ability of our rural communities to survive and thrive and this is an integral part of that. I think Senator Langemeier has been out to Banner County possibly and seen what's out there. There aren't too many areas in the state of Nebraska that get possibly a second and third opportunity to be successful with natural resources. They had an oil boom and a gas boom earlier in their existence. Obviously, the wind situation is out there now. And now with these new formations that are coming out, there are some awesome opportunities. But like with everything, you know, there's a window where that applies. And we're within that window now. And we need to make sure that we give these folks, including landowners...landowners, developers, and people that are interested in utilizing these resources and making it work for the state of Nebraska, the opportunity to do just that. And with that I would very much appreciate your support on this bill and with that I'll close. [LB458]

SENATOR LANGEMEIER: Very good. Seeing no other questions that concludes the hearing on LB458. [LB458]

BRUCE EVERTSON: Thank you much. [LB458]

SENATOR LANGEMEIER: Thanks for coming in. Welcome Senator Karpisek. [LB458]

SENATOR KARPISEK: Thank you. I was watching and I couldn't believe that Senator Schilz's bill wouldn't have a lot of opposition. [LB487]

SENATOR LANGEMEIER: We never know from time to time. [LB487]

SENATOR KARPISEK: I got caught a little flat footed. [LB487]

SENATOR LANGEMEIER: Now we'll open the hearing on LB487. Welcome, Senator Karpisek. [LB487]

SENATOR KARPISEK: Thank you, Senator Langemeier, members of the Natural Resources Committee. For the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k and I represent the 32nd Legislative District. During the 2009 legislative session we adopted LB160, introduced by then Senator Tim Gay. Generally, the bill allowed the Papio-Missouri Natural Resources District to issue flood protection and water quality enhancement bonds and then repay them from an annual special bond

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levy not to exceed 1 cent on each \$100 of taxable valuation. It was the first time the Legislature allowed a natural resource district to have bonding authority. All of you with the exception of Senator Smith, will recall that the debate on LB160 was often passionate and emotional as evidenced by ten amendments, two floor amendments, and a motion to IPP. In my opinion, as adopted LB160 contained an imperfection that puts cities and counties within the Papio-Missouri NRD at a great disadvantage. It can be summed up in one word--exclusive. State statute 2-3226.11 says that prior to issuing bonds or expending funds to pay costs of a reservoir or water quality basin project greater than 20 surface acres, a county board may pass a resolution opposing the project within its exclusive zoning jurisdiction. Unfortunately, there is very little exclusive zoning jurisdiction in Douglas, Sarpy, or Washington Counties. In Douglas County, for example, Omaha has a three-mile zoning jurisdiction outside the city limit and the communities of Valley, Waterloo, Bennington, and Washington each have 1-mile zoning authority outside their city limits. Under this circumstance, Douglas County has virtually no zoning authority for NRD projects in the county. And cities in Douglas County have absolutely no authority in these matters under the conditions set forth in LB160. LB487 removes the word "exclusive" from statute. The bill also allows municipalities the same zoning oversight for reservoirs and water quality basins in their respective jurisdictions. LB160 was specific to the Papio-Missouri NRD, but it sets a statewide precedent as the template under which bonding authority will be sought by other natural resource districts. LB487 makes reasonable changes to return local control to counties and cities. I have testifiers behind me that can answer specific questions regarding LB487 and LB160, but I'll be glad to try and answer any questions you may have of me. Thank you. [LB487]

SENATOR LANGEMEIER: Very good. Are there any questions for Senator Karpisek? Seeing none. Thank you. [LB487]

SENATOR KARPISEK: Thank you. [LB487]

SENATOR LANGEMEIER: Are you going to stick around to close? [LB487]

SENATOR KARPISEK: I will. [LB487]

SENATOR LANGEMEIER: Okay. You have heard the opening on LB487. We'll now proceed to proponents, those in favor of LB487. Welcome. [LB487]

MICK MINES: (Exhibit 12) Thank you, Chairman Langemeier, members of the committee, for the record my name is Mick Mines, M-i-c-k M-i-n-e-s. I'm a registered lobbyist representing the Papio Valley Preservation Association in support of LB487. I think our page is passing around a letter of support from the Douglas County Farm Bureau in support of LB487. Our sincere thanks to Senator Karpisek for introducing the bill. As he described, the bill very simply does two things: one it removes the word

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"exclusive" from state statute to say that prior to the NRD issuing bonds or expending funds for a reservoir or water quality basin larger than 20 acres, a county board may, and that's "may" pass a resolution opposing the project within its zoning jurisdiction, not within its exclusive zoning jurisdiction. So you see the difference. And second, the bill returns local zoning authority to cities and villages in the NRD. As you will see, I believe Commissioner Boyle from Douglas County will introduce a map that shows how little zoning area there is in Douglas County that is indeed exclusive. And for practical purposes, Douglas County is rendered...their zoning authority is rendered irrelevant matters of reservoirs and water quality basins throughout most of their zoning jurisdiction. And secondly because cities were never included in this...in LB160. The cities of Omaha, Ralston, Bennington, La Vista, Gretna, Bellevue, Papillion, Kennard, Washington, and Boys Town, they have no zoning oversight whatsoever for these structures. Opponents of the bill will tell you that all interested parties are...that interested parties are currently engaged in an interlocal agreement. That agreement is called the Papio Creek Watershed Partnership Project and it covers an area of 402 square miles in Washington, Douglas, and Sarpy Counties. They will tell you there are nine governing bodies in the interlocal agreement. You also need to know that two of the three counties, Douglas and Washington Counties, as well as the communities of Bennington, Kennard, and Washington, do not participate in this interlocal agreement. Municipal and county zoning is critical to the implementation of goals, objectives, policies of a comprehensive plan. Zoning safeguards public health, safety, welfare, by ensuring the orderly development of land, land use, taxes, and the provisions of public services, as well as sustained growth and development which depends on deliberate and effective planning and when cities and counties should not be precluded from fundamental responsibility of local government. The question I think you need to ask the opponents is for those tens of thousands of people in particularly Douglas County that do not live within the city limits of a city, but live within their...Omaha's 3-mile zoning jurisdiction or the zoning jurisdiction of one mile of other communities, they live in that zoning jurisdiction and with the word "exclusive" in statute, Douglas County has no say in zoning matters of these water structures. Where do these people go when they have a question about any zoning issues such as property values, safety, and all the aforementioned components of zoning? So local control...we believe that local control means local control. Counties should not have their zoning authority usurped by the misplaced term of art "exclusive", and cities should have the same authority to determine appropriate uses within their zoning jurisdictions. With that I would be glad to answer any questions. Thank you. [LB487]

SENATOR LANGEMEIER: Are there any questions? Senator Carlson. [LB487]

SENATOR CARLSON: Thank you, Senator Langemeier. Senator Mines, if you've got the...do you have the bill you can look at? [LB487]

MICK MINES: I'm sorry I don't. [LB487]

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SENATOR CARLSON: Well I think I can ask here. In the Section B that says, no proceeds from bonds issued pursuant and so forth to an NRD encompassing a city of the metropolitan class, "may" is crossed out and "shall" is put in there. Now if no proceeds can be used, what does "shall" add that "may" didn't? [LB487]

MICK MINES: I'm going to have to defer to testifiers behind me, Senator, I'm sorry. [LB487]

SENATOR CARLSON: Okay. All right, you've got it in front of you now. [LB487]

MICK MINES: I do, yes. [LB487]

SENATOR CARLSON: Okay. Then if you look in line 14, projects greater than 20 surface acres or recreational facilities. [LB487]

MICK MINES: Right. [LB487]

SENATOR CARLSON: What's...can you give me an example of a recreational facility that's...because one is a body of water, and what's a recreational facility that wouldn't be a body of water in this context? [LB487]

MICK MINES: Well these bonds are water quality and flood control bonds. That's the way LB160 described those bonds and the contention is those bonds should be used for exactly that purpose. Recreational purposes would include trails, playgrounds, and other associated and recreational activities, not necessarily boating for instance. [LB487]

SENATOR CARLSON: Okay. Thank you. [LB487]

SENATOR LANGEMEIER: Are there any other questions? Senator Mines, I do have one. [LB487]

MICK MINES: Yes. [LB487]

SENATOR LANGEMEIER: You talked about Douglas County not having a say with the 3-mile jurisdiction around Omaha and that's just going to grow. [LB487]

MIKE MINES: Um-hum. [LB487]

SENATOR LANGEMEIER: Over time, that's going to grow and pretty soon you're going to have Omaha taking up all of Douglas County. What kind of bill are we going to see when we have Douglas County as Omaha, we don't necessarily have Douglas County

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anymore. [LB487]

MICK MINES: Well this bill would give authorities to the city of Omaha as well. Cities are precluded...cities in the Papio NRD are precluded from zoning for those water structures. And as you'll hear testimony behind me, the county certainly doesn't...they have zoning authority now, but it's only in exclusive areas. Cities were never even considered in this process and we like that the bill adds in municipalities as well. So as a city grows and their zoning area continues to grow, at least the city would have zoning authority over these structures if they so choose. And the language is permissive that they "may" object to the construction of one of these structures, it's not they "shall". So I guess that's the safeguard, is as the three mile continues to expand, they would indeed have zoning authority where they don't even have it right now. [LB487]

SENATOR LANGEMEIER: Any other questions? [LB487]

MICK MINES: And I guess I would question why a city wouldn't want zoning juris...the authority to control zoning for whatever structure it might be whether it's a water-quality basin or a reservoir or tracts of housing or whatever, why a city wouldn't want that authority given the option. [LB487]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much for your testimony. [LB487]

MICK MINES: Thank you, Senator. [LB487]

SENATOR LANGEMEIER: Further testimony in support of LB487, proponents. [LB487]

SHAWN MELOTZ: (Exhibit 13) Good afternoon, Chairman Langemeier, and members of the Natural Resources Committee. My name is Shawn Melotz, S-h-a-w-n M-e-l-o-t-z. I am the current president of the Papio Valley Preservation Association which is a grass-roots organization whose primary mission is protecting the natural resources of the Papio Valley located in Sarpy, Douglas, and Washington Counties. We have over...our current membership is over 600 members and hopefully growing. I'm honored to come before you and testify in support of LB487 and respectfully ask this committee to advance this bill to the floor. I'd like to thank Senator Karpisek for recognizing the need to introduce this bill. But before addressing the merits of LB487, what we first must understand what this bill is not. LB487 does not prohibit the construction of dams and it does not prohibit the use of bonds for such construction. LB487 is not about dams, it's not about flood control, and it's not about retribution. If this bill were about these issues, I would be testifying that studies report the estimated taxpayer cost of building the 29 dams is over \$1 billion compared to the cost to remove all properties in the hundred-year floodplain at \$460 million versus minimal cost with the implementation of low-impact development measures. In addition, I would be testifying that common sense

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would not compare potential flooding of a creek system to the flooding caused by rivers cresting, dams overflowing, and levies breaching in eastern Iowa. No, these are not the reason why we are here today. Instead, we need to understand what this bill does represent. The PVPA believes LB487 restores the checks and balances senators intended when they approved the language of LB160 granting county boards the option to pass a resolution restricting the use of bonds for the construction of dams within their zoning jurisdictions. During the LB160 debate and during the compromising process, as I will call it, I had the privilege of representing the PVPA here in Lincoln. During the course of the discussions, we voiced our concern to the senators, to senators' aides, as well as the lobbyists involved that the word "exclusive" would diminish the safeguards afforded to county boards when the Papio NRD board voted to issue bonds for a project. In fact, we, me and three other members of the PVPA, met with Hal Daub, the registered lobbyist for the Papio-Missouri River NRD to discuss the impact of the phrase "exclusive zoning jurisdiction." Mr. Daub assured us in our meeting that the word "exclusive" would not hinder a county board's ability to pass a resolution for any reservoir or water quality project within the county's boundaries. Even with Mr. Daub's assurances, we continued to be skeptical and continued to express our concerns. Unfortunately, the term "exclusive" was included in the final draft of LB160. It was this summer when our concerns were validated. In August, the Douglas County Board of Commissioners considered a resolution with respect to a Papio NRD reservoir project. Ironically parts of this project were in Douglas County zoning jurisdiction, however, the project was not within their exclusive zoning jurisdiction. Because of the word "exclusive", the county board was powerless to protect their constituents. We quickly discovered the county vote compromise, as it was termed, does not provide the protections promised during the drafting of LB160. The removal of the term "exclusive" through LB487 will incorporate the safeguards that we were assured. On behalf of the PVPA, landowners, and taxpayers, I respectfully request this committee to advance LB487 to the floor. Thank you. [LB487]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Smith. [LB487]

SENATOR SMITH: Thank you, Senator Langemeier. Ms. Melotz, what's the exclusive zoning and the zoning example you were just giving, can you...? [LB487]

SHAWN MELOTZ: Yes, there was a project on 168th and Fort, it is the NRD's project Dam Site 15A. [LB487]

SENATOR SMITH: Okay. All right. So it was in that 3-mile area, extended area outside of Omaha? [LB487]

SHAWN MELOTZ: I believe there were parts of that structure in different areas of zoning, whether it be the city's, the county's. [LB487]

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SENATOR SMITH: But within Douglas County? [LB487]

SHAWN MELOTZ: It was in Douglas County; and I believe it was within the 3-mile gray zone, so to speak. [LB487]

SENATOR SMITH: All right. Thank you. [LB487]

SHAWN MELOTZ: Um-hum. I would also like to respond to Senator Carlson's question of Mr. Mines. I believe those changes that you referred to were part of what Bill Drafters felt were needed in the bill. The "shall" term is probably a legal issue that is there to put a little more power into the county's ability to pass a resolution. [LB487]

SENATOR CARLSON: Well the reason I asked it is because the first word of the sentence is "no proceeds" and then...so "no" to me wouldn't matter if it said "may" or "shall", but I'm not arguing the point, I just...was interesting that there was a change of words there. [LB487]

SHAWN MELOTZ: Yeah. And I personally feel the key to this is not anything other than it gives the counties the protections. They don't have to do the resolution; they don't...they can let the bonding continue, but it just gives them what we were told, or felt we were told, that they should have. And from my understanding during the process, it was the county vote or the vote of the people and those were kind of our, I shouldn't say choices, but those were a couple of the options that were presented to our organization during this session. And we just are asking to have those checks and balances put in place. Thank you. [LB487]

SENATOR LANGEMEIER: Very good. Seeing no other questions, thank you very much for your testimony. Further testimony in support of LB487. Welcome. [LB487]

JEFF QUIST: Good afternoon. Good afternoon, Chairman, Chairman Langemeier and committee members. For the record my name is Jeff Quist, it's spelled J-e-f-f Q-u-i-s-t. I'm here to testify in support of LB487. I'm in my third term on the Washington County board of supervisors. I've been sent here to represent the county board on this issue. Washington County has long been involved in equitable solutions to water quality and quantity in Washington County including the Papio Creek Watershed. The county has increased runoff requirements for new housing developments; we have encouraged terracing, no-till, and other conservation practices on the farm ground of the county's commodities producers. Washington County has difficulty with the exclusive language in the current legislation. When this issues was discussed several years ago, as has been previously mentioned, LB160, the county was attempting to track and comment on the processes and the compromises as they were proposed. As happens in many cases that come before this body, changes and amendments happen at a rapid pace as a

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session comes to an end. Washington County was not aware of the ramification of this single word in the context of the overall legislation. As we understand the current law, it takes away any local control of any large flood control projects that would be above the 20 acre size that was discussed earlier, if they...it takes away our control if they are in more than one jurisdiction. As an example, if they cross into both Washington and Douglas County lines, the counties, this results in the lack of due process for either of the counties. In effect, this allows the NRD to override any county zoning land use and planning currently in Washington County. Local control has been lost, plain and simple. LB160 took away our zoning authority in instances of overlapping zoning jurisdictions and that's just plain wrong. This will result in hundreds of thousands of dollars per year in lost revenue used to support our schools, roads, and law enforcement. Some proposals presented for this watershed indicate tens of millions of dollars in road improvements, and a large increase in law enforcement responsibilities. We fear these costs will fall back onto the Washington County taxpayers. This equates to an unfunded expense to Washington County. In a time of tight budgets, and the elimination of state aid to counties which now for Washington County is over \$100,000, this becomes a massive tax revenue shortfall for our county. This has the potential to exponentially increase the tax asking dollars to our property owners at a time of a sluggish economy and with no local control or protections. The provisions in the current legislation presents spending that would be a budget buster in light of our resources. For these reasons we're hopeful you will support our position in LB487. If you have any questions, I'm prepared to try to address them. [LB487]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, thank you very much for your testimony. [LB487]

JEFF QUIST: (Exhibit 14) What I do have here is some maps that kind of indicate how the zoning authorities are between the entities that are involved in this Papio watershed. So I'll pass those out so you have kind of a reference for future. [LB487]

SENATOR LANGEMEIER: Sounds good. Thank you very much. Welcome. [LB487]

MARY JOHNSON: Good afternoon. Hi there, my name is Mary Johnson, M-a-r-y J-o-h-n-s-o-n. I am the current mayor of Bennington, Nebraska. I am here to testify as a concerned citizen. I believe the citizens of Bennington should have and say...should have to say no to or say how to their...how will their taxes be spent. LB487 provides representation to the citizens of Bennington. Provisions of this bill to some extent are similar to the debate...are similar to the debate on LB81, Omaha's wheel tax bill. I think my...I thank my representative, Senator McCoy, for the closing...or the opposing taxation without representation. LB487 will leave no doubt that my fellow citizens of Bennington will be provided the mechanism for the proper representation. Thank you. [LB487]

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SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, thank you very much for your testimony, appreciate it. [LB487]

MARY JOHNSON: Thank you. [LB487]

SENATOR LANGEMEIER: Further testimony in support of LB487. [LB487]

SANDRA FOURNIER: (Exhibits 15 and 16) Good afternoon, my name is Sandra Fournier, S-a-n-d-r-a F-o-u-r-n-i-e-r. Good afternoon, Chairman Langemeier and members of the Natural Resources Committee. I come before you today to testify in support of LB487. I am a citizen of Douglas County, but I am here today to testify on behalf of fellow citizens in Douglas County and for whom I have received letters of support to present to you today. Additional letters of support across our state are being sent to Chairman Langemeier via e-mail. I apologize to Chairman Langemeier in advance for the possible flood of e-mails he may receive. [LB487]

SENATOR LANGEMEIER: I'm used to it. (Laughter) [LB487]

SANDRA FOURNIER: I would like to thank Senator Karpisek for his supporting this bill and bringing it before the Natural Resources Committee on behalf of the citizens of Nebraska. As I mentioned, I'm a citizen of Douglas County. I am also a business owner and property owner of Douglas County as well. I support LB487 because it introduces amendments to the current statutes so that the local representation can be given back to the people. As it was mentioned in previous testimony, the current statute prohibits county government from passing a resolution unless a flood protection or water quality project in its exclusive jurisdiction. Therefore, I as a citizen who is located in both Douglas County and in the city of Omaha's 3-mile extra territorial zoning jurisdiction or ETJ, lack representation in matters of public policy regarding flood protection and water quality projects and in the issuance of bonds for such projects. As a former researcher in agricultural sciences and natural resources I do appreciate the importance of water quality and water management projects. Additionally as a project management professional, I understand that management of...managing projects of significant scope, risks, and technical complexity has many challengers. However, the one aspect that will always determine the success of a project is how well stakeholders' expectations are managed. Without proper engagement of the stakeholders, stakeholders' concerns are not addressed and their success criteria are not included, leaving a stakeholder with unmet expectations. It has been our experience that stakeholders have not been properly engaged in water projects. Two specific examples are in relationship to Dam Site 15A in the Omaha/Bennington area. I personally attended two of the public visioning workshops held by the Papio-Missouri River Natural Resource District in which neither meeting recognized citizens at stakeholders, nor did they address stakeholders' concerns and expectations. Furthermore, the audiences were not representative of the stakeholder population. According to the Papio NRD's record, only 66 addresses

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received the notification of the first public visioning workshop. Since these water projects will be funded by general obligation bonds and the tax levies apply to all taxpayers in the Papio NRD, a public hearing would have been a more appropriate forum. The first public visioning workshop was held on June 29, 2010. It was the first time that many of the landowners became aware that their land was going to be taken for recreational lake and housing development. They'd had no prior engagement in the planning or decision-making process. When a landowner had asked what would happen if she chose not to sell, it was explained by the Papio NRD's assistant general manager, Marlin Peterman, that the Papio NRD could exercise its power of eminent domain. After this first workshop I went before the Douglas County board on July 13, 2010, to ask for its help on behalf of the citizens and landowners in my area. I was told by the board that its hands were tied because Dam Site 15A does not reside in the exclusive jurisdiction of Douglas County. We felt helpless but continued to access what rights we may have to protect our interests. The second workshop was held on August 26, 2010. This workshop was a second attempt by the Papio NRD to get input on recreational areas around the proposed recreational lake. Citizens, stakeholders still had unaddressed questions which is why less...such as, why less costly and equally affective alternatives were not being pursued. We were told that this was because the partnership, the Papillion Creek Watershed Partnership, decided on the recreational lake. When we asked Marty Grate of the city of Omaha the names of the elected officials...who were the elected officials, he referred to it in his...who he referred to in his presentation as the partnership, he replied: I don't remember. Since Douglas County had withdrew from the Papio Creek Watershed Partnership several years ago, this leaves Douglas County residents without representation. More importantly, the inclusion of "exclusive" in the statute leaves Douglas County board without the authority to represent its people. The passing of LB487 would remedy this deficiency in the statute so that democracy in these matters can be restores. I thank you for the opportunity to hear my testimony on behalf of my fellow citizens and I respectfully request this committee to advance LB487 to the floor. I would be happy to answer any of your questions. [LB487]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Dubas. [LB487]

SENATOR DUBAS: Thank you, Senator Langemeier. So at any time on this proposed project was there a public hearing, or there was just these visioning meetings? [LB487]

SANDRA FOURNIER: I was not aware of anything other than receiving this postcard in mid-June a couple of weeks before the public visioning workshop. [LB487]

SENATOR DUBAS: Did you have land that was going to be impacted? [LB487]

SANDRA FOURNIER: I'm a property owner; I don't have land that would be impacted, but my...I would be impacted in multiple ways by...I would be taxed for the additional

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roads in the recreational areas and so forth. And the fact that LB160 in 2009 took my ability to vote on these bonds, unfortunately. [LB487]

SENATOR DUBAS: Okay, thank you. [LB487]

SANDRA FOURNIER: Thank you. [LB487]

SENATOR LANGEMEIER: Senator Carlson. Oh, not done yet. [LB487]

SANDRA FOURNIER: Sorry. [LB487]

SENATOR CARLSON: Thank you, Senator Langemeier. As I...you used Dam Site 15A as an example and as I look at that on the map here, it's in Douglas County, it's I don't know how many miles from Bennington, but Douglas County, it would look to me like Douglas County is the likely political subdivision or political entity to whom this request should go. I'm having trouble understanding on Dam Site 15A, how would the city council, village board, well, it says effected, so I'm not sure what effected means because how far do you go for effected? [LB487]

SANDRA FOURNIER: I'm not really sure. I mean that's something that the county boards and the NRD would have to answer. I know that I was told that my area in the tip of that Dam Site 15A that starts at 168th and Fort is in the 3-mile zoning jurisdiction of Omaha and therefore not in the exclusive zoning jurisdiction of Douglas County. [LB487]

SENATOR CARLSON: Okay. Thank you. [LB487]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you, very good. [LB487]

SANDRA FOURNIER: Thank you. [LB487]

SENATOR LANGEMEIER: Further testimony in support of LB487. Welcome. [LB487]

MIKE BOYLE: (Exhibits 17 and 18) Thank you. Good afternoon. My name is Mike Boyle, M-i-k-e B-o-y-l-e. I'm a member of the Douglas County Board of Commissioners and I have been sent here today by unanimous vote of the Douglas County Board of Commissioners, urban and rural interests alike here to support LB487. A couple of comments I would like to make about the partnership that's been referred to and I'm sure will be talked about again. Douglas County belonged and joined and paid dues to this partnership. As the meetings went on, I attended several of them and my recollection is I was the only elected official in the room of some 20 to 25 people, bureaucrats representing the planning departments of various communities that were in

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favor. As time went on, when we first joined the partnership there was a glaring organization missing. It was Washington County. And I was concerned. I thought now why aren't they in the deal? You know, why aren't they participating in this partnership with us and the other counties? You know, we're all in this together on that district. So we decided, I talked to Clare Duda who is a farmer on the board and Clare didn't know either. So the two of us got a hold of our friends to the north in Washington County and met with them and discovered after talking to them that we were wrong in what we were supporting and that they were the ones who were right. They had a correct position. The taking of farm land for recreational lakes and so forth is a big issue and a serious one particularly involving Washington County and other rural areas that could go across the state for that matter. As we talked to them more we discovered that they had experts who talked about something called low-impact development which is handling the water as it comes down. It doesn't build dams to store up water that overflows in heavy rains. It handles the water as it occurs. And the city of Omaha, when I was mayor, did that on several occasions. There's a soccer field right next to the Missouri River, Dodge Park in Omaha, and I used to get complaints when I was mayor because it would be flooded and it was never a soccer field, it was a dry dam. It was built to take water and that's what it did. And it was the incidental use was the soccer field. And we had the same thing out at Tranquility Park at 120th and Maple Street. People would call and complain because the soccer games had to be cancelled and we would tell them it's really not a soccer field, it's a dry dam. And it's a very appropriate way to handle this kind of water control. That's what Washington County reminded us. So we joined with our rural friends and decided that this was a better approach. And as we did, we discovered that we had other communities like Bennington and others with us. So we pulled out of this partnership because we weren't making any headway at all. It was...we were simply outnumbered. So we tried to work with the Legislature. LB160 came up. We knew this exclusive was a real tough word for us to deal with. We felt it was destructive and one that would prevent us from participating and it has. Ms. Fournier came to me, I believe, first and I represent an area down in the Old Market in south Omaha so we don't have those kinds of interests supposedly that she would have on eminent domain for taking for lakes and so forth. But she came to us and...so Mary Ann Borgeson, who is the chair of the board, and she wrote a letter which has been passed out to you, to Mr. Winkler who is the present head of the NRD. And I might add, we have a number of interlocal agreements with the NRD and we work with them very well, except for this one big issue. And we got a response that answers your question, Senator Carlson, that this word "exclusive" prevents us from having a say in Dam Site 15A. So the next...I do want to mention that the only dam that we see, and it's on that...it may be on that map that I passed out, up in the far left corner at the top of the...that's, I think, the dam there is the one that's the small pink areas, that's the one area that Douglas County has exclusive interest and that dam will be built 29 years from today. So it means I have to run and be re-elected, I don't know, another six or seven times. So it is a big issue. We need your help. The people in our communities deserve a say. You would want it for your districts. You wouldn't want this to happen to you. Please help us and we hope that you will

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support LB487. [LB487]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Smith. [LB487]

SENATOR SMITH: Thank you, Senator Langemeier. [LB487]

MIKE BOYLE: Senator. [LB487]

SENATOR SMITH: Hello, Mr. Boyle. [LB487]

MIKE BOYLE: How are you, Senator? [LB487]

SENATOR SMITH: A quick question, Dam Site 15A is that within the exclusive zoning jurisdiction of Douglas County? [LB487]

MIKE BOYLE: No, it is not. [LB487]

SENATOR SMITH: It's not at all. [LB487]

MIKE BOYLE: There is a letter, the second page, from Mr. Winkler shows that...states that it is simply not in the exclusive jurisdiction, it's in his one-page letter, the first paragraph. It's about halfway down that first...second paragraph, I guess. [LB487]

SENATOR SMITH: Okay. All right. Okay, thank you. [LB487]

MIKE BOYLE: Um-hum. [LB487]

SENATOR LANGEMEIER: Senator Dubas. [LB487]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Commissioner Boyle. Would there be any other issues or other land uses that this could be a problem with? I mean, if it's not in your exclusive jurisdiction, would you have problems having any involvement with zoning issues? [LB487]

MIKE BOYLE: I'm not sure I understand your question. [LB487]

SENATOR DUBAS: I know I'm not phrasing it the way I mean it. [LB487]

MIKE BOYLE: We do not have a lot of territory left. We have about 51 square miles which isn't much and Omaha will come and get us before it's over and we know that. But it's the larger issue of the smaller communities as well that really are probably going to be hurt worse than we are. We're concerned very much about the cost. It does

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approach a billion dollars in property tax money from what I understand. And so we feel like we owe the public a hearing before us when they...they say, what are you doing about this? This is in your jurisdiction. Is it or is it not? It's in Douglas County, how come you can't do something? [LB487]

SENATOR DUBAS: So if it's not...so I'm assuming...look at the map here so I'm asking the question the way I mean it. So this would fall in the city of Omaha's extra zoning jurisdiction, is that correct? [LB487]

MIKE BOYLE: The second map that I gave you that has two little pink areas... [LB487]

SENATOR DUBAS: Uh-huh. [LB487]

MIKE BOYLE: ...yes, the area that...inside here, you see a little pink area up here, everything around here is the 3-mile limit of the city of Omaha. There are towns in there, Bennington, Waterloo, Valley, that have their own jurisdiction as well. And so this is the county line between Douglas and Sarpy and this is Washington and Douglas. So all of this area here is controlled by the city of Omaha with the exception of those towns that I mentioned. And this is Douglas County's piece of the pie. [LB487]

SENATOR DUBAS: Okay. That clarified it for me. Thank you very much. [LB487]

MIKE BOYLE: Um-hum. [LB487]

SENATOR LANGEMEIER: Senator Carlson. [LB487]

SENATOR CARLSON: Thank you, Senator Langemeier. On your map here, if you take Dam site 15, tell me how many political subdivisions then according to LB487 should have the privilege of registering their concern or their opposition. [LB487]

MIKE BOYLE: I'd be guessing. The resource district could answer better than I, but I believe it would be two. I believe it would be the city of Omaha and Douglas County. [LB487]

SENATOR CARLSON: And not Bennington? [LB487]

MIKE BOYLE: I don't believe so. I think Bennington is just to the east; its jurisdiction, you'll see that circle, that shape. The mayor is here, she may know whether or not it would...they would have a say or not, but I believe it's only Omaha and Douglas County. [LB487]

SENATOR CARLSON: Okay. All right. Thank you. [LB487]

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MIKE BOYLE: Thank you. [LB487]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much, appreciate it. [LB487]

MIKE BOYLE: Thank you very much. [LB487]

SENATOR LANGEMEIER: Further testimony in support of LB487. Welcome. [LB487]

MARIAN MAAS: Good afternoon. My name is Marian Maas, M-a-r-i-a-n, Maas, M-a-a-s. I live in Bellevue, Nebraska. I'm here as a concerned citizen. I'm here in support of LB487. This bill is the democratic process. The people who live where these potential structures might be built, as well as neighbors and nearby local communities need to have a voice. They need to have a say in whether or not they find these to be beneficial to their village or town or county. It is the local community citizens who will eventually have to pay the additional tax dollars for the new associated costs that come with these structures such as road maintenance and servicing and possible social services. Eventually ownership of these structures is often transferred to the local jurisdiction. In these days of tight budgets for towns and counties this could bring an undue, unmanageable financial load to these smaller communities, and therefore these folks need to be able to vote on proposed bonds. I realize that LB487 is not about dams, but if I may, and as a biologist, I'd like to say a word about dams. The use of dams as a means for flood control is being examined intensely throughout the country. Ecologists, fisheries biologists, and other science experts have spoken for years of the huge impact that channelizing, straightening, and damming a river has on the ecosystem of that river and its rivering corridor. This greatly affects, even eliminates the ecosystem services that could potentially be offered through boating, wading, swimming, fishing, camping, picnicking, all of the different potential recreational efforts that could be done along a river and the natural heritage value also for future generations. This can also be referred to as the public trust. The Missouri River Recovery Implementation Committee, which is a long name, is a congressionally authorized basin-wide committee of which I am a member and it is tasked with guiding the U.S. Army Corps of Engineers with restoration alternatives for the highly modified and dammed Missouri River. Some of the injuries from dams to a river system such as the Missouri and many other rivers are: number one, the fish and animal species which originally evolved in this river are lost when it becomes a lake. Number two, fish species lose the ability to travel upstream to spawn and downstream for deeper water in which to winter over. And believe it or not, there are a number of Missouri River...or a number of Platte River, Missouri River-type fish, big river fish that do move up the Papio. Number three, aquatic communities are unable to move up and down and get out of the way of toxins or un...poor conditions, I should say, and thus the genetics become fragmented. So fish that are upstream of a dam become separated from the fish downstream of a dam and even though this may not figure in, in most people's thinking, the genetics of the isolated fish populations become

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less robust and eventually weaken and are lost. And lastly, the flows of a river are much more controlled when dams are put into place. Spring rises are often eliminated totally. It is a constant flow. The triggering devices from higher rises, spring rises, are lost and that is a triggering device for spawning for many native fish. Recreation potential for along the river as a quality of life element is also lost and we have rivers running through the Omaha area and streams that are not giving full potential for quality of life. And I just wanted to mention, I just read that Iowa has announced its plan for dam mitigation which offers alternatives including the removal of dams. It states that some dams actually contribute to flooding. And the Iowa DNR river programs' coordinators stated, "we've learned that dams have effects far beyond their location. And as a new generation learns to fish and boat on our rivers, what we do with these dams is important." So in closing I would like to say that LB487 lets citizens who will be most affected to have a voice. It is the fair and right thing to do. And I encourage you to support LB487. Thank you very much. [LB487]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, thank you very much, well done. [LB487]

MARIAN MAAS: You bet. Thanks. [LB487]

SENATOR LANGEMEIER: Further testimony in support of LB487. Welcome. [LB487]

KEVIN PROPST: (Exhibit 19) Good afternoon, Chairman Langemeier, and members of the Natural Resources Committee. For the record my name is Kevin Propst, that is spelled K-e-v-i-n P-r-o-p-s-t. I'm the chairman of the village of Washington board of trustees and I'm here on their behalf. On February 1, 2011, our board unanimously passed a resolution to support LB487. The trustees feel this is an important piece of legislation since our jurisdiction overlaps with three others. Those jurisdictions are Washington County, Douglas County, and the city of Bennington. As you can see on the map, actually it's not quite correct, we do go into Washington County with our jurisdiction so there's a little bit of a misprint on the map. This is why the word "exclusive" becomes so troublesome for not only our board, but for our constituents. A project that exists in two, three, or four jurisdictions...or a project could exist in two, three, or four jurisdictions thus none of the local boards could meet the terms...the exclusive term. I'm a small business owner and I'm able to tune in and watch the Legislature quite often. And I watch the floor debates; I watch committee hearings, and there's three words that I hear over and over again. I've heard them here today already. Those three words are fairness and local control. That's exactly what LB487 is about, nothing more, nothing less. I'd like to point out that LB487 still puts the burden on counties, villages and municipalities, not the NRD. The local jurisdiction affected is required to pass the resolution to oppose the project and notify the NRD of the decision in a timely manner. They can chose not to oppose a project if it does not affect...does not...is not unfavorable to them. One of the other things I'd like to point out from

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past...from previous testimony is that out of the 29 proposed dams that the NRD has, only one lies within any exclusive jurisdiction. None of the others do; they're all in overlapping jurisdictions. The village of Washington appreciates your time and attention the committee gives to this bill and we'd ask you to advance it to the floor. And I'd like to entertain any questions at this time. [LB487]

SENATOR LANGEMEIER: Are there any questions? Seeing none, thank you very much. [LB487]

KEVIN PROPST: Thank you. [LB487]

SENATOR LANGEMEIER: (Exhibits 20, 21, and 22) Well done. Further testimony in support. Seeing no other testifiers. We do have a number of letters. We have one from Clifford Morrow from the Burt County Board of Supervisors. We have one from Mary Johnson, the Chairman of the Washington County Board of Supervisors. And we have one from Linda Duckworth of Omaha in support of LB487. That moves us on to testifiers in opposition, those who wish to testify in opposition of LB487. Welcome. [LB487]

JOHN WINKLER: (Exhibits 23, 24, and 25) Dear Chairman Langemeier and members of the Natural Resources Committee, my name is John Winkler, J-o-h-n W-i-n-k-l-e-r, and I'm the general manager of the Papio-Missouri River Natural Resources District, as well as I am testifying on behalf of the Nebraska Association of Resource Districts. I'm testifying today in opposition to LB487. You've heard less than two years ago the LB160 authorized limited bonding authority within the existing levy limits of the Papio NRD for flood protection and water quality enhancement projects in the district. LB160 was the result of many years of hearings, debate and consideration of alternative legislative language. The final bill contained numerous concessions designed to address the concerns of opponents. These concessions included limitations on the use of the bonds with regard to flood control reservoir size, public access to projects, restrictions on the use of eminent domain, and even a requirement for approval by county boards over projects within the county board's exclusive zoning jurisdiction. Despite all of this, LB487 now seeks to amend the bonding authority granted just two sessions ago, and perhaps make the process unusable. We view this legislation as effectively undermining the compromises made in good faith by the Papio NRD during consideration of LB160. The provisions of LB487 would likely result in a situation where any proposed project utilizing flood control and water quality enhancements bonds will be delayed and/or made the subject of political pressure through county board or city councils. Furthermore, this bill effectively makes city councils and county boards duplicate decision-makers as to flood control and water quality projects. There's already an elected NRD board charged with this function, elected throughout the district. More importantly, water quality and flood control projects are within the particular expertise of natural resources districts, not cities and counties. We have the technical support and resources needed to evaluate the risks to the public, as well as the feasibility of

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potential methods to deal with those risks on a basin-wide basis, rather than from the limited perspective of one local city council or county board. As we all know, water knows no political boundaries and that's why the NRDs were formed to address these issues on a basin-wide basis. Finally, given the likelihood of the elimination of state aid to NRDs, it is all the more important to retain the flexibility the district has to address serious flood control issues facing our district, as well as the challenges posed by federal clean water and levee certification mandates by the federal government. LB487 would undermine and diminish that flexibility. On behalf of the Papio-Missouri NRD and the Nebraska Association of Resource Districts, I respectfully ask that the committee indefinitely postpone LB487. I would like to entertain any questions. [LB487]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Winkler. We'll start with Senator Carlson. [LB487]

SENATOR CARLSON: Thank you, Senator Langemeier. John, as you look at the bill and the word "exclusive", it does bother me that we had a testifier indicating that only 1 of 29 proposed dam sites would fit this exclusive zoning. [LB487]

JOHN WINKLER: Um-hum. [LB487]

SENATOR CARLSON: So was...I don't remember this aspect, spending a lot of time on it with LB160. [LB487]

JOHN WINKLER: Could I clarify the history there? That language was particularly of interest to the cities and the partnership because of the fact that they do have...for example, the city of Omaha has a 3-mile exclusive zoning jurisdiction outside of the city limits. The city of Omaha will eventually grow into that. And the cities have an interest in protecting what type of development occurs there. That's why the Legislature granted cities and villages and towns that extra territorial jurisdiction. The interest of the city is they don't want the counties making decisions for something that will occur within eventually the city limits. And so that is very important. For example, the city of Omaha opposes this. You'll hear from the city of Papillion; they have a very keen interest in protecting the zoning that occurs in that area. That's why that language was very important and purposely put into the bill to protect those interests. And at the same time meeting, for example, Washington County's interest in making sure that no reservoirs were built in their particular county. That was the history and the compromise. [LB487]

SENATOR CARLSON: Okay. And I think I recall from the previous discussions in this area that 29, or something close to it, that was the number that was discussed about potential dam sites. [LB487]

JOHN WINKLER: Right, right. [LB487]

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SENATOR CARLSON: So, it wouldn't be your fault, it would be my fault, but when this was passed, did you fully understand that only 1 out of 29 would fall into the exclusive zoning? [LB487]

JOHN WINKLER: Yes. And another protection to expand on, another protection that the cities and villages would have, when we develop a, for example, flood control reservoir project, Dam Site 15A is another good example, we have an interlocal agreement with the city; because eventually a city will incorporate that extra territory and they will take over the maintenance of that project. So we have an interlocal agreement that spells out financial and maintenance responsibilities for each of our projects with the corresponding entity, for example city or village, that we would be building this project in. So that's another avenue that they have. Besides, they're being represented by an elected NRD board. And there's their other avenue. So there's several different avenues for citizens and cities and villages to express their either pleasure or displeasure with the project. Those are already in place. So if the city has a particular issue with a project, they could refuse to sign the interlocal agreement which would effectively kill the project potentially. [LB487]

SENATOR CARLSON: Okay. Thanks. [LB487]

SENATOR LANGEMEIER: Senator Dubas. [LB487]

SENATOR DUBAS: Thank you very much, Senator Langemeier. Mr. Winkler, are there any other times where the NRD would interact with the local zoning jurisdiction on any other kinds of projects? [LB487]

JOHN WINKLER: Levee projects; also, we review for the communities developments and flood plains or subdivisions, so we interact with the zoning authorities and local governments on a daily basis. [LB487]

SENATOR DUBAS: So is there any time that their decisions could stop what you're trying to do? [LB487]

JOHN WINKLER: I would think through the interlocal agreement process they really could say, you know, we will not accept responsibility for this project in the future if we annex it, we don't want anything to do...and again, the goal of our board is not to build these projects where they are not wanted. As you can see from the study, there is a serious threat in the Papillion Creek Watershed for flooding. The issue with the exclusive zoning jurisdiction was as well a particular entity, for example Douglas County, Washington County, may chose to control flooding or stormwater in a certain way. The issue with that is, do not...do not have...they should not have the ability to dictate or control how the city of Omaha wants to control it or the city of Papillion or Bellevue or Sarpy County, who is very supportive of the partnership plan. The

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partnership plan was drafted by appointed people by those particular subdivisions. They weren't elected officials, but they were told to attend those meetings. That partnership plan, watershed management plan, has been adopted and passed by the partnership members, by those elected bodies who reviewed the plan and voted in a democratic process to implement this particular plan. [LB487]

SENATOR DUBAS: Okay, so we're talking about projects that fall within, you know, not in any exclusive jurisdiction. [LB487]

JOHN WINKLER: Correct. [LB487]

SENATOR DUBAS: So what recourse does the average citizen have to come to a public hearing or interject their...? [LB487]

JOHN WINKLER: They're represented by a member of our board, wherever they live in the district. They're also represented by...if they're in a city, a city councilman, the mayor, so they're...state senators, I mean they're represented by a number of folks who have the ability to start that discussion and start that approval process; or disapproval process. [LB487]

SENATOR DUBAS: So, but outside of contacting a representative at some level of government, did they have any opportunity to directly come in and, like I said, at a public hearing? [LB487]

JOHN WINKLER: And comment? We have public meetings, stakeholder meetings, and that's kind of a catchall term. So yeah, they have ability to comment. Now does that change the plan? That's to be seen. But there is abilities to, besides the public process, to send letters, to attend stakeholder meetings, planning meetings, all of those things. Dam Site 15A is a number of years away and so we're already starting those meeting to try to educate the public, and the particular people in the area, about what the project is about. [LB487]

SENATOR DUBAS: All right, thank you. [LB487]

SENATOR LANGEMEIER: Are there any other questions? Senator Smith. [LB487]

SENATOR SMITH: Thank you, Senator Langemeier. Mr. Winkler, on, and you touched on it a little bit with Senator Dubas, everyone that's testified testified here in support of this bill that are property owners and perhaps outside of the exclusive zoning territory of Omaha. [LB487]

JOHN WINKLER: Um-hum. [LB487]

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SENATOR SMITH: They still are represented by an elected member of the NRD.
[LB487]

JOHN WINKLER: That's correct. [LB487]

SENATOR SMITH: And I've heard the discussion be, talking about local control, local representation, having representation, if they're going to be taxed and so on, and it seems like what we have here is a case where we have three forms of local control, or local government, that are overlaying and none of them are perfect where they perfectly line up. But in all cases, there's access to that local government. [LB487]

JOHN WINKLER: And I think that you're correct, Senator, and I think the founding principles of the NRDs was local control; local control over natural resources issues. That was one of the founding principles of our districts. And that doesn't change with flood control, or levies, or anything of that nature. [LB487]

SENATOR SMITH: And I'm going to put you on the spot a little bit, but what I see, if you're putting it back into the hands of two or three local governments to reconcile differences, you may have opposing political views among those local governments, possibly a difference...zoning plans or other types of strategic plans that could really hinder the objectives of flood control and the NRD. So, do you...can you tell me of any examples you might see that...where there could be conflict between the local governments in making strong decisions here? [LB487]

JOHN WINKLER: I think, you know, heard from testifiers from Douglas County and Washington County, again, that we don't might necessarily agree on the technique to control flooding. There may be even a question of some folks is there even a flooding issue, which I think we've demonstrated clearly and will continue to demonstrate clearly. I think with any issue, Senator, when you're dealing with different public bodies you're going to have varying degrees of opinion and conflict. As a specific project like Dam Site 15A, yes, it probably is. And that's why I think one of the reasons that the language was crafted so carefully is to help eliminate that potential conflict to the least, you know, because now you...on 15A you've got two bodies deciding if this should be build, the city of Omaha and the NRD. And the NRD's board is kind of left out on some of the other testimony, you know, is it Douglas County and the city of Omaha that should be making the decisions? Well you left somebody out of the mix. You left the NRD board who are our elected representatives. And the idea was, should those folks in those areas make decisions which have a public safety and health impact in the city of Papillion, and Bellevue, and Sarpy County? And so another reason why those...that particular wording was chosen very carefully to help project those interests as well. Do we have conflict? Yes. [LB487]

SENATOR SMITH: Okay. Was it a...news to you, heard some testimony here in support

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of the bill, some people felt as if they were not represented well or included well in the public process for their voices to be heard. Was that news to you? [LB487]

JOHN WINKLER: We hear that on a number of occasions and we can always do better to be inclusive. When you advertise for a public stakeholders, again that's a...you know, who is a stakeholder. When you advertise for those and you send letters, you try to get the people in the immediate vicinity. Now I could say I'm a stakeholder in Bellevue, but when this reservoir gets built in northern Douglas County because it's going to have an impact on my property and what occurs in my community, so we do advertising, and we try to put notices in the newspaper and we try to go that...and post them on our Web page. Is there a certain responsibility for the citizens to try and find...yes, there is, but is there certain responsibility for us to do a better job in getting the word out that these meetings are occurring? Yes, and we can do better to do that. I mean we've heard, you know, we've heard both sides, we've heard, yeah, you've done a good job of getting the word out or you've not done a good job. So we, of course, can always do better. [LB487]

SENATOR SMITH: Would those public meetings have been in the...published in the newspaper for everyone within the Papio... [LB487]

JOHN WINKLER: Typically it's in our...our World-Herald is our publication of choice. [LB487]

SENATOR SMITH: But maybe only those that were in the immediate area. [LB487]

JOHN WINKLER: Would get letters of invite. [LB487]

SENATOR SMITH: Would get letter, okay, I gotcha. All right, thank you. [LB487]

SENATOR LANGEMEIER: Are there any other questions? Senator Carlson. [LB487]

SENATOR CARLSON: Thank you, Senator Langemeier. In looking at this, John, I'm guessing that the Papio-Missouri NRD, you have the most populous NRD in the state. [LB487]

JOHN WINKLER: Correct. [LB487]

SENATOR CARLSON: You probably have the most political subdivisions of any NRD in the state. [LB487]

JOHN WINKLER: Probably. [LB487]

SENATOR CARLSON: And probably by a pretty big margin. [LB487]

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JOHN WINKLER: I would think just in the metro area alone we've got Papillion, and Bellevue, and Ralston, and La Vista, and Omaha, and the counties, and Bennington, and Valley, I mean, we've got...you know, I could go on and on naming them, Gretna. [LB487]

SENATOR CARLSON: So I can see the challenge of trying to keep...not only keep everybody in the loop, but somewhat make everybody happy; it's a difficult task. [LB487]

JOHN WINKLER: Right. And also, you know, for example, a levee project may go through...if we have a levee project, it may go through three or four different zoning jurisdictions. The issue there then is if one of those zoning jurisdictions has the ability to stop that project and the project cannot be completed, then they put the other two or three entities at risk who wanted the project. You can't just cut off a levee at the political boundary line because it's not effective. So a number of our projects would potentially fall in that regard. Cities and villages are very protective, and I think counties as well, of their zoning jurisdictions. It's how they control future growth and it's how they control what their community will look like and the protection of their citizens. And so that language was crafted, again, very carefully to protect those interests. [LB487]

SENATOR CARLSON: Okay, thank you. [LB487]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much, Mr. Winkler. [LB487]

JOHN WINKLER: Thank you, Senator. [LB487]

SENATOR LANGEMEIER: Further testimony in opposition. Come on up, don't be shy. Welcome. [LB487]

MARK STURSMA: (Exhibits 26 and 27) Chairman Langemeier and members of the committee, my name is Mark Stursma and that's spelled M-a-r-k S-t-u-r-s-m-a. I am the planning director and designated floodplain manager for the city of Papillion. I'm also one of the representatives for the city of Papillion on the Papillion Creek Watershed Partnership. I want the record to show that the city of Papillion is opposed to LB487. The city of Papillion is a member of the Papillion Creek Watershed Partnership which adopted a plan to address stormwater quality and reduce the risk of flooding within the watershed. That plan proposes a creation of multiple reservoirs along with other initiatives to achieve its goals. The inclusion of recreational facilities within and around a reservoir is a tiny percentage of the overall project costs of a reservoir, but one that provides valuable entertainment and health amenities to the region. The recreational component of the reservoir also helps to offset the loss of developable ground by increasing the surrounding property values. As such, we fully support the NRD's ability to construct recreational facilities as part of flood control projects funded with bond

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revenue. The city of Papillion also opposes giving veto authority to cities and villages. We are not asking for that authority, certainly not at this time. Some of our concerns are that if an upstream community were to change its mind about how management plan proposes dealing with flooding and stormwater issues and it would veto a project, the downstream communities would suffer. All jurisdictions within a watershed contribute to the problem of increased volume and velocity of stormwater due to development, but it is the downstream communities that are at increased risk of flooding. Another concern is that it seems inappropriate and unnecessary to allow one political entity to veto the projects and programs of another political entity. We have three other reservoirs in our jurisdiction and it's been our experience that any issues that we have with these projects can be worked out through the Interlocal Cooperation Act. Regarding the removal of the word "exclusive" from the description of a county zoning jurisdiction, this would allow a county to veto a reservoir project anywhere within its boundary. This would circumvent the authority of a city or village to regulate development within its own jurisdiction contrary to state law. We certainly have tremendous concern that, in our example, Sarpy County could veto a project within our jurisdiction. I know if we open the door for that on these projects, where would it end? So we're very concerned about that proposed change. I guess in closing I'd like to point out that years of development in the upstream portions of the watershed have resulted in the ever-increasing risk of flooding downstream. The Papillion Creek Watershed Partnership was created because it was understood that everyone within the watershed shared in the responsibility of managing stormwater. There have been ongoing...there has been ongoing activity by individuals and organizations representing, for the most part, upstream portions of the watershed to limit or delay flood prevention projects. We feel this illustrates a disregard for the wellbeing of those affected by their actions. We fully support the use of bond revenue by the NRD to accomplish the goals laid out in the Papillion Creek Watershed Management Plan and are opposed to the amendments proposed by LB487. And with that I'd answer any questions. [LB487]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, thank you very much, well done. [LB487]

MARK STURSMA: Thank you. [LB487]

SENATOR LANGEMEIER: (Exhibits 27, 28, and 29) Further testimony in opposition. Seeing no more, I do have a number of letters. I one from Mayor David Black with the city of Papillion; I have one from Marty Grate from the city of Omaha; and one from Mark Wayne, Sarpy County Administrator in opposition to LB487. Seeing no other testifiers. Neutral, is there anyone that would like to testify in a neutral capacity? Just one? Come on up. Welcome. [LB487]

DOROTHY LANPHIER: (Exhibits 30, 31, and 32) Good afternoon, Senators, and good afternoon, Senator Langemeier. My name is Dorothy Lanphier. I am the current director

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of subdistrict 7 of the Papio-Missouri River NRD board. I'm not speaking for the board. [LB487]

SENATOR LANGEMEIER: Dorothy, can I have you spell your name for me. [LB487]

DOROTHY LANPHIER: I'm sorry, sure, my name is Dorothy Lanphier, it's spelled L-a-n-as in Nancy, P-as in Paul, h-i-e-r. My address is 812 South 51st Street, Omaha. [LB487]

SENATOR LANGEMEIER: Thank you. [LB487]

DOROTHY LANPHIER: Okay, I repeat. I am the current director of subdistrict 7 of the Papio-Missouri River NRD. I'm not speaking for the board, but I am here to express my interest in LB487. I want to call attention to the seemingly well-thought-out plan to move the governmental decision-making process away from elected officials and citizens to an unaccountable partnership formed under the Interlocal Agreement Act. I'm going to provide you with some questions and answers I had about the Papillion Creek Partnership in 2007 for your information. I'm also providing you with a packet containing...and that's just one copy everybody, the latest interlocal cooperation agreement that became effective on August 1, 2009, along with the exhibits A, B, C, D, E, and F. This was what was handed out to local governing bodies when they were asked to pass the stormwater management plan. And I've got to compliment the partnership in doing a good job with going through and with developing stormwater policies and stormwater regulations within the city of Omaha and within the partnership area which is Douglas and Sarpy County. But the...I will leave this copy for you. The exhibits are...the policies are up here; the exhibits contain the watershed management plan and a copy of the implementation plan. And basically the plans that the elected officials received were a one-page map that indicated where the dams were to be located within the Papio Watershed and the implementation plan which stated the years that they were going to be implemented, 2011 to 2013. Again, this is the packet that was given out to elected officials who were then asked to approved all. By voting to approve all it required that the local governing bodies agreed to collecting watershed fees from new development and significant redevelopment for constructing the water quality basins and regional detention basins depicted on the maps along with the time frame that the construction would occur. I believe the public has the right to know how public officials make decisions when it comes to spending public monies. I support the policy of each governmental entity being able to vote to approve or disapprove of a project within their governmental jurisdiction. I believe that asking for and receiving support from local governing bodies that will be affected by a project would be in the best interest of the public. Democracy benefits from an inclusive process that allows meaningful public input, the consideration of all alternatives and the show of support from local elected governing bodies. Leaving citizens out of the debate, however, is not acceptable. Citizens deserve accountable government. Thank you for this opportunity.

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Please feel free to contact me if you have any questions and I would be glad to answer any now that I am able to. [LB487]

SENATOR LANGEMEIER: Very good. Are there any questions for Ms. Lanphier?
Senator Carlson. [LB487]

SENATOR CARLSON: Thank you, Senator Langemeier. Thank you for your letter here. I'm going to give you an example and I'd like to know how you would respond to this. I'm looking at Dam site 1 which is clear up in Washington County. And the way the bill reads that it looks to me like a project could be stopped by any affected city or village. So if we start up here at Dam site 1, it could be Blair, Kennard, Washington County, Bennington, Omaha, Papillion, and I've missed, I would miss several in there, but there are a lot of them that would argue they're affected counties. How should one entity be able to stop a project? I think they ought to have input. I think the input is really important. [LB487]

DOROTHY LANPHIER: That's why I'm here testifying in a neutral capacity. I think that's part of your decision-making process. But I... [LB487]

SENATOR CARLSON: Well that's what we're grappling with, I think. [LB487]

DOROTHY LANPHIER: I believe the local governing bodies should have some input. Again, the partnership was put together by the...when I first was...came on the board, it had started in 2001, so I had to bring myself up to speed on what the partnership was and I began attending meetings and I've attended most meetings, I think. But early on, the Papio NRD was...decided to be the administering agent for the Papio-Missouri River...for the partnership. And there's an executive committee that really is considered the partnership, the core of the partnership, because each represent...a representative supposed to be designated from each governmental entity, although some did not really appoint them, they were probably, you know, in planning...some planning people and people who worked with water issues in the various different communities were on the partnership. The executive committee then is made up of the partnership. And the administering agent serves...this is from the interlocal agreement, Papio Creek Watershed Partnership, interlocal agreement, the administering agent serves at the pleasure of the executive committee and performs duties assigned by the executive committee which may include, without limitation, and then there's a long list. It starts out with seeking any state legislation which the majority of the parties to disagreement determines necessary to the support to work on the partnership. That kind of bothered me to have, you know, an executive committee made up of knowledgeable people, but not elected and in some cases not appointed. They probably filled different positions. So we were to serve at the pleasure of the executive committee and in...go about doing these different things that the executive committee ordered. And I began to question, you know, did they get...and then we began to get contracts to sign because we were

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the administering agents so the NRD were the only ones that could really sign a contract. The partnership was not a separate entity and was not able to enter into contracts. So it was the NRD board that had to enter into the contracts for the partnership. So I began to ask, well did you run this past your elected body? And not...they didn't always run the question of whether we wanted to enter into a contract for the partnership through each individual governing agent, or governing entity. And that concerned me because I thought, well why are we doing this if we're not sure all of our partners are really agreeing to this, although different governing bodies. So I guess I'm asking that you look at the whole picture and we have, of course, signed contracts to allow studies to be done, and the studies came back with the different dams and water quality basins. So I'm just here asking you to look at the entire picture and I'm leaving copies of both the interlocal agreements, the one that was originated in 2001 and then was updated in 2009. And before the 2009, I asked and I think there were other people who asked for more accountability on the partnership, that if they asked for one thing the decisions were made by consensus, there was no vote. So I asked that a vote be taken if it was going to be coming to...for our approval for a contract, that a vote be taken on the partnership when any large decisions were made so that we'd know that every one of the governmental entities had actually bought into that decision. So that's been changed in the 2009, was a little bit more accountability. But from 2001 until 2009 there wasn't that accountability, so. [LB487]

SENATOR LANGEMEIER: Are there any... [LB487]

SENATOR CARLSON: I have one more question. The Papio-Missouri NRD and we have a project, who votes on that project, yes or no? Doesn't the NRD board? [LB487]

DOROTHY LANPHIER: You know, it's not brought to us as a project. It's usually brought to us as a contract and a contract to do something for that project. But we have never actually voted on each specific dam and had a hearing on that dam. Correct me if I'm wrong, John Winkler. [LB487]

JOHN WINKLER: (Inaudible.) [LB487]

SENATOR LANGEMEIER: They can't testify. Oh, okay, I'm sorry. [LB487]

DOROTHY LANPHIER: Oh, okay, I'm sorry. [LB487]

SENATOR CARLSON: They can't. You're on your own up here. [LB487]

SENATOR LANGEMEIER: We might get some more information later. [LB487]

DOROTHY LANPHIER: Yeah, okay. We have not had a specific public hearing and a vote on whether we want to construct the dam. When we signed on to this water

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management, larger water management plan, a watershed management plan, it included a map of the different dams. So I believe it was considered that we signed on to all of them. [LB487]

SENATOR CARLSON: Okay, all right. [LB487]

DOROTHY LANPHIER: But we do have contracts that come before, Senator, I don't want to sidetrack you, that there is a contract to do a specific thing for that dam, design or build. [LB487]

SENATOR CARLSON: Okay, let me...let me...so you're saying that when there is a Papio-Missouri NRD project, the board doesn't vote on it? [LB487]

DOROTHY LANPHIER: We vote on a...probably a contract is brought to us, that's the first vote that we have on a project. [LB487]

SENATOR CARLSON: Okay, thank you. [LB487]

SENATOR LANGEMEIER: I'm going to follow up on that. You're saying you voted on that watershed management plan, and within that plan were all these dams. [LB487]

DOROTHY LANPHIER: Right. [LB487]

SENATOR LANGEMEIER: You didn't necessarily vote on any dam in particular. You voted on that plan. [LB487]

DOROTHY LANPHIER: Right. And we would... [LB487]

SENATOR LANGEMEIER: So now they're working on making that plan happen. [LB487]

DOROTHY LANPHIER: Right. [LB487]

SENATOR LANGEMEIER: By contract. [LB487]

DOROTHY LANPHIER: Right. [LB487]

SENATOR LANGEMEIER: So you're voting then on each contract as it comes up. [LB487]

DOROTHY LANPHIER: Right. [LB487]

SENATOR LANGEMEIER: Okay. Senator Smith, did you have a question? [LB487]

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SENATOR SMITH: Yes, thank you, Senator Langemeier. So you were presented the overall plan. I think that's just what you explained there. And so once you knew about the overall plan, you had access to the rest of the board members and to the management at the NRD to express any concerns, so you had that opportunity to interact, though. And then whenever those contracts would come up, you had the opportunity to vote up or down a contract that would advance that project forward. [LB487]

DOROTHY LANPHIER: That's right. [LB487]

SENATOR SMITH: Okay. [LB487]

DOROTHY LANPHIER: There was a large study that was done that these maps were a part of, but I don't know how many of the directors looked at that. But it was available. [LB487]

SENATOR LANGEMEIER: Senator Dubas. [LB487]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Ms. Lanphier, let's go back to the Papillion Watershed Partnership, are all of the governing entities on this map, are they all members of that partnership, like all of the communities, all of the counties? [LB487]

DOROTHY LANPHIER: It started out with the city of Bellevue, the city of Bennington, the village of Boys Town, the city of Elkhorn, the city of Gretna, the village of Kennard, the city of La Vista, the city of Omaha, city of Papillion, the city of Ralston, the county of Douglas, the county of Sarpy, the county of Washington, and the Papiio NRD. This I believe was from 2000...was dated 2004, so it may have been an updated copy. Currently, it includes the city of Bellevue, the village of Boys Town, the city of Gretna, the city of La Vista, the city of Omaha, the city of Papillion, the city of Ralston, the county of Sarpy, and the district. So I believe several cities have dropped out, the smaller communities have dropped out, and two counties, Douglas and Washington. [LB487]

SENATOR DUBAS: Thank you. [LB487]

SENATOR LANGEMEIER: Okay. Seeing no other questions, thanks very much for your testimony. [LB487]

DOROTHY LANPHIER: I would like to leave a copy of these questions with you if I could. Thank you. [LB487]

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SENATOR LANGEMEIER: Yep, if you'd give them to Barb. Thank you very much. We'll distribute them. [LB487]

DOROTHY LANPHIER: Thank you for the opportunity. [LB487]

SENATOR LANGEMEIER: Thank you. Seeing no other neutral testifiers, Senator Karpisek, you're recognized to close. [LB487]

SENATOR KARPISEK: Thank you, Senator Langemeier, members of the committee. That took a little longer than I was expecting, but I think that's okay. I think there's a lot of questions that came up here that people don't exactly maybe understand what's going on or don't agree with what's going on. I think just the last testifier statement to say how many have dropped out makes me wonder or glad that we're going to take another look at this. And I have to say I agree with her that I've brought this for you to look at and we've brought one idea for you to think about. I think one thing is, the bill does not stop these from happening, but it stops the bonds from being drawn. Now as I have been told, the taxable value in the watershed project here is \$50 billion. Now that's a big chunk of money; this is a big deal and I understand that. I don't think that anything we're trying to do in the bill would stop this, but it could stop the bonding. Again, I think we've hit on that the exclusive is the problem in the bill because, Senator Carlson, you pointed out 1 out of 29 is exclusive. If we look at it this way, I just have a hard time believing that any of these communities don't have a say if something is coming over into their 1-mile or 3-mile or 2-mile jurisdiction. Now if you read the bill without the underlying parts, it just talks about the county, the county would be able to say no. We all know cities and counties are two different things. And I do want to say, before I forget, the NRDs do a great job. The Papio NRD is much different than the NRD that I'm used to and probably that most of you are used to because it deals with different things. It deals with more people; it deals with a different type of river; and I understand that. However, to just...to me this just sounds like the NRDs is going to decide where they're going to put a dam and if a city or another county doesn't like it, well, we'll listen, but I don't know that anything is going to change. As a resident of that, which I am not, but if that would happen in the Little Blue or Big Blue, I would not be very happy with that sort of thing. It is a major issue and I understand. I remember the LB160, that was a big deal. I was not in favor of bonding for the NRDs, and I'm still not. That's not why I brought the bill though. That went through. Senator Gay did a great job and got it through and did work with people and made concessions. But that doesn't mean that something shouldn't be brought back and looked at if people feel like it's not working right. And I think by the testifiers we heard that it may not be working right and it needs another look. I appreciate your time on this. And again, I do have to defer to the committee. You are the ones that know on these subjects. I do not, but when I hear of people, cities, counties, that aren't happy with...don't feel their voice is being heard, I thought I needed to bring it forward. I will be glad to take any other questions. [LB487]

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SENATOR LANGEMEIER: Very good. Senator Smith. [LB487]

SENATOR SMITH: Thank you, Senator Langemeier. Senator, thanks for helping to educate me on this. Being a freshman senator, I know everyone else here knows the history on this, but I don't. But one thing I do see here is that there, you know, setting precedence, there are some implications here, there are other local control issues that could impact public power districts even. I mean, if you look at...for what I have experience with, Omaha Public Power District which serves a lot of different public political subdivisions and they make a decision in the resource management plan to add a power plant, if you have a city that has that power plant within its jurisdiction, you know, then would they be able to hold up the progress of fulfilling the energy requirements of that overall area that they have responsibility for, that public power district, even school districts, I could see where there's implications for that as well. So this is certainly a complex issue and I think...I'd like to certainly learn a lot more about this, but thanks, appreciate it. [LB487]

SENATOR KARPISEK: Thank you. [LB487]

SENATOR LANGEMEIER: Senator Carlson. [LB487]

SENATOR CARLSON: Thank you, Senator Langemeier. Senator Karpisek, you used the terminology when you reviewed here, and you said that LB487 doesn't stop a project, but it could stop the bonding; what's the difference? [LB487]

SENATOR KARPISEK: In my opinion, if the taxable value is \$150 billion, there's probably some way that they can go about getting the funding rather than the bonding. We didn't have bonding before. Projects still did get done, maybe not as big. So I...and I'm not...I don't want to say that there is money there, I don't really know, but I think there would be a way to do it; or at least it might bring the two parties back to the negotiations table to work on something. What I seem to hear today was people don't feel like they're being heard and things are happening to them that they don't necessarily agree with. [LB487]

SENATOR CARLSON: Well I haven't counted the subdivisions here, but there's a number of them, and it bothers me that there's a possibility, say there's nine, that one out of nine can stop a project that the other eight want. And I don't know how we deal with that. But that's... [LB487]

SENATOR KARPISEK: I don't know, Senator, and it may be something to think about if half, over half, want the project, it goes. I don't know. That may be something to think about; because I do agree, one senator in here can't hold things up, they can for awhile. [LB487]

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SENATOR CARLSON: We had one that used to. (Laughter) [LB487]

SENATOR KARPISEK: Yes. And if a few bills come through, I'm sure we'll have a couple more of us, but that would be something to look at, Senator. And I do understand what you're saying and I appreciate that, because what is good for the greater majority is the good. And I also hear what the others are saying when they talk about being downstream. And especially with our Kansas neighbors, we know all about what happens downstream and those sort of things. And that is not my intent either to not do something that's good. Again, I think maybe things are...people feel like things are being shoved on them. Whether that's the case or not, I don't know because I haven't been involved. [LB487]

SENATOR CARLSON: Okay, thank you. [LB487]

SENATOR KARPISEK: Thank you. [LB487]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much. [LB487]

SENATOR KARPISEK: Thank you for your time. [LB487]

SENATOR LANGEMEIER: You have heard the closing on LB487. And that concludes our hearings for the day and we'd like to thank everybody that participated in the audience and those that watched us on-line. Have a great night. (See also Exhibit 33.) [LB487]