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Transcriber's Office

Natural Resources Committee  
November 09, 2011

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[LB5 LB6]

The Committee on Natural Resources met at 10:00 a.m. on Wednesday, November 9, 2011, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB5 and LB6. 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 morning and welcome to the Natural Resources Committee. I'd like to welcome everybody that's here in the audience to participate, as well as those that are watching us on closed-caption television through NET and those of us watching the hearing on the Internet. We appreciate your participation. My name is Chris Langemeier. I'm the Chairman of the Natural Resources Committee. I'd like to start off our day by introducing the members of the committee. Starting to my far left or your far right we have Senator Jim Smith from Papillion. We have an empty seat which is Senator Haar's because he's sitting at the table, getting ready to introduce his bill, but he's from Malcolm, Nebraska. And then we have Senator Mark Christensen from Imperial. Then we have the Vice Chair of the Natural Resources Committee, Senator Ken Schilz from Ogallala. Next to me is Laurie Lage. She is the legal counsel for the Natural Resources Committee. To my far right or your far left we have Barb Koehlmoos, who is the committee clerk. As you come forward today, and we'll talk about testifying, please give anything you want to hand out to her when you come up and we'll get that distributed. Then next we have Senator Beau McCoy from Elkhorn or the Omaha area, and then we have Senator Tom Carlson, who is from Holdrege, Nebraska. And then we have Senator Annette Dubas, will be joining us momentarily. We have two pages that will be helping us throughout the day. We have Emily Gilmore, who is from Lincoln and is a senior at SCC here in Lincoln and helping. And then we have Matt McNally from Norfolk, Nebraska, and he is a sophomore at UNL. If you're going to testify today, in the corners of the room you see a couple of sheets of paper. If you're going to testify, we ask that you fill out this green form, and when you come up front we ask that you give it to Barb. It helps us keep an accurate record of who you are and it corresponds to your testimony and helps our transcribers to get their work done, so we ask that you fill that out. If you're here today and you don't plan to testify, there's another sheet that looks kind of like a spreadsheet back there and you can sign in, put your name and address on there and the bill. We do have two bills today--LB5 and LB6. You can put the bill number or put them both in there at once that you support or oppose. You don't have to do two lines. Now, you don't have to do two pieces of paper--one or the other. So you don't have to sign in on both. We do have a lot of people that seem to do that today. When you come up to testify, we ask that the first thing you do is tell us who you are, your name and spell it for the record. It helps us keep a more accurate record of today's events. If you have anything you want to hand out, we ask that you have 12 copies. If you know right now that you don't have 12 copies, raise your hand and the pages will help you get that up to 12 copies. We greatly appreciate that. We also ask that if there's

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anything that you want us to see and if you hand it to us to look at, we're going to keep it for the record. So if you have something you want us to see, but you want to keep it--let's say a picture of some sort, we ask that you show it to us from the testifier's table and then allow yourself after the hearing to have the committee members view it if they would like to. At this time, we would like you to all look at your cell phone. I've heard a few kind of go off already. Everybody look at your cell phone and please turn those off today. We don't want to disrupt the hearing. The individual, we want to give the opportunity to testify uninterrupted at the table so we would like that turned off. We also ask for no public display of support or opposition to what anybody says up here. It is their time, their three minutes. We do give three minutes for testimony here in the Natural Resources Committee. You see the little lights in front of Senator Haar, and I don't say this, but the senators we don't time. I've gotten a few e-mails saying I only got 3 minutes and the senator took 35. But we don't testify, the introducer. It's their opportunity to lay their case for their bill. But the testimony, you will be limited to three minutes. You're going to get two minutes on green; you'll get one minute with the yellow light, and then when it goes red we would like you to stop. We would then allow yourself...the committee is very good that if you're caught amid something that they find interesting, they will ask you a question and let you finish. That has not been a point...a problem at this point. I will say that we have had two days of hearings on very similar topics, and I would very respectfully ask that if your testimony is similar to what has been given to us on a previous day, just address that you've made testimony and that you'd like your name in the record. We don't need to hear that all again. It's been two very long days. I don't plan to be here this afternoon (laughter) and so just giving you that little heads up right now. With that, I think we've been through everything. We're going to have two bills today. We're going to start in numerical order, so Senator Haar, you didn't get preferential treatment because you're on the committee. Somebody asked me that this morning. You have LB5 and we will open the hearing on LB5. Welcome.

SENATOR HAAR: (Exhibits 1 and 2) Senator Langemeier, Chairman, and members of the committee, thank you very much. My testimony will be...my bill is very short. My testimony is pretty long, so (laugh). No, it will be short as well. LB5 creates the Oil Pipeline Certificate of Authorization Act. The purpose is to protect the state's environmental resources and establishing an efficient method for processing of all application. And I'll get into this in a minute, but it's patterned after the laws in North Dakota. The requirements: All oil pipelines eight inches or larger, and so this would not include gathering lines because those are covered by the Oil and Gas Commission. It has a concept called exclusion zones, and that's the first of the maps I've handed out. And this is the Sandhills, basically, as described by the EPA. Everything that has 44 by it on this diagram is the EPA's definition of the Sandhills. The second exclusion zone, meaning you can't build there, you can't go there, is a watershed of a class A cold-water stream. And the next two maps show the class A cold-water streams. These streams are trout breeding streams, and they bring in significant tourism. This is protected in current law from new livestock feeding operations, and as I said, the maps there are

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included. Then the third exclusion zone would be an area where the groundwater is ten feet or less below the earth's surface for longer than ten miles. Now, if you look at the last map I handed out, this is from the University of Nebraska, and this map shows where...the lightest blue is where the groundwater is 0-50 feet. I do not have a map yet of where the groundwater is ten feet or less, and the university is working to get me that map, and they say they can do it. Now, currently, the current route on this last map in dotted red is the proposed route for KXL. The big black line is the route of Keystone I, and according to the EPA, to the EIS, the environmental impact statement, 65 miles of the proposed KXL corridor could encounter groundwater of ten feet or less. Most of that is in the Sandhills. In my bill, LB5, the Nebraska PSC will take the application and certify that the pipeline does not go through an exclusion zone. It's a 30-day process. Einstein said things should be simple but not too simple. My bill is only three pages, and as others have said, it's good but not perfect. I would like to then have you take up this thing with the blue tags on it, because this is the findings of facts from Keystone I going through North Dakota. And again, I show you this because my bill, LB5, with the exclusion zones is patterned after North Dakota. I didn't read through the whole thing, I'll be honest. But I'd like to point out some things that caught my attention. If you go to point 26 or paragraph 26, and the pages aren't numbered I guess. Oh, yeah, page 11, I'm sorry. This talks about exclusion and avoidance areas, and as you can see in the highlighted portion, "A transmission facility route must not be sited within an Exclusion Area." But then a little later on and this isn't highlighted, but they talk about in determining whether an avoidance area shall be designated for a facility the commission may consider certain things. So they have exclusion areas where you can't go and they have avoidance areas where, if you want to go there, you've got to show...you've got to demonstrate that there is no other way to do it. You go a little further to 28, exclusion zones: "The proposed route of the Keystone Pipeline"--and this was a finding of the PSC for Keystone I--"crosses no exclusion areas as defined by the North Dakota Public Service Commission." And then "Avoidance Areas," 29, you'll notice it will cross avoidance areas such as defined by the commission. So in this case, the exclusion areas again are off-limits; avoidance areas they'd look at one by one. And then you see in 30 some of the avoidance areas, Woods State Park (sic) Forest. In 33 the thing that interested me here is that you actually...and after that is that people from Keystone were actually there testifying at the various hearings. After paragraph 32, one of the things they consider is a 500-foot buffer. You go down and they consider irrigated land. The next page, page 13, they talk about cultural resources. Page 14, they talk about aquifers and here you'll notice Heidi Tillquist, who works for Keystone. In other words, Keystone people were at these hearings testifying and giving evidence, really in this case giving evidence of where they were going. So keep going on. I find on page 17 it's interesting, and this is some what we've heard, I guess, on paragraph 58, "external leak detection systems such as fiber optic monitoring, hydrocarbon electric sensing cable, carbon vapor monitoring, acoustic emission monitoring," and so on are there for pipeline inspection. Then on page 19, paragraph 68, "The Commission finds the proposed Keystone Pipeline route in the Fordville area represents the minimal

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environmental impact and minimal impact to the landowners compared to either the east route or the west route." One thing I didn't put in my bill that's in North Dakota's, they provide alternate routes. So here's the decision, actually, by the commission that one route is better than the other. Also, on page 19, they talk about public water systems; on 20, private water systems; on page 21, several lakes and river areas; page 22, stream and river crossings. And much of this, if you'd look at it, are the kinds of things we've heard actually, but this was before the commission in their process. Page 24, trees and shrubs is one of the issues that they talked about. Page 26, noxious weeds. And then in paragraph 108 is the Construction Mitigation and Reclamation Plan that Keystone presented. Page 27, they talk about noise, third-party inspectors; page 28, other considerations. In one of them, 119, talks about the "Construction of the Keystone Project will involve approximately 500 construction workers working on two spreads." Page 29, paragraph 122, Keystone talked about compaction in places where there was going to be agriculture. And then 125 I find pretty interesting too. I want to read that. "Landowners expressed"--so this was a hearing results--"Landowners expressed concerns regarding the landowner liabilities once the pipeline is operating. Cowling," who is someone from Keystone, "testified that he believes liability protection is provided for landowners in the easement document. Cowling stated that under the easement document Keystone will pay commercially reasonable costs and indemnify and hold the landowner harmless for any loss, damages, claims or actions resulting from Keystone's use of the easement, except to the extent such loss, damage claims or actions result from negligence or willful misconduct of the landowner or its agents." It's not quite strict liability, because if the landowner is willfully negligent then they must pay. We don't know about the easements signed by our landowners because of nondisclosure in Nebraska. And so finally, on page 30, there's an order and, basically, the order comes down to the fact that they looked at everything and they didn't go through any exclusion zones, the avoidance zones they went through were cleared, and so on. So I find this very interesting, because all the various issues that North Dakota talked about and yet Keystone I complied. I was going to bring maps, but they're just long stringy things and I didn't think that was very useful. But there are whole maps if you'd like to look those up on the Internet of where Keystone I went and what the avoidance areas and the exclusion areas. Again, my bill is very short. It has a very short time frame, only 30 days with this time frame. I'd just like to say that this only...that my bill only refers to natural gas...I'm sorry, to crude oil...or to oil pipelines, because that was the Governor's call, and so it doesn't talk about natural gas or any of those other things, because although the Governor's call was quite broad, it did say oil pipelines, so that's all that's covered here. If there are legal concerns, I would be happy to work with anyone's lawyers or senators to work through their concerns. I did include one more document, and it's just to show you the kind of stuff that this application requires, and where you see the blue tab it shows the avoidance areas that their proposed routes went through. And then, you know, they have to say yes, no, yes, no, to those areas. That's part of their...this is the application, and it can be processed within 30 days. So with that, I would wind up my testimony and be open to questions. [LB5]

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SENATOR LANGEMEIER: Very good. Are there any questions for Senator Haar?  
Seeing none. Oh, Senator Carlson, excuse me. [LB5]

SENATOR CARLSON: Thank you, Senator Langemeier. I just have two simple  
questions, Senator Haar. [LB5]

SENATOR HAAR: Sure. [LB5]

SENATOR CARLSON: You are from Malcolm, you own some property. [LB5]

SENATOR HAAR: Yes. [LB5]

SENATOR CARLSON: If you discovered that you had a significant deposit of oil under  
your property, would you drill an oil well? [LB5]

SENATOR HAAR: (Laugh) I don't know if...we have tons of easements on my land and I  
don't know if...I know we can't put up chain link fences and so on. I don't know. So I'm  
sorry, I don't know what I signed on earlier as to what I can and can't do. [LB5]

SENATOR CARLSON: Do you own any property out in the Sandhills? [LB5]

SENATOR HAAR: No, I don't. No, I don't. [LB5]

SENATOR CARLSON: If you owned a quarter of land in Holt County and a significant  
amount of oil was found underneath that property and there were no easements on it,  
would you drill an oil well? [LB5]

SENATOR HAAR: You know, after listening to the testimony of people from the  
Sandhills, and I have to assume, too, that I'm a fourth generation Sandhills person, I  
think if I...I believe that if I could do that without damaging my heritage that I would  
certainly consider it. But the thing that's impressed me is that for many people in the  
Sandhills it's more than money. And so I don't know. You know, I'd like to be a  
millionaire. Who wouldn't? (Laugh) But I really don't know, and I've been very impressed  
by that from the testifiers...the value of their land. [LB5]

SENATOR CARLSON: So if on your imaginary property out there you determined that  
the risk wasn't great...wasn't...the risk was minimal, you might be tempted to drill an oil  
well. [LB5]

SENATOR HAAR: Oh, I'd certainly be tempted. [LB5]

SENATOR CARLSON: Okay. I would, too. (Laugh) Thank you. [LB5]

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SENATOR HAAR: Of course, I'd have to get this by my wife (laugh). [LB5]

SENATOR LANGEMEIER: Senator Dubas. [LB5]

SENATOR DUBAS: Thank you, Senator Langemeier. Senator Haar, just...I'm asking this question to clarify... [LB5]

SENATOR HAAR: Yeah. [LB5]

SENATOR DUBAS: ...things in my mind. [LB5]

SENATOR HAAR: Sure, you bet. [LB5]

SENATOR DUBAS: But it appears this would be a pretty straightforward decision that the PSC... [LB5]

SENATOR HAAR: Yeah. [LB5]

SENATOR DUBAS: ...would make. There's not any ambiguity or any, you know, going and seeking expert testimony. It's just the applicant comes in, they say this is where we want to put the pipeline. PSC looks at the map and says, yeah, you can, because you aren't in any of these zones or, no, you can't, because you can't go through that zone. Is that in a nut...maybe I'm oversimplifying that, so please feel free. [LB5]

SENATOR HAAR: (Laugh) Well, no, like I started out saying, you know, things should be simple but not too simple. As you can see from the Public Service Commission findings, there were hearings involved in the process. And then there was also a negotiation, as I believe LB1 could involve negotiation with avoidance zones. But what LB1 doesn't have that this has is this concept of exclusion zones. You can't go there. [LB5]

SENATOR DUBAS: Very good. [LB5]

SENATOR HAAR: And Keystone I didn't (laugh). [LB5]

SENATOR DUBAS: Thank you. [LB5]

SENATOR HAAR: Yeah. [LB5]

SENATOR LANGEMEIER: Seeing no one, Senator Haar,... [LB5]

SENATOR HAAR: Yeah. [LB5]

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SENATOR LANGEMEIER: ...if you wanted to be a millionaire, you picked the wrong career being a state senator, I might add. (Laughter) [LB5]

SENATOR HAAR: I know. I was complaining to a friend the other day, and they said, Ken, you just don't take capitalism serious enough (laugh). [LB5]

SENATOR LANGEMEIER: There you go. Seeing no other questions, we... [LB5]

SENATOR HAAR: Thank you very much. [LB5]

SENATOR LANGEMEIER: We've heard the opening on LB5. Now I'm going to talk a little bit about proponents, opponents, and neutral. We've had some confusion over the last couple of days of what category you fit in. So I'm going to give you kind of an overlying kind of a hint. If you've talked, tweeted, told a friend, wrote an article, even breathed the idea that you do not like the pipeline, you probably should testify as a proponent today. If you've talked, tweeted, Facebooked, told a friend that you love the pipeline and you think it should be here, you should probably testify as an opponent. Neutral, neutral testimony are for individuals that are testifying to give information that have taken no sides. If you've written an article, you've passed out a piece of paper, you've told a friend that you have a side, you should not be in the neutral category. You should either be in a proponent or an opponent. So we're hoping to have that cleared up a little bit today. You still have to make the judgment call to what category you want to be in. With that said, we'll try and give you some guidelines of that. If you don't like the bill because it doesn't go far enough, you still are probably a proponent for some action. So use that as a guideline. With that, we will move to proponents. If you would hand in your testimony, green sheet as you come up. We look forward to hearing from you all today and, again, please tell us something new. We've had two days of similar conversation. We're looking for new information and we welcome you to the Natural Resources Committee. And welcome back. Oh, don't touch the mike. Forgot about that (laughter). [LB5]

BRUCE KENNEDY: Sorry, Senator. [LB5]

SENATOR LANGEMEIER: It's been a long two days. The mike is only there to record your testimony. It is not there to amplify it; it doesn't make it any louder in the room. Unless you yell into it, it is louder in the room. It is strictly there to record it, and if it gets too close to you, it gargles your voice, and so when we try and make a transcript, nobody can understand a word you say. So that's why we try and keep the mike away from you a little bit so it doesn't get "gargly" because then I get more e-mail of dislike from the transcribers. So we ask that you don't touch the mike; let it do its work. If it...I can see how you're recording. If it's recording too loudly and I can see I'm sitting too close to mine, we will pull it back away from you. So with that, welcome. Yeah, pull that

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up a little bit. Thank you very much and we're going to have a great day. [LB5]

BRUCE KENNEDY: Good morning. Mr. Chairman, members of the committee, my name is Bruce Kennedy, B-r-u-c-e K-e-n-n-e-d-y. I am here this morning representing the Nebraska Wildlife Federation. I wanted to first take the opportunity to thank all of the senators who have introduced bills, and I would like to thank the Governor for calling this special session to address a problem that needs to be addressed. If we had our druthers, I guess we would incorporate a little bit of all of the five bills in a final bill. We seem to have a little bit of a preference for Senator Haar's bill because of the fact that it has the emergency clause. But there's a lot of good stuff and, again, we thank all the members who...all of the senators who introduced the bills. We thank the committee for coming together to address the problem, and with that said, our main concern I guess are the surface waters, streams and rivers, and how oil might seep into them, and how that would be cleaned up. That is a big concern to us. Although last night I had a nightmare about dump trucks being filled up with oil and sand, and I was thinking, where are they going to get rid of all that? But anyway, we would hope that something meaningful will come out of this session, and we would urge the committee to forward something out. We would urge the Legislature as a whole to not adjourn until they have come up with a statute that will deal with the problem. I guess that's pretty general in nature, but that's our feeling and I would be glad to answer any questions. [LB5]

SENATOR LANGEMEIER: It was really good. One thing just for the record, LB1, LB4, and LB5 do all have the emergency clause. [LB5]

BRUCE KENNEDY: Okay, sorry. Failed to note that. [LB5]

SENATOR LANGEMEIER: Are there any questions? Seeing none, very good. Well done. [LB5]

BRUCE KENNEDY: Thank you for the opportunity. [LB5]

SENATOR LANGEMEIER: You bet. We appreciate you coming in. You're a good one to start with. You've been here before. It's a natural habit, I know. Senator Haar and I worked on it for a year. [LB5]

MARJORIE KENNEDY: Yes, and I can't believe that anyone could hear me but I guess they can. [LB5]

SENATOR LANGEMEIER: Welcome. [LB5]

MARJORIE KENNEDY: Well, thank you (laugh). My name is Marjorie Kennedy, M-a-r-j-o-r-i-e K-e-n-n-e-d-y. I am representing Friends of the Niobrara. I think what Bruce just said I would second as far as thanking those of you, all three of you on this

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committee, who have introduced bills. I like all of them. I think they should all go to the floor, if possible, and I think they are all worthy of great consideration. The big deal as far as I can see is it is so important for the state of Nebraska to have a say about its destiny as far as Keystone XL and other oil pipelines that might be proposed in the future. We are kind of in a quandary at this point, because it turned out we didn't have laws that we could have had and that now we're trying to have and that we very desperately need. I know this isn't from this committee, but I was reading about the eminent domain bill in the paper, and I was, frankly, shocked to learn that TransCanada was within its rights, apparently, to go and tell landowners that they could take their land via eminent domain. I thought they were just making it up. It turned out, apparently, they really are entitled to, and certainly we want to say about that. Our state certainly must have a stake in its own destiny. And I think that's about all I have. [LB5]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Christensen. [LB5]

SENATOR CHRISTENSEN: Thank you, Mr. Chairman. Thank you for testifying. I appreciate what you've said. The difficult part may be in what we can do. Quite often when you get a group rallied like this, changes like on the eminent domain you talked about probably will be made, tweaked somehow. But at the same time, totally changing a route sometimes isn't possible but you can set up a process for the next one. You know, we may hit that situation here, and even though a lot of us may be portrayed as not wanting to change anything or change something, may not know how we can legally do that. And so I just want to state right up-front, we're hearing you, but sometimes the hands are tied, but what comes out of this for the future...you're going to have an impact on what happens in the future. [LB5]

MARJORIE KENNEDY: Yes. [LB5]

SENATOR CHRISTENSEN: I don't know if you're going to get the impact you want on this one. Sometimes it don't seem fair and right. That's the things we've got to study and go through yet before we do something. So I just wanted to make that statement, because I think sometimes we're portrayed up here as not caring, when sometimes our hands are tied. But look and see what happens and the effect that you have over long term, I think you'll see you've done some good in what you all have come here to testify for in the long run. Thank you. [LB5]

MARJORIE KENNEDY: Thank you. [LB5]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much for your testimony. Well done. [LB5]

MARJORIE KENNEDY: Um-hum. [LB5]

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SENATOR LANGEMEIER: Good morning. [LB5]

DONNA ROLLER: (Exhibit 3) Hi. I' here again, I'm sorry. [LB5]

SENATOR LANGEMEIER: We're not. That's good. [LB5]

DONNA ROLLER: Here's the handouts of my...what I'm going to speak on. I am not a public speaker. [LB5]

SENATOR LANGEMEIER: Oh, I need you to start with your name, though. [LB5]

DONNA ROLLER: I know. My name is Donna Roller, D-o-n-n-a R-o-l-l-e-r. My testimony is different from the day before. I'm here again to support LB5. I will endorse this bill because it creates the exclusionary zones around the aquifer and other sensitive areas. This bill sets rules on pipelines routing similar to the states of Montana, North Dakota, and Minnesota, which provide a precedent for existing laws that are already in place and working. I also supported LB1 which deals with the permitting process, liability, and eminent domain. I do have reservations about LB4 giving the Governor and his delegated committee authority to grant oil pipeline permits. The public entity that determines these permits should have no political agenda or be subject to lobbying. The permit should be decided only on the following rules and the regulations set by the state of Nebraska. I have listened to a lot of testimony in the preceding days, and I have some concerns about irrelevant topics discussed that have no bearing on our state's rights to enact laws. We can only do routing, setting permits, and eminent domain rules and regulations regarding those. And I know some of you on the committee are for the pipeline and really that's not irrelevant either. This is a bill about protecting our state and setting rules regarding pipelines and their routes. And as far as jobs go, this is not a jobs bill. We are not in the business of providing jobs for unions or laborers and, frankly, it's not our business. Our jobs are created by our strong agricultural community, and let's protect those jobs that we already have. Destroying our farmland and our water will create catastrophic economic loss for those employed in the state already. Economic fuel prices: This is not a price regulation bill on fuel. Most importantly, we have harvested enough corn and soybeans to produce biofuels that our state needs, so anything said about the economic benefit of TransCanada is debatable and questionable. TransCanada's commitments: Here again, this is not a law specific to TransCanada. We have no invested interest in their time lines, their sale commitments, or their easement rights they have already purchased illegally, in my opinion. Other pipelines: This pipeline is like no other and should not be compared to any other pipeline in Nebraska. This pipeline is bigger and under high pressure. It contains not normal crude oil but dirty tar sands oil created from bitumen which is very dangerous chemical additives. This is a new type of crude oil being pumped and, yes, we already have Keystone I, and I will argue that the state, without permit and routing regulations,

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were not prepared to grant or debate anything on the first pipeline. I was a Montessori teacher for 15 years and I owned a school for 9 years, and I had regulations and I needed a license and training and continuing education and spent a lot of money doing it in that matter. And I had to meet requirements for a private school. Pipelines in this state have absolutely no rules or regulations regarding their routing, permit process, and eminent domain. Yesterday I heard the word "beg" several times regarding getting what Nebraska needs from Washington or anyone else, and now I am using the word "beg." I beg you to move these bills on to the floor of the Legislature for a fair and legal debate. We are in the eleventh hour, and we absolutely can no longer wait to pass legislation to protect Nebraska's citizens and our resources. The whole nation is watching Nebraska to act in a responsible manner regarding oil pipelines. And I do feel we can enact laws because TransCanada does not have a permit, and we can make these laws effective now and bind TransCanada or anybody else to those laws. And we must find a legal way to do that. It is imperative. [LB5]

SENATOR LANGEMEIER: Very good. Very good testimony. Are there any questions for Ms. Roller? Seeing none, well done. [LB5]

DONNA ROLLER: Thank you very much and I appreciate all your time that you have put into this. [LB5]

SENATOR LANGEMEIER: Thank you. Further proponents. Good morning. [LB5]

BONNIE KRUSE: (Exhibit 4) Good morning. My name is Bonnie Kruse, B-o-n-n-i-e K-r-u-s-e. I'm a Nebraska past-president of the General Federation of Women's Clubs. I'm a member of the League of Women Voters, I'm a Rotarian, I'm a member of the Seward County Groundwater Guardian Team, and I am a member of the Seward Citizens on Pipeline Route Committee. The Haar bill, LB5, is critical to the people and to the environmental resources of the state of Nebraska. A safe pipeline is a smartly located pipeline. And, oh yes, what is state of the art today regarding pipelines will not be state of the art years from now, and we are in this for the long haul. I applaud Senator Haar for this bill that finally addresses the protection of an exclusion zone. I would suggest that wellhead protection areas that supply drinking water for municipalities be included as exclusion zones. A most pertinent point is that the administrator for the Pipeline and Hazardous Materials Safety Administration has stated to Congress multiple times that the PHMSA has not studied the safety issues regarding diluted bitumen and present safety regulations that do not take any differences into account. The TransCanada pipeline is an old story to those of us that live in Seward, Nebraska. We dealt with TransCanada's first pipeline. Seward is a microcosm of what is happening now, only back then we couldn't get the attention of the Nebraska Legislature or our senator to introduce legislation. As a result, the first Keystone pipeline is now built through our wellhead protection area underneath four of our city water mains. The Seward City Council, with the support of the Seward Citizens on Pipeline Route

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Committee, was forced to negotiate with TransCanada the best we could without any support from the state. The Seward City Council did not want the pipeline to go through the wellhead protection area underneath four of our city water mains. It was us against TransCanada and the feds. The U.S. Department of State demanded that we, the Citizens on Pipeline Route Committee, submit to them an alternate route. In the process, we ended up submitting two alternate routes to the U.S. Department of State. The final Keystone EIS that came out was false. It showed that the Keystone pipeline route did not cross a high consequence area, which in fact it did. The reason the U.S. Department of State and ENTRIX got by with this in that final EIS statement is because the Seward wellhead protection area was not identified on the U.S. DOT map, and that map was outdated. Then we tried to correct the map with the U.S. Department of State, and they told us there were no procedures for updating the maps at that time or there presently isn't at this time. So the feds and ENTRIX don't always get it right. That's why you need strong state legislation. On May 10, 2010, I met with Elizabeth Orlando, who was at that time the U.S. Department of State NEPA coordinator and international affairs officer in charge of the first TransCanada Keystone project. I asked Ms. Orlando, "If the first route of the Keystone pipeline was moved to avoid the Hecla Sandhills, then why isn't the Keystone XL pipeline route not being moved to avoid the Sandhills regions in Nebraska?" Ms. Orlando just shrugged and said, "I don't know." The Keystone pipeline agreement with the Seward City Council was signed February 15, 2008, which included the requirement of a site-specific emergency response plan. On May 10, 2010, I testified at the EIS draft hearing in York, Nebraska, that TransCanada had not produced the required site-specific emergency response plan and that was duly noted by Harold Winnie, Office of the Pipeline Safety. TransCanada finally delivered their site-specific emergency response plan to the City Council on July 14, 2010. No one knows the land better than Nebraskans--the landowners and the local city and county governments. Without state legislation, you are hanging your city and county governments out to dry. Without a Public Service Commission that has regulatory control and oversight, there is nowhere for citizens, let alone any city or county governments, to go to vet the situations of pipeline siting, regulation, and oversight. Today you see the result of the chasm that Nebraska has regarding pipeline legislation, and there are more pipelines to come. "Behold! A Pipeline Cometh! Machines loom large with snort and growl. Behemoths gobbling up good soil, gouging, gorging earth's deep bowel. Clay mounds exclaim a mindless toil. Disrupted earth through water rages, at blights upon terrain so fair. Man again adds shameful pages, to God's trust placed in his care. Blades and bores assault the fields, raking clefts across the plains. Grain repaid with stunted yields, laments the loss of promised gains. Black, viscous fluid pulses on, through gashes crushed upon the earth. Bystanders play the role of pawn, as pipes snake subtle throbs of dearth. Piped payments scratch at what is lost. Time only past will answers give. Children to come shall bear the cost, praying their fam'lies safely live. Uncertain life within us grows. We wait on God to show us light. Trusting that He only knows, teaching us what's true and right." Richard Zwick, Citizens on Pipeline Route Committee, Seward, Nebraska. [LB5]

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SENATOR LANGEMEIER: Thank you. Are there any questions for Ms. Kruse? Seeing none, very good, very good. We need to remind everybody of the lights. If we keep going over, everybody won't get to testify today so we need to respect those. Welcome back. [LB5]

LARRY HUTCHINSON: (Exhibit 5) Thank you, Senator Langemeier. It's a pleasure to be here again and I'm here to represent the Nebraska... [LB5]

SENATOR LANGEMEIER: We know who you are, but I still need you to say and spell your name. [LB5]

LARRY HUTCHINSON: Larry Hutchinson, L-a-r-r-y H-u-t-c-h-i-n-s-o-n, from Lincoln. Shortly before the special session was called, several Izaak Walton League members became interested in being on record for bills within that have been introduced or likely to be introduced that put some authority for the state to be involved in this process. Therefore, a resolution has been passed last night by the Lincoln Izaak Walton League, and part of that is based on the National Izaak Walton League of America policy on oil pipelines. On the back of this resolution there is a copy of the national policy on oil pipelines that you can refer to. I won't go into the resolution other than to say that we basically support all the bills that have been introduced, and we think that the portion of LB5 is subject...that is part of that policy and part of the resolution that it's based on. The Lincoln chapter has the largest membership in the state, about 860, I believe, at this time. And there's a dozen to 13 or so chapters scattered across the state. The National Izaak Walton League has 260 chapters nationally, and their national conference next year will be hosted by the Lincoln chapter, which should be a pretty good economic boon to the state with several hundred delegates appearing here for two or three days at that time next summer. The Izaak Walton League was born in 1593, and he died in 1683 at the age of 90 which is a remarkable old age at that time in our past. I attribute that to his love of fishing. And so being an ex-fishery biologist in the state, I'm pleased that I'm here to present that kind of information. I don't think I have much else to say other than if you have questions, I'll try to address them as possible. [LB5]

SENATOR LANGEMEIER: Very good. Are there any questions? Just for clarification, you're here just for Izaak Walton League? You're not here...you normally testify in...for the Fishermen Association. [LB5]

LARRY HUTCHINSON: The American Fishery Society? [LB5]

SENATOR LANGEMEIER: Yeah. You're not testifying on behalf of them today, just the Izaak Walton League. [LB5]

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LARRY HUTCHINSON: That's right. This is just for the Izaak Walton League. [LB5]

SENATOR LANGEMEIER: Okay. Very good. Well done. Appreciate your testimony. Further proponents. Welcome back. [LB5]

AMY SCHAFFER: (Exhibit 6) Good morning. Yes, thanks for allowing me to speak. My name is Amy Schaffer, A-m-y S-c-h-a-f-f-e-r. As I said yesterday, I'm a daughter of a landowner that has family ranches in both Rock and Holt County. And this isn't just my dad and mom; it's grandparents, nieces and nephews, aunts and uncles, extended family as well. And we're also certified organic, so if you have any questions about that I would be happy to answer that. I would first like to say that I support Senator Haar's bill, but I suggest that he strengthen the bill by including language that talks specifically to soil types, that being that oil pipelines cannot be placed in clay-based type soils. I also have some general comments that I would like to make. Yesterday, during Mr. Jones's testimony, he stated that TransCanada has peacefully obtained 91 percent of the easements in Nebraska. And I'm not sure how this adds up, given that over the last two days most of the landowners have spoke against the pipeline. Apparently, we have a very vocal 9 percent. Another comment that I would like to make is in regards to us coming forth in the ninth inning or the fourth quarter or whatever you may call it. A lot of games come down to the ninth inning or the fourth quarter, and it's not the state of Nebraska's problem, you know, that TransCanada hasn't put forth a solid business strategy that didn't consider a plan B. As a billion-dollar company, they should have thought about the consequences of not having a federal permit, you know, and moving forward with their plans and construction. Also, yesterday there was a lot of talk about jobs. Let me remind you that these jobs are short term, unlike farmers and ranchers that could have, you know, their income taken from them for their entire lifetime. And then I have also an additional comment in regards to decommissioning. You need to think about the long-term consequences of these pipelines being abandoned, and so when you put these bills on the floor, I highly encourage you to include a severability clause. And finally, I would like to add that you are all elected Nebraska officials. You're all obviously very intelligent, and I'm confident in your abilities, and I'm certain that you'll base your decision on a long-term solution that is in the best interest of the state of Nebraska and its citizens. So thank you. [LB5]

SENATOR LANGEMEIER: Well done, again. Are there any questions for Ms. Schaffer? Seeing none, very good. Thank you very much. Further testimony as proponents. Welcome. [LB5]

KENNETH MOORE: Mr. Chair and members of the committee, my name is the Reverend Kenneth Moore, K-e-n-n-e-t-h M-o-o-r-e. I'm the regional minister of the Christian Church Disciples of Christ in Nebraska, and I'm the board president of Nebraska Interfaith Power and Light. And I'm speaking in favor of LB5. Many of my religious colleagues with Interfaith Power and Light in Kansas, Texas, and Washington,

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D.C., have testified to the U.S. State Department against the Keystone XL pipeline. Others around the country have preached, educated, rallied, and even risked arrest in order to bring this moral issue of tar sands into the light. The proposed pipeline tests our ethical fitness and our sense of moral obligation to future generations. Christian concern for the environment is shaped by the word of God spoken at creation; the love of God hanging on the cross; and the breath of God daily renewing the face of the earth. Here in Nebraska, the Keystone pipeline that is proposed poses a serious threat to the state's water supply and not just our water but to the nation's largest aquifer, the Ogallala. It provides drinking water to 30 percent of Americans, irrigates crops in the heartland, and this is a God-given and precious resource that we should protect for this and future generations. It is not ours to risk nor are the jobs associated with our agriculture heritage. This bill would protect ecologically sensitive areas like the Sandhills, cold-water streams, and aquifers. When I visited a couple of weeks ago with Bishop Ann Sherer-Simpson of the Nebraska Conference of the United Methodist Church, she shared with me that as she has visited with her members all across the state, that they are fearful of the potential environmental catastrophe that this pipeline represents. If we learn anything from our neighbors in other states, it is that these tar sands oil pipelines do leak much more than TransCanada has predicted. And if we can learn from our neighbors in Michigan where a state of emergency was called because an oil pipeline broke in July of 2010, spilling a million gallons of raw tar sands crude into the Kalamazoo River, the spill is still not cleaned up and won't be for some time, and the total cost is estimated at a billion dollars. Large sections of the river remain closed to swimming, fishing, and even boating. A survey conducted by the Michigan Department of Community Health, after the Kalamazoo incident, found that 60 percent of nearby residents were experiencing headaches, vomiting, respiratory troubles, and other health problems due to the spill. I and those that I represent urge Nebraska's elected officials to protect the Sandhills, our cold-water streams, and the aquifers in Nebraska. Please take the strongest actions possible to care for God's creation and provide a hopeful future for our children and our children's children. Thank you. [LB5]

SENATOR LANGEMEIER: Well done. Now, wait for questions. Hopefully, will be easy for you. Tell me, where are you from? [LB5]

KENNETH MOORE: I'm from Lincoln. [LB5]

SENATOR LANGEMEIER: Okay. Are there any questions? Seeing none, very good. Well done. [LB5]

KENNETH MOORE: Thank you. [LB5]

SENATOR LANGEMEIER: Further testimony as proponent. I like to see the eagerness and the orderliness of coming up. Welcome. [LB5]

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JOSEPH DELICH: (Exhibit 7) Hi. Good morning. Mr. Chairman, members of the committee, thank you for being here. My name is Joseph Delich. That's J-o-s-e-p-h D-e-l-i-c-h. I live here in Lincoln, and in the interest of full disclosure I have volunteered with Bold Nebraska in the past and will probably continue to do so in the future. But I'm here today as a Nebraska citizen for the same reason that I walked into the Bold Nebraska office for the first time. I'm adamantly opposed to the Keystone XL's current route through the Sandhills. And that's why I'm here today to speak in support of LB5, specifically because of its language regarding exclusionary zones. I've been told to talk about what I know, so I'm going to try and do that. As I sat down to write this speech, first all I could think was that three minutes didn't seem like an awful lot of time. As I thought more about it, I remembered the time limits for testimony at the State Department hearings were three to five minutes. Now, I don't know if any of you had the pleasure of attending either the Lincoln or Atkinson hearing, I attended both in their entirety. And I've got to tell you, those three- and five-minute intervals really start to add up, as I suspect you probably realized from the past couple of days. So every once in a while when I was there, I'd begin to get impatient and feel that things were really dragging on. But then I'd snap back to attention as I reflected the reason for the extensive testimony is Nebraskans have a lot to say about this pipeline. In case it hasn't been clear, I can tell you what I heard. At the hearings, I would say 60 to 70 percent of the testimony asked the State Department to deny the permit so long as the route ran through the Sandhills...60 to 70 percent. Now I've never held public office, except for student council in I think sixth or seventh grade, but you can guess that anybody would be happy to win with margins like that on election day, for example. Now, I don't know if any of you know this, but this is a pretty red state. What that means is we're not the sort of state that's about to pass a bunch of laws and regulations and create public agencies to deal with contingencies that may or may not happen in the future. Even though I'm often on the other side of the aisle, I think that that's probably a good thing. However, if when the need does arise the people of Nebraska are told it's too late to do anything, I fear the consequences may be catastrophic. The citizens of Nebraska, the people that live here and will continue to live here shouldn't lose out simply because it took us a few years to organize and be loud enough to be heard. I want to quickly address a couple of concerns about the legislation. One is that the state does not have the authority to route pipelines. It's simply not true. Montana and North Dakota already do so as has been mentioned. And I've heard an argument that sounds persuasive but is misleading. I've heard that if states can route pipelines, for example, South Dakota can site it far to the west while we wanted to site it far to the east. This would be a complication, but there's no reason we would not be able to work out something like an interstate compact with South Dakota. This could be a messy process and probably would be inefficient, but it's the current state of things. The other option is to cede the authority to some sort of federal agency, and maybe that would be preferable but it's not the current state of affairs. And like I said, this is a red state and we don't tend to cede authority to the federal government without much of a fight. Thank you. [LB5]

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SENATOR LANGEMEIER: You just have a little bit left. Finish it. Finish your last paragraph. [LB5]

JOSEPH DELICH: Okay. [LB5]

SENATOR LANGEMEIER: It's short. [LB5]

JOSEPH DELICH: So I'm asking you to vote for LB5 because I think it does the most to protect the Sandhills and the Ogallala aquifer. And it does what I think most Nebraskans want and would have insisted upon more loudly years ago had we had the resources and organizational infrastructure this company did when it first proposed the pipe. Please at least vote this bill out of committee so it can be honestly debated by the full legislative body. [LB5]

SENATOR LANGEMEIER: There you go. Are there any questions? Seeing none, well done. Very good. Further testimony as a proponent. [LB5]

PAUL MATHEWS: Paul, P-a-u-l, Mathews, M-a-t-h-e-w-s, from Cogswell, North Dakota. First of all, I'd like to thank the Chairman and the committee members for allowing me time today on behalf of the Nebraska property owners facing eminent domain. I'm a farmer, but also a practicing CPA and also an emergency response in my area. My area is in the area of the Ludden pumping plant leak. As I look around this room, I believe it's safe to say nearly everyone here owns private property. In 2007, my family did too, and was quietly planning our life, believing private property rights meant that we could. Try to conceive a situation where a foreign corporation tells you, you no longer have absolute rights on their planned corridor. Make no mistake, this event causes much anxiety to a homeowner. Like most, we purchased this property many years ago and made the mortgage payments and paid the taxes. And we dreamed of the day we could build and we did, but to have this dream shattered when a pipeline operator, by their decision in a foreign country, placed a corridor for hazardous, uniquely wavered, high-pressure thin steel pipe next to our home seemed so poorly sited. To plead with the rigid land agents to suggest something different was only met: sign our easement or we'll just condemn you. As you see, currently codified North Dakota laws give pipeline operators a lot of rights, nearly that of a dictator's. But I suggest this committee review the most grievous attacks on private property, the right of eminent domain. As a North Dakota owner, the current legal landscape, property owners can only appeal to the compensation aspect to their courts. How can a person weigh the proper amount of compensation relative to always knowing that danger lurks outside and what may be contained in that drinking water with every glass we draw from a faucet? In our example, the compensation would not afford to pay for a cup of coffee a day. I fear Nebraska has a similar lack of protection. My condemner may not have been named Osama, Saddam, or Muammar, but this pipeline operator uses the same bully threats equivalent to what they have been proud of. I've lived my entire life in rural America and

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I don't believe this is the American way. And I encourage you guys to study this very well, and I also would encourage any questions at this point. [LB5]

SENATOR LANGEMEIER: Well done. Are there any questions? Senator Carlson. [LB5]

SENATOR CARLSON: Thank you, Senator Langemeier. Thank you for coming to testify. So let's go back a little bit. You have property and the pipeline ended up going through your property? [LB5]

PAUL MATHEWS: Yes. [LB5]

SENATOR CARLSON: And you built your house. And how close did it go? [LB5]

PAUL MATHEWS: The original survey agent that showed up showed me a copy of the map that literally would have went through my basement. By apparent accident or lack of a current map, they were planning on maps that were several years old. This was a green field new home development. The next time they came, they came with a map showing 156 feet away and asked my wife to sign the statutory North Dakota waiver to the 500-foot buffer. We refused. We insisted that the buffer stay intact, and I received a phone call from TransCanada within a couple of days and, obviously, he was very disappointed, and he said our cooperation probably is going to be minimal at this point. Hence, we entered into a long, difficult, difficult year with them. [LB5]

SENATOR CARLSON: Okay. And this is this pipeline we're talking about. [LB5]

PAUL MATHEWS: Keystone I. [LB5]

SENATOR CARLSON: Oh, Keystone I. Okay. So then would you say that the North Dakota regulations didn't help you? [LB5]

PAUL MATHEWS: Even those need to be modified. The testimony I gave here, I truncated down from 4.5 minutes down to 3 minutes. As I encouraged my legislature last week, and they adopted, to conduct a study of eminent domain laws relating to a foreign pipeline with no domestic oil coming on that line or receiving to a North Dakota refinery. So the North Dakota Legislature will be studying my...the situation for the next 12 months, I assume. [LB5]

SENATOR CARLSON: Okay. So the existing regulations and law in North Dakota...to this point, you're not confident that that's going to help you. [LB5]

PAUL MATHEWS: It's not enough in my mind. As you can see, this was...it's a violation...it's as if this person comes in and...into your home and when you open the door, he's there. And there's just no basic human rights, the right to be...feel

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comfortable in your home. It's destroyed that, in my estimation. [LB5]

SENATOR CARLSON: Okay. Well, I think you've made your point pretty well. Appreciate your testimony. Thank you. [LB5]

SENATOR LANGEMEIER: Senator Christensen. [LB5]

SENATOR CHRISTENSEN: Thank you, Mr. Chairman. Did they eventually stay the 500 foot away? How did that turn out? [LB5]

PAUL MATHEWS: Yes, but it was after the PSC hearings to the point that I couldn't even testify exactly knowing what the effect was on me. And, you know, I might add here is that I've done over 3,000 hours of research. A CPA can get into this (laughter), but it's important to note that my research found that the state of Illinois' 1997 Lakehead pipeline, the Illinois Commerce Commission said, you can have your permit but we're withholding eminent domain rights. You have to negotiate with the landowners. I believe Lakehead took that to the Supreme Court and the Supreme Court upheld the commission's decision about withholding eminent domain rights. Which is interesting about that is, as I read it and I encourage you guys to do that also, but the public purpose...they found five or six shippers or a couple of refineries is not public enough in their minds to...for that sovereign state right to be used against their property owners. It's an interesting case. [LB5]

SENATOR CHRISTENSEN: What was that pipeline? [LB5]

PAUL MATHEWS: Lakehead. [LB5]

SENATOR CHRISTENSEN: Lakehead in Illinois. [LB5]

PAUL MATHEWS: 1997. [LB5]

SENATOR CHRISTENSEN: Thank you. [LB5]

SENATOR LANGEMEIER: Are there any other questions? Senator Dubas. [LB5]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Mr. Mathews, for coming forward. So I picked up on a comment that you made to Senator Christensen. It was through the Public Service Commission's hearings and that process that you were able to get your issue resolved with that 500-foot buffer, is that correct? [LB5]

PAUL MATHEWS: But it was difficult to know how to testify when you didn't know where the corridor was going to be. Looking back on it, it feels like it was retribution for me not signing the waiver. Eventually, I was able to testify. I testified the very last hour at the

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North Dakota PSC hearings in September 2007. And as of that point, an hour earlier Keystone had told the commission that all waivers were acquired. And specifically asked: What about Mr. Mathews? And they said: Yes, he's adopted our 500-foot corridor. But yet the week before when I had this in my hand for the administrative judge, I still had an easement with 156 feet. The agent was unaware of it and he said...again, a week earlier the agent said: This is what I can give you; I'll come back two more times, that's all; you'll be placed in the condemnation file. [LB5]

SENATOR DUBAS: So then it was through that hearing process where they said that they would abide by the 500 foot, and then you were able to testify and get that secured? [LB5]

PAUL MATHEWS: But so late in the process. It put the landowner in such a disadvantage to know how to plead his...the effects that this pipeline would have on him. [LB5]

SENATOR DUBAS: Very good. Thank you for coming. Thank you for your help. [LB5]

SENATOR LANGEMEIER: Very good. Seeing no other questions, thank you for coming down and testifying. [LB5]

PAUL MATHEWS: Thank you. [LB5]

SENATOR LANGEMEIER: Further testimony in support or proponents. Come on up. Move to the front and then you'll be ready next. You're getting your exercise up and down, up and down. Welcome. [LB5]

JIM PIPHER: (Exhibit 8) Hello. Thank you. My name is Jim Pipher, J-i-m P-i-p-h-e-r. I live in Lincoln, Nebraska. Thank you for the opportunity to speak today about perhaps the most important decisions ever facing our Legislature. I'm sure that you all want to do what is best for our state and our citizens, and I don't envy your position. I know that you're being bombarded with all kinds of conflicting opinions and contradictory messages, and I can well imagine that it could seem overwhelming to try to make sense and find meaning in the avalanche of information and misinformation. With my brief statement I hope to offer a simplifying perspective. Ultimately, the complexity of your task might provide a simple wisdom. Let's start with a few places where I think we can all agree. Everyone, even the executives with TransCanada, would agree that the Ogallala aquifer is an important and valuable natural resource. Water is the lifeblood of our state. If the XL pipeline is built, it will be with us for a long, long time. As proposed, this project will still be operating long after many people in this room are dead and buried. This project would be built, inspected, operated, and maintained by human beings. And you're supposed to talk about what you know: I'm a clinical psychologist. I worked construction jobs to put myself through school. Human beings are amazing and

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wonderful creatures who continually goof up and make mistakes. This project is very, very big. Your task in this special session is to measure what is in the best interests of the people of this state. Attempting to achieve a comprehensive assessment of the safety and advisability of this project has to involve literally thousands of factors and variables. Your judgment is occurring in the context of opposing sides with dueling facts and figures. Yet you seek to find the truth. It's a lot to take in, but therein lies a key consideration. As you struggle to sort it all out, pay special attention to the dimensions of this issue in terms of size, scale and scope, complexity, complication, and, as mentioned earlier, time, and the all important and inescapable human factor. Be humble and realistic. I submit that no one has all of the answers. Lots of folks will weigh in and that is as it should be. But there is no expert, no scientist, no engineer, in fact, no human being that can give you an unequivocal, straight up, 100 percent guaranteed promise that this pipeline will never ever create problems for our land and water. We have options. There are many ways to go. Given what's at stake and the gravity of your task, I strongly urge you to stick with what you know for sure. This is difficult and complicated. I wish you well. But knowing what is right just might be easy. Keep the pipeline out of the Sandhills and away from our aquifer. Thank you. [LB5]

SENATOR LANGEMEIER: Well done. Are there any questions? Seeing none, very good job. Just as a kind of programming note I didn't say at the start, we will adjourn for lunch at 12:00 till 1:30 and then we will come back and continue at 1:30. Welcome. [LB5]

JOEL SARTORE: Hi. My name is Joel Sartore, J-o-e-l S-a-r-t-o-r-e. I appreciate being allowed the chance to testify today. To be honest with you, I can't believe we're all sitting here and that this is taking so long. I tried to think about what this is really about. I draw on my years of covering environmental issues for National Geographic magazine. I've covered drilling and extraction of gas and oil on the North Slope. I've covered fracking and deep beds and coal bed methane extraction in the Rocky Mountain West. I covered last year's oil spill. I'm not here on behalf of National Geographic. I'm here on behalf of myself, and what I'm telling you is that, to echo Dr. Pipher, yeah, people make mistakes, sure. Does that mean I don't want pipelines? Sure, I want pipelines. I've got a big old Chevy pickup truck and I've got a Prius. We all drove vehicles to get here, didn't we? I like natural gas, too. I heat my big old historic home that's not insulated very well. I wish it could be, but it's stucco over brick, hard to do. I wish that I had more natural gas and it was cheaper. I wish for a lot of things, but I really wish to understand why we're here. Why are we here? Is it about more jobs? No, because a longer pipeline following Keystone I would provide more jobs because the pipeline is longer. I'm no expert in construction, but more pipe and more miles means more jobs, probably more taxable infrastructure on the surface as well. What I'm thinking is, this must be about something else, and I've thought and thought and thought, what is this about? Is it about the fact that the oil and the benzene in it, the fact that it's a nasty, nasty tar sands extracted process for bitumen in the first place, is it about that? Well, let me think. Yeah, it's a

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terrible process and, yeah, benzene will be pumped through it 1600 psi. For sure, it's a bad process. Is it about the plume moving around? Well, I don't think it's about that either. My father was an environmental cleanup specialist, specializing in petroleum plumes and how they migrate through soil and water for many years for the Army Corps. Turned out he doesn't like it either. It must be about something else. What's it about? I know what it's about. It's about money; it's about money. I got a call at the dinner table last night. Folks with TransCanada want me to vote in favor of it. What do they care about me? They were calling thousands of people. Why did I get a little brochure in the mail that said, this oil is not going to be sold to China? Well, of course, it will get sold to whoever pays the most for it, in my opinion. TransCanada, please don't sue me into outer space. Well, it's got to be about money, isn't it? A few people stand to make a lot of money and they got to some of you guys a long time ago before you thought that anybody would be aware of this sleepy little issue. No problem with Keystone I; here comes Keystone II. It's a problem and I don't envy you guys. I don't. But should we risk our aquifer for fossil fuel? I'm a fossil fuel addict. I like fossil fuel. Pipelines are a better way to ship fossil fuel than trucks, for sure, and rail. No, it's about money. A few people want to take this chance, possibly damaging our aquifer forever, when there's a perfectly good route, one that will provide more for Nebraskans in terms of jobs and long-term security. So that's about what I have to say other than one more thing. I am very, very heartened by this process. I'm heartened that I have the chance to speak here and that you guys listen to me, that we can have this discourse. It's not personal; it's environmental. It's long term and it matters. So I thank you all very much for listening to me. [LB5]

SENATOR LANGEMEIER: Very good. Are there any questions? I do have one. Where do you live now? [LB5]

JOEL SARTORE: I live in Lincoln, Nebraska. [LB5]

SENATOR LANGEMEIER: Okay. [LB5]

JOEL SARTORE: Thank you. [LB5]

SENATOR LANGEMEIER: I appreciate it. Thank you. Well done. You're the man. They saw you get up six times and (laughter) they're respecting that. Welcome. [LB5]

PAUL CORKLE: Thank you. My name is Paul A. Corkle. Corkle is spelled C-o-r-k-l-e. I live in Atkinson, Nebraska. I'm a man with more than one hat. I am also...I am a farmer/rancher. In addition to that, I also serve on the city council for the town of Atkinson, Nebraska. The reason I am here is because I would like to tell you about a situation that happened in Atkinson, Nebraska. Several years ago, the state...I can't tell you whether it was DEQ or EPA, notified the city that they no longer...their solid waste treatment plant, which was the sewer plant, doesn't meet the criteria for the effluent

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being discharged into the river. So we had to build a new sewer system or waste treatment plant. When we originally did that, had it looked into, we had the EPA, the DEQ, the USDA, the Army Corps of Engineers, and an engineering firm out of Columbus, Nebraska, all look into it. And ultimately, we were going to go with a lagoon system as opposed to a mechanical plant. We had a mechanical plant in but it only lasted probably 25 or 30 years and was obsolete, and they told us a lagoon system would be far better and would serve our needs better. So ultimately, we looked at buying a piece of tract of land and then we would pump the effluent off of the lagoon system through an irrigation system in waters and grass. The lagoon system was going to be 32 acres. It was going to be raised out of the ground 2.5 feet, and it was going to have a state-of-the-art polyurethane liner in the bottom of this lagoon. When the study was all complete and everybody met at the conclusion of the day, was that the lagoon system didn't qualify because of the fact that there was...our groundwater was too close to the surface and the soil types of the sand of the Sandhills was too porous, and the possibility of groundwater contamination was too high that we couldn't build the lagoon system. So therefore, we had to go...we were notified right after the first of the year that we had to go to a mechanical plant. And my question or my statement, in general, is that if, in fact, our little town of 1,200 people couldn't build a waste treatment lagoon system plant that was raised out of the ground 2.5 feet, then why can TransCanada put their pipeline and employ benzene and everything, and ultimately it's only 3 feet? And I'm sorry, I'm over the red. [LB5]

SENATOR LANGEMEIER: No, you did excellent. Very well done. Are there any questions? Seeing none, thank you very much. Very well done. [LB5]

PAUL CORKLE: Thank you. [LB5]

SENATOR LANGEMEIER: Further proponents. Come on up. I need you to hand...can you hand Barb that green sheet for me? Thank you. [LB5]

NANCY PACKARD: Hello. I'm Nancy Packard, N-a-n-c-y P-a-c-k-a-r-d. I could say I'm a retired teacher. I'm a long-time Sunday school teacher; I'm a mom, grandma, belong to lots of environmental agencies, but I am here as a Nebraska citizen. I live in Lincoln, Nebraska. The one good thing that has come out of this, I think, is we've all affirmed our love for our state and for this legislative process and for our natural resources. If you Google and look on Wikipedia at the Ogallala aquifer, you see it's just a brilliant little blue dot in the middle of the land. We have such a rich asset here. I think other states must be envious of us. A couple of years ago, it was my good fortune to be able to listen to lots of Natural Resources Committee hearings and talked about were things like the wind energy. And one of the things that came up, Senator Christensen, was eminent domain for a bike trail that was being put in. I'm for bike trails. I was really impressed with how carefully people considered eminent domain for the landowners who would have been affected. I came away from that session feeling like people were almost too

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protected, which is unlike the feeling I'm getting now with TransCanada. Senator Schilz, I remember you, I believe, asked lots of good questions and I told my Ogallala relatives that I thought you showed great promise as a senator. And now that I've established myself as a lovely person, I would like to tell you, Senator Schilz, that I own the property just north of your house, well, some friends and I do, and we're doing some renovation and we're going to put in a new natural gas pipeline, and I'm going to run it through your living room. In fact, I've already started to...we're putting it in the subfloor, though, that's okay, and I've already started to do some of the work. And you can see that we're very careful. We're Caucasian like you and I'm like your grandma, we're not going to do any harm. I would like to go from that to saying, why would we not protect ourselves against a foreign company that wants to plow through our state and even without promising petroleum for the United States? As your constituent, I ask you to have...you're doing this. I ask you to listen; I ask you to have insight and wisdom, and I ask you to take courage. I think there are two groups you need to have courage against, and one is the people who are not informed. And I've certainly been in that situation where I've been too busy to know what's going on. But one is that big group that's not informed and is susceptible to promises of jobs and oil. And the other group is the group that's misinformed. You have to be courageous for us against those two groups. You have to do the right thing. About ten years ago, McCullough...David McCullough came to Nebraska to talk. He had just finished his book, John Adams, and it was right after the 9/11 event, as a matter of fact. And he came to talk about those great men who started our country, Jefferson and why he chose Adams rather than Jefferson and Adams, as had been his original intent. And he said this: He said they didn't know how it was going to turn out. And I think that is such a good line for us today. You don't know how this is going to turn out, but you have to be courageous for us. You have to stand for us. This is more than you and me now. This is for our grandpas and grandmas and this is for our kids. You have to protect this land. The time is coming soon when we will be the feed basket for other people who don't have our water and our soil, and you have to protect it for us. I admire you for what you're doing and I thank you for this opportunity. [LB5]

SENATOR LANGEMEIER: Well done. Are there any questions? Seeing none, very good. Well done. [LB5]

NANCY PACKARD: I saw perplexed looks when I mentioned that about Senator Schilz. I hope you understand I was trying to make the point a personal (laughter)... [LB5]

SENATOR LANGEMEIER: Further testimony as a proponent. Come on up. [LB5]

CAROL REED: Hello. I'm back again. [LB5]

SENATOR LANGEMEIER: This little guy is going to have more experience in the Nebraska Legislature before he's eight than (laughter). That's good. [LB5]

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CAROL REED: Little hands and little feet have things to say, too. [LB5]

SENATOR LANGEMEIER: Yeah. [LB5]

CAROL REED: So I brought you another expert since you've had a heck of a lot of experts. This little guy is an expert. He says pipelines leak and spill, trust me. [LB5]

SENATOR LANGEMEIER: Oh, wait a minute. I need your name. [LB5]

CAROL REED: My name is Carol Reed, C-a-r-o-l R-e-e-d, and this is Noah, N-o-a-h Reed. And he says that pipelines leak and spill and he is an expert on leaks and spills so he has something to say about the matter (laughter). This morning he had it all the way up to his neck so I know about cleanups, too. And I think that cleaning him up is a whole lot more pleasant than cleaning up an aquifer will be. I'm not quite sure how exactly you're going to do it. Do you have a giant fish tank cleaner that cleans aquifers? I don't think so. And I've heard from you, very respectfully, that you're talking about just a pipe with nothing in it. Well, let's use a little more Nebraska common sense and Mom's common sense to say, we all know that there's something running through that pipe. So what is it? It's nasty; it's toxic. We don't want it in our soil; we don't want it in our water. Please, please, listen to the lovely senators who have proposed some bills here to allow us to have some exclusionary zones. Thank you very much, Senator Haar, for doing that, to protect sensitive environmental areas like our Sandhills, like our aquifer. And I also want to say, Senator Christensen, you're talking about if things are too late. Well, as far as I can see it--and no, I'm not an attorney, I don't have that legal expertise--since the President hasn't signed a cute little piece of paper saying that they have legal right to build that pipeline yet, they don't. That means they don't have those rights and you still have the right and the responsibility to protect our state with laws that we can move forward with. Thank you also, Senator Avery, for your law or your proposed bill, and I would ask that you also move both of these forward to be debated by the full Legislature. Senator Langemeier, I have some reservations about the bill that you introduced, and I know that's probably not up for debate today because I do not think that the decision should be made by a political body but by those who are elected by the citizens of the state of Nebraska, not an appointed board. And I appreciate that you're wanting to bring the decision within the state of Nebraska, so on that much I agree with you, but I think that we need to have it be by somebody elected and who is held responsible and accountable to the citizens of Nebraska. So, again, I thank you for letting me and my lovely little child here speak today because he loves the Sandhills and he deserves clean water. [LB5]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, thank you very much. [LB5]

CAROL REED: Thank you. [LB5]

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SENATOR LANGEMEIER: Further testimony as a proponent. Come on up. [LB5]

ALEXANDRA KERIAKEDES: Ready or not. The young lady is distributing material surrounding my planned testimony and I would like to start...these are my copies and I've been jobless for 11 years so I'm pretty much an expert on how that feels. [LB5]

SENATOR LANGEMEIER: Oh, I need to stop you right there. Do you have your... [LB5]

ALEXANDRA KERIAKEDES: Yes, my name... [LB5]

SENATOR LANGEMEIER: No, I need your green testifier sheet. [LB5]

ALEXANDRA KERIAKEDES: Oh, excuse me. [LB5]

SENATOR LANGEMEIER: We got to go in the right order. You got lots of green paper there. [LB5]

ALEXANDRA KERIAKEDES: Here we go. I've got a lot of paper, period. [LB5]

SENATOR LANGEMEIER: That's okay. [LB5]

ALEXANDRA KERIAKEDES: If you think this is something, you should see my dwelling. [LB5]

SENATOR LANGEMEIER: Okay, now your name. [LB5]

ALEXANDRA KERIAKEDES: Now my name. [LB5]

SENATOR LANGEMEIER: Thank you. [LB5]

ALEXANDRA KERIAKEDES: (Exhibit 9) Alexandra Keriakedes. Alexandra, A-l-e-x-a-n-d-r-a, Keriakedes, ten letters five syllables, K-e-r-i-a-k-e-d-e-s, citizen of Lincoln. In fact, I have a perfect view of the Capitol from across 16th Street. Ideal. Now I have to, first of all, identify myself properly with no reservations; I have no secrets. I'm a hardliner. I'm not just a tree hugger, I'm a globe hugger. And when you've seen the recent articles like in the Journal Star about the global warming situation having exceeded worst-case scenarios, surprising even the 98 percent expert scientists in going beyond what their horrible predictions were, where do we go from here? Well, we don't do anything that increases global warming, such as the processing of tar sands oil. It's not that just I'm opposed to the Keystone XL or any other oil pipeline; I'm opposed to all fossil fuels and means of transporting them. I am a realist to the point that I know we cannot overnight turn off all the pumps, but if you want to look, the evidence is there.

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Just in the NPR news this morning, where two airlines had flown machines filled with biofuels, one produced through algae and the other one through processed vegetable cooking oil. It's a start, it's a small start, but I'm an optimist, and I'm wearing the colors that in...the color that in Germany where I lived for 28 years as an ex-patriot symbolizes hope: green. Die farbe der hoffnung--hope. And I have great hope. I had it sitting in the orchestra pit in Germany hearing, oh, it's politics, you can't do anything about it. But my watchword...those three quotes there on the inscriptions from the Nebraska State Capitol, number...primary being "The Salvation of the State Is Watchfulness in the Citizen." And I have had the pleasure of seeing through this whole issue how many citizens are concerned and coming forward and expending their resources to do what they can to protect Nebraska's resources, which ultimately serves the purpose of the entire world. For this purpose, however, I could not jump into a military branch following 9/11 and am in great admiration of those who did; even people of somewhat advanced years went back into military service. But as a citizen...Helen Keller said, "I am only one, but I am one. I cannot do everything, but I can do something. And because I cannot do everything, I will not refuse to do the something that I can do." And I think that is what our highest calling is, to do the something that we can do and put our globe ahead of Nebraska, ahead of the Midwest, ahead of the entire U.S.A., North America. And the quotation from the frieze above the Supreme Court bench is prime: Eyes and Ears--what we're all bringing today--Are Poor Witnesses When the Soul Is Barbarous. And I think there are too many barbarous souls running around this state. Thank you very much for giving me the opportunity to speak my word. I was prepared because I am very emotional. As the Germans would say, I'm built close to water. When the tears flow, that's the reason. And so I brought this little fellow (Meadowlark bird sound). We never want to silence this voice. This is Nebraska...pure Nebraska. Thank you. [LB5]

SENATOR LANGEMEIER: Very good. Well done. Are there any questions? Seeing none. Welcome back. [LB5]

SUSAN LUEBBE: (Exhibit 10) Thank you. My name is Susan Luebbe, S-u-s-a-n L-u-e-b-b-e. Hello, my name is Susan Luebbe. I'm a rancher/landowner from south of Stuart. We are a fourth generation ranch that strictly raises Black Angus beef on our Sandhills ranch. I am here to support Senator Haar's LB5 with the greatest respect and pride. I am thankful that someone understands the emergency to reroute this pipeline. LB5 will do exactly that. The most ungodly act would be for me not to stand up and say, heck no. What makes me nervous is the fact that the current proposed route is less than 200 yards from my house. Our water is the best tasting ever and who wants to wake up worrying about one more stress on the ranch? The reputation of this company is horrific at best. To treat the landowners young and old with the threat of eminent domain before a U.S. permit is issued shows the arrogance this company has portrayed from the beginning. Nebraska has the largest percentage of slaughtered beef in the United States, and this large percent comes from predominately the Sandhills. We raise beef that supplies every resident, fast food chain, and grocery stores. Not if, but when our

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aquifer is poisoned, how will I or where will I get the 20 gallons of water per day for each of our cows? I just want to protect my land and our water, and you would too if you lived and worked in the Sandhills of Nebraska. We are not extreme environmentalists but we must take care of our sandy ground or it will not take care of that bank note that constantly looms over our heads. I must pass land on to my son that is viable for him to live off of. This is not fear or emotion but fact. And having to depend on you folks to help us out is, well, honestly, a little bit unnerving. I hope that you understand what I am asking of you is so crystal clear. It is a fact that many citizens and landowners say it would be a crime not to fight to the bitter end to save our Sandhills and the water that sits below us. There are many that speak of storing weapons to defend the land as our ancestors before us did to stop this pipeline in the Sandhills. There is such a great pride in owning this special ground that some of us are willing to shed our own blood to save it. So when I ask you to help us out, I'm serious, as I don't want to see it come to this. I know you didn't plan to be here either. But as elected officials of Nebraska, you choose to run for office which means you are working for all the people. I hope you don't consider us strangers or not your constituents as this bad route affects the whole state. I want to thank all of you on the Natural Resources Committee for your time and efforts in working for the people of Nebraska. Please, I strongly urge you to pass LB5 out of committee for me, for our children's future, and our state's economy. Thank you. [LB5]

SENATOR LANGEMEIER: Well done. Are there any questions for Ms. Luebbe? Seeing none, thank you very much. [LB5]

SUSAN LUEBBE Thank you. [LB5]

SENATOR LANGEMEIER Further testimony as a proponent. Welcome back. [LB5]

DAVID HUTCHINSON: (Exhibit 11) Good afternoon. My name is David Hutchinson, D-a-v-i-d H-u-t-c-h-i-n-s-o-n. For 45 years I've had on my card, in place...excuse me, preventive maintenance in place of corrective maintenance. A couple examples would be, that I want to give, is the Missouri flood this summer. In 1992, I had the opportunity to canoe on the Missouri River at its highest level, and I've been canoeing on the Missouri River for 56 years. That's a day or two. But this is a man-made problem this last summer with the flood. In March, they knew that the snow pack was going to be a problem but nobody did anything about letting the water out of the Missouri River. In April...and neither did the experts, nothing was let out of the Missouri River, May. They waited till June 6. Preventive maintenance: If they would have let that water out in March, April, or May, we wouldn't have had that flood this summer. The dump that they had, the ammunition dump in Hastings, Nebraska, during World War II, they haven't...they've tried to clean that up. There has been a big problem with the soil and the water at the dump in Hastings. In Grand Island the cancer rates--and this is documented through many articles and studies--are very high in Hastings and Grand Island. The Great Lakes, again preventive maintenance. They don't market the perch in

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Lake Michigan anymore. It's contaminated. The San Francisco Bay, you go fishing there, there are signs: Beware of the toxic fish. There's a dead area in the Gulf of Mexico because the water is contaminated: lack of oxygen. And where does it come from? The Missouri River, the Mississippi. So we need to prevent problems. I'm against the pipeline going through the Sandhills. Since yesterday, I've learned a lot about these testimonies. Actually I'm against the pipeline, period. But you sure wouldn't want to put it through a high water table. And bigger is not always better. Twenty-five years ago IBM let off 40,000 employees. That was a smart move because they're still in business today. But bigger is not always better. And again, why do people have bottled water that they carry around today? Why don't they just drink it out of the fountain? Because there's a concern about pure water. Back East it's been documented in many medical journals that you drink water, you're drinking antibiotics, you're drinking painkillers, because they don't have pure water. We have pure water in the state of Nebraska in our Ogallala aquifer. We need to prevent problems and pollution. And this committee, I appreciate what you're doing and I appreciate the time, and I know you'll do the right thing. Thank you. [LB5]

SENATOR LANGEMEIER: We appreciate you coming down. You did a great job. Are there any questions? Seeing none, thank you very much. [LB5]

DAVID HUTCHINSON: Thank you. [LB5]

SENATOR LANGEMEIER: Very well done. Come on up. Welcome. [LB5]

TODD CONE: Thank you. My name is Todd Cone, C-o-n-e. I'm from Atkinson, Nebraska. I'm a licensed pump insulation contractor, and my wife and I own a partnership in a cow-calf operation, with this pipeline going between two ranches, about three miles from one and six miles from the other. The first thing I'd like to say is I called every senator and invited them all up there, three weeks ago on a Sunday, to come see where this was. One senator shows: Senator Bill Avery. This was probably the most important thing that's going to go across you guys' desks. I look at this sign right here: Natural Resources Committee. Is the Natural Resources Committee not supposed to look out for the best things of Nebraska's resources? We don't have much here. We're not like the Black Hills have people come. We've got water and we've got wind, and that's about it. I do not understand why we're talking about this right now. If there's a chance of screwing up a thousand gallons of water with this thing, why are we talking about this? I would like to have an answer from you guys. I have no idea, but I can tell you that this pipeline will leak someday, and this water, this pristine water that it's going through now, will not be like that. We have set up a little fund in our country where people are putting \$50 together. And if this thing goes through, this proposed pipeline goes through here, we're going to have a monument out next to a pump station on a guy's ground, and it's going to be a big monument, and on top of the monument it's going to have the people that let this happen to the water for the people in a hundred

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years so they can tell who screwed this ground up. And I hope none of your names are on that monument because it's going to be there for a long time, and probably that pipeline will be too. And when it's all rotted out and it's corroding and it's in the ground, that's going to be a bad deal. Thank you. [LB5]

SENATOR LANGEMEIER: Well done. Are there any questions of Mr. Cone? Seeing none, thank you for your testimony. Appreciate you coming in. Further testimony as a proponent. Welcome back. [LB5]

LINELL CONNOLLY: Thank you. Good morning, Senators, committee. My name is Linell Connolly; that's L-i-n-e-l-l C-o-n-n-o-l-l-y, and I'm from Lincoln. I support LB5 and I appreciate all the hard work that all the committees have done and the senators in presenting their legislation. I testified briefly Monday and providing copies of that testimony, so I won't be repetitive with that. I do echo Robert Bernt last evening, he was the last to testify, and his mention of the fault lines as they relate to the KXL route. I recall the time on the farm that my grandfather homesteaded in Johnson County. My mom and my aunts and uncles often told when they were young of being in the pastures or being in the field, and they could feel the ground shake, and I had no idea that we could have earthquakes in Nebraska. Now there's been a quake in Oklahoma a few days ago, right along the route of the KXL. What happens to pipes subjected to those forces of Mother Nature? And if that pipe is in our Sandhills area and we have something like that happen, what happens to the land and the water? Those are our natural resources. On another note, I would like to note that I'm not a radical and I'm not an extremist as suggested of some of us by some of those testifying on Monday. I've tried to be a good steward of the earth and of nature as my father taught me from the time I was small. I think he'd be proud now. (Crying) Sorry. I've not been asked and I've not been paid to be here. In fact, I turned down three days of employment and wages that I desperately need to be here. My ethics and my moral compass are my guides in being here, as is my heart, and I hope you all feel the same. Sorry, I've got faucets. [LB5]

SENATOR LANGEMEIER: You're doing fine. [LB5]

LINELL CONNOLLY: From my heart, I'm asking you and your committees to move these bills forward for debate after the hearings so that the full Legislature can craft legislation to protect our most precious and our most vital resources, which are our water, our land, and certainly our Nebraska citizens. Thank you. [LB5]

SENATOR LANGEMEIER: Well done. Are there any questions? Seeing none, well done. Further testimony as a proponent. [LB5]

MARGARET PULLEN: How do you do. I'm a genetic physicist. I did my Ph.D. work in physics at Livermore National Labs. My name is Margaret Pullen. [LB5]

SENATOR LANGEMEIER: Can you spell it for me? [LB5]

MARGARET PULLEN: P-u-l-l-e-n. Like I said, Paul Revere did his ride and he rode to my ancestral point. My cousin, John Pullen, literally held up the lantern. God created the laws of physics, and one of those laws is the law of quantum entanglement. It is absolutely impossible that that pipeline will not break. That is an impossibility, especially with a million herd of buffalo running on top of the aquifer. Old Faithful going off at any point in time, which has already been predicted, any major or minor eruption, the quantum entanglement, it is absolutely inevitable. And I think the oil and gas families need to wake up to the fact that they are obsolete. The first diesel engine was created on hemp, to run by hemp. We got lots of hemp in Nebraska, because me...and I irrigated with a lot of hemp scratching on my legs as a kid. There's no reason why we can't expand the ethanol, with ethanol, solar panels, and wind generators for gathering electricity. In Wyoming, talking about right now, sending all their wind energy (laugh) to California to call their energy problems. I mean we're talking about an obsolete industry. They need to recognize they're an obsolete dinosaur and let us invent some new things, and we need some new infrastructure in this country and here's a good chance for a lot of entrepreneurs and inventors to come into play, to expand on all these other alternatives. And it's already been well known that these families shut down the fact that there was already cars running with water decades ago. I've been watching the Soylent Green effect. I saw that documentary years ago as an undergraduate student, and I've been watching these families create that horrible effect on this planet, and it needs to be stopped. And this is one example where the people of this country in the republican style and form that our country was created upon, our original republican documents that make every mother's kitchen table the seat of government, like this young lady with her baby, to take back this country and to turn this whole country around with this stopping of this pipeline. Good day. [LB5]

SENATOR LANGEMEIER: I've got to ask you one question. On your sign-in sheet, you checked that you're an opponent, so I'm assuming you are an opponent of the pipeline but you're technically a proponent today to do something about it. Would that be a fair statement? [LB5]

MARGARET PULLEN: To do something about stopping it, period. [LB5]

SENATOR LANGEMEIER: Okay, okay. We just wanted that clarified so we have you in the record correctly. [LB5]

MARGARET PULLEN: Oh, I see. I see. Okay. [LB5]

SENATOR LANGEMEIER: So today you're a proponent on our sheet. [LB5]

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MARGARET PULLEN: I am very, very hard of hearing, unfortunately, so I don't... [LB5]

SENATOR LANGEMEIER: You're doing great. You're doing great. [LB5]

MARGARET PULLEN: ...hear all these little clues. [LB5]

SENATOR LANGEMEIER: Are there any questions? Seeing none, thank you very much. [LB5]

MARGARET PULLEN: You can find my CV in Who's Who in the World ten years ago. [LB5]

SENATOR LANGEMEIER: Thank you very much. Further proponents. Welcome. [LB5]

ROB SCHUPBACH: (Exhibits 12 and 13) My name is Rob Schupbach, R-o-b S-c-h-u-p-b-a-c-h. I'm speaking in favor of the bill. In the past...I'm using a brochure that I've gotten from the Game and Parks Commission to be kind of a folder for the handouts that I've got. It's a brochure about trout fishing in Nebraska. In the past, I've been an advocate of trout stream protection on behalf of the Cornhusker Fly Fishers and Trout Unlimited. Because of the timeliness of getting those organizations involved--they operate through a board of directors that don't meet until the end of the month and they haven't taken any position--I'm speaking for myself. I have a little bit of background for you. In 1999, trout stream legislation first came into effect. It was called the Tom Osborne trout law, and it created a setback for Class 2, 3, and 4 livestock waste control facilities if they were in the watershed of a class A cold-water stream. In Nebraska, this brochure from the Game and Parks illustrates all of the trout streams in Nebraska, there are 37 of them. Fifty of them have public access through wildlife management areas. In the middle-2000 era, the EPA went from a herd size limitation or a herd size class system into a NPDES discharge system, and changed the permitting system. Nebraska changed their law. We have a copy of Title 130. And at that time, I and several other people lobbied through changes to the Livestock Waste Management Act that created a two-mile setback for livestock waste control facilities if they were in the watershed of a class A cold-water stream. And that's what brought me here to testify this afternoon...or this morning. The question that I asked one of the legislative aides in Senator Haar's office was, if we have a two-mile setback to protect class A cold-water streams from livestock waste control facilities, why don't we have some kind of a setback for pipelines? No one had a good answer. I'd like to ask you to move to the third page in the statute of the Title 130, class A cold-water streams are what are called gaining streams. That's illustration A in my handout. It comes from USGS, the U.S. Geological Survey circulator 1186. It's not a free circular and I only have two of them, so I'm going to submit the one that I have as a permanent reference. The gaining streams get their water from groundwater, and they get their water from groundwater in the area. The protection law came from the perception in 1999 that a livestock waste control facility

was going to be built in the watershed of Long Pine Creek. They were going to use a large pit, and it was feared that the pit would seep into the groundwater because of the sandy soil. That's...the second illustration is on page 62. I've taken the poetic license to, at the top of the illustration where it says "waste control (sic--disposal) basin," and write in "or pipeline." And what this illustrates is that if the pipeline leaks and gets into the groundwater, there's a stream below it in this illustration, and the polluted groundwater from either the livestock waste control facility or the pipeline is going to come out in this stream as polluted groundwater. I think that this is particularly significant in the area because this is sandy soil that...it's not like the clay soil around in eastern Nebraska: groundwater moves through there very rapidly. It has the potential to cause a terrific amount of damage to recreational fishing. An example in my next illustration is just a handout from the American Fishing Association. They estimate that in 2006 retail sales for fishing-related activities in Nebraska was \$211 million. I think it would be a shame to damage that type of an industry. If we move to my next illustration, there are two illustrations. This is an area of detail of where the pipeline goes in relationship to in between Newport and Stuart, Nebraska. On the left, there's a cold-water stream called Long Pine Creek. On the right there is Oak Creek, Louse Creek, and Sand Creek, and the drainage goes to the northeast. If there would be in between...if the pipeline would leak in that area, it is conceivable to think that the groundwater would be impacted that would drain into those streams. But more significantly, the pipeline crosses in between Newport and Stuart, it crosses the headwaters of the Elkhorn River and then parallels the Elkhorn River. The drainage goes toward the Elkhorn River. If the pipeline leaks, would it have an impact on the Elkhorn River? It's highly probable to think so. The Elkhorn River has enough problems as it is. I think that Nebraska has statutes in place to be able to move forward and say you're not preempting anything; you're simply expanding the livestock waste control facility law. Nebraska also has...and I see the red light. The last illustration that I have is a wellhead protection map, and it has the path of the pipeline on it. But more significantly, it has all of the watersheds in Nebraska in relationship to the path of the pipeline and the wellhead protection areas. I think that there's nothing new about wellhead protection in Nebraska. The wellhead protection laws in Nebraska also provide a firm foundation to move forward and say the pipeline needs to be moved out of the areas that are problematic already. The people that have gone into wellhead protection have gone into wellhead protection because they have a problem that they're trying to address. How does adding a pipeline, that at some point in the future will leak, help them solve their groundwater problems? [LB5]

SENATOR LANGEMEIER: Very good. [LB5]

ROB SCHUPBACH: Are there any questions? [LB5]

SENATOR LANGEMEIER: Are there any questions? Seeing none, very good. Appreciate it. [LB5]

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ROB SCHUPBACH: Thank you. [LB5]

SENATOR LANGEMEIER: Further testimony as a proponent--again for LB5. Good morning. [LB5]

MARIAN LANGAN: Good morning, Senators. My name is Marian Langan, M-a-r-i-a-n L-a-n-g-a-n. I live in Lincoln. I'm here in support of LB5 on behalf of my organization. I'm the executive director for Audubon Nebraska, and I represent the thousands of members of...thousands of citizens in Nebraska that are part of that. There have been several things said about people like me the last couple days, as I understand it, so I also wanted to just add that I'm a sixth-generation Nebraskan, come from farmers from Boone County, Nebraska. My cousin still farms our home place. My dad proudly served our country. My church in my hometown, there's an altar with my family's name on it. David and I have owned Husker volleyball season tickets for 15 years. I speak to you as a Nebraskan. I unfortunately wasn't able to be here the last two days and I don't want to repeat myself, so I'm just going to briefly share a couple things that I know. I know that I wake up every single day grateful that I got to grow up in rural Nebraska, and I know every single day how lucky I am to live in such a wonderful state as ours. I also know that we've only begun to tap the potential of what the resources of our state can bring us in terms of livelihoods for our citizens. My organization has worked for over 30 years along the Platte River to help develop the ecotourism industry out there, which is now a multimillion-dollar annual industry. We've been helping several ranching groups in the Sandhills figure out how to gain income from the resources and natural benefits of their properties that have come about from their stewardship. And that potential exists in the Sandhills to an unbelievable degree. You know, you hear colloquially things called God's country. Our Sandhills are God's country, and people are going to be able to capitalize on that. We just haven't quite figured that out to, you know, the next level yet, but we do not want to kill the golden goose, and that's what's going to happen with this pipeline. We can't have our Sandhills identified nationally in the future as the place where that terrible accident happened, which is what's...you know, how places all over the country right now are identified. We've got incredible wildlife, bird life, ways of life for the people up there, and all of that is being jeopardized for short-term financial gain. Sometimes you just have to trust, and I think what we've heard from people is that we're having to trust all of you to find a solution here. We've got to get that pipeline out of that Sandhills and out of that aquifer. And thank you very much. I'm happy to answer any questions. [LB5]

SENATOR LANGEMEIER: Well done. Are there any questions? Seeing none, thank you. Well done. [LB5]

MARIAN LANGAN: And thank you all for your time during this special session and the senators who have brought forward bills. We hope to see all of them on the floor. Thank you. [LB5]

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SENATOR LANGEMEIER: Very good. I think we have time for one more before we break for lunch. Welcome back. Good morning. [LB5]

BRUCE BOETTCHER: (Exhibits 14-16) Good morning. Bruce Boettcher, B-r-u-c-e B-o-e-t-t-c-h-e-r. I support Senator Haar's bill, LB5. This bill is exactly what the people of the state of Nebraska have been asking for, and that's why we are here in a special session, to take care of our land in the Ogallala aquifer. The only changes I would make in this bill is that it should, this sandy soil types, it should say no pipeline should be placed in sandy soil types. I have some general comments here. Yesterday I learned the REA substation in Holt County has been abandoned because of the groundwater is too high there. Now that is the electrical part of it. A month ago they had to come up with a new plan to route the REA around the ethanol plant in O'Neill. These are just a couple examples of poor planning and an incomplete analysis of this whole project. Some of them pictures there, the first pictures that you got of four, them are pictures of a dirt work being done at the Ericson substation right now, or last week, before this federal permit has been issued. The other pictures there are pictures of the Sandhills of Saskatchewan. And as you look at them pictures, they claim that they had reclamation on them hills. As you can see, it would not take much to have much reclamation on them type of hills. And if they did...well, if that was what they did there, they did a pretty poor job. And so my point is, if that's the case, I don't want them anywhere nears the Nebraska Sandhills. I'd like to make another comment on the organic side. Mr. Jones testified that they had reclaimed certified organic land, yesterday. Certified organic land cannot be reclaimed to its original status. Once you've disrupted it, it's not the same. The last I would also add, the landowners in my area that have signed the easements, a lot of them wished they hadn't of and they hope that the construction of this project never starts. They only signed because they felt like they had no choice. So TransCanada says they have acquired 91 percent of the easements peacefully. On a billion-dollar project like this, and they can only come up with two people to support what they're doing here--two landowners--to support what that they approve. I think this as a national controversy should show you people that this route, there must be something wrong with it, otherwise they would have had more landowners testifying that there is nothing wrong with it. Thank you. [LB5]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Dubas. [LB5]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Mr. Boettcher. I'd like to get some more information--you're an organic farmer, correct? [LB5]

BRUCE BOETTCHER: Yes. [LB5]

SENATOR DUBAS: And so if your land is disturbed, is there an official process you have to go through? Does that jeopardize your certification? Do you have to... [LB5]

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BRUCE BOETTCHER: Yes, of course it jeopardizes your certification. [LB5]

SENATOR DUBAS: And then you...and so what are the steps you have to take to make sure that certification stays in place? [LB5]

BRUCE BOETTCHER: Well, if it is disrupted, you will have to go back into conventional and you'll have to stay that way for three years and...before you can get back to organic status. And so therefore, then your income back off and that has to go back to a conventional as well. So there's your hardship. Your hardship took you three years to get to organic, taking conventional prices, and then in reverse that's what will happen to you again. So, you know, that's how you come up with that I guess. [LB5]

SENATOR DUBAS: All right. Thank you very much. [LB5]

BRUCE BOETTCHER: You bet. [LB5]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much. [LB5]

BRUCE BOETTCHER: You bet. [LB5]

SENATOR LANGEMEIER: And with that, it is noon. We are going to adjourn until 1:30. We'll meet right back here at 1:30 to continue the proponents for LB5. [LB5]

RECESS

SENATOR LANGEMEIER: Well, welcome back everyone. We are the Natural Resources Committee and we are having a hearing on LB5, and we have heard the introduction by Senator Haar. We took a little break for lunch and now we're back to continue with proponents of LB5. And with that, we have our first testifier and he's ready to go. And so please tell us and spell your name, and we'll get going. [LB5]

ALVIN SMITH: My name is Alvin Smith and it's spelled the same as the senator from the 14th District, S-m-i-t-h, and I live three miles north of David City in Senator Langemeier's district. And I want to talk about the Ogallala aquifer isn't the only thing that isn't only in western Nebraska, and it isn't only at the surface. We own...I was manager of the natural resources district; I was also manager of the Water Resources Association. But we lived west of Bellwood. We have turkeys there and had turkeys at David City, but we didn't ever drill a well for water for our turkeys. We took a 20-foot pipe, put two buckets of lead on it, got into a loader, and drove it in the ground to about 4 feet, and then we put a reducer on it from a half inch to a quarter of an inch, and then we put John Deere putt-putt motors, I called them--kick-starters--and we had all the

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water we could use. The only thing we had to do was have a 300-gallon pressure tank. So western Nebraska isn't the only one that's got an aquifer under it called the Ogallala aquifer, and it isn't the only one that's got water on the surface. But it seems like when I managed the NRD, the biggest problem we had was: Don't put the dam on my place; don't put the ditch on my place; put it on somebody else but protect me. And that's what we got here. And I am absolutely...people, if you would take a look and you'd come, you can't find one person in Butler County that is disturbed or annoyed by the pipeline that went two miles from that farm, and everybody is happy with it. I don't think...they treated people, even some people that messed up after they got the grass; they went back to corn on a 7-8 percent slope. And they come back and grassed it again. Now that's how kind and considerate they were. But somebody has got to realize something: I don't know how many speeches the Audubon Society wrote for these people, but they owned 416 irrigation wells in this state. Do they pay taxes on it? No. And I think that if you would take a check, you would find out that western Nebraska draws more farm payment--I call it farm welfare--than anybody in the rest of the state put together. That's why they're here, to put it on somebody else's. One of the testifiers this morning made a statement: Don't put it in our land; move it somewhere else. Well, the fragileness is all over this state. In David City, I used to tell my secretary, don't let your son or husband urinate on the street, because if they do you'll flood your basement. That's how high the water table was in David City. It's still that high. But people don't realize. It...do it...somebody else, move it off of me, but let's consider something. Let's write Congressman Smith from that district and ask him how much farm payment and how much they get compared to the rest of the state. I think you will find out it almost is the same, a greater amount, than the whole rest of the state of Nebraska. So Wyoming and Colorado and all of us have got a problem, but we've got to solve it. And, Senator Langemeier, I admire you for putting a bill in for the Governor, but I think he should have wrote his own damn bill, and maybe he didn't write it because he don't have this (inaudible) because he's trying to be an economist and fired half of his people. I don't know for sure. I haven't checked with him. But this thing has to go. That pipeline we got, you can't believe the satisfaction. I can give you all the names and you can call them, and they'll tell you they had...treated well. A friend of mine that we put a 100-acre dam on his property, his wife--he passed on--his wife got paid and then they brought water to tamp the ground with water instead of a damn tamper, and the people "grewed" crops there this year, so. But western Nebraska got to realize they're not the only ones with the Ogallala aquifer. They're not the only one. Now if they think it's so dangerous, how can they tell me how much Roundup is going to hurt the water, how much atrazine is going to hurt it, how much weeds, grass killer, and alfalfa is going to hurt it? They don't know because we haven't had it that long. But, yes, we need to protect our water, but we need to be sensible and not think we're the only people that's got something, because we're not. [LB5]

SENATOR LANGEMEIER: Very good. Now for clarification, I think you are a proponent of the pipeline? Did I say that right, you support the pipeline? [LB5]

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ALVIN SMITH: Yes. [LB5]

SENATOR LANGEMEIER: So we've got you in the wrong category here, but it went okay. Are there any questions? Seeing none, thank you very much. We appreciate you coming in. [LB5]

ALVIN SMITH: Thank you. Sometimes I don't get around as good as I should. [LB5]

SENATOR LANGEMEIER: After I sit in this chair for 12 hours, I'm in the same way. Okay. We are going to continue with proponents of the bill, which then are probably opponents of the pipeline. [LB5]

TERRY FRISCH: I'm for LB5. My name is Terry Frisch, T-e-r-r-y F-r-i-s-c-h. And for the record, this gentleman here, they do not use atrazine in the farming anymore. I support LB5. This committee needs to come to some agreement on these bills to get them to the full legislative body for a decision. This issue is too important to be held up by one committee as yourself. It just does not seem right for a foreign country to force itself on the U.S.A. and the state of Nebraska. So I don't have to come back just for the bond that Senator Avery has got, I feel it is very necessary, but \$500 million is not enough. Remember, if this goes through, you people will be held accountable when this pipeline leaks, and I guarantee you it will leak. That's all I have to say. Thank you. [LB5]

SENATOR LANGEMEIER: Well done. Are there any questions? Seeing none, very good. Further testimony in opposition...excuse me, as a proponent to the bill or opposition to the pipeline. Welcome back. [LB5]

KARL CONNELL: Yes. My name is Karl Connell, K-a-r-l C-o-n-n-e-l-l. I was down here...well, basically what I have, I live in north-central Nebraska--Newport--Keya Paha County. I'm going to be blessed with about 3,000 feet of Keystone XL pipeline, of which this crosses a hay meadow and also crosses a pasture. I am in support of, I think it's, LB5 basically because I'm hoping it's going to protect the groundwater and the land that's above it. The reason that I come back down here--I was down here Monday and testified before you. I didn't give you anything because I know you've got that in the hand. Senator Christensen asked...commented about a pipeline down around North Platte that was built in 1954, I believe. And the comment was that we haven't had any problem with that pipeline; what's so bad about pipelines; pipelines are good, the oil is good; there's nothing the matter with it. What the senators need to know is that pipeline, the reason it's there, it was built with...40-some years ago I think Mr. Langemeier said, Senator Langemeier. That's when they put steel in the pipe. That was when that pipe was produced in the United States. It's probably an inch thick. It's probably between 15 and 17 inches in diameter. It is sweet crude and it is about 750 pounds of pressure. There is a whole big difference between the old pipeline and the new pipeline. The new

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pipeline is bigger and the material is thinner and it's higher pressure and it's corrosive. So that's...the new pipeline, the big new pipeline is probably not going to last quite as long. That's what I wanted to clarify with Senator Christensen. Also I hope you senators didn't throw away the packet I gave you Monday and you read a little bit of it, because in there it talks about the chemical materials in the oil, the crude oil that's coming down this pipeline. It's got a lot of chemicals in it. And I asked a gentleman yesterday, I said: Tell me the combination of those chemicals and in what amount does it take to create heat in this crude oil so it will flow? And so far, nobody has told me about that, because this oil has got to be 158 degrees to flow. You need to read that. Also when I left Monday to go back home, I was very disgusted with you senators, and it has to do with your apparent arrogance that this is a major concern to the people that this pipeline comes across. And as a voting taxpayer, I don't believe we need to be treated as bad as we were treated Monday. And my red light is on and I'm probably done. [LB5]

SENATOR LANGEMEIER: Are there any questions? Seeing none, thank you for coming back down. We appreciate it. [LB5]

KARL CONNELL: You bet. Thank you for your time, sir. [LB5]

SENATOR LANGEMEIER: Further testimony as a proponent. Welcome. [LB5]

BEN GOTSCHALL: (Exhibits 17-21) Thank you. My name is Ben Gotschall, B-e-n G-o-t-s-c-h-a-l-l. I live here in Lincoln, although I consider Lincoln to be my second home. My family has a ranch up in the Sandhills, southwest Holt County, southwest of Atkinson. I will also mention that I am the District 5 president of the Nebraska Farmers Union. I also work for Bold Nebraska. I've been working for them since May. I have been fighting this pipeline issue, you know, the issue of the pipeline going through the Sandhills, for almost two years now. I oppose the pipeline route. I oppose the pipeline because of the route, because TransCanada has been unwilling to negotiate with you all or with the federal government on the route. And so I just want to make it clear that I do oppose this pipeline because of the route and I oppose the route of the pipeline. I think those are not too mutually exclusive. And like I said, the message hasn't changed. Two years ago, I along with many other Nebraska landowners called for a rerouting of this pipeline. And I think LB5 will clearly define where we can have pipelines in our state, and most of us landowners, especially where I'm from, don't want a pipeline in the Sandhills. Most Nebraskans don't want a pipeline in the Sandhills, in the Sandhills portion of the Ogallala aquifer. I know there's back and forth about where the boundaries of the aquifer are, where the boundaries of the Sandhills are, but I think that the map that I showed from the FEIS shows clearly where the boundaries of the Sandhills portion of the Ogallala aquifer are, and there are no oil pipelines there--and we want to keep it that way. My family moved to Holt County in the Dust Bowl. We were originally farmers, sharecroppers up in Knox County. Back in 1936, things were bad for a lot of people. And my great-grandpa and his brother drove their cattle--they had about

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100 head of cattle that was theirs--they auctioned off all their farm equipment and they drove the cattle to Holt County about this time of year. They slept in the section lines. And the reason that they went there was because of the Ogallala aquifer. They had heard that the land there had water below it, and that's why they did that. And they bought a ranch on what is ridiculous now, on handshake credit of an Army buddy, and we're still there today. And the reason we're still there today is because we've tried to take care of that water and that grass and that land, and we're still in the cattle business. We never went back to farming. Two things that I want to mention also today is, one, is the oil production in Nebraska. Now I've looked on...I've also passed around another map with oil production in the Sandhills. I've looked at those counties and I've tried to overlap the map. And to the best of my calculations, to the best of my limited mathematical abilities, I've come up with the counties in the Sandhills produce 60,793 barrels of oil per year compared to the Keystone I pipeline which was shut down today--two hours ago that announcement was made--is producing 591,000 barrels of oil per day. So I just wanted that to be on the record, because I know on Monday there was some back and forth about what is oil, whether oil sinks or not. And I would encourage you to visit Yellowstone and visit where the tar sands oil spill there was, and I would encourage you to visit Michigan and see where the tar sands oil spill was there, because I really think that you should see that. I've seen it and it's very disturbing, and the people who live there are very sick and they're dying, and I think that you need to take that into consideration. I see my time is up. I've got one last comment. Senator Christensen said something earlier about hands being tied. And I'm not picking on him because he's not here, although it maybe makes it a little easier, but I just want to say that this is not...this special session is nothing new. We've been trying to get this done for a while now. Senator Dierks, back when he was still a senator, was trying to get siting regulations passed. In the last regular session we were trying to get siting regulations passed. And a lot of bills did not get out of this committee, so I ask you, please, if any bill does come out of this committee, I think it should be this one, because I think it is the simplest, clearest example of what Nebraskans want and what Nebraskans need. And sometimes it might feel like your hands are tied, but let's make sure that it's not because you're sitting on them. And that's all I have to say. [LB5]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, thank you very much for your testimony. [LB5]

BEN GOTSCHALL: Thank you. [LB5]

SENATOR LANGEMEIER: Further proponents of LB5. Good afternoon. [LB5]

TAYLOR WEICHMAN: My name is Taylor Weichman, W-e-i-c-h-m-a-n. Think of something you have worked on and have pride in. You've worked to get it just as you want it. You spent countless hours on it and you've truly devoted your life to creating this perfect thing. There have been stretches of time, years even, when working on it

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was unbelievably difficult. The weather conditions, economic upswings and downturns, births and deaths have made big changes in your plans, but still you worked on it. Some days there were awful regressions. It was so delicate it required just the right touch. Things went wrong for so long, you didn't know if you could keep working on this beautiful thing that was also such a difficult thing, but you worked on it because you knew it was important. You worked on it because you wanted your children and your children's children and, if you were lucky, your children's children's children to enjoy it the way you have enjoyed it. You worked on it because people counted on you to work on it. Your family sat down at the table with you each night and trusted you to work on it for their sake. And when they were just old enough, they stood beside you on the sleepless nights to work on it for the family's sake, just as you had done for your parents. Each morning you would wake up eager for the chance to begin working on it. It's not perfect but it has been your life's work to get it where it is today. You are sitting on your porch admiring this masterpiece, and all at once someone comes along and threatens tearing apart, and you know it will be uniquely hard to put it back together. You start to say something, to gather your neighbors alongside you, but your neighbors can't help because they've been threatened just as you have been. Bit by bit this thing you have spent your entire life working on gets destroyed, stomped on, and spit on. Then the person who potentially destroys your life work looks over at you and says: Oh, sorry; here's some money. Protect Nebraska. Protect Nebraskans. [LB5]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, thank you very much. Well done. Welcome back. [LB5]

KATIE ZULKOSKI: (Exhibit 22) Good afternoon, Senator Langemeier and members of the Natural Resources Committee. My name is Katie Weichman Zulkoski. (Laugh) It's W-e-i-c-h-m-a-n Z-u-l-k-o-s-k-i. I'm testifying today with both of my last names in support of the Nebraska Chapter of the Sierra Club. We are testifying in support of LB5 as we believe that this bill and the portions of it would make...and the exclusion zones that are included in this bill would make important additions to either of the two process bills that we have been in support of earlier this week. We do want to take a moment and thank the committee for the seriousness that you have used in addressing these issues. We know that emotions have gotten high on both sides of this and we appreciate the time and the effort that you are all putting into this. We also believe there is an opportunity that we can all work together to create some type of win-win situation where the pipeline is built and the Sandhills and the water are still protected. I do, while I'm here, want to take a moment to address some of the questions that were asked of me yesterday, and I do want to say, as you all know, as Ken Winston is normally is the one that is in front of you today, he is on record as being opposed to the pipeline and as being opposed to the current route. However, our mission for this special session is to ensure that Nebraska is provided a process that allows Nebraska and Nebraskans a say in routing decisions, and that will continue to be our message through this special session, because although the Sierra Club is in opposition to the pipeline, if the pipeline cannot

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be stopped, which we believe is true at this point, then it needs to be built in what we think is the smartest and best place that it can be built. And we are in favor of legislation that would allow Nebraska to do that. I do have a handout that I neglected to hand out to you, that I'll hand out on my way, that shows the statewide impact of this decision. It is a handout that includes editorials from newspapers from across the state reflecting what we think is the statewide view of this issue. Thank you for working on this, Senators, and I'd be happy to answer any questions. [LB5]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, thank you very much. Well done. Further testimony as a proponent to LB5. Mr. Peterson, welcome back. [LB5]

ALAN PETERSON: Thank you, Senator Langemeier. Hi. I'm Alan Peterson, A-l-a-n P-e-t-e-r-s-o-n, from Lincoln. I appear once again as an attorney for the Sierra Club, Nebraska Chapter. And I came to talk today just very briefly because I kind of want to defend myself and some things I said earlier this week from what seemed like an unfair attack to me. Like most Nebraskans, I'm not a potted plant that sits in the corner if somebody goes after to me. And what am I talking about? Well, Senator Speaker Flood last week issued a very fine legal analysis of the issues that confront trying to pass pipeline legislation. And in that memorandum he referred to a Minnesota case called Enbridge v. Drydal, I think that's how you pronounce it, and compared it to the Eighth Circuit's Kinley case. I was asked, and really it's all I was asked to do at that time, to prepare a memo to respond and, where necessary, rebut portions of Speaker Flood's memo--and I did, and I think I did so fairly. And I talked about the Enbridge case and compared it to the Kinley case just as had he and his excellent legal counsel Mr. Boever. I also did a very short version later on, and I spoke I believe and mentioned that that Minnesota case is worth looking at for this Legislature in trying to craft lawful, constitutional legislation, because that case carefully differentiates between safety legislation and routing. And in that case, which I thought instructive and possibly useful to this Legislature, the court noted that that statute specifically said it was not about safety. And then, in fact, it was not. The court looked at it. I felt somewhat attacked, and that's probably my hypersensitivity. I shouldn't be that way. But I heard several minutes of discussion from Chicago counsel, from the Sidley firm, Mr. Carpenter, who apparently--I don't know if he wrote his memo or not; it's not signed--but to the effect that (1) I wasn't allowed to cite it because the Eighth Circuit wouldn't allow it. I didn't bring the case to the Eighth Circuit; I brought it for your use, possible use, in crafting legislation to this Legislature. Secondly, the rule has now changed. Even if I took it to court...may I finish that? [LB5]

SENATOR LANGEMEIER: Finish that thought up. [LB5]

ALAN PETERSON: Thank you, sir. Appreciate it. Even if I took it to court, the rule has now changed. Rule 32.1 allows citing of unpublished opinions, and it was an

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unpublished opinion and I always said it was. So I didn't think that was fair. Furthermore, ignore that case if you wish, because even in the same memorandum that Sidley Austin wrote, they mentioned a very similar case out of Texas from the Fifth Circuit U.S. Court of Appeals, which made that same distinction. And in that case it was a big setback if you wanted to put in a big piece of equipment. A setback was permissible as routing or location, and being attacked as really being safety. The Fifth Circuit said no, no; it's routing and it's legit and not preempted. I think that's all I really want to say today. I'm not here in general, I am in support of LB5, of course, but I suppose I'm defending myself and defending the use of the Minnesota precedent for the limited purposes that this Legislature wants to do something legal while it does it. Thank you so much. [LB5]

SENATOR LANGEMEIER: You bet. Are there any questions? I can say that after that discussion yesterday I have now read, starting at 3:00 this morning I've read all the rules of the Eighth Circuit Court, which I'm not sure what I'm going with it tomorrow, but I know the rules of the Eighth Circuit Court as of today. So with that said, thank you. [LB5]

ALAN PETERSON: Thank you, senators. [LB5]

SENATOR LANGEMEIER: Any other testifiers in proponent? Welcome. [LB5]

ANTHONY SWIFT: Thank you, Senator Langemeier and members of the Natural Resources Committee. My name is Anthony Swift. I'm a policy analyst with the Natural Resources Defense Council, and I just wanted to... [LB5]

SENATOR LANGEMEIER: Oops. I need you to spell it. [LB5]

ANTHONY SWIFT: Oh, sorry. S-w-i-f-t. And I just wanted to mention a few factual matters relating to Keystone I and Keystone XL that are pertinent to your decision-making process as you consider LB5, which the NRDC is supportive of. As you may notice or have heard from the previous testimony, Keystone I has been shut down today due to mechanical problems. We don't know the extent of the problems but this is consistent with an overall operating history that has been quite out of...I mean it's been contradictory to the operating history we were told Keystone I would have. TransCanada predicted that that pipeline would leak 1.4 times a decade. It has leaked 14 times in its first year of operation. And you may have also heard of the former Keystone pipeline quality inspector who has now gone public with the story in which he found that the company deviated from design in ways that would have a significant negative impact on the long-term safety of that pipeline in order to build it as quickly as possible to save money through the construction process. And I should add that Keystone I is TransCanada's first crude oil pipeline that it wholly owns and operates. The second thing I want to mention is just the issue of leak detection and the

capabilities of Keystone XL's leak detection system. Now in the State Department's environmental review, the State Department says that the real-time leak detection system will be able to detect leaks of 1.5 to 2 percent of Keystone XL's capacity. On an 830,000-barrel pipeline, that means that its real-time leak detection system will not be able to reliably detect leaks between less than 500,000 to 700,000 gallons a day. And that's...those are significant leaks. I would also add that TransCanada often talks about redundant systems. I have here the CSA standard that TransCanada said it would abide by for its secondary leak detection systems. Those systems require that leaks of 2 percent per day be identified within a week using accumulated mass loss processes. That would allow a 5-million-gallon spill before detection, and leaks of less than 1 percent...or of 1 percent need to be detectable within a month. And again, that would allow a maximum spill of 10 million gallons to occur before the non-real-time leak detection systems set in. And I would just finally add that that standard which...I see I'm red. Do you mind if I just finish this last moment? [LB5]

SENATOR LANGEMEIER: Finish it up. Yep. [LB5]

ANTHONY SWIFT: The standard which I just described would suggest is a significant gap in the leak detection system itself. The standard was issued as one of the special conditions that TransCanada would abide by. It's condition 31 of the 57 special conditions. So it's another sign that a lot of these safety conditions have significant problems with them and do not necessarily ensure that the pipeline can be operated under what the public may perceive as a safe manner. [LB5]

SENATOR LANGEMEIER: Good. Are there any questions for Mr. Swift? Seeing none, thank you very much. Well done. [LB5]

ANTHONY SWIFT: Thank you so much. [LB5]

SENATOR LANGEMEIER: Further testimony as a proponent. And everybody check your cell phone again to make sure they're all turned off. I normally start that at 1:30; I skipped that. Welcome. [LB5]

CHUCK HRUBY: Hi to you, sir, and the committee. I am Chuck Hruby. That's H-r-u-b-y. I previously testified and you're probably getting tired of hearing from me. I want to cover several things and I'm going to get to the most important first. And I am a proponent of LB5. I would suggest on LB5, page 1, line 10, I think, it says to the effect, "larger than eight inches in the inside diameter." Would you consider changing that to "is larger than six inches in the inside diameter"? And I say that because many nominal pipe sizes in the oil industry piping business that I was in, in Wyoming as a consultant, inside diameters are coated with cement for the purpose of mitigating sulfides. So the inside diameter of those pipes is less than nominal, for example: 6-inch, 5.94; the 8, just under it. In other words, I'm assuming that your intent is to limit the capacity. But I would

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rather see you do it with a six-inch rather than the eight just because of those sizing requirements on the inside diameter. On line 24, still on page 1... [LB5]

SENATOR LANGEMEIER: Just for the record, you're in Section 1, page 2, to our bill, in case people are following along. [LB5]

CHUCK HRUBY: Thank you. I've got a screwed up copy off the Internet, and I can't hardly figure out where I'm at. "In which the ground water depth is ten feet or less below the earth's surface for a distance of ten miles." I think the ten feet or less is right on, and I've done a lot of work in that area. "For a distance of ten miles or more," I wish you would consider making that four miles, and I'm referencing the wildlife...the Crescent Wildlife area. I've worked a lot in Alliance and in that neighborhood, and that...well, let's just say, please consider it. On the eminent domain...well, I didn't cover that earlier, and it isn't necessary. I've heard so many discussions about the content and comparison of this bitumen distillate combination being a crude oil. There is a vast difference. Think in terms of bitumen as tar that I knew as a farmer, that you knew as a rancher or farmer. And the distillate is tractor fuel with about 1...my research...because they did not tell us what the distillate consisted of, and would not, I did some research. And basically about 1 percent of tractor fuel is benzene. Just some personal experience: When I was a youngster--I'm getting to be a little older. I don't think I am, but in 1935 and '36, we went to visit some folks southwest of O'Neill. I was instructed by my uncle, I guess, of blowouts and what constituted them. And man, did that stick. I saw how he worked over the years trying to patch a blowout. And, you know, we were 10-15 years...(cell phone ringing)...he was 10 or 15 years getting that finally stopped. So most of you guys know all that. [LB5]

SENATOR LANGEMEIER: Okay. We've hit our time. Can you give me a quick summary? [LB5]

CHUCK HRUBY: Yes, sir. I will wrap it up. [LB5]

SENATOR LANGEMEIER: ...so I can talk to Mr. Peterson about his phone ringing. [LB5]

CHUCK HRUBY: I believe LB5 is well thought out and is definitive, and that's important from the engineer's point of view. I would like to have...it probably would have avoided a whole difficulty with the Keystone pipeline in the first place had it been in law. I wish the Natural Resources Committee to consider the testimony of others and advance LB5 along with LB1. And I don't cover the other ones because I don't have any expertise there. I just know about those two. [LB5]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Hruby? Seeing none, thank you very much. Well done. Further testimony as a proponent. Welcome.

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[LB5]

LOUIS GENUNG: Hi. My name is Louis, L-o-u-i-s, Genung, G-e-n-u-n-g. Most people know me as Tom. I'm here to be in favor of LB5, and, man, we've heard a lot of good stuff. Man, what a process and what an education. I first started getting interested in what was going on with this pipeline deal roughly two years ago. And I heard about a meeting that was going to go on in Atkinson, Nebraska. That happens to be my hometown. Even though I live in Hastings, my wife and I both are from the Atkinson area and grew up there, and, in fact, my mother-in-law has ground that the proposed route crosses, as well as we have some other holdings there too. But anyway, I heard that there was this secret meeting between TransCanada and the landowners. That wasn't exactly accurate. What it was, was a meeting of Landowners for Fairness and people that belonged to that group--people that had registered and qualified to be there. So I went to that meeting and I didn't qualify to be there because my land is not crossed by the route or the proposed route. In doing that, that was the beginning of my getting acquainted with this deal. Unfortunately, I was rejected from that meeting, which took me in the directions that some of you folks know that I've gone, and I've been with a lot of people and a lot of places. I was even with you in Norfolk that day, and thank you guys for all your work and all that kind of thing. But I just wanted to say that my wife and I and the rest of our family all live around Atkinson. We're very proud to be from that area. We have the same...you know, I've thought about the word "concern." You know, concern is an understatement--absolutely understatement for this atrocity. This is a preventable deal and I'm very pleased that it's gotten to the point where the special session has been called and you all are having these hearings. And I ask you to please move ahead with the legislation to protect land, water, and the people of the land. Thank you. [LB5]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, thank you very much. Well done. Further testimony as a proponent. There's some extra chairs up here so if you're planning to testify, come on up and sit up in these chairs. Is this our last proponent? Anyone else? Okay, come on up. Don't be shy. Welcome. [LB5]

PIPPA WHITE LAWSON: Hi. Thank you. My name is Pippa White Lawson; that's P-i-p-p-a, White, W-h-i-t-e, Lawson, L-a-w-s-o-n, and I'm just a concerned Nebraskan. This bill is about siting. Many people say that if the pipeline is moved, it may never be built and all those jobs will be gone. Jobs are a big part of this argument, so I would like to speak about that aspect of this issue. First of all, I want to say that I have a loved one who has been looking for work in his field for a long time, and I know a lot of people in this room will probably be able to say the same thing. So jobs is not something that I take lightly. But it seems to me that when people talk about this pipeline has to happen because it will give us jobs, we forget the jobs that will be jeopardized when something bad happens. We seem to forget the jobs in agriculture that may go away when there is a bad leak. And I think that someday, whether it's in 1 year or 30 years, the chances are

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that there will be a bad leak and the livelihoods of farmers and ranchers for miles around may be lost forever. So it seems like we're robbing Peter to pay Paul. We give jobs to a few hundred people in agriculture that down the road may finish off the jobs of other people. I know the rejoinder to this is: but there isn't going to be a leak; it's safe. But there is no precedent for that. TransCanada can't point to the first pipeline and say that it is a model of excellence. It hasn't been. And so we only are moving forward on conjecture that there will be no bad accident. There is no proof. There is nothing tried and true that TransCanada can show us. With regards to jobs, this ad appeared in the Lincoln Journal Star in May, and the number of jobs they estimated was 342,000. In an article in The Washington Post and in The New York Times, just a few days ago, TransCanada came forth and confessed that they did indeed inflate job numbers greatly, even way above the 20,000 that we hear so often. In that article, they said they were including choreographers, dancers, and speech therapists. So as we have only a few hundred jobs probably coming our way, it seems wrong to me that we make that an issue. I don't think that a few construction jobs should trump the jobs of farmers and ranchers, and I don't think that oil production should trump food production, and I don't think that oil moving through pipelines should trump pure water flowing through other pipelines. Thank you. [LB5]

SENATOR LANGEMEIER: Well done. Are there any questions? Seeing none, very good. Further testimony as a proponent. [LB5]

EMILY LEVINE: Before I start, can I ask a question? Can I ask a question? [LB5]

SENATOR LANGEMEIER: Technical question or...? [LB5]

EMILY LEVINE: Yeah. Do we know where Senator Christensen is? [LB5]

SENATOR LANGEMEIER: He had another meeting to attend. He'll be joining us later. [LB5]

EMILY LEVINE: Okay. I've been waiting for everyone to be here. My name is Emily Levine, E-m-i-l-y L-e-v-i-n-e. I'm a 55-year resident of Lincoln. I would have been here last spring to testify, but I was taking care of my mother in hospice, and that's about the only thing that would have kept me away. I love Nebraska and I love the Great Plains. I've spent my entire life learning about this place. Place defines us as people. I love it here so much that I returned to college at what they euphemistically call a nontraditional age so that I could study the place where we live. I graduated with high honors in Great Plains Studies with a minor in geography. I have spent most of my life working outside with my hands, learning an appreciation of the natural world. I'm also a published historian. I'm an intellectual egghead with dirt under her nails who can operate any piece of large equipment you've got. I'm speaking in support of LB5. We know that groundwater and surface water are inexorably intertwined, especially in the Sandhills.

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We have river systems that are fed from springs in the aquifer. It is my understanding that there are some places along the Keystone XL route where the water table is actually above ground. We must be allowed to protect the most precious and sensitive areas of our state, which is what Senator Haar's bill attempts to do. It is the very least we can do. I oppose the pipeline completely. If we have to do it. People say we need the oil and we can't just stop right now and switch to other fuels. Well, that's a convenient use of the shock doctor in politics, but some of us have been advocating for alternative fuel and energy for 40 years. I started in junior high on the first Earth Day. When I was a kid, President Kennedy said we would put a man on the moon before the decade was through, and we did. Certainly if we can put human beings on our planet's moon, we could have had another source of energy in the last 40 years. But the same people who think being an environmentalist is a dirty word, as if anyone could be anti-environment, these same people have had their heads buried in the sand, in the sands of Saudi Arabia, for 40 years. Now they have their heads buried in the Alberta tar sands. [LB5]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, thank you very much. Well done. Further testimony as a proponent to LB5. Just out of curiosity, how many more proponents? Seeing none, this is my final one. Welcome back. [LB5]

DAVID HIBLER: (Exhibit 23) I'm still Dr. David J. Hibler, H-i-b-l-e-r, north Omaha--three properties on the Ogallala aquifer. I want to begin by thanking all of you senators for your extraordinary efforts in what has been very hard and trying conditions for the last three days. Tempers have sometimes worn a little bit thin, but I think you have all really done your best and I think you are all to be commended. This has been democracy in action. I'm not going to try to read through this. I'm going to skim over the salient points. As to LB5, absolutely no quarrel with it except for wanting, on page 2, line 23-24, needs to be clarified as to the direction and orientation of the distance of ten miles or more. And I might also support the idea of a lesser amount of miles. As to LB6, and I don't want to have to come back here again today, okay? A simple observation: One billion dollars would seem more adequate. Senator Haar, quite properly, last night, said that we're all in a little bit of an information overload here. We've had so many contrasting facts. So late last night I decided to try and chase down a little bit more factual information that you could deal with on what had been some of the issues of contention we've looked at over the last few days. As to whether or not benzene will vent from dilbit in the event of a leak, I visited yesterday afternoon in the hallway with TransCanada Vice President Robert Jones, who insisted it would not, and told me that reports to that effect were not accurate. Yet in your packet here you have a report from The Michigan Messenger citing Cynthia Giles, an EPA assistant administrator, who says, quote, on the back of the page: High benzene levels in the air prompted the issuance of voluntary evacuation notices to residents in the area by the local county health department. The EPA did not get a measure on the air quality apparently because all their air quality

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monitors were down in the Gulf on the one hand, and secondly, when they did get them up there, Enbridge insisted that anybody who wanted one had to sign a release of liability and agree not to sue. As to expert policy from, also relative to benzene, you might want to look at this. This is the Aljazeera article, in case you're wondering about what Aljazeera is thinking about us. But this is the Aljazeera article that has interviews with people who have already suffered significant health effects as a result of that Kalamazoo spill. In last Sunday's Omaha World-Herald, full page with a gentleman who has testified here a couple of times, Mr. Sydow, saying, quite plainly, it is impossible for crude oil to contaminate the Ogallala aquifer. And, in fact, I interviewed Mr. Sydow personally on Monday, got him on tape, and he told me, point blank, from his expertise that it was impossible for crude to sink in water. Okay. You have in your packet here from the Environmental Protection Agency, July 2011--this is in their first one-year report, okay?--an EPA map which shows the 35 miles of the Kalamazoo River that have been contaminated with what they approximate to be approximately 200 acres of accumulated dilbit sitting at the bottom of the river. And after a year, they still don't know how they're going to get it out. As to whether or not Keystone XL oil is destined for U.S. or foreign markets, please read the Oil Change International briefing which gives you documentation on the six producers to whom Keystone XL will be delivering the oil, three of which are located in Port Arthur inside of a foreign free-trade zone, meaning that the crude processed there can be exported from the United States without being taxed. You all know what a free foreign trade zone is, okay? In other words, this is Canadian oil that can pass through the United States into a foreign free-trade zone and then be, according to what...what's the...it starts with a V--Valero. Valero has already in their business documents that they had in their stockholders' reports announced their intention to ship to South America and to Europe. And finally the point that I am most interested in as to whether or not terrorists would be able to cause a catastrophic leak in the Keystone XL, in my hallway conversation yesterday with Mr. Jones, he did acknowledge receipt of my letter in Canada over a month ago, and I finally got an answer from him as to whether or not his company has ever done any type of a contingency study as to the relative effect of a leak in sandy soil of dilbit as opposed to a leak in clay soils. He told me apparently his company has not done any, but he also told me not to worry because he has helped design pipelines in South America that were impervious from fire from an AK-47. But I am worried because he had also assured me earlier yesterday that it was impossible for the benzene to escape into the air. And as the EPA report shows, it obviously did up in Kalamazoo. If the head person in charge of this project doesn't know the physical facts of the last major accident involving dilbit, this is troubling. Granted, an AK-47 will probably bounce off his pipeline, but not so for a 14-foot farm truck loaded with tons of fertilizer, diesel fuel, and stainless steel ball bearings; for that's the way terrorists do these things. They don't just blow things up. They put in shrapnel to guarantee that it's going to pierce and maim and kill. [LB5]

SENATOR LANGEMEIER: I need you to jump to your summary. [LB5]

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DAVID HIBLER: Yes. He told me it was up to the TSA. I did some research on the TSA. TSA has an \$8.1 billion budget of which over 99 percent is dedicated exclusively to aviation aeronautical protection. Out of that \$8.1 billion budget, only \$47 million is dedicated to what they call "surface transportation security." Obviously, the TSA has no resources either to study or to defend pipelines from attack. The time to act is now. Pick 1, 4, or 5, LB1, LB4, or LB5, or some combination thereof, please. But whatever you do, pick something. Advance all these bills. Not to decide is to decide. And I thank you very much for your patience. You are doing an exceptional job. Thank you. [LB5]

SENATOR LANGEMEIER: Thank you. Are there any questions? Seeing none, thank you very much for your testimony. Further testimony in support or a proponent to LB5. Seeing none, we will now move to opponents to LB5 or, as I gave earlier, supporters of the pipeline. Opponents to LB5. Welcome. [LB5]

ROBERT JONES: (Exhibits 24 and 25) Welcome. Thank you. Good afternoon, Chairman Langemeier and members of the Natural Resources Committee. My name is Robert Jones, J-o-n-e-s. As you know, I represent TransCanada Keystone Pipeline LP, a U.S. company headquartered in Houston, Texas, with field operations headquartered here in Nebraska. I'm responsible for the implementation and development of the Keystone pipeline system. I appreciate the opportunity to testify in opposition of LB5. Senator Haar's bill specifically targets the Keystone XL route. LB5 says new pipelines cannot be constructed in exclusion zones, which would include areas where groundwater is within ten feet. This would prohibit building Keystone XL along the route that has been subjected to an extensive three-year environmental review by the Department of State, with the participation of federal and state agencies with specific environmental, safety, and technical expertise, which has been confirmed repeatedly as the most environmentally responsible route to follow. Furthermore, the exclusion zone for pipeline construction covers the majority part of the state of Nebraska, the western two-thirds. Passing LB5 would mean the majority of the state is off limits to new pipeline development. Where is the scientific basis for this drastic step of walling off the majority of the state from critical energy infrastructure? It should be noted that LB5 ignores the fact that 15,000 miles of crude oil pipelines already cross the Ogallala aquifer. It ignores the fact that these pipelines safely transport 730 million barrels of oil per year over the Ogallala aquifer. It ignores the fact that the Ogallala aquifer covers almost the entire state of Nebraska, as well as six other states. And it ignores the fact that the Ogallala aquifer is just one of many aquifers that exist safely with various pipelines, while also providing safe drinking and irrigation water. In addition, this bill has been analyzed by prominent law firms which have concluded it is unconstitutional. I will defer to our legal testimony to detail the constitutional flaws. This bill is clearly an attempt to address pipeline safety, which is clearly preempted by federal law. Finally, LB5 is unfair as applied to Keystone XL. The Keystone XL process has been underway for more than three years. We have properly submitted every federal and state process that was in

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effect. For Nebraska to, in the eleventh hour, impose new exclusion zones and restrictions on Keystone XL is fundamentally unfair and jeopardizes the viability of the project. In conclusion, we will build a safe pipeline. We will not endanger the aquifer or the state's drinking and irrigation water. The benefits of the Keystone XL project to the state of Nebraska and to America have been well documented and they are substantial. This bill is unconstitutional, unfair, and unnecessary. And for all those reasons, I respectfully ask the committee not to move forward on LB5. I'll be happy to answer your questions. [LB5]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Smith. [LB5]

SENATOR SMITH: Thank you, Senator Langemeier. Mr. Jones, I wanted to go through a few of the comments that have been made and get your response, if you're able to. If not, hopefully someone following you can answer some of these questions. Just a number of areas and things I've noted down. There is a question about where the heat comes from with the oil as it passes through the pipeline. How is the oil heated to the degree that it can be transferred? [LB5]

ROBERT JONES: The...TransCanada, when we accept oil at Hardisty, it comes from oil storage tanks, and so the oil is already subject to the ambient temperature when it first comes into the line and then is moved through pumps every 50 miles. There is no additional heat. There is no physical heating of the oil other than its movement through the pipeline. [LB5]

SENATOR SMITH: So from the movement along will heat it to the point where it transfers. [LB5]

ROBERT JONES: Well, yes. There will be heat gained as it goes through pumps. It's not very much heat. It's a few degrees. It also, because it's underground, the pipe is buried at least four feet if not more, and so the temperature of the ground is very consistent. And so it will either have a warming effect in the wintertime to get it out to about ground temperature, depending on the time of year, and it will have a cooling effect if it gets above that ground temperature. So, you know, we have done modeling and now we have the existing pipeline that verifies our models, and it shows that the temperature increase, as long as the oil keeps moving, grows by a few degrees every pump station. If the pipeline shuts down, then that temperature of the entire system starts to match the ground temperature. [LB5]

SENATOR SMITH: All right. There were some comments made about a potential for earthquakes. What construction standards are there that accommodate that? Can you speak to that? [LB5]

ROBERT JONES: Right. So part of the code, under 49 CFR, which is the federal

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regulation, you have to consider seismic loadings. And so there are seismic zones, and you have to design the pipeline so it can withstand any seismic activity. [LB5]

SENATOR SMITH: Can you kind of put that into laymen's terms what that means for Nebraska? [LB5]

ROBERT JONES: So obviously if you get closer to California, where there's high seismic activity, earthquake activity, then you've got a higher loading factor. As you get closer to the center of the continent, you still have to design for seismic activity, it's just not the same amount. That being said, we consistently use a pipe design that can easily accommodate any seismic activity. And so pipelines have been exposed to seismic activity in the past, and they actually, you know, they do fare very well. [LB5]

SENATOR SMITH: So if there is some type of seismic activity, is there inspection that follows? [LB5]

ROBERT JONES: Well, we have to inspect the pipeline every few weeks by the air. But, for example, when there was a reported incident in Oklahoma, we sent our technicians out to all our pump stations immediately to have a look. And there was no impact whatsoever. [LB5]

SENATOR SMITH: And then relative to the final proponent that spoke that talked about the EPA, their comments, and then also the security situation and potential for--I think he was referring to some type of a restoration or emergency response plan. Can you speak to either of those two things? [LB5]

ROBERT JONES: Sure. First with regard to the claim of a benzene cloud, this is in tremendous dispute. Again, that is another pipeline; it is being overseen by the EPA and by the local state authorities. My discussion with Enbridge about that is that there was no benzene cloud whatsoever and that this has been misrepresented. That being said, it's not our case. And the other thing that's different about that is the way we cross pipelines, where we cross water bodies like rivers. So Enbridge, when they had their problems in the Kalamazoo, the pipeline followed the terrain of the land. What we're going to do is do a horizontal directional drill underneath rivers. And so for the Keystone pipelines, the minimum depth below a river is 25 feet, and in most cases it will be as high as 50 feet. And so the washing out and the issues that you may have seen in either the Yellowstone or the issues they had in Kalamazoo can't occur on the Keystone. And that's because the technology we use now is far more sophisticated than was done during the time of those pipelines being constructed. As for the issue with regard to terrorist attacks and such, the Transportation Safety Board takes this very, very seriously, and we have restrictions as pipeline operators on what we can and cannot discuss. And that's exactly what I told the gentleman. [LB5]

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SENATOR SMITH: Okay. Thank you. [LB5]

SENATOR LANGEMEIER: Senator Carlson. [LB5]

SENATOR CARLSON: Thank you, Senator Langemeier. Mr. Jones, in...I've got these testifiers written down over the last three days; there's over a hundred of them. But many times something similar to this kind of comment comes up, that there are many more chemicals in tar sand crude than other crude and that those other chemicals are the real problem. Would you comment on that? [LB5]

ROBERT JONES: Crude oil that comes out of the Alberta oil sands comes to Keystone in two fashions. Whether it is synthetic or upgraded crude oil or it's a blended crude oil-type, like Cold Lake or Western Canada Select, it is a form of taking the bitumen and diluting it with a natural product. That natural product is condensate. It could also be synthetic oil--that upgraded product of the bitumen; that is done. So there's no chemicals that are being added. This is two natural products being mixed together. That all being said, pipeline companies have specifications. Those specifications are driven by the industry needs in refineries. So whether the oil is coming from conventional sources or the oil sands, the shale oil that we are finding in North Dakota and Montana, this oil all needs to meet the specification of refineries. And so when you--when I hear these claims about adding chemicals, it's natural products, naturally occurring in the ground. [LB5]

SENATOR CARLSON: And the two mentioned most often are benzene and bitumen. Now, what about those? [LB5]

ROBERT JONES: Well--so bitumen is the product that is part of the oil sands. And so people used to refer to it as "tar sands" because the sand and the bitumen looks like--you would put it right on the road and flatten it and away you go. But, of course, tar is a result of a component that comes out of refineries. And that's why we don't produce tar, we produce oil, hence why it's called the "oil sands." So the bitumen is the natural product that comes out of the ground. One of the constituents of that natural product, whether it be condensate or bitumen, there is degrees of all sorts of different elements, and one of them is benzene. [LB5]

SENATOR CARLSON: Thank you. [LB5]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much for your testimony. Further testimony in opposition. Well done. Welcome. [LB5]

LEE HAMANN: (Exhibits 26, 27, and 28) Good afternoon. Mr. Chairman, members of the Natural Resources Committee, my name is Lee Hamann: Lee, L-e-e, Hamann, H-a-m-a-n-n. I'm with the McGrath North law firm in Omaha; I represent TransCanada

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Keystone Pipeline LP; and I'm speaking in opposition to LB5. I have submitted with my testimony a letter that we received today addressed to the committee from the Nebraska Chamber of Commerce, and they asked us to please introduce that to you, noting their opposition to this bill. I have also included testimony from David Carpenter, who spoke before you twice before on the federal constitutional issues. He couldn't be with us today, but we would ask you, again, to consider his comments. As we all know, we find ourselves in an interesting situation because of the way this special session came about. And it's clear by now it has somewhat boxed in the process a little bit, because of the fact that this arose out of concerns for safety and out of a very strong desire to force a reroute of the Keystone XL pipeline. So that leaves us with a situation of special legislation. I've talked about that before; I don't want to go into all that again, but I will try to tie it to this particular bill. We have two distinct classes created by this: oil pipelines covered by the bill and then those not covered by the bill, which--either they do not carry oil, or else the pipeline is under the eight-inch threshold. Unfortunately, there's really no rational distinction between those smaller pipelines and ours. I mean, they both carry the same threat of damage to the aquifer, and we all care about that, so that's not a rational classification. Additionally, you've heard some testimony this morning about, you know, a truck having a crash, spilling its cargo--it could be oil, it could be something else much more disastrous. This bill does not address that. And the particular conundrum we have with the special legislation is, you can't address it without going beyond the call of this special session. So you leave unprotected threats to the environmental concern here in this bill, and that creates an improper classification, which brings it under suspicion under the Nebraska Constitution. Additionally, the emergency clause in this bill really targets TransCanada, because the only emergency is that we're ready to get started building our pipeline as soon as the Presidential permit is in place. And that makes this proposed legislation particularly suspect. I've talked about the regulatory taking before; I'm not going to get into that again today, but I just want to make sure that you understand that is also an issue with this bill. As far as the interstate commerce, LB5 discriminates against interstate commerce both in its effect and its purpose. There is no reason to exclude the smaller pipelines. But as you look, you'll find that intrastate pipelines...in this state, there are few, if any, that are above that eight-inch threshold. So by definition you've singled out interstate pipelines; that's not permissible under federal law. It's also burdensome. The final point is the federal preemption. We've talked about that a great deal. And again, this is all about safety; it talks about, you know, protecting the environment. And even though the word "safety" isn't used in the bill, it's quite clear that the concern is for the aquifer, for the Sandhills. And that is clearly preempted by the legislation. One last comment is the exclusion zones. I'm not sure we could have even built Keystone I with particularly that ten-foot groundwater. If you look at the Platte River Valley...you know, we don't have a good state map that shows that, but--you know, the depths all the way along--but I think it would be very difficult to satisfy that and build any pipeline north and south through the state. Thank you very much for your time and your attention. [LB5]

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SENATOR LANGEMEIER: Are there any questions? Senator Smith. [LB5]

SENATOR SMITH: Thank you, Chairman Langemeier. Mr. Hamann, can you talk about your opinion of this bill if there were no emergency clause in it. Would that change? [LB5]

LEE HAMANN: Well, it helps take the attention off of Keystone XL pipeline itself, but it does not solve your problem with special legislation, because of the fact that you have what we would say is a indefensible classification of pipelines that are covered and pipelines that aren't covered. So I think you still run into the same problem just under the state constitution, aside from your federal issues. [LB5]

SENATOR SMITH: All right. Thank you. [LB5]

SENATOR LANGEMEIER: Any other questions? I do have one. Let's talk about the corner of this box you say we're in, based on the call, which you handed out here. As the reports continue to come out, and they seem to have more validity to them, that the Obama administration or the Secretary of State--I'm going to lump them together, and I'm well aware they're separate--doesn't look like they're going to make a decision any time soon. At what point does your argument become totally irrelevant, if it isn't already, that the emergency clause is picking on one particular pipeline? I mean, if they don't get it approved for ten years, are we still bound that...? [LB5]

LEE HAMANN: Well, I mean, I think it still affects the process of going forward with the pipeline, so I think it's still a consideration. I suppose the further away the presidential decision is, maybe it's less of a factor. But I think the fact that we're so far along that we've...you know, it's a linear project, as has been explained before. You can't just do one thing and wait; it takes 10-15 years if you would just do one thing at a time. So I think it impacts the entire process to have the emergency clause in here and have the rules changed as far into it with our acquisition of our right of way. We've acquired that right of way based on existing laws in Nebraska. So I think these issues are still going to be present. [LB5]

SENATOR LANGEMEIER: Okay. Any other questions? Seeing none, thank you. [LB5]

LEE HAMANN: Thank you. [LB5]

SENATOR LANGEMEIER: Appreciate it. Further testimony in opposition. Welcome. [LB5]

MARVIN YOST: My name is Marvin Yost, Y-o-s-t. I live in Plymouth, Nebraska. I'm a farmer and a county commissioner in Jefferson County. I'm here on my own behalf to share with you my experiences with Keystone. As a farmer, I farm land that the pipeline

went through. From the beginning I was contacted that they were going to build a pipeline through the property. And the gentleman that came to visit with us met with me and the landowner. He went over everything; we negotiated the crop damage that might take place. He explained to us what would happen: the topsoil would be removed and put back. They did everything they said they was going to do. I'm a no-till farmer; I have done nothing to the soil since that time up through this harvest, just planted, sprayed, and harvested. So as far as doing what they said they was going to do, they did. As a county commissioner in Jefferson County...the pipeline goes through our county; we have a pumping station there. They was very good at communicating with us as commissioners. We appreciated the fact that they bored the roads, did not cut them. We had no issues with the road damage with that; anything that needed to be done was taken care of immediately. And the added valuation is very much appreciated. [LB5]

SENATOR LANGEMEIER: Very good. Very good. Are there any questions? Senator Carlson. [LB5]

SENATOR CARLSON: Thank you, Senator Langemeier. Mr. Yost, you stated that you met with their representative and the landowner. I imagine you meant your renter. [LB5]

MARVIN YOST: I'm the renter, yes. [LB5]

SENATOR CARLSON: Okay. And how many times did you meet with their representative? [LB5]

MARVIN YOST: I would say probably three. He actually moved into our community and became a part of the community, and he still is. [LB5]

SENATOR CARLSON: And over those three sessions, what happened? Was it a discussion of what was going to take place on the first one? And then what was the second one? What was the third one? [LB5]

MARVIN YOST: He met with us the first time and, you know, laid it out as to what, you know, the crop damage. And then he gave us a time to think about it. And then he came back for the agreement. [LB5]

SENATOR CARLSON: Okay. All right, thank you. [LB5]

MARVIN YOST: Okay. [LB5]

SENATOR LANGEMEIER: Are there any other questions for Mr. Yost? Seeing none, thank you very much. Thanks for coming in. Further testimony in opposition. Good afternoon. [LB5]

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CURT CARLSON: Good afternoon. My name is Curt Carlson, C-a-r-l-s-o-n. I am a landowner, and I own land in Hamilton and Merrick County that is going to be crossed. And I was approached about three and a half years ago by Keystone--or TransCanada. And similar to Mr. Yost, I was kind of surprised--owning land, and they say, "You're the lucky one," and they're going to come across your property. They've been very professional from the git-go. The first meeting they didn't even really show us a map. I think he did this and said, "This is where we think it's going to go." And then he gave us time, like, to think about it. And then he came back: Well, I'll get back to you when we have something more definite. And then we went and did a walk-around, and he said, "I think this is where it's going to go on your property." So they've been, from the beginning, just doing what they going to say they'll do. Sorry. [LB5]

SENATOR LANGEMEIER: You're doing good. [LB5]

CURT CARLSON: Some of the ground that we own is probably the most diverse ground that they're going to cross; it's the south channel of the Platte River. And they have addressed my concerns about going through the Platte River, about the way they're going to handle it, the way they're going to do construction. I've seen the videos on how they do it, how they've done it. And I've been impressed with TransCanada. The rerouting that I asked them to do...they had the--when we got closer, they came out and they surveyed it. And it was going to go through some of my springs; we have natural springs, and I pointed those out to them. They brought an engineer in from Oklahoma. They looked at it; they routed around it. So they've been--they've done everything they said they were going to do. And when they need to get a team on there to look at something, they call ahead of time--day or two, three days, sometimes it's shorter notice: Can we get on your property? They've always asked. Even after the easements were signed and they needed to get on and do something on their easement, they called and asked; they were more than kind. So that's all I have. [LB5]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Carlson? Mr. Carlson, I do have one. As you talked about, they're coming through the south channel of the Platte. [LB5]

CURT CARLSON: We own the south channel of the Platte. [LB5]

SENATOR LANGEMEIER: So they're going to bore under that. How...have they... [LB5]

CURT CARLSON: I don't know. [LB5]

SENATOR LANGEMEIER: ...told you how they're going to get through there? [LB5]

CURT CARLSON: No. [LB5]

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SENATOR LANGEMEIER: Okay. [LB5]

CURT CARLSON: No, because some of it is accretion ground where there's no water. And the south channel is the dry channel, where we're at. I mean, a little water flows. The main channel is north of us. And then there's actually, you know, probably a mile and a half, where we're at, between the main channel and our--the southern boundary of the Platte River. [LB5]

SENATOR LANGEMEIER: Okay. Very good. Are there any other questions? [LB5]

SENATOR SMITH: Yeah. [LB5]

SENATOR LANGEMEIER: Oh, Senator Smith. [LB5]

SENATOR SMITH: Thank you, Chairman Langemeier. Mr. Carlson, thank you for coming and testifying today. Whenever you were first approached by this, were there concerns that you had with the safety to your property? And how did you get beyond that in your mind and feel comfortable signing an agreement? [LB5]

CURT CARLSON: Some of it comes from knowing we need the oil as a country. Somebody has got to make that sacrifice, instead of pushing it off on my neighbor. That's part of it. The other part of it is seeing how they were going to construct it. Yeah, they sent me a video and they showed...and, you know, I don't think a company like TransCanada wants me to own a big portion of their company because they messed up my ground. I don't think they really want me owning their company, so I have faith that they're going to do what they can to protect their shareholders and myself. [LB5]

SENATOR SMITH: And I don't want to overstep and get into what your agreement looks like with them, but as you were processing that, did you have conversations or some assurance from TransCanada that in the event there were to be some type of a damage, that you would be taken care of in that matter? [LB5]

CURT CARLSON: I don't have the contract with me. We did negotiate with them on the contract. It wasn't so much the monetary end of it, but it was some of the wording language in the contract. Not that I can remember, because it's been an ongoing process over three and a half years in multiple meetings and rerouting and...well, they had the--the other thing that kind of satisfied my mind, going back to your question, was they had the geologists out from the federal government, I guess--they weren't theirs. And they had to do test digs on our property; they dug holes. And they were looking for Indian artifacts; they were looking for prehistoric things and different things. I don't know, they wouldn't tell me all that they were looking at. Soil conditions--they did all sorts of things. So I watched them go through that. And they compensated us for crop damage and for the dig. And, yeah, they even brought in the Pawnee Indians to

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supervise it in case they found bones, so that the Pawnee could either rebury them or take them to rebury them somewhere else. So that was part of it. [LB5]

SENATOR SMITH: Thank you very much. [LB5]

CURT CARLSON: You're welcome. [LB5]

SENATOR LANGEMEIER: Any other questions? Seeing none, thank you very much for your testimony. [LB5]

CURT CARLSON: Thank you. [LB5]

SENATOR LANGEMEIER: Good job. Further testimony in opposition. [LB5]

CHARLES BARBER: Go ahead? [LB5]

SENATOR SCHILZ: Go ahead. Yeah, we're ready. [LB5]

CHARLES BARBER: Charles Barber, B-a-r-b-e-r. I'm a farmer in Jefferson County. I live approximately five miles north of the Steele City pumping station. The Keystone Pipeline I went through my ground for two and a half miles. XL has proposed to go through it a second time, parallel. Very economically sound for my farming operation. But as Mr. Yost and Mr. Carlson said, I have met with them approximately six times on both pipelines. They give you a presentation of what they want to do. They give you time to look it over, visit with people, and come back, tell them what you've come up with. And then they either settle with you, or they have to run it through their main office. Like I said, I've met with them at least six times. Anytime they want to fly over my ground or walk over my ground or go with a ATV, they call two to three days in advance and say: We're going to be there; is your crops out--or whatever. So, yeah, they're easy to work with. We had a couple minor, little problems on the first one that went through. They tell you to get your contractor to get a bid...has to bring their equipment back and fix it. It's that simple. Make a call; you'll get your money; you fix it. As far as...you asked Mr. Carlson about coming back if there was a problem. Yeah, they come back. You will be reimbursed for any damage that they do, or at least that's what we've been told. Like I said, so far we...you know, the first one has been in for over two years now. And I would welcome anybody from the committee, or somebody you sent down, to look at my ground and see what they've done and see what it looks like after they've left. We're in that area where there's...I think it's 8.5 miles where they want to go through parallel--they're both taking different routes. And again, they've been easy to work with. It's done our county a lot of good, both school districts and roads. I'm sure everybody has concerns. You have to. But, again, they've treated me well, and if they want to go through me a couple more times, that's fine. Like I said, at least so far there's been no damage. And again, if you'd like to come down, feel free--or send somebody down.

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[LB5]

SENATOR SCHILZ: All right. Thank you, Mr. Barber. Are there any questions for Mr. Barber? I guess I would have just one question. [LB5]

CHARLES BARBER: Okay. [LB5]

SENATOR SCHILZ: You said that when the first one went in there was a couple of issues. Could you elaborate on those a little bit, if you could. [LB5]

CHARLES BARBER: Yeah. They had one terrace curved the wrong way... [LB5]

SENATOR SCHILZ: Um-hum. [LB5]

CHARLES BARBER: ...it amounted to about 50 feet. [LB5]

SENATOR SCHILZ: Okay. [LB5]

CHARLES BARBER: I mean, it took my dozer guy two hours to straighten it out. [LB5]

SENATOR SCHILZ: Right. [LB5]

CHARLES BARBER: And we had a wetland that they did not get seeded the first time because it got wet. And, matter of fact, if I'm thinking right, they're there today--was going to try to get it seeded. Every time they get here, it's wet. And, you know, they said, too, they're going to take care of it. So--but it's 1.2 acres of wetlands that they have to reseed. [LB5]

SENATOR SCHILZ: I see. Thank you very much. Any other questions for Mr. Barber? Thank you, sir, for your testimony. Next opponent--LB5. [LB5]

BILL SYDOW: For the record, my name is Bill Sydow, B-i-l-l S-y-d-o-w. So thank you, Mr. Vice Chairman and members. I live in Sidney, Nebraska. I serve as the director of our Nebraska Oil and Gas Conservation Commission. And the Oil and Gas Conservation Commission regulates the exploration and development of our state's oil and gas resources, and we rank about 18th in terms of daily oil production in the U.S. I appear in opposition to LB5. LB5, first of all, only deals with oil pipelines and not our other pipelines for natural gas, for the refined products of diesel and gasoline and jet fuels as well as our natural gas liquids, such as propane. So it discriminates against oil pipelines, and I'm against that, especially in terms of surface. And I've listened a lot the last few days on this surface restoration. An oil pipeline will be constructed just like a gas pipeline or a refined products line; there will be surface issues. And so if that's the point of it, it doesn't do that. As well, LB5 is very prescriptive in its Section 4. The bill

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automatically limits where a pipeline may be permitted, based upon, I believe, broad-brushed, rigid standards that may immediately disqualify routing options that could and perhaps should be considered. One of the points that was brought up is the ten foot to water. But if we have a pipeline approach to a river or a creek, that water right there is at the surface, so I believe that under that section you could not underbore a river or a stream, because you're within groundwater that's within ten feet of the surface because it is the surface. The bill only speaks to the role, as well, of the Public Service Commission, which is quite unlike the approaches of LB1 and LB4. No group of agencies is mentioned which would bring together, I believe, knowledge and expertise and, in fact, experience that would be necessary when conducting a type of a study and analysis for the permitting of any type of construction project that we might undertake. And so for just those two reasons, I would speak against LB5 today. [LB5]

SENATOR SCHILZ: Thank you, Mr. Sydow. Any questions for Mr. Sydow? Seeing none, thank you very much for your testimony. Next opposition testifier, please, for LB5. It's all yours. [LB5]

JOHN McCOLLISTER: (Exhibit 29) Mr. Vice Chairman, senators, good afternoon. Thank you for the opportunity to speak. My name is John McCollister; I'm the executive director of the Platte Institute for Economic Research in Omaha, Nebraska. We support construction of the Keystone XL pipeline on the current route and oppose the LB5. The testimony of Nebraskans against the pipeline on the current route has been earnest and heartfelt, but it just doesn't have any basis in fact. That said, what are the real issues, the real facts? The integrity of the aquifer isn't in danger. Oil floats on water, and a leak from the pipeline would rise to the surface rather than migrating downward into the aquifer. Crude oil from the Keystone XL pipeline is no different from crude oil currently being processed by refineries in our country. Benzene in crude oil isn't soluble, so it wouldn't penetrate the water table. Farm chemicals are more of a danger to the aquifer than crude oil. With 21,000 miles of pipelines in Nebraska, the record of pipelines in our state is exemplary. Over 90 percent of the landowners have willingly, or perhaps eagerly, accepted easements or land-use contracts with TransCanada. The Legislature should consider cold, hard facts--science rather than emotion. This special session and the passage of legislation which asserts state jurisdiction over the Keystone XL pipeline could very well derail the multibillion-dollar, multistate project and put the state in a precarious legal position. Such an action would be unconstitutional under the commerce clause, which gives the federal government the authority to regulate international and interstate trade. Any action on this point potentially violates the constitution and federal law, which could subject the state to an endless amount of litigation. It is clear the intent of this bill is to put safety regulation and responsibility into the hands of the state. However, because the pipeline crosses the Canadian border, approval of the route rests with the State Department and the President, under the auspices of the federal Pipeline Safety Act. Accordingly, the State Department conducted a comprehensive environmental review, evaluated alternative routes, and concluded the current route is

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the most economically safe route among those reviewed. These studies constitute preemption by the federal government, meaning that because the route is now under federal jurisdiction the state cannot legally interfere. In Nebraska alone, over 7,500 jobs would be created if the pipeline is built. In our current economic climate, we should be creating as many jobs as possible. And these jobs are not transitory construction jobs. Maintenance of the pipeline will ensure that jobs remain long after construction is completed. Additionally, building the pipeline would inject over \$465 million into the state economy, increasing personal income by \$314 million, and enhancing state and local revenues by \$11 million. Building the pipeline would increase Nebraska's state gross product by an estimated \$390 million. And property taxes will be paid to help support local communities along the pipeline. The Ogallala aquifer and the Sandhills will not be harmed by the Keystone XL pipeline, and the nation's economy will receive a boost. Building the Keystone XL pipeline is good for Nebraska and good for America. [LB5]

SENATOR SCHILZ: Thank you, Mr. McCollister. Any questions for Mr. McCollister? Seeing none, thank you very much for your testimony. Further testimony in opposition to LB5. Whenever you're ready. [LB5]

JOHN BOURNE: Thank you. Mr. Vice Chairman and members of the Natural Resources Committee, my name is John Bourne, spelled J-o-h-n B-o-u-r-n-e, and I live in Omaha, Nebraska. I'm an international representative of the International Brotherhood of Electrical Workers. The IBEW has 750,000 members across North America, and we represent numerous people across our state, from south Morrill to Omaha. I'm here to go on record of opposing LB5. We oppose this legislation not because we think it's wrong, but it's just too late. We need to start this Keystone project as soon as possible and feel this legislation will delay it and probably kill it. This project means an awful lot of jobs to our members, jobs we needed yesterday as well as today, and we've heard a lot of talk about that over the last couple of days. Construction workers are among the hardest-hit and longest-suffering group of employees that have been losing their jobs in this recession. The numbers of unemployment across the nation for construction workers is well over 20 percent and in some places as high as 30 percent and more. I'm sorry to say, it's not going to get any better. In fact, Nebraska Department of Labor says the construction jobs are down 2.3 percent this fall, which is a much larger than normal decline. In a news release from the federal Department of Labor, it stated that 20,000 more construction workers became unemployed in the United States, and that was just in the last month, in October. We need to put our people to work, and a project like this is badly needed. Not only are there hundreds of thousands of hours of electrical construction work for inside electricians, instrument techs, linemen, etcetera, providing the electrical work for the pump stations that are actually part of the pipeline, there's going to be huge amounts of employment in bringing the electricity needed to the projects as well. At this time, NPPD has a project to supply three NPPD wholesale customers which includes 74 miles of 115,000-volt transmission

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lines, including some substation work just to supply the power needed. This project is valued at approximately \$49 million. I am told that there's 750 hours of labor per mile. So if that is true, then that project would be 55,500 hours, which is a little different than what we've been hearing the last couple of days. This is going to happen all along the pipeline, from Montana to Nebraska. Others have spoken, and probably will, to the benefits that when you extend these types of transmission projects and our publicly owned power districts have a market that they've never had before in selling this constant power. I was told that to provide power to the last pipeline built there was three complete substations--built at \$10 million each with 25,000 hours of work by electrical workers, by people in the Dakotas. I'm not sure of everything that has to be and will be built for this project to feed it, to supply it, but I can guarantee it's an awful lot of electrical construction workers' hours of employment and a whole lot more for other trades that will be involved. We need the jobs now. And I think I could talk for an hour about the benefits that jobs bring--money spent for food, lodging, gasoline, groceries, maybe a little bit at the local tavern, taxes paid, and all the rest, and, of course, be spent across the state and help us all in this terrible economic time. I'm sure you know all that and will, of course, take it under your consideration. I appreciate your listening, and I appreciate your three days of hard work and as you begin your deliberations. And I thank you. [LB5]

SENATOR SCHILZ: Thank you, Mr. Bourne. Any questions for Mr. Bourne? Thank you very much for your testimony. [LB5]

JOHN BOURNE: Thank you very much. [LB5]

SENATOR SCHILZ: Next person testifying in opposition to LB5. [LB5]

RON KAMINSKI: Good afternoon. The sun is still out; that's a good sign. My name is Ron Kaminski; I'm the business manager of Laborers' Local 1140. On behalf of our members here in the state of Nebraska, our international union and the half million members we represent, the Omaha and Southwest Iowa Building Trades, Lincoln Building Trades, we come here opposed to LB5. As you've heard from me before, this is, our belief, an attempt to delay this project. We need jobs. We need jobs now. And that's all I have today. [LB5]

SENATOR SCHILZ: Thank you, sir. Any questions for Mr. Kaminski? Thank you very much for your testimony. [LB5]

RON KAMINSKI: Thank you. [LB5]

SENATOR SCHILZ: Next testifier in opposition to LB5. [LB5]

MICHAEL WHATLEY: (Exhibit 30) Good afternoon. My name is Michael Whatley,

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W-h-a-t-l-e-y, and I'm the executive vice president for Consumer Energy Alliance. We urge the Natural Resources Committee and the Legislature to cautiously approach legislation to address oil pipeline siting, as we've discussed over the last couple of days. In terms of LB5, we would echo our concerns with the other bills for attempting to change state law to create a new permitting requirement for a project three years after TransCanada filed its application with the State Department. We view it as an unfair attempt to alter the rules of the game long after it started. We believe it violates the intent if not the letter of the constitution's prohibition on ex post facto laws. We see this as particularly problematic, given the state of Nebraska has been directly involved in the State Department's environmental review throughout that three-year process without raising any objections to the proposed route. Given the fact that the State Department would need to conduct a new environmental impact statement for any new proposed route, which would restart the process, which has taken over three years to date, it's safe to say that the actual impact of this legislation would be to seriously jeopardize the project. In addition to those concerns about ongoing projects, we have significant concerns over the provisions in Section 4 of LB5, which would put in place, you know, restrictions in terms of future pipeline siting, which could severely restrict any potential projects in the future. We think that we don't want to see, you know, oil flow through or around or in this part of the country to be unduly restricted going forward, so we'd have concern there. Thank you very much for your time. [LB5]

SENATOR SCHILZ: Thank you for your testimony. Any questions? Senator McCoy. [LB5]

SENATOR McCOY: Thank you, Chairman Schilz. And thank you, Mr. Whatley, for your testimony. Could you speak to what you know about the North Dakota siting legislation and how...have you had any experience with that, or your organization, with exclusion zones? [LB5]

MICHAEL WHATLEY: We have not looked at the exclusion zones in North Dakota. The only thing that I would say is that the North Dakota legislation was in place prior to TransCanada having filed this permit application, so they've been working through that. But I would have to defer to TransCanada on that. [LB5]

SENATOR McCOY: Thank you. [LB5]

MICHAEL WHATLEY: Yep. [LB5]

SENATOR SCHILZ: Any other questions for Mr. Whatley? Seeing none, thank you very much for your testimony. [LB5]

MICHAEL WHATLEY: All right. Thank you. [LB5]

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SENATOR SCHILZ: Good afternoon. [LB5]

NATALIE PEETZ: (Exhibits 31-33) Good afternoon, senators. Natalie Peetz, P-e-e-t-z, registered lobbyist, here today in opposition of LB5 on behalf of Kiewit Corporation and Tenaska. In light of the long three days you've had, I'll be very brief. I have submitted into the record letters that each company submitted to the State Department. You've received a lot of material in the last three days, and I wanted to make sure that you saw those comments. Very briefly I'd like to speak to a couple points. One, in particular, is about TransCanada in particular. Kiewit has been in Nebraska for over 127 years. It is a very respected construction and engineering firm. It has almost a decade of experience with dealing with TransCanada. Tenaska is one of the largest independent energy companies in the United States. It has dealt with TransCanada for over 20 years. And both companies have alluded to the relationships they have with this outstanding company from Canada. There's been several references over the last couple days, as we've watched the hearings, about "those foreigners." I wanted to touch on that briefly. As everyone knows, the United States and Canada have long been good friends and partners. And in Nebraska, as both Tenaska and Kiewit would tell you, corporately located companies in Omaha, Nebraska, they have offices in Canada. They do a lot of business with Canada. Our relationship there is incredibly important. So their letter, really, talks about that relationship about how important this is to our economy and to the defense of our country. They both believe and are on record in support of the pipeline in the current site. They believe this will be the safest pipeline built to date. I wanted to reference just briefly on the landowner issue: 91 percent of the landowners have signed contracts. I believe on the other pipeline in the eastern part of the state it was closer to 98 percent. I think it's important to reiterate that. And on a personal note, because of the discussions that have come up in the last two days, I sought out two landowners that I'm very familiar with in eastern Nebraska, that have the pipeline through their land. And I asked them the questions about it. Both unequivocally went on and on about what a great relationship they had with TransCanada, how responsive that they have been on this project. So I just wanted to share that. And I'm sure you'll hear from them. I listened to Professor Goeke talk about water and safety issues, which is really what this is about--over 40 years of experience. I really felt that that said it all. Jobs are important to our state. There was some allusion to--or some folks alluded to the fact that these aren't Nebraska jobs. They are. Kiewit employs people. Kiewit has participated in the first pipeline, as they have with many other projects with TransCanada. And there will be many Nebraskans impacted--or have been impacted by the pipeline, and we hope to be involved and will be involving Nebraskans in those jobs in the future. Finally, the message is the one issue I wanted to talk about, and that is, as you all know, all eyes are on Nebraska. I had a call from a former economic development professional who was just calling to find out what's going on here. They were very concerned about what they'd been working on for over three decades, in terms of Nebraska's reputation. And it is an important issue to talk about, because what takes three decades to build up can be undone in a very short period of time. There's a

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lot of very nervous people out there, both in Nebraska and outside, that are watching what is happening here. And it's just important to remember; I know you're aware of that. On that note, I appreciate your time today. If you have any questions, I'd be happy to try to answer them. And thank you for all your work on this important issue. [LB5]

SENATOR SCHILZ: Thank you, Ms. Peetz. Any questions for Ms. Peetz? Seeing none, thank you very much. [LB5]

NATALIE PEETZ: Thanks. [LB5]

SENATOR LANGEMEIER: Further testimony in opposition. Are we done? Oh, not quite. How many more testifiers do we have in opposition? One more? Okay. Good afternoon. [LB5]

BRIGHAM McCOWN: (Exhibit 34) Good afternoon, Mr. Chairman, distinguished members of the committee. Thank you for the opportunity to appear here before you today. And given my limited time, I would ask that the balance of my larger written materials be placed into the record. My name is Brigham McCown, and I'm the former U.S. pipeline safety regulator for the country. [LB5]

SENATOR LANGEMEIER: Brigham, I need you to spell your name for me. [LB5]

BRIGHAM McCOWN: I'm sorry. It's B-r-i-g-h-a-m, McCown, M-c-C-o-w-n. My testimony today won't really recite talking points for or against the project, and instead I hope to offer my views based on real-world experience with key issues that are relevant to pipeline safety and that these thoughts will be considered during your deliberations. The debate has been a heated one, and certainly this body has heard from passionate individuals on both sides of the issue. My former agency, the Pipeline and Hazardous Materials Safety Administration, called PHMSA, oversees the safe and secure movement of approximately two-thirds of all energy products consumed in this country each and every day, by all modes of transportation, including pipeline. PHMSA's mission is to protect people and the environment from the transportation of hazardous materials. And I'd be remiss if I didn't point out that federal pipeline safety laws and regulations encompass far more than just personal safety. These regulations are based upon a holistic approach to risk management and take into account life, property, and the environment. For example, PHMSA's main goals, in their order of priority, are safety, environmental stewardship, reliability, global connectivity, and preparedness and response. The review project has been far more thorough than is typical of a traditional pipeline project. And at this point I think it's fair to say that Keystone XL has been the most extensively reviewed and scrutinized pipeline project in the history of our nation or, for that matter, any nation. And as designed, this pipeline meets and exceeds the most stringent safety mandates conceived by our nation's legislature and including the currently pending Pipeline Transportation Safety Improvement Act. Frankly,

TransCanada should be commended for going the extra mile, and not every pipeline operator would make the same concessions when they're not required to do so by law. With respect to the aquifer and the Sandhills, please note that thousands of pipelines already cross the aquifer, with at least one of these having been in service since 1952. Moreover, the country has thousands of other miles of pipelines crossing through other ecologically sensitive areas such as the Everglades and the marshes in Louisiana. Though my experience indicates that the fears associated with this project have been exaggerated, Nebraskans should also draw comfort on the fact that the federal government enhances pipeline safety whenever a line moves through a sensitive area. For example, PHMSA requires heightened scrutiny in unusually sensitive areas, or USAs, which are defined as an area containing a drinking water or ecological resource area that is unusually sensitive to environmental damage from a hazardous liquid pipeline release. To this end, the federal government prescribes additional safety protocols in these areas. Sole-source aquifer recharge areas are considered and protected by federal pipeline laws and regulations. Moreover, PHMSA's environmental regulations take into account areas containing critically imperiled or endangered or threatened species as well. Finally, as I mentioned, the federal review process is ongoing. And based out of news out of Washington this morning indicates the State Department is taking yet another look at this as well as additional routes. With that stage set, I urge caution and restraint in considering any additional legislation that would attempt to regulate any environmental or safety aspects of an interstate pipeline, as these actions would most likely result in an untenable legal position. After reviewing this project and consulting with my former colleagues at PHMSA, I'm confident that, if approved, this pipeline will offer a level of protection above what the law requires. And I'm satisfied that this line will not pose a significant threat to the health, welfare, and safety of the state of Nebraska or our nation as a whole. Thank you for the opportunity to testify here with you today, and I'd be pleased to answer any questions. [LB5]

SENATOR LANGEMEIER: Thank you. Are there any questions? Senator Carlson. [LB5]

SENATOR CARLSON: Thank you, Senator Langemeier. Mr. McCown, we've heard several statements in the last three days about something like this: Not "if" a pipeline leaks but "when"; and every pipeline, one time or another, will leak. And those statements are probably true. But expand a little bit on how this pipeline, in your estimation, might be different. [LB5]

BRIGHAM McCOWN: Well, Senator, that's a great question. And, first of all, several years ago we reduced what is required to report a spill. For example, now a federally reportable spill is a mere five gallons. So we are tracking very small spills, with 90 percent of those reports involving less than 50-gallon spills. So this pipeline is actually designed for what they call a 0.8 pressure rating, but it's going to be run at a 0.72 pressure rating. This pipeline has reduced spacing between the mainline valves; it has leak detection equipment; it has automatic shutoff valves; it has encasing around many

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areas. This pipeline, frankly, probably includes...that \$7 billion cost--at least \$500 million of that probably includes voluntary upgrades that are not required under the law. [LB5]

SENATOR CARLSON: So when you say it was 0.8 to 0.72, that's about a--that's running at 90 percent instead of 100 percent? [LB5]

BRIGHAM McCOWN: Well, no, sir. Actually, 100 percent would be 100 percent; so it's going to be running at 0.72 of its design strength instead of a 0.8 factor. [LB5]

SENATOR CARLSON: Okay, 72 percent instead of 100 percent. [LB5]

BRIGHAM McCOWN: Right. [LB5]

SENATOR CARLSON: Okay. Thank you. [LB5]

BRIGHAM McCOWN: Yes, sir. [LB5]

SENATOR LANGEMEIER: Senator McCoy. [LB5]

SENATOR McCOY: Thank you, Chairman Langemeier. And thank you for your testimony, Mr. McCown. If you can, could you expand a little bit--did you deal with any of the North Dakota--their siting legislation, in your time with the federal government? And as you dealt with pipelines, can you detail...? You talked about it a little bit in your prepared testimony, as I see here. Perhaps you--if you could expand on that. [LB5]

BRIGHAM McCOWN: Well, Senator, these state laws are fairly tricky. And most of them try to regulate intrastate pipelines. And even some of those you get into a discussion of whether they are an instrumentality of interstate commerce, whether they can affect interstate commerce. The...a lot of pipeline operators choose to go ahead and abide by these state laws without challenging them in court, because, frankly, I think the industry's perspective is it's best to get along with everybody, if they can. Most of these laws were put in place, you know, prior to a pipeline project coming in and are prospective only. North Dakota's PSC language, if you look at it--they have a couple of exclusions, and there are a couple pieces in that legislation where it specifically indicates it applies to intrastate lines only. So to my knowledge, none of these have actually been tested in court. And, again, you know, I don't know why. That's maybe a business decision for the pipeline companies. But from the federal government perspective, a local or state organization, entity, such as a state government, can enforce certain rules, and those relate to planning and zoning decisions. But when it comes to actual pipeline safety, many times siting laws run afoul of what would otherwise be fairly preempted. [LB5]

SENATOR McCOY: Thank you. [LB5]

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SENATOR LANGEMEIER: Senator Smith. [LB5]

SENATOR SMITH: Thank you, Chairman Langemeier. Mr. McCown, thank you for being here today, and thank you for your testimony. And it's good to see a new face on this issue. And, actually, I've been asking questions along--for the last couple of days, and I think you are the person that's going to be able to answer some of these questions more directly for me. You are the guy. I mean, your successor is the person that has been involved with this project over the last two to three years, that participated in the EIS. Right? [LB5]

BRIGHAM McCOWN: That's a fair statement. Yes, sir. [LB5]

SENATOR SMITH: So you were that guy in prior years. [LB5]

BRIGHAM McCOWN: Yes, sir. [LB5]

SENATOR SMITH: All right. So help me understand, it may not relate specifically to this pipeline, but for--in the previous pipelines, what has been the involvement of local, state governments in the process? [LB5]

BRIGHAM McCOWN: All right. Well, for an EIS...you know, EIS's have been around for a long time. President Nixon signed the National Environmental Policy Act in the 1970s. And so, as I'm sure you know, the act mandates that a federal study be undertaken anytime there is a significant federal action. And an EIS is the more comprehensive of two potential studies that one can do. You know, throughout the process I had the opportunity, not in my capacity as the pipeline chief but in my capacity as the motor carrier guy, to run the largest EIS at the U.S. DOT. And there is significant involvement in state and local leaders. There are the public hearings that everybody generally knows about. But there's a consultation phase that can last a long time. And typically an EIS can be completed in about 18 months. This one has taken 36. We've had extensive consultation on the pipeline side. The state fire marshal is actually one of PHMSA's strongest stakeholders in the state, the go-to guy in the state for us. And that varies by state to state, but usually the PUCs, the environmental quality organizations, as well as the fire marshal are all involved. And the whole idea of the EIS process is to come out with a product that at the end of the day has input from as broad a range of stakeholders as possible. [LB5]

SENATOR SMITH: So what level of expectation did you have when you were in that role that state governments would be proactive in their communications, about their engagement in the process? [LB5]

BRIGHAM McCOWN: Well, the expectation is they'd be very engaged. And, you know,

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to the extent...my staff always had an opinion of: Put up a tent and invite everybody in. And sometimes you'll get contentious debates; sometimes you'll get people that can't agree. But generally, reasonable people can generally reasonably agree. There are always some that are either going to be for or against something, and no matter what concessions you make you're not going to change their opinion. So it's not an absence of conflict, but whether it's PHMSA or any of the other USD departments, you have to regulate based upon a risk-management curve to try to figure out how you can move the country forward while trying to reduce the threat or the consequences of a spill or the likelihood of a spill as much as you can. But, you know, the fact is, we could put 100 million times more money into the system and I can't guarantee there will never be a single spill. But I can tell you that, you know, we have a very good safety record with the pipeline agency, and it's by far the--not only the least expensive, but it's the safest form of transportation this country has for energy products. [LB5]

SENATOR SMITH: All right. Then my last question is kind of a...I don't know if it'll be difficult to answer or not, but I've heard the comment made that there's never been a pipeline like this. [LB5]

BRIGHAM McCOWN: Hmm. [LB5]

SENATOR SMITH: And in your experience, even maybe your predecessor's or--has there been this type of a pipeline assessed and analyzed before? And if it's unique, why is it unique? [LB5]

BRIGHAM McCOWN: Well, we've had several occasions where there have been pipeline projects that have drawn scrutiny. First of all, as I mentioned in my testimony, there are other pipelines going through ecologically sensitive areas: we have pipelines in the Everglades; we have pipelines in the marshes. So they do exist alongside recharge zones or drinking water supply routes; they cross navigable waterways every single day. The Trans-Alaska pipeline from the 1960s and '70s was the last time a serious issue came up with the siting of a major pipeline. And, you know, we've heard much of the same debate today as we heard then, that there would be ecological disasters if this pipeline were placed in and through ecologically sensitive areas in Alaska, with major elevation changes, I might add. And that pipeline has performed very well over the decades. [LB5]

SENATOR SMITH: All right. Thank you. Appreciate it. [LB5]

BRIGHAM McCOWN: Thank you, sir. [LB5]

SENATOR LANGEMEIER: Senator Carlson. [LB5]

SENATOR CARLSON: Thank you, Senator Langemeier. When I ask you this question, I

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know you can answer it, and I hope you will. Of these bills that have been--are being presented during this special session, what's your opinion about the constitutionality? [LB5]

BRIGHAM McCOWN: Hmm. Well, I'm not a constitutional scholar, Senator, so I don't...I am a litigation attorney by classical training, and I always tell my clients when they ask me what their odds are in court, that, you know, I can give you some odds, but the bottom line is nobody knows what a jury will do, nobody knows how a court will come out. And from that perspective, I'd prefer not to take odds on any of the bills. But I will say that, as crafted, anything that infringes upon either an applicant's vested interest or anything that attempts to regulate pipeline safety, no matter how it's disguised, is still trying to regulate pipeline safety, and I think it's federally preempted. [LB5]

SENATOR CARLSON: Okay. Thank you. And one other question. There's been a lot of comment made about transporting of dangerous, hazardous chemicals. What's your opinion of the degree of hazardous chemicals between regular crude and tar sand crude? [LB5]

BRIGHAM McCOWN: Okay. Well, crude is an interesting type. I mean, pipelines transport either refined product, crude product, or natural gas--gases. And, you know, with respect to the aquifer, a refined product like gasoline, diesel fuel, distillates can actually permeate the ground easier than crude oil. So from that perspective, a crude oil, because it is heavier, doesn't have the same viscosity rating as a refined product. Moreover, the crude that we're talking about here is a medium to heavy crude; it's not the sourest crude. It's consistent with what we import from Venezuela, from Mexico. And it's consistent with what we currently bring out of Wyoming. So from that perspective, it's less toxic than ethanol. [LB5]

SENATOR CARLSON: Thank you. [LB5]

BRIGHAM McCOWN: Yeah, thank you. Or I should say less corrosive. I'm sorry, Senator, wrong word choice. [LB5]

SENATOR CARLSON: You can drink ethanol. [LB5]

BRIGHAM McCOWN: Can you? I haven't tried that, sir. [LB5]

SENATOR LANGEMEIER: Senator Dubas. [LB5]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you very much for being here today, Mr. McCown. Well over a year ago, last summer, Senator Sullivan and I conducted a pretty extensive interim study resolution trying to discern exactly how can the state be involved and what have you. And PHMSA was very helpful to us; we had

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multiple exchanges with them, asking questions. And so I guess I want to follow up with you on some of the things that we visited with them with at that time. In your estimation, does PHMSA act more as a proactive agency or a reactive agency? [LB5]

BRIGHAM McCOWN: Well, I think there are friends of mine on the Hill that would say we're reactive, but we try very hard to be proactive. And, you know, unlike some of the newer federal agencies, which PHMSA...PHMSA is a new agency in its current incarnation, but it's always existed as the Office of Pipeline Safety before 2004. The agency does not--its regulations are performance based instead of prescriptive. It generally tries to be highly proactive. Pipelines have been around for a very long time; first pipelines were made out of wood. And we have, you know, over a hundred years of experience in regulating pipelines. The technology has advanced at an unparalleled clip in the last 30 to 40 years. And so if you look at the current pipeline safety bill on the Hill, instead of a major overhaul, it's--you see more tweaks around the corners, more kind of just minor moves to it. And that says to me that we have a mature regulatory framework in place. And the good news is that, you know, pipeline incidents are down, and we're becoming more educated. We've had a couple of spills in the last year. Most of those these days are due to third-party damage, not to actually the pipeline itself failing. [LB5]

SENATOR DUBAS: Thank you. That kind of takes me into my next question, when you talked about where this agency is. In some of the reading that I've done...budget cuts in general, across the board, local, state, federal, and it's been my understanding PHMSA has not been exempt from those types of budget cuts, and maybe it's impacted your ability to have the inspectors, have the boots on the ground. Your feelings about any budget cuts and the impact to that agency. [LB5]

BRIGHAM McCOWN: Um-hum. I was just at PHMSA a couple weeks ago, and I have not heard anything with regard to cuts or layoffs. In fact, the current pipeline safety bill was criticized by some. I think Senator Paul criticized it as, quote, hiring more bureaucrats. So, if anything, I think the agency will continue to grow and, you know, as it matures. And I should also point out that 80 percent of PHMSA's inspections are actually done by our state partners. And so to the extent possible, we try to leverage as much as possible down to the state level. And the last pipeline safety bill, one of the things we were able to get passed was to actually raise the state matching grant level from a 50/50 split to an 80/20, meaning that the state would only have to match 20 percent of the grant. So the agency is trying very hard, where it can, to push assets down to the state and local level as much as possible. [LB5]

SENATOR DUBAS: What was that percentage you said? [LB5]

BRIGHAM McCOWN: It's an 80/20 split now. [LB5]

SENATOR DUBAS: But how many of the inspections are--80 percent, did you say?

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[LB5]

BRIGHAM McCOWN: On a national average, 80 percent of the inspections around the country are actually accomplished by the state partners. [LB5]

SENATOR DUBAS: Okay, thank you. And one of the discussions that we had with PHMSA dealt with siting authority. [LB5]

BRIGHAM McCOWN: Um-hum. [LB5]

SENATOR DUBAS: And they kept saying states have siting authority. [LB5]

BRIGHAM McCOWN: Um-hum. [LB5]

SENATOR DUBAS: When they're saying that, what is it that they're meaning? [LB5]

BRIGHAM McCOWN: Well, I don't know. Because states don't have siting authority. In the case of liquid lines, FERC has siting authority. In the case of liquid lines, it is true that there is no federal siting authority, per se. But as I discussed during my testimony, when you get into...if you have a local line--for example, there are a lot of local gathering gas lines based on the Marcellus Shale in Pennsylvania or the new shale down in Texas, where people are developing. Smaller lines like that, sure, are a state-based routing requirement. But in an interstate line, you know, the law is far from clear. And again, what you generally see are people trying to regulate either the safety of the line itself or of the environment. And, you know, again, that's something where the federal government has sole jurisdiction and, in fact, encourages states to adopt compatible legislation that mirrors the federal regulatory regime so that we don't end up with a "quiltwork" of different colored laws from state to state. [LB5]

SENATOR DUBAS: Thank you. [LB5]

BRIGHAM McCOWN: Yes, ma'am. [LB5]

SENATOR LANGEMEIER: Mr. McCown, I do have a couple questions. And first of all, your comments about not having siting authority--I think you just took a 90-degree and you took us around a corner that I think we had been around already. In the last year, the current head of PHMSA has testified before Congress saying they don't have enough money to do their job. But you're telling us they do, and they're going to grow. [LB5]

BRIGHAM McCOWN: Well, I think there's a difference of, probably, political philosophy with the current folks from mine. But I never had an absence of people or resources or money. [LB5]

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SENATOR LANGEMEIER: Okay. I appreciate that. Any other questions? Seeing none, thank you very much for your testimony. [LB5]

BRIGHAM McCOWN: Thank you, sir. [LB5]

SENATOR LANGEMEIER: Appreciate it. Further testimony in opposition. Just out of curiosity, how much more opposition? We'll get to neutral. Welcome. [LB5]

BILL COLLINS: Thank you. My name is Bill Collins, B-i-l-l C-o-l-l-i-n-s. I won't sit here before you today and tell you that I'm an expert on pipelines, but I am the son of a man who has worked for a natural gas pipeline company for 50 years. In fact, there is a station, if any of you have been to Beatrice, north of there, he works at that station. His position there is a district land man where his job is to acquire the right of way for pipelines. And you've had testimony earlier today from two gentlemen saying how the process was somewhat pretty easy for them, that they were treated fairly and stuff. And from experiences listening to my dad, just like all of you probably listened to your dad around the dinner table, it's pretty much that's common for what he does. What they usually do is they offer you actually more money than what your land is worth because, as you're seeing here with some of the testimony from the Keystone experts, is that time is money. If you delay a project, it's going to cost you money. And so the two gentlemen that said they were treated fairly, I found through my conversations with my dad that's standard pretty much throughout the pipeline industry. And I sit here today to oppose LB5, and the reason that I oppose it is because I don't think from reading it closer that it is a bill that's going to just site the pipeline. I think it's an attempt to actually stop the pipeline, from the way I read it. The reason I came to this conclusion is Senator Haar, who happens to be introducing this, I feel is probably an environmental extremist. There is a post on the Nebraska Sierra Club where he...from May 12, 2009, where he states that he's a proud member of their executive committee, the same Sierra Club who was cofounded by a person by the name of John Muir, who was an unapologetic racist, and David Brower, who said "childbearing should be a punishable crime against society unless parents hold a government license." Pretty scary from this side. [LB5]

SENATOR LANGEMEIER: I'm going to stop you on that. I don't think that has any relevance to today's hearing. So stay on point if you would, please. [LB5]

BILL COLLINS: Okay. According to the Lincoln Journal Star's August 19, 2011, article, this pipeline will be paying property taxes. They'll be paying \$161.3 million in tax revenues to this state, a state that for the last sessions has really needed this money. And you guys have been cutting and cutting and cutting to the bone, so I don't see how we can actually afford to lose that. Now granted, that's an estimate. But the current Keystone pipeline that went into service in 2010 has been given a tax revenue basis of \$145 million. So that's pretty close, so I'm willing to accept the \$161.3 million. Also in

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the Lincoln Journal Star article, it was projected that there's going to be business activity of \$468 million; people getting paid. They're going to be spending money in the areas that we're all worried about, the rural parts of the state that are desperately needing business activities. Ultimately, from my research I've read, only the President is the only one that can stop this pipeline. With this bill passing, what concerns me is that we seem to be the only state who is standing in the way of the construction of the pipeline, from what I've read. It seems to me we're opening ourselves up to lawsuits from other states if we stop them from being able to get their tax revenue or if we stop them from being able to create jobs in their states. So that's my testimony. I'm open to any questions. [LB5]

SENATOR LANGEMEIER: There you go. Are there any questions? Senator Carlson. [LB5]

SENATOR CARLSON: Thank you, Senator Langemeier. And thank you for testifying today, but I want to give you a suggestion. Character assassination is not a good thing in the testimony. We try very hard to make you feel comfortable when you come to a hearing because you are a part of the second house in Nebraska. We want you to come here. But it's kind of hard to win friends if you...and get your point across, if you really tear after somebody's political position. I hope I'm viewed as a conservative but there are some that probably wouldn't, and that wouldn't make me feel very good. So thank you for coming, but...and I hope you come back, but try to keep the character references down. [LB5]

BILL COLLINS: Thank you for your advice. I appreciate it. [LB5]

SENATOR LANGEMEIER: Senator Smith. [LB5]

SENATOR SMITH: Thank you, Chairman Langemeier. And, you know, I was kind of hoping to hear...I thought where you were headed, you were talking about your father and his work in working with landowners, so I was actually very interested in hearing some of those experiences. And I'm just curious, I mean is your father still doing that today? [LB5]

BILL COLLINS: Yes, he is. [LB5]

SENATOR SMITH: So not always a positive outcome, I assume, but probably has established some friendships over the years through his connection with the people in the community, right? [LB5]

BILL COLLINS: If I can say one thing, there was one time he even actually got a \$2,000 bonus because he got the project done quicker than the goal was. So, you know, he does treat people fairly. He's actually out there talking to them. He negotiates with them.

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And I believe that's what TransCanada has been doing also, because I've been hearing a lot of things: they're bullying people, they're taking people's land. That's simply not true. It's an easement. They're not taking anybody's land. You still own the land. You can still grow crops on it. If you're grazing it, you can still put grass on it and everything. You just can't build on it for, obviously, the reasons the ground isn't as structurally sound, so. [LB5]

SENATOR SMITH: Well, thanks for sharing. [LB5]

BILL COLLINS: Thank you. [LB5]

SENATOR LANGEMEIER: Are there any other questions? There you go. Very well done. Thank you for coming in. Appreciate it. Further testimony in opposition. Seeing none, we will now move to neutral testimony. Is there anyone that would like to testify in a neutral capacity? We'll take a break after we conclude this hearing. Welcome. [LB5]

JERRY VAP: (Exhibit 35) Thank you, Mr. Chairman and members of the Natural Resources Committee. I'm Commissioner Jerry Vap of the Public Service Commission and I represent the 5th District, and I'm here today to testify in a neutral capacity on LB5. The commission appreciates the Legislature's efforts in addressing this challenging public policy issue. Should the Legislature decide that the commission should have a role in the siting of pipelines as outlined in LB5, we believe the requirements could be satisfied with existing staff and resources. Therefore, the commission does not believe it will have a fiscal impact on the agency. I'm available for any questions. [LB5]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Vap?...or Commissioner Vap, I should say. Seeing none, thank you very much for your testimony. [LB5]

JERRY VAP: Thank you. [LB5]

SENATOR LANGEMEIER: Further testimony in a neutral capacity. Just out of curiosity, how many more neutral testifiers? Just this one? Okay. Welcome. [LB5]

DAVE WEDIN: (Exhibits 36 and 37) Thank you, Chairman; thank you, senators. I'm Dave Wedin, W-e-d-i-n, from the School of Natural Resources at the University of Nebraska. I have been here before talking about issues with revegetation and erosion. I'm happy to answer questions on those if you have any, but we'll move on. When I was here on Monday, after the end of the session I chatted with Mr. Jones from TransCanada and he thought I had misunderstood the portions of the environmental impact statement that dealt with the warming associated with the pipeline and invited me to take a look at that again. And I did and I still believe in pipeline warming. And so

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the graph I gave you is from the appendix of the environmental impact statement. I can explain that if you want. It still...it shows basically significant warming, and I believe that would be associated with significant effects on the vegetation above the pipeline. With regards to my testimony, LB5 does use the EPA's ecoregion classification system as a basis for delineating the Sandhills. And so I have some explanation of where that comes from and whether that would be appropriate for this use, which I think it is. And so we can discuss that if you'd like, but maybe that hasn't come up as an issue today. And then my final thoughts were again in the context of LB5. What are some of the reasons that the Sandhills would be considered a unique region, perhaps meriting the sort of consideration given in LB5, and I have some comments on both the soils, vegetation, water resources, and the land use. But I think at this late hour I'll see if there's any questions. [LB5]

SENATOR LANGEMEIER: Are there any questions? Senator McCoy. [LB5]

SENATOR McCOY: Thank you, Chairman Langemeier. And thank you, Dr. Wedin, for being with us this afternoon for your testimony. I'm looking at your graph here, and perhaps if you wouldn't mind clarifying, at the top, for the benefit of those who aren't looking, it says "Predicted Soil Temperatures 6" Below Ground Surface Near Lincoln, Nebraska." [LB5]

DAVE WEDIN: Right. Now this is just taken...I just cut this or this is pasted out of the engineering report, the modeling that Mr. Jones referred to for soil temperature. So this is their graph from the EIS. It's still on the federal Web site buried in the appendices of the EIS. And for Nebraska, they only model the impacts of the pipeline on soil temperature at one location, and that would be near Lincoln, the generic kind of Lincoln temperature, Lincoln soil characteristics. The soil characteristics of the Sandhills are obviously different than the loamy soils we would have around Lincoln. And so the results would be different for sand, but we don't have those sort of modeling results. The...if you look at the graph, the black line at the bottom shows what the soil temperature would be six inches below the surface away from any influence of the pipeline. So not surprisingly, the temperatures are below freezing in the soil in the winter and warm up to about 80 degrees Fahrenheit in the summer. The red line, as it shows, is above the pipeline at six inches depth, which is within the rooting zone, definitely, and will impact plants, and we'll see in the winter approximately 10 degrees warmer temperatures at six inches depth above the pipeline. The yellow and the purple shows, as you get away from that center line above the pipeline, how far that warming would extend. So realistically, there is a zone of maybe ten feet wide above the pipeline where we would expect to see thawed temperatures in the winter and some differences in the vegetation. And then the other point that I made was that agronomists will often look, depending on the crop, at 40 degrees soil temperature or maybe 50 degrees soil temperature in the rooting zone as the temperature at which nitrogen starts to become available, roots start to become active, and microbial processes start to happen. That's

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from the soil's point of view, that's springtime. And if you look when the lines cross, say, the 40-degree line, away from the pipeline you're crossing that around the first of April and above the pipeline you're crossing that in late February. So that's saying that at six inches depth spring processes are going to start four, five weeks earlier than they would away from the pipeline. In all fairness, is this going to be an economic impact or an ecological disaster? I'm not sure, but I think the point I had tried to make was the vegetation with this degree of changes in temperature above the pipeline will be different from the vegetation away from the pipeline. [LB5]

SENATOR McCOY: So your analysis is, after you had a chance to look at the data again, pretty much remains where it was. [LB5]

DAVE WEDIN: Exactly where I was. So the...it would be nice to have a better study done with soil textures that are more like the Sandhills. The actual literature review associated with the environmental impact statement was pretty thin. There was only one citation from Evan DeLucia, in 1983, I believe, on the impacts of soil warming on perennial grasses. I have a lot of colleagues that have done a lot of work on that, so there's a lot of other information that would be relevant. [LB5]

SENATOR McCOY: I guess my last question to you would be you've talked, I think perhaps I think it was on Monday as I recall, and your many years of working in the Sandhills and with vegetation in the Sandhills, Dr. Wedin. And I understand being part of academia, you are paid to hypothesize,... [LB5]

DAVE WEDIN: Right. [LB5]

SENATOR McCOY: ...and I'm not necessarily asking you to do that. But you mentioned... [LB5]

DAVE WEDIN: We love to hypothesize. We just don't love to be held accountable. (Laughter) [LB5]

SENATOR McCOY: All right. Would you care to try to I guess take a stab at what you think it would...you said the evidence seems to be thin dealing with soil types of the Sandhills. And I appreciate that you're taking a gander at what it would be looking at this graph. Do you think it would be any different dealing with the soil temperatures in the Sandhills? Or would it be, in your opinion, similar to what we see from what you gave us in the handouts? [LB5]

DAVE WEDIN: I think it would be similar. I tried to get a couple of my civil engineering colleagues to nibble at the hook, and say, "Come on, run your models with this," because I have no expertise in those actual models of heat dissipation in the soils. And they didn't nibble at the hook. You know, they like grant money, and I couldn't give them

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any. But the...it's late in the day; I apologize. (Laughter) When the sand is dry...and moisture is such a good conductor of heat. If the sand is dry, it will probably be a better insulator, on average; but when that sand is saturated, and below about 75 centimeters the soils in the Sandhills are usually saturated, I think it will behave comparably. And you've got to remember, there's a lot of wet meadows. About 15-20 percent of the landscape out there is wet meadows and they're more organic. They're probably going to behave much like these soils. [LB5]

SENATOR McCOY: Thank you. [LB5]

SENATOR LANGEMEIER: Any other questions? Seeing none, thank you very much. We appreciate it. [LB5]

DAVE WEDIN: Good. [LB5]

SENATOR LANGEMEIER: Is there anyone else wanting to testify in a neutral capacity? Seeing none, Senator Haar. Going to waive closing? [LB5]

SENATOR HAAR: No. [LB5]

SENATOR LANGEMEIER: No. I was trying. [LB5]

SENATOR HAAR: I know you were. [LB5]

SENATOR LANGEMEIER: Welcome back. [LB5]

SENATOR HAAR: (Exhibit 38) Thank you very much. Just several things, and I'll make it pretty short here. First of all, they talked about the state-federal partnership where the state gets 80/20, and we don't have that in Nebraska. That's something we might want to look at in the future. There are no state inspectors, and if we participated in that program, we'd get the 80 percent match from the federal government. I started by saying simple but not too simple. I believe that Nebraskans want something to happen, and my bill, perhaps Senator Dubas' bill, Senator Langemeier's bill are more likely to merge into one or all of them is what I hope. The map I pointed out...you know I love maps. And this is just what I do in my spare time, reading the Canadian Association of Petroleum Producers' report. What's really interesting about this, and this is the 2009 report, if you look at number 5, the dotted line number 5--now this is no longer in the 2011 report. But to me it was just interesting that in 2009 there was, on the table, another proposed pipeline of about the size of the KXL that would go to the west, a little bit to the west of where KXL is being proposed. And my point of that is I believe we need regulation in place. This won't be the last pipeline, probably, but this is just kind of interesting that in 2009 there was another pipeline being proposed for that area. And then finally, Senator Carlson, the land I live on right now is 70 acres that two couples

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bought, and we divided it into three and we clustered the houses, and the rest we're trying...much of the rest we're trying to grow in prairie. And we just thought all you have to do is let it grow. (Laugh) And that's not the case. It's a lot of work to get prairie back. So my wife has been watching a lot of this, and here's the text message she sent to me. "On that oil well, hell no. Love, Chris." (Laugh) So, I'm sorry. I'd like to be a millionaire but it ain't going to happen. (Laugh) And with that, I'm done. [LB5]

SENATOR LANGEMEIER: (Exhibits 39-43) Very good. Thank you very much. Appreciate it. Now we will take a little break. Let's come back in about seven minutes at ten after, at 4:10, and we will start on LB6 with Senator Avery. [LB5 LB6]

BREAK

SENATOR LANGEMEIER: Well, welcome back everyone. We're going to start the hearing on LB6. We have just heard the one on LB5. I need to add a little bit to the record for LB5. We have a number of letters in support. One was from Stu Luttich from Geneva; Britton Bailey from Lincoln; Lori Fischer from Shelby--those are in support. In opposition to LB5 we have a letter from Mark Whitehead with the Nebraska Petroleum Marketers and Convenience Store Association; and one from Brian Bresnahan from Stromsburg. And I apologize if I butchered those. They will be spelled right in the permanent record. We will now move to LB6, and I talked to the introducer. LB6 is a bill that would require bonding and bonding of TransCanada on this pipeline and any oil pipeline. And so we want the discussion to be focused on you either want a bond. You may not agree with the amount but that's what committee amendments are for, so we don't want to hear everything else. We just want to know you're in support of a bond and what level you think it should be, and a brief why. Is that a fair enough description? [LB5 LB6]

SENATOR AVERY: That is perfect. Thank you. [LB6]

SENATOR LANGEMEIER: Okay. And then the opposite side. If you believe you don't need a bond, tell us you don't need a bond and why. With that, Senator Avery, welcome to the Natural Resources Committee, and you're recognized to open on LB6. [LB6]

SENATOR AVERY: (Exhibit 44) Well, I hope I can help us get out of here early. Thank you, Mr. Chair. My name is Bill Avery, B-i-l-l A-v-e-r-y. I represent District 28 here in the heart of Lincoln. LB6 requires that a oil pipeline carry or post a \$500 million indemnity bond against their pipeline construction project. The bond I am talking about is equivalent to a performance bond that indemnifies the state and our counties and landowners against failure of a pipeline carrier to carry out fully its obligations. In other words, the bond will secure against loss or damage. I have an amendment. I was looking for the page; I didn't see one. I have an amendment here that I want to pass out for your consideration that proposes how the \$500 million indemnity bond would be

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used. In developing this amendment, I consulted with local and regional insurance underwriters, including one at a major insurance firm who recently had written a several-million dollar bond. They were very helpful. Since then, in fact this morning, I received a letter from the Surety and Fidelity Association of America, and I believe Tad Fraizer will be here to bring that to you in neutral testimony. But they also are recommending things that are similar to what we have in the amendment that's being distributed. I want to stress before I get started that this legislation does not deal with siting. It will apply to any crude and petroleum oil pipelines, or pipelines carrying products thereof, constructed in this state. This is not special legislation and it falls within the Governor's call. It guarantees that upon failure to restore Nebraska land, infrastructure, and natural resources to their original state, the bond would be used to make the state whole. In October of this year, a letter to Senator Flood, the Speaker, TransCanada president of energy and oil pipelines offered to provide and maintain a performance bond in the amount of \$100 million. To my knowledge, this offer is largely meaningless, designed primarily to entice Nebraska to abandon what at that time was a push for a special session. After speaking to a regional surety bond expert, I learned that it is common practice for large energy companies to hold heavy pollution insurance policies, and I understand that they are required to carry these policies in substantial excess of the amount that TransCanada offered in October 18. Their offer of a performance bond was never very specific as to how it would work and was likely never going to be sufficient to cover a significant spill. I really hope that there's someone here from TransCanada. I'm sure there is somebody here from TransCanada. I hope they will speak to this issue because I believe we need some clarification on that. The \$100 million performance bond offered by TransCanada is painfully inadequate, I believe; \$500 million may sound like a big number, and it is a big number, by the way. It was chosen because of evidence that we have from previous experiences in other states. Enbridge tar sand oil spill expenditures in the Kalamazoo River is still ticking along 15 months after the spill, and the price tag has reached about \$700 million. So we know these can be expensive. Let me briefly discuss a little bit about what surety bonds do. These bonds are used in major construction to protect taxpayers from constructor failure. They provide financial security and construction assurance by ensuring that a company will perform work as specified. To take a gamble on TransCanada's performance when their first Keystone I experienced 12 spills in the first year I think is an unacceptable financial risk to the citizens of Nebraska. Let me point out now: that's 12 spills on the Keystone I pipeline. That already has been built--12 spills in the first year. I just learned today that TransCanada announced today that it has been forced to shut down the Keystone I pipeline because of mechanical problems. I don't know if you're aware of that or not, but that was reported today by Reuters. It came to me at 12:23 this afternoon. I have structured this bond as an ongoing and after-the-fact financial security system on actual physical loss for the state of Nebraska should such loss occur due to TransCanada or any other pipeline carrier's accidental, negligent, or unintended consequences or actions. The indemnity bond will not cover punitive damages to either the state or to private landowners. Now back to the amendment. Any

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indemnity bond secured by a pipeline carrier must be made by the security company that makes the U.S. Department of Treasury's approved list of sureties, and the surety company must have an agent based in Nebraska. I believe when you get that letter from the surety association, The Surety and Fidelity Association of America, you will see that they recommend that provision be made for cosureties. I think that's a good idea. And cosureties might be necessary because of the amount of the bond it may be difficult to find a company that would write a bond in the amount of \$500 million. It's not unheard of but it is likely that you might want to allow for cosureties so that more than one company could get part of the action. In my amendment, pipeline carriers like TransCanada will have the opportunity to remedy all losses to Nebraska's satisfaction on its own. It has a chance to act in good faith to restore our land, our infrastructure, and natural resources to their whole state, their original state. If they don't, this is when the bonds will be forfeited. So how would the \$500 million bond be used? This is a large part of that amendment that you have. First, \$400 million would go into a pollution remediation bond. In the event of a spill or release, the cost of which exceeds the pipeline carrier's pollution liability insurance, our Department of Environmental Quality shall administer payments for pollution remediation, coordination, and containment. Second, should the pipeline carrier's insurance lapse, expire, or upon insolvency of the carrier, the pipeline carrier, the pipeline carrier shall immediately cease operations in the state of Nebraska. What you don't want to happen is...first, you want to ensure against damage from a spill, but you don't want to have a situation where the pipeline company loses its pollution insurance, liability insurance, and then the state be exposed. And if you have a company that goes insolvent, you don't want a period of time there when there is no risk coverage for the state of Nebraska. Keystone I--and this is the reason why the remediation bond I believe is necessary and the reason it is so large--Keystone I has already experienced, as I said, 12 spills in its first year. But they claim no fault for those spills. Why? Because they're at pumping stations. Well, pumping stations leak and they cause damage. What happened with Keystone I? Those 12 spills in the first year is the most first-year spills in any other pipeline in U.S. history. Keystone I was recently issued a federal corrective action order in June of this year by the U.S. Department of Transportation to take necessary action to protect the public, property, and the environment from potential hazards associated with two spills this summer in Sargent County, North Dakota, and Doniphan County, Kansas. Also Enbridge dumped over one million gallons of tar sand crude into Michigan's Kalamazoo River, polluting and closing the waterway to fishing and swimming for six months. They're still working on that. We are all familiar with the Exxon Mobil spill that put 42,000 gallons of oil in the Yellowstone River, contaminating one of our most precious national park waterways. And, of course, we are aware of what happened in Louisiana and the Gulf Coast where decades of tragic consequences have been realized there or will be realized because of British Petroleum's offshore explosion. The point is, these spills not only can but do happen. They do happen. They will happen. And when they do, there is damage to our waterways, damage to our wildlife, damage to our environment, damage to our land and to the stakeholders along the pipeline route. That's the first part of the \$500 million

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bond. Second, I want to use \$50 million of the remaining \$100 million for a right of way bond. This bond would be available to the Department of Roads to rehabilitate and restore county and state roads to their original condition. I was recently in Holt County. I saw roads, not all of them were even paved. These roads will be used to move heavy equipment to the pipeline site should they actually build in that area. They would be used to haul heavy equipment and heavy pipe and land movers and things of that sort. These roads were never designed for this kind of heavy use. Now I know that farm equipment is not light use, but those roads are old roads. I was on them. And some of them, as I said, are not even paved. These roads are going to get heavy use. So it seems to me that we need to have some way to indemnify the counties. In the event that the pipeline carrier does not restore those roads to their original condition, the counties need to have some way to be made whole. Is \$50 million or are \$50 million enough? I think probably it is, but maybe not. I'll leave that to your judgment. This statutory requirement will expire after two years of completion of the project, and completion of the project would be when the oil begins to flow. The reason we put a limitation on this is that surety companies will not provide this kind of insurance in perpetuity. It's not a permanent thing. You can probably get these roads repaired in two years after completion. So we do have to make sure that we write this legislation in a way to make it possible for the company to actually purchase the insurance. There has to be a way for them to get the surety bonds. The third and final use of this bond, the remaining \$50 million, would be a land rehabilitation bond to be administered by the Department of Environmental Quality for soil restoration and rehabilitation. The language in there refers to soil and soil formations, and I used that word "soil formations" because, if they build in the Sandhills and they cut through one of those sand dunes, then they should be required to restore that sand dune to its original condition, which I would call a soil formation. Maybe there's another technical term that you would want to use that would be superior. This bond would expire five years after completion of the project. We know that the soil in the Sandhills is very fragile. I've driven through the Sandhills many, many times, but until last week I had never actually stood on that soil. But I stood on top of one of those dunes, kicked that soil with my foot. It's powdery. It's very loose. It blows in the wind. You've seen the blowouts along those dunes. It's going to be hard to restore that soil. In speaking with one of the ranchers whose family has been on that land for 80 years, he said it took his family about 40-50 years to get the grass established on those dunes on their ranch to the point where they could adequately use it. If we start ripping up the Sandhills to put down a pipeline, good luck in getting it restored to its original condition. I had a gentleman just talk to me here a few minutes ago about a situation involving his family's land where it was torn up for a pipeline, and it's been many, many years now, and it's still not in its original condition. I believe that Nebraska cannot afford nor should we be obligated to assume or share the risk of this project. The risk should be with the builder. The intent of LB6 is to protect Nebraskans from unforeseeable but calculable risk--not punitive damages. I want to make sure that we understand that. This is a fiscally responsible action to take to protect our land, our infrastructure, our natural resources; and our citizens deserve

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nothing less. Thank you. [LB6]

SENATOR LANGEMEIER: Thank you, Senator Avery. Are there any questions?  
Senator Haar. [LB6]

SENATOR HAAR: Senator Avery, and I don't know if this has anything to do with your bill, but my understanding is that there's a cap in federal law, a \$250 million cap or something like that, the amount required of a company. Do you know anything about that or...? [LB6]

SENATOR AVERY: Well, a cap on what? [LB6]

SENATOR HAAR: On the money they have to spend if there's a spill. [LB6]

SENATOR AVERY: So you're talking about pollution liability insurance. [LB6]

SENATOR HAAR: Okay. [LB6]

SENATOR AVERY: I think that's what you're talking about. I don't know if there's a cap of \$250 million. I had heard that it was more in the area of a minimum of \$350 million. I don't really know. And we have tried our best to find that answer, and we can't find it. [LB6]

SENATOR HAAR: Okay. [LB6]

SENATOR AVERY: Now that shows you how difficult it is to get information out of the federal government. [LB6]

SENATOR LANGEMEIER: Senator McCoy. [LB6]

SENATOR McCOY: Thank you, Chairman Langemeier, and thank you, Senator Avery, for being here this afternoon and for bringing LB6 to us. Can you tell me, in your research and in your staff's research as you put together this legislation, were you able to discern, was there a bond in place? You talked about the Kalamazoo oil spill. Was there a bond in place with the oil company involved in that situation? [LB6]

SENATOR AVERY: I don't know if the state of Michigan required additional surety insurance above and beyond the pollution liability insurance that I believe is a part of the federal permitting process. The truth is, Senator McCoy, we are in the weeds in my office just trying to keep up with what's going on in this special session. And we...the green copy you have I admit is inadequate, and the reason that it is inadequate is that we had to get something in before the deadline to hold a place, and we have been working like crazy almost 24/7 just to educate ourselves about what it is we're trying to

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do. And that's why you have such a long amendment there. I think that the letter from The Surety and Fidelity Association of America will be helpful to you and you'll get a copy of that. But I do not know the details of what has happened in other states because we simply didn't have time to research it. [LB6]

SENATOR McCOY: I'll be happy and direct those questions to Mr. Fraizer or others who might follow. And a couple other quick questions. I noticed in several sections in the green copy, and I believe it's the same in the amendment but correct me if it's not, you talked about Nebraska having a reasonable interest. Do you mind expanding on that and what you...how you define reasonable interest? [LB6]

SENATOR AVERY: It's not excessive and it is not inadequate. An interest that expresses what is a modest--that's how I would see it--a modest interest, say, in preserving land and geological formations, resources. An excessive interests would be where you place so much value on an asset that to protect it is almost impossible. [LB6]

SENATOR McCOY: And was there another statute you looked at or another state to pattern that definition of reasonable interest, or where did that come from as you put that together? [LB6]

SENATOR AVERY: It came out of my own infertile mind. (Laugh) [LB6]

SENATOR McCOY: Okay. Thank you, Senator Avery. My final question to you would be in the section of the bill where you talk about pipeline larger than 25 inches, the inside diameter, do you mind going into why you chose that diameter? Was there a special reason? We've seen...well, probably all of us can attest, we've seen a number of different sizes of pipes, talked about the different legislation. Was there any particular reason you arrived at that diameter? [LB6]

SENATOR AVERY: I believe that definition probably will fit the kind of pipeline carriers that we'll be seeing in the future, and it is also consistent with Senator Dubas' bill. [LB6]

SENATOR McCOY: Thank you. [LB6]

SENATOR LANGEMEIER: Senator Carlson. [LB6]

SENATOR CARLSON: Thank you, Senator Langemeier. I've got two questions, Senator Avery, because I spent a lot of years in the insurance business but I don't know anything about indemnity bonds. So what would a \$500 million bond cost? You pay premiums. [LB6]

SENATOR AVERY: You pay premiums. And I don't...I haven't had time to price it, but here's what I expect would happen: that they would probably do cosecurity on the \$400

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million. And you might be able to get one company to do \$200 million of that and another company to do another \$200 million. And then I would suspect maybe another company would do the public use bond and another company would do the soil rehabilitation. So the combined premiums I think are easily affordable by a \$47 billion company, but I don't know what they would be. [LB6]

SENATOR CARLSON: Okay. Now I have another question if we can go to page 1 of the amendment, and I'm going to ask this of TransCanada as well, because this wording may well be in some of their contracts. But Section 6 is about returning land to its original condition. [LB6]

SENATOR AVERY: Um-hum. [LB6]

SENATOR CARLSON: Now this is a little puzzling to me because if we have a pipeline that goes through somebody's property and they've got to remove everything that's in that corridor as they're constructing the pipeline, well, some of that being removed could be mature trees, western cedar--you're in the Sandhills. And to be honest, the removal of a western cedar is probably a favor to the landowner. But once that's done and restored, I don't think we want mature trees back in that line. So how is it possible to return it to its original condition? And that wording, if I'm the landowner I might be able to use that to my advantage because I remember I had ten mature trees down that line and I don't have any now, and you owe me for it. [LB6]

SENATOR AVERY: Well, I don't believe that the wording is "original" condition. And let me give you a little history on this. I started to use the word "satisfactory." The problem with that is you have to define what is satisfactory, and what is satisfactory to you may not be satisfactory to me, and that's a very, very slippery term. I believe if you turn to page 2, and you go to line 23 where we deal with the \$50 million bond for rehabilitation of land, we are calling upon the DEQ to develop a soil restoration protocol. Now that would be a set of expectations, a code of conduct that spells out what would be required to restore the soil. Now they would be able to take into account cedars. They would be able to take into account mature trees. You cannot cut down a mature tree and then replant it. I mean you can but it's probably impractical. [LB6]

SENATOR CARLSON: No, because I don't think that they...I don't think that TransCanada would want that and I don't know if the property owner would either. But that's problematic to me, "original." [LB6]

SENATOR AVERY: I do see the word original condition prior to forfeiting. [LB6]

SENATOR CARLSON: And your point there, on page 2, is it has to do with soil restoration. Well, if we get the soil restored, now we've got to plant something. And what's it going to be? And if it goes back to what it originally was, it may not be the best

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thing. But it might be a point of contention, so. [LB6]

SENATOR AVERY: But that could be a part of the protocol, don't you think? I mean they... [LB6]

SENATOR CARLSON: Well, the original condition I think is probably (inaudible). [LB6]

SENATOR AVERY: Well, yeah. And if you want to amend that to something more satisfactory, but I think to say "satisfactory condition" really is a difficult word in this context. [LB6]

SENATOR CARLSON: Oh, I do too. I do too. So it's a problem but... [LB6]

SENATOR AVERY: It is. Yeah. [LB6]

SENATOR CARLSON: Okay. Thank you. [LB6]

SENATOR LANGEMEIER: Other questions? Senator Avery, I do have a question, and it's a clarification in your testimony. You talked about that if there was a violation, that the company must cease operations in Nebraska. [LB6]

SENATOR AVERY: Not a violation. No, I said... [LB6]

SENATOR LANGEMEIER: Okay. Go back to that portion though. [LB6]

SENATOR AVERY: Yeah. If they become insolvent they would have to cease operation. [LB6]

SENATOR LANGEMEIER: Okay. That will work for what I want to go to. [LB6]

SENATOR AVERY: Yeah, bankrupt. [LB6]

SENATOR LANGEMEIER: Yeah. But I want to talk about cease operations. Does that mean cease pumping oil down the pipe? Does that mean cease going and recovering the pipe if they want to go get it back? Does that mean they can't go get the pumps and haul the pumps away? Does that mean they can't have an office in Omaha like they do now? What... [LB6]

SENATOR AVERY: I think that it would mean they would have to... [LB6]

SENATOR LANGEMEIER: Tell me what you're thinking there. What does cease operation mean? [LB6]

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SENATOR AVERY: They would have to stop...oil would stop flowing through the pipeline in Nebraska. [LB6]

SENATOR LANGEMEIER: But if they want...but they could get their assets or they could... [LB6]

SENATOR AVERY: Yeah. [LB6]

SENATOR LANGEMEIER: You foresee that continuing, just...when you say cease, you're talking about the oil flow. [LB6]

SENATOR AVERY: Right. Yeah. But they...and they have shutoff valves all along the route. [LB6]

SENATOR LANGEMEIER: Sure. I just... [LB6]

SENATOR AVERY: Shut it off here; shut if off here. [LB6]

SENATOR LANGEMEIER: I just wanted to clarify that if we're evicting of them out of their office in Omaha at the same time. [LB6]

SENATOR AVERY: Well, see, if they become insolvent and a spill happens after that, then we've really got a problem. [LB6]

SENATOR LANGEMEIER: Sure. Sure. [LB6]

SENATOR AVERY: I think these are issues that really are worthy of discussion. [LB6]

SENATOR LANGEMEIER: And we appreciate it. Any other questions for Senator Avery? Seeing none, thank you very much. [LB6]

SENATOR AVERY: Thank you. I will stay for a reasonable amount of time. (Laugh) [LB6]

SENATOR LANGEMEIER: Well, we're going to have a little discussion about that here. Again we would ask, now we're going to move to proponents, supporters of the idea of a bond. And we want you to keep your testimony focused on--I didn't say short, you have your whole three minutes--but to the bond: you want it or don't want it; should be more or should be less. [LB6]

DONNA ROLLER: (Exhibit 45) Thank you all. I know it's late in the hour and I'm extremely tired too, but I am here to support LB6 and I think the bond is a good idea. However, I...there was...Senator Avery pretty much said everything that I wanted to say.

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He said \$500 million, they can't do more than that, and that probably is the most we can ask. I just in my mind I'm thinking, okay, we want to insure ourselves in case this happens, and we've already had 12 leaks, so it's going to leak. And when it is, it's going to be catastrophic and I think it's game over, especially for those people in the Sandhills. And I do kind of have a crazy fourth paragraph here about, you know, if we add up all the total agricultural income the state produces in a year and multiply that by 100, would that be enough, you know? I don't think we can put a price on our land and water, but the bond is the best we could do, I guess. I don't know. I'm just speaking my opinion but I do think that we should hold them accountable for any losses so that the landowners and the state do not suffer from this and that if the bond is high enough they will be more careful about their safety in building this pipeline, because I really do feel it is the bottom line and the profits of TransCanada. And I do believe that they do not have Nebraskans in their best interest because of this chosen route. And I thank you very much, and if you have any questions. I don't think so, but... [LB6]

SENATOR LANGEMEIER: Well done. [LB6]

DONNA ROLLER: ...that is my opinion. [LB6]

SENATOR LANGEMEIER: Very good. Thank you very much. [LB6]

DONNA ROLLER: Thank you. [LB6]

SENATOR LANGEMEIER: Further testimony in support, or a proponent. [LB6]

ALEXANDRA KERIAKEDES: I will make this short and (inaudible). Please inform me, I had been told that you would take additional written testimony, or perhaps in lieu of spoken, until this evening or quitting time or...? [LB6]

SENATOR LANGEMEIER: Oh. No, we need...oh, I see what you're saying. No, we need your testimony today yet, so. [LB6]

ALEXANDRA KERIAKEDES: A written copy. Well, this is sort of in support of the proposition that... [LB6]

SENATOR LANGEMEIER: But I've got to stop you. I know you've been here before. [LB6]

ALEXANDRA KERIAKEDES: Yes. Okay. Alexandra, A-l-e-x-a-n-d-r-a, Keriakedes, K-e-r-i-a-k-e-d-e-s. [LB6]

SENATOR LANGEMEIER: Go ahead. [LB6]

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ALEXANDRA KERIAKEDES: (Exhibit 46) If you'd like to pass this information on or to...I checked with the author or her husband by phone. She had flown off again. JoAnne Nausler, Dr. Nausler, in her book Making Do Out of Doo-doo, quoted a source from her youth who had said to her, wisely: When your horse is dead, it's time to dismount. He who has ears to hear or understanding, take with that what you will. I had asked Senator Avery just before we commenced here that I was concerned about, what is it, number 4 on the left. I mean, it says, in parentheses, oil means petroleum, including crude oil or any fraction thereof. And I've always been disturbed from the beginning of this procedure by TransCanada's, every time they speak of crude oil, crude oil, crude oil; they never, never, never--one article--mention dilbit or tar sands oil. And it looks like they avoid that hot button phrase like fire and brimstone, for good purpose. But as far as the restoration, when you think about why do we proudly show our ruts from the Oregon Trail; why do we still have ruts from the Oregon Trail? Well, the land forgives but it doesn't really always forget. So it's something to think about. So thank you very much for giving me an opportunity to get on my soapbox again and for your incredible patience. You should all be awarded top admirals in the Great Navy of Nebraska for your performance, if the Governor hasn't already taken care of that. [LB6]

SENATOR LANGEMEIER: Thank you. Are there any questions? Seeing none, thank you very much for your testimony. [LB6]

ALEXANDRA KERIAKEDES: Thank you. [LB6]

SENATOR LANGEMEIER: Thanks for coming in. Further testimony in support or a proponent of LB6. [LB6]

MARIAN LANGAN: Good afternoon. Marian Langan, M-a-r-i-a-n L-a-n-g-a-n. I'm executive director for Audubon Nebraska. I admittedly know nothing about these financial instruments but I do know a little bit about the cost of ecological restoration, and I'm going to be talking specifically to what it costs to put tallgrass prairie plants back on the ground and grass seed back on the ground. The costs in the Sandhills are going to be different than that because of a variety of reasons. But you can think of, you know, CRP is probably the easiest thing that everybody is familiar with. You can put in very low diversity mixes that are \$15 an acre in that circumstance. You will get the...you know, it will help hold...those roots will help hold the soil together, but that is not going to give you any ecological function or minimal ecological function in terms of habitat for the bird species, for, you know, in the Sandhills we have a fantastic rate of prairie chickens and that sort of hunting. That can't happen. If you want to bring back that full ecological function, you have to get high diversity seed mixes, which are very, very difficult to get ahold of. In the tallgrass work that we do, we're able to buy them through a partner in Aurora that specializes in that, but that can cost \$250 to \$300 an acre to get that seed mix on the ground. In the tallgrass region, it takes a minimum of five years before you even start getting a full diversity back in, and that's just the plants. It still takes much

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longer for insects, birds, all of those things to come back. So ecological restoration is extremely expensive. I don't actually think if there were a major problem in the Sandhills I don't think that they would get the full, in any time line that we're familiar with, that they'll be able to restore that ecological function. But at a bare minimum, even the cleanup is going to be hugely expensive. And I believe that Senator Avery's bill at least puts some protections in place for Nebraska citizens. So we would support LB6. [LB6]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, very good. Well done. [LB6]

MARIAN LANGAN: Thank you. [LB6]

SENATOR LANGEMEIER: Further testimony in support. Welcome back. [LB6]

PAUL MATHEWS: Thank you. Paul, P-a-u-l, Mathews, M-a-t-h-e-w-s. If you recall this morning, I mentioned that I also serve as a volunteer first responder, a fireman for my fire district, which lays in the area of the North Dakota pumping plant which Senator Avery alluded to. I think there's truly some very concerns about that spill. I think it's a great example of what I think everybody is concerned about here. I know as a first responder the first reaction is, is that the catastrophic spills, what do you do? How do you handle that? And as time has come, I think the environmental portion of it is that 1.5 to 2 percent, that type that isn't apparently detectable by their electronic gauges. That to me is the most scary one of them all. North Dakota and South Dakota PSC testimony provided by Keystone, under oath, they told the PSC that isn't nine minutes. That's more like hours, days, or possibly a couple weeks before they could detect those kind of spills, because the only way they can detect those spills is by sight or by smell. Now in the North Dakota example, which happens to be in the Hecla Sandhills, a perfect example of the Sandhills I think you're concerned about, that is in a very remote area of our county. The roads were flooded on both sides. Who is going to see it unless you have the mandatory flyovers? Practically that's what it comes down to: days, weeks. We don't know. So I encourage the committee to ask TransCanada to provide the control room evidence that when did you know it and how would you respond to it; how long did it take? I just don't think they provided us any information yet of when that would occur. North Dakota PSC currently has opened a formal investigation. It hasn't concluded. And I guess I'll just conclude with those remarks at this point. [LB6]

SENATOR LANGEMEIER: Very good. Are there any questions? I do have a question. Can you tell me the name of those Sandhills in North Dakota you were talking about? Tell me that... [LB6]

PAUL MATHEWS: The Hecla Sandhills. [LB6]

SENATOR LANGEMEIER: Hecla? [LB6]

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PAUL MATHEWS: Hecla. Actually TransCanada rerouted that late in the Department of State hearings, and that's how I got the unlucky incident of being a corridor or an affected person. But they did that very late and they did it to...if you look at the EIS for Keystone I, they did it for the specific reasons to...that it seems like most of the Nebraska people are concerned about. [LB6]

SENATOR LANGEMEIER: Very good. Are there any other questions? Seeing none, thank you very much for your testimony. Further testimony in support. [LB6]

EMILY LEVINE: Last time, guys. Emily Levine, E-m-i-l-y L-e-v-i-n-e. It seems that Senator Haar's bill is of use for what happens before a pipeline is put in, where it can be put. LB6 is of use for what happens after the pipeline is put in. I gave you a little background on my academic qualifications before. One thing I know about is prairie and how complex it is. As far as the bond, which is what we're here about, I don't know what the maximum amount allowed is. If it's more than \$500 million then it should be more than \$500 million. It should be the absolute maximum allowed. That said, TransCanada must be held accountable to clean up everything, no matter what it costs, even if it bankrupts them. That's the price they pay. That said, given the complexity of those prairies and those wet meadows, they won't be able to clean it up. They won't be able to restore the land and the water. In regard to that, has TransCanada provided details of their cleanup plans for a Sandhills and wet hay meadow environment, and where can citizens examine these documents? Beyond cleaning up after a disaster, do they even have viable plans for simple restoration after they lay the pipeline? Yesterday, a TransCanada representative said that they will consult university experts for assistance in this. They will consult? They're planning to build this thing; they should have that in the bag by now; that should all be worked out. They expect us to let them come through our state before they have a detailed plan for restoration? How do you even restore a wet hay meadow? I don't think they have a clue. You can't just scoop out those soils and bring in different soils. Compaction destroys soils. They take millions of years to...well, I'll skip all that. We see what happens when corporations don't have a viable cleanup plan, and the people, wildlife, land, and water of the Gulf, Michigan, the Yellowstone region, and countless other places, are still paying for it. As a horticulturist with a background in native prairie, I know how complex these rangelands and meadows are. You can't just reseed with any grasses. And even if you identify the right forbs and grasses, what's your seed source? It must be local seed. Does TransCanada have plans to begin seed collection to store seed for each locale in the pipeline? You cannot introduce plants from another area even if they're the same species. TransCanada says they admit it will be difficult to restore the land but they will do it. I believe that some natural environments formed over hundreds of thousands of years are so miraculous and complex that men cannot replicate them. We need to see detailed plans for restoration and disasters. Such plans must be approved by qualified people before TransCanada is allowed to begin. Even if a bond is posted for a billion

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dollars, they will not be able to clean it up. I submit that there be no monetary limit to TransCanada's liability. One of the first lessons we learn as children is if you make a mess, clean it up. TransCanada must first prove that they know how to clean it up and they can clean it up, because I think anyone with any knowledge of prairies, especially complex shortgrass prairies, how fragile they are, knows that you cannot restore what it took that long to create. [LB6]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, thank you very much for your testimony. Well done. Further testimony in support of LB6. Welcome back. [LB6]

BRUCE BOETTCHER: Yes. I'm Bruce Boettcher, B-r-u-c-e B-o-e-t-t-c-h-e-r. I support this bond but, yes, I do not think it is enough. Our water system is invaluable to us. I think that bond, if it's possible, should be as high as the value of that company that is putting it in, and it should be run as long as the pipe is in the ground, not for five years. The entirety of the lifetime of the pipeline the bond should run. [LB6]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, thank you very much. Welcome back. [LB6]

AMY SCHAFFER: Hello. Amy Schaffer, A-m-y S-c-h-a-f-f-e-r, and I'm going to echo what my dad just said. I think the bond value should be increased to reflect that value of our water which is invaluable to Nebraska. Our water is what makes our state. And it should also reflect the value of that company which is a billion-dollar company. I would also agree with him that it should be longer...it should never be removed after five years, so it should be there for the length of the time that that pipeline is in the ground. And my family actually just traveled to Canada at the end of September. And when they were up there talking to people in British Columbia about a pipeline that potentially could be going across British Columbia, the people up there in those areas were saying that their water is like gold to them and no way, you know, they were not going to allow TransCanada or anyone to cross their water. And so when you're thinking about the bond amount, think of it as our water is gold. That's what it is. That's what makes our state. So that's all I have. [LB6]

SENATOR LANGEMEIER: Very good. Are there any questions for Ms. Schaffer? Seeing none, thank you very much. [LB6]

AMY SCHAFFER: Thank you. [LB6]

SENATOR LANGEMEIER: Well done. Further testimony in support or a proponent. I like to see the eagerness, but calm. Welcome back. [LB6]

BEN GOTSCHALL: (Exhibit 47) Thank you. My name is Ben Gotschall, B-e-n

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G-o-t-s-c-h-a-l-l, here in support of this bill. And as a constituent of Senator Avery's, I'd like to thank him for traveling from what is now my second home district to my first home district to meet with people and see the landscape. I just appreciate that. But I'm in support of this bill. I think that we definitely need to protect our state in some way financially, and bonding is one way to do that. It's a good way to do that. I would echo questions of whether or not \$500 million is enough. I would also echo questions of whether two years is long enough. I would also echo comments to push for the maximums on that. I had...Senator Avery mentioned some other emergency response issues, so I'm not sure what particular ones will be dealt with. But one particular emergency response issue that definitely needs to be considered is the disclosure of the chemicals that are in the diluent of the diluted bitumen in this. Not only do I believe that disclosure of that is a matter of national security, I mean because it's entering our domestic water supply, but also because for emergency response personnel you need to know the nature of the beast you're dealing with in a spill. And if it's dangerous, you need to know what kinds of protections you need to take as an emergency responder. Senator Avery also mentioned counties, and I have done some work with the counties. I've gone to some county meetings dealing with this particular issue of hauling routes in the counties. And some of the counties' boards, York County, for example, my home county, Holt County, have proposed bonds for haul routes for the equipment hauling on the roads. And Senator Avery mentioned some of those issues earlier. And one of the biggest issues in that was who decides what the value of the road was or the condition of the road was, and then, you know, determines the value that is owed to the county in the case of damage. And in those cases with the counties, TransCanada's proposal was to have a third party that was chosen and funded by them. York County, in particular, took issue with that because they felt that the third party should be, at the minimum, decided by a mutual decision of the county and TransCanada. So then, in other words, they didn't want a third party chosen solely by the company. They wanted to have oversight into that process as to who the third party was. And I just would encourage you to consider that, you know, in considering this bill. You know, who gets to decide is a big factor in how much things are worth and how much things...you know, how much you get compensated for. And it's important to get fair compensation for the state and for the counties. And I just...I see my time is up. I just want to again push for you to pass this bill and the other bills out of this committee. I was visiting with Senator Johanns on Monday, in Washington, D.C., and he was very frank with me and he, like I, have been pretty outspoken about this issue for a while now. And he says...Senator Johanns told me, he said don't worry; get some bills passed in your Legislature. Work hard and get this done and don't worry about these threats that you're getting about constitutionality and interstate commerce and all these things. And he was speaking in his capacity as a former governor. He said, don't be afraid. And so I just want to echo those sentiments to you senators on the Natural Resources Committee. I believe if you stand with us Nebraskans, we will stand with you. So thank you. [LB6]

SENATOR LANGEMEIER: Are there any questions for Mr. Gotschall? Seeing none,

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thank you very much. Well done. Further testimony in support. [LB6]

LORI FISCHER: Hi. My name is Lori Fischer, L-o-r-i F-i-s-c-h-e-r. I'm from Shelby, Nebraska, and I'm about ten miles from the first pipeline, and if the second one is built I'm going to be in between two of them or else I'll be next to two of them. Either way, it's important to me that there are some liability issues and all that's going to be covered. I don't think that the \$700 million is going to be enough. I mean that doesn't cover what the spills that we're currently seeing already happening. And we're looking at 50 years in the future. So there needs to be some way that we can build in where they can even go up in the future, as costs go up, because I know a gallon of milk costs me a lot more today than it did ten years ago. So we need to be thinking about that in the future. I have grandchildren, and the lifetime of this pipeline is going to be probably when their children, you know, are born. And I think that we need to be taking care of that now and that's why I hope you guys will pass this and get some good legislation going with all the bills that's gone through. That's all I have to say. [LB6]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, thank you very much. Well done. It's after 5:00--good evening. [LB6]

ANDREA SIME: Good evening. Thank you, Senator Langemeier and committee members. Long day. My name is Andrea Sime, A-n-d-r-e-a S-i-m-e, and I reside here in Lincoln. I'm speaking as a very concerned citizen. After watching the hearings the last two days, there are some questions I have not heard addressed, and I hope you committee members will seek out this information from the representatives of TransCanada. We know the proposed Keystone XL pipeline will carry raw tar sands, which are very corrosive and abrasive. Why is it that TransCanada is buying pipeline steel from China and India, which is only 75 percent the strength of the steel produced in the United States? That seems to be a big concern. Why recently was TransCanada ordered to dig up a dozen sections of defective pipeline? What is TransCanada's cleanup strategy with the tar sands oil? Do they have one? Do they have a proven technique when this pipeline spills? Will it be able to be cleaned up? TransCanada says it is not fair to hold them up with this project. Where was their fairness, honesty, and ethics when planning this pipeline to cross the world's largest inland reservoir that provides drinking water to Nebraskans and other states, and water for our agriculture that keeps the Nebraska economy moving? I do empathize with the pipe fitters, the electricians, and the other people in the construction industry who need jobs. But if there is an oil leak, and there will be, what will happen to the state of Nebraska's economy? Our agricultural economy has kept Nebraska from having the high unemployment rates that we've seen in other parts of the country. TransCanada is a multibillion-dollar company, and they will make billions of money. If TransCanada truly believes, and I quote, it is impossible for crude oil to contaminate the Ogallala aquifer, then I suggest that they post a minimum of \$1 billion in bond to make sure that Nebraska and the U.S. taxpayers do not have to foot the cleanup costs like has

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happened in the Kalamazoo River, and also to demonstrate to us their confidence in the integrity of their pipeline. Thank you. [LB6]

SENATOR LANGEMEIER: Very good testimony. Any questions? Seeing none, thank you very much for your testimony. Anyone else want to testify as a proponent? Now I think we're going to take another five-minute break. It's been a long afternoon. Some of my colleagues are back but they've been going out back and forth, but let's take a five-minute break and then we'll start here at 5:20. [LB6]

BREAK

SENATOR LANGEMEIER: (Break) Start back here. We appreciate everybody allowing us to take that little break. This has been a long three days. Now we will move to opponents of LB6. Welcome. [LB6]

ROBERT JONES: (Exhibit 48) Good evening, Chairman Langemeier and members of the Natural Resources Committee. This feels like *deja vu*. My name is Robert Jones, J-o-n-e-s, representing TransCanada Keystone Pipeline LP, a U.S. company headquartered in Houston, Texas, with field operations here in Nebraska. I'm responsible for implementation and development of the Keystone pipeline system. I'm here to testify in opposition to LB6. This bill takes a concept TransCanada had offered to voluntarily put in place to mitigate concerns in Nebraska, and it would amplify it fivefold and make it mandatory. In so doing, the bill would violate federal preemption and constitutionality requirements, and mandate costs that are unnecessary and duplicative of other protections in place. I will touch briefly on each of these points. Like other legislation considered in this special session, LB6 concerns itself with safety, an area reserved for federal government oversight, and like other bills, this bill is directed specifically at Keystone XL. I have asked legal counsel to address these issues in testimony to follow. This bill would introduce unprecedented and unnecessary costs on the energy business sector. These costs would have a chilling effect on the critical energy infrastructure development in this state. Federal regulatory oversight requires prompt response and cleanup of an oil release. Failure to respond promptly places our ability to operate the system in jeopardy. This is the one reason why, when a release from a pipeline occurs, the response is swift. In addition, the law requires a swift response overseen by the state and federal agencies. And Keystone is responsible to clean up any release of oil from our system, both under state and federal law. That process would be overseen by appropriate state and federal agencies, including the Nebraska DEQ and the EPA. Any federal permit also will have restoration requirements as laid out in a construction, mitigation, and reclamation plan, which is incorporated into the State Department's final environmental impact statement. I have attached a sample of a letter sent to each county more than a year ago in which we offered to post local bonds for repairs to road damage. It is important to note, as stated in the letter, that after constructing nearly 1,100 miles of pipeline in six states in some of the wettest

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weather on record, roads have been restored, and without any attempt to seek bond money. And for the upcoming construction of Keystone XL in Nebraska, we have agreements in place with Holt, Wheeler, Garfield, Greeley, Boone, Nance, Merrick, York, Fillmore, Saline, and Jefferson Counties. We are also required to post a bond for restoration. Our easement agreements with individuals also requires us to restore the land, and our track record of performance on restoration is superior, as shown yesterday in those photos, as those familiar with the existing Keystone pipeline have experienced. While the techniques for restoration in the Sandhills are different, the commitment to doing the job right and to follow through on our responsibilities is the same. I look forward to your questions. [LB6]

SENATOR LANGEMEIER: Very good. Are there any questions? [LB6]

ROBERT JONES: Oh, because Senator Avery brought it up, I did want to talk about the shutdown today, I think, unless it's going to be a question, and then I... [LB6]

SENATOR LANGEMEIER: That was going to be my question, but go ahead. [LB6]

ROBERT JONES: Thank you. Keystone shut down because of a third-party power outage that occurred yesterday, and it appears to have caused a sensor to not operate correctly. So we replaced that sensor and we're back up and running today. So again it was a third-party power outage, and it's amazing to me how we find out about it so quickly. It shows you how communications really are very fast in this world we live in. [LB6]

SENATOR LANGEMEIER: Senator McCoy has a question. [LB6]

SENATOR McCOY: Thank you, Chairman Langemeier, and thank you for your testimony, Mr. Jones. You mentioned in your written testimony that TransCanada carries commercial insurance and that your coverage is checked regularly against peer data and industry events. If you can expand on that, if you would to the degree that you're able to, how exactly that works and what you mean by against peer data and industry events. [LB6]

ROBERT JONES: Certainly. So each pipeline company needs to assess the amount of insurance that it needs to carry, and it will depend from pipeline to pipeline and from company to company. And as we heard earlier, because of inflation and changes in costs, that gets revised every year. So an operator, to protect themselves, has insurance, and it compares the insurance with the industry and it is very specific dependent on each project and each pipeline. [LB6]

SENATOR McCOY: I would presume that...well, I wouldn't expect you to know the business dealings of competitors of TransCanada. Is that something that's across the

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board, across the industry? We've heard other companies mentioned, Enbridge and others. I would assume they would deal with the same type of peer data and industry events that are judged with their commercial insurance as well. [LB6]

ROBERT JONES: Absolutely. In fact, the insurance companies will be the ones, the third parties, that are collaborating and getting all that third-party information of the other peers. [LB6]

SENATOR McCOY: And I would presume then, with the Yellowstone incident and the Kalamazoo incident and the Gulf spill incident, the commercial insurers were probably brought in and used in those particular instances? Is that how that would work in practicality? [LB6]

ROBERT JONES: You know, each company probably manages their costs differently. So, for example, the BP one, that's an offshore oil pipeline...or not a pipeline at all. It has nothing to do with pipelines. And so I can't even imagine how that would impact our insurance. But as for the other ones, the insurance company would look and say, well, how are you going to build your pipeline across rivers? Well, you see, we're so much different than the way Enbridge was built across the Kalamazoo or the way Exxon Mobil's pipeline was built across the Yellowstone. With our techniques, our insurance company will look at it and come up with a different assessment. That being said, yes, those incidents will be taken into consideration with regards to the premiums, I'm sure. [LB6]

SENATOR McCOY: So they would...so an insurance company, your commercial insurance company or multiple companies, would look at your practices and how you're going to go about things so that 50-some, 57 or whatever the number is, differences in above and beyond what's required that you're talking about with this pipe, and all that would be taken into consideration with your insurance company on your premiums and all that. Is that what you mean by that? [LB6]

ROBERT JONES: Yes. And also, of course, the cost of cleanups. And so not only how you, your experience and also the industry's experience and also the industry's experience with regards to cleanups. [LB6]

SENATOR McCOY: And do you know whether there were bonds in place that were used in the Kalamazoo? I mean were there bonds in place with any of those incidences? [LB6]

ROBERT JONES: I don't know that. You'd have to talk to Enbridge about that. [LB6]

SENATOR McCOY: Okay. Thank you. [LB6]

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SENATOR LANGEMEIER: Are there other questions? I do have one. I want you to explain the third party providing you power. [LB6]

ROBERT JONES: Oh, so... [LB6]

SENATOR LANGEMEIER: I understand you're a first party. Who's second and who's third? [LB6]

ROBERT JONES: So the second would be the transmission line. The third would actually be the guys that provide the power. [LB6]

SENATOR LANGEMEIER: So you're the user. The transmission, that's the other shipper of the power,... [LB6]

ROBERT JONES: And then the generator. [LB6]

SENATOR LANGEMEIER: ...and then whoever is generating the power. [LB6]

ROBERT JONES: Right, so that's...the message I got today was Keystone shut down because of a power outage. Maybe I described it as a third-party power outage. It certainly...we weren't the first party, so whether it was a transmission line or a generation. I suspect because we have so much power consumption, it must have been a generation, which would be the third party. [LB6]

SENATOR LANGEMEIER: And I take it with our great Nebraska public power, that wasn't in Nebraska. [LB6]

ROBERT JONES: No, but you can imagine that if you don't have power in Alberta, there is no oil going in the pipeline. [LB6]

SENATOR LANGEMEIER: Well, there you answered the question. Any other questions? Senator Carlson, excuse me. [LB6]

SENATOR CARLSON: Thank you, Senator Langemeier. As we've gone on these past three days, I've observed you once in a while as the discussion is taking place and the hearing is going on, and you're making some notes. When you come up here, you simply can respond to questions that we asked. Are there some questions and some things you've written down that you would like to respond to? [LB6]

ROBERT JONES: Well, that was...certainly that one was one of them. You know, I did want to thank, by the way, the professor from the University of Nebraska. He is correct. We had a discussion about my experience versus modeling, and so I did want to put that on the record that I had a very good discussion with him and that his testimony was

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correct and I support it. [LB6]

SENATOR CARLSON: Okay. Anything else that you... [LB6]

ROBERT JONES: No. I just try to be prepared when I come up here to answer your questions. [LB6]

SENATOR CARLSON: Okay. Thank you. [LB6]

ROBERT JONES: Yes. [LB6]

SENATOR LANGEMEIER: And for the record, that was Dr. Wedin talking about the grass and the temperature six inches down. Is that the professor you're referencing? [LB6]

ROBERT JONES: That's right. And he was using modeling and we did talk, and he said, well, that's their graph. Actually it was the Department of State's consultant's graph. And the interesting thing will be--and we talked--interestingly about that is that in the Sandhills area where he was talking about it, where the water table is high, that's also where we're going to have the concrete coating, and so the temperature will then be far less because of that coating. Another advantage for using it. [LB6]

SENATOR LANGEMEIER: Senator Smith I think has a question. [LB6]

SENATOR SMITH: Thank you, Chairman Langemeier. Mr. Jones, let me build on what Senator Carlson brought up. Is there...you know, if there was anything else that you had thought of as you were sitting out there and listening to some of the testimony that you wanted to provide clarification to you. And I think probably as a civil engineer either probably on some of the construction points that were made, a couple things that jumped out to me was steel, the use of overseas steel. I know you made some comments yesterday or maybe it was earlier today, I forget, but as to why some of this steel is purchased overseas. And do you know of that steel being inferior to steel in other locations? And anything else along the construction lines. [LB6]

ROBERT JONES: Yes. Thank you, and actually I did want to address the question about the leaks as well, because I think there's a lot of misinformation about that. With regards to the pipe, the pipe in the United States, the overwhelming majority of the pipe in the United States is going to be made in a plant in Little Rock, Arkansas; the rest of it, the overwhelming other part of that is going to be made in Regina, Saskatchewan--two North American mills. They are top of the world with regards to quality. They follow our specification that also takes into consideration some of those 57 conditions that we agreed to with the Office of Pipeline Safety, PHMSA. This claim that this pipe is inferior is just completely false. Whether you're buying pipe from wherever in the world, it's all in

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how you inspect it, the components that you select with regards to fabrication of the steel. And so, you know, whether the pipe is made in Europe or in Asia or in North America, it's all about how you watch it, how you inspect it, how you select it. So I'm confident that there's quality steel made around the world and pipe made around the world. In this case specifically I can tell you that the overwhelming majority is in Little Rock, Arkansas; there is a significant amount that's being made in Regina, Saskatchewan. [LB6]

SENATOR SMITH: Okay. [LB6]

ROBERT JONES: Sorry. As for... [LB6]

SENATOR SMITH: And along those lines, and I'll come back to the leaks, okay? [LB6]

ROBERT JONES: Okay. [LB6]

SENATOR SMITH: But there was a comment that was made about that steel being purchased elsewhere. What's...do you have any idea of what that source of that information is, or is that just incorrect information? [LB6]

ROBERT JONES: No. So we make arrangements with pipe mills. Pipe mills then go out in the open market and buy the steel. And yes, the steel comes from all sorts of offshore sources, but they have to follow our specifications, and then we go there and inspect and test it. [LB6]

SENATOR SMITH: Okay. Now the leaks, I want to talk about that. [LB6]

ROBERT JONES: Okay. So there is no doubt that we've had leaks. We have to report them. That's the law. And the threshold, by the way, is five gallons--an extremely low threshold. So when people say, well, this is the worst that any other pipeline has had, nobody ever had that threshold before, so that is like comparing apples with oranges. The other thing is, is our pump stations, you know, these are aboveground facilities. These are moving parts: bearings, seals. And so when you have a first-year operation, you need...you know, you're going to have what I call a warm up or a wear-in type period. And we resolved those. We identified some issues, and yes, the office of...PHMSA gave us a corrective action order and we looked at it. And we had to have a third part...they hired a third party to come in and investigate and see what was going on. We also...we absolutely wanted this to happen because we wanted to find out what was going on. We've now had...we had some fixed mounts that needed to be replaced with hoses, and since we have done that we've not had a problem since. There has no one spill. But the other thing I heard was, well, if these leak it's going to hit the groundwater. Well, that's not true because when we designed these pump stations, we put in an impermeable liner, because we know that there's...because if you have moving

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parts like gaskets and seals, then you're going to have spills; they're going to be small in nature, and you better have an impermeable liner to make sure that there is no damage. So that is what happened. I think the other thing that needs to be really clear is that these are...the costs to clean up this is nowhere near the dollars we're talking about. And so when we offered the \$100 million, that was really after discussion with listening to Nebraskans. You know, they...originally, they were talking about \$10 million or \$50 million, and we really felt that the \$100 million number was a very generous number. It is absolutely redundant to the insurance that we have. It is going to be an additional cost and nowhere near the cost if we ever had to do a cleanup. And again, because we can't...we can...people can look to Kalamazoo and they can look to Yellowstone, but our design is significantly different, and so that's why it's not an appropriate comparison. [LB6]

SENATOR SMITH: All right. Thank you. [LB6]

SENATOR LANGEMEIER: Senator Christensen. [LB6]

SENATOR CHRISTENSEN: Thank you, Chairman. Just a clarification. You know, I guess I haven't always liked the way the leaks have been talked about. How many have come out of the pipe and how many of them come out of the pumping stations? [LB6]

ROBERT JONES: There's been no leaks in the pipe. [LB6]

SENATOR CHRISTENSEN: Thank you. [LB6]

SENATOR LANGEMEIER: Senator McCoy. [LB6]

SENATOR McCOY: Thank you, Chairman Langemeier, and thank you, Mr. Jones. A follow-up question of what I asked earlier on the commercial insurance and it made me think of it in response to your question with Senator Smith a moment ago. You mentioned that this proposed \$500 million bond would be a redundancy in addition to your commercial insurance. I would imagine, although correct me if I'm wrong, that your commercial insurance, I assume there's probably some minimums that are required across industry standards. Is it possible for you as a company to, let's say you were to do something in lieu of a bond at all, can you ratchet up your threshold, your limits for commercial insurance? I mean, I assume you have that flexibility as a company? [LB6]

ROBERT JONES: Yes. In fact, I think that's an excellent idea. I really do believe that because of inflation and the size of the pipeline and the dynamics that it would be important to look at being able to vary that insurance coverage, and I think being able to demonstrate to the state our insurance coverage in lieu of a bond would be the solution to this issue. [LB6]

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SENATOR McCOY: So you, as a company, could potentially, as a show of good faith to the state of Nebraska in light of the discussion we've had over the last three days, could go in and have that ability to change your commercial insurance coverage to reflect the sensitivity of the Sandhills. [LB6]

ROBERT JONES: Absolutely, and to demonstrate to you the size of the insurance that we would carry. Absolutely. [LB6]

SENATOR McCOY: Thank you. [LB6]

SENATOR LANGEMEIER: Are there...Senator Carlson. [LB6]

SENATOR CARLSON: Thank you, Senator Langemeier. If there have been no leaks in the pipeline and they're at the pumping stations; now, no leak is good, but if you're going to have one, is it better to have it at a pumping station than in a pipeline? [LB6]

ROBERT JONES: (Laugh) No leak is good. [LB6]

SENATOR CARLSON: No, I know that. [LB6]

ROBERT JONES: Certainly I would say that, you know, because the pumping stations have got that impermeable liner and have berms around them, that obviously that is, you know, a preferred location...there isn't a preferred location but that would be preferred over the pipe. Yes. [LB6]

SENATOR CARLSON: Is the pumping station leak there easier to detect and easier to repair? [LB6]

ROBERT JONES: Oh, certainly, it is far easier to repair because it is above ground. And as for detecting, our detection system is incredible. You know, the testimony you heard earlier about, you know, 1.5 percent or 2 percent, you know, we want to give a very conservative number. But because we have redundant leak detection systems, the leaks that we did have we did detect far down to fractions of a percent, and that's because we have the newest pipeline and most sophisticated technology. The code that was described earlier today really applies to all the pipelines, and of course, they vary in age from, you know, in the '50s to today, and so the code, of course, has a different bar than what we set. We set a much higher bar. [LB6]

SENATOR CARLSON: Well, I think that's very important because in several remarks that were made during testimony, you know, a 1.5 percent of the big numbers is still a big number. [LB6]

ROBERT JONES: Absolutely. [LB6]

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SENATOR CARLSON: So you're confident that you detect those leaks far more quickly and that it doesn't ever approach...you can't say it doesn't ever. It shouldn't ever approach a percent or a percent and a half. [LB6]

ROBERT JONES: That's correct. It shouldn't ever approach. And again, you know, I have to sit up here, and when I look at...you want to make sure I give you conservative answers. I want to make sure I overperform. And so, you know, we don't make claims that we can get down to a single-digit percentage. We just tell you in our experience that we've been able to do. We are very confident about the 1.5 to 2 percent, and that's why that's in our testimony. But our experience is showing that we have the ability to be in far smaller number than that. So yes. [LB6]

SENATOR CARLSON: Okay. Thank you. [LB6]

SENATOR LANGEMEIER: Senator Haar. [LB6]

SENATOR HAAR: And this is one of the things, of course, we have to deal with constituents and so on. So what you would say is your percent, and can we quote you on that? [LB6]

ROBERT JONES: It remains the same, sir. It has to be because I want to be conservative, and we're confident with the 1.5 to 2 percent. [LB6]

SENATOR HAAR: Okay. [LB6]

ROBERT JONES: Our experience obviously, though, shows a far, far lower number. [LB6]

SENATOR LANGEMEIER: Are there any other questions? Senator Carlson. [LB6]

SENATOR CARLSON: Thank you, Senator Langemeier. And then to follow up on Senator Haar's question, because 1.5 percent of a big number is a lot, but what are you comfortable with in terms of time of detection? [LB6]

ROBERT JONES: Oh, time of detection, again because we have all these sensors, is every five seconds we're getting feedback. So if there was to be, for example, a significant leak or a leak greater than 1.5 percent, we would find it within five seconds. It would be an alarm that would go to the control center that is monitored 24 hours a day, and they would be able to react. The time it takes to shut down the pipeline safely, because you have to turn off the power, is about nine minutes. And by the time you finish closing all those valves, it's about 12 minutes. [LB6]

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SENATOR CARLSON: But if a leak is significantly less than 1.5 percent, then what's the length of time to detect it? [LB6]

ROBERT JONES: Because now we're into that gray area where experience has to take over, the one incident we did have that was in North Dakota, we found that one in less than an hour. And it was a misty spray, so it wasn't...can you imagine? It was the spray coming out of what they call a nipple, which is a threaded fitting in an aboveground piping, and so there was a spray coming out of that. And that spray, we detected the loss in less than an hour. [LB6]

SENATOR CARLSON: And was that located...? I can understand a pumping station to a pumping station. And then what's in between, wherever that leak was, depends on maybe where it was in relationship...or it don't matter where it is. [LB6]

ROBERT JONES: Well, it was right in the pump station itself in that aboveground piping. [LB6]

SENATOR CARLSON: Okay. Thank you. [LB6]

ROBERT JONES: You bet. [LB6]

SENATOR LANGEMEIER: Are there any other questions? This is our last opportunity in three days here, at least at that table. Seeing none, thank you very much for your testimony. [LB6]

ROBERT JONES: Thank you. [LB6]

SENATOR LANGEMEIER: Further testimony in opposition to LB6. Welcome. [LB6]

PATRICK PEPPER: (Exhibits 49-50) Good evening, Senator Langemeier and the Natural Resources Committee. My name is Patrick Pepper, P-e-p-p-e-r. I am from the McGrath North firm, a Nebraska firm representing TransCanada Keystone pipeline. I'm here to testify in opposition to LB6. The basis for the opposition to LB6 are very much the same as previous testimony from TransCanada's legal counsel. We believe LB6 is impermissibly discriminatory to interstate commerce. We believe it is special legislation and we believe it is encroaching on the federally preempted area of safety--pipeline safety. There's been some amendments and I'm getting through those, and I appreciate Senator Avery's statement that this is sort of a work in progress, and I imagine trying to draft legislation in this environment is not an easy task. But I will say that given the purpose of LB6, which is to create an indemnity bond which would be triggered to protect accidental or intentional harm or injury to land, infrastructure, or natural resources, it is very likely in the area of safety and pipeline safety. There were questions earlier regarding how an insurance company would write this indemnity bond and what

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questions they would likely ask of TransCanada when figuring out how to underwrite this indemnity bond. Those all go right to pipeline safety regulation. The test is whether the state legislation or regulation has a direct and substantial effect on pipeline safety. I believe this unquestionably does. The second point is the oil pipeline definition uses a 25-inch classification. I believe from Senator Flood's analysis that he put out before the special session was called, he was able to identify that 25 inches and greater reflected pipelines that were interstate in nature, while 25 inches and less were reflective of pipelines that were intrastate in nature. I imagine Mr. Sydow, if he's asked, will tell you that if that distinction is eliminated and all pipelines in the state of Nebraska are required to post a \$500 million indemnity bond, it will have a tremendous chilling effect on the state's oil production; thus it looks very much like favoring intrastate commerce to the detriment of interstate commerce. Finally, and I won't belabor the point on special legislation; we've been down that path extensively in these hearings. So with that, I will conclude and take any questions. [LB6]

SENATOR SCHILZ: Thank you, Mr. Pepper. Senator Haar. [LB6]

SENATOR HAAR: Well, at one point in one of the briefs, I believe it was from your company, you suggested that there was some possibility of passing legislation in the special session. But have you seen any of the bills that in your opinion are not unconstitutional at this point? [LB6]

PATRICK PEPPER: No. [LB6]

SENATOR HAAR: Do you believe we could do a bill that would be constitutional at this point? [LB6]

PATRICK PEPPER: Given the background and the context in which this special session has been called, I think it is really unlikely. [LB6]

SENATOR HAAR: So because of the way the special session was called by the Governor, anything we do is going to be unconstitutional. [LB6]

PATRICK PEPPER: I think it's going to have a real risk, Senator Haar. [LB6]

SENATOR HAAR: So then it sort of comes down to which lawyer do you trust is basically, would you say? [LB6]

PATRICK PEPPER: I think it comes down to the legislators need to make their own decision. But I would say that any time...I think everybody agrees safety is not a permissible purpose for legislation. [LB6]

SENATOR HAAR: Right. Right. [LB6]

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PATRICK PEPPER: So if you strip away safety from this legislation, you're left with very broad purposes to legislation, and within those purposes it is very difficult to draw a meaningful, in a legal sense, distinction for crude oil pipelines or oil pipelines as opposed to other hazardous liquids in pipelines. [LB6]

SENATOR HAAR: Okay. Thank you. [LB6]

SENATOR SCHILZ: Thank you, Senator Haar. Any other questions for Mr. Pepper? Senator Smith. [LB6]

SENATOR SMITH: Thank you, Senator Schilz. Let me continue on with Senator Haar's line of questioning. Very specifically, grandfathering, and I asked that in another exchange. That alone, having a grandfather clause on any piece of legislation, in your opinion would not eliminate legal issues. [LB6]

PATRICK PEPPER: Potentially not legal issues, but it may eliminate lawsuits. [LB6]

SENATOR SMITH: All right. So what would remain? [LB6]

PATRICK PEPPER: Well, I would imagine if another pipeline carrier wanted to come in and build a pipeline and decided to file an application, say, another Canadian-based company with a domestic office in Texas and Omaha, similar to TransCanada Keystone Pipeline LP, wanted to build this and announced tomorrow, they may still have constitutional questions to raise. Whether they would raise them, I don't know. As the testifier from PHMSA on LB5 mentioned, a lot of times pipeline companies find a way to essentially go along to get along. [LB6]

SENATOR SMITH: Okay. Thank you. [LB6]

SENATOR SCHILZ: Thank you, Senator Smith. Senator Haar. [LB6]

SENATOR HAAR: One of the issues that's been brought up in terms of the legality has been the timing, that if we had done this three years or four years ago. Do you think courts would consider the fact that TransCanada has been in here lobbying us not to do anything? [LB6]

PATRICK PEPPER: I think if they considered it, they would give it very little weight, Senator Haar, because I'm not sure that any of the legislation that was offered before didn't impermissibly intrude upon pipeline safety. And if the lobbying against what is otherwise improper legislation, I don't think is a relevant concern in terms of the burden and benefit on interstate commerce. [LB6]

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SENATOR HAAR: Okay. So basically nothing we have, could have done, or can do is going to be legal in your opinion, sir. [LB6]

PATRICK PEPPER: I think that's too broad. I mean,... [LB6]

SENATOR HAAR: Okay. Pretty close, though. [LB6]

PATRICK PEPPER: ...last session, the Unicameral and the Governor signed a very good piece of legislation in the reclamation area, and that was after, you know, fairly extensive consideration. [LB6]

SENATOR HAAR: Okay. Thank you. [LB6]

SENATOR LANGEMEIER: Any other questions? Senator Christensen. [LB6]

SENATOR CHRISTENSEN: Thank you, Mr. Chairman. I believe it's North Dakota's law that LB5 was similar to. Has that ever been challenged on interstate, or just on intrastate? [LB6]

PATRICK PEPPER: I don't know that it's ever...I don't know its applicability to interstate commerce. I don't know that it's ever been challenged though on those bases, and I think that's maybe the question you were asking. [LB6]

SENATOR CHRISTENSEN: Yeah. I wondered if it had been challenged if there was any basis for it. Thank you. [LB6]

SENATOR LANGEMEIER: Any other questions? Seeing none, thank you very much. Further testimony in opposition. [LB6]

BILL SYDOW: Good evening, Mr. Chairman and members of the committee. For the record, again my name is Bill Sydow, B-i-l-l S-y-d-o-w, and I live in Sidney, Nebraska. I serve as the director of our Oil and Gas Conservation Commission. And our commission regulates the exploration and development of oil and gas in our state. I'll just say for the record, I've worked 35 years in oil and gas, and if you have questions later about remediation on how we do it with spilled oil, results, restoration of locations, restorations of pipelines, I'd be glad to answer that out in the future. But I do appear in opposition to LB6 today. I'm troubled with some of the findings that LB6 would make. In part of those findings it speaks to the preservation of many things. However, I believe that we should be more about the conservation or the wise use of resources that we have, our natural resources, including oil and gas. In Section 2(7), the bill speaks to the finding of the Legislature that would be made that the construction of an oil pipeline transportation system poses an unforeseeable risk to economic and land-use plans for Nebraska. And I would submit to you that we already have a well-established safe

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pipeline transportation system for crude oil and refined products in our state. Our oil pipeline transportation system has operated for many years, beginning with the crude oil pipeline of the Platte in 1952. We aren't required to look into the future to foresee the risk. I believe that we can conclude that we only need to look back on 60 years of pipeline history and economic success and harmony in land use that has gone along with that. The current and historic facts already exist. Lastly, our commission holds performance bonds. Every company is required to have a performance bond, but it's not \$500 million; it's \$25,000. In my opinion, a \$500 million indemnity bond may even...I don't know if anybody would write a bond like that. People are very shy...companies that write performance bonds are shy of \$25,000 and want the operators to pledge an inordinate amount of their assets to the bond certainly and substantially more than the \$25,000. And so I wonder about that amount. I'm not going to say it's impossible but I think it would be very difficult for anybody to comply with a bond of \$500 million. And I would be concerned about that just as trying to attract other businesses in the oil and gas industry into Nebraska. So with that, Mr. Chairman, I'd conclude and answer any questions. [LB6]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, thank you very much for your testimony. [LB6]

BILL SYDOW: Thank you. Come to Sidney sometime. [LB6]

SENATOR LANGEMEIER: Further testimony in opposition to LB6. [LB6]

JOHN McCOLLISTER: Senator Langemeier, members of the Natural Resources Committee, my name is John McCollister. I'm the executive director of the Platte Institute, Omaha, Nebraska, and I speak in opposition to LB6. I won't burden you with my previous testimony. You've been diligent and the hour is late. Just a couple of quick comments on the legislation. I'm not against the principle of liability for an oil company or a pipeline. It's a correct thing that they need to clean up spills and remediate the soil. I was in the oil business for 35 years and in the natural gas business for 30, so I had the opportunity to clean up some sites of companies that we purchased. So we know how that works and we don't back away from the principle of cleaning up sites. And I don't believe TransCanada has either. Secondly, TransCanada is a stand-up company, responsible company, and I'm absolutely sure that if they receive their permit and move forward with this pipeline, that the people of Nebraska would be happy with the selection of TransCanada and the fact that they have a pipeline in the state. Thirdly, murky legal issues. Having witnessed the testimony over the last three days, I've received an education on the commerce clause and the preemption, and so have you, and I'm satisfied that there is a significant legal risk for the state of Nebraska if they go down this road. These are sticky wickets. And having seen what's happened to Boyd County, I hope we aren't going down the same road with these issues. That's the downside. The upside, those economic issues that we talked about: the jobs, the 7,500

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jobs, the million dollars' worth of tax revenues. So all those are positive things. Significant upsides. So how do you deal with all the emotion in this issue? And I don't relish the kind of position you're in here, because it's rather tough and I...with that, I appreciate your understanding, I speak in opposition to LB6, and I wish you well as you consider this legislation. Questions? [LB6]

SENATOR LANGEMEIER: Are there any questions? I do want to ask one. You know, we've talked about the jobs and, you know, we've...and again, you take the emotion out and let's just go back to all the numbers we've heard. First, we saw a flyer of 300,000 jobs, and we've heard a strong 20,000; now you just went to 7,500. If we have one more day of hearings, are we going to be at a thousand? [LB6]

JOHN McCOLLISTER: Well, I think if you look at the national scale of the project, the five states that the pipeline will go into, you know, you can get an overall concept of how many jobs would be generated. However, I think the 7,500 number that we've been looking at came out of the EIS statement. [LB6]

SENATOR LANGEMEIER: Okay. [LB6]

JOHN McCOLLISTER: I have a source for that and I can certainly provide it to you. [LB6]

SENATOR LANGEMEIER: No, you clarified it. That's all I wanted you to do. Are there any other questions? Seeing none, thank you very much. Further testimony in opposition to LB6. [LB6]

MICHAEL WHATLEY: (Exhibit 51) Thank you, Mr. Chairman, and thank you for your hospitality this week. My name is Michael Whatley, W-h-a-t-l-e-y, and I'm the executive vice president for Consumer Energy Alliance. In addition to expressing our concerns about again having additional regulatory impediments added to the proposed Keystone XL pipeline that TransCanada has undertaken to build based on the laws and regulations, both federal and state, that were in the place at the time that they filed their permit application--and we see that as a matter of fundamental fairness. So we do oppose the LB6 and having it applied here. I did want to speak for just a minute. Senator Haar asked earlier about the Oil Pollution Act of 1990, and just a real quick synopsis of that. Under the Oil Pollution Act, an owner-operator is liable for the costs associated with the containment and cleanup of a spill and any damages resulting from that spill. They are also liable in tort for any of those damages. And this liability is with the company unless there's a third party who has negligently and willfully acted to cause the spill, and then liability would shift over there. When an owner-operator is unable to pay those funds from the...funds from an Oil Spill Liability Trust Fund can be used to cover removal costs and damages. That fund can provide up to \$1 billion for any one oil pollution incident, including up to \$500 million for the initiation of natural resources

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damage assessments and claims. The main uses of these funds are state access for removal actions, payments to federal, state, and tribal trustees to carry out NRD assessments and restoration, payments of claims for uncompensated removal costs and damages. The company liability for payment into the fund is capped at \$350 million. If you have any questions I'd be happy to answer them. [LB6]

SENATOR LANGEMEIER: Senator Haar. [LB6]

SENATOR HAAR: All of a sudden I have a question that I really haven't asked before. Now, we don't have strict liability in Nebraska at this point. South Dakota does because there is that caveat of if it's a third-party negligence...or if it's negligence on the part of the landowner, or whatever, then it's not covered. Would that be covered in South Dakota? [LB6]

MICHAEL WHATLEY: I do not know. [LB6]

SENATOR HAAR: If they have strict liability? [LB6]

MICHAEL WHATLEY: Again... [LB6]

SENATOR HAAR: Okay, because you're not... [LB6]

MICHAEL WHATLEY: I'd be more than happy to look that up and get it back to you. [LB6]

SENATOR HAAR: Yeah, I would like to know that. [LB6]

MICHAEL WHATLEY: Sure. [LB6]

SENATOR HAAR: And so because you described that. So if it's a landowner through his or her negligence that breaks the pipeline and causes a large spill that could run into the millions of dollars, I mean that would immediately bankrupt a landowner. Who would pay for it at that point? [LB6]

MICHAEL WHATLEY: It would come out of the Oil Spill Liability Trust Fund. [LB6]

SENATOR HAAR: Okay. So no matter who's responsible, the Oil Liability Trust Fund covers even if a state doesn't have strict liability, or...? I'm trying to understand what the liability is. [LB6]

MICHAEL WHATLEY: Yeah. And obviously that a company can stand up and pay for the cost themselves if they were to chose to. But in terms of the strict liability on it, if a person who has this liability attached to them, whether it's the owner-operator or this

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third party--and again it would have to be both willful and negligent--then the Liability Trust Fund would step up and pay those. [LB6]

SENATOR HAAR: Up to...? [LB6]

MICHAEL WHATLEY: Up to \$1 billion per incident. [LB6]

SENATOR HAAR: Up to \$1 billion. [LB6]

MICHAEL WHATLEY: Yes, sir. [LB6]

SENATOR HAAR: And after that...I mean, we've already seen Enbridge go to \$700 million. After that, whose liability is it? Is it the state's or...? [LB6]

MICHAEL WHATLEY: I don't believe at any time that there is a statement of the state responsibilities there. [LB6]

SENATOR HAAR: But who would pay that extra costs? And I'm really trying to figure this out because I didn't... [LB6]

MICHAEL WHATLEY: No, I think that's a very important. And, you know, to give you an example with the BP spill in the Gulf of Mexico, you know, the total restoration costs and damages are expected to be between \$35 billion and \$40 billion. And BP has agreed to take on all of those costs, including placing \$20 billion into a separate trust fund that is being run by a government supervisor. [LB6]

SENATOR HAAR: But I mean in a situation where there would be a major spill caused by a farmer who went crazy, took his Caterpillar to the pipeline or something like that, okay. (Laugh) So it's willful and negligent. And obviously...and, you know, a big spill. He can't...the farmer can't pay for that. They go bankrupt obviously. Then it comes out of the trust fund up to a billion dollars. What happens if it goes higher than that? [LB6]

MICHAEL WHATLEY: I do not know. [LB6]

SENATOR HAAR: Okay. You know, maybe you could find out, because I'm... [LB6]

MICHAEL WHATLEY: Yes, sir. I would be happy to look at that. [LB6]

SENATOR HAAR: I'm really interested and I don't quite understand yet who's liable for what, and if it makes a difference in South Dakota where they have strict liability and for us where we don't. [LB6]

MICHAEL WHATLEY: Yeah, we'll get that together and bring it back for you. [LB6]

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SENATOR HAAR: I appreciate it. Thank you very much. [LB6]

MICHAEL WHATLEY: Yes, sir. [LB6]

SENATOR LANGEMEIER: Are there other questions? I have one. I want to talk about that last comment you made. You talked about willful and...they would have to be willful and negligent. [LB6]

MICHAEL WHATLEY: Yes, sir. That's what I understand. [LB6]

SENATOR LANGEMEIER: So if the county is out cleaning out a road ditch--I think I know the answer but I'm going to ask you anyway. Describe the willful part of that. [LB6]

MICHAEL WHATLEY: I believe that the person who is undertaking the action would have to willfully attempt to sabotage the line. [LB6]

SENATOR LANGEMEIER: So had to want to sabotage it. [LB6]

MICHAEL WHATLEY: Yeah, and I will get a clarification on that for you. [LB6]

SENATOR LANGEMEIER: Okay. [LB6]

MICHAEL WHATLEY: Yes, sir. [LB6]

SENATOR LANGEMEIER: That's an interesting answer. Now negligent. What would he be negligent about? The fact that he hit it? [LB6]

MICHAEL WHATLEY: Yes, sir. [LB6]

SENATOR LANGEMEIER: So if he's cleaning out the ditch and catches the pipeline, he wasn't willful because he didn't mean to go poke a hole with the teeth of the backhoe through that line. He just happened to catch it. [LB6]

MICHAEL WHATLEY: Right. [LB6]

SENATOR LANGEMEIER: So that \$1 million fund that you just talked about doesn't pay, because you said it had to be willful and negligent. [LB6]

MICHAEL WHATLEY: My understanding at that point is that the owner-operator would be responsible for the cleanup. [LB6]

SENATOR LANGEMEIER: What if he's...the only thing he owns is the Bobcat? [LB6]

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MICHAEL WHATLEY: Again, it would be the owner-operator of the facility. In this case it would be the pipeline. [LB6]

SENATOR LANGEMEIER: So then it goes back to TransCanada. [LB6]

MICHAEL WHATLEY: Yes, sir. [LB6]

SENATOR LANGEMEIER: It's their problem that the county cleaned out the ditch. [LB6]

MICHAEL WHATLEY: Yes. [LB6]

SENATOR LANGEMEIER: Interesting. Senator Haar. [LB6]

SENATOR HAAR: Okay. And on the same issue of liability, are landowners that sign an easement, are they required to have liability insurance to cover this kind of situation so you don't lose the farm? [LB6]

MICHAEL WHATLEY: I do not know. [LB6]

SENATOR HAAR: Okay. Do you know who we could ask about that? [LB6]

MICHAEL WHATLEY: No, sir, I don't. [LB6]

SENATOR HAAR: Okay. [LB6]

SENATOR LANGEMEIER: Any other questions? Seeing none, thank you very much. [LB6]

MICHAEL WHATLEY: All right. Thank you. [LB6]

SENATOR LANGEMEIER: Further testimony in opposition. Are we all done with opposition? Is there any neutral testimony? Come on up. This seems to be the sensitive area. [LB6]

SENATOR HAAR: Senator Langemeier, can we get answers to even some of the questions that Mr. Whatley couldn't answer, about, you know, like...because I've never really thought of that before. Does the landowner need to get insurance and how much, and all that? You know, what are they buying in terms of risk? [LB6]

SENATOR LANGEMEIER: Okay. [LB6]

SENATOR HAAR: Okay. Thanks. [LB6]

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SENATOR LANGEMEIER: Welcome. [LB6]

CHELSEA JOHNSON: (Exhibit 52) Hi. My name is Chelsea Johnson, C-h-e-l-s-e-a J-o-h-n-s-o-n. I am originally from Johnson, Nebraska, and I go to school at Nebraska Wesleyan University, so I'm currently living in Lincoln. What I am testifying on today is a resolution that Nebraska Wesleyan Student Affairs Senate passed a couple of weeks ago, and I'm just going to read the first couple of "whereas" and then the "be it resolved by" portion, and then just kind of explain where we came from with all of this. So "A Resolution. Whereas: Nebraska Wesleyan University's Student Affairs Senate is the formal governing body for students that creates legislation to improve student life; and, Whereas: The majority of Nebraska Wesleyan University students hold their residence in the state of Nebraska," and then the other whereas. "Be it resolved by the 2011-2012 Student Affairs Senate that: We stand in opposition of the construction of the Keystone XL pipeline passing through the state of Nebraska as it is currently routed over the Ogallala Aquifer, deeming it of detriment to the continued prosperity of Nebraska's agriculture and rural communities, tourism, and unspoiled landscape; and urge the Nebraska Legislature to exercise its authority on routing and regulating oil pipelines in Nebraska before the State Department makes its decision on whether or not the TransCanada Keystone XL pipeline can be built." And then it has the delegation will be chosen by the SAS president. And we did present it to Governor Heineman. Actually it was his policy analyst, Mark Matulka. And basically what came out of that conversation was Mr. Matulka said that our resolution was in line with what Governor Heineman also feels, and he suggested that we talk to our state senators about it so that's kind of why I'm here. And the neutral testimony is because we didn't vote in favor or opposition to any of the bills that are being discussed in this special session, so basically just neutral on any of the bills. Are there any questions? [LB6]

SENATOR LANGEMEIER: Okay. Are there any questions? Seeing none, thank you very much for your testimony. [LB6]

CHELSEA JOHNSON: Thank you. [LB6]

SENATOR LANGEMEIER: Any other testimony in a neutral capacity? Mr. Fraizer. Welcome to Natural Resources. [LB6]

TAD FRAIZER: (Exhibit 53) Senators, I'll try to be very brief. My name is Tad Fraizer; that's T-a-d F-r-a-i-z-e-r. I'm local counsel and lobbyist for the American Insurance Association, a national trade organization of property and casualty insurers, including companies that write surety bonds. One of our members is The Surety and Fidelity Association of America, and they asked us to see that you got this letter dated November 9, to Senator Langemeier, and a copy was provided to Senator Avery. And I'll note, although on the letter it talks about being page 2 of 3, there actually are only

two pages with printing on it. It's just the way the computer formatted it. We'd like to make it clear that we are neutral on the underlying issue of the pipeline and such. That's obviously a public affairs...or excuse me, a public policy decision that you and the Legislature will have to make as to the wisdom of a bond and the amount of a bond and such. But we did want to bring to your attention some technical and practical aspects of bonding that you could find in any legislative context where a bond might be required that might ensure the availability of a bond. And I'll just very briefly touch on what The Surety and Fidelity Association letter wanted to bring out. One is the possibility of a bond amount adjustment, or as Senator Avery made reference to in his initial testimony, the possibility of cosureties on a bond. Obviously the larger a bond is, the harder it is to find someone who will write a bond. So you could either consider adjusting the amount or making it clear that you could have multiple sureties to kind of split up the bond to reach whatever amount you might find appropriate. The second point was that hopefully some of the language in whatever you come up with ultimately could better define the scope of the bond. The Surety Association suggested perhaps defining it in terms of compliance with whatever permit is issued either by the federal government or under any state regime. Obviously, the more wide open the terms of a bond are, the harder it is for a company to write it or take on that risk, and perhaps also to define who the bond runs to. In some suggested language, The Surety Association suggested possibly defining it in terms of the Nebraska Secretary of State or it could be another appropriate state agency. But a bond that kind of refers to the world, you know, running to the world at large is a difficult one for a company to write. As far as the issuer, they suggested you clarify as to the fact that bonds can really only be issued by insurers subject to the jurisdiction of the Department of Insurance. I think Senator Avery's initial legislation refers to some banks or other financial institutions. And there's a difference between posting a cash bond and having a company write a surety bond for you. And finally as to the duration, as some people previously noted, writing an insurance policy or a bond that goes out into perpetuity is unlikely you're going to find that on the market. Just like insurance on your house or your car, bonds or insurance policies generally have a set term. Now you might want to consider some sort of renewal thing that you always have to keep a bond in force. But it's difficult to write a bond that would last 50 or 100 years, so The Surety Association suggested maybe there was some possibility of a cancellation provision with notice to the state of something like that. And as Senator Avery noted, I believe he's bringing an amendment, and which we have not seen, which may well address some of these issues, and I believe The Surety Association would certainly be willing to work with the senator on any technical adjustments that might be appropriate under the circumstances. But we just wanted to bring these issues to you, and while I'm no expert in surety law, I would try to answer any questions you might have at this time. [LB6]

SENATOR LANGEMEIER: Are there any questions? Senator Haar. [LB6]

SENATOR HAAR: Yeah. And so just to clarify for me again, you can't have a surety

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bond like I can't have house insurance that just goes on in perpetuity. But there could be a clause in there that says you have to renew it to keep the pumps going. [LB6]

TAD FRAIZER: I imagine it would be possible to do that. As part of the legislation, say that whatever entity is required to maintain a bond always has a bond in effect so that you could replace an existing bond with a new bond at the time of expiration of the original term. [LB6]

SENATOR LANGEMEIER: (Exhibits 54-55) Are there any other questions? Seeing none, thank you very much for your information. I'm sure Senator Avery will get you a copy of his amendment. Is there anyone else who would like to testify in a neutral capacity? I'm told I must have letters, huh? Back to the name-butcherer here, unfortunately. Okay, LB6 support: Larry Hutchinson, Izaak Walton League. Couldn't stick around so he left his testimony. Surety and Fidelity, we've just got that; that was introduced to...so in opposition to LB6, we have Mr. Mark Whitehead with the Nebraska Petroleum Marketers and Convenience Store Association. In a neutral capacity we have Jim Knopik from Belgrade in a neutral capacity. So we have those letters for the record. With that, Senator Avery stuck around. [LB6]

SENATOR AVERY: I did. [LB6]

SENATOR LANGEMEIER: We appreciate that. [LB6]

SENATOR AVERY: No, you don't. (Laugh) [LB6]

SENATOR LANGEMEIER: We appreciate you stuck around. Now we'll see you after you do your closing. Welcome. [LB6]

SENATOR AVERY: I'll make it brief. If I were you, I would be saying: get him out of here. All right, thank you very much, Mr. Chairman. (Laugh) I do thank you for your patience. It's been seven hours of testimony, and I know it's not easy. I've been on that side. We have had three days of testimony on five bills. The opponents have found all five of the proposals that we have suggested objectionable, all on the same grounds. So everything we're doing here is wrong--anything. What you are doing, what I'm doing, what others are doing, it's all wrong, all on the same grounds. We're all proposing legislation that preempts federal law. We're all proposing legislation that violates the commerce clause of the U.S. Constitution and we're all proposing special legislation. I would remind you that last session when we had the reclamation bill, they came in and said the same thing: We were doing everything wrong. Well, I want to ask you something. Do we have the right to do anything to protect our citizens and our resources? Because listening to the opponents, we don't. They repeated them over and over and over in this hearing room. The oil pipeline companies have the right to build across our state with minimal regulation--and we have minimal regulation, believe

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me--and we have no constitutional way to change that. I find that spectacularly unbelievable. We are a sovereign state. We are a sovereign people with sovereign rights to protect our interests. We not only have the right but the obligation to protect our land, resources, and people--and I urge you not to shrink from that responsibility because we owe it to our citizens. Thank you. [LB6]

SENATOR LANGEMEIER: (See also Exhibits 56-57) Very good. You have heard the closing on LB6 and the hearings for our legislative session. With that, we conclude. We want to thank everybody that came and participated in all three days of testimony and sat here with us, and we appreciate it greatly. Thank you, and that concludes the evening. [LB6]