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Natural Resources Committee
January 31, 2007

[LB295 LB314 LB568]

The Committee on Natural Resources met at 1:30 p.m. on Wednesday, January 31, 2007, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB568, LB314, and LB295. Senators present: LeRoy Louden, Chairperson; Carol Hudkins, Vice Chairperson; Tom Carlson; Mark Christensen; Annette Dubas; Deb Fischer; Gail Kopplin; and Norman Wallman. Senators absent: None. [LB568]

SENATOR LOUDEN: (Microphone malfunction)...please and we'll begin this hearing. Today we are starting the Natural Resources Committee hearing. My name is LeRoy Louden. I represent District 49 and I'll introduce those that are here today. On my right is Senator Wallman, from Cortland; next is Senator Dubas, from Fullerton. To my right is Senator Kopplin, from Gretna. Jody Gittins is legal counsel for the committee. To my left is Vice Chairman Carol Hudkins, from Malcolm; Senator Deb Fischer, from Valentine; and on the end is Barb Koehlmoos, who is our committee clerk. I'd ask that you turn off your cell phones or turn them on silent, or whatever it takes, so we have no disturbances during the hearing. And those wishing to testify on a bill should come to the front of the room when that bill is to be heard. As someone finishes testifying the next person should move immediately into the chair at the table. If you do not wish to testify but would like your name entered into the official record as being present at the hearing, please raise your hand and the page will circulate a sheet for you to sign. This list will be part of the official record of the hearing. This year we are using a computerized transcription program and it is very important to complete the green sign-in sheets for testifiers prior to testifying. They are on the tables by the doors and need to be completed by all people wishing to testify including senators and staff introducing bills and people being confirmed. If you are testifying on more than one bill, you need to submit a form each bill. When you come up to testify please place the form in the box by the committee clerk. Do not turn the form in before you actually testify. Please print, and it is important to complete the form in its entirety. If our transcribers have questions about your testimony they use this information to contact you. As you begin your testimony, state your name and spell it for the record, even if it is an easy name. Please keep your testimony concise and try not to repeat what someone else has covered. If there are large numbers of people to testify, it may be necessary to place time limits on testimony. If you have handout material, give it to the pages and they will circulate it to the committee. If you do not choose to testify, you may submit comments in writing and have them read into the official record. No displays of support or opposition to a bill, vocal or otherwise, will be tolerated. If you need a drink of water, please ask the page. And today our pages are Erin Frank from Bassett and Steve Scharf from Lincoln. And with that we will start testimony on LB568. Jody Gittins will present the bill. [LB568]

JODY GITTINS: Good afternoon, Chairman Louden, members of the Natural Resources

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 31, 2007

Committee, my name is Jody Gittins, J-o-d-y G-i-t-t-i-n-s. I'm committee counsel for the Natural Resources Committee and introducing LB568 on behalf of the committee. LB568 came to the attention of the committee through the city of Alliance who contacted us saying that we have a situation. Our scrap tire grant program is going to expire this year in June and we really need this to be extended, so that's what this bill does. It extends the Waste Reduction and Recycling Incentive Fund to allow grants to continue until the year 2012, so it extends the program out. There will be others after me to testify as to the benefits of this program. One of the things this grant system has helped with is the tire amnesty program. Larry Dix is here to testify on behalf of the counties and he will be following me immediately to tell you how the counties have benefitted from this program. [LB568]

SENATOR LOUDEN: Any questions for Jody? Thank you, Jody. At this time I'll also make the notation that Senator Tom Carlson has joined us. Go ahead, Larry. [LB568]

LARRY DIX: Senator Louden and members of the committee, for the record, my name is Larry Dix, spelled D-i-x. I'm the executive director of the Nebraska Association of County Officials, appearing today in front of you in a support position on LB568. Let me be brief in describing what happens and why the counties have a position on this bill. This is one that certainly impacts counties whether you go clear to the western part to Senator Louden's area, to the eastern part to Senator Kopplin's area, and all parts of the state. The counties look for the amnesty program and for these grants because you will find that many of our counties will actually set up as a collection site, our county roads department where people can bring the tires in on under an amnesty program. Now the other thing that really is of interest and importance to us is for whatever reason around the state of Nebraska, we mysteriously tend to find a lot of these tires appearing in our roadways and our ditches throughout the year. And we believe that by extending this grant, it certainly alleviates some of that. We know that from the number of tires that are brought into some of our highway departments and shops, that it is a huge, huge benefit. And it does keep them out of the ditches and things like that and certainly it's everybody's taxpayer dollars that is saved by this process. It alleviates our road crews from getting out, picking those tires up and what happens is we end up hauling those back to the highway departments anyway and then struggle with where, how do we dispose them. So it's something that we feel pretty strongly about, that we should continue this program if at all possible. I'd be happy to answer any questions anyone of you may have. [LB568]

SENATOR LOUDEN: Questions for Larry? Senator Dubas. [LB568]

SENATOR DUBAS: Thank you, Larry. I do know that the program is an excellent program and that a lot of tires are being turned in rather than in the road ditches. Are there any other economic benefits that were given back from this program. What are the tires, what are you doing with them once you get them? What are the types of benefits

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 31, 2007

we're getting? [LB568]

LARRY DIX: Sure. And I believe there is going to be someone that will follow, but I know that from some of the county highway departments have said that they realize that these sometimes are shipped to another state. Sometimes they're ground up. They are used in roadways. And I believe some people have even become quite creative in actually making pieces of equipment, tables, I think we find them in playground equipment at schools, so we have heard of a number of uses that are used, very, very positive uses of those. [LB568]

SENATOR DUBAS: Thank you. [LB568]

SENATOR LOUDEN: Any other questions for Larry? Seeing none, thank you, Larry. [LB568]

LARRY DIX: Thank you. [LB568]

SENATOR LOUDEN: Next proponent? [LB568]

VIRGIL HORNE: Senator Louden and members of the committee, my name is Virgil Horne, spelled H-o-r-n-e, representing the Lincoln Public Schools. And I'm here primarily to tell you that we are the recipient of the tires. Seacrest Field, which is a centrally located football stadium in Lincoln, has artificial surface. The artificial surface is actually supported by ground up tires. We have three different tracks in Lincoln, one located in the center of town, one in the southeast Lincoln, and one in east Lincoln, that also use ground up tires. Now the reason I mention the locations and the specifics of this, is while these facilities are primarily for athletic teams and for physical education teams, they are also available to the public to use as a smooth walking surface in the evening for people like me who are older and don't like to walk on sidewalks sometimes because we fall easily. They are available from that standpoint. Seacrest Field is used as the opening ceremonies for the Cornhusker State Games and it's used also for football and soccer. Since 1998 the Lincoln Public Schools have received \$314,618 from these grants and that's part of the reason why we've done it that way. We would certainly encourage you to extend this grant program and I thank you for the opportunity to testify. [LB568]

SENATOR LOUDEN: Questions for Mr. Horne? Senator Carlson. [LB568]

SENATOR CARLSON: Senator Louden. Virgil, explain a little bit more, like Seacrest, the ground up tires are underneath, that's part of the... [LB568]

VIRGIL HORNE: No, sir. The artificial surface is, and I'm going to use terms that I understand because I don't know what it is. It's a polyurethane some kind of mix, but it's

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 31, 2007

like, if you'll think of this as grass, the tires actually come down and if you see a punt land or a kickoff that somebody doesn't catch, you see a little something come up. And if you sit high enough in the university stadium, in Memorial Stadium, you look down, it looks black. If you're not very high it looks green, but if you look down far enough, you can actually see down in the grass and that's little bitty ground up pieces of tire. And when we want to treat our field, instead of watering it now, we go over it with a big brush and it kicks up that rubber to make it more buoyant when the players hit the ground. That's what, it actually separates the pieces of the grass, artificial. [LB568]

SENATOR CARLSON: Thank you. [LB568]

VIRGIL HORNE: Um-hum. [LB568]

SENATOR LOUDEN: Senator Wallman. [LB568]

SENATOR WALLMAN: Senator Louden. Do you feel it's a real cost benefit also? [LB568]

VIRGIL HORNE: Oh, absolutely, absolutely. It...the artificial surface has obviously saved us a lot of money but the fact that we get some kind of a rebate back out of it, because in the case of Seacrest Field, that was not paid for by public funds. That was all raised money through the community and for Seacrest alone, it was \$173,875. So it was a tremendous help and a motivator for people to help contribute to the thing because we had this grant fund thing that there would be some other help. So I would think, I have not actual knowledge of this, but based on what happened in Lincoln, I would think this would be true across the state of other people who are raising money, as an example, for playground equipment which has some requirements now by the federal government, the landing surfaces and stuff of that nature that would be present. That would be a motivator. Say if we can get this kind of money, we can match part of it by this grant process. [LB568]

SENATOR WALLMAN: Thank you. [LB568]

SENATOR LOUDEN: Other questions for Mr. Horne? Seeing none, thank you. [LB568]

VIRGIL HORNE: Thank you, Senator. [LB568]

SENATOR LOUDEN: At this time I would note for the record that Senator Christensen has joined us. [LB568]

KORBY GILBERTSON: Good afternoon, Senator Louden and members of the committee. For the record my name is Korby Gilbertson, it's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of Waste

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 31, 2007

Connections in support of LB568. One of the uses of the used tires is crumb rubber which can be used as daily cover at landfills and that's one of the uses that Waste Connections, uses some of the weight, the used tires. And some of you have read in the paper about the cleanup in Ashland last week and a number of those tires were taken up to the Butler County landfill which is where some of them can be reused in a useful way. So with that I'd be happy to try to answer any questions [LB568]

SENATOR LOUDEN: Any questions for Ms. Gilbertson? Seeing none, thank you. [LB568]

KORBY GILBERTSON: Thank you. [LB568]

SENATOR LOUDEN: Next proponent? [LB568]

JAMES GERKING: My name is James D. Gerking, G-e-r-k-i-n-g. I'm from Brock, Nebraska. I've been involved in the tire recycling business since 1996 so some of you people on this committee are new to me and I know Jody there from the past and so on. But anyway, I think a little bit of the history of what you're being asked to do today is important. This bill isn't really anything to do with the dollar tire fee because the dollar tire fee that we all pay in this state raises somewhat over \$2 million. But back in, oh I don't know, 2002 or so, or before that probably, Mr. T.O. Haas testified that we needed to preserve some of this money specifically for the use and benefit of the tire industry and that's how this came about, that the million dollars was set aside to do that very thing. Mr. T.O. Haas is deceased now. You've heard some testimony about Seacrest Field. I can answer any questions about that because we actually installed that in 1999. So there's some very important things that have happened in the tire recycling industry that are eventually will make tires a commodity that we expect them to be because they are valuable. And I just want to support the fact that this bill if passed as is, with the stipulations in it that are in this bill, that the way it was passed in 2007, and one of those is that we've always had a little commotion over the fact of supporting the tire-derived fuel industry which I believe is properly exempted from these funds. And these funds are better off to be used for positive products that regard tire recycling such as schools, playgrounds, surfaces, the athletic fields we've heard about. And today we had a meeting at the Department of Roads. We used to have to talk about supporting them for tire recycling projects to use tire crumb rubber in the asphalt system of the state. And the normal way to make a high, like the interstate service projects is to use polymer rubber which is a man-made commodity, which today we basically import in this country from China and so on. So with the things that are happening in the polymer market, we're seeing that go sky high. And actually we can modify asphalt rubber, asphalt concrete, better with tires and another high performance polymer, a little pinch of it. And so in the future, I believe we'll see tire rubber in all of our roads and when we do that, we'll be out looking for tires, because there is a tremendous demand in that industry for modified asphalt. So that's the good news. I guess a little bit of history which you might

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 31, 2007

be interested in about how that started at Seacrest Field, we were an upstart in the business and didn't have a reputation to do anything. But there was a man that sat down beside me at the front of the treasurer of the Lincoln Public Schools and said, how are you going to do this? And this man said, he'd personally back the project as doing something for the athletes. And what happened that day was, that we saved the Lincoln Public Schools about a half million dollars on a contract over the Astro Turf XL product they were ready to buy and so at that time, Dr. Tom Osborne is the one that said, I'll guarantee it. So just a little bit of history. So thank you. Any questions? [LB568]

SENATOR LOUDEN: Any questions for Jim? Senator Christensen. [LB568]

SENATOR CHRISTENSEN: Thank you, Chairman Louden. Would you explain that dollar tire fee, where that goes? You mentioned... [LB568]

JAMES GERKING: Well, the dollar tire fee that you pay when you leave your tire...when you buy a tire in this state, goes to the Department of Environmental Quality tire fund. And that, we sell a little over two million tires in this state. And the dollar tire fee is on, whatever the size of the tire is, truck tire, car tire, tractor tire, it doesn't make any difference. Some tires are exempt, but that's where it goes, and they collect a little over \$2 million every year. [LB568]

SENATOR CHRISTENSEN: It's on when you buy the tire and when you dispose of it, right? [LB568]

JAMES GERKING: No. Those are two different items. You pay a dollar tire fee on every tire that is sold in this state, every new tire that's sold, and every car title, there's a \$4 or \$5 tire fee. And the tire recycling industry provides tire disposal for tire dealers, otherwise you'd see mountains of tires at every tire dealer. That's what you're not supposed to see. And so we, as a tire recycler, in our case, we have trailers out here at T.O. Haas and they fill those with the tires that they trade in or are shot. And that's what, then they charge you a disposal fee which then they pay some of that to us to keep giving them empty trailers. And trailers go to our plant, in their case, and they're ground into crumb rubber for playgrounds and footballs fields, and asphalt and so on. Two different things. [LB568]

SENATOR CHRISTENSEN: And then the disposal dollar goes where? Disposal of the tire? [LB568]

JAMES GERKING: The disposal tire goes to the dealer first and the dealer contracts with us to provide haul away service or whatever. We're a scrap tire hauler, permitted scrap tire hauler in this state as well as our location now is Phelps City, Missouri, but right across the river from Brownville. But we grind about a million tires out of Nebraska every year there to make crumb rubber. So don't confuse the two different things.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 31, 2007

[LB568]

SENATOR CHRISTENSEN: Okay. [LB568]

JAMES GERKING: One is a tax and one is not a tax. One is whatever the market will bear, I guess is all. But this bill keeps you spending some money at least towards tires because that's where you're collecting it. [LB568]

SENATOR CHRISTENSEN: Thank you. [LB568]

JAMES GERKING: Thank you. [LB568]

SENATOR LOUDEN: Other questions? Just a minute, Jim. [LB568]

JAMES GERKING: Sure. [LB568]

SENATOR LOUDEN: Senator Carlson. [LB568]

SENATOR CARLSON: Senator Louden. Mr. Gerking, I had another question, but when you said Missouri, how come you've got part of the business in Missouri? [LB568]

JAMES GERKING: Well, we're original scrap tire disposal, or recycling plant, and we were located in Nebraska City until 2001. We had a serious fire in Nebraska City which was not under our control, what happened and so on. And after that, then we were looking for a new location to locate and there happened to be an old meat-packing plant at Phelps City, Missouri, Missouri Beef Packers, that was available and that's where we ended up because truthfully, Nebraska didn't want us, but we ended up across the river. But Nebraska City said, at that point...we were located along the river, along an industrial part of town and after the fire we had a building that was half torn down. It was 80 feet wide, 200 feet long and it was half down. So then they made the decision to tell us that we had to abide by setback rules along that industrial part of town with that one building, if we wanted to rebuild it, which would made us have a 50 foot wide by 200 foot wide building, and our 80 foot by 200 foot wide building wasn't big enough so I couldn't get by with anything smaller so we had to, we basically left. And it seemed like the fire marshal followed me to every spot I thought about going and was there before I got there. Today that's not an issue. We have, if any of you were from Omaha, or Council Bluffs area and saw the terrific fire at Stern Oil Company, we took a product up there that put that fire out in 45 minutes. We can put tires out today with no problem, put serious fires out with no problem. These are all things we've learned since 2002 and that's the way it goes. [LB568]

SENATOR CARLSON: Thank you. Second...really, the first question I had was just for my own information and I think some other new people would be interested, what are

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 31, 2007

some other specific projects that you've had because something like Seacrest is very interesting and what are some others? [LB568]

JAMES GERKING: Well, we did, we realized in 1996 when we started recycling tires, there was not enough market for the product we were making. So you can either ground the tires or ground them in to crumb rubber so we started looking for uses. And one of them was the athletic field industry that we found which today, in 1998 I took Dr. Osborne to look at a field in Pennsylvania and then we came back and did Seacrest and Memorial Stadium in Lincoln in 1999. And with that, we started a landslide of football fields all over this country of artificial grass. And Nebraska wanted it, Nebraska got it, everybody wanted it and it's still going on today. And market is still growing. So, I mean, that's a terrific market for us is cryogenic tire recyclers. We use a freezing process and our rubber is in demand for those type of installations. You mentioned we did Hastings, Doane College, Wesleyan, another field at Cook Pavilion, I got to think a little bit. Iowa, a field over there, and then I decided just to retreat as an old man to the tire recycling industry and sell rubber, not fields anymore. So but to tell you the truth, the latest project that really has opened the eyes is in the state of Missouri and we made a presentation down there about a year ago and somehow people listened, the "Show Me" state I guess, so we tried to show them. And now they are showing the rest of us. But if you've driven to Kansas City lately, on I-29 from Frederick Avenue in Saint Joseph, eight miles south on both sides of the interstate, is rubber asphalt. It was done late this year and right next to it is another section that was done in the polymer method. Herzog Contracting did the job; they received the smoothest road in Missouri for the rubber asphalt project. When you go to Kansas City, if you can't tell the difference, then you're not paying attention. But just recently Nebraska's made another, Nebraska hasn't really done a rubber asphalt project in two years and it's time to do some more. But I was contacted by the Department of Roads and the DEQ to talk about what I could supply in 40-minus crumb rubber for rubber asphalt. And I contacted the...Moe Jamshidi out here at the Department of Roads and I said, what you need to do is...I don't know if you're aware, because we've been keeping the secret, Missouri has eight miles on I-29. Great. Not a test strip, but eight miles is more than a test strip. So they've been there, they've seen it and they are trying to figure out how to write in the specs now because we can actually compete with the present day method at a lower dollar figure and that's where I wanted to be: not higher dollar but lower dollar. All because of tires. [LB568]

SENATOR CARLSON: Thank you. [LB568]

JAMES GERKING: That's a commercial, sorry. (Laughter) [LB568]

SENATOR LOUDEN: Any other questions? Senator Wallman. [LB568]

SENATOR WALLMAN: Senator Louden, and Jim. I think I, did you used to have a railroad track that were here somewhere too, did you? [LB568]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 31, 2007

JAMES GERKING: Sure. [LB568]

SENATOR WALLMAN: Yeah, I got some rock from you. [LB568]

JAMES GERKING: Yeah. [LB568]

SENATOR WALLMAN: So I used to work some for them, but I think you've done some tremendous issues and how do we get you to do business with us in Nebraska roads? [LB568]

JAMES GERKING: Well, we do a lot of business in Nebraska. We're only three miles across from the bridge. [LB568]

SENATOR WALLMAN: Yeah, yeah, I know, yeah. [LB568]

JAMES GERKING: And how do we get the Nebraska Department of Roads to do it? Well, we have to politically support them to, and tell them, it's okay to use crumb rubber. Because I mean, we've done everything engineering-possible to prove that we are better. And now they have...my only concern is how they test things and some of those things, but they're working on it. [LB568]

SENATOR WALLMAN: Okay, I believe you. [LB568]

JAMES GERKING: Well okay, keep pushing. [LB568]

SENATOR WALLMAN: Thank you. [LB568]

SENATOR LOUDEN: Any other questions for Jim? Thank you. [LB568]

JAMES GERKING: Thank you. [LB568]

DEAN EDSON: Senator Louden and members of the committee, I'm Dean Edson, E-d-s-o-n. I'm executive director for the Nebraska Association of Resource Districts, testifying in support of LB568. A lot of the points I was going to talk about have already been hit, so I'll open up to any questions that you might have. We do use the products on some recreational trails and other products. But in the essence of time, we'll just try to answer the questions that you may have. [LB568]

SENATOR LOUDEN: Any questions for Dean? Senator Hudkins. [LB568]

SENATOR HUDKINS: Thank you. Dean, tell us about the projects that you use this rubber for. [LB568]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 31, 2007

DEAN EDSON: We've used them on recreational trails. We've also helped with some of the counties on tire collection and some of the municipalities on tire collection. We've done some tire collections on our own and also with private organizations. We've also worked with DEQ to look at alternative markets for these products. One of the things that we've...our interest was in was bank stabilization projects, to bale the tires and then use them for bank stabilization, but we've got to also address water quality concerns at the same time, that and we want to make sure that we're not doing something to create another problem. [LB568]

SENATOR HUDKINS: Okay. [LB568]

SENATOR LOUDEN: Okay, any other questions? Senator Fischer. [LB568]

SENATOR FISCHER: Thanks, Senator Louden. Dean, I don't know if you can answer this or not and I don't know if we have a representative here from DEQ today, do we? [LB568]

DEAN EDSON: I was looking for one myself. [LB568]

SENATOR FISCHER: (Laugh) Maybe I'll ask you. [LB568]

DEAN EDSON: I'll try. [LB568]

SENATOR FISCHER: On this program, are...all the tires don't need to be ground, correct? [LB568]

DEAN EDSON: It's my understanding that there's other methods to develop new markets for the tires that...I think, if you're asking me the question about grounding them down to the pulverized, I don't believe so. I'd hate to answer for DEQ, though. [LB568]

SENATOR FISCHER: Okay. I guess I'll address this to the committee then, thank you. [LB568]

DEAN EDSON: Yeah. [LB568]

SENATOR LOUDEN: Senator Christensen. [LB568]

SENATOR CHRISTENSEN: Thank you, Senator Louden. Dean, when you said bank management, are you talking about river bank management? [LB568]

DEAN EDSON: Stream bank management; erosion control methods. [LB568]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 31, 2007

SENATOR CHRISTENSEN: Just for... [LB568]

DEAN EDSON: Yeah, some other states have baled these tires and they'll put them along stream banks and then stabilize the banks so you don't get the erosion problems. They'll wrap them in wire, they also may lay rock on them to hold them down. And we're looking at some of those types of projects here. We want to make sure that we're not creating a water quality problem as well. [LB568]

SENATOR CHRISTENSEN: Is there any way of using these to make sure nothing grows in the riverbeds? [LB568]

DEAN EDSON: It's possible. (Laughter) We could look at that. [LB568]

SENATOR CHRISTENSEN: Thought you'd like that, Senator Carlson. (Laughter) [LB568]

SENATOR LOUDEN: Any other questions for Dean? Seeing none, thank you. [LB568]

DEAN EDSON: Okay. Thank you. [LB568]

SENATOR LOUDEN: Next proponent. [LB568]

BECKY VANDENBERG: (Exhibit 1) Good afternoon, my name is Becky Vandenberg. I'm with SID #6 right here in Lancaster County, in Emerald, Nebraska. B-e-c-k-y V-a-n-d-e-n-b-e-r-g. I'm going to switch glasses here because I never could get used to the bifocal things, I've got to read before you all. We do numbers of tire collections out in Emerald and I did...I work with the DEQ, I don't work for them, but I do work with them in numbers of things going on. And I did get a few numbers from them just in calling for this committee meeting. Now I'm going to try to stay on track here and just read this letter to you as we go. Committee members, thank you very much, first of all, for hearing me today. Since the early 1990s the Nebraska Department of Environmental Quality has awarded \$8.2 million in grant funding to clean up scrap tires. Early in the program \$.4 million was awarded through a 50 percent cost share with property owners. In the late 1990s the program began a 100 percent amnesty for scrap tires through public collection of the tires themselves. With the cost of disposal at \$1.20 per tire, the DEQ has paid out an estimated \$7.8 million since that time. Funds from this program were used to clean up scrap tires and rubber displaced from their owner in the '04 tornado as well. The people of Emerald have full knowledge of the need for this program, as we have had our own scrap tire collections and have collected just under a 1,000 tons at a cost of nearly \$100,000. I have had phone calls from farm wives just to say thank you. One woman said she had looked at that stack of tires out her kitchen window for 20 years and was so grateful to have something else to look at for a change. Tires do not biodegrade. At one of our tire collections, a man brought in a Model T tire

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 31, 2007

he still had hanging on the barn wall. He said he thought he might have occasion to use it but when the opportunity came to get rid of it, he did. As is the directive of many of the older farmers I have found with the attitude that if they have to pay to get rid of it, it can stay right where it is. The need for this program in Nebraska is obviously great as it is everywhere in the country. However, the need to find an acceptable end use is just as great. Two landfills in the state, David City and the town of Jackson, use tire chips as alternate layers to accommodate drainage and biodegradable materials. One company uses chips for septic tank laterals. All of these companies own their own chipper. Two companies were forced to go out of state to purchase crumb rubber. One produces gaskets that are shipped all over the world. The other, rubber mats for schools, libraries, and playgrounds. The greatest need in Nebraska for crumb rubber would be in the construction of roads. There is a stretch of I-80 in western Nebraska made from crumb rubber that I would say is the smoothest section of the interstate from border to border. If the state would invest in a machine or two which can be purchased used for under \$100,000 and I know, I've checked, and produce its own crumb rubber from what appears to be a never-ending supply of tires, I believe the money saved by the state would be nearly impossible to calculate, with savings on the road situation and the cost of the public health in alleviating the West Nile Virus. Which leads me to another route of money conservation with regard to scrap tires. Champlin Tires Recyclers in Concordia, Kansas, makes park benches and picnic tables. I purchased a bench three years ago and it has set in my front yard this entire time through all the abuse Nebraska weather has to offer, and it still looks as good today as it did when I purchased it. My bench is four feet in length and weighs 85 pounds. It has not lost its color, it sits very well, doesn't burn my legs in the summertime and requires absolutely no maintenance whatsoever. Champlin's eight foot bench weighs 170 pounds. Their eight foot picnic tables weighs 470 pounds, not easily tossed in the back of the trunk. Every year in the fall, the state Parks and Recreation Department personnel bring in all of the benches and picnic tables to refurbish and store until spring, when they take them all back out and chain them all down so people don't walk away with them. These tables and benches need no maintenance, no painting, no reason to bring them in each fall and take them back out the next spring. You have a one-time purchase cost and no other. Not only are these tables and benches cost effective and environmentally friendly, they also provide a comfortable and attractive way for the public to enjoy our state parks and rec areas. One final selling point. The benches, my right had to God, will bounce without damage, I've seen it done. They will come to deliver these benches, they will have a front-end loader inside the semi trailer and they will push that bench up over the top of the wall. My bench came down, bounced a couple of three times and landed safely, no damage whatsoever. The whole point to this is this, so even if a tornado carries that bench away, whoever finds it is going to have a fine piece of lawn furniture. In conclusion, maintaining this program would assure continued collection of a breeding ground for mosquitoes, a safe harbor for snakes, an eyesore for your great-grandchildren, the reinforced education of the general public on how to dispose of properly, purchasing equipment used for recycling, and reimbursement for using

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Natural Resources Committee
January 31, 2007

recycled materials in production or construction, all of which are excellent incentives in the persuasion of the public to not only use recycled materials, but to recycle and reuse, themselves. I am from Missouri, my parents didn't start recycling in Stella until I began pushing the program to them. My mother called me not long ago and told me about that piece of road up north on the interstate and said the very same things. Smoothest piece of road she's ever been on and that's true. Whenever they say it's the "Show Me" state, you've got to prove to them people and I've from there, so you know, I mean, if this wasn't proven to me, I wouldn't be here today telling you about it. But this does, by no means, show all of the uses crumb rubber and chipped rubber have in this state. Erosion control is another big, big thing in this state. But tires for roads (laugh) just seems to be an obvious choice. Do you have any questions? [LB568]

SENATOR LOUDEN: Questions for Becky? Thank you. [LB568]

BECKY VANDENBERG: Thank you very much. [LB568]

DEB DOPHEIDE: Hi, my name is Deb Dopheide, that's D-e-b, Dopheide is D-o-p-h-e-i-d-e. I'm the director for Keep Alliance Beautiful in Alliance, Nebraska. First off I'd like to thank Senator Louden. When I contacted him in the middle of December, it was snowing around our area. He was trying to get out, feed cattle and he called me back and I certainly appreciated that, sir. I'd also like this committee to thank you for listening to what we have to say. I have used the tire recycling grant, the amnesty days grant, two years in a row and the first year we used it was 2005. We got with the city of Alliance and then our county and then I administrated it. We put it together and we asked people from Box Butte County to bring in their old tires. We collected, it had been five years since we had had an amnesty, we collected 497 tons of tires. That's a lot of tires (laughter) and I've got to tell you it was kind of scary sitting there looking at those things. It cost us \$93 a ton to have a hauler come through and pick those up and they were kind of amazed too. So wow, that was great. The next year, in 2006, I started hearing rumors that the tire amnesty would be over in June of 2007. Well, of course, I'm not going to let things get away. So I went ahead and again convinced the city and the county to go in with me and we'd do this again. That year we recycled, I believe we collected in our tire amnesty and our tire amnesties, by the way, are a week long. So there's plenty of time for you get your tires and bring them in. We collected, I believe it was a little over 205 tons and that was approximately 16 months later. So you can see that this is something that's an ongoing problem. And the problem that I found, you know, when you start doing research because you're wanting to get ahold of your state senator and get his help, you find out interesting things. One of the things I found out is a tire never goes away. Even if they bury those darn things in a landfill, they come back, unless they are baled tightly. And they still have a chance of getting away from the baling. So these things will still rise to the occasion. I don't like seeing them. If we don't have the tire amnesty, what happens to them? They sit out in our ditches, they get thrown in my dumpsters, they get taken and set carefully out by the dumpsters, they get

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 31, 2007

piled up in people's yards, and they are great places for mosquitoes to breed. Any of those of us who have horses or are concerned about health issues, West Nile Virus is a great place, tires are a great place for mosquitoes to breed. So I look at this not only as an issue of we've got stuff hanging around that we don't want and we can make good use out of it, I also look at it as a health issue as well. So with that, that's all I have to say, thank you for listening to me. [LB568]

SENATOR LOUDEN: Thank you, any questions for Deb? I'd have one. Well thanks for driving the 400 and some miles, Deb, to come down here and testify. I'm sure you didn't wear out all four of your tires, (laughter) but I'm sure by the time you get back they won't be as good as they were. And you're very true, that tire amnesty deal in Alliance that first year brought in a lot of tires and then the next year, it isn't just around Alliance. That covered probably two or three counties around there. [LB568]

DEB DOPHEIDE: It's not supposed to though, Senator Louden, so we don't want to talk about that (laughter). [LB568]

SENATOR LOUDEN: I know it, but I'm just telling you (laughter) that tires came from a long ways around because I talked to one senator here and I said, what do you do with your tires and he said, we just throw them in the road ditches. Well, you'll have to, I said, Alliance has a tire amnesty. He says, well, next time they do, I'm going to haul them up there, so you'll probably... [LB568]

DEB DOPHEIDE: Well, one of the things that we do try do is just keep this to the county, but we are well aware of the fact that a few of those ranchers from Sheridan County are kind of sneaking in on us and we're sure there's a few from Morrill and so on and so forth. But basically, and I think NDEQ would agree with me, I'm not speaking for them, but I think they'd agree with me that we'd much rather have those tires coming in and being used rather than being taken and thrown in the ditches. Because then your country road superintendents have to, their departments have to go out and try to clean that mess up and whatnot, and it's no fun. The other thing I would point out is this year if I can get the grant in tomorrow, so needless to say, I've got to get back to Alliance here pretty darn quick, but if I can get the grant in tomorrow, we will be doing a project. We've selected a neighborhood in Alliance and we're going to be using crumb rubber as landscaping materials in that area. And so we've given everybody the option that if you want this, give us your name, let us know about it, tell us about how much space we've got to cover here, and through one of the grants that is in this program we'll be able to recover 50 percent of the costs of that. Well what that means is that's going right directly to the individual people that are voting. So my point to you is, is this is a great program, let's not kill it. Let's not kill it, let's keep it going. [LB568]

SENATOR LOUDEN: Very good and thank you for coming, Deb. [LB568]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 31, 2007

DEB DOPHEIDE: Thank you. [LB568]

SENATOR LOUDEN: And we appreciate what you do out there for Alliance, for the whole area out there. [LB568]

DEB DOPHEIDE: Thank you very much. [LB568]

SENATOR LOUDEN: (Exhibit 2) Okay, we have a letter in support of LB568 from the Mid-America Tire Dealers Association. And with that are there any more proponents? If not, are there opponents? No opponents? Are there anybody that would like to testify in the neutral? [LB568]

JOHN KNAPP: Thank you, Senators, for the opportunity to speak. My name is John Knapp, J-o-h-n K-n-a-p-p. I live in Sarpy County and I guess I'm neutral on this. As I see, part of the problem with the tires is that we've heard people talk about getting tires out of the ditches and in the ditches, and I think what puts the tires in the ditch is the \$4 fee when I get rid of my tire versus...I'm a farmer, so I get tires...I'm in Sarpy County we got a lot of people. I get a lot of trash in my waterways and fields from just people don't want to pay the landfill fees. Anyway, the fee...we're talking about the fee when you buy the tires to fund these grants. And I think the real problem for the guy that's throwing away the tire is the fee at the end. And so I don't think, if you continue this program, or discontinue it, I don't think it really helps the people throwing away the tires because until you pay them to bring their tire in, it's some effort on their part, so anyway, that's my thoughts on that. And this fee was set up initially to get rid of the tire piles and that and I'd urge you to ask DEQ...I think most of the tire piles are gone now from the state...has done its goal. I'd urge you to ask DEQ how many tire piles are left and what the status of the cleanup actually is. And the current bill mentions, one of the concerns I have, well, the current bill has a clause in it that limits, you cannot use these funds for tire-derived fuel. And one of the concerns I have is over the past few years, in fact about every year since about 1996, there's been efforts to get that clause removed from the bill and so I'm always concerned about amendments to include tire-derived fuel as part of this grant money. I definitely oppose that. And I have concerns about using tires as cover on landfills. I don't, I guess if somebody wants to use it as temporary cover on a landfill that's okay, but I'd hate to see money that should be used...I think this money, if it's being used, should be used for true recycling projects, finding new uses for it. Like Mr. Gerking was talking about and asphalt projects or the athletic fields or stuff like that. In a landfill, I mean, you're throwing it away, a potential product, and it isn't going to deteriorate there. It's going to remain there. And so anyway, I guess that's my comments. [LB568]

SENATOR LOUDEN: (Exhibit 3) Okay. Thank you, John. Questions for John? Seeing none, thank you. Anyone else wishing to testify in the neutral? If not...oh, we've got one more to testify, read into the record. The Department of Environmental Quality is

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 31, 2007

submitting a letter in neutral testimony. And with that, I guess we'll close the hearing on LB568 and open the hearing now on LB314. [LB568]

JODY GITTINS: Good afternoon, Chairman Loudon, members of the Natural Resources Committee, my name is Jody Gittins, J-o-d-y G-i-t-t-i-n-s. I'm introducing this bill on behalf of Senator Loudon. This bill was presented to Senator Loudon by the Department of Natural Resources. Its purpose, really, is to fill a gap in the law. There's a loophole regarding wells and one of the things that has been going on in some areas of the state that has been brought to the attention of DNR, is that sandpits that have been dug where the water naturally rises to the surface, are being fitted, or equipped, with pumps but then pump the water out of the sandpit for irrigation purposes. These sandpits being used for irrigation purposes are not regulated. So in areas where you have moratoriums where no wells can be drilled, where there is a limit of the amount of water that can be used for irrigation, if you have a sandpit and you put a pump in it and you can pump out of it, there's no regulations, either by DNR or your natural resource districts, that can control the amount of water that's pumped, the amount of water that's used for irrigation, and have an idea of what's actually being used. So this bill purports to, for only this reason, to close that loophole and say for purposes of a sandpit being dug for irrigation, it's going to be considered a well. It must be registered, it must abide by all spacing requirements, and it must abide by all the regulations that are in existence in the natural resource district where the sandpit is located. Ron Theis, from the department, is here to further explain the bill and the situation of how the department has worked with the NRDs, has worked with sandpit owners to come up with the appropriate language. I'd be happy to answer any questions, but I will tell you Ron is the expert: I am not. [LB314]

SENATOR LOUDON: Questions for Jody? Thank you, Jody. First proponent for LB314. [LB314]

RON THEIS: (Exhibit 4) Good afternoon, Senator Loudon, Senator Hudkins, the rest of the committee, my name is Ron Theis, T-h-e-i-s. I'm here representing the Department of Natural Resources. I'm an attorney on their staff. This bill seeks to close a loophole in our groundwater laws. The loophole was created in the definition of water well found in Section 46-601.01. Because of the definition, anyone who places a pump in an existing man-made body of water such as a sand or gravel pit, and pumps water from the pit to irrigate, as one example, is exempt from regulation by the department and by natural resources districts. The current definition limits a well to one excavated "...for the purpose of withdrawing ground water...". Since bodies of water, like sandpits, are the result of mining for sand or gravel and not made for the purpose of withdrawing groundwater, they are not considered wells by definition, even if the water is pumped from them for irrigation. Currently, we call them pit wells, are not subject to the new well moratoriums or allocations and other restrictions in fully or in overappropriated areas. They are also not required to register as wells or comply with well spacing requirements. They don't get well spacing protection either. The department typically

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 31, 2007

becomes aware that someone is irrigating out of a sandpit or other body of water when it gets a call from a neighbor upset about the groundwater depletion caused by these pumps or a violation of the spacing protection for their own registered wells. We've cooperated with some land owners who have voluntarily sought to register their pit well in order to obtain spacing protection, but they're very rare instances. The gist of the legal problem this bill seeks to remedy is outlined in communications between an attorney for the North Platte Natural Resources District, the Nebraska Attorney General's Office, and the department. That's the handout copy that you were given. The department met with representatives of the sand and gravel industry, natural resources districts, and the Department of Environmental Quality, Health and Human Services, and the Nebraska Well Drillers Association, in order to develop the bill. From the early stages, the department has not found any parties who object to the intent of the bill. There's been much discussion, however, on the best means to accomplish its purposes. Of note, the introduced bill limits the use of pits as wells to only those pumping groundwater for irrigation. Therefore, some uses such as domestic uses and industrial uses of groundwater from pits still fall outside the definition and will not be regulated. We believe that 99 percent or more of the pumps in pits or the water from the pumps in the pits, is used for irrigation. And registration of other uses would unnecessarily create an excessively complex set of exemptions for certain minor but desirable nonirrigation purposes. For example, the department has no interest in registering active sand and gravel mines as wells. We also have no interest in interfering with the Water Well Standards and Contractors' Licensing Act, that's Chapter 46, Article 12. The Standards and Licensing Act has its own definition of well that is certainly appropriate for cased wells and wells for human consumption. We have consulted with the HHS water division and they are not interested in being involved with registration of pit wells. The bill is fairly simple. It adds an additional category to the definition of water well for the purposes of Chapter 46, Article 6 and that also carries over to Article 7, the Groundwater Management and Protection Act. The additional category includes as wells any excavation made for any purpose when the excavation allows groundwater to percolate to the surface and if a pump is inserted in the excavation to take water for irrigation. It defines the construction of a pit well as the placing of a pump or other device into the excavation. It specifically excludes pit wells from the definition of water wells for the purposes of Chapter 46, Article 12 which is the Standards and Licensing Act. Pit wells within 50 feet of a stream bank will be subject to surface water appropriation as are all wells under Section 46-636 and reuse pits are unaffected by this bill unless the reuse pit would be dug deeply enough to intersect the groundwater table. We believe this would be very, very rare. I'd be happy to answer any of your questions. [LB314]

SENATOR LOUDEN: Any questions for Ron? Senator Christensen. [LB314]

SENATOR CHRISTENSEN: Thank you, Chairman Louden. How is this going to work with allotments? Is there going, is this going to create new allotments now on totally

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 31, 2007

appropriated areas? [LB314]

RON THEIS: I'm not sure how to answer your question since they aren't wells at this point. They...in the bill, would require that any appropriate use as described in the bill be registered as a well. It would be a new well and would be dealt with as any other new well. And when it may or may not be eligible to be registered depending on restrictions from the natural resources district. [LB314]

SENATOR CHRISTENSEN: I guess I'm thinking about, I got several neighbors that pump out of pits that can't get wells. And even, I got one set of neighbors, they share a pit that they pump out of. And with the well spacing allotment, is this going to say, one neighbor's going to have a well and one isn't? And isn't this an increase to acres? I just wondered how this is all going to affect, because we've got this same situation on the Platte as well as the Republican that are fully appropriated that we could see an increase of some acres, allotments. We could have one neighbor make it and one not, I guess I just wondered how this is going to affect them? [LB314]

RON THEIS: Well, if in your neighbor's situation, as you describe, they're already irrigating out of a pit, it doesn't appear that there would be an increase in irrigated acres. I think it, testify to the fact that they're irrigating already, that may allow them to register a pit. The spacing protection or the spacing requirement for registering a well is not changed by this bill and nor the other bill that we'll be discussing today. So the spacing issue is one that, we'd be addressing just as though you would be putting in a cased well. [LB314]

SENATOR CHRISTENSEN: So in other words, of my two neighbors, the first one to register is going to have one and the other one isn't? [LB314]

RON THEIS: Well, it...I don't know. I can't describe how those circumstances would play out. I think a big factor would be any previous use that either of these users could document from the existing pit, there's always a possibility of applying for a variance of the spacing through the NRD. And it seems like what you're describing would be a pretty good case. [LB314]

SENATOR CHRISTENSEN: I just know it can cause neighbor disputes. You know, one can, one can't and...so. [LB314]

RON THEIS: Yes. [LB314]

SENATOR CHRISTENSEN: Thank you. [LB314]

SENATOR LOUDEN: Senator Kopplin. [LB314]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 31, 2007

SENATOR KOPPLIN: Just to clarify in my mind, what I'm hearing you say is that it's possible in some of these places that are fully appropriated, they didn't ignore more wells, you just dig a pit and pump out of that? Is that what you're telling us? [LB314]

RON THEIS: Well, not exactly, Senator. The definition that exists for a well would apply to if you dug a hole with the intention of finding water and pumping the water out of it. The intention that you have in digging the hole, excavating it, however you excavate it, that's the critical legal issue to this, what we think is a necessary change of the definition. So if you went and dug a hole, you would have a well under the existing definition of well. What our experience has been and what we think is likely to be the general scenario of water coming from sandpits, is that the pit was dug to mine sand and therefore it wasn't dug to mine water and it is not a well. This change of definition in LB314 would allow and require those pits to be registered as wells if a pump was put in them for the purpose of irrigating. [LB314]

SENATOR KOPPLIN: Okay, thank you. [LB314]

SENATOR LOUDEN: Other questions for Ron? Senator Wallman. [LB314]

SENATOR WALLMAN: Senator Louden. What...how many gallons a minute do you consider an irrigation well, a hundred? Above? [LB314]

RON THEIS: Well, do I consider it or does the bill? Which question... [LB314]

SENATOR WALLMAN: You know, what is the gallons per minute? Like, we put some holes down around school. We stayed under a hundred gallons a minute because then we didn't have to register. Is that the way that still is? [LB314]

RON THEIS: Well, generally irrigation wells are considered as those wells pumping greater than 50 gallons per minute. And this bill does not address that, it just talks about wells used for irrigation so it would... [LB314]

SENATOR WALLMAN: Thank you. [LB314]

SENATOR LOUDEN: Okay, any other questions for Ron? Thank you, Ron. [LB314]

RON THEIS: Thank you. [LB314]

RON BISHOP: Mr. Chairman, members of the committee, my name is Ron Bishop and I'm general manager for the Central Platte Natural Resource District out in Grand Island, Nebraska. I'm appearing here in support of this bill on behalf of not only myself and our Central Platte Natural Resource District, but also on behalf of the Nebraska Association of Resource Districts, the Nebraska Water Resources Association, and the State

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 31, 2007

Irrigation Association. [LB314]

SENATOR LOUDEN: Can you spell your name Ron, for the clerk? [LB314]

RON BISHOP: Yes, I'm sorry, I forgot that you reminded us. B-i-s-h-o-p is the last name. First name is Ron, R-o-n. [LB314]

SENATOR LOUDEN: Thank you. [LB314]

RON BISHOP: I'm not going to take much of the committee's time. We do support this bill. We think it closes a gap and it's extremely important for those of us in the central and western part of the state that are fully appropriated and have groundwater management plans and are trying to manage not only the groundwater, but the uses of water. It fills a gap in the law there that would allow one individual that happened to have a pit on his property or went out and dug a pit on his property, to pump groundwater to the detriment of other groundwater users in the area. And so we think it's a good bill. We think it is one that should be passed and we would hope that the committee would look favorably on it, not only here but on the floor. And I won't take any more of your time unless there's some questions? [LB314]

SENATOR LOUDEN: Any questions for Ron? Senator Christensen. [LB314]

SENATOR CHRISTENSEN: Thank you, Chairman Louden. Ron, how are you going to handle the sandpits, are you going to give them an allotment or are you going to look at the intent, if their intent was to dig it for irrigation? Not have an allotment? How will you guys look at that? [LB314]

RON BISHOP: Well, we're already in an allotment program right now. We're in the process of certifying irrigated acres and so to get those acres that they are irrigating out of a pit certified, they would have to show us that they were irrigating back in 2004. At that point, then, we would give them an allotment in the overappropriated area of our district where we have to cut back. We would also give them a...certify the number of acres that they were irrigating back in 2004 when we put the freeze on, we and the state put the freeze on. And then as we get to allocating water or reducing the amount of water that's consumed, they would be treated just like, just as though that were a well and they would have either their certified acres cut back or the amount of water that they could pump to each certified acre cut back in order to make up any shortfalls. In our natural resource district we've always done it by acres and so if there is a need to cut back on the consumed amount of water because of its impact on either other groundwater users or the river, then we just cut everybody back uniformly, say 5 percent or 10 percent, whatever it takes to get back into that balance. [LB314]

SENATOR CHRISTENSEN: Thank you. [LB314]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 31, 2007

SENATOR LOUDEN: Other questions for Ron? Senator Carlson. [LB314]

SENATOR CARLSON: Senator Louden. Ron, I should maybe know this but I don't, and I thought I heard some kind of a measurement given. How far does the pit have to be from the stream bed to be called a pit? [LB314]

RON BISHOP: Well, a pit is a pit, Senator. But, if that pit is within 50 feet of a stream, then they treat that as surface water because it's likely to have a direct impact on the flow in that stream and impact downstream surface water right holders. And so because it's so close and the impact is assumed to be so obvious, they just treat it like a surface water right. And so they'd have to have a surface water right from the state of Nebraska for if it was within 50 feet. [LB314]

SENATOR CARLSON: And that's 50 feet of an existing stream or a streambed? [LB314]

RON BISHOP: Within 50 feet of the, I'm not exactly sure what the definition is, whether it's the bed or the bank. I think it's the bank, but I wouldn't swear to that. [LB314]

SENATOR CARLSON: Okay. [LB314]

SENATOR LOUDEN: Senator Dubas. [LB314]

SENATOR DUBAS: Thank you, Senator Louden. Ron, are there more and more of these pits coming into use, being used for irrigation, is this... [LB314]

RON BISHOP: If we don't fill this gap, the answer is yes, there is going to be more and more of them... [LB314]

SENATOR DUBAS: Okay. [LB314]

RON BISHOP: ...because it's a loophole to be able to utilize groundwater that needs to be filled. Yeah, and in our natural resource district, in a lot of the natural resource districts across the state, there are literally hundreds of these pits that are down into the groundwater, especially in the Platte Valley. We see that all the time. About every sandpit that you see is close enough to the river or to a stream that water table is high, you know, and by the time you go down anywhere from 5 to 12 or 14 feet, you're in the groundwater. And sandpits certainly go a lot deeper than that. [LB314]

SENATOR DUBAS: Are there a lot of people using this as a irrigation source now or they're just, because there's a shortage, they're looking for other avenues to find water? [LB314]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 31, 2007

RON BISHOP: We haven't inventoried in our natural resource district. My guess is that we don't have a lot of that now, but with the moratorium on new wells and the stay on new wells all across the district, it won't take long to figure out that you can drop a well in the sandpit and it would be just like a well. [LB314]

SENATOR DUBAS: Okay, thank you. [LB314]

SENATOR LOUDEN: Are there other questions for Ron? Thank you, Ron. [LB314]

RON BISHOP: Senator, thank you all for the opportunity. [LB314]

SENATOR LOUDEN: Other proponents? Are there opponents? Anyone testifying in the neutral? [LB314]

DAVID COOKSON: Senator Louden, Vice Chair Senator Hudkins, members of the committee, my name is David Cookson, D-a-v-i-d C-o-o-k-s-o-n. I am special counsel to the Attorney General. We're here in a neutral capacity because the bill raises a couple of issues that we think need to be looked at before the bill is advanced. Certainly as to any pit that's dug after the effective date of the act, it does not cause a problem with any area, as Senator Christensen noted, that is either fully appropriated or overappropriated because under this definition they would not be able to dig pits in those areas. The concern we have is with preexisting pits and how this law would treat those, particularly with regards to the Republican River Valley Basin where we have a moratorium in place at various states, but the final moratorium went into effect on December 15, 2002. Any pit that was dug before that has not been registered as a well and identified pursuant to the settlement terms to the state of Kansas and the state of Colorado. Any...under this definition, this becomes a well after 2002 and up to the effective date we now have wells that, at least in our initial glance, seem to violate the terms of our settlement agreement if they're within the area that's covered by the moratorium. We see no problem with the bill with regards to effective date forward. We have some concerns that it may raise some legal issues and potentially litigation involving the enforcement of this for wells, particularly in the Republican, drilled after December of 2002 and potentially in the Platte pits that were dug prior to the time of LB962, the 2004 date that Ron Bishop mentioned. We would suggest that we would be happy to take a look at the potential ramifications and work with committee counsel and the department to see if there's a potential language fix to the bill that would address our concerns. And with that, I'd be happy to take any questions. [LB314]

SENATOR LOUDEN: Any questions for Dave? Senator Christensen. [LB314]

SENATOR CHRISTENSEN: If I understood you right, like the Republican you use the December 15 date, 2002? [LB314]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 31, 2007

DAVID COOKSON: Well, the Lower Republican has adopted...we were supposed to have in place by December 15, 2002, a moratorium pursuant to the terms of the settlement. The Lower Republican's was adopted on December 9 and the Middle Republican's was adopted the first or second week in June of 2002. And of course, as you know, the Upper has had a moratorium for several years. So in any of those districts a sandpit that becomes newly registered or required to be registered, it raises potential legal questions as to the validity of that pit. Is the registration retroactive to when it was dug or is it the date that it's registered? It's not clear from the bill and that's sort of the concern that we're addressing is how do you deal with this...it's a limited class. It's a closed class of wells, but how do you deal with those particular wells? [LB314]

SENATOR CHRISTENSEN: And is there any problems with like my definition of a neighbor? Are we going to be able to get them both their water right because they pump out of the same pit. It's between the two line properties and... [LB314]

DAVID COOKSON: Assuming that there's not been registered and those acres are not certified under each of the integrated management plans in the Republican River Basin, whether your neighbor is in the Lower or your neighbor is in the Upper, potentially they fall into that class that raises our concern about these potentially not being able to grant permits to existing pits. And we really haven't looked at specifically what the legal impact of that is. But whenever you start taking away something that somebody had previously and making the law retroactive, it does raise legal issues with regards to takings. [LB314]

SENATOR CHRISTENSEN: I guess I...when I think of these two neighbors, one of them has got a very small well that's got a pump and stuff in it and registered, but they tend to pump fully out of the pit. And the other neighbor has got no well because I know the properties well. I just wondered how that's going to affect them, if that needs to be addressed. [LB314]

DAVID COOKSON: Well, assuming based on the absence of a definition and as Ron Theis pointed out, we were contacted by the department and the attorney for the North Platte NRD, and our counsel was that this requires a legislative fix. And I believe the bill addresses that for anything that's dug after the effective date. Having seen the bill today, our concern is with that closed class. And if they fall within that closed class, we need to figure out how we deal with those wells before we move forward. [LB314]

SENATOR CHRISTENSEN: Thank you. [LB314]

SENATOR LOUDEN: Senator Carlson. [LB314]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 31, 2007

SENATOR CARLSON: Senator Louden. Dave, this is just for clarification. If I own some land adjacent to the river, under current law if I were going to dig a pit, not for irrigation, do I have to have a permit? [LB314]

DAVID COOKSON: I don't believe you do for sand and gravel operations. Ron would probably know better. [LB314]

SENATOR CARLSON: Well, what about recreational? [LB314]

DAVID COOKSON: If you are diverting stream flow, then you need a storage permit. And if you intend to release water from that storage unit and use it, you need a storage use permit. And there are limitations on if it's over 15...if it stores over 15 acre-feet of water then that storage facility has...basically it's a dam. It has to be registered with the department. There are a lot of small stock ponds, however, that regardless of where they're located if they're not diverting water, they're not treated as a...requiring a surface water permit. There is...I know we've had discussions with the department in the last year about how do you deal with small containment facilities that are 2 acre-feet or smaller with regards to if they're located on a live stream releasing water, and we're still trying to work through some of those issues. So it's not clear exactly what the answer to your question is unless they're clearly diverting from the stream. If they've cut a channel into the stream and they're diverting into something next to it, that requires a storage permit. [LB314]

SENATOR LOUDEN: Okay. Other questions for Dave? Thank you, Dave. [LB314]

DAVE COOKSON: You're welcome. [LB314]

SENATOR LOUDEN: Anyone else testifying in the neutral? I don't have no letters to read. Okay, then I guess we'll close the hearing on LB314 and open the hearing now on LB295. [LB314]

JODY GITTINS: Good afternoon, Chairman Louden, members of the Natural Resources Committee. My name is Jody Gittins, J-o-d-y G-i-t-t-i-n-s. I'm testifying...introducing LB295 on behalf of the committee. LB295 is a cleanup bill proposed by the Department of Natural Resources. It clarifies and coordinates some of the provisions of law that were enacted under LB962 and under LB1226 last year. At some point when we're doing a lot of statutory changes in a very big bill, once in awhile we will miss one of the statutory changes that needs to be made. And so this kind of takes care of a few of those issues. There's also a concern about a definition of decommissioned and abandoned. They have different meanings, and "abandon" was used incorrectly in one portion of the bill so that's being changed to "decommission." There's also a time limit and water permit that was under LB1226 which extended that out to five years for...before the right is declared canceled. But in another section of law under the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 31, 2007

permits, it stayed three so we need to do some changes there. I will tell you that Ron Theis will be telling you more about the discussions that they've had with various interested people regarding the bill and how it came to be and the discussions that have taken place over the last six months to get the bill in the shape that it's in. The amendment, AM140, actually becomes the bill. And this was the final process that was reached in agreement with a multitude of people across the state, either by teleconferencing or face-to-face meetings over the last week. And we hope now that AM140 is the bill that the committee will advance. And there are two additional amendments that are technical in nature that are also included in my explanation of AM140 and Ron will go into the necessity for those technical amendments. [LB295]

SENATOR LOUDEN: Questions for Jody? Thank you, Jody. First proponent for LB295. [LB295]

RON THEIS: Good afternoon again, Senators. My name is Ron Theis, T-h-e-i-s, and I'm here representing the Department of Natural Resources where I'm employed as an attorney. I'd like to...I think my remarks will explain we've got a bit of an organizational problem in that I want to describe what the bill does in terms of the committee amendment that's before you because the bill, as it was originally introduced, is modified. As you know, there have been significant changes in Nebraska's water laws in the last three years. As might be expected with so many changes, the statutes now contain a few inconsistent and confusing provisions. The Department of Natural Resources requests this cleanup bill to address provisions in the statutes that have been difficult to implement. Additional changes were added by the bill drafters office to correct spelling errors and conform language in the statutes to their protocols. Subsequent to the introduction of LB295, DNR has continued to discuss the bill with interested parties and, as a result, wishes to present the committee with some recommended amendments to the bill as introduced. A committee amendment draft AM140 reflects the agreement of all so far on the bill contents and in later discussions, which committee counsel has included information on a couple of recent suggestions for recommended revisions to that. I think those are in your notes, Senators. For your clarity, I will primarily describe what the bill does in terms of AM140 using the amendment's organization rather than the bill as originally introduced. Section 1 amends Section 46-229.04 to add the words "the U.S. Bureau of Reclamation" to the list of irrigation districts and canal companies which can reassign surface water appropriations to a new landowner. In 2004, LB962 created the opportunity for irrigation districts and canal companies to reassign surface water rights to new landowners within the district when the previous landowner had relinquished a water right or it had been cancelled by the department for nonuse. The Bureau was inadvertently left off the list of irrigation districts and canal companies that are authorized to make these reassignments. And the omission has prevented the efficient reassignment of unused surface water rights in the Republican Basin where the Bureau provides most of the water for irrigation canals. Section 1 also amends with an exception in the proposed

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 31, 2007

amendment provided by committee counsel the 60-day turnaround time for voluntary relinquishments dictated by Section 46-229.04(5). Currently the department is required to issue an order of cancellation within 60 days after receipt of any voluntary relinquishment. However, some relinquishments are made on condition that certain other circumstances occur, for example, on the condition that the landowner is accepted into the EQIP program. If the circumstances don't occur within 60 days, the department is unable to issue the order of cancellation within the required time frame. The committee amendment will keep the 60-day turnaround time for the voluntary relinquishments, but adds words "except when the relinquishment is conditioned upon an action by a federal agency." The department shall issue its order of cancellations within 60 days of receipt of that action. Section 2 of the amendment at page 7 of AM140 amends Section 46-602 to correct problems of interpretation created by LB508 last year when it added limitations on the replacement of wells no longer in use. It created a confusing requirement that the abandoned well be decommissioned within 180 days after the replacement well is dug. By definition, and that's found at 46-1204.01, abandoned wells must already be decommissioned. Additionally, in order to be consistent with the definition of decommissioned wells, the bill substitutes the term "decommissioned" for "abandoned." The section also strikes inconsistent and confusing language in Section 46-602(2)(b)(i) regarding the time limit to decommission an already decommissioned water well. The language changes here comport with the intent of LB508 to have a well replacement window either 180 days before or after the decommissioning of the original well. The bill also adds a phrase to Section 46-602(2)(b)(iii) to clarify that it is the original water well which may continue to be used for de minimis purposes like range livestock watering, not the replacement well. Section 3, page 12 of AM140 clarifies the well spacing protection statute. It does not change any of the spacing requirements, but replaces the word "drilled" with the word "constructed" in order to remove a narrow legal argument that spacing protection applies only to drilled wells as opposed to bored, jetted, or otherwise excavated wells. A provision is added to clarify that spacing requirements apply to changes of use of existing wells in addition to newly constructed wells. Section 4 corrects a statutory reference to the acceptable period of nonuse of a surface water appropriation permit. In 2004, LB962 extended the amount of time an appropriation could go without being used before the department could cancel it. The change to five years instead of three was made in 46-229.02 and elsewhere, but not in this particular statute, 46-644, which is a corollary statute that refers to the duration of surface water appropriation permits. This amendment changes the time reference in 46-644 to five years instead of three to comport with the rest of the statutes on surface water appropriation permits. I'm pleased to answer any of your questions or try. [LB295]

SENATOR LOUDEN: Questions for Ron? Senator Hudkins. [LB295]

SENATOR HUDKINS: Mr. Theis, let's say that you have a surface water right on a creek. And you've been irrigating out of that, but then you get a letter from the natural

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 31, 2007

resources district saying that as of such a date you can't irrigate out of that creek anymore for that year. Now does that take away from the five years or how does that work? [LB295]

RON THEIS: Well, I think the time period of your nonuse is tolled for the purposes of cancellation of use based upon not use. [LB295]

SENATOR HUDKINS: Okay. So you're king's X for awhile. [LB295]

RON THEIS: Yes. [LB295]

SENATOR HUDKINS: Yeah. All right, thank you. [LB295]

SENATOR LOUDEN: Other questions for Ron? I guess I have one, Ron. Have you got this thing like you want it? [LB295]

RON THEIS: I'm not sure, Senator. We're still talking to people. [LB295]

SENATOR LOUDEN: Okay. I was wondering whether it's still a thing in progress or if it's ready to be advanced. [LB295]

RON THEIS: As far as we're concerned, with the additions that committee counsel has, it's as good as it gets until you deal with it again on the floor. [LB295]

SENATOR LOUDEN: Okay. Thank you. Any other questions for Ron? Thank you. [LB295]

RON THEIS: Thank you. [LB295]

RON BISHOP: Senator Louden and members of the committee, my name is Ron Bishop, R-o-n B-i-s-h-o-p, and I am manager of the Central Platte Natural Resource District. I'm appearing here today on behalf of our Central Platte Natural Resource District and also the State Association of Resource Districts. The Natural Resource Districts Association had originally taken a position opposed to this bill because of some of the wording, but part of that opposition motion was to work with the department. We have worked with the department since we took that action, and we're now comfortable with the amendments that have been offered, including the couple of amendments today, and we would urge your kind consideration of this. Basically, we look on it as a housekeeping, just straightening up some of the language problems. Some of the language that had originally been used to straighten up some of the problems gave some of the folks a little bit of a heartburn. That's been all taken care of now and so we support the bill as it has been offered for an amendment. I won't take a lot of your time. If you've got some questions, I'll try to answer them. [LB295]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 31, 2007

SENATOR LOUDEN: Questions for Ron? Thank you. [LB295]

RON BISHOP: Thank you, Senator. [LB295]

SENATOR LOUDEN: Next proponent. Are there any opponents? Anyone testifying in neutral? [LB295]

DAVID COOKSON: Chairman Louden, Senator Hudkins, members of the committee, my name is David Cookson, D-a-v-i-d C-o-o-k-s-o-n, special counsel to the Attorney General. I'm here today to express just a couple of concerns we have. The major concern we have has been addressed by committee counsel in AM140 with regards to Section 3, the first section. The bill as written, talked about, "...no person shall drill..." a well. The original statute in AM140 goes back to the prohibition on the well itself, no irrigation well. Our concern with the original bill was by saying, "...no person shall drill...", would limit our ability to enforce this section against the owner of the well because the prohibition was against the driller as in, "No person shall drill...", and so committee counsel in AM140 has addressed that. Our other concern is with, and this provision is still in AM140 on page 12, Section 3, subpart 3. We believe the original purpose of this section was to address an enforcement situation that we had on well spacing where the well use was changed. The well in that instance was originally an irrigation well that was being used for domestic purposes which caused a spacing confusion and problem. The way the language is written, it doesn't address that situation, it only addresses going from any other purpose to irrigation. We have suggested a language change which we've shared with committee counsel that, no person shall use a water well for purposes other than its registered purpose until the water well registration has been changed to the new intended use, or the intended new use, excuse me. With that change, that would be sufficient to address all situations where someone registers an industrial well, uses it for ag, someone registers an irrigation well and uses it for domestic and vice versa. That way when we go to enforce this prohibition in regards to spacing we don't have any unnecessary confusion in explaining to the court while one is prohibited and another is not, so. There's one other concern that this raises and I know some of the folks here who have background in irrigation and agriculture is, there is on occasion de minimus use of irrigation wells for livestock purposes, particularly in the winter when the livestock are not near an existing stock pond or stock well and they may fill a stock tank near the irrigation well. It's a de minimus use, but it potentially could be prohibited by this, but generally speaking, you'd still have the irrigation spacing requirement. So it shouldn't be a problem but it's just a concern that we wanted to raise and identify. And with that I'll take any questions. [LB295]

SENATOR LOUDEN: Questions for Dave? I would...oh, Senator Fischer, go ahead. [LB295]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 31, 2007

SENATOR FISCHER: Thank you, Senator Louden. Mr. Cookson, could you repeat what you were proposing for a change on page 12? [LB295]

DAVID COOKSON: Sure. Our Section 3 would read, no person shall use a water well for purposes other than its registered purpose. [LB295]

SENATOR FISCHER: Thank you. [LB295]

DAVID COOKSON: And then it would read, until the water well registration has been changed to, and we would add, the intended new use, and then strike the word, "...irrigation...", in line 22. [LB295]

SENATOR FISCHER: Okay. [LB295]

SENATOR LOUDEN: Yeah, I got a question. Will this affect some of these people that use an irrigation well to water cattle in the wintertime and some of these deals, or... [LB295]

DAVID COOKSON: The only situation where this comes up because this is a spacing situation, is if you...the reason we were slightly concerned was because like, watering livestock is generally considered under our law to be a domestic purpose. And the question...if it's a registered irrigation well, there's a different spacing requirement than if it's a registered domestic well. So for instance, a domestic well has a, I believe, a larger spacing requirement than an irrigation well. And so we tried to work it through and see if actually there was a problem. We couldn't think of one, but it still strikes us that there might potentially be a problem if you're using a well for multiple purposes. [LB295]

SENATOR LOUDEN: Most of the cattle on cornstalks get watered with, I mean, you fill the tank up awful quick. [LB295]

DAVID COOKSON: Right. And we certainly don't think the department is wanting to prohibit that practice because, you know, it is a generally accepted agricultural ranching purpose to use that when it's appropriate to use it, so. We couldn't envision a situation where that would be a problem but it still, you know, it's one of those things that raises a red flag but we couldn't think of language to potentially address that. [LB295]

SENATOR LOUDEN: One other question because sometimes we run across that where I live. You have a big construction outfit come in. They always need a certain amount of clean water or something like that. And they usually try to find a very good well some place they can pump out of and in areas where there's irrigation wells, why that's usually where they take that water out of. This, I mean, this is usually just a once in a while deal or a short-term deal. Would this cause any problems with that? [LB295]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 31, 2007

DAVID COOKSON: It, well, in this instance it's a spacing requirement so the questions is, is the temporary well for construction violating a spacing requirement and generally speaking, we haven't had to deal with any enforcement issues where that's been a problem in the past. [LB295]

SENATOR LOUDEN: Because like, if they had to drill an oil well or something like that, they use a whole lot of water for a while and I was wondering if that can still be pulled out of an irrigation well or if you have to run down and start getting permits or something like that. [LB295]

DAVID COOKSON: Right. Well, I mean, it all comes down to the spacing question. If there's another well that's within the spacing area and again, if you're using it for domestic purposes or industrial purposes or irrigation purposes it changes the spacing requirement. [LB295]

SENATOR LOUDEN: Okay, thank you. Senator Christensen. [LB295]

SENATOR CHRISTENSEN: Thank you, Chairman. Is this going to affect...the state quite often uses irrigation wells to deep-soak dirt for use of highway construction. Do you have any problems in here with that? [LB295]

DAVID COOKSON: We shouldn't because historically we've not had any situation where Roads, the water that the Department of Roads is using, or their contractors or subcontractors, is violating...not that I'm aware of, has not violated a spacing provision. Again, this really applies to the spacing of the wells. [LB295]

SENATOR CHRISTENSEN: Deals more to spacing, okay. [LB295]

DAVID COOKSON: And in some instances I think Roads actually has in the past used existing wells and has either purchased the water or had an arrangement with the landowner. [LB295]

SENATOR CHRISTENSEN: I guess what I was thinking about the well registration says no person shall use a water well registered for irrigation purposes. In this example, now used for highway purpose, is not what is originally intended for. Does that give us conflict in that subsection (3)? [LB295]

DAVID COOKSON: Well, and it does potentially give you an issue because it's in the section that deals with water well spacing and our interpretation would be that it's, and if we believe the intent of the department was to create a spacing requirement, but I could see where a judge could interpret that to be something beyond just a spacing requirement. And that's why we raised the concern of using irrigation wells to winter

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 31, 2007

cattle down cornstalks. [LB295]

SENATOR CHRISTENSEN: Would it be good to have the amendment in here that says, irrigation wells used for cattle watering or for highway projects, exempt? Would that be something worth adding? [LB295]

DAVID COOKSON: We would certainly be willing to work with committee counsel and/or the department to figure out how to address that situation. And again, that's why we raised the red flag, because any time you say, thou shalt not, it takes a different level in the legal arena. [LB295]

SENATOR LOUDEN: Any other questions for Dave? Thank you. [LB295]

DAVID COOKSON: Thank you, Chairman. Thank you, committee. [LB295]

SENATOR LOUDEN: Anyone else wishing to testify in the neutral? If not, I see no other testifiers and we'll close the hearing on LB295. [LB295]

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Transcriber's Office

Natural Resources Committee
January 31, 2007

Disposition of Bills:

LB295 - Advanced to General File, as amended.
LB314 - Advanced to General File, as amended.
LB568 - Advanced to General File.

Chairperson

Committee Clerk