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Natural Resources Committee
January 30, 2013

[LB186 LB353 CONFIRMATION]

The Committee on Natural Resources met at 1:30 p.m. on Wednesday, January 30, 2013, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB186, LB353, and gubernatorial appointments. Senators present: Tom Carlson, Chairperson; Lydia Brasch, Vice Chairperson; Annette Dubas; Ken Haar; Jerry Johnson; Rick Kolowski; Ken Schilz; and Jim Smith. Senators absent: None.

SENATOR CARLSON: I am Senator Tom Carlson, the Chair of the committee, and our committee members that are present are to my extreme left, Senator Kolowski from Omaha, District 31; Senator Ken Haar from Malcolm, District 21; and next to them, when they get here, will be Senator Jim Smith from Papillion and Senator Ken Schilz from Ogallala; to my immediate left is Laurie Lage, our legal counsel; and then to my far right is Barb Koehlmoos, our committee clerk; Senator Lydia Brasch from Bancroft, District 16, who is the Vice Chair of the committee, and Senator Jerry Johnson from Wahoo, District 23; Senator Annette Dubas from Fullerton, District 34, and Senator Smith has just joined us. Our pages are Tobias Grant, you want to wave or stand up, Tobias, from Lincoln. He's a senior at Doane, and David Postier from York and he's a sophomore from UNL. So they'll be serving as pages. Today, we have a gubernatorial appointment to handle as well as LB186 and LB353, bills by Senator Christensen. So, we have Frank Reida. Would you come forward, Frank, take a chair? And this is an appointment to the Power Review Board and actually he's been serving for several months in taking over that position. So welcome, Frank, and tell us a little bit about yourself. [CONFIRMATION]

FRANK REIDA: (Exhibits 1 and 2) Thank you, Mr. Chairman, and thank you members of the committee. My name is Frank Reida, and that's spelled R-e-i-d-a. I live at 1122 Turner Boulevard, Omaha, Nebraska, 68105. And as Senator Carlson said, I have been serving as a member as a recess appointee to the Nebraska Power Review Board. I believe either May or June of last year is when I first started serving in that capacity. I have given to Barb Koehlmoos a revised vitae and that should be distributed to you. And I thought that by having that, that would probably expedite going through education, training and experience. First of all, does everyone have a copy of that? First of all, what I'm going to do is, I'm going to dovetail the educational with the actual working experience so you see how that came together. I was a graduate of University of Nebraska in Lincoln with a degree in mechanical engineering. When I...after graduating, I went to work for the Nebraska Public Power District for about 11 years and I was in their generating stations primarily, but also had exposure to transmission distribution systems. Went from starting as a mechanical engineer and performance engineer all the way up to managing the maintenance at the facility, and was the assistant superintendent, and when the superintendent was absent. The plant that I was at, which was Kramer Power Station, went into what was called, mothball status. And so, NPPD

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gave me the opportunity at that point to either go to another plant or to do something else and come back, if I desired. And so I decided that was a great time for me to go to law school and so I went to law school full-time for three years and that was at Creighton. I might mention that when I was at NPPD, I attended Creighton University and received my MBA. That was when I applied at NPPD. So after Baird Holm law firm, I...after graduating from law school, I then joined Baird Holm law firm as an associate, became a partner in seven years, and was with them for about 15. Primarily served in the capacity of business planning and tax, and so I'm very familiar with working in a very regulatory environment. In 2005, I joined Energy Systems Company, which is a thermal services company, and we provide district energy services. Now, if you're not familiar with that, the Capitol has been served by a district energy system. It's located over behind the State Office building, but it's a large thermal plant. They produce steam and chilled water. They then distribute that under the...underground through pipelines, which is what we do in Omaha on the Creighton campus. Your particular DES, District Energy System, serves the Capitol, the State Office building, the Governor's mansion, and it's being hooked up to what used to be the Assurity Life building, which I believe is going to be office space. Your new DES in Lincoln is going to be in the Haymarket, and so that's being constructed right now to serve the arena. I believe it may go down and even serve your district courthouse. There's some talk about doing that. That's going to be operated by LES. Going to page 2, as far as professional engineering status, I am a PE and received that in 1982; also first-grade operating engineer in the city, for the city of Omaha. Received certification as a energy procurement professional, and also am LEED certified. Back when I was working for NPPD, I taught as an adjunct at Bellevue University. I have not done that since I went to law school. I currently also teach the Dale Carnegie course and this is a new venture for me at Creighton University. The...Creighton received through a grant, through an energy grant of about \$2.5 million, monies to put the wind turbines and solar collectors on their campus, and also put together the curriculum to teach an energy science program. And I'm going to be teaching as an adjunct in that particular program. And the program chair and I met with Senator Haar, would have been about a year ago, and Senator Haar is going to be one of my guest speakers for when I teach that class. [CONFIRMATION]

SENATOR HAAR: Cool. [CONFIRMATION]

FRANK REIDA: Yeah. Do you remember that? That was about a year ago that, that...I have you slated for that. (Laughter) [CONFIRMATION]

SENATOR HAAR: Okay. Thank you. [CONFIRMATION]

FRANK REIDA: For other professional activities, I put the recess appointment. I also was appointed, and I don't remember who the senator was, but back in 1997, we developed the rules for professional practice of architects and professional engineers in Nebraska. Those rules have not been updated for years and so we provided the update

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for that. I also was appointed by Senator Beutler to the, what was called the LR455. If you're not familiar with that, that was the study, it was a three-year study to look to see whether or not Nebraska should engage in retail competition for electricity. You might recall, back in that era California was...had rates somewhere in the 12 cent per kilowatt hour range and we were down 5 and 6. And so the thought was, at least in California, that if we go and we blend all this, that somehow everybody could pay 9 cents. And, of course, the result of this study for Nebraska came into what was called a wait and see. And so I continued on after the LR455 into what was then called the LB901 committee and every year a study was done to see whether or not the...in the wait and see was called conditions certain, whether the five conditions had been met so that retail competition might be something considered in Nebraska. I believe it was two years ago the Legislature suspended having annual reports unless it was required or requested by the Power Review Board. I also was appointed to...I'm actually an appointee to the city of Omaha as to the Engineers Board. And that was originally by Mayor Fahey, which is ratified by the city council, and then reappointed by Mayor Suttle. And at Creighton University from the date of when they started their Sustainability Committee, I've been a member of that and currently still am. As far as other professional associations, you can see both from the engineering and the law, associated with that, and probably of particular significance, for the last five years I've been one of the five judges for the...it's called the ACEC, which actually is officed over in the Cornhusker Hotel. And what we do is, we actually select the top engineering projects for the year for the state of Nebraska. Other associations: I've been a member of Downtown Rotary for a number of years and two years ago was appointed to be the chair of their energy committee. And this is actually for the district, the District 5650, which is approximately 52 clubs, 2,500 people. It covers eastern part of Nebraska, western part of Iowa. On page 4, as far as other community activities, I'm currently a member of the foundation board for the Omaha Community Playhouse, and the rest of these are...still most of them are still current, but it gives you a flavor for my community involvement. I believe that that is the end of what I had prepared other than to say that for the goals that I would have, Nebraska has a really rich history because they are the only state in the Union with all public power and also is the only one with a Unicameral, they have a rich history of having this being an incredible resource. And so, a goal I would have would be to continue to strive to have that, to be that resource and to continue to have rates that are the lowest reasonably possible and high reliability. Probably one of the biggest challenges right now is to integrate some of the renewable resources into the mix, and also the...Nebraska has joined what's called SPP, which is the Southwest Power Pool, and integrating that transmission network into our utilities is a real challenge right now. So I look forward to working with that. And that concludes my presentation. Do you have questions for me? [CONFIRMATION]

SENATOR CARLSON: Okay, yes, thank you. Thank you for your testimony. Thank you for coming, and we'll open it up now to questions of the committee. Senator Kolowski. Oh, you're indicating Senator Haar wants to speak. Okay, Senator Haar.

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[CONFIRMATION]

SENATOR HAAR: Thank you. Thanks for being here. Well, you actually answered a lot of my questions with your introduction; I appreciate that. Tell me a little bit more...because one of my areas, of course, is renewable energy and so on. The retail deregulation of electricity in Nebraska's study. I still don't quite...it probably was before my time in the Legislature. [CONFIRMATION]

FRANK REIDA: What was happening was and it was...it kind of precipitated out of California because they were having rates that were in the 12 cent range. [CONFIRMATION]

SENATOR HAAR: Uh-huh. [CONFIRMATION]

FRANK REIDA: And the thought was...and this was a misconception, the thought was that electricity was nothing more than a commodity, and so, you could take it like tomatoes. And so the only difference in cost from Nebraska to California should be transportation. And they didn't realize what the intricate network is that allows our electricity to flow. So the...California started, and then back east somewhere like Pennsylvania, they started doing this retail deregulation so the...instead of having one supplier, they could pick and choose who they were going to have. There were a lot of powerhouses and that sort of thing that were sold and then stranded costs had to be addressed. And part of what the conditions a certain group was doing every year was tracking to see how all of those plans were working. And at least, I believe two years ago was the last report where they did kind of a survey, and none of them were working. The one that probably had the greatest possibility was down in Texas because Texas had a lot of surplus energy. They also had all the fuel. They were...if you look at the United States, there are what are called three synchronous regions. And so you have the internet, interconnects both east and west, and then you have Texas, and so Texas thought because we can basically control our own destiny. And so that was what LR455 was. It looked at all the utilities in Nebraska. And there was a report...it was actually, I believe his name was Scott Ridley from APPA was the person that was hired to come and basically coordinated the study. But all the...there was participation from obviously the local utilities, but as I recall, Utilicorp had a representative there, Enron had one, Aquila Energy, so they were looking at how this might all work for Nebraska. As I said, there were five conditions certain that came out and those were actually in an LB. And so every year the study was done to see whether it made sense for Nebraska to look at, at having retail competition. [CONFIRMATION]

SENATOR HAAR: Now, and I should probably know this, but can any of the smaller public power districts buy from anywhere, or do they have to buy from, for example, public power within the state? [CONFIRMATION]

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FRANK REIDA: I believe on a wholesale basis that they are selling back and forth across interstate transactions. But as far as a retail customer... [CONFIRMATION]

SENATOR HAAR: Okay. [CONFIRMATION]

FRANK REIDA: ...they would be in a particular district service area and that district then has a monopoly. And so the utility has a duty to serve and the customer then has...there's only one person they can...or one entity they can buy from. [CONFIRMATION]

SENATOR HAAR: Okay. And I have a son in Dallas right now that buys green energy from Florida or something, so maybe they're doing that. [CONFIRMATION]

FRANK REIDA: If you get outside Nebraska, if you get outside of Nebraska and you get into the deregulated states, there's a lot of buying and selling, you know, a lot of interstate transactions going on. [CONFIRMATION]

SENATOR HAAR: I noticed one of your areas of interest is environment finance. Could you just talk just a little bit about that? [CONFIRMATION]

FRANK REIDA: When you say environmental finance... [CONFIRMATION]

SENATOR HAAR: That's at least what came across on the sheet in front of me. It says, areas of interest, economic development, environment finance and energy. [CONFIRMATION]

FRANK REIDA: Oh, there should probably be a comma in there, Senator. That was...(Laughter) [CONFIRMATION]

SENATOR HAAR: Okay. [CONFIRMATION]

FRANK REIDA: Yeah, there should be a comma so that those are... [CONFIRMATION]

SENATOR HAAR: Gotcha. [CONFIRMATION]

FRANK REIDA: ...because an environment, that's foreign to me. I must have missed a comma. [CONFIRMATION]

SENATOR HAAR: Commas are really important. [CONFIRMATION]

FRANK REIDA: Yeah. I apologize for that. [CONFIRMATION]

SENATOR HAAR: Okay. And, obviously, you've talked about your interest in energy

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and I appreciate that. You're LEED certified? [CONFIRMATION]

FRANK REIDA: Yes. [CONFIRMATION]

SENATOR HAAR: Have you practiced that yet or...talk just a little bit about that.
[CONFIRMATION]

FRANK REIDA: My LEED certification was, I believe, in 2009. And one of the primary reasons that I got the LEED certification, we served the Creighton University campus. And I was on their sustainability counsel and they were looking at putting the first LEED building on the campus, which was going to be a new residence hall, which was...has been delayed. But what their goal is, at least their current goal is to make their next new building a LEED silver certified. And since we provide the steam and chilled water to that campus, my primary interest was to be involved to make sure that we had an integration where they could, in fact, get that LEED certification. They have a couple of buildings on campus that they call LEED certifiable, like the new Harper Center is a great example. And so, the design of the building was such that it received the benefit of energy efficiency, but they never went into the documentation and paid the money to get the medallion, and that sort of thing. [CONFIRMATION]

SENATOR HAAR: Okay. [CONFIRMATION]

FRANK REIDA: So that other than wanting to be in...one of my positions or actually I'm legal counsel for Energy Systems, but also vice president of customer service. And so that's part of the integration where if a customer wants to do something in particular, we provide specialized services for them. [CONFIRMATION]

SENATOR HAAR: Okay. Well, thank you. I look forward to getting to know you better. Thanks. [CONFIRMATION]

FRANK REIDA: Thank you. [CONFIRMATION]

SENATOR CARLSON: Okay. Thank you. Senator Smith. [CONFIRMATION]

SENATOR SMITH: Thank you, Mr. Chair. And Mr. Reida... [CONFIRMATION]

FRANK REIDA: Yes. [CONFIRMATION]

SENATOR SMITH: ...thank you for being here, and thank you for your testimony and for your willingness to serve on this very important board. It's great to see some things we have in common. MBA from Creighton, great school to get your MBA from. You're also a Rotarian. [CONFIRMATION]

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FRANK REIDA: Yes, I am. [CONFIRMATION]

SENATOR SMITH: And I'm a suburban Rotarian from the Omaha metro area.
[CONFIRMATION]

FRANK REIDA: So you probably know Bob Perrin. [CONFIRMATION]

SENATOR SMITH: Yes, Bob is a great guy, great architect too. And so it looks like you've done a lot to give back to your community, so we appreciate that very much. Interesting, you've been involved with LR455 and LB901, the retail competitiveness discussion for utilities in Nebraska. And from serving in that capacity, I have an interest from you. Philosophically, do you feel like the time has passed for our state needing to review our cost competitiveness on energy, or do you see any conditions that would allow for private utilities to operate in Nebraska? [CONFIRMATION]

FRANK REIDA: Well, that particular study, where they actually would look at what the pricing would be has not been conducted for a couple of years now. And so to give you quantitated numbers, I wouldn't be able to give you that. I would say that the public power nature of Nebraska has been so strong that from a...looking at its basic history, that I would say that probably it would take something pretty dramatic to make that the case, but again, without having actual quantitative numbers. My recollection is of the five conditions certain, at least three of the five have been met. And one of them was kind of easy. It was like, do you unbundle your services, and that sort of thing. But as far as the pricing, that was the one, some of the forward prices and trying to compare and contrast how that would work as compared to what the actual costs were of generating in Nebraska, that had not triggered to the point where it would be cost-effective, at least at the last study that was done. [CONFIRMATION]

SENATOR SMITH: Probably when you left off, the differential in rates was probably still in the double digits. [CONFIRMATION]

FRANK REIDA: I think that's correct. I think that's correct. [CONFIRMATION]

SENATOR SMITH: I know that's narrowed quite a bit in recent years. Okay. Thank you.
[CONFIRMATION]

FRANK REIDA: Thank you. [CONFIRMATION]

SENATOR CARLSON: Okay, thank you. Any other questions? Yes, Senator Brasch.
[CONFIRMATION]

SENATOR BRASCH: Thank you, Chairman and I also want to thank you for your willingness to serve and compliment you on your outstanding credentials...

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[CONFIRMATION]

FRANK REIDA: Thank you. [CONFIRMATION]

SENATOR BRASCH: ...and your experience and also your mentoring and service to the community. It's a great day in Nebraska when people like yourself and many others step up and help add assets to our great state, and especially in energy and renewable energy. And near my district, one of the ag producers is using methane and producing fuels, electricity. Have you looked at that at all as an emerging area that could help offset some of our needs that we're addressing through wind and other resources?
[CONFIRMATION]

FRANK REIDA: Sure. And some of the, like the biofuels and the biodiesels...as a matter of fact in our facility we evaluated biodiesel as a potential fuel about a year ago. At that time the differential, and it wasn't necessarily differential in price, but it was the ability to store the fuel. Because we normally don't...we normally use natural gas as our primary fuel and that we would have number 2 diesel fuel to be our backup. Now the difference between a petroleum-based liquid fuel like diesel fuel, is that you can, as long as you go and you treat it and you have...you kind of...we do...we have what's called sucking the sludge out. We have trucks that come in and actually vacuum off of the bottom of big fuel tanks. One of the situations was with the biofuel, especially soybean, is that its what I would call shelf life, is only about six months. And so that was a real negative consideration for us, as we have about half a million gallons of fuel oil in the ground that have been there for years and years and so that would be a...that was a reason that we do not go further with these in the biofuel. But very recently when you think about methane, we just approved a...it was a special application for Lincoln Electric System where they're taking...they have a...right now off of the landfill gas, they're basically just flurrying and they're going to put a four megawatt generator there that will take that methane and rather than just burn it and put it into the atmosphere, we're generating electricity. So those are the kinds of things that need to be woven into the fabric of electricity. [CONFIRMATION]

SENATOR BRASCH: Excellent. Thank you and, again, your service is very valuable.
[CONFIRMATION]

FRANK REIDA: Thank you, Senator. [CONFIRMATION]

SENATOR CARLSON: Okay. Thank you. Any other questions? I don't have any questions whatever about your capability. Interested in your history. Appreciate your history in teaching the Carnegie course, and then your volunteer time in the Douglas County Corrections Center on spiritual matters as well as being involved in a purpose-driven life. And so I appreciate all those things that have been included in your summary, and thank you for coming. Any other questions of the committee? Okay,

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thank you for your testimony. [CONFIRMATION]

FRANK REIDA: Thank you very much. [CONFIRMATION]

SENATOR CARLSON: Do we have anyone that will testify in support as a proponent? Anyone as an opponent, or anyone in the neutral position? Okay, seeing none, then we close the appointment hearing on Mr. Frank Reida and thank you for coming. [CONFIRMATION]

FRANK REIDA: Thank you very much. [CONFIRMATION]

SENATOR CARLSON: Okay. And we'll open the hearing on LB186, and Senator Christensen, you're recognized to open. [LB186]

SENATOR CHRISTENSEN: (Exhibit 3) Thank you, Mr. Chairman and the members of the Natural Resources Committee. I'm Senator Mark Christensen, M-a-r-k C-h-r-i-s-t-e-n-s-e-n. I represent the 44th Legislative District, and I'm here to introduce LB186. LB186 amends Section 2-3228(1)(f) to restrict the rules or regulation authority of natural resources districts. The bill would clarify that no NRD would have the power to promulgate any rule or regulation requiring the land be irrigated to apply manure. This bill seeks to address a current rule brought to my attention by producers within the Lower Loup NRD where they prohibit the application of manure effluent through a pivot system if the acres are not certified irrigated acres. It is my understanding from the discussion with Butch Koehlmoos, the manager of the Lower Loup NRD, that they created this rule to stop a few dryland producers from running their livestock wells to continuously fill the livestock lagoons and pumping it through the pivots as effluent to get around the NRD limit on expansion of irrigated acres, in effect expanding irrigated acres within the district. Though the intent of the rule is good, trying to prevent the Lower Loup from being designated fully appropriated by limited irrigated rules, I introduce this bill because I believe such rules might lead to some unintended consequences. For example, it encourages the use of certain manure application systems that do not spread manure as evenly, potentially leading to the risk of groundwater problems. Allowing the honey wagon to apply the manure, but not allowing the superior method of running it through a pivot system seems counterproductive. Another potential unintended consequence is an animal producer may not be able to find enough irrigated acres to apply all the manure produced from their animal operation because of geographical locations, potentially forcing him to reduce the size of the operation or negatively affecting the local economy. I happen to own a farm that has a hog facility on it where, if this rule was applied in my area, they would have to pump if DEQ ever changed the restrictions of how much you could apply to an acre to be used, they would end up pumping this in excess of five to ten miles. Because where this particular farm sits, it's three miles to the south you hit another hog facility, three miles west you hit another hog facility, nine miles to the east you hit another hog facility, and

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no irrigated acres in between any of these. And going north, you go about five miles to the first irrigated farm, which already has hog manures on it, so then you'd be going additional miles from there. That's the potential consequences that I see of having this rule in place. I'm both a farmer and a producer of crops and livestock...I'm both a farmer who produces crops and a livestock producer. I see such rules being more of a problem than a cure, and wouldn't want this power exercised for a farm. In addition, there is a question whether such a rule to regulate manure application is within jurisdiction of the NRD even though the intent is to indirectly regulate water. Since the introduction of this bill, I've had a good conversation with the manager of the Lower Loup NRD, Butch Koehlmoos, who explained their reasoning regarding the particular rule that caused me to introduce this bill. Hopefully, I represented them fairly, but as I told Butch, I believe we can find a better way to reach the goal of preventing expansion of irrigated acres. I did prepare an amendment for the committee's consideration, which I have to hand out. I believe AM60 represents a more accurate picture of the problem that is introduced in the bill, but is not the solution that I will talk about here in a little bit that I would recommend for Butch and his NRD. I believe LB186 is a necessary bill to discuss the appropriate role of the NRDs in such situations. I'm willing to work with the Lower Loup NRD or any other parties to find a solution. A couple of the solutions I've been able to find in visiting with other NRDs and how they handle this. There's the ability to regulate the pumping rate of the livestock facility. Even in 46-602 under registration of wells and stuff, if you want to convert an irrigation well to livestock well or so, they have to be held down to 50 gallon a minute, or they have to be permitted to go above that. That is one way of doing it. And if you think about an average pivot being used out there, typically the state...or the...I visited with pivot companies, I visited with agronomists and everything, so I'll tell you it takes six gallon per acre to be considered full irrigation. So in other words, 100 acres needs 600 gallon well. We know a lot of people run it at half that, but still becomes a...minimal irrigation gets tough in dry years. But then if you took that down a little further to that 50 gallon I mentioned, you just about eliminate the possibility of being much value of running that water through that facility. Another, I've got a couple NRDs, one of them said I could quote their name, that's the Middle NRD, that they put an allocation on a livestock facility, so they don't have to go to the side of trying to regulate having to have irrigated certified acres to apply effluent through a pivot. I think these are two other methods that would be better in my eyes that are currently being done that could handle the situation. And in discussion with Butch, I said if we could come with a alternative solution that we agreed on, and we've been in discussions, I would be willing to have the committee to hold this bill. And if the NRD changes their rule and provides proof of it, then I would just have you kill the bill after that. So I've been very serious with the discussions with Butch and I'm sure he'll be up here to testify, and I guess that's where I sit on there. And if there are any questions, I'd be glad to address them. [LB186]

SENATOR CARLSON: Okay. Are there questions of Senator Christensen? I would ask then, what are we having the hearing on today, the amendment you just handed out...

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[LB186]

SENATOR CHRISTENSEN: Well, the... [LB186]

SENATOR CARLSON: ...or a concept or what are we having the hearing on? [LB186]

SENATOR CHRISTENSEN: Well, the hearings...the amendment only changes from saying irrigation right, which we don't have. We have certified acres. That's what the amendment does. That stays with the true intent of the actual bill, which restricts their rules. I understand that in visiting with a number of NRDs, they would prefer not to have this law in place. And in the discussion with the Lower Loup, they're willing to lift that rule and do it in another way. So if that's the case, if you hear that when he testifies, I will do as I said, be willing to just have you hold the bill until we see that they have time to adjust the rules, and I'd be done with the bill. So, I guess I'll leave it to you how you want to handle it from there, but the hearing basically would be on the amendment, doesn't change anything but the correct terminology. The bill is restricting their rights to make a rule to require irrigated certified acres to apply manure through a pivot system, so. [LB186]

SENATOR CARLSON: Okay. Any other questions? All right. Are you going to close? [LB186]

SENATOR CHRISTENSEN: Yeah, I'll wait and see what happens here. [LB186]

SENATOR CARLSON: Okay. All right. How many proponents do we have? How many opponents that want to testify? And how many in a neutral position? Okay, no opponents, and as a...or no proponents, and as an opponent, you can come forward to testify. Welcome. [LB186]

RUSSELL CALLAN: (Exhibit 4) Thank you. Nice snowy afternoon. Okay. Good afternoon, Chairman and committee members. My name is Russell Callan, R-u-s-s-e-l-l C-a-l-l-a-n. I'm the assistant general manager for the Lower Loup NRD. I'm here on behalf of the Lower Loup NRD and the Nebraska Association of Resource Districts to give testimony against LB186. The Lower Loup Natural Resources District believes that the proposed change would impede the district's ability to manage water within the district. The statutes allow the natural resources districts the ability to manage natural resources based on the district's individual needs. On October 25, 2012, the Lower Loup NRD board of directors approved a modification to our rules and regulations that include a restriction on developing new acres with lagoon water through an irrigation system. The rule change also allowed the certification of irrigated acres previously irrigated with lagoon water to be certified and to be eligible for a supplemental well. The district went forward with these rules and regulations to fix a problem that we seen as new irrigated acre development and a potential water quality concern. The Lower Loup

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NRD board of directors have had several requests from producers...livestock producers, to allow groundwater irrigation on acres that they had been applying lagoon water and manure on through an irrigation system. As an example, this producer had one and three quarter pivots developed with the groundwater, and the other quarter of the three-quarter pivot developed with lagoon water. The request to the board was to allow additional groundwater irrigation on the quarter of the three-quarter pivot to grow a full crop of corn to use the nutrient loading that had occurred due to the over application of manure on the field. The board allowed the producer to increase his irrigated acres to allow the crop to uptake those nutrients and move the manure application to adjacent fields already served with groundwater. Following that agreement, because the district had no way to restrict the producer from developing additional acres irrigated with lagoon water, the producer then developed an additional half-pivot with the lagoon water. This is just one example of what is happening with lagoon water in the Lower Loup NRD. The district recognizes the importance of being able to use the manure resource in a responsible manner, but not all of the lagoons are being applied for their nutrients, they are also being used to irrigate. This rule does not prevent the livestock producers from applying manure through an irrigation system that they are currently using now. In fact, it would allow them to apply for a supplemental well to irrigate the field. It would require that if they need to expand and are planning to apply through an irrigation system, that the acres also be certified to groundwater or surface water. Thanks for your time and I'd be glad to answer any questions. And just to continue on, we have met with Senator Christensen and are very willing to sit down with him and discuss, you know, some of the issues he brought up earlier, and kind of the effects of our rules and what he sees as a potential problem, so. [LB186]

SENATOR CARLSON: All right. Thank you for your testimony. Questions of the committee? Yes, Senator Dubas. [LB186]

SENATOR DUBAS: Thank you, Senator Carlson. Thank you, Mr. Callan, for being here. When you do changes to your rules and regs, do you have public hearings? [LB186]

RUSSELL CALLAN: Yes, definitely. [LB186]

SENATOR DUBAS: Did you have people that came in and spoke for or against these proposed rule changes? [LB186]

RUSSELL CALLAN: Oh, we did not, we did not. [LB186]

SENATOR DUBAS: And since implementing them, are you hearing from any of your producers, pro or con? [LB186]

RUSSELL CALLAN: Well, we're currently working with several producers on getting up to speed on supplemental wells to irrigate those properties, and to get those acres

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certified. In our process, we allowed, you know, anything that had been done prior to October to be certified as capable of being irrigated that had had lagoon water on it prior. So, definitely been working with those folks. Those are kind of on hold now until we figure out where we're at on this, so. [LB186]

SENATOR DUBAS: Okay. I believe Senator Christensen said that he sees what you're doing as being unfair to landowners who irrigate and follow the certification rules, so can you give me a response to that? [LB186]

RUSSELL CALLAN: You know, in our board discussions, our board talked about that, that we're actually giving out, as a board, giving out groundwater...ability to irrigate with groundwater to those who didn't have it prior to our moratorium. So that discussion was there but because of the water quality concerns, they felt that it was warranted to do that. So that's where that came from. [LB186]

SENATOR DUBAS: Okay. All right. Thank you. [LB186]

SENATOR CARLSON: All right. Any other questions of the committee? Senator Haar. [LB186]

SENATOR HAAR: Thank you. I'm still trying to clarify in my mind what this is talking about. So people that were using lagoon water to irrigate are now asking that certification be extended to those acres even if it's overappropriated, whatever. But the fact that they've been using lagoon water now means that they want to be able to use it as...be considered irrigated with groundwater. [LB186]

RUSSELL CALLAN: Yeah. And not all of them are...were using it as to irrigate with. You know, that's just a...they're also using it to put it on fields for the nutrient value. [LB186]

SENATOR HAAR: Sure. [LB186]

RUSSELL CALLAN: But really, in our mind, they were using groundwater to irrigate those acres with through an irrigation system. The water, an example, in a hog facility, the flush water. So it comes from a well so it's groundwater being pumped into the lagoon. And so that's kind of the justification of allowing them to certify those acres as being irrigated with groundwater is because really the water source was from a well, so. And they're...they...we didn't originally because they didn't have a well specifically to irrigate with, we didn't certify all those in the beginning. And now we're going back and trying to fix that, to certify those as groundwater. [LB186]

SENATOR HAAR: Okay, so then the rule that you are proposing, say that again. [LB186]

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RUSSELL CALLAN: Okay. Basically, if they've been irrigating with that lagoon water up until October 1, and had some history to show that, we can...we'll certify that as groundwater irrigated. And in that case, they would be eligible to actually put a well there to full irrigate it. Anything done after that time period would have to either have groundwater granted, and if you remember the LB483 process, that was a way we could grant acres, or transferred. In our district we can transfer acres and so the acres would have to be transferred to that field to apply the lagoon water to. [LB186]

SENATOR HAAR: Okay, and so the objection to...what's the objection, then, to the rule, that you couldn't set those kind of rules, you'd automatically have to certify these in the future, or...? [LB186]

RUSSELL CALLAN: Basically, we couldn't...we couldn't require that they had the groundwater certification on the field, they could just put the lagoon water wherever they wanted to. And we, because of the overapplication, if you just used that water to irrigate with, you load the soil with the nutrients, so. [LB186]

SENATOR HAAR: Okay. Thank you. [LB186]

SENATOR CARLSON: Okay. Senator Smith, or you didn't? Senator Kolowski? No? I'm trying to get hand signals here. (Laughter) Is Lower Loup fully appropriated? [LB186]

RUSSELL CALLAN: No, sir. [LB186]

SENATOR CARLSON: And, but you have a moratorium on new wells? [LB186]

RUSSELL CALLAN: We do. [LB186]

SENATOR CARLSON: And when did that go into effect? [LB186]

RUSSELL CALLAN: I hope I get my dates right, but in two thousand and...the 2004 determination determined that we were fully appropriated and then we worked with DNR and actually had that reversed. So four years ago, LB483 was enacted which allowed us 10,000 acres to be developed in that four-year time period. Each one of the districts that were in that Lower Platte Basin area, because of the reversal, were granted those 10,000 acres. And at that time, that's when the moratorium was put on and the agreement was that that moratorium would stay in place because of the predetermination of being fully appropriated indicated that we were close to being declared fully appropriated. And so, we've maintained that groundwater...or well moratorium, and then we also put on a acre moratorium, which the LB483 process trumped with the 10,000 acres over four years. And we're at the end of that process. That process has expired and in October, the board indicated that we were going to continue with that approximately 3,000 acres per year until a time reached of fully

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appropriation or close to. And so that would be going on this next fall if the board granted that to happen. They'll make that decision probably late spring, early summer, after we see our static water levels from this great drought we've been a part of. That answer your question? [LB186]

SENATOR CARLSON: Well, you did. And so, when you're that close to being fully appropriated, you've got a concern about how many additional acres you allow under irrigation. I understand that. [LB186]

RUSSELL CALLAN: Yes. Yes. [LB186]

SENATOR CARLSON: But there's also the need to be able to get rid of this lagoon water and use it in a positive way. So, hopefully, you can get together on an amendment, or a stating that would satisfy that so that you can go forward feeling reasonably good about this and those that want to use that lagoon water can be able to do it. I think that's where you're trying to head, right? [LB186]

RUSSELL CALLAN: Yes, yes, that's right. [LB186]

SENATOR CARLSON: Okay. All right. Any other questions? Okay. Thank you for your testimony. [LB186]

RUSSELL CALLAN: All right. Thank you. [LB186]

SENATOR CARLSON: Anyone else as an opponent? Anyone to testify in a neutral position? Okay, Senator Christensen. [LB186]

SENATOR CHRISTENSEN: Thank you, Senator Carlson. The issue here that I see that's real concerning to me is the fact that if DEQ changes the rules again, they have in the past, or they want you to be locked up with so many acres that you can apply this effluent to, and if that's tied to irrigation, irrigated acre base only, certain areas like south of Arapahoe where I was talking about the farm I purchased, that's going to be a major expense, or it's going to reduce the number of livestock they use. And right now, this facility already pumps some at seven miles because they do try to go to irrigated ground because they can put more per acre more often. They have several facilities that have pivots on where they apply it to dryland, but they only run them about once every third year because it would build up too much nutrient value. So when I heard about this issue, not only from a producer from their area but also the hog farm from my area, there was concern that this rule could spread further, would be disastrous to them, and that's the economic development. That was the part that really got me concerned. And that's why I have been...I think it's vitally important that either we come to an agreement that we're not going to prohibit it, and I know it's only one NRD. And it may be fine for them in their area, but many times once one NRD starts something, it goes to another

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one, and then to the next one. I guess I'm just trying to be aggressive on the situation and try to stop it quickly, because I know if that hit the Lower Republican where I farm, it would be disastrous for this hog company. And if they started producing less, it's going to hurt the grain price, it's going to hurt the economics of my local area. And that's the reason why I got so shook so quickly. And I probably should have called Butch quicker. He got ahold of me before I did him, which I commend him for. But the fact is, I could see additional problems coming from this if it spread. And that's why I think there's...as I give before in my opening, additional alternatives that could be used that will not allow producers to cheat the rules by dumping water through the hog facility, filling lagoons, pumping it out, and trying to make it irrigated when it's not. And I understand what they're doing, and I do not want to cause them problems of ever getting to the fully appropriated status. That's not the intent of what I'm doing. And I think we have agreed in our discussions that there's alternative ways of doing this and that's what I'm asking again, as I did at my close in my opening, is that I'll continue working with them until...then I will just ask you to hold the bill in committee until I have another direction where I feel like the bill needs to go. Thank you. [LB186]

SENATOR CARLSON: Okay. Any questions of Senator Christensen? Then we'll close the hearing on LB186, and are you ready to open right away on LB353? Okay. [LB186]

SENATOR CHRISTENSEN: Thank you, Mr. Chairman and members of the Natural Resources Committee. I'm Senator Mark Christensen, M-a-r-k C-h-r-i-s-t-e-n-s-e-n. I represent the 44th Legislative District and I'm here to introduce LB353. LB353 amends Section 2-3228(1)(f) to restrict the rule or regulation authority of the natural resources districts. This bill would clarify that no NRD would have the power to promulgate any rule or regulation requiring the use of groundwater to maintain the certification of groundwater acres. The bill seeks to prohibit current rules within the Central Platte NRD--that's one I know doing it--which currently requires that to keep groundwater allocation on irrigated acres, those acres will have to be irrigated two out of ten years forcing...or forcing the retirement of certified irrigated acres. This may encourage the costly and inefficient irrigation of acres such as corners, acres that a pivot irrigation does not reach, or small gravity fields that are inefficient to irrigate just to keep the allocation of those acres alive. Again, though the intention of Central Platte NRD is good, wanting to retire acres to comply with the Cooperative Agreement, potentially creating negative and counterproductive consequences. I wouldn't want this power exercised where I farm. I think it is too heavy handed approach that could be abused. Who is to say another NRD could not pass rules to force retirement of acres within a rule requiring acres to be irrigated three out of five years, and not offer a fair value to retire the irrigated acres voluntarily? It is also a question of whether the NRDs have this authority to create a use-it or lose-it policy. If they do, should they have the authority? Again, I believe LB353 is an appropriate bill to discuss the consequences of allowing the NRDs to implement a use-it or lose-it policy, or I put it this way. Use-it ineffectively, inefficiently in order to not lose certified acres. I'll give you a classic example. You take a

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quarter that was irrigated from west to east. Then you decide to get more efficient, you put a pivot on it. So now instead of irrigating 160 acres, you're irrigating 130, but you're so much more efficient, we have found over time you can raise as many bushels on 130 acres as you could the full 160, especially on a drought year like 2012. Well, with these rules, you think about how it runs west to east. If you're looking at the west two pivot corners, they're simple, lay pipe on them, irrigate them, it's an easy approach. Now think of the bottom two pivot corners. If you don't want to lose these and sell them, which are paying \$8,000 an acre isn't necessarily bad, but you've got to remember, a real estate agent, some of these acres not far from there are bringing \$16,000-\$17,000 an acre, but that's the land going with it, not just a right or that certified acre base. But you'd have to go out through the middle of the corn to water seven acres, and then you're going back out through the corn again to water the other seven acres, and they're requiring them to do it two out of ten years. It's a lot of work, a lot of expense, or you give up them acre rights. I ask you why is this bill...why is that rule there? In my discussion with several people, they were very honest with me. They want to get acres retired for the Cooperative Agreement. They have a lot of acres to retire, but I'll sit here and ask you, is that the approach that Nebraskans do? That we're going to force you to do things inefficiently, ineffectively, or you have to sell them the right, or if you don't irrigate it two out of ten, you forfeit the right. I think this is a policy discussion that this committee needs to have because I do not believe that's the Nebraska way of doing business that I know. It gives me great concern and so I just bring it up. Last night, NRD had their reception. I had somebody ask me, they said, Mark, why are you attacking the NRDs' local control? I turned to him and I said, why is the NRD attacking the farmer's local management and control? If they...if you want to look at local control, the farmer having the certified acre right...or acreage base allocation, has the right to irrigate that or not irrigate that. That is local control at the lowest level. They are living within the allocations if they have them. They're following all the rules that are out there, using good husbandry practices, and now being forced by government, even though it may be a more local government than the state, forcing them to use old methods, inefficient methods. I'm speaking gravity irrigation, ineffective. Now, think about these when you're going through on this corner, you're going to have rows that are going to be from five to ten foot long to several hundred foot long on four corners that have to be irrigated that way. The farmer should have the choice to put that water through that pivot, or not use it at all. If they don't use it, it gives them the same benefit because it's not being a consumptive use. I think this is too heavy handed and that's why I brought this bill, and I'd be glad to answer any questions. [LB353]

SENATOR CARLSON: Okay. Questions of Senator Christensen? Yes, Senator Haar. [LB353]

SENATOR HAAR: Thank you. So as a farmer in this situation, why would you hang on to that water right? What's the benefit to you of not letting it go? [LB353]

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SENATOR CHRISTENSEN: Okay. I'm looking forward...thank you for the question because I wanted to bring that up. Okay. The next...originally we used ditch irrigation, we went to pipe irrigation, which was still gravity. Then we went to pivots. What's next? Drip tape seems to be the next technology. You forfeit these corners, irrigated base to it, now you decide to put drip tape in. Now, you can't put drip tape on them corners. Are they going to want to convert to drip tape? I've been around drip tape. I'll guarantee you, I can grow equal number of bushels or more, irrigate that whole quarter, 160 acres compared to 130 acres under that pivot, and use less total water, and raise the same crop. I've been around it. So, they are now limiting people if they give up these corners from the ability to go out and go to the newest technology that will save our natural resources, but yet produce the same amount per acre. The neatest thing about the drip tape is the fact you can apply just what you need, any size field, and you're putting it right in the root zone. There's not a more efficient way out there that I know of yet. Technology still being worked on, but it's been improved a bunch, and I see that as a reason why I would want to hold on to my rights, so I have the opportunity to go back to production on the whole quarter. And I can guarantee you, I can use no more water, do all 160 acres, I would on 130. I've seen guys doing it. [LB353]

SENATOR HAAR: So, this shows my lack of knowledge about irrigation. So the right is to the acres you can irrigate, not the amount of water. [LB353]

SENATOR CHRISTENSEN: Well, there's both. There...what I'm...my bill is dealing with is the certified irrigated acres. [LB353]

SENATOR HAAR: Gotcha. [LB353]

SENATOR CHRISTENSEN: And that's what they're trying to reduce because they need to for the Cooperative Agreement. I understand why they're doing it and they need to. But at the same time, the Lower NRD is having to do the same thing to get in compliance, and the Middle NRD, Upper NRD, the Middle NRDs have been doing a very aggressive job of going out and buying water rights. This Lincoln County farm project, they went out and bought a farm for sale. They went out and bought the rights. Now they retired the irrigation on it. They can either do that and quit, or now they're going to go ahead and use it as augmentation. There is a variety of tools available to them that I see isn't making it look like a heavy hand of government. Like I said, they said it right to me. Unfortunately, it's not Ron, or whoever might be speaking here today, but one of the lobbyists come right in my office says, this is what's going on. And they were very honest. There's not been a problem with honesty here in any of the groups I've dealt with. I didn't call Ron and visit with him, but hopefully we will after this. But I just want you guys to know what's going on, want you guys to make that decision, is this the policy that we want going on in the state of Nebraska? I don't think it's the right approach. Part of...something else I wanted to bring up. Probably in your fiscal note, you'll see this sheet of explanation of estimate. Let's go through a little of that. You go

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down in the bottom of the third paragraph, it says they could put back into irrigation, or transfer to another location, irrigation at anytime in the future. They're concerned that these acres could go back, as I said, with drip tape. I can tell you, I believe they can go back and use less water. But the transfer part of it can be handled very easy. We have a lot of rules in the Republican that prohibit transfer of irrigated acres. If they're on a field, they stay on a field, or some allow them to move only to the adjoining field. There's many of ways to handle part of the concerns that's listed here. You go on down a little further, next paragraph talking about the 4,687.5 acre feed of impact to the river will have...will be reserved for potentially irrigating acres instead of being freed up to offset new industry, commercial, or irrigated uses. Why do we want to take acres away from farmers for industry, commercial, and other irrigation uses? You guys can ask the questions, I can't. But is this other irrigation uses, is it, I'm going to get it from this person and give it to this person? I haven't had time to sit down and ask them that question, but I believe an industry coming in, or a commercial use, as they say in their next paragraph, new uses will have to buy offset water to offset their new impacts to the river. We do that in the Republican all the time. We have an ethanol plant at Cambridge. When it went in, it had to go buy irrigated rights to offset. I don't think that's out of line to ask them to do that. If somebody wants to voluntarily sell them their acres and they want to hold it for industry, I think it's great. But when we have a rule like we're talking about here, I think is heavy hand trying to get it for something, I don't know. So, anyway, I appreciate the questions and if there are more, be gladly open to address them.
[LB353]

SENATOR CARLSON: Okay. Any further questions? And you'll close? [LB353]

SENATOR CHRISTENSEN: Yes. [LB353]

SENATOR CARLSON: Okay. All right. How many proponents do we have who want to testify? Okay. Please come forward. Welcome. [LB353]

MIKE DOBESH: (Exhibit 5) Hello. My name is Mike Dobesh, M-i-k-e D-o-b-e-s-h. I'm from Wood River. I've just completed my first term serving as a board member for the Central Platte NRD. I farm 2,500 acres, but I'm testifying on behalf of myself today for the passage of LB353. We are living in an age we are not only recycling, but conserving energy, and natural resources. And since we are in a dry weather cycle, conserving water even where it's typically abundant couldn't be more important. As an example, there are cost-share programs for converting gravity irrigation to a pivot through the NRD as well as the NRCS. In fact, they even have a program where the NRCS will pay you not to irrigate pivot corners. On several of my fields, I have went from four irrigation wells and a reuse pit to one well that services a pivot, and the others were taken off electricity and run with a tractor for the corners, or eliminated altogether. But in the Central Platte, there is a rule that states you must irrigate all your certified acres two years out of ten. And I completely understand the need for such a rule for surface

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irrigation, as you can only put so much water in a ditch. And if you're not using your water, it's not fair to the others who would like water but have none left for them. Doesn't it seem to be hypocritical to give you money to reduce water and energy usage, then turn around and require you to actually purchase more gated pipe so you can irrigate the corners? And with the skyrocketing cost of underground pipe that one would have to trench to the corner, which is only seven acres in a straight pivot, or an acre and a half in a corner system, so much for reducing energy and labor. In an NRD meeting I asked for clarification on what constituted an irrigation. The reply was, if you lay out your pipe and irrigate twice. Well, in a dry year like this last one from aerial photographs, if you were only to irrigate two times, the corn would still have burned up and considered not irrigated by those same photographs, which led me to ask another question. Since we are more than two years into this at this point, we will be facing lawsuits from farmers who will swear that they irrigated those acres the first two years, and with only two irrigations required, won't it be very difficult to prove that they did or didn't? So my answer was, well, now the farmer must now provide proof with pictures, or we can have staff come to verify it on site. Imagine how many extra man hours that would take to go over tens of thousands of acres of photographs to determine if pivot corners were irrigated, or to have staff go on the site to see for themselves. Which still doesn't answer the original question I'd asked about the first two years where we did not require the farmer to provide proof of his irrigation. It's a waste of taxpayer money. Let's think about who are the winners and losers with this rule. If you don't irrigate by year eight, you have the option to either irrigate, sell the water to the water bank, or you can put the water in the NRD's water bank for another eight years. That sounds great except there is a fee for putting the water in the water bank, which is paid in water and not dollars. And think of the older farmers who haven't kept up with the rule changes, and the out-of-state landowners that may have not been informed by the tenant, not to mention those who have the attitude that he was told that once this was...your irrigated acres were certified, that it would always be. Granted, there is no excuse for ignorance, but when they get those registered letters about the potential loss of their water rights, there will be a shortage of lawyers like we have never seen. The NRD will gain acres without paying fair market value by default. Think of the thousands of acres in Central Platte that were converted from gravity to pivot irrigation, which I'm sure would be well over 1,000 pivots, with all those corners in the cross hairs just waiting not to be irrigated. The winner, the NRD. The loser, the farmer. But if we adopt LB353, the producer will not be forced to use a natural resource. He won't be forced to spend extra money for gated or underground pipe and energy costs associated with that, as well as less labor. The NRD will no longer have to keep track of irrigated acres on previously certified irrigated fields or spend time verifying those acres. The NRD will have to purchase property at fair market value in order to obtain those water offsets or resale, or to offer enough money to entice owners to sell their water. Winner, the taxpayer, the farmer, and the NRD. The cost for the water may be more, but the good image of the NRD will be maintained, and the NRD will be on the same level as everyone else, as it should be. There has been the argument that there will be those organizations like Nebraska

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Game and Parks, U.S. Fish and Wildlife Service, and others, who will cry foul. If all those irrigated acres are not irrigated, they could feel like they're not being used for a...towards a beneficial use. First of all, the farmers, if they don't want to use all that water that you could have, that is a beneficial use. And also when considering the great lengths that Central Platte, Ron Bishop and others at the NRD have went to to comply with the Platte River program and to get back to 1997 levels of development, it would be very difficult for me to believe that any agency would try that, as it would be a slap in the face as to what we have accomplished. Also, many other NRDs do not have such a rule, and no one has taken them to task for it. Recently, the Republican district has purchased land in order to retire those irrigated acres to help with the issues with Kansas, and to avert the need to shut down acres in the quick response area. There was no sleight of hand. They entered the marketplace, willing buyer, willing seller, as it should be to find a solution for their water shortfall. The NRDs are required to come up with offsets for cities and municipalities for a number of years yet. So with little interest in the water bank, pivot corners are a tempting target but not the moral one. The government's reach needs to get smaller, not bigger. LB353 resolves this issue and clears up any other misinterpretations that there could be in the future. With the \$7.50-plus corn price, any farmer in his right mind would irrigate every acre he can. But if it's not worth it to him at these price levels, why should he be forced to, especially if to him, it's not cost effective. It's my understanding that the association will oppose this bill and at Central Platte's last meeting there was no vote taken to support or oppose this bill. I asked Mike Clements, the general manager of the Lower Republican NRD, if he would be interested in testifying for this bill since we have spoken on a number of occasions about various issues concerning both of our NRDs. His reply was that he would, but he was going to call the board members first as they are to set the direction of any action taken by staff. He later called back to decline, that the board felt they had no rule like this one, therefore, they didn't have a dog in this fight, which I completely understood. Isn't that the way things are supposed to work, a government for and by the people? That's why we're here today to plead our case before you, our public servants, who do their best to represent their constituents, and make sense out of situations that make no sense. I contacted several area farmers about today's testimony opportunity, and sadly, several had no idea about the two out of ten rule. They are good, successful farmers that are law abiding, they try to be abreast of all the regulations, but little do they know that they are the very targets of this rule. Thank you for your time and considerations on this issue. [LB353]

SENATOR CARLSON: Okay. [LB353]

MIKE DOBESH: I have one little thing to add. There's also something else new that's coming in besides drip tape. That one of our board members from the NRD is going to try an experiment with...it's sort of like tile draining, but it's in reverse where you flood it instead of trying to drain it that might actually work better than drip tape. So I'll close with that. And then I also gave you all a sort of little diagram about...it sort of exemplifies

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what Mark was talking about, various field that's irrigated traditionally, and then with a pivot, and then you would be required to purchase the extra pipe or underground pipe to get to the corners. [LB353]

SENATOR CARLSON: Okay. All right. Thank you, Mike. Any questions of Mr. Dobesh? Well, I see none. Oh, yes, Senator Brasch. [LB353]

SENATOR BRASCH: Thank you, Chairman and thank you, Mr. Dobesh, for your very thorough and well-said testimony today. I appreciate hearing this and I do understand that the farmer knows firsthand, boots on the ground, the condition of their crops, their water, and have lifelong, multigenerational, vested interest in a successful crop. I'm hearing about different types of irrigation and the need to protect those rights. Also, I've learned after the flooding along the Missouri River, we went back this year and looked at different plot test fields, and there are many different hybrids of corn and soybeans and other crops that are constantly under development. So that would also be important for the farmer to have the liberty to irrigate more or less according to the seed they purchase? [LB353]

MIKE DOBESH: Absolutely. [LB353]

SENATOR BRASCH: And so this...so without the right to self-regulate water to a degree, then they would be forced to apply water to perhaps a seed that truly didn't need it, or your thoughts. [LB353]

MIKE DOBESH: Well, I can tell you I had one pivot that I have, that the lower corners, unless you run a half-mile of pipe, can't be watered. Now, when I went to pick them, the corn was green, there was no ears. So, this last year was a classic example, you got out of it what you put into it. And I have another field that I recently rented this last year. It's funny, you'd think by Grand Island we're brimming with water. Well, there's certain areas where there's a lot of clay, not a lot of sand. It's not that the water isn't there, it doesn't flow very fast. So it took us three weeks from when we first started to gravity irrigate that field before we finally got across it every other row. Granted, I had the type of corn you're talking about, but it still needed watered and I believe I had 207 bushel average, but without that type of corn, I would have had zero. So we still need, even in Grand Island, we'd still need irrigation. [LB353]

SENATOR BRASCH: Sure. Absolutely. [LB353]

MIKE DOBESH: And my worry is, let's just say you have a number of corners that you can't irrigate, or don't care to, okay, if you end up in 16 years having to...forced to sell it, how do you get that back? When you go to, let's say, God forbid, you don't want to hand it down to somebody, you just want to sell it. Now, you've got these corners. That's not going to make it as attractive and as profitable as if you would have left it continuously

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irrigated. [LB353]

SENATOR BRASCH: Very good. I appreciate your testimony today. Thank you. [LB353]

MIKE DOBESH: And I also, one last closing thing to all of you. There's a few people on the NRD board. I'm no longer on it. I missed the filing deadline for a number of reasons. But at any rate, there are some that share my opinion, there are some that doesn't. I respect their opinion, but I can say we can agree to disagree. [LB353]

SENATOR BRASCH: Very good. Thank you. [LB353]

SENATOR CARLSON: Okay. Thank you. Any further questions? Seeing none, thank you for your testimony, Mike. [LB353]

MIKE DOBESH: Thank you. [LB353]

SENATOR CARLSON: Any other proponent? Welcome. [LB353]

RON WOITASZEWSKI: Welcome. Thank you. Ron Woitaszewski, R-o-n W-o-i-t-a-s-z-e-w-s-k-i. Okay, I guess, who I am or what I am, I'm a neighbor from Grand Island. What do I do? I'm a farmer, a landowner, a land developer. I'm also a licensed well driller, pump installer in the state of Nebraska. The last 15 years I've been putting up pivot systems, trenching, etcetera. I've done a lot of work in Kansas and Texas with pivot systems and I've seen how that works down there. With that said, my neighbors when they put grass or hay on my neighbor's property, which is grow crop, gravity irrigated, when they put hay on it, they don't irrigate it with pipe. It's too much work, it's too much trouble. They just leave it dry, generally. But when they go back to row crop, they will irrigate it. The two out of ten rule could catch them off guard. As I've said, I'm a licensed well driller. I understand a lot of water laws a lot of people do not know. I talk to a lot of farmers and water rights laws come up. These are good farmers, but they generally have no clue about water laws and rules. The NRD will tell you how many owners still didn't have their wells registered in the last 15 years and that was supposed to have been done a long time ago. These people tell me things they believe are true and I just shake my head. They don't know, they don't understand. Trying to keep up with all these water rules and run a farm, they are not. Now take old landowners, out-of-state landowners, and scattered family landowners from all over the place, and make them understand these rules and act on them is a burden they don't need. These people believed their farm is and always will be irrigated. If they don't keep checking a tenant's practices, they could lose their water. They say you have a chance to water bank it. Yes, if it all gets done. But you lose a minimum of 5 percent and if you water, and maybe 15 percent. And selling your water to the NRD doesn't get you near the loss in land values. I just checked with the NRD. We have some ground up by Kearney. It's one of the highest water bank values, that's a 76. The total value, if you took all the

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water and cashed it in, is like \$3,280. That's the highest number you could find, I think, in the valley almost. It's not an economical really viable practice. I know of a lady by Ravenna that let her relatives farm her ground. It was irrigated with water wells. They didn't want to bother irrigating it, her relatives of this old lady. The old lady didn't press the issue and bother irrigating it. Now the ground is dryland. The irrigation pumps can still be seen from the highway, but because of a rule to register them and certify acres she didn't do, they are worthless. And the land is probably worth half of what it should be. I'm sure that the NRD sent her letters. We got the same letters that we had to register ours and we did it. This old lady just ignored them and now it's dryland. And you can still see the pumps from the road. It was all irrigated. You can still see some of the irrigation system sitting there. It's a case where the relatives just didn't feel it was...it was too much trouble to irrigate it. She lost half of her land values because she didn't press the issue and this could happen...and now we're talking not about whole farms, but little areas, and you're talking about landowners from out of state and family members. Even when the normal farmers that actively farm it, what I talk to, don't understand the rules and I just shake my head. They think they know them, they don't. It's another confusion and a burden. This law is good. No one should have to constantly guard your property values. If someone said you haven't used your house, your garage, your factory, or whatever, so we are taking it. They would say, you have no right to take my property, you're stealing it. That's what could happen. You got...even the best of farmers that I talk to, you know, I say, I'm probably more educated in that because I'm a well driller, pump installer. I've worked with pivots, I've talked to farmers in Kansas and Texas for years. They had a rule in Kansas that you had to pump every well every year to certify it and the farmer finally said, they just give it up. It was a wasted effort. He said, you'd go out and pump wells that weren't effective. They just said, just use whatever water you want. It was a rule that was a burdensome waste of effort. It was one of the Kansas rules. But I think this is just a burden that's put on, and a lot of absentee landowners are very...would be very confused. These people up there, her nephews didn't want to bother irrigating and they just let it go. She lost her rights. I'm sure the NRD of the Lower Loup did all they could to send her letters, but she didn't comply. And this could happen over and over again. And I think when you own something you shouldn't have to be guarding your back all the time. Thank you for your time. [LB353]

SENATOR CARLSON: Okay. All right. Thank you, Ron, for your testimony. Do we have questions of the committee? I'm going to ask you a couple. You mentioned early, wells not registered. Expound on that a little bit, wells that are supposed to be registered that aren't. [LB353]

RON WOITASZEWSKI: When they had to certify the acres, they were closing off acres that had to be certified. Perhaps the NRD can tell you, but it was like in 2006, I believe. The NRDs went around to say they had to establish a base line of how many acres were irrigated for this whole thing to start with. Well, first off, you had to register your

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wells. As a licensed well driller, you're supposed to register those wells. It's mandatory now that you do that. But in the past, things didn't get done. You'd be surprised at the number of wells that still weren't even registered. I found one a couple of years ago that still hadn't gotten properly registered and misregistered, registered on the wrong quarter section. Just errors, mistakes. And now the NRD was very vigilant. You know, letters year after year and they finally got all this stuff accomplished, but it took years, I believe, to get everything corrected. Like I say, some were registered in the wrong place. Some of the landowners thought it was registered. I said it's not registered. Your well is not registered, do you understand that? And they just, what? And, again, I shake my head like, that's not a registered well. If you don't have a registered well and certified acres, your farm...and they believed the whole time it was registered and irrigated and if the paperwork not being done, it could be a disaster. A lot of them got corrected. I'm sure most of them did, but it was just paperwork. And the NRD had to establish a base line of irrigated acres. That's what they were doing in this instance, but now you go to another level and say, did you use it? No. Oh, dear. You get into a grass hay rotation they don't irrigate it. It doesn't seem effective. And that's their management choice. Now you rent it out and the owners think, well, it's irrigated and they go, no, you didn't irrigate it. It's been grass ten years. It's too late, sorry. Didn't you get the letters? What letters? Well, I gave them to my brother-in-law. He's out of...well, you could see the messes that can start. It's just an undue burden that they don't need, I don't believe. [LB353]

SENATOR CARLSON: Okay. All right. Thank you. Any further questions? Senator Haar. [LB353]

SENATOR HAAR: Yes. Well, thanks for coming and testifying. Somewhere there's a balance between...let's say, the NRD educating people and people taking responsibility to be educated. Where do you think that is? I mean, there's also a part of, we all have to take responsibility for knowing the law. When I just got my driver's license I got a speeding ticket and tried to plead ignorance. (Laugh) That sort of thing. [LB353]

RON WOITASZEWSKI: Yes, I understand that, but there again, I guess I'd compare this to if you have a house with a garage and you have a woodshed out back and you didn't put wood in it and they said, you didn't put wood in your shed for ten years, you can't use it. Wait a minute, I...well, you plead ignorance. You would think that if you own a piece of ground and it was irrigated, you don't have to keep proving every time, every time, over, over again that it's still irrigated. I mean, you're making a choice whether to irrigate it, and yes, the drip tape, I've put some in. I've tried it. I've put up pivots. There's a lot of things. Just because you don't use it, the right to take it, isn't that stealing? I don't see the correlation that it's not just stealing. Yeah, the letters can come out and like I said, I've seen this case at Ravenna and I drive by it and the pumps are still sticking out of the ground. It was just an old lady, she was perhaps confused. Maybe her nephews were too lazy to bother doing it. The...her values tumbled. It's just...I don't know. I mean, how much do you have to prove? I don't think it's right. That was their

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ground. It was legally irrigated. It was legally classified as irrigated. How can they unclassify it just because they said you didn't use it enough? I think that's wrong. [LB353]

SENATOR HAAR: Thank you. [LB353]

RON WOITASZEWSKI: Did I answer your question? [LB353]

SENATOR HAAR: Yeah, yeah. [LB353]

SENATOR CARLSON: Okay. Any other questions? Senator Brasch. [LB353]

SENATOR BRASCH: Thank you, Mr. Chairman and thank you. I'm going to try to say your... [LB353]

RON WOITASZEWSKI: Woitaszewski. [LB353]

SENATOR BRASCH: ...Woitaszewski? Thank you, Mr. Woitaszewski, for your testimony. I'm curious, how long have you farmed? Are you...? [LB353]

RON WOITASZEWSKI: I have farmed 34 years, I believe. [LB353]

SENATOR BRASCH: And are you first generation? [LB353]

RON WOITASZEWSKI: My father was a farmer and me and my three other brothers originally started farming. We started from zero and we ended up with 8,000 acres of last count. [LB353]

SENATOR BRASCH: That's wonderful. Have you...have you or your family experienced a drought over multiple generations? [LB353]

RON WOITASZEWSKI: My father wasn't a very big farmer, so I've heard about the '50s. I've heard about the '80s or the '70s, and this last year was just one of disbelief. I mean, you could irrigate and that's another point. There were places where we had corners, we had pipes strung out and you were trying to use the pivot well, you know, as has been described. It just became apparent that the most economical use was to put the water through the pivot and forget the corners for that moment. It wasn't a very good return. It wasn't paying off. There's times when you just pull your water in and use it where it produces the most return. I started putting pivots up. I got the Central Platte NRD interested in cost-sharing pivots way back 15 years ago, thinking it's a much more economical...it doesn't push nitrates down. It's a uniform way to irrigate and over the course those around Grand Island, Central Platte, pivots have taken over because economics said it was a good thing and they did it. And in the corners, even though this

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year we might have tried to irrigate them, you give up. There wasn't enough water to go around. You put the water in the most practical use, but next year if there's more water, you'll certainly go back to irrigating them. So, you need to play it, what's the most economical and most return. And did I answer the question? [LB353]

SENATOR BRASCH: You did and very good. The reason I asked is, my next question was, I represent District 16 which is Cuming County, Burt, and Washington, and many of my constituents contact our office with concerns about too much regulations. And so I'm just curious, in your 15 years, or have...you know, regulations are, I agree, to a degree to protect us but at some point in agriculture perhaps we need to revisit. [LB353]

RON WOITASZEWSKI: I'll give you an example. I worked in Texas and Kansas a lot. We picked up wrecked center pivots for 15 years and rebuilt them and sold them and put them on our properties because we wanted to go jump to the future in more efficient systems. I came back, was having a beer in a local tavern, and I told a fellow, you need to make sure you go back and irrigate those little pieces of ground that you've quit irrigating because your high school kids have left. He told me, you're full of baloney. And I said, I've been to Texas and Kansas. I've seen the future and you guys aren't going to like it. And they laughed at me. They laughed me out of the bar. I said, whatever. And it was true. The next year, I believe it was '06 that they limited the water, and these guys were looking at me shaking their head and I said, I've seen Texas and Kansas and New Mexico, you have to be efficient and the pivot is the most efficient way to water. The drip tape, I think, is coming along and other things, but just always the rules. Just...I worked in Cuming County. It's a very livestock. They raise a lot of cattle up there. They know what they're doing. They're very aggressive. You give farmers the right to go farm and they'll raise a lot of stuff, and they'll raise it the most economically. That's why pivots took over and gravity is dying because it's not economical. But to force someone to do an uneconomical practice just to maintain their right, doesn't seem to make any sense. And the drip tape probably will come in and take care of those corners and I've seen whole pivots come down. I've heard of whole pivots coming down and they've put the whole quarter back to drip tape. They took a pivot down, so. You know, limiting your rights and saying you can't do it now because you haven't done it for a couple of years, I think is crippling and I don't think any other industry would put up with that. If a factory gets shut down for a couple of years, they can't say you can't reuse it with exception of certain, you know, rules for electrical service, you know, things like that. But I don't... [LB353]

SENATOR BRASCH: Very good. I appreciate your testimony. [LB353]

SENATOR CARLSON: Okay. Thank you. Any other questions? Yes, Senator Smith. [LB353]

SENATOR SMITH: Thank you, Mr. Chair. Mr. Woitaszewski, thank you for coming and

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testifying, and I'm learning quite a bit here about the plight of the farmers in using water to irrigate their properties. It seems to me that at the very minimum before someone's property, the status of their property can be changed, that there should at least be some communication with that landowner to ensure that they understand what the rules are. And, but from your experience, the correspondence with property owners is always by letter and that they are just expected to understand what the rules of the use of that property is. And so the change in status of their property takes place, and you're right. I mean, if you're not up to date with the rules, if different generations don't follow those things as closely, they assume that the property is theirs and they can continue to use it, there's just that lack of personal communication from the local regulatory bodies in explaining. Do you see that? [LB353]

RON WOITASZEWSKI: Yes. If I might reiterate another thing. I didn't go this year, but at the well drillers convention...the conventions are in Lincoln, but they have a conference in Kearney about every year. And the one year they were there and this whole room is full of licensed well drillers, plumbers, and city municipality people and stuff, in which I go to, I'm a licensed well driller and I've got to keep my license up. Even the well drillers, I...there was a representative talking about the Central, the Platte, and the water recharge and some...I was just fascinated as a farmer, a land developer, a well driller, and I was aghast at the number of well drillers that were sitting in the back reading the paper and talking to their neighbor. And I thought, this is your livelihood. This is your whole thing. And I was just aghast that they weren't even paying attention. I think I probably knew more about that than most of the well drillers and the farmers and that's why I know it. But I keep up for a reason. I have a vested interest in...you know, all that, and I have to. We are a far larger farmer than average. We got there because we know the rules, but there's a lot of people...and these were well drillers and I was just surprised that most of them didn't pay much attention and I thought, this is your whole livelihood right here. And they weren't...those are the people who are professionals. They should have been front and center listening and I didn't think they were paying much attention. Those are professionals. So how is the average out-of-state grandma going to understand this and get that letter back when it should, or just ignore it, or forget it. This lady at Ravenna, she just ignored it. I know they at Lower Loup sent letters, I know that. But it didn't happen and how could...I think you're going to have a lot of problems and people are going to forfeit their rights and values because they don't keep up and don't understand. [LB353]

SENATOR SMITH: Again, thank you for your testimony. [LB353]

SENATOR CARLSON: Okay. Thank you. Any other questions? Seeing none, Ron, thank you for your testimony. [LB353]

RON WOITASZEWSKI: Thank you for your time. [LB353]

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SENATOR CARLSON: (Exhibit 6) Any further proponents? All right. We do have a letter of support from Arnie Hinkson of Wood River and that will be read into the record as a proponent. All right. Opponents? Welcome, Ron. [LB353]

RON BISHOP: (Exhibit 7) Welcome. Thank you. Mr. Chairman and members of the Natural Resources Committee, my name is Ron Bishop, R-o-n B-i-s-h-o-p, and I'm general manager for the Central Platte Natural Resources District, and this bill is about us. It was written because of a rule that we have. To start out with, in addition to testimony that is being handed out, I'd like to go back and review a little bit because some of the comments. In the state of Nebraska, unlike the state of Texas where the overlying landowner owns the water underneath, in the state of Nebraska service water and groundwater are dedicated to the public. They're owned by the state and people get a right to use that water, either by an application to divert it out of the stream, or application to drill a well and put the water to beneficial use. So it's a little different and so in whether you're taking a surface water right away or whether you're limiting a groundwater use, it's not like taking their property, taking their house, because in the state of Nebraska that water, that house doesn't belong to the individual landowner, it belongs to the state of Nebraska. And we have a right to use it if we follow certain procedures and put it to a beneficial use. So it is a little different here than it is in Texas. What I want to talk to you today about is, first of all, why we had that rule. We developed that rule because we saw pieces of ground laying idle and not being used and we can remember when there was thousands of acres of land developed up in the Sandhills 25 years ago. Many of those acres are now back to grass where they always should have been. Had we had LB353 on the books when that was developed, those lands would still be certified as irrigated lands. And yet, they haven't been for 25 or 30 years. We have across our district about a million acres of irrigated land. Some of it was surface water, most of it with groundwater. That area since LB962 was passed has been declared fully appropriated or in the case of Dawson County, overappropriated across the district. It was designated as fully or overappropriated by the state, Department of Natural Resources. Along with that designation came a ban on new wells, and a ban on expansion of irrigated acres, and a ban on new uses of groundwater and surface water that would impact the Platte River. The only exception to those bans are is if you offset whatever that depletion is to the river in like kind in the same amount of water, at the same location, at the same time that the depletion would have occurred. So anything we do out there we have to offset new uses. If an irrigator wants to put on a center pivot and he needs to expand his irrigated acres by four or five acres, that has to be offset. That impact, that four or five acres to the Platte River has to be offset in like amount of water and in the same location. Well, we also had to then go in and certify all the irrigated acres in order to develop a base because the law said, when the state designated, no new irrigated acres unless you offset. Well, you don't know whether you're going to have new irrigated acres or not if you don't have some kind of a base. So we established a base by going out and certifying. Many of the districts did, especially those west of us that were also designated as fully or overappropriated, and

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each of them had just a little different criteria. Our criteria was that if you had irrigated two out of the last ten years, we would certify it as irrigated acres. Even though that might have been eight years ago and nine years ago, we'd still certify it as irrigated acres and it would count as certified irrigated acres. Another way that you could get it certified was that maybe you hadn't irrigated in the last ten years but it was in the CRP program, a program that retires irrigated acres for a ten or fifteen year period. If you could show that it was in the CRP program and you had irrigated before that contract was signed, we counted that as certified irrigated acres. Another way, maybe you hadn't irrigated it in the last nine years because it was in alfalfa, but you were in a subirrigated alfalfa area. If you could show us that you had irrigated it prior to seeding it to alfalfa, again, it was classified as irrigated acres. And so we established our base and that base, then, is the basis for a ban on any new irrigated acres unless you offset. So every acre that we developed since then that a farmer wants to develop, he's got to offset by going out and acquiring water either from our water bank or from one of his other fields or from one of his neighbor's water, retire water use to offset that new use that he's got. The same is true for the municipalities and the same is true for the industries in the area. The natural resources districts, by the way, because of LB962, have to offset those new municipal uses and those new commercial and industrial uses unless it's a great big one like an ethanol plant. If it's more than 25 million gallons of water a year consumption, they're required to offset it. We have developed that base, but since we developed that base we've had close to 4,000 new center pivots. Four thousand center pivots, each one with four corners, most of which used to be irrigated are now dry. Well, some of the fellows want to put...there's probably been some of this tape put out. There have been some corner pivots, corner arms put out on some of it, but a lot of them aren't irrigated and haven't been irrigated since the pivot went up. I would guess that probably at least half as a conservative estimate, at least half of those corners--those probably somewhere around 1,500 corners--have not been irrigated since the pivot went up. Of those corners, probably half of them never will be. So there's probably at least five acres out of every pivot that's gone up, out of those fields where the pivots went up, there's probably at least five acres of land that will never be irrigated. If they're not irrigated, we let them sell it to a neighbor, we let them move it to another field, we let them...we'll buy it and put it in the water bank. If they put on a corner system on their center pivot and irrigate it, that's fine. If they put on tape and irrigate it through tape, that's fine. If they want to run pipe down there and flood irrigate it like they did before the center pivot went up, that's fine too. It's their choice, whatever they want. So they have a number of options how to handle that acres that they're not...no longer irrigating. But we end up with...and we estimate that we're probably going to have 1,500 to...or 15,000 to 20,000 acres that are not going to be irrigated. They're not going to use them. They're not going to transfer them and they're not going to put on corner systems. There's quite a few of them that we already have and every year we add more center pivots, and so that number is going to grow and grow and grow over time. Well, if the bill is passed and we can never take those irrigated acres off the role, it's going to be like those acres up in the Sandhills that are no longer irrigated, but we can't use that water because they

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may be, there may be something comes along in 30 years or 40 years and that individual wants to transfer the water or use it some way, put it to a beneficial use of some type. And so we've got to preserve his right to do that. So every new acre that a farmer wants to add out there, we've got to make him go and buy those acres to offset the depletion to the river, where the depletion is already there because we have hundreds of farmers that have put up center pivots and dried up corners. And at least one out of four of those corners on the average is not going to be...is not going to be irrigated. So we put the water in the river, but we can't take advantage of it. We have to charge that farmer to go out and get new water to dry up some acres somewhere to get water when the center pivot program has, in effect, already dried them up, but we can't take advantage of them if they stay on the books, stay as certified irrigated lands. We're estimating that of those center pivots that have already gone in, the impact, the long-term impact on the river is going to be four to five thousand acre feet of water, four to five thousand acre feet of water per year. If new producers that want to add irrigated acres can't utilize that stuff that's already in the river, and will probably never be used, but have to instead go out and buy, that's going to cost them somewhere between thirty-five and forty million dollars because the going rate for water right now in our district is \$8,000 an acre foot of water to the river. That's what we're paying. That's what we're willing to pay, and we haven't bought a lot even at that price. So the value might be even higher than that. But however you cut it, the most conservative estimate is thirty-five to forty million dollars to offset what in effect has already been offset by farmers drying up corners. It just doesn't seem to be a very practical way to utilize our water resources, our state's water resources. It seems to be an unnecessary cost to new irrigators, an unnecessary cost to new industry, an unnecessary cost to municipalities as they expand their populations. We think we've been reasonably fair with those irrigators in that we give them eight years. We require them to irrigate two out of ten, so they can go eight years without irrigating it and they don't lose anything. After the eight years, if they're not going to irrigate it, or not going to transfer it, or not going to sell it in the next two years but want to hang on to it some more, we let them put it in a water bank for another eight years, and it sits there and we protect it for them. But after 16 years, if they haven't used it, haven't put it to a beneficiary use, then we say, we're not going to continue to certify those acres as irrigated, not going to continue to certify the beneficial use of that groundwater that had been applied to the irrigated acres. So that's where we get to the problem. We've tried to be as fair as possible with the irrigators. We put out and have an extensive program as we get closer to the end of the first eight years of notifying the landowners through newspapers, through radio, and through letters to make sure that they're all aware of it. But they need to, in those last two years, they need to either irrigate it and put it to a beneficial use, or transfer it somewhere, or sell it to someone, or put it in our water bank. But you can lead a horse to water but you can't make him drink. We can get the information out there but we can't make them read it. But we're dedicated to doing our best to make sure that everybody is informed of the two out of ten rule, and the options that they have available if they don't use it, don't irrigate with it, in eight years. It's like surface water. Some of you may be

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acquainted with some of the surface water rights. You get...surface water belongs to the state too and you get a right to use it by getting an appropriation from the state. If you don't use that water for five years, don't put it to a beneficial use, it's subject to cancellation. With the new laws that were passed with LB962, there is an opportunity to extend that, in some cases, up to 15 years of nonuse and still maintain that water right. But the general rule is, you have to use it at least once every five years, or you lose that right to use the state's water. Well, in our case of groundwater in our district, you need to use it at least once out of 16 years, or transfer it, or sell it, or whatever. You have to make a use of it. And so we think it's compatible with, maybe a little more lenient than surface water rights, but it's compatible with the state's other water being surface water. [LB353]

SENATOR CARLSON: Okay. [LB353]

RON BISHOP: I think that completes...I thank you for your time. [LB353]

SENATOR CARLSON: All right. Thank you, Ron. Questions of the committee? Senator Brasch. [LB353]

SENATOR BRASCH: Thank you, Mr. Chairman, and thank you, Mr. Bishop, for your testimony. [LB353]

RON BISHOP: Yes. [LB353]

SENATOR BRASCH: Very thorough. I'm just curious, have one question. When you quoted and I think it's written here, you're estimating, is it 18,750 acres of... [LB353]

RON BISHOP: Of land that was irrigated at one time. [LB353]

SENATOR BRASCH: That is not. [LB353]

RON BISHOP: But not only is not now, but we estimate won't be irrigated in the future. [LB353]

SENATOR BRASCH: So, are they paying property tax as irrigated land or as dryland on? Would that be \$18,000 less dollars back to the counties then, or...? [LB353]

RON BISHOP: Right now, right now they are...there's both. [LB353]

SENATOR BRASCH: There's both. Okay. [LB353]

RON BISHOP: Some are paying irrigated taxes, some are not. Some have gone into the courthouse and saying, well, I've put up a center pivot and I'm not irrigating seven

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acres times four, or 28 acres out of that corner section, and so I want you to take me off the role. The common thing, though, is that if we certify it, we provide that information to the county assessor. And the county assessors for the most part are following our certification. If we certify it, they certify it as irrigated and they're charged for irrigated taxes. That's the common condition. [LB353]

SENATOR BRASCH: And if they give up that pivot then, you send a notice that it's now dryland... [LB353]

RON BISHOP: Yes. [LB353]

SENATOR BRASCH: ...and they'd be taxed accordingly. [LB353]

RON BISHOP: For example, if they went the 16 years and we no longer certified it as irrigated, we'd notify the county assessor and they would be assessed then dryland taxes, yes. [LB353]

SENATOR BRASCH: Okay. Very good. I have no other questions. [LB353]

SENATOR CARLSON: Okay. Thank you. Senator Schilz. [LB353]

SENATOR SCHILZ: Thank you, Senator Carlson. Ron, good afternoon. How are you doing? [LB353]

RON BISHOP: Good. [LB353]

SENATOR SCHILZ: First off. I mean, this rule just didn't come about, you know, as you were sitting there thinking one day in the office. Was this part of your IMP process that you went through to come with the rules for...? [LB353]

RON BISHOP: It's part of the overall Integrated Management Plan, and NIMP program, yes. [LB353]

SENATOR SCHILZ: So this would have been discussed, possibly, by all the stakeholders that were involved in that negotiation, or did this come about through board action? [LB353]

RON BISHOP: This came about really as board action. I can't honestly say, Senator, whether it was discussed in detail with the stakeholders, but it was...it's been discussed off and on for several years now among our NRD. And it's just more or less a continuation of the original certification process that we went through where we required two out of ten. [LB353]

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SENATOR SCHILZ: All right. Okay. And then, one other question I have is, you know, we're kind of on the clock, or we're really on the clock in the Platte Basin with the three state agreement. What...you know, we have to get back to 1997 levels by a certain date. Do you know...what is that date today and then, what are the consequences if we don't get back to that? [LB353]

RON BISHOP: Well, the...we have to get back there by, I think it's 2019, if my recollection is correct, Senator. Two thousand and nineteen we're required to be back there. If we don't, then there's problems for the state of Nebraska because you have signed on with the other states to an agreement that says we will be back to that level by 2019, back to the '97 level. It also says that after 2019, then we'll do additional things too. But back to '97 is the minimum time to get back to '97 levels is 2019. [LB353]

SENATOR SCHILZ: In your experience, looking at other areas where these kind of actions have taken place where the feds become involved and things like that...well, just look at Texas and what's happened there. If you don't come into compliance, usually it ends up in a majority, or it could end up, and you can correct me if I'm mistaken here, it could end up in massive regulations, massive reductions, and the ability to irrigate for all users. [LB353]

RON BISHOP: Well, there's always that threat there and certainly when you get U.S. Fish and Wildlife Service and threatened and endangered species, there's not only a threat there, there's a lot of power in the Endangered Species Act and so, we want to keep it in Nebraska's hands and in the local NRDs' hands and not abdicate any authority over to the federal government, whatever branch it might be. [LB353]

SENATOR SCHILZ: Thank you. Appreciate that. [LB353]

SENATOR CARLSON: Senator Haar. [LB353]

SENATOR HAAR: Oh, where's the King Solomon when we need him? (Laughter)
[LB353]

RON BISHOP: Yeah. [LB353]

SENATOR HAAR: I understand the need to be able to retire for...I mean, otherwise we stay frozen in time, but I also hear that technology might allow us to use that land in a better way, for example, with drip tape. Is there any way to allow for, you know, this...these corner pieces to go back if it can be demonstrated that the piece of property uses less water? [LB353]

RON BISHOP: Yes, there is. [LB353]

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SENATOR HAAR: Tell me about that. [LB353]

RON BISHOP: An example would be an individual who puts on a center pivot and he irrigates two of the corners but doesn't irrigate the other two corners. And he goes eight years and then he deposits those two corners, the 14 acres, in our water bank, or the water value in our water bank, and it comes to the end of another eight years, and he decides to sell that water right to...or that water use to the natural resources district and we make it available, then, to other producers, whatever it might. And then it goes along another ten years and he decides that maybe that tape is the answer and he wants to do it not only on those two acres that are currently irrigated where he's got those short and long rows, but he wants to do it on the bottom two corners too. He'd come to the natural resources district and acquire enough water to recertify those two acres and go ahead and put in the tape on the four corners and go back to irrigation. He's dried it up by selling us the water off of it, but he can come to us and buy it back and go ahead and...go ahead and irrigate them then 30 years from now or 40 years from now. But in the meantime, we freed up that water and made use of that water during the 30 years for other activities, whether it's a new ethanol plant, or a new industry, a new manufacturing industry, or a growth in town of population, or more irrigated acres. We've made use of that water in the meantime. [LB353]

SENATOR HAAR: How do you know if they haven't used it for two of the ten years? [LB353]

RON BISHOP: We have developed technology where we can take low-level infrared photography and we fly our district every year and we usually do it late October or early September when any stressed crop is going to be the most stressed. We can tell the difference between well-irrigated stuff and stuff that hasn't been irrigated. And we use that low-level infrared photography and the color spectrums to distinguish between irrigated and nonirrigated land. There has to be some personal ability tied into that too. For example, sometimes a irrigated alfalfa field had just been mowed just before we flew it. Part of that field might show up as dryland because it was the mowed part of the field. And so, if you see a center pivot running around there and you see a strip or part of that center pivot with irrigation wheel tracks, but it looks like it's dryland, and the color indicates that it's alfalfa, you pretty well know that it...the flight was taken at about the time he was putting up alfalfa. [LB353]

SENATOR HAAR: So it takes some interpretation, right? [LB353]

RON BISHOP: Yes. [LB353]

SENATOR HAAR: So when you allocate water, is it by the acres that are irrigated or the amount of water that's used? [LB353]

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RON BISHOP: When we certified acres? [LB353]

SENATOR HAAR: Yeah. [LB353]

RON BISHOP: We certify our irrigated acres and we don't allocate water. [LB353]

SENATOR HAAR: Okay. [LB353]

RON BISHOP: We certify irrigated acres and that gives him a right to use his well to irrigate those acres. Whether it's wheat or corn or soybeans or whatever the crop might be, he has a right to irrigate those acres. When we determine the amount of offset that has to be made, if somebody wants to do something new, we look at what that use is and how far it is from the river and through a detailed hydrologic groundwater model, we determine what kind of an impact raising corn or raising wheat will have on the Platte River. And it's the impact to the river that has to be offset, so we determine that in acre feet of water per year on the average over a 50-year period and that's what has to be offset. So a piece close to the river is going to have more acre feet of impact in 50 years to the river than something back 8 or 10, 12 miles. And so each section of land will have just a slightly different impact on the river and so a slightly different offset is required in order for him to be able to do whatever he wants to do, whether it's industry or raising corn. [LB353]

SENATOR HAAR: And then coming back, though, and I understand how somebody could come back and basically buy the water rights back for those corners, but if they can demonstrate that they're using less water with this new technology, there's...they can't just go back without buying those acres back, is that correct? [LB353]

RON BISHOP: That's correct. [LB353]

SENATOR HAAR: Is there any way to that, because in a way, that would make sense to me. If they're going to use less water for this whole plot than they did before and you're making better use of the land, why wouldn't you...why wouldn't you go ahead with that? [LB353]

RON BISHOP: Well, everything we do is based on consumptive use and so the consumptive use is different depending upon how you irrigate it for each crop. Take corn, for example. Everybody talks about center pivot being more efficient. Center pivot is more efficient on energy and it's more efficient on taking care of nutrients that are applied through the center pivot system, but not necessarily more efficient on water consumption because the old center pivots with the high pressure systems, there was more water consumed in them than there was in furrow irrigation where you flooded the field because it was spraying water... [LB353]

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SENATOR HAAR: Sure. [LB353]

RON BISHOP: ...up into the air and there's more evaporation. As we advanced in technology for center pivots, we started getting the lower pressure nozzles that started dropping it down closer to the field, the overall consumption started to drop because that was from the evaporation savings that we had on those crops. And if you get into some of this tape, there's even less evaporation because you're putting it all...planting it all underground. And so it's the next step in efficiency and reducing the consumptive use because you're, in effect, almost eliminating evaporation. [LB353]

SENATOR HAAR: Well, in the plans as you go ahead, let's say that the drip tape really becomes very popular replacing center pivots, would that allow you to expand the number of acres, then, that could be irrigated? [LB353]

RON BISHOP: There would be the potential for that and we do have in our groundwater quality program that is set up just for the sake of controlling declines in groundwater, we do have a feature in there that distinguishes how many acres can be irrigated and it varies depending upon how much water is consumed. So as you reduce consumption, you can increase the acres. And so there's always the potential of incorporating that into this Integrated Management Plan and the impacts...measuring the impacts on the river. There's always that potential. [LB353]

SENATOR HAAR: So it gives the NRD that potential but not the individual irrigator. The individual irrigator would have to go to... [LB353]

RON BISHOP: Well, if the individual irrigator went to that system and there were several of them, the NRD could adopt a rule where you would just...or you had a factor for being able to increase the acres that are certified or irrigated if you went to a certain type system that was more efficient as far as water consumption. [LB353]

SENATOR HAAR: And perhaps, that... [LB353]

RON BISHOP: That would help the irrigator. [LB353]

SENATOR HAAR: But right now that could only be done if the landowner buys more water rights. But is there... [LB353]

RON BISHOP: Right now, yes. [LB353]

SENATOR HAAR: Yeah, but there... [LB353]

RON BISHOP: But we could change the rule so that later one if it could be shown that it reduced the average acre of consumption from say eight inches down to six inches, a

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25 percent reduction, there's a potential, then, for changing the rules so that he can irrigate 25 percent more acres if it's in that kind of a system that in fact has been shown to reduce the consumption of water by 25 percent. [LB353]

SENATOR HAAR: And that might take care of Senator Christensen's concern in terms of using the corners. It doesn't really take care of the people who just didn't know they had to use it two in every ten years. [LB353]

RON BISHOP: Yeah. [LB353]

SENATOR HAAR: And that second part I'm not really so concerned about because we all have to take responsibility. I mean, there's that element in it for knowing what the rules are, but... [LB353]

RON BISHOP: Sure. [LB353]

SENATOR HAAR: Okay. Thank you very much. [LB353]

RON BISHOP: You bet. [LB353]

SENATOR CARLSON: Senator Schilz. [LB353]

SENATOR SCHILZ: Thank you. Ron, I just want to piggyback off of what Senator Haar asked you, and as you talk about crop use and consumptive use efficiencies, I mean, basically there's only two ways to get it. And that's, one, through reducing the evaporation, or two, changing to a crop that uses less water... [LB353]

RON BISHOP: Uses less, consumes less... [LB353]

SENATOR SCHILZ: ...or both. [LB353]

RON BISHOP: ...or both, right. Yep. [LB353]

SENATOR SCHILZ: And so, so then my question and this is getting a little off base, but I always wonder is that...okay, so we find a crop that uses less, right? We find a way to apply that in a manner...I guess what I'm asking, this is purely hyperbole, but what I'm asking is that could you see a way that you would want to go back to gravity irrigation in certain places and overapply water to get water into the stream? Because at certain times, wouldn't that give you what you need as far as timing and things like that? [LB353]

RON BISHOP: I've never thought about that, Senator. That's never come up so I'd have to think about that for a little while. [LB353]

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SENATOR SCHILZ: Okay. Well, I just look at it, and at times, it may absolutely make sense. [LB353]

RON BISHOP: Yeah. Well, we have something along that line in that we are looking out in Dawson County where we have high water tables that are impacting crops... [LB353]

SENATOR SCHILZ: To deep water. [LB353]

RON BISHOP: ...going in and lowering the water table so that it increases the crop production and use that lowered water table water to get to the river to offset depletions for one thing or another. [LB353]

SENATOR SCHILZ: Sure. And the reason I bring this up is looking at the Panhandle districts and how those have come about and how the recharge from the Panhandle irrigation system, the surface water... [LB353]

RON BISHOP: Right. [LB353]

SENATOR SCHILZ: ...has come back to the stream in time, and basically, makes up almost 90 percent of all of the water that Lake McConaughy gets. [LB353]

RON BISHOP: That's right. Lake McConaughy is fed by the recharge water that goes in as surface water projects and then feeds back to the stream. [LB353]

SENATOR SCHILZ: Right. Thank you. Just...you might think about that a little bit. [LB353]

SENATOR CARLSON: Okay. Senator Haar. [LB353]

SENATOR HAAR: Thank you. Just briefly, does the Central Platte NRD require metering? [LB353]

RON BISHOP: No. And there's a reason for that, Senator. We have over 17,000 wells. If we were to require meters, we'd have to spend...we, or the farmers or both would have to spend about \$20 million. And we don't...we have very little use for that information. It tells us how much he pumped. It doesn't tell us how much it impacts the aquifer. It doesn't tell us how much it consumed? We have other studies and other efforts going on that tell us what the evaporation is off of a corn crop. We have other programs going on to tell us how much of that water that's pumped actually runs off and how much is consumed by the crop. So we have those answers without putting a meter on the well and spending \$20 million, and that \$20 million is only the capital cost. We'd have to spend about \$1 million a year on the average keeping those things running and making

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sure that they work. And if we put meters on them that were read, that we could read off of a computer, we'd spend another probably \$10 million as a minimum to do that. Otherwise, we'll have to hire people to go out and actually read them. [LB353]

SENATOR HAAR: Read the meters. [LB353]

RON BISHOP: And we...they found that having the farmer turn in the reading doesn't necessarily...it works for 75 or 80 percent of them, but the other 20, it doesn't work for. So you'd have to have a program where you go out and read them. And we'd have to put on about 20 people in Central Platte to take care of those 17,000 to 18,000 irrigation wells. So for the gain that we get out of it, we think that we could spend \$20 million or \$30 million a lot more efficiently within our district. And that's because we just don't have that much runoff. Everything that's pumped, 98 percent, 99 percent...in fact, we did a study and it was over 99 percent of the water that's pumped either is consumed by the crop and evaporates through evapotranspiration, or returns to the aquifer before it gets more than a mile off the field. And so if the consumptive use tells you what kind of an impact you'd have on the aquifer, what more do you need? [LB353]

SENATOR HAAR: Well, thank you for that information. [LB353]

RON BISHOP: Sure. [LB353]

SENATOR CARLSON: Okay. Any other questions? [LB353]

RON BISHOP: Thank you, Senator. [LB353]

SENATOR CARLSON: Ron, I'm not done. [LB353]

RON BISHOP: Okay. (Laughter) [LB353]

SENATOR CARLSON: What happens physically when you observe that corners haven't been irrigated two out of ten years, and so you use your rule, and it's my corners that haven't been irrigated, what do you do? [LB353]

RON BISHOP: Okay, Senator. Along about the sixth year that you...our records indicate that the low-level infrared photography indicate that you haven't irrigated, about the sixth year we're going to send you a notice and say, remind you of the two out of ten requirement, and remind you that our records indicate that you haven't irrigated for six years so you need to irrigate at least twice over the next four years. We're going to send you a notice of that. And then you go another year, and it's indicated you still haven't irrigated, we're going to send you another notice, make contact with you, and make sure that you're aware that our records show and advise you that if your records are different than that, you need to call us and make an appointment and we'll come out and see

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where we're wrong, see if we are wrong. And you can use the ASC records, ASCS office records, you can use a whole host of different things to prove that our infrared photography was wrong. We do that again after the eighth year and say, you have to irrigate the next two years. If you don't intend to, or you think there's maybe a chance that you won't, we would suggest you call us at your earliest convenience and we talk about transferring that water into the water bank to protect it for you for another eight. And so, hopefully, after the fourth notice, you would contact us and we would put it in the water bank then, and we'd protect it for you for another eight. [LB353]

SENATOR CARLSON: If I come after the eighth year and transfer it into your water bank, what do you pay me? [LB353]

RON BISHOP: We don't pay you anything. We protect it for you. We protect that as certified irrigated land and you get the benefit. We don't get any benefit unless you sell it to us in the water bank. But we just...it's kind of held in a savings account for you and you can use it the next year, you can use it four years from now, you can use it eight years from now. You can use it anytime you want. You can either use it yourself, or you could sell it to someone else, or you could call us up and say, you know, I...it's been 12 years and I just don't think I'm going to ever do anything with those corners, certainly not over the next fours. I'm willing to just sell it to you because the price is right right now. [LB353]

SENATOR CARLSON: So, if I don't indicate anything but I don't irrigate it for ten years, it automatically goes into the water bank and is held there, but there's no money, there's no money that changes hands unless I say I want to sell it. [LB353]

RON BISHOP: That's right. But it isn't automatic. You have to ask us to put it in the water bank. We don't...we just don't automatically take it and put it in the water bank. It's your choice. [LB353]

SENATOR CARLSON: But then if I don't react in any way at the end of ten years, then what have I lost? [LB353]

RON BISHOP: You've lost certification on those acres. You haven't put it to a beneficial use for ten years, and so it reverts back to being state of Nebraska water. [LB353]

SENATOR CARLSON: But at nine years and eleven months I could come in and say, I'm not going to...I'm not going to irrigate, I want to sell it. [LB353]

RON BISHOP: That's fine. We'll buy it. [LB353]

SENATOR CARLSON: But at ten years and one month I come in and say I want to sell it, you can say, too bad... [LB353]

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RON BISHOP: You're a month late, Senator. [LB353]

SENATOR CARLSON: ...you lost it. We took it away from you. [LB353]

RON BISHOP: You're a month...you're a month late. [LB353]

SENATOR CARLSON: Okay. Okay. What does the term well irrigated mean because it's supposed to be well irrigated two out of ten years? And you talk about taking the pictures. You used the term, well irrigated. What does that mean? [LB353]

RON BISHOP: Well irrigated? I don't recall using that term. [LB353]

SENATOR CARLSON: And I assume it's not the well in the ground, it's irrigated in a good fashion, but you did use the term well irrigated. [LB353]

RON BISHOP: Okay. Yeah. Well, it's just like surface water. The law of the land, the state law and the court decisions say that you have to use surface water one year out of five or it's subject to loss. And it's been determined that just running water out there and opening up a couple of gates on a pipe one time, doesn't...isn't an irrigation. That's just running water out and opening a couple of gates. So you have to actually irrigate the field and it can't be just over at this corner. It has to be the field that's irrigated. If that field is irrigated, then that's what qualifies as irrigated. [LB353]

SENATOR CARLSON: And the pictures you take give you an accurate assessment of that so you can with confidence say, this corner was irrigated or it wasn't. [LB353]

RON BISHOP: With a reasonable level of confidence. But you have to use some common sense in there too, like the example on the alfalfa field that...and we give the landowner an opportunity. We never say, you definitely did not irrigate for eight years. We...when we contact them that eighth year, we'll say, our records indicate from the photography that that field hasn't been irrigated for eight years. If your records show something different, please come in and show us. [LB353]

SENATOR CARLSON: Okay, and one other question. You feel confident that you know how much water was used in Central Platte NRD each and every year. [LB353]

RON BISHOP: And it varies each and every year. [LB353]

SENATOR CARLSON: Well, it would vary each and every year. [LB353]

RON BISHOP: Sure, depend upon the weather. [LB353]

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SENATOR CARLSON: But in...and you probably don't know this by now, but for what was used in 2011, you know what was used. You know how much water was used. [LB353]

RON BISHOP: We could determine that, yes. [LB353]

SENATOR CARLSON: And you're confident you can determine that accurately. [LB353]

RON BISHOP: As accurate as we would have, had we had meters on it, yes. [LB353]

SENATOR CARLSON: So, if it ever became necessary to go to an allocation, how would you administer that? [LB353]

RON BISHOP: We don't intend to ever go to an allocation. Rather than allocation, we go to a acre reduction, because allocation just doesn't work very well in the Platte River valley because we've got...you've got a farm that's got good heavy soils, and Senator Schilz over here has got a farm that's pretty sandy, and to maximize the yields on both your farms, they're both going to consume out of the aquifer about the same amount of water to raise a crop of corn, assuming that your rainfall is about the same. But in order for him to raise that yield on that sandier soil, he's going to have to apply four or five more inches of water than you do. So if we have an allocation that's only just enough for you, we're going to short him even though in the end, the consumption on his crop isn't going to be any more, or his impact on the aquifer isn't going to be any more than yours would have been. [LB353]

SENATOR CARLSON: Okay. All right. I understand. Thank you. [LB353]

RON BISHOP: You bet. [LB353]

SENATOR CARLSON: Any further questions? Okay. Senator Johnson. [LB353]

SENATOR JOHNSON: I believe...and thank you, Mr. Carlson and thank you, Manager Bishop. I believe in local control and understand each district has their own controls and own regulations. Are you aware of other districts that have this same type of a policy in place? Will others be affected with the action that we take or don't take? [LB353]

RON BISHOP: To my knowledge no other district has this policy yet. [LB353]

SENATOR JOHNSON: Do you believe that your district... [LB353]

RON BISHOP: We have had several of them approach us about this policy and have indicated an interest in maybe developing something along those lines, but we're the only one that does. [LB353]

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SENATOR JOHNSON: Do you believe your district is so unique that it fits yours better, so we couldn't...if we do something and cover the whole state, how are we going to affect the other districts? [LB353]

RON BISHOP: Well, that's the nice thing about the natural resources districts and their authorities for managing the water supply. You have given us the authority to manage those water supplies and so there is a little variation in rules and regulations among the natural resources districts because we can tailor it to fit our needs in our area, and our soils, and our crops that might not work the same way in another. For example, I was talking about if we get into problems with water...groundwater supplies, we would go to a acre allocation instead of to a water allocation where we'd reduce the number of irrigated acres. In other districts, that doesn't work as well for them. They go to an allocation where you say, you got 15 inches of water and if you use that all in the first three years and a little more, maybe the fourth year you're not going to have any water. You're not going to have the full 15. [LB353]

SENATOR JOHNSON: Thank you. [LB353]

RON BISHOP: Yeah. [LB353]

SENATOR CARLSON: Okay. Yes, Senator Kolowski. [LB353]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Ron, you're...I'm trying to get a bigger picture of this whole thing. In my last eight years with the Papio NRD, we didn't have this kind of a problem but we had an abundance of water the last couple of years. But I'm trying to take a step back and take a look at the bigger picture of 23 NRDs in the state. And Senator Johnson's comment about local control is home to a lot of us and I would look at the analogy, I guess, of that watershed that you're responsible for is part of that local control. You've got compacts. We have compacts and agreements with multiple agencies and states and everything else to try to...whether we're working in the Platte or any other Republican River or anything else that we are also responsible for, and we have agreements with them. I like the ideas of what you're trying to do for your local control in your particular area and trying to be cognizant of the needs of all the people that you're serving in that complex area. But we need to take a larger picture sometime of this whole aspect of water controlled by the state. And you've made that point a number of times in your conversation that it's not...it's not controlled, it's not state...it's not owned by that person on that land in that location, but it's state water, ground or surface that we're dealing with. And I think you stated that very well that we need to step back and take that view in of the entire state and how unique the NRDs are. And I know from conversations with federal groups and all the rest, they wish many states...they wish all states would have something like the NRDs because it would be a lot better communication and coordination of efforts on the part of states to...of the feds

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to work with states and the states to be efficient in what they're trying to do. So I appreciate what you've said today and certainly appreciate the sides of what we've heard today, but I hope we don't lose track of the bigger picture of what NRDs were put in place for, and the large responsibility the state of Nebraska has with all these other alliances. So, I thank you. [LB353]

RON BISHOP: Thanks. [LB353]

SENATOR KOLOWSKI: Does it make sense? [LB353]

RON BISHOP: Yeah. [LB353]

SENATOR KOLOWSKI: Thank you. [LB353]

SENATOR CARLSON: Any further questions? Okay, Ron, thank you for your testimony. [LB353]

RON BISHOP: Thank you, Senator. Thanks to all of you. [LB353]

SENATOR CARLSON: Anyone further as an opponent, in opposition? Anyone testifying in the neutral position? Seeing none, Senator Christensen, you're recognized to close. [LB353]

SENATOR CHRISTENSEN: Thank you for your attention. Great questions. And I just want to reemphasize. This is about the process being used. There isn't any of us that doesn't like the local controls and there isn't any of us that hasn't...doesn't like the NRDs. But who can make the lowest level of local control decisions of what is the best acres to apply the water to? It's the farmer. Who can apply it the most efficiently, cost-effectively and the wisest? The farmer. But with what's happening here, they're forcing them to water them two out of ten. That's not a lot. But think about the example I give you earlier. If it all waters west to east, them two east corners are very tough. You heard farmers testify. Board members, former board members testify the cost of doing that. I think you got to think about the intent and their reasoning for doing it. I don't think I misstated it at the beginning because I think it was restated. We've got to get a lot of acres to match the 1997 levels of the Cooperative Agreement. This is a tool that they're using, but is it the Nebraska way? Do we get some of it, as Senator Carlson's question, by default, because they didn't do in ten years? Do they get it because they've been in the water bank for eight years, just decided they got to sell it because they don't want to have to put the cost in or the effort to go out to it? I ask you, if they don't irrigate them acres, what's consumptive use? Zero. It's not harming them. I think you heard testimony here that out of that \$8,000 they're offering, the highest they could figured paid was \$3,280. I knew they took the river impact into that \$8,000. I didn't say it in my opening; I listened. I was sure it would probably come out. I didn't ask anybody to come testify. I

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could have asked a bunch, chose not to. Thirty-two eighty an acre? You see why they're having trouble finding acres from ground. Around Grand Island may sell for \$16,000 an acre if you're buying the whole acre, said just the certified acres. Let's compare that to what the Republican is doing. They went to the open market, they spent \$63 million to buy 115 pivots on the open market. Now, they can go back and sell the land if they convert it back. No trickery, and maybe they're not trying to trick people, but people are missing it. Maybe that's a better way of putting it in the Central Platte, but the Republicans done it totally up-front. The Republicans are using the occupation tax so they can generate enough dollars to do it. Central Platte doesn't apply any. Twin Platte NRD has done the same thing as the Republican. They went bought acres using the occupation tax to pay it. Again, I think a very up-front, honest approach, this is not going to leave people with a bad taste at the end. If they didn't read their mail, they didn't respond to their mail, I have no doubt notices go out. Many of you probably have been notified about dams that didn't get certified after the certified letter in 2005 went out, and they don't want to lower them to 15 acre feet. Again, another response to people don't always respond to what they should have. I don't think there's any evil intent, but I think there's a better approach. And that's what I believe the Twin Platte NRD has done, the Republican NRDs have done. And that's what I think this discussion is today. Are we going to take the highest road possible in meeting the Cooperative Agreement in how we treat our farmers and landowners, or not. I'm not saying any evil intent, but there is a higher road. I'd say Twin Platte, the Republicans have done that. You know, you heard general manager Bishop talk about all the things they've done. They've done a lot of great things. I don't want to read all of them, but the moratoriums, the developments, offsets, all that's been great. But I'm not sure what they're doing on this one is. Surface water. Maybe it's being misapplied in my area, and I will follow up and check, but I have surface water. They don't require me to irrigate them pivot corners right now. I've asked. They've said, you have to water the farm. I will check on that because I sure don't want to get to where I lose it. I will follow up and I will try to get you the answer, but I believe I'm correct. I have to, in my irrigation district, use every outlet every fifth year, used to be three, and we changed that statutorily. And I have to irrigate that farm every five years. But no one, so far, has ever answered me I have to irrigate every particular acre. I've got to go change some practices if I do because I'm not going to lose my right. But that again would put us back in the same situation. This last summer if I couldn't have used the water off of my pivot corners when I only got eight inches of water under the ditch onto my pivot, I wouldn't have raised very good corn. I was the lowest level manager making the decision. Local control was me. I'm the owner of the ground. I'm farming the ground. I'm making the best management decisions for my operation. And if I need that water this year off the corners and let them dry up, and put it on under the pivot, that's local control and best management. Got so many notes on what all to hit on. Again, I might reemphasize. They talked about all the acres, 15,000 acres, 18,000 possibly on this sheet, not getting irrigated. But again, there's no consumptive use if they ain't using it. And I disagree that the water ain't put to beneficial use, because if you're not pulling the water out of the ground, there's no need to put to beneficial use. You're not taking it

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out. You can say there hasn't been water put on them acres to beneficial use, but you can't say the water ain't put to beneficial use. So, you know, there's a...if they want an encouragement, I always try to bring solutions when I'm bringing a complaint. And I didn't have one until during this discussion. Property tax by statute, all you got to do is walk in and say, I didn't irrigate this and they will reduce it. That's by state statute. You can't be forced to pay that. But the NRD can put on an occupation tax on every certified acre and get paid whether it's irrigated or not. That can be an incentive. Is it worth paying ten bucks an acre on and I'm not going to ever irrigate it? There's other ways to have that incentive. Pay a reasonable price. Instead of taking the 8,000 times the factor of depletions...I don't know if you've looked at factor depletions, I haven't polled them on the Platte, but I polled them on Madison Creek where they bought the Lincoln County farms. The northern ones, 9, 11, 13 percent. The southern ones 17, 18. Eighteen was the high one. I went on down the creek. As I got closer, I got up some 22s, 24s. I'm told there's places it's 50 percent, but I didn't find any. What I'm saying is, when you're converting this irrigated ground that would sell for \$16,000 an acre if you're selling the farm, to dryland that would probably sell for \$8,000, maybe \$10,000, \$12,000 at the depth and the high side, I can't believe there ain't at least a \$4,000 dip. There would be in my area. It would be half. If you take sixteen and a half, they paid \$8,000 on them acres without the reduction, it would work. There's dry-year leases they can go into. The Lower Republican leased acres this year, averaged \$415 an acre to get farmers not to irrigate it. Part of their way of getting compliance. There's alternative ways of doing it. You can go look at their property tax levy. They ain't near as high as Imperial, I can tell you, and they have no occupation tax. Not that I want to push high taxes, but they have ways of doing just compensation and getting this land brought in. I want to see them get there as cheap as possible too, but I want to do it more in the method of the Twin Platte and the Republicans: willing buyer, willing seller, not with difficult rules to follow which lead to some people accidentally forfeiting it. Others spending a lot of money to make sure they can keep them corners, or laying a lot of excessive pipe and difficult. I've done it. If you've farmed, I'm sure you all have, laid pipe out through corn. It's not fun. One other comment. Believe Senator Haar addressed Ron's question of, is there a way they can get the acres back? And he said, they can buy them back from the NRD. I guess, I've got one question. I know you guys can't answer the question, maybe Ron can afterwards, but if they're so short of acres to meet the Cooperative Agreement, if I'm a farmer and I've sold you my acres on the corners and I want to go put drip tape in there, they gonna sell it back to me? I can't see it. Maybe I'm wrong, but if I need to buy 100,000 acres to get into compliance and I've only bought 50, and somebody wants to come back and buy 28 acres, am I going to sell it to them? I wouldn't if I was on the ownership side of it. So I'm saying they have the rule that they will and maybe they do, I don't know. I'm not putting words in anybody's mouth, but I'd have to ask them if they say they do, why would they when they need acres so bad? So I think it would be difficult to get them back. That's why farmers don't want to give them up unless they know they don't need them. They could institute a rule, Senator Haar, that if they got 160 acres, they sell off the 30 acres...or 30 acres on the corner and go to 130 acre

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pivot, they go to drip tape, you can spread that 130 acre worth of water across because it's going to use less if you can get an approved project that wouldn't increase consumptive use set. It's not a deal like the Republican where you could just spread 12 inches down to nine inches and make it work because they're running on consumptive use. But there might be a way of working around that. So, I don't want to drag it on any longer. I think you guys know how I feel about this. I want it to be very up-front, honest, clean, willing buyers, willing sellers, simple, and I commend the Twin Platte, the Republicans how they've handled it. I'm just not thinking this other method is the Nebraska way of doing business, and that's why I ask for advancement of this bill. [LB353]

SENATOR CARLSON: Okay. Questions? Senator Haar. [LB353]

SENATOR HAAR: So to summarize all of this, you would be saying that the current process there is offset on the cheap. [LB353]

SENATOR CHRISTENSEN: Uh-huh. [LB353]

SENATOR HAAR: Okay. [LB353]

SENATOR CARLSON: Any further questions? All right. That...I don't have any. [LB353]

SENATOR CHRISTENSEN: Okay. [LB353]

SENATOR CARLSON: So that ends... [LB353]

SENATOR CHRISTENSEN: Thank you. [LB353]

SENATOR CARLSON: ...our hearing on LB353, and thank you for coming and testifying today. Committee, we will not go into Executive Session today, so we're done. (See also Exhibit 8) [LB353]