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Natural Resources Committee
February 14, 2013

[LB57 LB325]

The Committee on Natural Resources met at 1:30 p.m. on Thursday, February 14, 2013, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB57 and LB325. Senators present: Tom Carlson, Chairperson; Lydia Brasch, Vice Chairperson; Annette Dubas; Ken Haar; Jerry Johnson; Rick Kolowski; and Jim Smith. Senators absent: Ken Schilz.

SENATOR CARLSON: Welcome to the Natural Resources Committee hearing this afternoon. I'm Tom Carlson, Chair of the committee, senator from District 38. And to my far left is Senator Rick Kolowski from Omaha, District 31. Next to him is supposed to be Senator Ken Haar from Malcolm, District 21, and he's probably introducing a bill and should be coming, I would think, before too long. Next is Senator Jim Smith from Papillion, District 14; and normally next to him is Senator Ken Schilz from Ogallala. He's not with us today. To my immediate left is Laurie Lage, our committee counsel. To my far right is Barb Koehlmoos, our committee clerk. And then next to her is Senator Lydia Brasch from Bancroft, District 16, who's Vice Chair of the committee; and next to her, Senator Jerry Johnson from Wahoo, District 23; and then Senator Annette Dubas from Fullerton, District 34. Our pages today are Tobias Grant from Lincoln, and David Postier from York. They'll be serving us. If you are going to testify, please have the green sheet that you should have gotten at either door, get that filled out, printed hopefully so that we can read it, and bring that with you as you testify and put that into the box next to Barb Koehlmoos. If you do not wish to testify but want your name entered in the official record as being present, there's a white sheet by either door that you can sign and gives you an opportunity to do that. If you don't choose to testify but you want to submit something in writing, you can do that. That will be read into the record, so that's an option as well. Senator Haar is just joining us now.

SENATOR HAAR: Thank you.

SENATOR CARLSON: If you have handouts, make sure there are 12 of them when you come forward so that...go around to each member of the committee with a few left over, and if you have difficulty with that, one of our pages can help you out with that. When you come up to testify, sit down at the table there and don't touch the microphone because whether I'm sitting back in my chair or whether I'm up close to it, it's going to pick you up either way. You don't have to adjust it. In fact, if you want to lean back and whisper so nobody hears, it will pick that up too. So you don't need to touch the microphone. Committee does not use any electronic devices during the hearing and if you have cell phones, please either turn them off or put them on silence or vibrate. I don't imagine we're going to have a problem with this today, but it's normal in our hearings that we have no public displays heard for or against a bill as somebody testifies. I don't think we will use the light system today, but I'll ask how many are going to testify. We may...we may implement the light system as we go along. We won't start

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with it. If we do put it into effect, when you sit down and are ready to testify, the green light comes on and that gives you four minutes and then the yellow light comes on as a warning. You've got one minute to go. And then the red light comes on and if you don't wrap it up, I'll try and encourage you to wrap it up. Yesterday in the hearing I looked at the report that the testifier was reading and I gauged it was going to take another minute and 20 seconds, so I let him continue. So otherwise, try and keep your remarks within the five-minute period. Are there any questions before we proceed? We have LB57 and LB325 to be heard today, and so we'll open with LB57. Senator Larson, you're recognized to open. Welcome.

SENATOR LARSON: Thank you, Senator Carlson and members of the Natural Resources Committee. I am Senator Tyson, T-y-s-o-n, Larson, L-a-r-s-o-n. I represent District 40 from O'Neill and I'm here today to introduce LB57. LB57 is a bill that would give the Nebraska Environmental Trust additional oversight over projects it funds. It would require that the Nebraska Environmental Trust approve any purchases of real property made using Environmental Trust funds given to a grant recipient. This bill would apply to Environmental Trust funds given to a grant recipient either to purchase property directly or to use it in conjunction with a revolving fund. LB57 would also require the Environmental Trust to approve the first subsequent sale of any real property purchase by a grant recipient using Environmental Trust funds. The only time the Environmental Trust Board would not have to approve any purchase or sale of property would be when the property has been purchased using funds provided solely by the grant recipient. Additional, LB57 requires the Environmental Trust to approve any subsequent transfer of real property purchased with Environmental Trust funds to the federal land management agency. If the Environmental Trust Board approves the transfer to a federal agency, the board will also be required to approve a sum of money equal to the amount the transferred property was valued at for tax purposes that would be given to the county in which the property was located. The county would establish and maintain a trust fund in which the sum of money allocated by the Environmental Trust would be kept. The county would be able to spend and invest that interest...invest the interest generated by the trust fund at its discretion. The intent of the bill is twofold. First, the bill gives the Environmental Trust additional oversight authority over its funds that are used in various property transactions. If a grant recipient applies for funds to purchase property or places the Environmental Trust funds in a revolving fund that will be used to purchase property, the board should be able to make sure those funds are being used for the intended purposes of the Nebraska Environmental Trust. The same holds true anytime a grant recipient wants to sell land that has been bought using Environmental Trust funds. The Environmental Trust Board should have the power to approve the sale, including the purchase price, so that the board can be certain the property is going to further the goals of the Environmental Trust the Environmental Trust had in mind when it allowed the funding of that property. I believe it is important to make sure the Environmental Trust funds are spent wisely, regardless of whose hands those funds are in at any given time. The second intent of this bill is to make sure that

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counties are adequately compensated for any property tax they may lose if a county land is transferred to the federal land management agency. It has been the case in the past that the Environmental Trust grant recipients who have used Environmental Trust funds to purchase property will turn around and sell it or transfer the land to the federal land management agency. If you look at the fiscal note attached to this bill, you will notice that right now there's about 500 acres slated to be transferred to federal agencies. It is also estimated that the property tied with the Environmental Trust funds is transferred to federal agencies at least one in every six years. The average size of property transferred is about 226 acres. This would take that land off county property tax rolls and would result in the county losing property tax revenue from that land. LB57 would help counties recoup some of the lost property tax revenue, in addition to giving the Environmental Trust Board oversight authority over these kinds of transactions as well. It is my understanding the current Environmental Trust Board has limited its approval projects using revolving funds and often knows up-front when a grant applicant wants to buy or sell land using Environmental Trust funds. While I appreciate the diligent monitoring of the state funds the board is entrusted with, I want to make sure oversight mechanisms, like the ones I am proposing in this bill, will be in place for the boards of the future. I am also willing to work with the Environmental Trust and its members to make sure the language of this bill best accomplishes these purposes. It is important to make sure that agencies entrusted with state funds take every step necessary to ensure those funds are being used properly. LB57 gives the Nebraska Environmental Trust the appropriate oversight tools to make sure that the projects it funds uphold the Nebraska Environmental Trust mission. Thank you, and I'd try to answer any questions should the committee have them. [LB57]

SENATOR CARLSON: Okay. Thank you, Senator Larson. Are there questions of the committee? Senator Kolowski. [LB57]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Senator Larson, thank you for your testimony and for the bill before us. I wanted to ask you on the first part of your proposal on what has happened as far as incidents that have made this issue paramount in your mind to bring this forward, especially with the grant application process that people must go through. And have there been incidents where a number of things have not worked properly or brought to your attention in some way? [LB57]

SENATOR LARSON: As I said, the Environmental Trust has moved away from using revolving funds, the current board. There's obviously, I think, been issues in the past with the use of revolving funds. And even though the current board has decided not to issue revolving...or has stopped those types of grants, even though I know there has been grants applied for to use revolving funds every year, I think that doesn't mean future Environmental Trust Boards will not, you know, give grant recipients revolving funds. And so I think there is the concern. It's been done in the past in terms of revolving funds, and though the current board isn't, that doesn't necessarily mean that

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future boards won't. So in terms of the first part of the bill, as you asked, you know, in terms of instances, I think that is one of the main instances. And then obviously, I think as we move forward with land purchases and, you know, making sure that these groups fulfill the Trust mission, I don't see what...putting the mechanisms in place to ensure the trust fund dollars are being used in the spirit of the Trust. I'm not sure what the harm is in that to make sure that, whether it's revolving or not, that we're making sure that this money is being used for its purposes. [LB57]

SENATOR KOLOWSKI: So you'd be taking the revolving trust choice away from the... [LB57]

SENATOR LARSON: No, what the bill does... [LB57]

SENATOR KOLOWSKI: ...mandating it or...? [LB57]

SENATOR LARSON: No, it doesn't take the revolving trust away. It still allows revolving funds. But if essentially once those revolving funds, if a grant is...if the NET Board allows a grant and the contract says there is revolving funds allowed, anytime they use those revolving funds in the future, right now the NET Board doesn't have any say. I mean a group may, you know, consult with them, but it's not up to the NET Board. It's up to the organization that got the revolving funds what to spend the money on or what to do that, what projects they want to do. And essentially what this bill would do in terms of revolving funds would just say, you know, that is state dollars that you're using. You know, you've received that grant from state dollars. We gave you the ability to continue to revolve that. [LB57]

SENATOR KOLOWSKI: Sure. [LB57]

SENATOR LARSON: The NET Board needs to have a say in how those funds are being used. It doesn't say that every project moving forward will be revolving. I mean that will be up to the board itself but... [LB57]

SENATOR KOLOWSKI: But they have that choice now, don't they? [LB57]

SENATOR LARSON: As they do, yes. [LB57]

SENATOR KOLOWSKI: As a board. [LB57]

SENATOR LARSON: The board has that choice and they haven't funded any revolving funds recently, but that's a choice of the board. Now a future board may choose to go the other way and allow those revolving funds to happen, but once those funds leave, and they funded it revolving, they have no say in the future use of those funds. [LB57]

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SENATOR KOLOWSKI: Okay. On the second part of that, if land was taken out of tax rolls, as you're talking about, let's say a building of a lake recreation area, something of that nature, that land would be removed if it went to a construction of a large lake, recreation area in that sense, but you'd have gains in...potential gains, say, in drawing people to that recreational site. Sales taxes on lots of different things, everything from gas, food, lots of different fees perhaps or something like that. Is there a balance there or a wash on that compared to the loss of that land for that particular time? [LB57]

SENATOR LARSON: The bill strictly relates to land that's transferred to the federal government. And I can understand your argument that, you know, it will now be a wildlife preserve or whatnot, therefore drawing outsiders in. And I think if you want to use the sales tax argument or fees of that nature, yes, some cities do have the local option sales tax where they might get .5 cent or something of that nature,... [LB57]

SENATOR KOLOWSKI: Sure. [LB57]

SENATOR LARSON: ...but we have to be very mindful that the majority of our sales tax comes to us here in Lincoln, not the local counties. And one thing that I hear most from my constituents, and I'm sure the other rural members of this body hear it as well, is property taxes, property taxes, property taxes. And I think that's one thing, you can say it's only been, you know, 226 acres here or there's, you know, another 500 planned or whatnot, but you talk to the average Nebraskan in rural Nebraska and say, you know, this...they're taking not only lottery dollars, which are the Environmental Trust funds,... [LB57]

SENATOR KOLOWSKI: Uh-huh. [LB57]

SENATOR LARSON: ...they're buying land and using your tax dollars, and then donating that land to the federal government and taking it off the property tax rolls. Most rural Nebraskans have a fundamental issue with that. Now, you know, if you want to talk about the value-added growth that... [LB57]

SENATOR KOLOWSKI: Sure. [LB57]

SENATOR LARSON: ...federal land offers in those small quantities, I mean, we can talk about that. But like I said, a majority of the sales tax will come to the state and we can all argue, you know,... [LB57]

SENATOR KOLOWSKI: Sure. [LB57]

SENATOR LARSON: ...what rural Nebraska is getting back in terms of state...and, mind you, most of property taxes, the majority of it goes to K-12 education. And as our formula currently sits, rural Nebraska continues to lose money in our state aid formula

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because of the values of our lands continue to go up. [LB57]

SENATOR KOLOWSKI: Uh-huh. Exactly. [LB57]

SENATOR LARSON: And when you start to take...when you start to take those pieces of land, those parcels of land off our property tax rolls as well as our valuations going up, we're putting a heavier burden on those rural Nebraskans to pay those property taxes for our local schools while our sales tax dollars continue to go to Omaha and Lincoln with our K-12 education. So I understand the concern in the value-added argument,... [LB57]

SENATOR KOLOWSKI: Sure. [LB57]

SENATOR LARSON: ...but I think there's a counterargument there. [LB57]

SENATOR KOLOWSKI: So part of your response would be, if it was a lake, that would be one aspect, and sales would be different than a wetlands that wouldn't have as much viewing or people going to it or something like that. [LB57]

SENATOR LARSON: It would take a significant lake. [LB57]

SENATOR KOLOWSKI: Sure. [LB57]

SENATOR LARSON: When you're considering, like I said, these aren't huge acres, 500 acres is just shy of a section of ground, you know, 226 acres, you know, is, you know... [LB57]

SENATOR KOLOWSKI: Sure. [LB57]

SENATOR LARSON: ...just over a quarter. So I think that it would have to take a...you know, Senator Lautenbaugh has Lake Linoma. You know, maybe if the Environmental Trust wants to get involved in something of that nature, we can talk about the benefits to the state. But a lake the size of a quarter of ground isn't going to be a major attractive drawer. [LB57]

SENATOR KOLOWSKI: Sure. Thank you. [LB57]

SENATOR CARLSON: Okay. Senator Dubas. [LB57]

SENATOR DUBAS: Thank you, Senator Carlson. Senator Larson, I know this has been an issue that you've had a strong interest in since coming into the Legislature. I have a question on that county trust fund. Would there be statutes in place now that would either make it more difficult? Explain to me, I guess, how you envision that trust fund

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working. [LB57]

SENATOR LARSON: Essentially, what the bill does is, if the land is transferred to the federal government, they have to put into a...we'll call it a trust fund at the county level in which the county can choose to do what they want with the interest that comes off of that. They can't use the principal. The idea is that, you know, if the Trust helps buy a quarter of ground, you're looking at, for easy math sake, we'll say \$1 million for that quarter of ground. It may be up or down off of that. And they put that into the trust fund. And then the county will be able to use the interest that is drawn off of that trust fund that they put in a bank to either pay the property taxes for that ground to ensure that, you know, we're helping alleviate that property tax burden, or if a county doesn't...you know, their levy is where they want it to be and they don't need to raise it, they could actually continue to collect it and, you know, put the interest back into the principal and continue to earn money off that. So in the future, you know, future generations can benefit even more heavily off of those tax dollars. And you know, I guess we can have the policy argument of whether or not that's good policy, but I've always tried to be very mindful of the future generations and the property tax burden that my constituents face, as well as the, you know, just the image issue of what this...of what's happening in rural Nebraska in some of these cases. [LB57]

SENATOR DUBAS: So the money that would go into that trust fund would come from that transfer? [LB57]

SENATOR LARSON: They could...well, the transfer, you know, if the federal government pays for the transfer, then they could use that money. Or else, you know, they could apply for another Environmental Trust grant to pay for that, you know, pay for that. Or they could use their own money to pay for that. I mean it just stipulates that the money equal to the value of that property needs to be put into a trust fund, whether that, you know, where it comes from can be a variety of sources. [LB57]

SENATOR DUBAS: Okay. Are there, to your knowledge, are there any statutes that would maybe prohibit that type of action or...? [LB57]

SENATOR LARSON: Not to my knowledge. If there are, I'd be happy to work with the committee to clarify that. [LB57]

SENATOR DUBAS: All right. [LB57]

SENATOR LARSON: And, you know, it may have been an oversight by me and my staff if there are. [LB57]

SENATOR DUBAS: All right. And you referenced in your testimony that you'd be happy to work with the Environmental Trust on this bill. Had you had any conversations with

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them ahead of this before bringing the bill? [LB57]

SENATOR LARSON: I've talked to a number of board members ahead of this bill. Mr. Brohman visited my office after I introduced it. Working with them in the process, though, it was mainly just talking to a few board members that are currently on the Environmental Trust and receiving their feedback and their thoughts on what the bill is in situations that they're currently facing as Environmental Trust Board members. [LB57]

SENATOR DUBAS: Very good. Thank you. [LB57]

SENATOR LARSON: Thank you. [LB57]

SENATOR CARLSON: Okay. Thank you. Any further questions? Senator Haar. [LB57]

SENATOR HAAR: Thank you. Thank you. So you mentioned a number of times the spirit of the NET and this would give the NET additional authority to use that money wisely. What do you see as the spirit of NET? [LB57]

SENATOR LARSON: I see the spirit of the NET to ensure sustainable land management in the state of Nebraska, to ensure that we...whether that deals with water, which I think is one of the biggest things facing this state. I think the NET has a huge role to play in that in terms of sustainable land management. You know, other people see the NET as an organization that can help put land back into conservation. I mean the mission of the NET, and I know they have their own mission, but we can all...that's all up to debate, you know, what we view the NET as. And I think that it has a role to play in terms of land management and I think, you know, I like to see the water projects come out of the NET just because I feel strongly about water, but I know other people feel strongly about other issues as well. [LB57]

SENATOR HAAR: Okay. Thank you. [LB57]

SENATOR CARLSON: Okay. Any other questions? I'm going to ask you one or two. If we have an instance where there's been a grant from the Environmental Trust to some kind of a wildlife, wetlands management group, whatever it might be, and they give them a grant of \$300,000 and then eventually that group transfers that land to U.S. Fish and Wildlife. So that's federal government. Now you've said they would need to put the value into a fund at the county level. Who are "they"? [LB57]

SENATOR LARSON: The organization. It's my understanding it's the organization that currently owns the land and is transferring it to the federal Fish and Wildlife. So...and like I said, there's a number...Senator Dubas asked an excellent question. They could, you know, possibly apply for another Environmental Trust grant or pay for it themselves. And it's only the current value of the land. So they might have bought the land for \$1

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million, put a conservation easement on it, which oftentimes brings the value of the land down, and then put it back. And so they'd have to put the current value of that land into an endowment, would be a better word. [LB57]

SENATOR CARLSON: So in a case where the land was valued at \$1 million but then after the easement it's now \$600,000, what would that group put in \$600,000 or \$1 million? [LB57]

SENATOR LARSON: That's my understanding, yes, sir. [LB57]

SENATOR CARLSON: What if they receive a grant for \$300,000 and at the time that they transfer the land to U.S. Fish and Wildlife it's valued at \$1 million? Then what goes into the county fund? [LB57]

SENATOR LARSON: It's...the way the bill is written, it's what the value of the land is. [LB57]

SENATOR CARLSON: So it would be \$1 million. [LB57]

SENATOR LARSON: It would be \$1 million. [LB57]

SENATOR CARLSON: Okay. And that's an assumption. There's a payment made from the U.S. government to this group, and this group, in turn, transfers that money to the county. [LB57]

SENATOR LARSON: If that's how they work the deal out in terms of the U.S. government is going to pay them for that land. The U.S., sometimes it's, you know, just a donation. I think we've all dealt with that, when land is just given in terms of donation. And so it just says that it doesn't have to come...the payment doesn't have to come to the federal government, and then they pay it. They can either pay it out of their own pocketbook, they can apply for more grants, they can...I mean they have any funding mechanism they want to ensure that there is a grant given. [LB57]

SENATOR CARLSON: So if we have a piece of land that's valued at \$1 million and the U.S. Fish and Wildlife doesn't provide any money for that but it's a transfer to them, then whichever group decided to do that, it's a pretty serious decision, isn't it,... [LB57]

SENATOR LARSON: Uh-huh. [LB57]

SENATOR CARLSON: ...because they got to come up with \$1 million someway... [LB57]

SENATOR LARSON: Correct. [LB57]

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SENATOR CARLSON: ...to put that into a county account. Okay. All right. Thank you. [LB57]

SENATOR LARSON: Appreciate it. Thank you. [LB57]

SENATOR CARLSON: Any further questions? Are you going to close? [LB57]

SENATOR LARSON: We'll see how the hearing goes. [LB57]

SENATOR CARLSON: Okay. All right. Thank you. We're ready to hear proponents. Let me just ask, on the two bills combined, whether you're going to be a proponent, opponent, or neutral, how many intend to testify today? Okay. I think we'll use the lights. (Laughter) And that's good. That's good. So first, do we have a proponent? Step right up and give your sheet there. [LB57]

TANYA STORER: Does this go to you? All right. Actually, there's a little box. Good afternoon. [LB57]

SENATOR CARLSON: Good afternoon. And just before...Barb, shut it off a minute, would you? (Laugh) We'll just review again. Want you to give your name and spell it, and then the green light gives you four minutes, the yellow light gives you another minute, and then we're not really stingy on this but hopefully at the end of five minutes you don't have five more minutes. [LB57]

TANYA STORER: No. I think we'll be good. [LB57]

SENATOR CARLSON: So we'll ask you to wrap it up. Okay. Welcome. Go ahead. [LB57]

TANYA STORER: Thank you. Thank you, Senator Carlson and members of the Natural Resources Committee. I am Tanya Storer, T-a-n-y-a S-t-o-r-e-r. I'm a rancher from Cherry County where my husband and I own and operate a cow-calf operation. I also currently serve as the District 6 director on the Nebraska Farm Bureau Federation Board of Directors, and I am here today on behalf of Nebraska Farm Bureau in support of LB57. Nebraska Farm Bureau members have become increasingly concerned with the use of Environmental Trust Fund dollars for the acquisition of land and perpetual conservation easements. These concerns revolve primarily about the uneven playing field that is created when public monies are used to compete with private citizens for land and the unintended, often negative consequences of using public monies to restrict land uses in perpetuity. As such, in recent years members have adopted extensive policy in regard to the use of Environmental Trust funds for land acquisition. Farm Bureau policy opposes the use of Environmental Trust funds for land acquisition and the

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purchase of conservation easements unless those funds are provided to a political subdivision. The policy statement also states that land or easements originally purchased using trust fund dollars should not be sold, exchanged, or transferred to a federal agency or private not-for-profit. Finally, the policy, the Farm Bureau policy states that any Trust funds used to purchase land should be returned to the Trust upon the sale of the land. So although LB57 doesn't fully achieve our policy objectives, we support LB57 because it is a step in the right direction in getting us closer to being in line with what our members have stated their wishes to be. Requiring Environmental Trust Board approval before a subsequent sale of property initially purchased with Trust funds would provide more accountability and transparency in the use of Trust funds. It would also provide the Trust board with the opportunity to assure the grant dollars continue to be used for the intended purposes of the act creating the fund. Finally, we particularly like the provisions in LB57 which would require the creation of a trust in a county when property purchased using Environmental Trust dollars is removed from the tax roll. Removing property from the tax rolls means other property owners obviously are left to deal with the added property tax pressures. Not only does this affect agriculture, but it affects surrounding communities as well. The trust established in LB57 we believe would help mitigate this concern. So for these reasons, Senators, Nebraska Farm Bureau does support LB57. I'd be happy to answer any questions that I can for you. [LB57]

SENATOR CARLSON: All right. Thank you for your testimony. Questions from the committee? You came a long way but you came for the meeting as well, didn't you? [LB57]

TANYA STORER: I'm...yeah, I'm multitasking so... [LB57]

SENATOR CARLSON: Good. Good. Good. Any questions? Okay, thank you for your testimony. [LB57]

TANYA STORER: Thank you for your time. [LB57]

SENATOR CARLSON: Uh-huh. Next proponent. Welcome, Joe. [LB57]

JOE HERROD: Thank you. My name is Joe Herrod, J-o-e H-e-r-r-o-d. I'm here representing the Nebraska Council of Sportsmen's Clubs. We support this bill because as sportsmen, we want to pay our taxes and this helps taxes be paid. I'll be very brief. There are a couple of things about this bill that are also a concern that I'm not sure are fully covered. My experience with Game and Parks, my knowledge of what's gone on over there over the years, I know for many, many years they've been not taking on six pieces of property and that's because they didn't want to pay the taxes on it. And here recently, those six pieces of property, and there has been a change in administration at Game and Parks and those six pieces of property were transferred from Ducks

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Unlimited to Game and Parks. And this, to me, is...some people would call that, could be alluded to as a straw man in this whole thing to get around some of the aspects of this bill. And so what I'd like to see done with this bill is to make sure that even though this bill says, okay, you got the money, you developed the property, and you gave it to somebody else. Well, that somebody else, they don't...they're not the person that was granted that grant and they're not covered. And so I think the bill could be even strengthened. I think it's a real good bill and the last thing about it is, as we've seen from Farm Bureau and as we've heard on the floor of the Legislature and many of the people I know, we know there's a lot of sentiment against permanent conservation easements. I'm involved in one. I have turned violently opposed to them, so to speak. I know what's involved. You have to have one to know what's wrong with them. But if this goes on, this is a good place to maybe turn the heat down. Let's start paying the taxes here, guys. Let's go along with this bill. Let's pay the taxes and maybe we turn the heat down a little bit on even further, more radical steps that might be taken. [LB57]

SENATOR CARLSON: Okay. Thank you. Any questions of Joe? I guess seeing none, thank you. [LB57]

JOE HERROD: Thank you. [LB57]

SENATOR CARLSON: Next proponent. Welcome. [LB57]

TRACY SMITH: Thank you. My name is Tracy Smith, T-r-a-c-y S-m-i-t-h. I am the assistant manager of the Bostwick Irrigation District in Nebraska. Manager Delka sends his regrets today. He had a prior commitment. I'm here today as a representative of the district and the board of directors. The board of directors desires to go on record in support of LB57. The district believes that water is one of the greatest resources of the state and is in dire need of consistent guidance and funding if it is to be sustainable in the future. While we have no land purchase at this time or any issues thereof, we would ask for a slight change to the bill as it's being considered. On page 5, under section (4), paragraph (c)(i), the board asks that you would consider changing or removing the term "natural resources district." So often our states forget that other entities and political subdivisions do conservation and are also in need of funding. We believe the Water Resources Cash Fund can be a valuable tool to drive conservation and water sustainability. Such a valuable tool should be versatile and encourage conservation without such inferred limits. Our district strongly believes and invests in conservation of water. Although assistance has been declined by the state, the district has made major investments in its infrastructure by converting open ditches, over 50 miles of open ditches, to buried pipe. We've also installed gate automation and are installing variable frequency drives on our pumps. The result was that while 2012 was a record drought year with record water use, the diversions of the district rank 23rd from the very least out of the 56 years of operation. Next year it is also our intent to conserve even more. We believe true conservation benefits beyond those who conserve and beyond the year

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it is done. I thank you for this opportunity to comment. [LB57]

SENATOR CARLSON: Okay, Tracy, thank you for your testimony. Any questions? Yes, Senator Haar. [LB57]

SENATOR HAAR: Yes. Well, thank you. From your testimony, are you saying that the NET money should go to water, the Water Cash Fund, or how does that dance with this, with this bill? [LB57]

TRACY SMITH: Well, again, I represent the board of directors and it was their feeling like anytime you hear the word "natural resources district" at a surface irrigation district, it's kind of scary. And they just felt like by limiting that paragraph to the natural resources district, it put more of a limit on where this water was...or where the money for water conservation was going. [LB57]

SENATOR HAAR: Okay. So...but just a follow up, and I appreciate that, but are you saying then that the way the NET operates currently threatens the irrigation districts' funding or...? [LB57]

TRACY SMITH: No, it doesn't threaten our funding, Senator, but we did have and we attempted in this past year to send an application in for some of the funding for water resource water conservation, and we were denied. And that's why our board sent me here today, because they felt like maybe we got slighted a little bit in that and some of that money went to the natural resources districts. So they were asking me to make that comment. [LB57]

SENATOR HAAR: Okay. Thank you. [LB57]

SENATOR CARLSON: Okay. Thank you, Senator Haar. Now are you...you referred to page 5. [LB57]

TRACY SMITH: Yes. [LB57]

SENATOR CARLSON: And I think you said to strike "natural resources districts." [LB57]

TRACY SMITH: They would like to have it removed or changed to what term I'm not exactly sure. I would say maybe...well, I'm not going to say because I don't honestly know. [LB57]

SENATOR CARLSON: Well, and I'm just...I'm talking as I think here. What if it said, "Fund made to natural resources districts or irrigation districts"? [LB57]

TRACY SMITH: That would be than more acceptable to our board. [LB57]

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SENATOR CARLSON: All right, either way like that. [LB57]

TRACY SMITH: Yes, sir. [LB57]

SENATOR CARLSON: Okay. Okay. I understand your request. Any further questions? Okay, Tracy, thank you for your testimony. [LB57]

TRACY SMITH: Thank you, Senator. [LB57]

SENATOR CARLSON: Next proponent. All right. Opponent? Welcome. [LB57]

SCOTT SMATHERS: Good afternoon, Chairman Carlson. How are you today? [LB57]

SENATOR CARLSON: Good. [LB57]

SCOTT SMATHERS: I am Scott Smathers, S-c-o-t-t S-m-a-t-h-e-r-s. I am executive director of the Nebraska Sportsmen's Foundation. Our organization has spent a great deal of time in this conversation. We've been involved in this conversation over the last two and a half to three years in regards to conservation easements, in regards to the NET spending. We've had numerous conversations, both opponents and proponents. We oppose LB57 as the form of legislation. We do not oppose the fact that conversation needs to be dictated, solutions need to be found, which are already in the process of happening, to correct an issue that has been created out of a system that was fair play when the original rules were placed. Our members are smart. Understand, they are ranchers, agricultural producers themselves. They are rural property owners. In addition to some of our metro folks, we have a nice gel with a mix of each other, which is unusual. But the bottom line is that these organizations that have been talked about, it's as if they have created some kind of foul play or created irregularities. We've asked for two and a half years to see that documentation that proves that case. We have not seen that documentation. However, 20 years ago smoking on TV was wonderful. We now know 20 years later smoking is a terrible thing for everybody to do. We don't see it on TV. We feel the same thing has occurred with this particular process. The NET had an established set of rules. Those organizations played by those rules, accepted grant money, then took that money, sold that property, turned that money back into another project within the community. Those rules may need to be changed at the present time. Things have changed. We understand that when land is transferred to the federal government, they pay in-kind. That does provide an opportunity for counties to be subject to a harsh reality. In combination with in particular counties, and I travel the state border to border all year long talking to a large number of folks, you combine this with other issues that occur from the federal government land acquisitions. Some you've taken a county's ability, and put some serious stress on that county. The last thing we do or we want at our organization is to have any effect of that because we are those

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members that live in those communities. We do spend money in those communities. Our newest reports out on what sportsmen spend on an economic impact in the state of Nebraska, our new report just came out, after six years, went from \$470 million to \$780 million. It's what we spend in the state annually on our recreational pursuits. That translates right back to those communities, those counties. In answer to those taxation issues on those acres, only four properties have been sold to the federal government or transferred to the federal government from NET grants over the last 20 years; five more are pending. The NET Board, which I visit with large numbers of those members and the director of that organization, and the head of the Game and Parks who sits on that board and the grant committee, and they are going to change their process and reevaluate where they stand. What we would like to see is we'd like to see this committee let that lay within the house it belongs. Let the NET grant do their process; we work their processes to make sure that we don't do the wrong thing going forward. We feel that if it is allowed to take place within that house, those things will take care of themselves. And quite frankly, I take strong objection to sportsmen haven't paid their taxes. We pay our taxes. Quite frankly, Senators, we pay them threefold, \$780 million a year. So our organization opposes LB57, not the spirit of the bill. We want to work within the confines of our fellow memberships at Ducks Unlimited, on Pheasants Forever, Whitetails, the NET Board, those grant processes to make sure those things don't occur in the future, because the last thing we want to do is harm the areas where we want to go and 500 acres is 500 acres. And to answer the question, Senator Carlson, that you asked in regards to will that land be valued at \$600,000 for that trust fund that would be established or \$1 million, your answer is on page 7, lines 23...or 24, 25, and then on page 8, lines 1 and 2. It will be valued at the purposes of how it was taxed the prior year. So if it was taxed as recreational the year prior, that's what the taxation base of the value of that land will be put into a trust fund. And again, sportsmen don't have an issue with that. We would support some capacity of that as far as our concerns. I won't speak for our partners and brothers at the national conservation organizations. That's up to them to do. So we oppose LB57 in spirit. We ask that you leave it in the hands of the people that know it, live it. And there are members in this room that would oppose that. So we appreciate it and we thank you for your time. [LB57]

SENATOR CARLSON: Okay. Thank you for your testimony. Questions? Senator Dubas. [LB57]

SENATOR DUBAS: Thank you, Senator Carlson. Thank you, Scott, for being here. So if I'm understanding right, you're saying, yes, you recognize that there are some things that have changed over the years and we do need to go back and look at them. [LB57]

SCOTT SMATHERS: Absolutely. [LB57]

SENATOR DUBAS: But you'd prefer those changes be made within the rules and regs of NET rather than in statute. [LB57]

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SCOTT SMATHERS: That is correct, Senator. And the reason why, Senator, is that there are some conversations that have come to us that some of our members, our sponsors, and our partners have stressed that they have concerns in regards to constitutionality of it coming from this building. I'm not saying the Sportsmen's Foundation feels that way, but that is a concern. To me, that creates a greater division amongst what we're all trying to achieve. If the house doesn't solve itself, if the NET and those people don't solve the problem and put those things in place, then obviously that's where we feel this building comes in play. [LB57]

SENATOR DUBAS: So you're feeling comfortable enough that because your organization, as well as many others, are recognizing the need for change, that you're willing to move forward with working with NET, making sure that these concerns have been addressed. I mean if you look at the statute, we do have...there are parameters as to how NET works. [LB57]

SCOTT SMATHERS: Yes. Yes. [LB57]

SENATOR DUBAS: And so there is a place where statute needs to come in. But at this point in time you're feeling we're being premature with putting statute in place? [LB57]

SCOTT SMATHERS: Yes, I do and our organization does also. We trust the...we've trusted the NET Board, whether it's this board, prior board, or future boards, to live by the mission of the board. I know my board has to live by our mission and any variance from that and it needs to be adjusted, we've adjusted that mission as time dictates it needs to. Things change. We have great confidence in that board to be able to recognize the fact and hear the voices from the outside, from our groups, from the conservation groups that participate in NET grants. And I want it to be known that the Sportsmen's Foundation has never applied for nor received any grants from the NET, but we do work with most of those people in that organization and that apply for grants of that organization. [LB57]

SENATOR DUBAS: Are those conversations going on right now as far as the need to make these changes? [LB57]

SCOTT SMATHERS: They haven't stopped for three years. (Laugh) [LB57]

SENATOR DUBAS: Okay. All right. Thank you. [LB57]

SCOTT SMATHERS: And I don't see them stopping anytime soon. [LB57]

SENATOR DUBAS: Thank you. [LB57]

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SENATOR CARLSON: Okay. Thank you. Any other questions? Senator Haar. [LB57]

SENATOR HAAR: I love words, Scott, and your use of "foul play" I take...(Laughter) [LB57]

SENATOR KOLOWSKI: Yeah, I thought that too. [LB57]

SENATOR HAAR: That's right. (Laugh) Could you tell me a little bit more just about Nebraska Sportsmen? Are you the umbrella over some of the other groups or... [LB57]

SCOTT SMATHERS: I don't know if we're considered an umbrella. We are...ten years ago the organization was developed by a group of six individual sportsmen that felt that every group went in their own vision, saw their own tunnel, if you will, and there was nobody to bring them together to talk about not only legislative issues, but issues with the Game and Parks, with the NRDs, the DNRs, and quite frankly in how to build and brand ourselves as a group of people that, one, are very involved in our state. We care about the land resources in agricultural production, and we care about the natural resources of our state. That's how the organization was formed. As we have grown over the last ten years, our organization has become a bit of a...the pointing of the spirit, if you will, for a lot of organizations. We currently have 1,500 individual memberships. We have an additional 3,000 affiliate memberships through partnerships, sponsorships, and fellow conservation organizations. So that's basically what we've evolved to at this point. We have a nine-person executive board and we have a seven-person advisory board. Initial conversations regarding litigational issues are voted amongst the board. We take a sample of roughly a quarter of our membership base by questionnaire of how they feel on those particular legislative issues and then we formulate our decision and our stances. And that quarter percent changes with each legislation opportunity. [LB57]

SENATOR HAAR: Thank you. [LB57]

SENATOR CARLSON: Okay. Any other questions? Scott,... [LB57]

SCOTT SMATHERS: Yes, sir. [LB57]

SENATOR CARLSON: ...I think you misspoke a little bit because earlier in your testimony you said that you were really not opposed to the spirit of this bill, and then in your closing you said you were opposed to the spirit. So I think you're not... [LB57]

SCOTT SMATHERS: I apologize. [LB57]

SENATOR CARLSON: ...you're not opposed. In fact, I was wondering why you came up as an opponent, as you started to speak, but I heard that. And you've indicated that we should stick with the Environmental Trust and how they're handling these things and

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allow them to do it within the house. How long is long enough? [LB57]

SCOTT SMATHERS: Well, since the process has been in place basically for two and a half years, if I'm correct on the dates of when this...the problem was brought to the table and conversations started to dictate groups and gatherings and conversations, as we talked about last summer on a couple different events with...that you held in regard to conservation easements and the NET, I think, quite frankly, that now that the board has had a summer and this fall to review their processes and to put those things in place, I think a full grant cycle is basically the first step that we take a look at and we say what are we doing going forward. Again, excuse me, I would have more concerns if we had 20 to 30 properties that we were talking about that have been in the process. We've had four that have been transferred or sold. We have another five pending, according to the original spirit of the grant. We don't...I don't see them doing any more at this point until they become comfortable. And again, that's a board that has very diverse opinions and diverse decisions. We talked...I heard Senator Larson talk about water. We agree, the sportsmen. There's a lot of different viewpoints on that board that are trying to cover a lot of opportunities within that grant. I think as they come together, they'll figure out the right direction, quite frankly, and I think if you want a term, I'd say 12 to 18 months or a grant cycle. [LB57]

SENATOR CARLSON: Okay. All right. Thank you. [LB57]

SCOTT SMATHERS: Uh-huh. [LB57]

SENATOR CARLSON: Any further questions? Seeing none, thanks for your testimony, Scott. [LB57]

SCOTT SMATHERS: Thank you, Senator. [LB57]

SENATOR CARLSON: Next opponent. And if we have more, please move right up to the front so that we can make the exchange quickly. Welcome. [LB57]

RYAN HEINIGER: (Exhibits 1 and 2) Good afternoon, Mr. Chairman and members of the committee. My name is Ryan Heiniger, R-y-a-n H-e-i-n-i-g-e-r. I am the director of conservation programs for Ducks Unlimited for Nebraska, Kansas, Colorado, and Wyoming, and I'm here today on behalf of our 11,000 members of Ducks Unlimited in Nebraska. We have 59 local chapters throughout the state that annually host more than 75 fund-raising events. I know that many of you have attended back in your local communities. Let me just start by saying that, as the committee knows, Nebraska is really blessed to have wonderful natural resources, a very capable Game and Parks Commission, conservation-minded landowners, and citizens very passionate about conservation, habitat, and wildlife populations. Just within days, the annual spring migration of millions of ducks, geese, sandhill cranes, and other water birds will begin to

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arrive in Nebraska, which really puts it on the continental map of areas of significance for those interested in wildlife. I am pleased to be able to be here today to be able to provide some input on LB57 and share our concerns about this legislation. As you all know, the Nebraska Environmental Trust is a tremendous organization that now has a 20-year track record of achieving great conservation outcomes with the support of the Nebraska Legislature. Ducks Unlimited is very proud to partner with the Nebraska Environmental Trust to deliver science-based habitat conservation, much of which involves working directly with farmers, ranchers, and other landowners interested in approving wildlife habitat. In particular, our focus in Nebraska is within the Rainwater Basin and along the Platte River from Scottsbluff all the way to Omaha. Our work on both public and private land of restoring wetlands and prairies also helps improve water quality and helps recharge our water in our rivers and in our aquifers. We believe that during the last two decades the board and staff of the Nebraska Environmental Trust has exhibited sound judgment in developing clear policies and rules to responsibly administer public funds while also embracing innovative and entrepreneurial approaches to fulfill its mission. That's been talked about a little bit already today. Ducks Unlimited has been very fortunate to receive several grants from the NET board, including some for land acquisition that also involve the very innovative revolving fund approach. Each project, and I want to stress this, each and every project completed with these grants has been consistent with the terms and conditions of the agreement that are approved by the NET Board, and not just the original project, but in the case of the revolving funds, the subsequent ones are still done to the same methodology, the same focus that we originally applied for the grant to deliver. In our experience, land conservation is a very dynamic and impatient process and no two projects are identical in terms of time frames and landowner expectations. Prescriptive legislation crafted in this area should be mindful of allowing NET processes to work within the realities of land acquisition and remain true to the fundamental principles of the Trust, empowering grantees to develop common sense, win-win solutions. Legislation should also remain true to a long-held Nebraska tradition of protecting landowners' private property rights. While it may not be the intent of this legislation, we feel that there are specific provisions of the bill that may infringe on those rights. We acknowledge the sensitivity of federal land ownership and potential impacts on county tax revenue, and we appreciate Senator Larson's work to help find a solution to this issue. As an example, one of the handouts that I provided is a copy of a letter submitted by the Franklin Board of Supervisors chairman to the Nebraska Environmental Trust as part of one of our proposals last fall that sets about a pilot effort to establish a trust fund that would be held by the Nebraska Community Foundation. We're working with the county, with the Rainwater Basin Joint Venture to capitalize a fund that would help offset that difference between what the U.S. Fish and Wildlife Service would pay, which roughly averages about a third, and then to fulfill that difference so it makes the county whole. So we're working on these solutions already because we do acknowledge their importance and we want to work to a positive resolution. Importantly, we are not proposing to use any Nebraska Environmental Trust funds to create this endowment. In summary, we believe

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that the existing requirements within grant agreements provide the necessary oversight this legislation envisions, and recommend that NET boards and staff continue to be empowered with the decision-making authority that has produced impressive results that now number more than 1,300 projects in all 93 counties. Thank you for the opportunity to provide input. I'd be happy to take any questions. [LB57]

SENATOR CARLSON: Okay. Thank you for your testimony. Questions? Yes, Senator Haar. [LB57]

SENATOR HAAR: Thank you. You mentioned some concerns about there are parts of this that might infringe on your ability to operate. What...could you be a little more specific or...? [LB57]

RYAN HEINIGER: Yeah, I'd be happy to. That's a great question, Senator. So, for example, with a statutory requirement that the NET Board would have to approve the sale of land if a private owner such as Ducks Unlimited, as a private nonprofit conservation organization, would have to seek the NET Board's approval before we could dispose of land, that's in essence a government authority saying that we could or could not sell to some particular landowner. [LB57]

SENATOR HAAR: Would that be land that you got through a grant or just any land? [LB57]

RYAN HEINIGER: Well, as per the conditions of the proposed legislation, land that was acquired in part or in whole with NET funds. [LB57]

SENATOR HAAR: Okay. [LB57]

SENATOR CARLSON: Okay. Other questions? Senator Johnson. [LB57]

SENATOR JOHNSON: A little bit of follow-up: So you...you...they would need...they would give you the approval. What would be the factors that they would have to consider in order to approve it or would their concerns be that...how are you going to pay for this or are you giving it away and we don't get our tax money back? [LB57]

RYAN HEINIGER: That's a great question. I don't know if it's specified to that level of detail. In our current grant agreements, I can tell you, and maybe Mark could correct me if I misspeak, but it says that the board would not reasonably withhold that approval. And no such assurance is given in the proposed legislation. [LB57]

SENATOR JOHNSON: So you don't know what the criteria for their... [LB57]

RYAN HEINIGER: Correct. [LB57]

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SENATOR JOHNSON: ...approval or disapproval would be. [LB57]

RYAN HEINIGER: Correct. [LB57]

SENATOR JOHNSON: Your use of the Community Foundation, explain a little bit the background of that. [LB57]

RYAN HEINIGER: So this is a pilot effort. It's a recognition on our part and that on the Rainwater Basin Joint Venture, which is our umbrella partner in that landscape, to set aside some funds that would annually generate interest to be used for setting...offsetting that differential between what the property was formerly taxed at, then the revenue that would come in from the U.S. Fish and Wildlife Service. And one point I would make is that annually Congress is actually the entity that sets the formula and the rate for reimbursing counties, and so we, of course, try to encourage the highest level of support as possible from Congress. And looking at historical averages, it's roughly 33 percent. So we would just be trying to backfill that other 66 percent. And our interpretation of the legislation that's currently written is that only NET funds would be used for that endowment and it would...that if the NET Board approved the transfer to a federal land management agency, then the board would also have to approve the transfer of that amount that's prescribed in the law. There was a question earlier about whether it was NET origin or whether the Fish and Wildlife Service or Congress would set aside that portion, and I guess just interpreting the current legislation, it would say that the NET Board. So in essence, it would double the cost of those type of projects. [LB57]

SENATOR JOHNSON: Yeah. Okay. Thank you. [LB57]

SENATOR CARLSON: All right. Other questions? Senator Haar. [LB57]

SENATOR HAAR: I've sat on the committee for four years now and don't understand all the implications, but I know there has been some friction between Ducks Unlimited and other...could you just describe that a little bit, what brought us to this point? [LB57]

RYAN HEINIGER: That's an interesting question, Senator, and I don't have necessarily all the history. When I was previously working in Nebraska, I always felt like we had great relationships with landowners, with the Nebraska Environmental Trust Board and other interested parties. I was away from the state for a few years but I'm now reengaged in my current capacity. It certainly has my attention and I'm always open for input and dialogue. I think that's something that has been lacking, is just these folks, you know, sitting around a table. I will always make myself available to come down to Bismarck anywhere, anytime to have those conversations and look for that common ground, to be able to work for solutions that are viable for all parties involved. [LB57]

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SENATOR HAAR: Okay. Appreciate that. [LB57]

SENATOR CARLSON: Any further questions? I'm going to ask a question. I'm looking at the copy of the letter that went to Mark Brohman from Franklin County Board of Supervisors and it indicates in there that, "Ducks Unlimited has agreed to work with other partners involved and the county to create a permanent endowment fund which will generate an annual payment to the county to offset the anticipated reduction in taxes associated with this acquisition, making this a 'tax revenue neutral' project." Now such a thing was done. We all know that, fortunately or unfortunately, almost every year taxes are going up. So is the spirit of this indication of cooperation such that that fund would allow for that increase in taxes that seem to invariably occur year by year? [LB57]

RYAN HEINIGER: Excellent question, Senator, and yes. So the idea would be to set aside a corpus of money that would be invested wisely but sufficiently enough to be able to keep up with the cost of inflation so that the annual interest return helps keep up with that cost of rising taxes over time. [LB57]

SENATOR CARLSON: Okay. All right. Thank you. Any other questions? Hearing none, thank you for your testimony. [LB57]

RYAN HEINIGER: Thank you. [LB57]

SENATOR CARLSON: Next opponent. Welcome. [LB57]

ROB SCHUPBACH: Hello, Senator Carlson, committee. My name is Rob Schupbach. I live at 2304 S. 24th Street in Lincoln. I'm speaking today as a... [LB57]

SENATOR CARLSON: Would you spell? Spell. [LB57]

ROB SCHUPBACH: S-c-h-u-p-b-a-c-h. [LB57]

SENATOR CARLSON: Thank you. [LB57]

ROB SCHUPBACH: (Exhibits 3, 4, 5, and 6) I'm speaking today as an opponent of this bill and a proponent of the Nebraska Environmental Trust. I'd like to point out first to the board, when I voted in 1982 (sic) and again in 2004 for the constitutional amendments that allowed the charitable gaming and the state lottery, it was with the understanding that the funds generated by the gaming activity would be used for the purposes of higher education, environmental improvement, and financial support of the Nebraska State Fair. Upon reading LB57, it's very apparent to me that this bill will use gaming funds to create an investment account to pay county real estate taxes. I feel that this is breaking the trust that the people who voted in 1992 for LR24CA and in 2004 for

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LR209CA put in the Legislature when they voted LR24CA and LR209CA into the constitution. This fundamental change in allocating the use of gaming funds should be voted on by the people, just as LR24CA and LR209CA were voted on by the people. I would like to point out what is very significant. When LR209CA allocated \$2 million of gambling proceeds, or reallocated \$2 million of gambling proceeds to support the Nebraska State Fair, that required a constitutional amendment. This bill would take unspecified funds and give them to counties to create an investment fund to pay hypothetical...or to pay to supplement real estate taxes without a vote of the people. It took a vote of the people to support the State Fair. Why shouldn't it take a vote of the people to support county real estate taxes? The people have not voted to support county real estate taxes with gambling money in Nebraska. There has been some criticism that's been kind of skated around of the Environmental Trust being involved in wetland projects that have been partnered with Ducks Unlimited and other agencies. I'd like to point out that the wetland projects in Nebraska or the wetland projects they've supported are environmental improvement projects. Wetlands perform a vital function in nature. They're like the kidney in your body; they purify the water. Nebraska has, both rural and urban Nebraska, suffered from excess fertilizer and pesticide problems in the groundwater and surface water. I'm providing limited evidence. I'm in short supply of this book. The title of it is Nitrate and Nebraska's Small Community and Domestic Water Supplies. It's a book that was put out in 1999 by the Bureau of Reclamation. I only have two copies of it, so I'm keeping one for reference and I'm turning in the other to the committee. But I've taken a page out of the book which is the second in my exhibits. This is a page out of the book that shows in 1991 the number of communities and the areas in Nebraska that have suffered from nitrates in their community wells water systems of over 10 parts per million. It is significant. The wetlands that are installed in the areas provide a cleansing mechanism to improve that. Recently--the next page in my exhibit is an e-mail that I got from the Nebraska Department of Environmental Quality--104 communities in Nebraska received over \$2 million of settlement from the company that produces atrazine. The city of Lincoln received \$850,000...or \$800,000 of atrazine settlement. Most of the communities received between \$5,000 and \$10,000. Atrazine is an agricultural chemical that apparently is being used to the excess and it's running off in communities' water supplies. The kidneys, the wetlands that the Environmental Trust funds, help to protect that. The Nebraska Environmental Trust has provided funding assistance to help with nitrate problems. The Nebraska Environmental Trust has provided financial assistance to establish wetland restoration. These wetlands, as I said before, act as kidneys to purify and improve water quality. The improvement is made necessary by excessive agricultural chemical use becoming runoff into the state's surface and groundwater. Restricting wetland improvement, which this bill will do, by the Nebraska Environmental Quality or Nebraska Department, the Nebraska Environmental Trust is not water-quality friendly. LB57 is counterproductive to water quality improvements. It's reactionary and contrary to state water quality goals. I urge you to please kill LB57 in committee. Do you have any questions? [LB57]

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SENATOR CARLSON: Okay. Thank you. Questions? Well, I have a question. [LB57]

ROB SCHUPBACH: Please. [LB57]

SENATOR CARLSON: If we go back to when the Environmental Trust was established and... [LB57]

ROB SCHUPBACH: Yes. [LB57]

SENATOR CARLSON: ...you voted on it, became a part of that, once the Environmental Trust started making grants, and although that process is somewhat changing, and we're going to hear from the Environmental Trust about that, when they started making grants to groups and groups used that money in whatever way they used it, the Trust then really lost control of that money. Would you agree? [LB57]

ROB SCHUPBACH: They have to live by...the groups have to live by the stipulations of the grant, it's my understanding. [LB57]

SENATOR CARLSON: And I'm not...but I'm not aware of any stipulation that says a given grant, when it goes to a group, and I may be wrong, but if they really violate the spirit of what the grant was for, that that money is to be returned. They probably wouldn't get any future grants. But I think that...I think that grants that were given and used for various purposes, once that money was transferred out it was really gone from the Environmental Trust. [LB57]

ROB SCHUPBACH: I don't think so. The last Environmental Trust meeting that I attended, there were some complaints, and I don't recall the gist of the complaints, but there was a complaint that was made by some neighbors through an attorney and the attorney appeared at the Environmental Trust meeting. It was the meeting when the Trust voted on participating in the Snake River funding that fell through. But this particular attorney drew out, raised several issues about abuses that I just don't remember the details of. The Trust took some action, as I recall. Mark Brohman can probably fill you in. I don't...my memory just isn't perfectly clear on a day-to-day basis so I'm just recalling the general...I can picture the woman's face. I just can't...I don't remember her name. She was...she's a local Lincoln attorney. But she cited several abuses of a grant and the Trust Board took some action. [LB57]

SENATOR CARLSON: Okay. [LB57]

ROB SCHUPBACH: But the grants that I have seen and that I've...I haven't been directly involved in, but the grants that I've seen when I've gone to...or heard about when I've gone to the meetings have stipulations as to what the purpose of the grant is for. Typically,...and I think you're hitting on a very substantial problem that this bill brings

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out. Typically, the grants are partnered with other grants. The Trust was formed so that entities that didn't have table money could come forward, get the table money, and then go to other agencies that say we'll give you some money to help you out with your project, but you've got to put something into it too. So the agency, the entity, the community, the city of Wilber, whatever it might be that wants to improve their sewage treatment plant but they don't have the tax base to do it, have a place to go to get table money and then they have a place to go to the other federal agencies that will...other state and federal agencies that say, we'll give you money, we won't give you all of it; you may have to go to half a dozen different agencies. And then you have a partnership of funding that brings this forward. That brings me to my most primary objection. What Senator Larson's bill would do, let's just say that Ducks Unlimited and Pheasants Forever and the Environmental Trust all partnered to do a wetlands project and the wetlands project was adjacent to land in the Rainwater Basin Joint Venture. And it became, once the project was done, it became, from a management point of view, more efficient to have the Rainwater Basin Joint Venture manage the property and own it. If...and then the property appreciates in value or the tax value goes up. Senator Larson's bill would cause the entire valuation to go to that county if they sold it or if they...however they disposed of it. If they sold it, the entire money, the entire amount of the valuation would have to go to that county. If they didn't sell it, if they couldn't get money equal to the valuation from the Rainwater Basin Joint Venture, they'd have to dig into their pockets to do it. I think that would stop the partnership and that would stop the development, and I think that's the goal of this bill. [LB57]

SENATOR CARLSON: Okay. And I will ask Mr. Brohman when he comes forward. [LB57]

ROB SCHUPBACH: Yes. [LB57]

SENATOR CARLSON: And you may be right; I may be wrong. If I'm wrong, I'll admit it. But thank you. Any further questions? Okay, thank you for your testimony. [LB57]

ROB SCHUPBACH: Thank you. Thank you for your time. [LB57]

SENATOR CARLSON: Next opponent? Seeing none, those...oh, here we...you got to be quick, Mr. Winston. [LB57]

KEN WINSTON: Well, I'm just surprised that other people didn't want to speak before I got up. [LB57]

SENATOR CARLSON: Okay. [LB57]

KEN WINSTON: And I will be brief. [LB57]

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SENATOR CARLSON: Welcome. [LB57]

KEN WINSTON: Thank you. Good afternoon. My name is Ken Winston, K-e-n W-i-n-s-t-o-n, appearing on behalf of the Nebraska Sierra Club. The Nebraska Sierra Club has voted to oppose LB57. Basically, the reasons that we're opposing it is based upon the fundamental right of people to own property, and a subset of that right is the right to alienate or sell property. And to the extent that LB57 conflicts with the right to alienate real property, it could very well be subject to legal challenge because it also indicates that it...that it also may violate rules against perpetuities and other fundamental legal criteria. With that, I would end my testimony. [LB57]

SENATOR CARLSON: Okay. All right. Thank you. Any questions? Seeing none, thank you. [LB57]

KEN WINSTON: Thank you. [LB57]

SENATOR CARLSON: Any further opposition? All right. Neutral testimony? We do have a letter. It's from the Nebraska Water Resources Association, Amy Prenda, in opposition to LB325. Whoops, we got the wrong one. We'll have to save that one. [LB57]

MARK BROHMAN: (Exhibits 7, 8, 9, and 10) Good afternoon, Mr. Chairman and members of the Natural Resources Committee. My name is Mark Brohman. It's M-a-r-k B-r-o-h-m-a-n. I am the executive director of the Nebraska Environmental Trust. I've got a couple points I'll go through and then I'll try to answer some questions. There are a lot of questions that came up. My subcommittee, the legislative subcommittee, asked me to come in a neutral position and point out some things that we see could be clarified or maybe some problems or issues that we would have. It had been stated earlier that the Trust Board has been working on issues, especially taxes, for a number of years, and we have and I'll go into that in a little bit. I've got three handouts I'm bringing around or having sent around. The first one is language that's in the Environmental Trust grant contracts, so this language is in every contract that goes out and then there's sometimes additional terms that are put into contracts. So when we review a grant application and we decide to grant that entity money, sometimes we'll put additional conditions on that and that will become part of that contract. Also, the contract as it's written, the grant application, I'd say not contract, the grant becomes part of the contract and it says so in the contract. It says the original application, along with this contract, are the only documents involved. So as you look on that page under J, it talks about transfer and disposal of real and personal property, so that's both personal and real property: The sponsor will not sell, lease, transfer, exchange, mortgage, or encumber in any manner whatsoever any of the portion of any real, including land acquisitions, easements, or improvements, or other property acquired in whole or in part by the Trust funds without prior written permission of the Trust, which will not be unreasonably withheld. That word came up earlier and there's not a definition of what's "unreasonably

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withheld." But it goes on to say, too, that if a sponsor doesn't want to abide with that and does want to sell it anyway, then they have to return the Trust grant funds. Now the second provision down below applies only to real estate, so it's not talking about equipment that someone would buy. So it goes on and about the third line down it says, "The Trust must also be notified in writing of any plans to sell, lease, transfer, exchange, mortgage or encumber the property. The Sponsor will be required to obtain written Trust approval." Now what Senator Tyson Larson's bill would do would make it not only be Trust written approval, which usually comes from my desk, but there is criteria when people submit grants, and we look at the criteria and a lot of times...well, almost in every case when someone wants to exchange land in the future or especially gift it to like the Fish and Wildlife Service, that's in the original grant. We know that's coming and so we look at that and see if they're meeting those obligations. But there is an obligation that they have to notify us and I have to, in writing, say that we are going to permit that. If we deny it, then they can pay back or we can seek, you know, through contract law, you know, a dispute. We've never had that happen, but I just wanted to point out that language. Revolving funds have been mentioned and it's also part of what's in front of you, the bill that's in front of you. And the revolving funds, the last few years my board has looked at revolving funds and said, well, maybe we've lost a little bit of control. When originally what happened is we had a group come in and say the idea was we're going to take a pot of money, you give us a couple hundred thousand dollars. We're going to go out and buy a tract of land that has wetlands on it, we're going to restore the wetlands, put an easement on it. And there may be some agricultural land also part of that, but the farmer didn't want to sell just the wet area, he wanted to sell an entire field, which you can understand. And so they sell the entire field to this organization. They restore the wetlands and put a conservation easement on it. Then they resell it. They take those proceeds and do it again. And primarily when the revolving funds were set up in the Rainwater Basin, it was to create habitat and restore habitat and preserve habitat in the Rainwater Basin. And that's where a lot of this has come up from, is with Ducks Unlimited and their dealings with the revolving funds. So the last three years when we've had applications come in for revolving funds, my board has actually said and publicly has stated that we are not funding revolving funds at this time. Now the last one that we did fund was in 2009. So I think the board is kind of shifting what their thinking is and they think maybe we don't have full control on those future decisions, even though we have to, you know, it has to be justified, has to meet the principles of that contract. But the one thing that's come up, and as I look at the bill and think of different things we're doing right now, the NRDs would also be, you know, subject to these revolving fund conditions. And so if an NRD wanted to buy land in the Republican River Valley or the Platte River Valley, which they are using some of our funds now to buy water rights, but if they wanted to buy a piece of land, the farmer didn't want to just sell the water rights, he said, I'm retiring, I want to sell this piece of property, if they wanted to buy that property, put an easement on it and protect the water, put a water easement on it, and then resell it and then use that money to buy another property, they wouldn't...they would have to come back to the board each time, even if they spelled out

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exactly how they planned to do that. And that's what the Ducks Unlimited did when they first came in with the first revolving fund. They said, here's the criteria: It's going to be in the Rainwater Basin; priorities will be to adjacent areas next to other wetlands; we're not going to go out and start new wetlands, we're going to go adjacent to existing ones, that's our priorities. So there were criteria. So if the NRD had criteria saying, we're working in the Platte Valley, we're working in the Republican Valley, they still would have to wait and bring each one of those projects back to the Environmental Trust Board. My board meets four times a year so the problem is in the time delay. Some people would say three or four months isn't a big deal, but the timing, you would have to time it, get in front of my board and ask for permission. So it just adds another wrinkle to what we do. I see I'm out of time and I would ask for permission to hit a couple other points, Senator, before I go to questions. [LB57]

SENATOR CARLSON: Okay. Go ahead. [LB57]

MARK BROHMAN: On the tax issue, you can see on this handout that has the different properties, it was mentioned before that four properties, it's actually three properties, have been bought in the last 20 years. So the top half of that page you'll see there's one in Clay, one in York, and one in Franklin where property was bought and then given, sold, or transferred to the Fish and Wildlife Service. Those we knew, when they applied for those grants, we knew that those were going to be given to the Fish and Wildlife Service, because in most cases it was adjacent to an already owned property. And so in order to manage a property, which was mentioned earlier, a wetland, you got a wetland in the middle of four property owners, you need to have all four property owners agree to how you're going to manage that wetland, because that water goes up and down. So in many cases, these are the second, third, or even the fourth parcel finishing out a project. So those are the three that total 677 acres that we've done so far. The next group is a set of five that are pending, and you'll notice there's Hamilton, Clay, Franklin, Franklin, and Gage County. Take especially notice of the last one. There's Friends of the Homestead National Monument. They bought a 100-acre tract of land adjacent to the monument and said, we want to buy this property, restore it back to prairie, and give it to the monument. Under this scenario, of course, they would have to pay, you know, we'd have to put money into an account and pay those taxes. And in some cases, you know, a county may say, we think Homestead National Monument is worth so much that we would like to increase the size of it and we're not worried about that small loss in taxes. It's about \$2,000 a year in taxes on that property. So I just wanted to point out it's not all Ducks Unlimited, but primarily this is Ducks Unlimited to Fish and Wildlife Service that has sort of sparred this debate. So again, total in 20 years it's 1,100 acres across about six counties, so I wanted to lay that out. And then the last one had been mentioned down there at the bottom of the page. It's Ducks Unlimited has come in this year. The applications were due last fall but it's for this spring. We're yet to award them. And they have asked for a grant to buy 41.5 acres in Fillmore County. And the last piece of paper you have in front of you is the document from Fillmore County saying that they

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agree, as long as they're trying to pay taxes. So what's happened is Ducks Unlimited has made an effort, a concerted effort, to try to address the tax issue. They heard loud and clear that there was a tax problem out there. My board has been concerned about it. And so they found a way to pay those taxes. I want to mention that one of the concerns about this bill and the way I read it is that the Trust would be responsible because it says the board, and then goes on to say, it must put funds in. So to me, it looks like the board is responsible to put that amount of money in and it's equal to the amount that that land was valued the year before the transfer. So again, if it's a \$1 million property, we have to put \$1 million in that account. Well, the interest, even at 4 percent, is going to be about three times what the property tax is each year, so we think that's an inordinate amount of money to be put into that. The other thing it doesn't allow is if the federal government is paying an in-lieu-of tax, and you heard from Ryan that a lot of cases it's about 30 percent, there's no provision to say, okay, the federal government is paying 30 percent so we're only going to charge you 66 percent. It's just saying you must put in this full amount. And the other scenario is a lot of times we don't put the full amount into that project. Maybe we're 10 percent, 25 percent. But it doesn't matter, as long as there's Trust money involved, we have to pay into that account. So if we put 10 percent into a wetland project, we would have to pay 100 percent or we'd be responsible to see that 100 percent is in that account. So I think there's some things that need to be worked out. I know I'm way over time and I know there's probably a lot questions, so I think I'll quit there. But I did want to mention those things and hand out these items. So we're not opposed to the concept. You know, our board is definitely working on this. We have not established a clear policy on taxes but I think Ducks Unlimited realized the last couple years that we're concerned about taxes. The came in with a grant this year and said, here's how we're proposing to do the taxes. I think we need the ability to look at each grant and come up with solutions, creative solutions in some cases, and I think in some cases there will be some national land projects that would go to a Corps of Engineers, Bureau of Land Management, Bureau of Reclamation where the community would say, we're going to get more good out of this property off the tax rolls than we were on the tax rolls, and they'd be willing to forego those taxes. But on another hand, I think that we can find solutions, like DU is trying to do on this project. And with that, I'll try to answer any questions you may have. [LB57]

SENATOR CARLSON: Okay. Thanks for coming and testifying today. Questions of the committee? Yes, Senator Haar. [LB57]

SENATOR HAAR: Okay. This is the first time I've seen, because these issues have been bubbling up occasionally, the amount of land involved here is actually relatively small, isn't it? I mean a total of 1,100 acres, is that? [LB57]

MARK BROHMAN: It is. And I'll, you know, state for the record that this is land that has been transferred or will be transferred to a federal entity. In most cases it's the U.S. Fish and Wildlife Service, except for the one national park. And the other issues in the past

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have revolved around counties just being upset because they weren't sure whoever was going to end up with the land. Even though Game and Parks pays full taxes, DU pays full taxes, they were worried about what would happen in the future. So there were other lands involved, but these are the only lands that this bill would address when it comes to actual, you know, transfers to a federal entity with our money. These are the only ones so far and currently pending. [LB57]

SENATOR HAAR: Okay. [LB57]

MARK BROHMAN: So it is a very small amount but, you know, if it's your 1,100 acres, but it is multiple counties. It's not all in one. You can see there's... [LB57]

SENATOR HAAR: Right. [LB57]

MARK BROHMAN: ...several counties listed it's divided amongst. [LB57]

SENATOR HAAR: So explain again the revolving fund part. [LB57]

MARK BROHMAN: Sure. When the revolving fund first started out with Ducks Unlimited, they came in, and they're the only ones that had a revolving fund. They came in and asked for a set amount of money and they said: we would like--you know, just round numbers--we'd like \$300,000. We will take this money and we will go buy property that has wetlands on it, restore the wetlands, put an easement on it, and then sell it to what they call conservation buyers. Some cases, there's only a few acres of ag on that property that someone can continue to ag. Sometimes, you know, maybe the landowner said I want to sell a whole half a section, so you have a half a section of land but there's only ten acres of wetlands on there. So they put a conservation on maybe that ten acres of wetlands and maybe five acres of buffer, of grass buffer, and then the rest of it is crop ground. And so when they resell it, that landowner, the new purchaser, can do whatever they want with that farm ground. They can put in beans or corn or they can put it to grass. But they can't, you know, farm the wetlands, so it's protected. So they take that money from that auction and then they go and buy the next wetland. And so it's called a revolving fund because the money revolves. Usually each time you sell that land, it's worth less money because it has an easement. Because land has appreciated the last few years, some land they've actually made money on, even though when they sold the property it had an easement on it. So in some cases, it's actually made money. So there is some money in that account, whereas eventually it will drain down and there won't be any money left and that's why you would come back and ask for more money. So in the early days, they did ask us for additional grants, so we had several revolving fund grants to Ducks Unlimited. But that's the way the system works. It revolved the money and you were able to protect wetlands and then move to the next property. [LB57]

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SENATOR HAAR: And then we heard that this would give NET additional authority. Do you feel you have that authority now to accomplish what's in this bill or...? I'm trying to figure out, is this additional ability to exercise authority, or is this putting restrictions on things? [LB57]

MARK BROHMAN: It would require board action for each subsequent purchase. Or if we did a revolving fund with the NRDs for whatever reason in the future, or any group, it would require board action, versus now it just says written permission of the Trust. And written permission of the Trust, like I said, is my approval, looking at when the property comes in. I look at it and see, does it meet the criteria of the original grant, which is usually in the Rainwater Basin, adjacent to another project, you know, those kinds of things. So it would change and make that a board action. So instead of being able to accomplish it in a day or even hours at times to, you know, now meeting...maybe if the board meeting was in a week we could get it on the agenda. If it's in three months, they'd have to wait three months for board approval. [LB57]

SENATOR HAAR: But you know, we often go around and around the two words "shall" and "may." [LB57]

MARK BROHMAN: Uh-huh. Yeah. [LB57]

SENATOR HAAR: So does this give you additional, again, authority that you couldn't...and just talking about the NET, not you personally, Mark. [LB57]

MARK BROHMAN: Uh-huh. [LB57]

SENATOR HAAR: But does this give additional authority that NET wouldn't have had before? Is there anything in here that NET couldn't have done? [LB57]

MARK BROHMAN: Well, the board has indicated that they would like to see some of these projects in these revolving funds in a board setting in some cases, and so this would say they must be addressed by the board; the full board must at a board meeting and it must be a majority of members present. So it would give the board a little more authority in that case because I'm not signing off on that transfer. But like I said, the revolving funds are something that we have not put additional funds in the last three years. There have been applications but we've denied them. But I think it would give the board, you know, a little more authority because they would say, okay, this has to be on the agenda; we have to vote on each individual tract of land. Whether it's 5 acres, 1 acre, or 100 acres, it would have to come in front of the board each time. Even if the contract, the original contract, you know...well, a new contract, because if this would pass we'd change our contract, of course. But now the contract just says written permission from the Trust. [LB57]

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SENATOR HAAR: Do you report...you report to your board, though. [LB57]

MARK BROHMAN: Yes, I report to my 14-member board. [LB57]

SENATOR HAAR: I mean you...and respond to them... [LB57]

MARK BROHMAN: Yes. [LB57]

SENATOR HAAR: ...or you lose your job. [LB57]

MARK BROHMAN: And you're right. And after we do approve those, those are in the board book and they see what lands have been approved in these revolving funds. Again, you know, in this case it's such a small amount dealing with going to the service. It's 1,100 acres. But we do have other tracts that were bought with revolving money that, you know, did not go to the service. They went to Game and Parks. You know, that's the only one I can think of right now. And Game and Parks does pay a full tax. It's an in-lieu-of but it's 100 percent, unlike the feds who pay, you know,... [LB57]

SENATOR HAAR: A third. [LB57]

MARK BROHMAN: ...roughly 33 percent. [LB57]

SENATOR HAAR: Thank you. [LB57]

SENATOR CARLSON: Okay. Senator Johnson. [LB57]

SENATOR JOHNSON: Thank you. I'm going to follow up a little bit more on the revolving fund. And I've been involved with some of them where you loan or grant the money out and it's to be a revolving fund and it's actually paid back to the agency. [LB57]

MARK BROHMAN: Uh-huh. [LB57]

SENATOR JOHNSON: And can be used by another agency and given out again. But you have full control. [LB57]

MARK BROHMAN: Uh-huh. [LB57]

SENATOR JOHNSON: In the past, you've granted the money out and they've been able to sell the property and on their own revolve it,... [LB57]

MARK BROHMAN: Right. [LB57]

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SENATOR JOHNSON: ...so it doesn't come back to you. What you're asking for is that they come back to you and get that permission to revolve it again. [LB57]

MARK BROHMAN: Right. The money wouldn't come back to us, but we would have to grant...the full board would have to grant permission. I grant permission now. The full board would have to grant permission under LB57. [LB57]

SENATOR JOHNSON: Would you have the authority, if you say no, then they would have to pay that back to you? If you had...if the board felt there were other projects out here that were more valuable... [LB57]

MARK BROHMAN: Uh-huh. [LB57]

SENATOR JOHNSON: ...than what they're going to do, they in effect would have to, under this plan, pay it back to you and then you could revolve it out to agency B or group B. [LB57]

MARK BROHMAN: Yeah, I think that might be the case. [LB57]

SENATOR JOHNSON: So that's where you would gain some control over what you have now. [LB57]

MARK BROHMAN: Well, I don't know legally if we could say, you must pay the money back because we don't agree with what you want to do with the money. I think they would still hold the money and they would... [LB57]

SENATOR JOHNSON: They'd have to come up with a better project. [LB57]

MARK BROHMAN: ...have to come out with another project. Yeah, I think that would be the case. The only other project that we have similar to this that, you know, some people would call a revolving project and that was an organization asked for money from us to buy a ranch to restore and protect fens, which are a type of wetland, on that property. And then they said, when we sell that property, we'll want to use those proceeds to set up the Sandhills Task Force. And so that was in the contract. We knew that was what was going to happen. So when that land sold with the conservation easements in place, that money then went on to this next project. It's sort of a revolving fund but not really, because we knew ahead of time where the money was going, exactly what it was going to do, and it established the Nebraska Sandhills Task Force, which then is doing conservation work in the Nebraska Sandhills. So that's a case where we knew, once that land was selling, where those proceeds...but normally under, you know, the definitions of the contract, when they sell property, it has to come back to us, you know, and we have to approve, and then that money comes back. But in a revolving fund, they get to keep the money and then revolve it into the next project. But

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in all other cases, the money comes back to us if they sell either equipment or land with our Trust money. [LB57]

SENATOR JOHNSON: Thank you. [LB57]

SENATOR CARLSON: Okay. Thank you. Senator Kolowski. [LB57]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Mark, first of all, thank you for your work and the work of your board and the difference you make in our state. I appreciate that. [LB57]

MARK BROHMAN: Thank you. [LB57]

SENATOR KOLOWSKI: Could you quantify something for us? [LB57]

MARK BROHMAN: Uh-huh. [LB57]

SENATOR KOLOWSKI: About, from the foundation of the Trust, how...about how many acres would you say statewide have been turned around by your...the work of your Trust overall? [LB57]

MARK BROHMAN: Now you're talking about easements? [LB57]

SENATOR KOLOWSKI: No matter where they might be right now. [LB57]

MARK BROHMAN: You're talking easements and acquisitions and everything in revolving funds? [LB57]

SENATOR KOLOWSKI: Everything. Do the whole...the whole thing. [LB57]

MARK BROHMAN: Boy, I don't have a good number. I've been the director of the Trust for six years and the Trust has been around 20. I don't have a good number. I could get that number for you. But we have, in our database, we have easements and acquisitions, and then there's been land that's traded. And that's another point I didn't make and that is that the bill says if land is traded to a federal entity, you still have to pay the full taxes on it. Well, to me, that's sort of a double taxation, because if you're trading with Fish and Wildlife Service, they're taking something. They're paying a third of taxes. [LB57]

SENATOR KOLOWSKI: Sure. [LB57]

MARK BROHMAN: They're picking it, taking it out, and now you're putting something in paying 100 percent and then you're getting 100 percent over here, so you're gaining. So

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there have been traded lands and that's in our database. And so it's hard to quantify and give you a number. I can give you a number saying these are the acres that we've paid for, but some of these have now been, you know, traded and money has come back in. I can get that number for the committee, but it's a couple hundred thousand acres total. I know we've done some large projects in the Wildcat Hills and we've got some large easements in Schramm Bluffs between here and Omaha, but again, those are easements. But if you want easements and acquisitions, and we've got, you know, land interests, we can't hold land interests. The Trust cannot hold land or interests, so we can't hold easements so...but I can give you a number of what our money has been involved in. But again, sometimes we may have had 10 percent in it and occasionally we'll have 100 percent where they have other inputs that they pay for. You know, maybe they're paying for the appraisals and they're paying for restoration, and we're paying for 100 percent of the purchase. So it's kind of hard to give you a number, but I can tell you how many acres we've had an impact on, but it would be a couple hundred thousand across the state over 20 years. [LB57]

SENATOR KOLOWSKI: Whatever categories it might be in, if you could just give us kind of a total,... [LB57]

MARK BROHMAN: Yeah, under easement and acquisitions. [LB57]

SENATOR KOLWOSKI: ...send it to the chairman. If he could share it with our committee,... [LB57]

MARK BROHMAN: Sure. [LB57]

SENATOR KOLOWSKI: ...it would just be an interesting piece of history. [LB57]

MARK BROHMAN: Yep. [LB57]

SENATOR KOLOWSKI: But I'd like to see where the 20 years have been. [LB57]

MARK BROHMAN: Okay. [LB57]

SENATOR KOLOWSKI: Thank you so much. [LB57]

SENATOR CARLSON: Okay. Any other questions? I've got a...it's kind of a question. I'm looking at this 1,176 acres... [LB57]

MARK BROHMAN: Uh-huh. [LB57]

SENATOR CARLSON: ...in several counties. Assuming that was irrigated land in Phelps County, of which I'm more familiar, I'm guessing that the real estate taxes off of

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that land would be about \$30,000. And you can say, well, that's not good irrigated land so it's not worth that much. So it's worth half and so the taxes off that would be \$15,000 a year. And if it's in-lieu-of taxes then paid on that, and that provides about 33 percent of it, that's \$5,000 that would come in. [LB57]

MARK BROHMAN: Uh-huh. [LB57]

SENATOR CARLSON: There's \$10,000 difference in there. And if that's not taken care of, that's \$10,000 a year forever. [LB57]

MARK BROHMAN: Yeah. [LB57]

SENATOR CARLSON: And involves a lot of revenue over a period of time. And I just think it's important that it's understood that I believe a county ought to have the option of saying, well, we've got another project here and we think that's going to bring enough value to the county,... [LB57]

MARK BROHMAN: Uh-huh. [LB57]

SENATOR CARLSON: ...we don't care about that \$10,000. [LB57]

MARK BROHMAN: Yeah. [LB57]

SENATOR CARLSON: That should be their option, but it better be a fairly valuable piece of property to bring in that revenue to the county,... [LB57]

MARK BROHMAN: Yeah. [LB57]

SENATOR CARLSON: ...that doesn't end up back at the state and distributed to other school districts. So this is helping bring about, at least in my mind, we're talking about some specific figures here. [LB57]

MARK BROHMAN: Uh-huh. [LB57]

SENATOR CARLSON: And when you think about it's gone forever, it's a serious matter. Now the procedures that you're now following I think are coming closer to what Senator Larson has proposed in this bill. But what kind of assurance is there that that will continue that way, and when you're gone, somebody else takes over and another board comes in and all of a sudden we got different procedures? [LB57]

MARK BROHMAN: I think this group of folks here and your, you know, folks that come after you, you know, you still have oversight over the Environmental Trust through state statute. You know, some people say, you know, everything doesn't have to be locked up

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in statute. But at any time, you know, and you've seen the battles that we've fought over the last few years on various things from conservation easements to, you know, all kinds of things. Every year, you know, new bills are introduced and so a bill could be introduced at any time to say, you know, you must pay taxes or you must do this or you must do that. I mean so there's always that oversight. But to have it hard and fast, like LB57, with no exceptions, a county couldn't even refuse the money, the way I read that. And even if we only had 10 percent in it, we have to put full value into that. And even if the federal government is putting in 33 percent or maybe one year they're paying 50 percent, we still have to provide the same amount to that original account. So there's no flexibility. And I know Senator Larson told me the other day and he said today on the record that he was willing to work with us to try and find creative solutions, you know, and one would be to suggest that the Environmental Trust Board work with counties in the granting process, because we're doing that right now. We're looking at grants and approving grants, and the only one that's coming in that's transferring to the federal government that would go off the tax rolls is the one we've discussed and that's that 41 acres, and they are making provisions for that. [LB57]

SENATOR CARLSON: Okay. Okay. [LB57]

MARK BROHMAN: So I guess that's my response. [LB57]

SENATOR CARLSON: Okay. Well, Mark, thank you for coming to the committee. [LB57]

MARK BROHMAN: Uh-huh. [LB57]

SENATOR CARLSON: I've said this before, but certainly in my time in the Legislature I've been very grateful for what the Environmental Trust has done on my bill of removing invasive vegetation, and so I know you do a lot of good work and I appreciate what you do. And so thanks for your testimony today. [LB57]

MARK BROHMAN: Thank you. It's my pleasure to be here. Thank you. [LB57]

SENATOR CARLSON: Okay. Anyone else in a neutral position? Welcome, Larry. [LB57]

LARRY DIX: Good afternoon, Senator Carlson, members of the committee. My name is Larry Dix, spelled L-a-r-r-y, last name Dix, D-i-x. I'm executive director of the Nebraska Association of County Officials, appearing today in a neutral capacity. First of all, certainly want to thank Senator Larson for somewhat thinking outside the box and certainly being concerned about taxation issues in counties, because we have been involved in this. And given the amount of testimony today of talk about counties and taxation, I felt it was probably appropriate that I would come up just in case there were

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any questions in regard to that nature. And we, from a county perspective, always are concerned about the tax base. I mean that's always going to be there. I think it behooves us to pay attention to that, not only on behalf of counties, but on behalf of school districts and NRDs and ESUs and everybody else who really participate in that. Senator Kolowski had at one point in time made a comment that, well, if we have a project like this, you know, certainly that brings in other benefits to a community, in-lieu-of sales tax and things like that. And I couldn't disagree with that. But when we look at it, and I just put on my county hat, no matter how much sales tax comes in to a city or how much sales tax that comes in to the state, since the state no longer provides any state aid to counties, we don't get any of that. And most of these projects are outside of the city limits and so the one thing that it does is it puts more traffic on county roads and puts more burden on law enforcement and some of these folks. So there isn't a natural tie, if you will, to that, which I'm not here complaining about it. I'm just pointing out that just because there's more of a sales tax base, that doesn't necessarily help out the counties in their situation. I would tell you we are more than happy to work with Senator Larson and anybody at the Environmental Trust to work through this issue. I was pleased to hear the pilot program that's going on in Franklin County. First time I even heard about it was today. I had no idea that that was going on. But I appreciated Ducks Unlimited stepping forward, because over the years we've worked with them and identified, I think, what everybody has determined as an issue here. And so we stand ready to serve in the role as representatives of county government to help the committee and any of the senators in going through this process if they want to move something like this or a bill like this ahead. [LB57]

SENATOR CARLSON: Okay. Thank you. [LB57]

LARRY DIX: Thank you. [LB57]

SENATOR CARLSON: Any questions of Mr. Dix? Seeing none, thank you for your testimony. [LB57]

LARRY DIX: Thanks. [LB57]

SENATOR CARLSON: Any further testifying in a neutral position? Seeing none, Senator Larson, you're recognized to close. [LB57]

SENATOR LARSON: Thank you, Senator Carlson, members of the Natural Resources Committee, for what has been a rather lengthy hearing and some good discussion. And I'll start off my closing on a lighter note. You know, I'm not overly familiar with the Nebraska Environmental Trust grant process and exactly what the criteria are, but I know need is one of the criteria that the Environmental Trust looks at heavily when it comes to giving out these projects. And I'm extremely happy to hear that DU is helping out set up...and it set up a major endowment in Franklin County to help pay for the

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property taxes. So I don't know how much need they have if they're able to dig into their own coffers and do that for future grants, so that's something that I think we should look at. I think this bill, we had a long conversation about the tax portion of it, but I think we have to be very...and the tax portion and when land goes to the federal government. And, yes, it is only 1,100 acres that has been done so far in the past 20 years, but you can say it's a small amount of land but, again, we have to come back to what's the principle, what's the underlying policy issue. Oh, it's only this much, but is that much still too much? And I think that's the question that we have to ask ourselves. And the bill also, it protects all the money in the NET, and as the board is moving forward, and Mr. Brohman came up here with the NET and said, you know, well, you know, the contracts essentially right now says that, you know, the NET approves the transfer or the sale. Well, it's not the board; it's Mr. Brohman. And the board has given him that authority but I think we have to be good stewards of our constituents and I think the NET is the board that should be making these decisions, not the executive director. Those that have been entrusted to make the decisions need to be the ones making the decisions on these issues. I'm going to touch on a few things that we had, that got discussed, and try to close some things out. The NET, after looking through the bill, the NET must only approve the amount of funds when the land is transferred to the federal government. It doesn't say the funds have to come from the NET. We were, as I explained in my opening and through the questions, it's vague on that. The funds can come from the NET if they want to set up that endowment, but it doesn't necessarily have to. It just says the NET must approve the amount. There was one testifier that raised constitutionality concerns of this going into an endowment. And you read the constitution, all it says is: 44.5 percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Fund shall be transferred to the Nebraska Environmental Trust. Notice, if the money does come out of the Trust, if the Trust does wish to add an additional grant to put into that endowment, the money is still coming out of the Environmental Trust and the board of directors is deciding that is how it is best serving the spirit of the Trust. So that constitutional concern I don't think is valid in the sense that the money will still be coming from the Trust. And mind you, and I think this is something that we do have to be mindful of, is...and I think Senator Dubas brought it up, the Trust is still a beast of the Legislature. It was approved...the funding mechanism was approved in the constitution, we have to give them so much money, but we can put the rules and regulations on the Trust in terms of that money and how they spend it. A few things, I think, as testifiers continued coming through, we realized that the Trust is doing a lot of the things that is set out in this bill anyway. They've stopped the revolving funds. They're trying to make themselves more accountable. And we have a policy decision here that I think a lot of us that there have been questions that have raised that have forced the Trust into these things. But it doesn't necessarily mean, as Senator Carlson brought up, the executive director can change, the board can change. I think we have an opportunity to set these rules in statute to ensure that they continue on these good practices moving forward and don't fall into bad habits. And that's what this bill does, is an attempt to ensure that

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these good practices that the current board has been moving towards continue on. And we have that authority as a Legislature to do that and that's what this bill attempts to do. And we have a duty to the taxpayers of Nebraska to ensure that their tax dollars--whether they're lottery dollars or tax dollars, they're all tax dollars in the end--are being spent wisely. And I think that that's what LB57 does in the end. It sets in...or it sets up...or puts in statute what the Trust has been trying to do, maybe expands a little bit on what the Trust has been trying to do to ensure that Nebraska taxpayers' dollars continue to be spent wisely and in the spirit of the Trust, all at the same time. [LB57]

SENATOR CARLSON: Okay. Thank you, Senator Larson. Any questions of the committee? [LB57]

SENATOR LARSON: Thank you. [LB57]

SENATOR CARLSON: All right. Thank you. And with that, we'll close the hearing on LB57. We've gone an hour and 45 minutes. The clock up there says 3:17. We're going to take an eight-minute recess. We'll start the next hearing on LB325 at 3:25. [LB57]

BREAK

SENATOR CARLSON: Okay. It is 3:25 and we'll open the hearing on LB325. And, Senator Brasch, you're recognized to open.

SENATOR BRASCH: (Exhibits 11, 12, and 13) Thank you, Chairman Carlson, and good afternoon, members of the Natural Resources Committee. I am Lydia Brasch, L-y-d-i-a-B-r-a-s-c-h, and I represent the 16th District in the Nebraska Legislature. I am here to introduce LB325 at 3:25, (laugh) which I have brought at the request of the Papio Valley Preservation Association to address concerns that taxpayers in the northern portion of the Papio-Missouri Natural Resources District have raised. The pages are providing you with AM264, which replaces the original bill. The amendment has integrated feedback that our office has received since introducing the legislation last month. The Papio-Missouri NRD encompasses Dakota County, a portion of Thurston County, a portion of Burt County, Washington County, Douglas and Sarpy Counties. I represent Washington and Burt Counties, and Senator Bloomfield represents Thurston and Dakota. Over the past year, he and I have met with many constituents and I have also met with the general manager of the Papio-Missouri NRD to discuss the growing dissatisfaction with the lack of representation on the board. The four counties in the north represent twice the land area of Douglas and Sarpy Counties, and approximately 10 percent of the population, however, only 1 percent of the budget for projects that they need and that get support. In my conversation with the general manager, I discussed the possibility of moving one of the directors to an at-large status or drawing new subdistricts that deviate from the current one-to-one apportionment. Under statute,

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NRDs are allowed to apportion districts that deviate by a factor of three to one. Apportioning districts with this sort of deviation could allow more rural representation. Based on my conversation at that meeting, it is my understanding that the Papio-Missouri NRD board has little interest in pursuing these options that could provide an opportunity for expanded representation. The purpose of my meeting with him was in hopes to not come before you today. But I am here, and the testimony that this committee will hear today will focus on that lack of representation. In 1989, the Papio NRD merged with the Middle Missouri Tributaries NRD to expand the property tax base of the districts and provide the counties in the Missouri Tributaries NRD--the counties of Burt, Thurston, and Dakota--to provide them with additional funding to cost-share on erosion-control projects. Before this consolidation, seven directors sat on the Missouri Tributaries NRD board and 21 directors sat on the Papio NRD board. After consolidation, the combined board shrunk to 15 in 1992 and later to the 11 directors who sit on the board today. Recently, the goal of providing those dollars to cost-share on erosion projects has proven elusive because of a lack of representation of rural interests on the board. No other NRD in the state has such a clear disparity between the rural and urban interests contained within its boundaries. When our NRD system was established in 1972, our NRD districts were drawn to encompass water users with similar concerns and objectives. As outlined in Nebraska Revised Statutes 2-3203, and I'll quote: The primary objective shall be to establish boundaries for NRD districts which provide effective coordination, planning, development, and general management of areas which have related resource problems. Currently, the 11 subdistricts of the Papio-Missouri NRD are apportioned by population, which means ten of the directors largely represent the urban portion of the district while only one member, Mr. Scott Japp, represents rural interests in northern Douglas and Washington and Burt and Thurston and Dakota Counties. Historically, Mr. Japp has not been allowed to serve on any subcommittees. In the past he has been cut off from internal communications. He is essentially nonfunctional as a representative because of the way the board has chosen to treat him. The lack of representation for these four distinctly rural counties is most glaring in the Papio NRD's budgeting decisions. These counties provide approximately a combined \$1.6 million of property tax dollars. While the Papio NRD budget has over tripled in the last ten years from about \$25 million in 2003 to over \$85 million this year, the amount of money spent on conservation projects totals just \$800,000 for 2013, or less than 1 percent of their budget. As recently as 2008, the Papio NRD spent almost \$2.2 million, or 4.7 percent of its budget for the year, but that number quickly collapsed in 2009 to \$820,000, or 2 percent of the Papio NRD's...excuse me...budget. Interestingly enough, the Papio NRD was spending almost an identical amount of \$800,000 on erosion and conservation programs almost 25 years ago in 1988, when the Middle Missouri and Papio NRDs first merged. It is important to note that these numbers represent the entire conservation budget for all six counties. Defenders of the Papio-Missouri NRD's budgeting priorities frequently point to the large recreational projects of the rural part of the district, most recently the Pigeon/Jones project in Dakota County. Many rural residents, however, are frustrated by these elaborate and

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unnecessary dam projects that are sometimes built in partnership with private, high-end housing developers who are now bankrupt and gone. Their tax dollars are going towards projects in Omaha that are not even benefiting the water management priorities of urban residents. For example, the Papio-Missouri NRD is getting ready to loan a developer at a dam site 5, in Sarpy County \$480,000 for the purpose of building street lights. Previously, the NRD has loaned money to developers such as Dial Development for a residential high-end housing development. Dial ultimately defaulted on the loan. Yes, my constituents are very upset to see their hard-earned taxpayer dollars going towards projects that do not have clear flood control benefits when they could be going towards flood control and terracing projects important to both rural and urban districts. Because of their lack of representation on the NRD board, my constituents can do nothing. Perhaps most importantly, rural residents fear the ever-present threat of the power of eminent domain which hangs over their heads. This power has been used to build recreation projects, such as Boyer Chute and California Bend in Washington County, projects built for the purpose of recreation for weekend visitors from other areas, not for the agricultural interests from whom the backbone of the rural portion of that district is. AM264 to LB325 strikes the original language of the bill and adds a provision in 2-3208 that allows a hearing on a proposed division of an NRD that contains a city of a metropolitan class to be initiated by a signed petition of 25 percent of the legal voters within the area proposed to be divided. This amendment would allow rural taxpayers in the Papio-Missouri NRD to study whether their interests would be best served through the creation of a new natural resources district. The creation of a new district must clearly be a deliberate process, both carefully crafted and fiscally viable, and this amendment has been created so that it only impacts the Papio-Missouri NRD. The first step under AM264 would require constituents in a proposed new district to vote on the proposal. Second, the Natural Resources Commission must approve the changes after a full and complete evaluation. Such a process would allow voters who now feel disenfranchised to explore the possibility of forming a new district. Please, let me be clear, AM264 would limit this legislation to an NRD that contains a city of a metropolitan class. I will briefly point out that this legislation carries no fiscal note for the state. The NRD would face reductions in revenue if a division would occur. As I conclude, I want to thank you for your time. There are several people ready to testify behind me today on the various legal, budgetary, and political questions at play here, and they would be happy to share their point of view and their individual experiences. Again, I did try to avoid coming here with legislation by seeing if they could allow representation, which is now in statute. I was told there was no interest. But I do want to thank you for your time and I would be happy to answer questions. [LB325]

SENATOR CARLSON: Okay. Thank you, Senator Brasch. Are there questions of the committee? Okay, seeing none, thank you. And we'll proceed to proponents. Welcome. [LB325]

SHAWN MELOTZ: (Exhibit 14) Good afternoon. Good afternoon, Senator Carlson, I

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guess Chairman Carlson now I think. Congratulations with that. And welcome, Senator Kolowski, to the committee, as well as Senator Johnson. My name is Shawn Melotz, spelled S-h-a-w-n M-e-l-o-t-z. I'm testifying on behalf of the Papio Valley Preservation Association, a grass-roots organization with over 600 members. Our primary mission is protecting the natural resources of the Papio Creek Watershed located in Sarpy, Douglas, and Washington Counties. On behalf of the PVPA, I wish to express our group's appreciation to Senator Brasch for introducing this bill. Senator Brasch has listened to our members, her constituents' concerns, and has expressed these concerns through LB325 and AM264. Thank you, Senator Brasch. I will say that my written testimony did not include the AM264, as I was presented that this morning after I came into the hall. I do testify in support of this bill wearing two hats, first as an individual who has been involved in agriculture my whole life. I come from four generations of Douglas County dairy farmers. In addition, I will interject my views as a certified public accountant, my day job to help me enjoy my hobby of farming and being involved with the dairy cattle. My NRD, the Papio NRD, is comprised of six counties, as Senator Brasch outlined, from Sarpy County on the southern border to Dakota County on the northern border. Currently, the 11-member board has one director, Scott Japp, serving the northern four counties and a portion of Douglas County. I have brought the map of the district so you could familiarize yourself with that. Coincidentally, last year Director Japp's district was redistricted to some extent. The Papio NRD board voted to include a portion of Douglas County in the Washington County's north, and kind of coincidentally it just happened to include my house. So I am now part of the Washington County group. I am a Douglas County resident. While my testimony is not intended to be a rural versus urban battle, but true differences do exist between the beliefs, the values, and the philosophies between the current directors and the residents in the northern areas of the NRD. Historically, the Papio NRD have worked together...and farmers have worked together with the common goal of preserving the natural resources within the entire district. Our family has enjoyed working with the NRD and has put in over 16 miles of terraces in conjunction with their support. However, today's current Papio NRD staff and the majority of the directors lend a deaf ear to the wishes of the residents in the rural areas of the district. It seems that the needs of the agricultural-based northern counties are dismissed. A quick review of the attached exhibit, which is the second one labeled "Expenditures," "Budgeted Expenditures vs. Terracing," you'll see that while the terrace and conservation dollars have remained stagnant over the last five years, from \$820,000 down to \$800,000 this year, their entire budgeted expenditures have gone up 221 percent. This has not...we have come to the committee and asked for an increase in the budgeted amount for terracing but have been denied it over the past, since 2004, since I've been involved in this endeavor. It seems as if...and again, I can go through the numbers but the many philosophical differences do exist between the residents within the two district...distinct different regions of the NRD. Overspending...are two practices that it includes, in my opinion, overspending with the current budget at \$87 million; the use of bonding, which is now at \$52 million by the end of this year; and the threats of eminent domain. I think the overspending is one of the larger philosophical

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differences. I would doubt that the residents in Washington County would have agreed to building a \$2 million building in Blair that housed five employees currently. At this point, I'd like to put on my CPA hat and address some of the numbers that Senator Brasch touched upon. If you look at the last schedule, what I did on this schedule was pulled out the valuations of Washington, Dodge, Burt, Thurston, and Dakota Counties. The current valuation of the Papio NRD is \$52 billion in assets. The counties on the northern four counties, the valuation is \$4.5 billion. Assessing tax at their current levy of 3.2 percent would bring in property taxes in that area of \$1.4 million. The bottom section of this chart is a summary of the fiscal year 2011 property taxes collected by all the NRDs, each of the NRDs within the state, and this came from the Web site of the Auditor of Public Accounts. And as you can see, should this northern NRD of the Papio have its own district, it would rank 11th amongst all the NRD districts. So I'm fairly sure that such a decoupling of this NRD could be a fiscal...feasible fiscal endeavor. It does show that, you know, there's possibilities. The problems we have right now is the fact that we don't even...we can't even have the opportunity to address the issue because when you have two separate groups that are not marching down the same path, it's hard for us to be able to expect the current board to allow us to even address the issue. With that being said, I respectfully ask this committee to advance LB325, as amended, to the floor. [LB325]

SENATOR CARLSON: Okay. Thank you. Questions of the committee? Yes, Senator Dubas. [LB325]

SENATOR DUBAS: Thank you, Senator Carlson. Thank you, Ms. Melotz. As I look at a statewide map and you look at how the NRDs are drawn, I think a lot of them follow the basins or the watersheds. Now with this legislation or with a combination of these two, of the two NRDs that were done in the past, what does that do to that, following those watersheds or those basins? [LB325]

SHAWN MELOTZ: Well, as I understand the legislation, and I might have had a copy of it but...most of the boundaries were drawn by river basins, not necessarily creek basins. The area that we're referring to is more of a creek basin than a river basin, number one; and the rivers within these two different areas are in multi NRD districts. For example, the Elkhorn River Basin probably touches three or four different NRDs, as well as the Missouri River Basin. So I don't think that that would be an issue. However, you know, even if you have two separate NRDs, they're going to have to work together in some manner to address what occurs in both districts. [LB325]

SENATOR DUBAS: Okay. So just the diversity of...the diverse interests, I should say, of what's in your NRD, that's what you see as making it very difficult to have... [LB325]

SHAWN MELOTZ: Well, I'm sure this committee has experienced some of the frustrations we've had since 2004. Yeah, it's frustrating when you ask the board to

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expand terracing dollars and it's denied and then the next week there's a \$1 million piece of land bought for a basin and they have to go get a line of credit to cover that cost of that basin when maybe there's other areas that could be used. Yeah, it...the spending habits are more of a, in my opinion, is more directed towards the urban area of this NRD. I mean that's known and that's been seen throughout the years. I think there's ways to walk a little more hand in hand, but it just hasn't occurred and I don't foresee it changing in the future. [LB325]

SENATOR DUBAS: Thank you. [LB325]

SENATOR CARLSON: Okay. Thank you. Other questions? Senator Johnson. [LB325]

SENATOR JOHNSON: Thank you, Senator Carlson. Thank you. Using the two terms "merged" or "divided," you know, if we try and divide and make a separate unit or merge, is there any logic at all with, I'll just say, the flow of the water or flow of funds or representation if the four counties were merged into the district immediately to the west? [LB325]

SHAWN MELOTZ: Possibly. You know, it... [LB325]

SENATOR JOHNSON: Has that been...was that... [LB325]

SHAWN MELOTZ: It hasn't been discussed because we don't feel we can even discuss it... [LB325]

SENATOR JOHNSON: (Laugh) Yeah. Well, I know it. [LB325]

SHAWN MELOTZ: ...under the current legislation. [LB325]

SENATOR JOHNSON: I mean we're just trying to look at if there's other options out there. [LB325]

SHAWN MELOTZ: Sure. [LB325]

SENATOR JOHNSON: If that...if you feel you would have better representation or...and you probably can't answer that because you haven't looked at it. [LB325]

SHAWN MELOTZ: No, we have not. [LB325]

SENATOR JOHNSON: But instead of creating another one, would that be a fit? [LB325]

SHAWN MELOTZ: That's...sure, it's a possibility. [LB325]

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SENATOR JOHNSON: Would it be worth looking into? [LB325]

SHAWN MELOTZ: It's worth looking into. I would imagine that the interests to the west are more ag and rural friendly, so perhaps. [LB325]

SENATOR JOHNSON: You would think so. I would believe that. [LB325]

SHAWN MELOTZ: You would hope so. [LB325]

SENATOR JOHNSON: Yeah. Thank you. [LB325]

SHAWN MELOTZ: Uh-huh. [LB325]

SENATOR CARLSON: Okay. Other questions? Senator Smith. [LB325]

SENATOR SMITH: Thank you, Mr. Chair. Ms. Melotz, thanks for your testimony. I was trying to track with you, when you were talking about the valuation, and... [LB325]

SHAWN MELOTZ: Uh-huh. [LB325]

SENATOR SMITH: ...let me understand if I'm clear on the point you were trying to make. You're looking at the valuation of the seven counties that are part of the district, and looking at their individual valuations, and they total \$52.5 billion. [LB325]

SHAWN MELOTZ: Uh-huh. [LB325]

SENATOR SMITH: And Sarpy and Douglas together make up roughly 90 percent of that total valuation. Where were you going from there? What additional point were you...? [LB325]

SHAWN MELOTZ: My point was that the \$4.5 billion valuation of the upper four counties would extract into \$1.5 million of property taxes, which should be able to sustain the operations of those four counties. When you look to the other NRDs within the state, over...almost half of them are working under the same property tax collections. [LB325]

SENATOR SMITH: Okay. But within...and again, if you're looking at basing representation on valuation, the representation is pretty much representative now of the valuation across the district, right? [LB325]

SHAWN MELOTZ: Well, the valuation, that is correct. [LB325]

SENATOR SMITH: Okay. [LB325]

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SHAWN MELOTZ: But my point, what I was trying to make, was if the four counties were on their own, they would have enough tax revenues to support their needs and be able to operate within a budget that could be sustained. [LB325]

SENATOR SMITH: Relative to the other districts across the state, you mean. [LB325]

SHAWN MELOTZ: Uh-huh and relative to the needs of their area. [LB325]

SENATOR SMITH: All right. Thank you. [LB325]

SHAWN MELOTZ: Uh-huh. [LB325]

SENATOR CARLSON: Senator Kolowski. [LB325]

SENATOR KOLOWSKI: Thank you, Mr. Chair. Ms. Melotz, on the point made by Senator Smith just a second ago, did you count all of Burt and all of Thompson County... [LB325]

SHAWN MELOTZ: No. [LB325]

SENATOR KOLOWSKI: ...or Thornton...Thurston County, I'm sorry, when you did that? [LB325]

SHAWN MELOTZ: I counted all the counties north of Washington County line. [LB325]

SENATOR KOLOWSKI: Did you count all of those two counties, Thurston and Burt? [LB325]

SHAWN MELOTZ: No. I... [LB325]

SENATOR KOLOWSKI: Because they're not fully in our NRD district. [LB325]

SHAWN MELOTZ: I can tell you, Senator Kolowski, I used the same valuation that was used in the Papio-Missouri River's own budgeting process in the valuations, so I compared apples and apples. [LB325]

SENATOR KOLOWSKI: Just our land... [LB325]

SHAWN MELOTZ: Yes. [LB325]

SENATOR KOLOWSKI: ...within our NRD. [LB325]

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SHAWN MELOTZ: Yes, that's correct. [LB325]

SENATOR KOLOWSKI: Okay. Okay. Thank you. Also had a question on you talked about the threat of eminent domain. Has that ever been used that you know? [LB325]

SHAWN MELOTZ: It has been on our family, yes, by a member of your staff in 2004. [LB325]

SENATOR KOLOWSKI: And do you know of other examples of where that's been done in the four counties to the north? [LB325]

SHAWN MELOTZ: Yes, I do. [LB325]

SENATOR KOLOWSKI: And how many would that be over how much time? [LB325]

SHAWN MELOTZ: I can't give you a number. [LB325]

SENATOR KOLOWSKI: Okay. Thank you. [LB325]

SHAWN MELOTZ: One threat is enough on our family to make it a personal... [LB325]

SENATOR CARLSON: Okay. Any other questions of the committee? I would just try to clarify something here. So in looking at the amendment and the wording and so forth, the point of coming here is that you would like the four counties that are a part of the Missouri-Papio NRD now to separate and become a 24th NRD. [LB325]

SHAWN MELOTZ: Not necessarily. We want the opportunity to explore it to see if it's viable, but that could be a direction it takes. It could be a direction to merge. We don't know. We just know what's occurring right now within the two diverse groups isn't working. [LB325]

SENATOR CARLSON: Okay. But let's look at what are the options. So that is an option. [LB325]

SHAWN MELOTZ: That's an option. [LB325]

SENATOR CARLSON: And we don't have the power, but if we...if this committee said today, just do it, you'd say thank you. [LB325]

SHAWN MELOTZ: Not necessarily. [LB325]

SENATOR CARLSON: Okay. [LB325]

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SHAWN MELOTZ: We'd say we'll look into it. [LB325]

SENATOR CARLSON: And another option that was brought up would be to merge with some NRDs to the west. If the committee had the power today to say do it, would you say, okay? [LB325]

SHAWN MELOTZ: I wouldn't necessarily be the person to make that decision. I think there still needs to be the study, there still needs to be an approval of the voters. You know, we don't even know what could be done or if it could be done. We just know we can't explore it. [LB325]

SENATOR CARLSON: And would it be fair to say that what you feel like you've experienced up to this point, there is no good answer for you in the Missouri-Papio NRD to be a satisfactory solution? [LB325]

SHAWN MELOTZ: Well, I think more representation on the board would help, but... [LB325]

SENATOR CARLSON: And I'm not trying to drag you into a position here, but you have roughly 10 percent of the population and there are 11 directors. So one is 9 percent or whatever it figures out to be; two would be about 18 percent. Is two the magic number? [LB325]

SHAWN MELOTZ: I (laugh)...I haven't even thought about that, sir. [LB325]

SENATOR CARLSON: Well, but you're concerned... [LB325]

SHAWN MELOTZ: Yeah. [LB325]

SENATOR CARLSON: ...about representation. [LB325]

SHAWN MELOTZ: Yeah. [LB325]

SENATOR CARLSON: And you have one out of 11 now. How much would it change if you had two? [LB325]

SHAWN MELOTZ: Oh, it could change the dynamics significantly. [LB325]

SENATOR CARLSON: Okay. [LB325]

SHAWN MELOTZ: There's a lot of votes that are, you know, 50/50 or I should say 40/60. [LB325]

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SENATOR CARLSON: But two is better than one. [LB325]

SHAWN MELOTZ: Two would be better than one. [LB325]

SENATOR CARLSON: Okay. [LB325]

SHAWN MELOTZ: I don't know if two is the magic number. [LB325]

SENATOR CARLSON: You wouldn't expect three. [LB325]

SHAWN MELOTZ: I'm not prepared to even discuss that, quite frankly. [LB325]

SENATOR CARLSON: Okay. Well, I know that... [LB325]

SHAWN MELOTZ: Yeah. [LB325]

SENATOR CARLSON: ...representation is, in your view,... [LB325]

SHAWN MELOTZ: Would help. [LB325]

SENATOR CARLSON: ...is a big problem. [LB325]

SHAWN MELOTZ: Yeah. [LB325]

SENATOR CARLSON: So I'm trying to get at what would be a satisfactory solution and... [LB325]

SHAWN MELOTZ: Well, I think two or three would help. You know, at least it would engage conservation. There's many meetings that Director Japp brings up a motion that doesn't even get a second. [LB325]

SENATOR CARLSON: But if we went to three out of 11, we're looking at about 27 percent of the board to be represented, representing 10 percent of the people. So maybe that's fair; maybe it isn't. I think you're saying one isn't enough and two or three would be a lot better... [LB325]

SHAWN MELOTZ: Uh-huh. [LB325]

SENATOR CARLSON: ...and that might solve the problem. [LB325]

SHAWN MELOTZ: It might. [LB325]

SENATOR CARLSON: Okay. Okay. All right. Any other...? [LB325]

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SENATOR KOLOWSKI: Mr. Chair. [LB325]

SENATOR CARLSON: Yes, Senator Kolowski. [LB325]

SENATOR KOLOWSKI: Thank you, Mr. Chair. Ms. Melotz, on the map that you provided us, that's...it's 1,200 square miles to the north. Is that correct? [LB325]

SHAWN MELOTZ: That's not my map so I'm not sure what you're referring to. [LB325]

SENATOR KOLOWSKI: Wherever this came from. And it has 50,000 population in that northern section with 664,000 in the Douglas-Sarpy areas. So already the ten directors in the southern part would average 66,400 people per representation, per person, per director. And you have one representation, one representative, for 50,000. You're already ahead of the game there as far as the numbers. [LB325]

SHAWN MELOTZ: Well, the other way I look at this, too, since the board, when you were involved with it, chose to redistrict because of the census, part of District 1 now dips down into Douglas County. There could be zero representatives in Washington County to the north in the next election if someone runs in my area. I'm in Douglas County, so now you're speaking to the fact that there will be zero representation from those counties. That's a concern. [LB325]

SENATOR KOLOWSKI: It's in your subdistrict, but it's not in your county. [LB325]

SHAWN MELOTZ: Yes. I'm in Douglas County. [LB325]

SENATOR KOLOWSKI: I understand that. And it wasn't...it wasn't a choice to do the redistricting. It's a mandate to do that after a... [LB325]

SHAWN MELOTZ: No, it's not. [LB325]

SENATOR KOLOWSKI: ...after a population... [LB325]

SHAWN MELOTZ: Well, redistricting is, however,... [LB325]

SENATOR KOLOWSKI: ...after a census. [LB325]

SHAWN MELOTZ: ...the...it is not a one vote, one person mandatory allocation of representatives on the NRD board. [LB325]

SENATOR KOLOWSKI: Well, everything I've been associated with is trying to get it as closely as possible balance and you have an advantage right now with 50,000. [LB325]

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SHAWN MELOTZ: Well, I understand that, but I think being from the metro area, that's kind of a little different analogy than from the rural areas, in my opinion. [LB325]

SENATOR KOLOWSKI: Well, you have your opinion, that's correct. [LB325]

SENATOR CARLSON: Senator Smith. [LB325]

SENATOR SMITH: Thank you, Mr. Chair. And I wanted to follow up on a line of questioning that Senator Carlson had just a moment ago. If I can just kind of summarize, your grievances here are representation, but also what you perceive as being decisions that are being made that are more in favor of the urban versus the rural demographics. So if...and you were talking about the spending and the dam sites and some of those things. So even if you were to increase your representation within the current district, I'm not certain that that's going to satisfy your other grievance, which is the decisions or the spending patterns or whatever. I mean that's where you're going to have to be engaged in and work to influence the board as it exists. Adding...even adding another representative would not necessarily resolve that concern. Is that correct? [LB325]

SHAWN MELOTZ: Well, I think it could because it could maybe possibly create more dialogue amongst the board members and maybe a better understanding of the folks to the north and in the rural areas. [LB325]

SENATOR SMITH: So would I then venture to say that the representative that is in that northern portion of the district that's mapped out, maybe you feel like they're not providing enough dialogue to represent your interests? And isn't that what elections are for and such? [LB325]

SHAWN MELOTZ: Yeah, I agree. [LB325]

SENATOR SMITH: Okay. All right. Thank you. [LB325]

SENATOR CARLSON: Okay. Any other questions? Okay. [LB325]

SHAWN MELOTZ: Thank you. [LB325]

SENATOR CARLSON: Thank you for your testimony... [LB325]

SHAWN MELOTZ: Uh-huh. [LB325]

SENATOR CARLSON: ...and your responses to the questions. Next testifier, please. Welcome. [LB325]

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KEN BAKER: Hello. My name is Ken Baker, it's K-e-n, last name B-a-k-e-r. I'm from Dakota County, Nebraska. Homer is my address. And I just want to touch on two things, one being we are in the northern part of this Papio-Missouri NRD and representation is almost nonexistent as far as I'm concerned. Thanks to Scott Japp, he's kind of like a breath of fresh air. Otherwise, until he came upon the scene, we just haven't had...we've just about given up hope that nobody will listen to us, nobody will address the problems that we have. And we have a number of problems with especially the Pigeon/Jones drainage project, and that's those two creeks that flow together into one. They come out of the hills and they do a lot of damage up in the hills with erosion. The creeks up in the hills have eroded to...they are similar to a miniature Royal Gorge or a Grand Canyon. They've eroded so badly. And there's nothing, there's no maintenance been done to that part of the project. And this erosion, the sediment that the water carries with it, then, comes down on the bottom, and that's where I'm at, and I've farmed in this area for over 40 years and so I've seen the trends. I've seen the weather events that have affected us over the last 40 years and I have never seen a deterioration in the Pigeon/Jones drainage ditch in our neighborhood until these last four years. And in two...since the Papio-Missouri NRD took over this project, we have just seen I guess four flooding events. And everybody think...you know, everybody talks about flooding and we relate back to the flood of 2011, but we had flooding events before that. And these events, all our events have not been...and I want to make it perfectly clear that the flooding that has happened in our neighborhood has not been related to the Missouri River at all. We are at a higher elevation. And this water that floods us out, the last four events have been because of the poor maintenance of the dike system, the drainage system. This erosion that's happening above us, this sediment comes down and has actually filled the drainage dike. That's what we call it. These two creeks combine and then they flow through our neighborhood and it's headed towards the river. So we are at a lower elevation where we live, but I have never seen the problems that we've experienced in the last four years. And 2011 was the culmination of all the problems, but up until that time we have had three...two or three flood events before that. And the basic problem is that dike is so full of sediment that the dike has actually...the bottom of the dike has actually risen higher than the surrounding ground that it's supposed to be protecting. So when we have a flood event, the water outside the dike cannot get back into the dike because the tubes are all filled with sediment. Nothing is working the way it's supposed to be working. And we have...and you talk about representation. I've talked to the technicians that work for the NRD and they say they have no money. I have visited with our local ditch board and these are neighbors of mine and they say their hands are tied. They have no power. All the big decisions are made down in Omaha. And so...and I've talked to the fellows down in Omaha and they've turned me a deaf ear. And so we were to the point where there was no hope. There was nothing we could do. Our valuations of this one farm in 2011...by the time 2011 rolled around, we had our valuations cut in half because we had one farm that was 200 acres, had a foot of water on it with a pivot sitting in it. And this isn't sandy ground. This doesn't have anything to do with the river.

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But this ground was...it's prime ground which raises 250-bushel corn, and this flooding just devalued it so bad, and that's a situation where nobody is winning. So I just appreciate your support for this bill. [LB325]

SENATOR CARLSON: Okay. Thank you for your testimony. Questions of the committee? Senator Kolowski. [LB325]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Mr. Baker, thank you for your time today and thank you for coming. We have people here that might be able to address the concerns you've shared as far as the erosion and some of the things that have happened there, but will the current Pigeon/Jones project have a difference upon your land as you're looking at what might happen in the future because of the dam and lake and park and everything else that's going in... [LB325]

KEN BAKER: Yeah. [LB325]

SENATOR KOLOWSKI: ...that we've completed up there or is being worked on to be completed? [LB325]

KEN BAKER: Yeah, I understand what you're saying and the jury is still out on whether or not that dam up there is going to make that much difference, because it's a combination of two creeks that add to our problem downstream. And the big erosion problem is with Jones. And they addressed the problem with Pigeon, but Jones is the creek that drains a lot more area. And as far as we're concerned, they didn't address...well, it can't hurt. I'll say that. [LB325]

SENATOR KOLOWSKI: So it's a step in the right direction... [LB325]

KEN BAKER: Yes, it is. [LB325]

SENATOR KOLOWSKI: ...that has been worked on and the Kramper Lake and all the rest, that when that gets done it will have significant impact in that upper area. [LB325]

KEN BAKER: But it still doesn't address the problem that we have with maintenance on the existing structures. They're real big about building all these new facilities and structures, like dams and parks and all that, but they don't want to concentrate on maintaining what we have. [LB325]

SENATOR KOLOWSKI: And downstream, where the sediment has come to your property,... [LB325]

KEN BAKER: Uh-huh. [LB325]

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SENATOR KOLOWSKI: ...is that an NRD responsibility or is it a ditch authority responsibility? [LB325]

KEN BAKER: Is there a difference? [LB325]

SENATOR KOLOWSKI: Well, some people here will be able to speak to that, as I... [LB325]

KEN BAKER: Okay. [LB325]

SENATOR KOLOWSKI: ...as I see them come forward also. [LB325]

KEN BAKER: I would think that would be NRD. [LB325]

SENATOR KOLOWSKI: Thank you. [LB325]

SENATOR CARLSON: Okay. Senator Smith. [LB325]

SENATOR SMITH: Thank you, Mr. Chair. Mr. Baker, thanks for being here and testifying. You were mentioning the Pigeon/Jones. That's two different projects, right? Or is that just one? [LB325]

KEN BAKER: That's two creeks that run into one. [LB325]

SENATOR SMITH: Okay. And... [LB325]

KEN SMITH: I think it's one project. [LB325]

SENATOR SMITH: Okay. How did that project come about? Was that in response to your representation on the NRD bringing that, the need for that project up? Was that part of a master plan for the NRD or do you know? [LB325]

KEN BAKER: Well, it's...I guess I'm a little confused. As far as the Pigeon/Jones, you know, it's always been there. The earthen berms were built years ago to control flooding and prevent erosion originally, and that was years ago. [LB325]

SENATOR SMITH: Okay. But it sounds like there's some progress being made, just not enough and not fast enough to address some of the concerns you have. [LB325]

KEN BAKER: I haven't seen any progress at all as far as maintaining the dike in our area. [LB325]

SENATOR SMITH: Maintaining, okay. All right. Thanks. [LB325]

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SENATOR CARLSON: Okay. Before I allow Senator Johnson to provide a question, I've got to go and make a report and I will turn this over to Senator Dubas. Senator Johnson. [LB325]

SENATOR JOHNSON: Thank you. We've talked about the issue and so far we've heard the problem and I'm getting convinced there is a problem (laugh) and I guess now starting to look toward solutions. The ones I've thought of or we've talked about, I guess, it's been, you know, a new district or merge or more representation. I know you can't, you know, there might be a fourth option out there. If there were...if the best option would be two seats on the board and let's say one of them came from Dakota and Thurston County, the other came from Burt and Washington County, so you've got kind of subdistricts in it so we guarantee that we've got some representation in kind of the four counties that are out here, that I still think, from what you've said, that the Douglas-Sarpy will still control the checkbook. [LB325]

KEN BAKER: Uh-huh. [LB325]

SENATOR JOHNSON: And I think that's part of the issue. The merger, whether you can...maybe since you live up there, have a relationship probably with the people in the other NRDs, if you feel that merging with those to the west of you would be an option? Or do you feel the best option might be create a third district? Can you respond to any of those comments? [LB325]

KEN BAKER: Anything would be better than what we have now. But as far as...two would be better than one representatives, that's for sure. [LB325]

SENATOR JOHNSON: Well, it's tough to put you on the spot,... [LB325]

KEN BAKER: Uh-huh. [LB325]

SENATOR JOHNSON: ...but I just...or if there's other thoughts out there, I'd be, of course, open to that too. [LB325]

KEN BAKER: I guess I was asked to just let you know that there is a problem up north and we're open for any ideas, but I don't know. [LB325]

SENATOR JOHNSON: Okay. That's fine. Thank you. [LB325]

SENATOR DUBAS: Are there any other questions? Mr. Baker, I would have a question for you. [LB325]

KEN BAKER: Okay. [LB325]

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SENATOR DUBAS: Have you individually or as a group of neighbors from that particular area, have you gone to the board, to any of the board meetings, raising questions, asking, you know, what is it that you can do as an NRD to help us with the maintenance projects with the dikes, etcetera? [LB325]

KEN BAKER: Uh-huh. I have visited with different members of our local ditch board and they all are in agreement that they don't have any power; they can't do anything. They're advisory only. And so the...one of them told me that the best thing that I could do is to, when we did open up a tube in the...the tube that's supposed to drain the water off the land, back into the creek, when they opened that tube up the water ran out of the creek out onto the field. And so their answer or their solution to that problem was to throw sandbags on the outside of the dike, on the outside of that tube to prevent the water from running out onto our fields. That's... [LB325]

SENATOR DUBAS: So as far...as far as visiting with the actual NRD, the NRD board, have you gone to meetings or...? [LB325]

KEN BAKER: I've visited with Dick Sklenar and Marlin Petermann, those fellows. Marlin is a good guy. But Mr. Sklenar, I...when I argued...when I...he wouldn't listen to anything I had to say. After, you know, arguing with Dick Sklenar was like wrestling with a pig in the mud. After a while you realized you weren't going to win and he enjoys it. [LB325]

SENATOR DUBAS: So have you organized the neighborhood and actually gone to a board meeting? [LB325]

KEN BAKER: No, I...no, I haven't. [LB325]

SENATOR DUBAS: But you have had conversations with board members and... [LB325]

KEN BAKER: Yes, I have. I've had conversations with everybody. [LB325]

SENATOR DUBAS: ...in your district. All right. Thank you very much. Are there other questions? Seeing none, we appreciate you coming forward today. Thank you. [LB325]

KEN BAKER: Okay. Thank you. [LB325]

SENATOR DUBAS: Next proponent. Welcome. [LB325]

JERRY KRUSE: Jerry Kruse, J-e-r-r-y K-r-u-s-e, 2485 County Road 37, Omaha. When this...when the NRD was first started, I believe it was representation by acres instead of population, and if that is the case, I believe Washington County, which I live there, that

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our district up there would have maybe five representatives instead of just one. And that's all I have to say. [LB325]

SENATOR DUBAS: Thank you. Any questions for Mr. Kruse? Senator Johnson. [LB325]

SENATOR JOHNSON: It originally was by acres. And when did this change or...? [LB325]

JERRY KRUSE: I don't know when it changed, but it originally...that it was when they started these districts, it was representation by acres and not by population. And I can't answer that, when it was changed. [LB325]

SENATOR JOHNSON: Okay. That's all I have. [LB325]

SENATOR DUBAS: Other questions? Seeing none, thank you very much for coming today. [LB325]

JERRY KRUSE: Thank you. [LB325]

SENATOR DUBAS: Next proponent. [LB325]

SCOTT JAPP: (Exhibit 15) Good afternoon, Senators, and thank you for the opportunity to speak today and for Lydia Brasch to bring this bill forward. My name is Scott Japp, J-a-p-p. I'm a, profession, I'm a construction supervisor and I am the current NRD board director for District 1, however, I'm not here testifying on behalf of the Papio NRD board, because as of today we have taken no position. It was best said in the Super Bowl commercial when Paul Harvey said on the eighth day he looked over what he created and he needed a caretaker, so therefore he made farmers. Farmers are the number one caretaker of our natural resources within this state, as other states. It was the farmers that put together irrigation districts, reclamation districts, conservation districts, and drainage boards. The NRD 20...40 years ago was asked, in some cases we were forced to merge the conservation districts; other districts had the opportunity and option to merge together. Over the time...40 years ago, we worked along very well, as marriages, but as time grows on the working relationship has a different personality. In this case, due to approximately in 1989, when the merger with the Middle Republican happened, where we had a huge amount of numbers on boards, and then over time where we had representatives by counties instead of by population base, we have, the rural areas, have lost representatives on the NRD board. So therefore, today we only have one representing because we're based on a one person, one population base, where we do have state statutes, we could go to three and we could have three people on the board. But our NRD chose not to. As the result of having one representative on the board and having very little voice, and I am representing the people with my best ability, but as the

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handouts show you, it's hard to represent the people when the chairman of the natural resources district that I'm with refuses to provide you with documents, reports, and data. With the help of the Attorney General, he wrote up a memo telling the NRD district to provide Scott with the reports. A memo was sent to the NRD board and the NRD has still refused to give Scott Japp any requested documents. It's hard to represent people when you're not provided with information, when you're withheld information on the board just because you have a different point of view and you come from a rural area. One of the things you're going to probably hear from the opponents today is the need for Omaha is different than from the rural area. In this particular handout, in the '10 "Hazardous Mitigation Report," the flood damage in the urban area, which is all of Douglas and Sarpy County, on an annual basis is less than \$1 million; however, the flood and drought damage in the rural area on an annual basis is approximately \$4 million. The damage for flood and drought, which the NRDs should be managing and mitigating, is approximately the same. However, the amount of funding that we're getting to relieve those possible damages, we're down to approximately less than 1 percent of the total budget, where if you're going to base it on a population, we're 10 percent of the population. So therefore, we should have approximately 10 percent of the budget, because we have the same great needs, should be close to \$8 million, \$8.5 million. But we're spending our funds for recreation, not providing support for the rural area. I see my light is up, so... [LB325]

SENATOR DUBAS: Are there questions for Mr. Japp? [LB325]

SCOTT JAPP: Yes. [LB325]

SENATOR DUBAS: Senator Smith. [LB325]

SENATOR SMITH: Thank you, Senator Dubas. Mr. Japp, thanks for being here and for testifying. Going back to some of the original grievances that Ms. Melotz brought up, it sounds like you share those two basic grievances--representation and decisions that are made and the spending--that the direction that it's going that it seems to be, I think in your opinion or Ms. Melotz's opinion, represents more of an urban interest than a rural interest. [LB325]

SCOTT JAPP: The present board does. You can see that in the budget. Our greatest threat is eminent domain. We can argue about funding, it will say a million here, a million there difference, but it's when the NRD...in the past 20 years, in my county alone the NRD has condemned over 27 people, and that was...those people are provided with the document I gave you. That is not including the other people in the other counties that have been...had eminent domain. And in most cases of eminent domain, most people cave in. This NRD, besides using the eminent domain threat for themselves, is also out there using eminent domain threat for other governmental agency and for the Army Corps of Engineers, the Game and Parks, and the Soil Conservation Services.

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Those people have programs that are volunteer programs, and I'm all willing for volunteer programs, but we shouldn't be forcing people into a volunteer program. [LB325]

SENATOR SMITH: Okay. So the question I have, I guess, I'm trying to bring it back to what the original intent of the legislation is, and that is to change the representation. And if we were to somehow be able to support the change of representation to where, you know, Washington, Burt, and the other counties... [LB325]

SCOTT JAPP: Uh-huh. [LB325]

SENATOR SMITH: ...have two representatives or three representatives as opposed to one, I'm not certain how that's going to change the outcome of some of the decisions that have been made. Only elections can change that and discussion, debate within the board and the public's involvement. Am I...what am I missing here? It appears that the original intent of this legislation is to change the amount of representation those counties have. Is that...am I correct? [LB325]

SCOTT JAPP: I think the original intent of the bill is to give the northern counties or the rural part of...area the opportunity to split or merge. The way it's written now, we don't have that opportunity. We all...everything would also have to come back to the NRD board where we don't have representation at. [LB325]

SENATOR SMITH: And as a member of an NRD, you probably have a chance to communicate and associate with members of NRDs across the state. [LB325]

SCOTT JAPP: That is correct. [LB325]

SENATOR SMITH: Are there any other NRD out there that...I'm just guessing there's probably at least another one out there somewhere, where a county may feel they're not adequately represented, and how has that been addressed? [LB325]

SCOTT JAPP: Yes, there are other counties and it hasn't. They're kind of waiting for us. (Laugh) [LB325]

SENATOR SMITH: Okay. So there are others that are watching this legislation that are seeking to do something similar. [LB325]

SCOTT JAPP: They may. I can speak for...I've had numerous conversations with Cass County. The representation down in Cass County with the NRD out of Lincoln is similar to ours. Those farmers in Cass County have similar concerns that we have, yes. And there's also other...and I can speak where I farm out in western Nebraska where we have...and that's irrigation, where if I could just cross the county line I could drill a well,

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but I'm guilty by association by the county. And that hasn't been an issue, but with these water regulations and rights and where that's going to head, that may be a concern to them. [LB325]

SENATOR SMITH: Yeah. And I mean I get it. I, too, I mean I've been...before I was elected to office, whenever you have an issue you're trying to address with your local government and they're not listening, you don't feel like they're listening, you get frustrated. I get that. I understand how that is. But this whole split between urban and rural, I'm a little bit nervous because I see former Senator Mick Mines sitting in the audience and I know he's a member of the board of directors for OPPD, and OPPD has 13 counties along the eastern part of the state. And the lower probably eight or nine counties are represented by one board member and there are...the remaining seven are in a large metropolitan area, and there's a split there between urban and rural as well. And I think that plays out across the state. I mean it's something that we have to deal with. I'm not certain that splitting and reforming is always the right answer to overcome those differences between urban and rural. So it's...I get what you're trying to do and I'm sympathetic to it, but I'm a little bit nervous as to the precedence that it would set. [LB325]

SCOTT JAPP: I understand your concern, but I think what we should be concerned about is a group meeting the statutory requirements of an NRD, not on the number of districts we have. It's not a...I think Senator Brasch brought up, having another NRD isn't adding a fiscal burden to the state. It's just giving more, in this case, it's giving more local control to people of similar. Now, and I would think being an Omaha senator, you are, if opponents up to me come up and... [LB325]

SENATOR SMITH: Actually, a Sarpy County senator. [LB325]

SCOTT JAPP: Okay. Well, sorry I gave my comment. But if opponents come up here and says that the rural area, we have given them more in tax dollars because of recreational projects than we have paid, it would behoove Omaha to support this bill because it would give more tax monies for Omaha. [LB325]

SENATOR DUBAS: Other questions? [LB325]

SENATOR SMITH: Thank you. [LB325]

SENATOR DUBAS: Senator Kolowski. [LB325]

SENATOR KOLOWSKI: Thank you, Madam Chairman. Mr. Japp, since you decided to use the letter that's on the cover of your document you passed out that was from Mr. Winkler to his staff as per the direction of myself as chairman at that time, how many times have you ever asked me for anything that was denied? [LB325]

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SCOTT JAPP: Many. [LB325]

SENATOR KOLOWSKI: Me personally, as directed in this? [LB325]

SCOTT JAPP: I have sent you many e-mails asking for documents, reports, also agenda items, and I believe you turned me down every time. [LB325]

SENATOR KOLOWSKI: You sent me e-mails. [LB325]

SCOTT JAPP: Uh-huh. [LB325]

SENATOR KOLOWSKI: Well, I don't remember getting those, receiving those, or responding back to you in any way, shape, or form. [LB325]

SCOTT JAPP: Well, you want me to make a copy of them and give them to you? [LB325]

SENATOR KOLOWSKI: That would be fine, but I don't remember ever doing that, as per the instructions on this memo, that you also have the Attorney General's comments here and, just for the record, to read into that. On the first page of the Attorney General's comments: You took up that situation with this office, meaning the memo that I had...that Mr. Winkler sent out, and we informed you that our authority over governmental subdivisions in Nebraska, including natural resource districts, is limited, for the most part, to matters arising under the Open Meetings Act and the public records statutes. We have no general supervisory authority over government subdivisions in Nebraska. On the last page, page 4, second to the last paragraph: It does not appear that you have been improperly denied access to public records--from the Attorney General. [LB325]

SCOTT JAPP: That was for...as a general manager but not as a public citizen, and there...and I am a public citizen and that's what I made the request for, and I'm still denied. [LB325]

SENATOR KOLOWSKI: Well, we have different interpretations there. Just for the record, I wanted to make sure you...we had that on there. Thank you. [LB325]

SENATOR DUBAS: Other questions? Seeing none, thank you, Mr. Japp, for coming today. [LB325]

SCOTT JAPP: You're welcome. [LB325]

SENATOR DUBAS: Further proponents for LB325? [LB325]

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MICK MINES: Senator Dubas, members of the committee, my name is Mick Mines, M-i-c-k M-i-n-e-s. I am a registered lobbyist for the Papio Valley Preservation Association and I'm here today in support of LB325, as amended by AM264. I've represented this organization for about four years and, in fact, during my tenure as a senator, I represented Washington County down into Douglas County. So I've been aware for quite some time of the dissatisfaction by residents in Washington County and north, and I've attended several meetings of the Papio Valley...or Papio-Missouri NRD and it's very evident that there's a distrust and maybe a dislike between the board members and our organization. It is truly a unique district. I don't believe there's any other district...I know there's no other district like the Papio-Missouri in the state of Nebraska. You have a high concentration of urban interests in Sarpy and Douglas County, and obviously north you have rural interests. If we look at representation by one person, one vote, obviously everything is the way it should be. However, I think if you'd relate this or translate it into your representation in Nebraska, for instance, Senator Johnson and Dubas, you would have about three other senators representing rural interests against 44 urban interests, urban senators. And it's not to say that you're opposed to one another, it's your constituents have greatly different demands and different requirements than yours do. So I'm just saying that the one representative for that amount is proper when you have one person, one vote. Frankly, it isn't. It doesn't...it doesn't...there's not the same amount of representation because, first of all, the rural area is remote from where the district office is, it's inconvenient, and for all those reasons. I'm glad you, Senator Smith, I'm glad you brought up the OPPD analogy. It's similar but not really. OPPD has seven representatives. Two of us are elected by district, north and south, and the others are elected at large in Omaha. And it's based on one person, one vote, but it's a fewer number of representatives. And the NRD's...in this NRD's instance, you've got 11 representatives and you've got a fewer number of people up north. So it's really a divergence of interests--urban and rural--and I hate to put that in opposing corners, but clearly, there are different needs and different requirements in the urban area. And I'd like to be clear. The bill isn't looking for a solution of increasing the number of board members. This bill, as amended, simply asks that an area within the Papio-Missouri NRD, an NRD with a metropolitan-class city, be allowed to take a vote of the people and that vote of the people is undetermined at this point. It could be only two counties or it could be any district drawn, drawn by...that receives 25 votes. And then if it happens to receive an affirmative vote, the Natural Resources Commission would have oversight and determine if it should move forward. So my organization is simply asking that, give us this opportunity to evaluate. It may or may not prove to be worth merging, separating. It may or may not, but we have such different interests that we believe that we need an opportunity to study it, and this provides the vehicle to do that. So with that, I appreciate your attention and would be happy to answer any questions. [LB325]

SENATOR DUBAS: Are there any questions? Senator Kolowski. [LB325]

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SENATOR KOLOWSKI: Thank you, Madam Chair. Mr. Mines, Senator Mines, where are there...are there any other rural offices for the NRD in the northern territories? [LB325]

MICK MINES: I'm aware of the one in Blair that was...a new building was put up and there's an office there, right. [LB325]

SENATOR KOLOWSKI: And I believe Dakota County also. [LB325]

MICK MINES: Dakota County. [LB325]

SENATOR KOLOWSKI: Thank you. Just to make sure for the record... [LB325]

MICK MINES: I've not been to that office. Right. [LB325]

SENATOR KOLOWSKI: ...for the record that we have two offices... [LB325]

MICK MINES: Okay. [LB325]

SENATOR KOLOWSKI: ...to the north, please. [LB325]

MICK MINES: Okay. [LB325]

SENATOR KOLOWSKI: Thank you. [LB325]

SENATOR DUBAS: Other questions? Senator Smith. [LB325]

SENATOR SMITH: Thank you, Senator Dubas. And, Mr. Mines, thanks for being here and for testifying. I didn't mean to put you on the spot... [LB325]

MICK MINES: Not at all, Senator. [LB325]

SENATOR SMITH: ...with your role on the OPPD board. But I don't think anything you said was necessarily in disagreement that...I mean there are...I think there are some similarities where you're looking at the split between urban and rural, and this is not the only case that we're experiencing this I think in Nebraska. But you know, adding, you know, adding a seat in the upper four counties, in your opinion, from what you've experienced in the past, is that...that would not necessarily change the outcome of some of the decisions. Would you agree with that? [LB325]

MICK MINES: Well, you know, the dynamics of any board of directors, as you know, is changed by the people that are elected. And another...an addition of another seat on

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that board would change the dynamics, and certainly it would be better. But we believe that an opportunity to evaluate setting up our own NRD has merit and deserves the opportunity to go forward, but certainly the addition of one or two additional board members would make a difference. [LB325]

SENATOR SMITH: And I'm not not sympathetic to what the problem is here. [LB325]

MICK MINES: Yeah. [LB325]

SENATOR SMITH: Changing the boundaries, adding representation, all those different things, I'm not certain that any of those solutions in and of themselves is going to fix the problem. I mean even if you had the upper four counties serving as a separate district, you may end up with Washington having more representation than the other three districts or the other three counties, and maybe favoring some of their projects more than the other three counties. So I mean this is...this is not a fix all. [LB325]

MICK MINES: I agree. However, the interests are the same. We don't have interests in opposition to one another. Recreation is certainly a valid and reasonable pursuit in Sarpy and Douglas County, and, quite frankly, I think the NRD is fulfilling that obligation. Those are very valid in our northern part of the district. But we do have conservation issues that aren't being addressed, and that's a real concern to our population. [LB325]

SENATOR SMITH: Very diverse water issues. [LB325]

MICK MINES: Yeah, very diverse. [LB325]

SENATOR SMITH: Okay. [LB325]

MICK MINES: And you know, frankly, I don't know if representatives here from the district are going to testify in opposition. I'm kind of curious why they might do that. We've been a thorn in the NRD's side for a long time, beginning with the dams that were going to flood (laugh)... [LB325]

SENATOR SMITH: I can't imagine you being a thorn in anyone's side. [LB325]

MICK MINES: ...with the dams that were going to flood cities in Washington County. And you know, I don't know why losing, other than our tax base, why losing...potentially losing four counties north might be an issue. [LB325]

SENATOR SMITH: Well, maybe we'll have that conversation with them. Thank you. [LB325]

MICK MINES: I think you're right. Thank you, Senator. [LB325]

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SENATOR DUBAS: Other questions? I would have a question for you. This bill, as amended, we've been talking a lot about do we just add another representative, do we start...do you make your own NRD, do you merge with another. This bill isn't specific to any one particular idea, is it? This bill is just to give you... [LB325]

MICK MINES: This bill is specific, Senator. Excuse me for interrupting. I'm sorry. [LB325]

SENATOR DUBAS: Okay. That's what I want to be clear about. [LB325]

MICK MINES: Is specific that an area in the Papio-Missouri NRD, doesn't designate the area, could be any area, by a vote of 25 percent of the constituents, of registered voters, could decide to form their own district. [LB325]

SENATOR DUBAS: Okay. [LB325]

MICK MINES: Merger is a different matter and procedure but they could choose to do that as well, but not under...this specifically gives them the right to form their own district. [LB325]

SENATOR DUBAS: That's what I wanted, because there's been... [LB325]

MICK MINES: Yes. [LB325]

SENATOR DUBAS: ...a lot of talk about, well, should we just add representatives,... [LB325]

MICK MINES: Right. [LB325]

SENATOR DUBAS: ...should we merge you with somebody else. But this bill is specific to... [LB325]

MICK MINES: Creating a new district. [LB325]

SENATOR DUBAS: ...creating your own NRD. Okay. [LB325]

MICK MINES: Right. [LB325]

SENATOR DUBAS: That's what I wanted to make sure we were clear about. [LB325]

MICK MINES: Okay. [LB325]

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SENATOR DUBAS: All right. Any other questions? Seeing none, thank you so much. [LB325]

MICK MINES: Thank you. [LB325]

SENATOR DUBAS: Further proponents for LB325? [LB325]

STEVE KRUGER: Good afternoon. My name is Steve Kruger, it's S-t-e-v-e K-r-u-g-e-r. I live in western Washington County and currently all of my ground drains into the Elkhorn River. Western Washington County is also part of the Papio Natural Resources District. All this bill...and you just alluded to it and I just agree, is that all it does is starts the conversation and in the end, I believe the commission is actually going to have the final say on how the mergers or any of that. So why would you be denied that? I see...I mean I know there are reasons, you know, and everybody is concerned about their territory, but why would we deny a commission which is...that's their job, to sit there and look at districts that may want to form, and say, go ahead, yeah, that's a workable, better solution? That's all I have to say and if there's any questions, I'd... [LB325]

SENATOR DUBAS: Thank you. Are there questions for Mr. Kruger? Seeing none, thank you very much for coming forward. [LB325]

STEVE KRUGER: Yep. [LB325]

SENATOR DUBAS: Additional proponents. [LB325]

DON ADAMS: Senator Dubas and members of the committee, my name is Don Adams, D-o-n A-d-a-m-s. I'm executive director of Nebraskans First, a statewide groundwater irrigators coalition. I'll make this very short. I just made some notes. I wasn't going to testify but I think we've wandered off into the weeds on this issue. It's pretty simple. Senator Brasch and Senator Bloomfield have an unavoidably serious problem on their hands relative to their constituencies and the representation. They have thousands of property taxpayers in their legislative districts who pay hundreds of thousands of property tax dollars, in total about \$1.6 million, to the Papio NRD where they have essentially no representation. The map clearly depicts this glaring governance disparity. It is no exaggeration to assert that this is a classic case of taxation without representation, and I'm amazed that this issue hasn't come before this committee earlier than this. We've been watching this issue since 1993 and always thought that that NRD was really skewed poorly insofar as representation for agriculture, and there's no question that it is. The NRDs were created 40 years ago as special purpose local governmental entities to manage land and water resources. NRDs were not established to manage densely populated urban areas. The statutes, specifically 2-3203, states...specifically prescribes that NRD boundaries should be established based on areas which have "related resources problems." This standard is clearly not the case in

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the Papio NRD. Dakota, Thurston, Burt, and Washington Counties, parts of Thurston and Burt, half basically, comprise about 1,200 square miles. Douglas and Sarpy comprise 570 square miles, yet the top four rural counties have one member on an 11-member board. Incredible. The NRD board could have independently addressed this glaring inequity, which is unlike anything else in the 22 other NRDs save maybe the Lower Platte South where Lincoln does have a predominant representation. They could have created subdistricts with the 3-to-1 population disparity. That's clearly allowed in the law. Or better yet, they could have gone to at-large representation, such as the Middle Republican NRD does. That would give the upper four counties a real fighting chance if they got good candidates and ran good campaigns and convinced the people of the importance of having fair representation on the board. The top four counties could theoretically have all the directors if the people of Omaha thought they were the best directors. That is an option that has not been discussed that is allowed in the statutes, and this NRD has chosen not to go to 3-to-1, which would help the top four counties, maybe give them one more, two more directors, which wouldn't be good enough. At large would give them who knows how many, but at least they would have a chance, they'd have a fighting chance, and that option has not been discussed. The current situation regarding representation on the Papio-Missouri NRD is patently unfair and needs to be addressed and resolved. And I saw a copy of the letter that Senator Kolowski, when he was on the board, sent to the lone director from the top four counties, and I've got to tell you, it is chilling at the very least. And I'd encourage you to read that letter and who directed the letter to be sent, and that's to an elected representative on the board who won his election I think by 60 percent of the vote against an HDR engineer. If that doesn't chill you, I don't know what. That NRD needs to be split. Omaha is a unique animal. They have a unique interest. It's the big dog; it wags everything else. Split that thing up, let the...the NRC would have to do it, the commission, but give these people a fighting chance to break loose of that and manage their resources in a manner that benefits those taxpayers rather than funneling \$1.6 million every year down to Omaha, where they have virtually zero representation. One vote out of 11 is the same as zero. Two out of 11 is no good. We keep talking about adding one more director. That's a red herring. That's not going to solve the problem. If they went to at-large, that might and they could do that voluntarily with a simple vote of a majority of the board, or split that thing into two and have the rural four counties represent one NRD. And then Omaha and Sarpy with their unique situations and urban density and all that, let them handle their problems in that manner. [LB325]

SENATOR DUBAS: Thank you, Mr. Adams. Are there questions? Senator Kolowski. [LB325]

SENATOR KOLOWSKI: Mr. Adams, would you enlighten us on the letter that I sent, whatever that was all about? [LB325]

DON ADAMS: The e-mail. I think you have a copy of that. Did you give him a copy?

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[LB325]

SENATOR KOLOWSKI: The e-mail that Mr. Winkler sent to his staff. [LB325]

DON ADAMS: Yeah, I think...I don't...it says at... [LB325]

SENATOR KOLOWSKI: That wasn't from me. Do you understand that? [LB325]

DON ADAMS: Would you read the...I can't ask you a question. [LB325]

SENATOR KOLOWSKI: I have it. [LB325]

DON ADAMS: I understand that. I think it says at the direction of Director Kolowski. [LB325]

SENATOR KOLOWSKI: Sure. Yes. [LB325]

DON ADAMS: Is that not true? I can't ask you a question. [LB325]

SENATOR KOLOWSKI: No, sir. Did...I asked you, was that from Mr. Winkler or was it from me? [LB325]

DON ADAMS: It was from Mr. Winkler. [LB325]

SENATOR KOLOWSKI: Thank you. It was not a letter from me. [LB325]

DON ADAMS: It was a letter from Mr. Winkler... [LB325]

SENATOR KOLOWSKI: Thank you. [LB325]

DON ADAMS: ...that says, and I know everybody has read it: "Board Chairman Dr. Rick Kolowski has initiated the following directive." [LB325]

SENATOR KOLOWSKI: Uh-huh. [LB325]

DON ADAMS: There it goes. So unless Mr. Winkler is...no, I won't say anything else. It's a chilling... [LB325]

SENATOR KOLOWSKI: Well, I'm just clarifying what you said. You said I sent a letter. I did not send a letter. [LB325]

DON ADAMS: Okay. Well, then... [LB325]

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SENATOR KOLOWSKI: Do you know of the behaviors that led to that letter? [LB325]

DON ADAMS: Behavior? [LB325]

SENATOR KOLOWSKI: Never mind. That's fine. [LB325]

SENATOR DUBAS: Are there other questions? [LB325]

DON ADAMS: One other point and this will just take a second, but somebody said, well, maybe the problem is, is that the one director from those four counties isn't really skilled in dialogue and he's not really as effective as he should be. I mean fair representation on an elected board is based on votes. It's not based on if you have one person that is William Jennings Bryan and a great person in winning debates. You've got to have votes to get things done. Those four counties have no votes. They send money down to Omaha, it's spent, and a little bit comes back to them but not nearly enough that makes it fair. [LB325]

SENATOR DUBAS: Thank you, Mr. Adams. Any other questions? [LB325]

DON ADAMS: Okay. [LB325]

SENATOR DUBAS: Thank you for coming forward. [LB325]

DON ADAMS: Yeah. [LB325]

SENATOR DUBAS: Further proponents for LB325? (Exhibit 16) I do have a letter for the record in support of LB325 from Mr. Scott Watson. We'll now turn to opponents. [LB325]

DEAN EDSON: (Exhibits 17, 18, 19, and 20) Thank you, Senator Dubas and members of the committee. My name is Dean Edson, D-e-a-n E-d-s-o-n, and I'm the executive director for the Nebraska Association of Resources Districts. I'm presenting some testimony here. There were several gentlemen here earlier that wanted to testify but had to leave. It seems like today is kind of an important day to be with your spouse. So on behalf of that, happy...and happy Valentine's Day to everyone here. I want to submit a letter from the Central Platte NRD. I have three letters here, and one from the Middle Republican NRD, and one from the Upper Elkhorn NRD in opposition to the bill. The three letters that I'm submitting really address the main issue, that the NRDs still need to be involved in these decision-making processes when there's a boundary change. The bill, as proposed, takes the NRDs out of that decision-making process and out of the decision. I want to be specifically clear that current law already allows for boundary changes and for a petition process, and the letters I'm distributing to you shows you the impact of how that works. There was a merger or a boundary change back in the late '70s...or back in the late '90s, involved the Central Platte NRD and the Middle

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Republican NRD. There's 55 sections in the northeast corner of Frontier County that included the community of Eustis. They were in that Central Platte NRD. They were in and they are in the Central Platte drainage area. They felt that to better serve their needs and to receive better service to the communities they were involved in, they wanted to be affiliated with the Middle Republican NRD and asked that they be moved down. The districts...the two districts got together and agreed with the parties and recommended that they move those districts down to the Middle Republican NRD. Then what happened in 2001, there was some discussion going on about a Republican River lawsuit. Those same landowners that had the 55 sections, instead of running...staying where they were, wanted to run back to the north and get out of the Republican River Basin and avoid any ramifications that may come out of the compact and the lawsuit. And so the two districts got together and looked at the area and then they realized that some of those sections were actually in the Republican River drainage area. And we talked to the Department of Water Resources and Department of Natural Resources, and those areas had to be included into the Republican River Compact. So not all 55 got to go back to the north; 38 sections were allowed to go back to the Central Platte NRD. Back at that time, and this was in 2001, there wasn't quite as much complicated water law activity going on and water-related activities. Now we are into a considerable amount of compacts, agreements, and other issues to manage water. What we are concerned with now is that if this barn door gets opened, we're going to have all kinds of petitions going across statewide for people to get out of their NRD, create their own NRD, or move to another NRD that might provide them a bigger benefit. I have one map that I'd like to route around. I'm not going to talk on everything on this map but I'm just going to highlight a few points for you to consider when you're considering this bill, and I'll wait just a second here while this gets routed around. There's basically four areas here I want to highlight on your map and it's going to be hard to see, but this is a map of groundwater management activities and basically where we have water management programs going on right now. This is similar to a map that Senator Carlson was talking about yesterday with LB517. I want you to look at Madison County, which is the north-central part of the state. There's a little green dot there. Outside of that green dot there is some...outside of that there's very limited irrigation management. Inside that green dot we are putting on allocations this year. If this bill were to pass, those people could petition to get out of that district and move to another one, to the Lower Loup, where they might not be subject to allocations. I'm just throwing that out as an example. There's two other green dots in the Lower Loup with Greeley County, Custer County. Those are management areas where there's significant regulations. Those two...that area could petition to either form their own district or move to another district to avoid regulations. The last one I want to point out in the Upper Republican, Middle Republican area, after this bill was introduced I was contacted by some producers asking if this would open up an avenue for them to move out of the Middle Republican NRD into the Twin Platte so they would not be subject to groundwater allocations in the Republican River Compact. So the discussion has opened up considerably on it. I know my time ran out. The last one I wanted to mention is the Upper Republican NRD. In their letter they

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are concerned of the opposite happening of what the folks from the Papio Valley Preservation Association want, and that is they want rural representation. This district is concerned, if this bill moves forward, that a merger will occur and they won't have anything to say about it and they'll have to merge with the Lower Elkhorn NRD and they'll lose rural representation. With that, I'll try to answer any questions you may have. I did ask John Winkler, the manager from Papio-Missouri River NRD, to come in on behalf of the association and testify about any implications they may have with their district, so... [LB325]

SENATOR DUBAS: Thank you, Mr. Edson. Are there questions? Senator Kolowski. [LB325]

SENATOR KOLOWSKI: Thank you, Madam Chairman. Mr. Edson, on the representation part, have NRDs ever been represented by acres as you look at a number basis? [LB325]

DEAN EDSON: The NRDs have never been represented by acres. You'd have to go way back to old county conservation districts that occurred back...that dated back in the '40s, and those county conservation districts, they weren't represented by acres. You had to, in order to be on the county conservation board, you had to own farm ground. When the NRDs were created, the directors were elected at general election and there was no restrictions placed on them of what career you were in, whether you owned land. All you had to be was a citizen of the state and a resident of that area. [LB325]

SENATOR KOLOWSKI: And second question: How many districts are by one man, one woman, one vote kind of basis when you look at it? [LB325]

DEAN EDSON: Yeah, one person, one vote? [LB325]

SENATOR KOLOWSKI: We're on Valentine's Day. I better say that. [LB325]

DEAN EDSON: Yeah. We've had a challenge in the past 10-15 years to push the NRDs to all go to one man, one vote. There has been legislation introduced several times to force all NRDs to go to one person, one vote. That has not been successful. The legislation never passed so the ratios didn't change, but there were threats of lawsuits if local NRDs did not voluntarily go toward one man, one vote or one person, one vote. [LB325]

SENATOR KOLOWSKI: Uh-huh. [LB325]

DEAN EDSON: Right now we have 21 of the 23 NRDs are right at one person, one vote. There is one district that is about 2 to 1, and one district that's 2.2 to 1. [LB325]

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SENATOR KOLOWSKI: So the subdistricts within those are fairly out of whack with those two that you mentioned as far as numbers? [LB325]

DEAN EDSON: Yeah. But the other thing with the ratios, if you...you can set your subdistricts up with different representation, but you have to set them all up the same way if you do it by subdistrict. You can't pick one area of your NRD and say this one is going to be 3 to 1 and the rest of them are going to be 1 to 1. They all have to be the same. And so if you were to change one area to go to 3 to 1, everybody else goes to 3 to 1 as well. And so your ratios are not going to change, basically, on the number of people that are represented. [LB325]

SENATOR KOLOWSKI: So on a question like can we go to some other ratio, if you do, they all have to go that way. [LB325]

DEAN EDSON: They all have to go that way. That's correct. [LB325]

SENATOR KOLOWSKI: Okay. [LB325]

DEAN EDSON: So it doesn't really change the number of representation from certain areas in proportion to others. The ratios all have to be the same. [LB325]

SENATOR KOLOWSKI: Okay. Thank you very much. [LB325]

DEAN EDSON: So you could still end up 11 to 1. [LB325]

SENATOR KOLOWSKI: Thank you. [LB325]

SENATOR DUBAS: Senator Smith. [LB325]

SENATOR SMITH: Thank you, Senator Dubas. Mr. Edson, thanks for coming and testifying. You touched on this just briefly. Can you maybe go into a little bit more detail, not too much though (laughter),... [LB325]

DEAN EDSON: Okay. [LB325]

SENATOR SMITH: ...what process is there that's currently in place today to address this particular conflict, not just for this district, but other districts that may face similar situations? [LB325]

DEAN EDSON: There are a couple of different processes. One is if two districts want to change boundaries, those two districts can get together to discuss that and decide if they need to change boundaries due to some management or river basin issue or something like that. In that process, the people involved in that change will be included

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in that discussion. The second process that is there, and it's the one that was used here in the Republican River Basin, was a petition process where the landowners or the residents of that area petitioned the districts to consider this. That was taken to the districts and both districts were involved in a discussion, and so an agreement was reached between the two districts. And then it went to the commission for confirmation. [LB325]

SENATOR SMITH: Are you aware, in this particular situation, has there been any steps towards doing...utilizing any of those processes to address their complaints? [LB325]

DEAN EDSON: I'm not aware of any processes that have been undertaken under current law in this situation in the Papio. [LB325]

SENATOR SMITH: Okay. And then can you give me a little background on the formation of the Papio-Missouri district, the formation of this district, and is there any...and what particular reasons, other than precedent being set, would there be for not changing the boundaries? [LB325]

DEAN EDSON: Well, let's go back to the history of why it was done to start with. The reason why the merger occurred to start with was there wasn't enough tax base there to fund the programs that they wanted to fund in the Missouri Tribes., so they merged with the Papio so that they could gain some property...or tax dollars from the Omaha area to fund those programs. It's kind of an interesting discussion, you want to go back to that same system. I kind of mirror it to if you look at the Republican River Basin, that Republican River Basin is pretty large but a 1-cent tax levy in that area generates just a little over \$100,000 through the whole basin. And if you don't have the tax base there, you can't generate enough money to do a project. That's why in 2007 we changed the law to allow them to levy an occupation tax on irrigated land so they could generate money to resolve their problems. And so if you go back to a small district that has no money, there is no state aid anymore. They have to generate what they can on existing levies, and that may not be enough to operate, and that's why they left to start with. [LB325]

SENATOR SMITH: Okay. Thank you. [LB325]

SENATOR DUBAS: Other questions? [LB325]

SENATOR KOLOWSKI: May I? [LB325]

SENATOR DUBAS: Senator Kolowski. [LB325]

SENATOR KOLOWSKI: Just for clarification...and thank you, ma'am,...would the Pigeon/Jones project be a possibility if they were a standalone district today? Could

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they raise the money to do that kind of project in that area? [LB325]

DEAN EDSON: I could... [LB325]

SENATOR KOLOWSKI: Without bonding authority now. [LB325]

DEAN EDSON: Yeah. I wouldn't be able to answer that. I'd have to take a look at the numbers. [LB325]

SENATOR KOLOWSKI: Be a real challenge probably, millions of dollars. [LB325]

DEAN EDSON: It would be a real challenge to try to do a massive project. Anymore, your large flood control projects, you're talking millions of dollars, millions of dollars that you got to raise. And there's not enough money in the development fund right now to give to any new project. [LB325]

SENATOR KOLOWSKI: Thank you. [LB325]

SENATOR DUBAS: Mr. Edson, I would have some questions for you. I can't disagree with any of the comments you made as far as what would happen if this legislation moves forward and opening things out. But as I scanned through the letters you've passed out, it appeared to me that the problems that have arisen through these letters, somehow cooperatively they were able to come together and find some solutions. So what I'm hearing today is I think this bill demonstrates that this situation has escalated to a point that, no matter which side of the issue you're on here, this group of citizens has felt like I don't have any...we don't have any options left. You know, when Senator Brasch introduced the bill, said she attempted over the interim to try to find where do we find some middle ground,... [LB325]

DEAN EDSON: Yeah. [LB325]

SENATOR DUBAS: ...what can we do, and was basically told, we're not interested. So we're here today. So what...and I think Senator Smith kind of touched on this. When you have a situation where you have very diverse interests and very diverse...diversity in just the representation of a particular district and you reach a point where you do have this animosity and this constant contention where you can't find any resolution, what other options do residents have than to try to get something done like this? What can we present? What can we do to help facilitate? [LB325]

DEAN EDSON: If you want to facilitate a communication problem, I mean we have never run into a problem where it has gotten to the point where there's a party standing off and just demanding that...to certain items or everything be handed to them. We haven't gotten to that point. We have gone through some...hired some mediators

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on...dealing with water issues. You want to get into a contentious issue, go down and start talking to some farmers about putting an allocation on who have never had regulation before. We have brought people in to help mediate some of those problems. I don't know if this is at a mediation point or not. We have been in issues...I've been involved in issues on water quality where there's contaminations and farm producers don't want to do anything. They don't want any regulations, and we have brought in people to help communicate that something has to be done, but eventually got those issues worked out. If you're at that point where it's a mediation effort, you know, we have used that before on allocations on water. [LB325]

SENATOR DUBAS: You know, we have certainly seen, you know, in the Republican area, it's a been a very, very tough issue for those people. And we've done what we needed to do statutorily and it's been hard for those people, but I feel like the conversation has continued. You know, everybody has been a part of the conversation, reluctantly or not so reluctantly, and we've eventually gotten someplace where everybody is at least at a point where, okay, I can live with these decisions. But I'm just not seeing this happen with this particular situation. This has been an issue since I've been in the Legislature. I think that's about when it started. And residents keep coming forward to us saying, we can't get anybody to listen to us at the local level; step in and do something. Personally, I don't think the Legislature should be getting into this issue. [LB325]

DEAN EDSON: Yeah. [LB325]

SENATOR DUBAS: But if this is the only course of action that a particular constituency has, then what do we offer them? If it's not legislative, what do we offer to find some solution? [LB325]

DEAN EDSON: That's a very interesting question, you know. I guess I'm going to go way, way back. I've been around this Legislature for 26 years. I started here with working for Nebraska Farm Bureau. I can tell you when I started working for Nebraska Farm Bureau, Washington County came to me and told me that they needed to get rid...we needed to get rid of the NRDs. That was 26 years ago. So has this issue crept up? I don't think so. You know, is it the same fight? Probably is. It's probably the same fight over some flood control projects. It was back 26 years ago; I see the same thing today, but it's that issue. [LB325]

SENATOR DUBAS: So is this just something that will go on forever and ever... [LB325]

DEAN EDSON: It... [LB325]

SENATOR DUBAS: ...or do we try to find something that...? [LB325]

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DEAN EDSON: I don't know what the solution to that is. There is a demand for flood control projects for the city of Omaha and the residents in those counties. We can't expose them to loss of life and loss of property. Our role here is to protect property and protect lives, and things have to be built. And unfortunately for Washington County, Omaha is moving that direction, or the greater Omaha area. [LB325]

SENATOR DUBAS: I appreciate your historical perspective. You know, I just...it's just frustrating for everybody. I do know that. [LB325]

DEAN EDSON: It is frustrating for me as well. And I would, anytime you want to go down to the Republican River Basin with me and tell them that we're going to cut their allocation in half, and see their reaction,... [LB325]

SENATOR DUBAS: Oh, no, I certainly understand that. [LB325]

DEAN EDSON: ...you're more than welcome to come along. [LB325]

SENATOR DUBAS: I certainly understand that. We've heard from those residents too. [LB325]

DEAN EDSON: Okay. [LB325]

SENATOR DUBAS: So thank you for your testimony. [LB325]

DEAN EDSON: Okay. [LB325]

SENATOR DUBAS: Any further questions? Thank you, Mr. Edson. Next opponent. [LB325]

JOHN WINKLER: Well, since Senator Carlson stepped out, my testimony has to change a little but... [LB325]

SENATOR DUBAS: (Laugh) We're dwindling here. [LB325]

JOHN WINKLER: (Exhibit 21) Senator Dubas, members of the committee, my name is John Winkler, J-o-h-n W-i-n-k-l-e-r, and I serve as the general manager of the Papio-Missouri River NRD as well as I am the president of the NRD managers this year, so I have an honor to serve in that position as well. The situation with our vote of our board of directors, we meet this evening, so obviously no Valentine's dinners for us. We'll meet together as a group. But our subcommittee met on Tuesday to address this particular bill and voted 4 to 1 to oppose it, and they will make that recommendation to our board of directors this evening for a full vote of the board. So if the vote is any different than opposition, I will definitely notify the committee. But on behalf of the

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NARD, I did not see the amendment that was offered and discussed earlier. I got a general idea of what that amendment stated. We obviously are still opposed to LB325, as amended, as well as the original version. The Papio and the NARD believes that the current provision requiring approval from the boards of affected districts prior to merging or dividing any existing district or making changes in district boundaries is good public policy and should be maintained. The local elected board members of the NRDs are the most familiar with the needs and problems of their respective district's local control. To remove them from the process would be unwise. Furthermore, we are not aware of any circumstance where the existing law has been a problem. Since this legislation appears to be primarily directed at the NRD, with the Papio NRD, and with the amendment it is definitely directed at the Papio NRD, I have attached a few charts to my testimony. Attachment A, if you'll look at that, which breaks out the revenue and expenditures of the counties in the Papio NRD district. Please note the expenditures shown are just for major projects and it was readily available information for that particular county. This is by no means a comprehensive list of all expenditures related to district operations in that county and, in fact, we did not even include our rural water districts, which are operated by the Papio NRD and which serve the citizens of the four northern counties with clean and safe, reliable water supply. You may note that in any given year in a county, NRD's expenditures will at least double the tax revenue collected in the four northern counties of Burt, Thurston, Dakota, and Washington. In most years, the actual expense is much more than that. In addition, for the three-year period studied, NRD expenditures in these four counties were nearly five times the tax revenue collected in those counties, approximately \$19.4 million to \$3.9 million in revenue. Furthermore, as demonstrated by Attachment B, the Papio NRD collects nearly 94 percent of our tax revenue from Douglas and Sarpy County. In 2011 and 2012, the district, like many other political subdivisions, including the Legislature, throughout the state went through a process of redistricting as a result of the 2010 Census. As part of that, the...prior to that redistricting, if you look at Attachment C, the District 1 representative represented 25 percent less citizens than the other ten subdistrict representatives, which obviously put us in a position of underrepresentation for the other ten subdistricts. And definitely, the conversation revolved around exposing the Papio NRD to any type of lawsuit from voters or citizens of the district because of that glaring flaw in the representation. With the current...Attachment D, if you look at the current subdistricts, each representative or each district director represents approximately 64,000 or 65,000 citizens per subdistrict, and this is as close to the one person, one vote that the Papio NRD has ever been, and that was the board's direction to try to get to that as close as possible. Also, if you look at Attachment E, there is a letter from the U.S. Army Corps of Engineers, one of their top people in Washington, D.C., at a national level. And because water and natural resources have no boundaries, the Nebraska NRD boundaries were originally created to conform to watersheds, the watersheds of the state, not political boundaries like cities, counties, or school districts. This particular letter was presented during a 2009 interim study, LR181. I believe Senator McCoy sponsored that. He was on the Natural Resources Committee at that time. And the purpose of that was to look at the

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organization of the NRDs and operations and efficiencies and effectiveness, and no recommendations were brought out of that particular legislative resolution. But basically, this does state that the Nebraska system of natural resources districts are a model for the entire nation because they are truly a watershed management institution. In conclusion, we would ask that the committee keep the current provision requiring approval of the effected NRDs be kept in place, especially when a change is made or proposed to district boundaries of a natural resources district. And I see that I'm out of time and I would be glad to answer any questions that you may have. [LB325]

SENATOR DUBAS: Are there...excuse me, are there any questions for Mr. Winkler? Senator Kolowski. [LB325]

SENATOR KOLOWSKI: Thank you, ma'am. Mr. Winkler, on the...again, just to repeat, you said the amount spent in the northern districts is twice as much as the tax revenues that come in. Is that correct? [LB325]

JOHN WINKLER: It's twice as much most years and up to five times as much when we looked up the fiscal year '10 through '12. [LB325]

SENATOR KOLOWSKI: And the water districts are not counted in that total as you're looking at it, which (inaudible). [LB325]

JOHN WINKLER: No. And not all expenditures, just the major expenditures. [LB325]

SENATOR KOLOWSKI: Correct. Thank you. Also, the...going back to the comments made about some acquisition of materials for Mr. Japp, as the representative from that district, do you have any recollection of his ever being...not receiving the things that he eventually asked for over time? [LB325]

JOHN WINKLER: No, we attempt to provide all, obviously, directors with the information they request. Now the only exception to that would be if those particular records are confidential or there's some other restriction. But per the Attorney General's response, we did, I believe, comply with all the Open Meetings Act requirement and Freedom of Information Act requirements. So, no, I don't believe that we've withheld anything that should not have been or could not have been. [LB325]

SENATOR KOLOWSKI: Thank you. [LB325]

SENATOR DUBAS: Other questions? Senator Smith. [LB325]

SENATOR SMITH: Thank you, Senator Dubas. Thank you, Mr. Winkler, for being here and testifying, and the information that you handed out, the expenditures and the tax revenues,... [LB325]

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JOHN WINKLER: Uh-huh. [LB325]

SENATOR SMITH: ...certainly give a different perspective on the representation issue. So with that said, even though it appears from this information that there's a flow of resources into the top four counties from the Omaha and Sarpy County areas, but with that said it seems like we still have a huge divide,... [LB325]

JOHN WINKLER: Uh-huh. [LB325]

SENATOR SMITH: ...huge, you know, just some really bad blood. [LB325]

JOHN WINKLER: Uh-huh. [LB325]

SENATOR SMITH: And so a couple things I'd like for you to have an opportunity to respond to and hear directly from you is Mr. Baker was talking about his concerns with Pigeon/Jones and that he feels that there's been a deaf ear to the needs... [LB325]

JOHN WINKLER: Uh-huh. [LB325]

SENATOR SMITH: ...in that particular area. Can you comment, can you tell us a little bit more about that as to whether that's an NRD issue? I hear it's also a ditch authority. [LB325]

SENATOR KOLOWSKI: Ditch, levees, yeah. [LB325]

JOHN WINKLER: Yeah. [LB325]

SENATOR SMITH: Yeah, explain that a little bit. And the support for those needs, is it reflected anywhere? [LB325]

JOHN WINKLER: Uh-huh. The issue specifically, and I checked with staff on this, and the issue specifically with Mr. Baker and the Pigeon/Jones is that the district is willing and able to assist. However, that particular ditch authority or irrigation authority does not have the right-of-way acquired for us to help on that particular issue that he's discussing. So without that, the district is in a position where we cannot assist without that right-of-way. And so that's something that has been shared with the advisory board and I believe has been shared with Mr. Baker. I have not worked personally with him, but I know our staff has. And I think there was a little bit maybe...an issue with the answer to the question, not so much that we couldn't help but we can, but, again, we have to follow the proper procedure and all the right of way has to be acquired. And that's the issue there. [LB325]

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SENATOR SMITH: Okay. And you said in your testimony here today, you're testifying in opposition and sounds like you had five board members that voted. [LB325]

JOHN WINKLER: Uh-huh, 4 to 1; 1, 1. [LB325]

SENATOR SMITH: ...4 to 1. And you have 11 board members? [LB325]

JOHN WINKLER: Uh-huh. [LB325]

SENATOR SMITH: Did you get a sense from them as to where they fall on this? [LB325]

JOHN WINKLER: I believe, I believe from the conversation and from hearing from board members, they will oppose this in a vote of the board this evening. And again, if it changes, I will definitely inform the committee. [LB325]

SENATOR SMITH: All right. And Mr. Edson touched on this a bit, but where do we go from here? Where do you go from here? [LB325]

JOHN WINKLER: Uh-huh. Well, I'm a newcomer to the game, I guess. I've only been with the district for a little over six years now. And again, there's...and I understand the long history and Dean just probably just, you know, briefly touched on it, but there has been, it's been...it appears to be it's been a long-simmering type of issue between some folks and the district. If I had the answer, you know, we would definitely approach it. I would say that, you know, I met with Senator Brasch and, you know, she did mention these issues. And I misunderstood her as far as wanting to maybe be on the agenda, and I apologize to her for that. And I would put her on there anytime she wanted to come or anyone else. But I've never received, besides my conversation with Senator Brasch and rumors and maybe, you know, you hear things, but I've never received a formal, formal in a letter or an e-mail, request to put this on the agenda or to discuss this with directors to even address the representation issue. And again, Senator Brasch was, you know, when she said she was going to introduce this bill, that was kind of the first communication I had with somebody. But I heard, you know, you hear rumors, you hear. City of Omaha called me one time and said, you know, that they heard that there was someone that represented your organization that was talking about succession from the district. But that's as far as it went. So I think there needs to be some open dialogue, but there needs to be some formal requests or there needs to be a presence with the other directors to do that. [LB325]

SENATOR SMITH: Okay. And, you know, I'd just...and this is more of a statement than anything. You know, the whole urban and rural divide... [LB325]

JOHN WINKLER: Uh-huh. [LB325]

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SENATOR SMITH: ...that takes place, and I understand that and it's, you know, certainly there are issues that come before the Legislature where there's a significant difference of opinion... [LB325]

JOHN WINKLER: Uh-huh. [LB325]

SENATOR SMITH: ...when it comes to urban versus rural issues. But I know, you know, being an urban senator, yeah, I represent Sarpy County but an urban senator,... [LB325]

JOHN WINKLER: Uh-huh. [LB325]

SENATOR SMITH: ...that, you know, I have no problems listening and understanding some of the rural issues and supporting my colleagues that way. And do you get a sense from your board that, you know, there are conservation-minded senators (sic) that are representing the Omaha metro area... [LB325]

JOHN WINKLER: Uh-huh. [LB325]

SENATOR SMITH: ...that understand the issues of the upper four counties... [LB325]

JOHN WINKLER: Uh-huh. [LB325]

SENATOR SMITH: ...and will kind of reach across and work? [LB325]

JOHN WINKLER: Right. Again, I can't speak for directors, because I have to walk a fine line of what I think and what I believe and what they actually do. I've had the privilege of working with some directors that have a very broad scope of issues, were very conservation-minded or environmental-minded. You also have other directors that are focused more on the urban issues. Obviously, they have to represent a constituency. So I think we have a good board that tries to make decisions that are for the best of the entire district. And I can't really pin one particular issue that they selfishly voted on just for their particular district. I think the majority of them vote what they think would benefit the entire Papio NRD. That's my belief and my feeling. Now if that's different than what they've demonstrated to me or the feeling that I get, then, you know, then I'll stand corrected. But I think we have a decent...with our current board members, we have a decent group that would work diligently for the best interests of the district, and I believe that. [LB325]

SENATOR SMITH: Thank you. [LB325]

SENATOR CARLSON: Okay. Senator Kolowski. [LB325]

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SENATOR KOLOWSKI: Yes, thank you, Mr. Chairman. Mr. Winkler, I just, for a statement: For my last two and a half years as chair of the Papio NRD, I have not been approached by anyone to add something to the agenda, as you said. In the same way, I didn't meet Senator Brasch until I came down here as far as any contacts with her before that time. So I'm equal to your comments. I have not been contacted in any way, shape, or form. I also want to go on record and add here a comment on my discussions with Mr. Japp as when I was chair and my directions to you. You have that on audiotape and records, do you not, my comments to him at a board meeting one night? [LB325]

JOHN WINKLER: If it's at a board meeting, it would definitely be. All of our board meetings are recorded. [LB325]

SENATOR KOLOWSKI: As far as the extent of what the reasons were for the actions taken that were backed by our legal authorities as well. [LB325]

JOHN WINKLER: Correct. [LB325]

SENATOR KOLOWSKI: Thank you very much. [LB325]

SENATOR CARLSON: Okay. Thank you. Any other questions? Senator Johnson. [LB325]

SENATOR JOHNSON: If I could, just a quick question. Senator Smith has asked and received the answer to most of what I was looking for. I do have one question. And I understand why, when you've listed your, in Attachment A, the expenses... [LB325]

JOHN WINKLER: Uh-huh. [LB325]

SENATOR JOHNSON: ...and you've listed them out here. And I understand why you've listed the wages and the benefits up there,... [LB325]

JOHN WINKLER: Uh-huh. [LB325]

SENATOR JOHNSON: ...which if they were on their own, they would have some of those. [LB325]

JOHN WINKLER: Uh-huh. [LB325]

SENATOR JOHNSON: My question might be, what response or what ability do the people that are earning these wages have in the impact of studies or recommendations to the entire board, or what is their function in each one of these counties? [LB325]

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JOHN WINKLER: Sure. The staff there would be...have the same, you know, ability to recommend or suggest projects or spending levels, as any other staff member. During our budget process, we bring in, they're who we call project managers or leads on particular projects and programs, and they submit what they believe would be the appropriate amount of funding for their particular area or their particular program. And then, obviously, we go through to the board of directors for prioritization and, you know, to obviously vote and approve those recommendations. So most of our staff that are up there live there. They live in those areas. They're very familiar with the landowners and the constituents that we work with. And so I rely on them quite a bit to provide input on what would be appropriate levels. As with any entity, if it's public or private, you know, you are charged with prioritizing projects for any particular year or any particular multiyear, and that's a difficult thing. We have finite resources. And we are fortunate in the Papio that we've got a large tax base to work with, compared to the other NRDs, with Omaha and Sarpy County, and so we can probably do more things than most districts can do. And I think, at least by the numbers and what I've heard, and I think you'll hear later in other testimony, that we've shared those resources outside of just the Douglas and Sarpy County. So, yeah, those people have the same impact as anyone else and the same input and same abilities as anyone on my staff, so... [LB325]

SENATOR JOHNSON: Thank you. [LB325]

SENATOR CARLSON: Any further questions? Okay, thank you, John, for your testimony. [LB325]

JOHN WINKLER: All right. Thank you, Senator Carlson. [LB325]

SENATOR CARLSON: Next testifier in opposition. Welcome. [LB325]

LANCE HEDQUIST: (Exhibit 22) Senator Carlson, members of Natural Resource Commission (sic), I appreciate being here today to talk about our opposition to this bill. My name is Lance, L-a-n-c-e, Hedquist, H-e-d-q-u-i-s-t. I'm the city administrator of the city of South Sioux City, a position I've held since 1980. And I point that out, that I've been there since 1980, because I was there when we had two separate natural resources districts in our area. I was there when there was not enough funds to do a lot of the projects in the northern section of the current Papio-Missouri NRD. I was there when there was considerable negativeness about the local NRD not being able to do projects within our particular area. I was there when the discussion was made between the two boards and the question came up to the Papio NRD and said, does that mean that we'll be subsidizing the northern portion of our district if we take on the northern natural resources district? The answer was yes. As I sat in the meeting and the vote was going to take place, I thought this is going to die; there's no way an entity is going to publicly say we're going to subsidize the other area. And I was totally wrong. The vote was held. It was a split vote. But the vote to merger that between those two bodies I

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think was a tremendous advancement for Dakota County and the area to which I serve. I've found that the NRD staff, the NRD board members have been very open to discuss issues, ideas, and ways to help improve the drainageways in Dakota County, the drainageways in South Sioux City, improve the parks and recreation space. When we had the flood two years ago, it was the NRD that helped us fund the basins that held back the water, not to stop the Missouri from coming in, but the basins that we used to collect the rainwater and had to pump it out over into the Missouri River. They saved tons of cost to our community because of the great work that they did. We lost hundreds of trees in the flood that took place, hundreds of trees, and the NRD is helping fund some of the replacement trees for us along our riverfront. When you talk about the drainage ditches, the Pigeon Creek drainage ditch, when I talked to the directors and the people out in the areas, they're nothing but saying, thank goodness we got somebody who's going to help because we can't do it ourselves. They're saying that we want to work together to get things done, and I see a totally positive attitude of saying, here we finally got a way that maybe we can work ourselves out. It's not going to be easy, going to take some money, going to take some cooperation to get it done, but I find that that's been a very positive situation within our community. Now I'll just mention one final thing is the NRD meets once a year up in Dakota County. They meet at Dakota County...Dakota City, Nebraska, up there and they go up and look at the entire northern areas. This is not a group that sits in Omaha everyday. This is a group that comes up and spends one of their meetings up in our community so we can show them what's happening and taking place within our community, and we greatly appreciate that. And again, we encourage this bill not to pass. [LB325]

SENATOR CARLSON: Okay. Thank you for your testimony. Any questions of Mr. Hedquist? Seeing none, thank you. Next. Welcome. [LB325]

MARTY GRATE: (Exhibit 23) Good afternoon. My name is Marty Grate, M-a-r-t-y G-r-a-t-e, and I work for the city of Omaha. I'm the city's environmental services manager. Mayor Suttle asked me to bring a letter from him to you opposing this bill. And in the interests of time, I'm not going to read it to you. But I did want to kind of share my insight on this. And it's ironic a little, because I am aware that there are some folks in Douglas and Sarpy County that would be happy to see the northern part of the NRD off because there's this perception, again, like John was showing some of the figures, that the money is flowing out of Omaha. So I think there's room for talk about it. But the real fly in the ointment here comes with Washington County itself. The cities in Douglas and Sarpy County are under a federal mandate, unfunded federal mandate, to improve water quality, and we've got some flood control issues. And a fourth of the Papio Watershed lies in Washington County so we really need to involve Washington County. But it's hard to develop, you know, a cooperative sort of approach to solving these problems. So with that, I'll answer any questions. [LB325]

SENATOR CARLSON: Okay. Thank you. Questions of Mr. Grate? Okay, thank you for

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your testimony. [LB325]

MARTY GRATE: Sure. [LB325]

SENATOR CARLSON: Next opponent. [LB325]

STEVE GRASZ: Chairman Carlson and members of the committee, my name is Steve Grasz, S-t-e-v-e G-r-a-s-z. I'm an attorney with Husch Blackwell, which provides representation to the Papio-Missouri River Natural Resources District. The purpose of my testimony, which will be brief, is to address some legal issues related to LB325. Although the apparent purpose of the legislation is to allow changes in NRD boundaries without approval of the boards of the affected districts, the bill may not actually accomplish this. The bill deletes language in Nebraska Revised Statute Section 2-3211 requiring board approval. However, it does not delete similar language in two related statutes. Section 2-3207 states, "With the approval of the affected natural resources districts, the commission may change the boundaries of natural resources districts." Likewise, Section 2-3212 states, "If the boards of the affected districts favor a change in boundaries, the various affected district boards shall each present to the Secretary of State an application." Consequently, it is questionable whether LB325, as drafted, would accomplish its purpose. I would note that I have not seen the proposed amendment to the bill. Finally, I just wanted to further address a question from Senator Smith and point out that current law does provide the opportunity to initiate proposed boundary changes right now, and that's 2-3208. There are three ways that a proposed boundary change can be proposed. The first one is the Natural Resources Commission can do that on its own motion; the second one is a request by the majority of the members of the natural resources districts involved; or the third one, which has been discussed, is a petition and that is 25 percent of the legal voters residing in an area proposed to be transferred. So there is already an existing mechanism in statute to allow for such changes. [LB325]

SENATOR CARLSON: Okay. Thank you for your testimony. Any questions? Seeing none, thank you. Any more in opposition? Anyone testifying in a neutral position? (Exhibit 24) And we do have letters of opposition from the Nebraska Water Resources Association, which I got out of order in the last bill, Amy Prenda; and then from Jim Suttle, the mayor of Omaha, in opposition. Seeing no one else wanting to testify in neutral position, Senator Brasch, you're recognized to close. [LB325]

SENATOR BRASCH: Thank you, Mr. Chairman, and thank you to the committee here. And I also want to thank all those that came to testify today. Everyone that came here wanted to be heard. It's been a voice that's not been heard historically more. And we have all the documents that show the spending. Yes, and I'd like to cover the points. The spending has not been proportionate for conservation projects. The dollars that were shown us earlier, they're going towards the recreation projects in the northern counties, such as Pigeon/Jones, California Bend, Boyer Chute. Currently, the NRD

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boards can veto any boundary changes. That was the original bill that we had drafted, concern that we could have an interim study, we could do this, that. But as it comes back and even from what I heard today from Mr. Winkler, the board has already said no. You know, they haven't read the amendments, he said; it's just a no. And that's what this association, why they brought it here, the Papio Association. It has been no, no, and no. We'd like to change that. And the important thing here is that we did make a major change that wouldn't even affect the letters of opposition that Mr. Edson brought forward. Our amendment, first of all, changes all the legal language addressed by the...I didn't write his name down, the attorney that was just here. All that's corrected regarding the Secretary of State. AM264, it only changes the statutes for metro area NRDs. All the others will not be affected. It will just affect the Papio NRD. Back to the NRD history, the system was not set up to reflect population but it states that by common interest, objectives in managing natural resources. And the statement also made about the 3-to-1 option, the 3-to-1 option says no one subdistrict shall have a population greater than three times the population of any other subdistrict. So the statement, I don't quite understand why it was brought out. And again, subdistricts do not have to be 1 to 1 to avoid lawsuits. The U.S. Supreme Court has specifically ruled that special purpose governmental entities are not required to meet the one man vote standard, and the case from that was Salyer Land County v. Tulare Lake Basin Storage District, in 1973. So I do have some documentation to back up that statement. The other is that the Papio has the highest population of any other NRD in our entire state, and the subdistricts could divide into 3 to 1. And when I, as I mentioned before, like you, Senator Dubas, you said you hate to see this coming as legislation. I have the same thing. During the drought, and not even with the Papio, when I'd get calls I'd say, you don't want this to go to the Legislature; let's talk. So I initiated a luncheon appointment and my purpose was not just to say hello, it was I have a bill I want to bring but I want to talk to you first, this is what the bill is, I would like to come talk to the NRD. Maybe I should have written it in a formal request. He misunderstood, but my purpose was to consider the 3 to 1, to consider the fact that there could be members at large. I believe we also have NRDs that engage members at large. I was trying to find a solution at all costs before I would come before you today. And full disclosure for my colleagues, I did come to Senator Kolowski with that letter. I didn't want to throw any problems here. We are colleagues. We work together, not just for our Papio but for the entire state. So he...this was not a surprise to him. And I hope we can work together here, but it seems that from conversations and from the testimony in opposition that's followed, I think it's a union irrevocably broken, it so seems, because the funding is not proportionate to the conservation needs, and all of those documents do support that. They talked about the offices that they have in Dakota County and the other office. Those are offices. Those are not board of directors. They are not the decision makers. The representation, the budget, all the action items for the year are decided by the boards of directors, and that's what we're looking for is board of directors that evenly decide the direction of an NRD. When I attended the last reception we had, I'm on great terms with many of the NRDs and they came to me and said, Senator Brasch, what are you doing, you know?

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And I said, you know, if local control is what NRDs do and you have even...you know, I said, are you represented across the board? Yes, we are. And I said there shouldn't be a problem; it should not affect you. What we're just looking at here is when 11 board directors representing six counties all have an Omaha address with one borderline Washington County, that that needs to be looked at. The NRDs are 40 years old. It's time for a wellness check--is this working well? But we would like to speak specifically to just this one NRD, just one with the metropolitan situation. And urban and rural can work well together. There...you know, it is...it should be that way. We all, our well-being depends on agriculture. We have survived the recession because of agriculture. But the dollars from this are not going proportionately to agriculture. They are going disproportionately into recreation, dams, and trails. And I would like this board to seriously consider all the testimony that's here and to avoid, I believe Edson said, oh, it will break loose or a can of worms or whatever. Well, maybe we need to open a can of worms. You know, this is for local control, not board control, and when your board can override a vote of the people or a wish of the people, something is wrong with that. Even as a Legislature, if the Governor vetoes a bill, it can come back to the body of 49 and we have the right to change direction. This is simply representation and a response, a desperate response to the word "no." And I've heard it firsthand. They've heard it multiple times. Perhaps dialogue can go forward. I hope it does, but seeing that at one point they were two NRDs, and I was told the reason that they merged was because Summit Lake or the...yes, Summit Lake was in progress, they couldn't afford it, so they came to the rescue. Well, today this Papio NRD is also, I'm learning, needing a little rescue as well; that they are concerned about certain fundings in areas, that they are not with a cash reserve. That's what I've heard. I don't know. But I do thank you. Happy Valentine's Day. My apologies to your valentines for everyone in this room, and I close. If there's any questions, please. [LB325]

SENATOR CARLSON: Okay. Thank you, Senator Brasch. Any questions? Senator Smith. [LB325]

SENATOR SMITH: Thank you, Mr. Chair. And happy Valentine's Day to you as well, Senator Brasch. But you may have to make a phone call to my wife for me. (Laughter) But you probably saw the information that was handed out by Mr. Winkler and it talked about the tax revenue, and it shows tax revenue and shows expenditures by the upper four counties. [LB325]

SENATOR BRASCH: Uh-huh. [LB325]

SENATOR SMITH: And the tax revenues in 2010, 2011, 2012, each one of those years the tax revenues for the upper four counties was roughly \$1.3 million each year. The expenditures in Washington County alone in each of those three years well exceeded that. And if you look at the four counties together, the expenditures in 2010 was \$3.3 million, \$4.4 million, and 2012, \$11.7 million. So we're talking about...and we could talk

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about whether it's a conservation project or whether it is a flood control project or recreation, but it appears, and please tell me if I'm misreading this, but I'm walking away seeing that there's a flow of dollars from Sarpy and from Douglas flowing up into projects for those four counties. And if those...if this happens and it splits off into another district, where are they going to find the funding for that? [LB325]

SENATOR BRASCH: Thank you, Senator Smith. And I'd be happy to call your wife. And, no, I have not seen that document but the numbers we have here were presented by a CPA also that was a testifier here earlier, and the projects that are being funded are for...are not for conservation dollars. And I don't know if that includes the \$2 million building that has five employees in it. We would need to see that. And also, when a board of directors can just say no to a dialogue, that's the problem here. If they would bring a dialogue forward to look at the finances, to look at everything, a study needs to be done. But why do a study, why even take a step forward when we've already heard no, and, no, they're voting no tonight, and not everybody is there but they're going to vote no? So... [LB325]

SENATOR SMITH: Obviously, there's bad blood and so the dialogue is a mess. I agree with that. [LB325]

SENATOR BRASCH: So, yeah. [LB325]

SENATOR SMITH: But I'm going back to the expenditures. [LB325]

SENATOR BRASCH: Okay. [LB325]

SENATOR SMITH: So you're saying for conservation, you would want to see expenditures above and beyond what is reported? [LB325]

SENATOR BRASCH: Many of those projects, the other...there's, I believe, over \$15 million of bonds involved here. That is the highest of all the NRDs in the entire state. The next bond...and the finances, we're not concerned about at this...you know, that's part of the study, but they would bring in exactly or close to what most of the other NRDs have. Even some of those who wrote letters, they have the same revenues and they survive. So should they join with the Papio, too, so we can have some...? (Laugh) You know, they are, many of the NRDs have a very similar budget. They would, being farmers, it was said earlier, they would live within their budget. They would have those projects within their budget. They could do fund-raising, you know, if they want recreation areas. People want to walk trails, they can go walk beans. There's lots of...(laughter) there's lots of fields. I'm sorry, but they're looking at, like again back to the purpose is...and objective is common interest and objectives in managing natural resources. And the one meeting they have in Dakota City, I was told it's their annual budget meeting. It's not a tour of all four counties, a day out in the field, is what I've

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been told. I would love to go with them on the interim. [LB325]

SENATOR SMITH: All right. Thank you. [LB325]

SENATOR CARLSON: Senator Kolowski. [LB325]

SENATOR KOLOWSKI: If I may, with some clarifications. The Dakota County trips are usually tours as well, almost every year, to see different projects, leaving early from Omaha and viewing those. And the second point of clarification, the Papio NRD is the only bonding NRD that has authority through this committee and the work that's been done in the past here, and no other NRD has bonding authority. So I think it's very important we state that, because of the flood threats and the issues within the Papio Watershed are the most dangerous in a seven-state area and it's extremely important for property and life issues that have been mentioned before. Thank you. [LB325]

SENATOR BRASCH: Thank you. [LB325]

SENATOR CARLSON: Any further questions? Okay, I'll ask one. So, Senator Brasch, is your solution just greater representation on the board? [LB325]

SENATOR BRASCH: That is a solution, and the greater representation also, not just person but projects, proportionately on projects for rural interests, that it can't be all dams and recreation, trails. There needs to be proportionate terracing in those four counties. [LB325]

SENATOR CARLSON: But let's go back to my question, because if part of it is having more representation on the board, then how much representation does it take to solve the problem as you see it? [LB325]

SENATOR BRASCH: Well, historically, I read in testimony, numbers at one point were seven for the upper area. Washington County may have been its own. I don't think they were a part of the Papio or the upper tributary. But as I read the history and the statutes, I believe that a study needs to be done. It's not something that you can pull a number out of a hat. We need to look at what, you know, what the potential solutions can be. You know, what will it take? Will perhaps one person for...if we had to pick a number today, for two counties, maybe Washington County, and splitting up two and two, and that's just for convenience; two and two for the upper four; two, four, six, that's a simple math. But there's more than likely more to this solution than just the math. The interests of the people, the common interests, the objectives of the people, can Douglas and Sarpy County...and I do...I did meet one of their new board members. I was very impressed. He has some family up in, you know, in the area. He was in our conversation. Maybe the votes will change, direction will change. I don't know. But at this point, when a board can just say no to the will of the people and the vote of the

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people, I don't think that's the way our country was formed. England was good to us. They did lots for the colonies. But we wanted representation. That's how our country came about. Our ag people deserve some representation. And it's like a couple arguing here, I see--but we have been good to you. (Laugh) But, no, mediation, is that what an interim study is? I would love mediation. That's where I initiated my luncheon and tried to get some dialogue going. I asked if I could come to a meeting but I've learned from this hearing is I must write a letter requesting to be on the agenda. I did it much too informally. [LB325]

SENATOR CARLSON: Okay. All right. Thank you. Any further questions? All right, seeing none, thank you for your testimony. (See also Exhibit 25.) Again, thank you, each one, for coming today and your patience, and we're trying to set a record with the Revenue Committee so we've got five hours to go. (Laughter) But I want to thank Senator Dubas for pinch hitting for me and thank you all for coming. With that, we close the hearing on LB325. We're done. [LB325]