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Natural Resources Committee  
January 29, 2009

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[LB379 LB482 LB483]

The Committee on Natural Resources met at 1:30 p.m. on Thursday, January 29, 2009, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB379, LB482, and LB483. Senators present: Chris Langemeier, Chairperson; Annette Dubas, Vice Chairperson; Tom Carlson; Tanya Cook; Ken Haar; Beau McCoy; and Ken Schilz. Senators absent: Deb Fischer. []

SENATOR LANGEMEIER: Good afternoon, everyone and welcome to the Natural Resources Committee. I'd like to welcome everybody that's here to testify that's in the crowd as well as those that are watching on TV within the closed-caption of the building, and those that are watching on our new online on the Internet. That's kind of an advertisement so that everybody knows that it's on the Internet now. We'd like to welcome you all to the Natural Resources Committee. My name is Chris Langemeier, I am the chairman of the Natural Resources Committee. We'll start off, I'd like to introduce the committee and we'll start out to my right, or your far left: Barb Koehlmoos, who is the committee clerk, which many of you know, she's been with the committee a long time; Senator Tanya Cook, from District 13 in Omaha; and we'll have Senator Carlson and Senator Fischer will be joining us later as they're testifying on bills in other committees; we're going to go clear out to my far left or your far right we have Beau McCoy, from District 39; Senator Haar who is going to introduce the first bill is sitting at the front table; and then we skip down to Senator Ken Schilz, from District 47; and then the vice chair of the committee, Senator Annette Dubas from District 34, Fullerton, hometown, right? And then we have Laurie Lage who is the counsel for the committee, today we may have two pages...we have one so far, we have Melinda Frevert from Omaha, and then Justin Escamilla from Scottsbluff will be joining us. We will hear the bills as they were posted outside in order starting with LB379, and then we'll do LB482 and then LB483. We ask that each of you, as you come up to testify, we ask that you fill out a green sheet, they're located by the back doors. We need that for our keeping track of an accurate record of this day. We need you to fill that out in its entirety. If you are here today and you would like to be on record of having an opinion on one of these bills, there's also a sign-up sheet in the back corner that you can put your name and address and the bill number and your support or opposition testimony if you just want us to know you were here. We ask at this time, you please turn off all your cell phones. If there's anyone wishing to hand anything out, we do like ten copies so if you do have something that you'd like to hand out that you know you don't have ten copies, please raise your hand and a page will grab it and make you some extra copies to make that happen. We ask that you come up front as we get ready to testify and when you come up, tell us your name and then spell it no matter how simple it is, we still need you to spell it. It helps us keep our records accurate and true. We do not...one thing about the handouts is if you do hand out something to us we will keep it, so if you have a picture or something you want to hand to the committee to look at, you won't get it back. We'll put it into evidence. So think about that before you hand it over because you won't get it

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back. With that, I think I've exhausted all the time I'm going to exhaust on that. We will open the hearing on LB379. And Senator Haar, you are recognized to do your opening. Welcome. [LB379]

SENATOR HAAR: Thank you. Senator Langemeier, members of the committee, my name is Ken Haar, K-e-n H-a-a-r, two a's. Excuse me. LB379 extends the Scrap Tire Grant Program which was set to expire on June 30 of this year. This bill extends the program until June 30, 2014. The Scrap Tire Grant Program sets aside \$1 million from Waste Reduction and Recycling Initiative Fund. No new money is required. I'd like to tell you just a little bit to give you an overview. The Waste Reduction and Recycling Grants Program, one of many offered by DEQ, was created to assist in financing waste management programs and projects. In 2008, for example, 42 schools, day cares, and libraries were awarded funding for playgrounds, crumb rubber, and reading floors and the Road Departments received nearly \$955,000 for 20 miles of road made of rubber-modified asphalt. Also there were 37 scrap tire events which were awarded nearly \$663,000 for the collection and removal of approximately 6,600 tons of scrap tire. The funding for these programs consists of three sources. The first is a business fee on sales of tangible, personal property. The second, the fee of \$1 on the sale of all new tires and then 50 percent of the \$1.25 per ton fee on solid waste disposed in permitted landfills. Now these three sources raise about \$2.6 million annually and about \$1 million of that dollars goes into the program we're talking about today. So the overarching is the reduction and recycling grants program and what we're talking about today is a piece of that for tire recycling. I must tell you, I've used this. My wife and I bought some property, and we had a whole stack of tires out back, including some tractor tires and so on and so forth. We've used this program before. You'll hear from other testifiers about the many projects, and I feel the program has been very successful and has helped with scrap tire recycling all around this state. Now, one of the things that makes this really interesting is one of my constituents, Becky Vandenberg, and you'll hear from her in a minute...called me and said, hey, this program's going to expire, will you be sure and extend it so I really appreciate the vigilance--Becky's vigilance--in this program. Also we have some people from the department, from the DEQ here. They're not going to testify, but they said if we had any questions we could call them up and they'd answer questions. So with that, that's my introduction, and if you have any questions for me I'd be happy to answer them. I'll probably defer them to some of the people who are going to come afterwards. [LB379]

SENATOR LANGEMEIER: Thank you, Senator Haar. Are there any questions? Senator Cook. [LB379]

SENATOR COOK: Thank you, Senator Langemeier. I have a question. Do you have any idea why there was a sunset placed on the program in the first place? Can you speculate? [LB379]

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SENATOR HAAR: I'm guessing...I don't know for sure, but I think many programs like this have a sunset provision to make sure that they are reconsidered and looked at to see if they've been successful. So it's kind of an automatic way of making us take a second look to see if things were working. But in this case, apparently there was no trigger to, you know, make us see if it was expiring and that's where Becky Vandenberg came in. [LB379]

SENATOR COOK: Thank you. [LB379]

SENATOR HAAR: You bet. [LB379]

SENATOR LANGEMEIER: Any other questions? Seeing none, thank you for your introduction. [LB379]

SENATOR HAAR: Okay, thank you. [LB379]

SENATOR LANGEMEIER: We will move on to support testimony for LB379. Those wishing to testify in support, come on up. Welcome to the Natural Resources Committee. [LB379]

GENE HANLON: Thank you. My name is Gene Hanlon, G-e-n-e H-a-n-l-o-n. Mr. Chairman and members of the committee, I work as recycling coordinator for the city of Lincoln, and I'm here on behalf of the city in support of the Scrap Tire Fund extension. Some of you may remember that we had a large scrap tire fire here in Lincoln in the late 1980s. There were no recycling options for tires at the time, and the tire dealer had stockpiled the tires in hopes that at some future date there would be a use for those tires. The scrap tire fund has provided opportunities for individuals, businesses, and communities to clean up scrap tire piles, develop alternative uses for scrap tires, and provide incentives to purchase products that contain crumb rubber from recycled tires. The city of Lincoln has received over \$261,000 in grant funds to undertake tire-related projects. Those projects include such things as analyzing civil engineering applications for scrap tires, using crumb rubber tires in street construction, and installation of rubber mats from scrap tires in playgrounds and city parks. Other organizations in Lancaster County have also taken advantage of the Scrap Tire Fund for a variety of projects: rubber playground surfaces have been installed in churches, schools, and day-care centers throughout the county. Field turf, athletic surfaces which contain crumb rubber from recycled tires have been installed at the University of Nebraska-Lincoln, Nebraska Wesleyan University, Lincoln Southeast High School, and Lincoln High School. A number of tire cleanups have also been held and Becky Vandenberg has been one of the organizers of some of those cleanups in Lancaster County. This program is a valuable program to help promoting the cleanup of scrap tires in the state, promoting end markets for those scrap tires, and encourage the use of products containing recycled rubber from scrap tires. We urge you to support this legislation and extending

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the program until 2014. I'd be happy to answer any questions. [LB379]

SENATOR LANGEMEIER: Thank you, Mr. Hanlon. Are there questions? Senator Carlson. [LB379]

SENATOR CARLSON: Senator Langemeier. Mr. Hanlon, this just makes me think. The...you've mentioned city parks, and I'm thinking of the one that's out on South 14th by the YMCA. [LB379]

GENE HANLON: Um-hum. Densmore Park. [LB379]

SENATOR CARLSON: Is that...and where the children's area is, is that surface recycled tires? [LB379]

GENE HANLON: I believe it is, and Antelope Park shelter and a number of neighborhood parks around town have the rubber surfaces for safety purposes that are made from recycled tires. [LB379]

SENATOR CARLSON: Okay. Thank you. [LB379]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much for your testimony. [LB379]

GENE HANLON: Thank you. [LB379]

SENATOR LANGEMEIER: Further testimony in support of LB379? Come on up. If there's others, there's chairs up front if you'd like to move up and get yourself prepared to testify. Do you have some handouts? [LB379]

BECKY VANDENBERG: (Exhibits 1, 2, and 3) Yes. Good afternoon. My name is Becky Vandenberg, I'm with SID number six in Emerald, Nebraska. That's B-e-c-k-y V-a-n-d-e-n-b-e-r-g, here's my green paper, who do I...Do I give that to you? And I wanted to come up next because some of the questions that have been asked I think I have some answers for in some of the handouts here that I just handed you. If you wanted to go to the '08 press release, I believe it was Senator Carlson that was just asking the questions regarding the playgrounds in Lincoln. This shows from...it gives you a rundown as of last year of the monies that was paid out of this program and where they went to. And if you...I added this up and there were, I believe, 42 schools and playgrounds, play centers, childcares that used this money in order to put in play mats as well as crumb rubber and reading rooms. The libraries here in Lincoln also used this. The new library out at 14th and Superior has a play mat outside and a floor, if I'm not mistaken, a reading floor in their reading room made also out of crumb rubber. I need to change my glasses, it gets to me. I can't do the bifocal thing just yet. Okay. As I

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said, my name is Becky Vandenberg, I'm from SID number six in Emerald, Nebraska. Emerald is just about a mile and a half west of Lincoln. We hold the scrap tire collection every year which is a communitywide event that everyone enjoys and volunteers for. We look at this as something we can do for--give back to--if you will, the earth that we live on, all the while removing a breeding ground for mosquitoes and an unsightly legacy for our great-great-grandchildren. I'm going to try not to restate some of the things that have already come up but it's going to be a little hard to do; just bear with me. In '08, 37 tire collections were held and approximately 6,600 tons of tires were removed from Nebraska soil and returned in a more useful form to be used in school playgrounds and athletic fields, building new roads using crumb rubber modified asphalt, as well as a daily cover for landfills. And David City, as a matter of fact, uses crumb rubber as a daily cover for their landfills. I believe that when they started, and there's a DEQ person here, they may be able to help me with this...I believe when they started this they put a layer of crumb rubber, every third layer was a layer but from what I hear now, they do it just daily so. Okay, I guess that must be right; there wasn't anybody to jump up and say, nope that's wrong so that would be good. So I think David City actually is way ahead of a lot of the landfills here in the state of Nebraska. They have their own machines of which they use for a portion of this money, also, to buy the machines. They can crumb their own rubber right there on-site and put it in their landfill right there. These are also made into picnic tables and park benches. I sent along, also, this. Most of our tires go to Champlin Tire Recyclers in Concordia, Kansas, where they make picnic tables, park benches in crumb rubber, and they also have a...it's for disabled people, what is it called now...picnic tables...handicapped accessible, there we go, okay...picnic tables as well. SID number six picked up 712 tons of tires last year, alone. In '07 we picked up 619 tons of tires. In the years that we've been doing this, we have alone picked up 2,456.18 tons of tires, demonstrating what I believe to be an obvious need. If you can picture in your mind a pile of 6,600 tons of tires and the numbers of mosquitoes that live in those tires coupled with the fact that tires do not biodegrade, the health benefit alone is worth the maintenance of the program. We once had a hauler that said he couldn't get started picking up the tires until 10:00 a.m. because the mosquitoes hovering above. A few years ago, we had a man bring in Model T tires, saying he had it hanging in the barn, didn't think they were going to go back to using them so he figured he'd better get rid of it. Everyone that comes through this line is as thankful as they can be. And when they find out that the tires are going to be made into something useful, the response is always the same--well, that makes it all worthwhile. We were asked, when the tornado hit a few years ago, we were asked if we could take care of the scrap rubber because the hauler that they had hired would not take the rubber. So we, as a group, went out and picked up...we actually picked up 12.5 tons of scrap rubber that we pulled out of fields, out of ditches, out of crumbled homes and barns and was probably the nastiest, hottest, dirtiest work I had ever done. So whenever I put in my application for this and as soon as it comes back to me, I immediately start advertising. I try to get to all the farmers that I possibly can. I advertise straight to all of the co-ops and I go all the way across the state. My motto is, if you

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bring them to me, I will take them from you. I know how hot it is, how hard it is to get those tires loaded out of the ditches, loaded up and hauled into town, but we have so many people that are so very thankful for this. I once had a farm wife that called and said that she had looked at those tires out her kitchen window for 20 years and that now that they're gone she had no idea there was an apple tree behind it. I just want you to know how much I appreciate this program. This is something that we are doing for the earth that we live on, the state that we live in, the aesthetics alone, the getting rid of the mosquitoes. It's just a very well-worth program, not to mention all the different projects that are funded through this program, so I thank you very much. Do any of you have any questions? [LB379]

SENATOR LANGEMEIER: Okay. Are there any questions for Ms. Vandenberg?  
Senator Carlson. [LB379]

SENATOR CARLSON: Senator Langemeier. Is...it just says crumb rubber, is that when the particles are loose? [LB379]

BECKY VANDENBERG: Yes. [LB379]

SENATOR CARLSON: Okay. [LB379]

BECKY VANDENBERG: And they put that on, on usually on tracks. If they're running from one playground to another it'll be in there...a little sidewalk area that's...the NRD also, I might mention has one of our benches, one of these benches on the MoPac Trail, their southeast MoPac Trail. I want to mention, too, that Palmyra, the town of Palmyra has four of these benches. They decided to get rid of all of their benches and replace them with these. And, let's see, Hawthorne School here in town has a picnic table, Shoemaker's Truck Stop has a park bench. I have two of these park benches sitting in my front yard. One I've owned for six years and one for four. They have sit in the same spot every since the day I got them, and they look just as good today as they did the day they were delivered to me. There is absolutely no maintenance to these at all. They weigh an ungodly amount, the four-foot benches alone weigh 98 pounds. The benches...the base of the bench is made from nothing but scrap tire and the seat and backs are made from scrap tire and milk cartons, and that's how they get their color for those. But I want you to know that these are nearly just indestructible and I had a woman...Teri Edwards, the mayor of Palmyra, call me and she said she wanted to add one more thing to these tires, telling me that they were vandalism free. That they evidently had someone try to vandalize the bench, found it was too hard and left it alone and went on and did something else somewhere else. So at least these benches won't go anywhere if you get them. [LB379]

SENATOR LANGEMEIER: Very good. Thank you very much for your. [LB379]

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BECKY VANDENBERG: It's a wonderful program. Thank you very much. [LB379]

SENATOR LANGEMEIER: Thank you for your testimony. Further testimony in support? Welcome. [LB379]

JOE MANGIAMELLI: Senator Langemeier and members of the Natural Resources Committee, my name is Joe Mangiamelli, it's J-o-e M-a-n-g-i-a-m-e-l-l-i. I'm the city administrator in Columbus, Nebraska. And I just want to let you know how much the city of Columbus appreciates the bill that's been in place for the last five years and all of the positive things that you've heard that the results have been, this afternoon. I won't spend a lot of your time, but I want to thank Senator Haar for advancing the bill today and would ask that this committee favorably consider the extension that has been requested. Thank you very much. [LB379]

SENATOR LANGEMEIER: Thank you very much. Are there any questions? Seeing none, thank you for your testimony. Further testimony in support of LB379? Don't be shy, come on up. Welcome. [LB379]

SHERI HENDERSON: Senator Langemeier and the rest of the committee, my name is Sheri Henderson, S-h-e-r-i, last name, H-e-n-d-e-r-s-o-n. I'm the administrator clerk from Ceresco, Nebraska. And I can't really expound any more than Becky already did. She did a great job of covering all of the benefits of this program. Ourselves, we have been involved in it for many years now, the county is obviously rural where I live. We are kind of on the Lancaster, just into Saunders County a bit. We've gone both ways. People definitely appreciate this. We are in the progress, or process, rather of trying to start new playground type fundraising and activities, and we are certainly looking forward to the opportunity of the both the crumb rubber and the mats that are available for that. We definitely support this. I've worked with Steve Mika who is the Saunders County Highway Superintendent and actually piggybacked with him on several of our grant applications because we're all located in the same county. And we have taken the same tons and tons, you know, that a lot of these other places have. And we are just north of the Jack Sinn wetlands area, and we have enough of an issue with mosquitoes and all of the breeding and things that go on there. And so it's been a very good benefit to us to have the availability of getting rid of the tires that collect the water that become breeding grounds for those mosquitoes. Again, obviously, I'm in support of this and I hope that you will all agree that it is a very worthwhile program, and I appreciate very much Becky and Senator Haar bringing this to you. [LB379]

SENATOR LANGEMEIER: Very good. Are there any questions for Ms. Henderson? Seeing none, thank you very much. Thank you for your testimony. Further testimony in support? Welcome, we're ready when you are. [LB379]

DEAN EDSON: Thank you, Senator Langemeier and members of the committee. My

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name is Dean Edson, spelled D-e-a-n E-d-s-o-n. And I'm the executive director of the Nebraska Association of Resources Districts. I'd like to just go on record as the NRDs have reviewed this legislation's program and we fully support it and fully support the extension of time for the program. With that, I'll end my comments and answer any questions you may have. [LB379]

SENATOR LANGEMEIER: Are there any questions for Mr. Edson? Seeing none, very good. They let you off the hook. [LB379]

DEAN EDSON: Thank you. [LB379]

SENATOR LANGEMEIER: (Exhibits 4, 5, 6, 7, 8, and 9) Further testimony in support? Seeing none, I have a number of letters here. We have Mary Harding with the League of Conservation Voters submitted a letter for the record, Steve Andrews with the Nebraska State Recycling Association, Kyle McGowan with Crete Public Schools, Joseph Zadina, Shawn Herrick...if I screw these up, trust me, we'll get them right in the transcript, for Mid-America Tire Dealers Association, and Mark Warneke with Omaha Public Schools and I didn't say that one right either. But those are letters in support. Now we'll move on to letters of opposition. Is there anyone who wants to testify in opposition to LB379? Seeing none, does anyone want to testify in a neutral capacity? Seeing none, Senator Haar, would you like to close? [LB379]

SENATOR HAAR: Well, simply in closing I would say...and I think that the people who testified gave good reason how it's been useful, and I certainly hope we renew this until June 30, 2014. Thank you. [LB379]

SENATOR LANGEMEIER: Thank you very much and with that we will close the hearing on LB379. And I will turn the committee over to Senator Dubas and. [LB379]

SENATOR DUBAS: Ready when you are, Senator. [LB482]

SENATOR LANGEMEIER: My name is Chris Langemeier, it's C-h-r-i-s, Langemeier is L-a-n-g-e-m-e-i-e-r. And I represent District 23 in the Nebraska Legislature. I'm here to open on LB482. LB482 is merely a cleanup of a piece of legislation of non-needed verbiage in state statute. And with that I would ask for your support to advance LB482. [LB482]

SENATOR DUBAS: Thank you. Any questions for the Senator? Seeing none, anyone interested in testifying in support of LB482? Any opposition? Anyone in the neutral? You're welcome to close, Senator Langemeier. [LB482]

SENATOR LANGEMEIER: I'll waive closing. I think enough has been... [LB482]

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SENATOR DUBAS: Okay. That has to go on record as the absolute shortest hearing I've ever sat through. [LB482]

SENATOR LANGEMEIER: Not many people want to clean up history. [LB482]

SENATOR DUBAS: All right. Well, we will close the hearing then on LB482 and move on to the next bill which is LB483. [LB483]

SENATOR LANGEMEIER: Thank you, Vice Chairman Dubas and members of the committee. My name is Chris Langemeier. It's C-h-r-i-s, Langemeier is L-a-n-g-e-m-e-i-e-r. And I'm going to open on LB483. LB483, as members of the committee, you have had the opportunity to hear about this infamous bill, LB962. This is an addition to LB962. This provides steps...LB962 is designed to determine whether the state basins were fully appropriated or overappropriated. And annually the department has the opportunity to make a ruling whether you are fully appropriated. If you currently sit in a fully appropriated district, the department is not necessarily looking at you each year unless you make a request to be removed from a fully appropriated designation. LB483 sets out some guidelines. Nowhere in LB962 did we ever deal with anything that might happen if you happen to be fully appropriated and for something foreseeable reason that was changed. Maybe a big water user in the area ceased to use water or something on those regards. And you made a request to take your area out. What this does, is it provides a couple of steps. Number one, it says we're going to have an organized method of getting out of this. Because, as we've all seen in the past, immediately upon a declaration we have frenzy. We have frenzy when you get declared fully appropriated, and we haven't seen a declaration of unfully appropriated yet. But I would assume at that point the frenzy would be great as well. So LB483 tries to deal with how can we handle that change of status and how can we determine how we're going to prioritize new potential irrigation wells or just wells within a basin on that declaration. So what it does is it limits two things, first it limits that basin within and I have an amendment I have to offer to limit this within the 10/50 line and that's the part of the basin that was declared fully appropriated. It limits each NRD in that basin to expand their acres after the declaration change to expand it to 2,500 acres--2,500 acres is my number. The department can't give me a number because if they think it's fully appropriated, they would say it's fully appropriated, there is no number. So I picked a number at 2,500 acres. To say, if your district says, okay, you're not fully appropriated, you could then put in 2,500 acres this year and each year for four years, or maybe that's only one more year and then the department would declare you fully appropriated again. But if they don't, you could increase it 2,500 acres each year for four years. After four years, that frenzy should be out of the way and then we would be open to well drilling as the NRD sees fit. There is a provision in here that the NRD could extend that 2,500 for future years if they thought it was really working. Now, right now NRDs don't have any mechanism to prioritize wells. If each of you on this committee made an application and you're not fully appropriated...if each of you made an application to drill

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a well, they would issue you a permit to drill in the same order in which you applied. This would allow the NRDs, NRD by NRD by NRD, to set up some guidelines. How do we want to determine what 2,500 acres gets irrigated? I had thought, in my golden ball as I looked at this...I thought, let's make it on soil types. Let's say the applications that have the highest acres of Class I soils, the best soil in the state, let's let them go first. Then we'd go to the Class IIs or we'd go to the Class IIIs. But as you look across the state and you take the Platte Valley, for example, and you take southern Colfax County and the Platte Valley, that's really all Class II soils. So you can't model that to fit every NRD across the state. Now, we're going to give that authority to have public hearings by the NRDs to set this. They may pick farmability, they may pick adding on acres to take a pivot that's going from an 80 to make it make a full circle and use farmability. They may have some strategy they can use for actually using soil classification. We'll let the NRD do that. They're very in tune to their NRD districts, they're in tune to the needs. If you have a piece of ground in the hills that you would like to put a pivot on but it's going to take 22 bridges to get over all the valleys and because there's runoff and ditches, maybe that's not the best one to expand it to. So we're going to give the NRD that authority to set up rules within their basin on how they would do that. There is one second caveat in here, is in some basins you may only have currently...take for the Platte River Basin, you have the Lower Loup, it's only got 1,000 irrigated acres currently in that district. So we put in here we're going to offer it in the amendment is they could only increase their acres by 20 percent. So if you have a limited acres within a basin that changes, you just don't...we just don't want them to go jam 2,500 acres and a bunch of wells in a really, really tight area so we don't get wells to meet the minimum 1,000 foot spacing in Nebraska. You get a well every 1,000 feet to equal the 2,500 acres. So we do limit it for those partial basins. And so that in a nutshell is what it is. I think as I sit, if I were the director of DNR and I had to think about this decision to take any basin from fully appropriated to nonfully appropriated, you look at the science. And that's what this is all about is the exact science. We want to make sure that we have it right and all sides participate and have it right. But in the back of their mind, if I was that person I would have to think if we have current law the way it is and the science says, yeah, you can have a few more acres...we're not sure quite how many yet, but we could have a few more acres, it would be tough to make that decision knowing under the current law the way it stands that if I reverse this decision, we could get a jillion wells, we could get thousands of acres upon thousands overnight as well drillers, and I don't want to take the well drillers out of business here, but we would get a lot of well drillers in the state doing it. And it's not...I want to clarify that for the well drillers because they would be coming because farmers requested them to come. They wouldn't just be coming saying, hey, can I put a well in for you? They would come because people called them. And so I want to make sure when the director has to make this decision that they don't have that in the back of their mind. We are focused on the science, and if the science says you're not fully appropriated, then make the declaration. This would give us an organized way to get out without going from maybe fully appropriated to an overappropriated within weeks after a declaration. And so with that, you'll get a lot of

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testimony behind me. I'm more than happy to take questions if there are any. Thank you. [LB483]

SENATOR DUBAS: Are there any questions for Senator Langemeier? Senator Schilz. [LB483]

SENATOR SCHILZ: Senator Dubas, thank you. Senator Langemeier, did you give any thought...I see you have in here irrigated acres...is there any thought in there about industry or anything like that...like you said some of these NRD districts, you know, there may be other things besides irrigation going on. [LB483]

SENATOR LANGEMEIER: Most industry that we're seeing needing wells is taking the advantage of getting on the city system. [LB483]

SENATOR SCHILZ: Right. [LB483]

SENATOR LANGEMEIER: If you look at ethanol, ethanol is getting on the municipal well system. [LB483]

SENATOR SCHILZ: Sure. [LB483]

SENATOR LANGEMEIER: And they have a lot of exemptions already for the next 20 years so that is most of them are on. [LB483]

SENATOR SCHILZ: That's where you're looking at, letting that law take care of that. Okay, thank you. [LB483]

SENATOR LANGEMEIER: And the reality is, is in time...and this is my opinion, I shouldn't say reality. This is my opinion is, is as you get those development of a few more acres, then if an industry wants to come, there's a few more acres you can use for... [LB483]

SENATOR SCHILZ: Offset that. [LB483]

SENATOR LANGEMEIER: ...offset to allow that development to come in. [LB483]

SENATOR SCHILZ: I understand. [LB483]

SENATOR LANGEMEIER: Otherwise we're kind of locked on that. [LB483]

SENATOR SCHILZ: I understand, I understand. Sure. Okay, thank you. [LB483]

SENATOR DUBAS: Other questions? I would have one, Senator Langemeier. Could

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you let me in on your thought process behind the 2,500 acres or 20 percent. Does that just kind of seem like a logical number or what? [LB483]

SENATOR LANGEMEIER: Like I said, the department can't say because they...when I think of fully appropriated, I kind of think of fuzziness. You know, we have a model says it should be this line, the next model says it should be this line, the next model says it should be this line, so we have some fuzzy area between that. The department, and understandingly, they think it's a finite line. And it's their model. And there's nothing wrong with that but that's their belief. So I took...I got...I used the part of the state that just went into a fully appropriated preliminary appropriation. And I've asked all those NRDs for the acres, and so I started trudging through those numbers to try and figure out what they would be and trying to figure out a percent across that whole basin and so there's a little method to my madness, but not a lot. But if you...the reality is, and there may be somebody chastise me to come is we have a lot of ground that's in irrigation already. Typically what I'm seeing, and I'm in the management and the real estate business, is ground that now we've been able to purchase the neighboring farm, so now it makes sense to irrigate that. Are there just quarters upon quarters upon quarters out there that should...that we really need to go convert to irrigation? Probably not. But I would argue that right now we do have 80s where you're running a half circle of a pivot or you're gravitying it. And the next 80 has been a dryland farmer and the guy's been farming it for 80 years and doing a great job and raising a good crop on dry production, but today I could buy that piece and we could expand that out. You also see...that's why I picked 2,500 acres. We do everything in acres versus saying we need to allow 30 wells. I also went and looked at the well permit applications of the NRDs to get an idea, and most of them are having--kind of on average, a kind of running average and some are higher, some are lower--about 40 applications a year. And so I divided that in half, I took that to 20, I took it times a quarter of ground and I ended up with 2,757-some acres and so I rounded it down to 2,500 acres. [LB483]

SENATOR DUBAS: Make sense. [LB483]

SENATOR LANGEMEIER: So it was not a draw out of the hat, I tried to do some math to calculate that number. [LB483]

SENATOR DUBAS: I assumed that was the case and that does make sense in the way...and the approach that you took to it so I thank you. Are there any questions? Senator Carlson. [LB483]

SENATOR CARLSON: Senator Dubas. Senator Langemeier, in determining fully appropriated, I don't know all the details about what is considered there, but what kinds of irrigation would be considered in determining something to be fully appropriated? It's not just groundwater, is it? [LB483]

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SENATOR LANGEMEIER: Correct. It's all. [LB483]

SENATOR CARLSON: It's groundwater and surface water. [LB483]

SENATOR LANGEMEIER: Yes. It's everything. But the NRDs don't...and we had a bill on that. DNR administers instream flow rights which would be surface, for the surface water. So DNR handles that. So if DNR makes that determination, then they will make their own determination on what you're going to do with surface. [LB483]

SENATOR CARLSON: Okay. [LB483]

SENATOR LANGEMEIER: The NRDs don't give additional surface irrigation rights, DNR does that. So if DNR...then they can control on their own how they would give that. There's already avenues for that out there. [LB483]

SENATOR CARLSON: Okay. [LB483]

SENATOR LANGEMEIER: But not over the NRD system. [LB483]

SENATOR CARLSON: Okay. [LB483]

SENATOR DUBAS: Other questions? [LB483]

SENATOR LANGEMEIER: I guess I would have one comment is that I would hope DNR can facilitate how they want to handle surface in any of these events. They have the ability. [LB483]

SENATOR DUBAS: Okay. Thank you. Proponents? [LB483]

TIM TIGHE: Senators, my name is Tim Tighe. Tim, T-i-m, Tighe, T-i-g-h-e. I'm currently chairman of the Lower Elkhorn Natural Resource District located out of Norfolk. Also my day job is I run a small commercial bank in Madison, Nebraska, a community bank. I think that this bill actually applies to our district better than a lot of other districts. We're one of the districts that received a preliminary designation as fully appropriated. But we've had three or four public meetings, one with the department there talking about the ELM Study and what that did, what the projections were. And I think the testimony from all the people on that is that the ELM Study shows the Elkhorn Basin now, that it's affecting flows a little bit right now but it projects a big deficit out 20, 25 years in the future. And this ELM Study is not complete and so the department, I believe, is using incomplete data to declare our basin fully appropriated. Senator Langemeier's bill would actually do two things: It would slow the development down to a miniscule amount but allow some flexibility for the NRDs. So as far as the department goes, you know, we're not going to have a rash of new wells come in the area which would give us time to

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complete that ELM Study and get better data. I don't disagree with the ELM model so much as I do with...I think the department is overreaching on how the model was used to determine the fully appropriated status. But this would give the time for not only the NRDs, but for the Department to get more data into that model before they make that determination without causing any harm to surface or groundwater resources. It also would allow the time for the NRDs to certify irrigated acres and start work on a management plan to manage the district when and if we hit the fully designated or fully appropriated status. If you look at the...even if you look at the projected flows on this ELM model for the Elkhorn and the depletion, which we all kind of feel is a little bit unbelievable at this time, the gauge at Louisville still shows adequate flows. But the fully appropriated designation is based on the fact that the North Bend gauge is short. The Elkhorn dumps in below North Bend. We can't add any water to the gauge at North Bend even if we want to. But the Louisville gauge still shows adequate flow, so my argument would be that the Elkhorn District probably isn't fully appropriated based on those flows and even future projected flows. Twenty-five hundred acres a year, like I said, would give us a little bit of leeway. Right now, we...you know, if we go into full appropriation you end up having to do offsets, I mean the cost of just putting meters on all the wells in the district we're looking at over \$5 million and that doesn't save any water, that just measures it. So the 2,500 acres a year, I believe we have over 400,000 in the 10/50 area that are irrigated; 2,500 acres a year doesn't make a lot of difference, you know, as far as the flows in the Elkhorn or it's not enough additional development that it's going to cause any problems at all. So I think that's a, you know, it wasn't a scientific method to come up with that, but it's common sense and that's what we need in this issue. So I guess that's all I have for now. If anybody has any questions. [LB483]

SENATOR DUBAS: Any questions for Mr. Tighe? Yes, Senator Haar. [LB483]

SENATOR HAAR: Yes. Thank you, just for my education, what's the ELM model? [LB483]

TIM TIGHE: ELM model... [LB483]

STAN STAAB: It stands for Elkhorn Loup. [LB483]

SENATOR DUBAS: We'll have to have you come up and identify yourself for the record, please. [LB483]

TIM TIGHE: Previously they used what they called the Jenkins Model and, you know, in previous years the NRDs cost-shared us to start this ELM Model Study which they feel is a more accurate model than the Jenkins model. And the problem I have with it is I don't that there's been enough data put in the model to make a good decision. But this bill would really help us from the standpoint it would give everybody time to put more data in there and make sure we're making a good decision based on science not just

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on...we think we're going to have a rush of new wells go in and so we're going to have a problem so I'm going to declare our basin fully appropriated to be safe. I almost have that feeling with the Elkhorn Basin is we're reaching...you know, we're putting the data in the model but we don't have all the data in there. We're assuming a lot of stuff that may or may not be, and I guess the real thing that sticks there is right now they're showing a reduction of about, I think, 30 cubic feet per second, and they're projecting almost a 300 cubic feet per second depletion in Elkhorn River flows at the Louisville gauge. But that's based on a model where you put the data in and 25 years out you have the results. Since we haven't completed the ELM Study, I think we're a little early, you know, assuming those depletions. And we have not seen, you know...the argument is we've got small depletions now but it's going to be big in 20 years or 25 years. This bill would really allow us to kind of step back and get more data, more time to do things right, and I think that's a good thing because right now there's not a lot of options for the department or the NRDs. You know, the department's either appropriated or not fully appropriated and then the NRDs if you're not fully appropriated, you either...if you don't put a temporary moratorium on, you can have additional well drilling. When this first came about, when they first started talking about moratoriums--and this was in other districts--we went from probably 100 wells a year up to 400 in one year. So that's what, you know, what we're trying to actually conserve resources we actually accelerate development and it happens every time. [LB483]

SENATOR DUBAS: Other questions? Senator Schilz [LB483]

SENATOR SCHILZ: Thank you, Senator Dubas. Being manager of that NRD, here in the bill it talks about rules and regulations that would be set up. Can you give me a little bit of a feeling of what you would consider in that process and how you would...what your thoughts would be in putting that together? [LB483]

TIM TIGHE: As far as rules and regulations? [LB483]

SENATOR SCHILZ: Yeah. What would it include? What would you look at as an NRD manager to make sure that. [LB483]

TIM TIGHE: Well, I'm the chairman. Stan over here is the manager. [LB483]

SENATOR SCHILZ: Oh, chairman, excuse me. [LB483]

TIM TIGHE: Right. As a board member what we would like is right now I look at the Lower Elkhorn Basin and if you look at the data, even looking at those river flows in the future, I don't think we're fully appropriated, but the department's going to probably disagree with me. But I would hope in our model we would have some flexibility to add some usage without having to do water offsets. And, you know, it could be municipal or agriculture but not a lot of additional development but some additional development just

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so we don't have to go out and spend \$5 million to...just to measure the water we use. Another thing we did require in new permits the last year was to...they had to put a well meter on and the reason for that was we wanted to gauge how much water we were using in our district. I think they use in the model 10.5 inches a year and some of our areas we're only using five to six inches, you know, if it's a clay soils and we get pretty high rainfall in eastern Nebraska. I think our water usage is a lot different than what's put in the models and... [LB483]

SENATOR SCHILZ: Sure. [LB483]

TIM TIGHE: ...we just wanted to get more time to get that data in and the fact, you know, we kind of got the door slammed shut on us here before we had time to get the data but this bill would really help us. [LB483]

SENATOR SCHILZ: So basically what I understand you saying is that you'd like to have time to find out what the science truly is and then operate and manage from that science. [LB483]

TIM TIGHE: That's correct, because none of us...and I mean, I own irrigated ground but we want to use it as a resource. We don't want the rivers to go dry and I think there's...you get that impression every once in awhile, well, irrigators want to use all the water there is. But I deal with a lot of irrigators because I renew a lot of farm loans every year and those guys are very conscious of how much water they use and, you know, the environment. I mean, they live out there and we want to do it right but I guess what we feel like is that the department right now is putting this fully allocated basis on us just because they think there's going to be a bunch of additional development and they're right. Every time that threat comes about, it's natural for somebody that was thinking about drilling a well...they're going to want to go out and drill one. But this bill would really solve a lot of those problems and slow that development down to, you know, a very manageable level without creating any harm to surface or groundwater. [LB483]

SENATOR SCHILZ: Sure. Thank you. [LB483]

TIM TIGHE: Thank you. [LB483]

SENATOR DUBAS: Other questions, Senator Carlson. [LB483]

SENATOR CARLSON: Senator Dubas. Mr. Tighe, I think I heard you say twice that...either say it or infer it that putting on meters does not save water. Would you expound on that a little bit? [LB483]

TIM TIGHE: Well, my inference is that putting on meters does not save money. It would cost us \$5 million to \$6 million just to meter our water and if you're talking about

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spending \$5 million or \$6 million to offset...let's say you end up with...you have to offset 150 acres of use and provide offsets for that, you've got to either do that by buying irrigation rights or reducing your water usage. But just the cost of meters is \$5 million that we would have to spend just to know how much water we're using exactly. I think we can get a good idea on our water use by the wells we're putting out there with meters on them to get some sort of an average that would get us close to the number without metering everything. Because if you're fully appropriated, you do not have to limit your water use, you just can't add acres or drill new wells. [LB483]

SENATOR CARLSON: If you don't have meters...I lost my question here a minute...how many wells would this involve if you metered every well for \$5 million? [LB483]

TIM TIGHE: About 5,000 wells, and that may be the Lower and Upper Elkhorn that I'm speaking to. And so it's roughly 5,000...it's about \$1,000 a well. [LB483]

SENATOR CARLSON: But without a meter, how does an individual farmer measure how much water he's using? [LB483]

TIM TIGHE: Well, there's many ways you can measure. A lot of farmers put rain gauges out, I mean, that's how they...they know how much water they put on by the rain gauges and then they have their gallons per hours and their hours applied. We do not require that. We require all the new wells that have gone in the last year they've had to report how much water they use off their meters. But we have many wells in the district, you know, from prior years that are not metered. [LB483]

SENATOR CARLSON: I think it's pretty important one way or another if we're going to properly manage the water that we've got we have to know how much we're using and our difference would be probably you're saying you don't have to have meters to do it, but in the Republican Basin and in portions of the Platte, there are a lot of farmers that didn't want meters on their wells but then a lot of them told me that once they had a meter on, they didn't realize how much water they were using and how much they could save. And so I think that's why I would ask you these questions. [LB483]

TIM TIGHE: And, Senator Carlson, I'm not against meters, per se. I just think...I guess I don't see a reason to go out and spend \$5 million on meters to do, you know, 1,000 acres worth of offset when that's not going to make a huge difference in the district. Because right now if we're declared fully appropriated and we do not allow additional development, we really don't have to do anything. You know, you can use three inches a year, you can use 30. And I agree, 30 is wasteful but the fact is, the majority of our farmers they look at their input cost very carefully and they only use as much...I mean, they have agronomists, they only use as much water as they think is necessary to raise that crop and maximize their yield. But if you're fully appropriated, you don't need to limit water use; if you're overappropriated, you do. [LB483]

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SENATOR CARLSON: Well, I understand this, but it wasn't too many years ago in our area we thought it was unlimited, and so we didn't care how much we used. But, boy, did that change in a hurry and it could well change this end of the state, too. [LB483]

TIM TIGHE: And I agree with you and I am not against meters, per se. But I'm just saying at this point, you know, we're looking at a pretty good-sized bill. We actually started putting meters in a year ago and offered cost...we made it mandatory for new wells and we offered cost-share for existing wells...that we would cost-share 50 percent of the cost of a new meter so we're not discouraging water meters. But what we were trying to do is do it a little more orderly because it seems like the first thing that happens when you require meters on all wells is the price of the meters go up. You know, it's a supply and demand issue and I agree, eventually everybody will have a meter on a well in the state but I did not...if I gave you that impression that I was against meters, I'm sorry. [LB483]

SENATOR CARLSON: Well, that's okay. I'm pretty sensitive to it, I came from a conference that...and that would be \$1,000 a meter, that's what we're talking about. In California, they're now paying \$800 for an acre foot of water. [LB483]

TIM TIGHE: Yes. [LB483]

SENATOR CARLSON: And \$1,000 doesn't mean much when you start paying those kind of dollars, but thank you. [LB483]

TIM TIGHE: Thanks. [LB483]

SENATOR DUBAS: Any other questions? Thank you, Mr. Tighe. Go right ahead. [LB483]

ROD ZESSIN: (Exhibit 10) Good afternoon, Senator Dubas and Senator Langemeier. My name's Rod Zessin, it's spelled R-o-d, last name Z-e-s-s-i-n. I'm the vice chairman of the Lower Elkhorn NRD and sit behind the previous speaker, Tim, on the Lower Elkhorn board of directors. My family and I operate a farm in Madison County, both dryland and irrigated. We are engaged in corn and soybean production in Madison County. To further Senator Carlson's question, as he quizzed Mr. Tighe, we no till farm in Madison County. And due to our geography differences between your location and mine, up to two thirds of the Lower Elkhorn NRD are in no till farming production, which, due to our rainfall amounts and the water saving capacity of no till, we do conserve a considerable amount of moisture due to those farming practices that occur in Lower Elkhorn NRD. Now, to further...I'll begin my testimony, sorry for the divergence there but I wanted to address further that question that you had expressed. Again, thank you for allowing me to testify. I am testifying on behalf of the board of directors of Lower Elkhorn NRD as

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well as the Nebraska Association of Resource Districts. We believe that the LB483 is indeed a good bill worth promoting and pushing forward for the betterment of Nebraska, the irrigators, and the people of Nebraska. NRDs have been managing groundwater for over 35 years. The state has approved the groundwater management plans for every district. These plans contain the thresholds or triggers that each district uses to gauge groundwater, both quality and quantity. Once a threshold is crossed and a potential groundwater problem is detected, the NRD and its citizens may take actions to prevent a problem. These actions usually involve both educational and regulatory measures. NRDs measure many groundwater parameters to detect changes, trends, or problems, and once a problem is detected, the NRD takes actions to correct it. NRDs rarely take regulatory actions based on speculation. The Nebraska Department of Natural Resources recently made a preliminary determination that the Lower Platte River Basin is fully appropriated. The department will hold four hearings over the next two months and then make a final determination whether the basin is fully appropriated. If the final determination is that the basin is fully appropriated, the NRD may petition the Department to reevaluate the basin in the future. And if there is sufficient evidence, the department could then make a determination that the basin is not fully appropriated. In the event that the department decides that the basin is not fully appropriated by either of the scenarios mentioned above, they will, in effect, be saying that the problem or potential problem does not exist, since any stays would then be lifted. People in the basin would be able, again, to drill new wells, and there is a distinct possibility that many people will take advantage of this as quickly as they can. With no potential problem detected by the department, well drilling may occur at an accelerated pace. If the NRD thresholds are not met to take actions to protect for groundwater quantity, the NRDs will have a difficult decision to make. Do they allow the well drilling and new water use to occur, potentially causing a groundwater quantity problem to occur in the future? Or do they impose their own stays based on the speculation that a well drilling frenzy and groundwater quantity problems will happen? This bill takes care of that by mandating that if a basin's status changes from fully appropriated to not fully appropriated, controlled growth will be allowed. This is an issue about more than just economic development. It is also about community development. There are many needs in our state for the use of water including domestic, agricultural, and industrial. If we do not find sustainable methods to utilize and develop this shared resource, then we will not only have a failed economy, but a lost sense of community. It is this sense of community that provides the foundation for our society and its rule of law. LB483 provides a framework for growth and local management. This is a prudent step for our state during this time of uncertainty, and it has our full support. That ends my testimony. [LB483]

SENATOR DUBAS: Thank you, Mr. Zessin. Is there any...are there any questions?  
Senator Carlson. [LB483]

SENATOR CARLSON: Senator Dubas. If this bill became law, and then each NRD

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would be responsible for monitoring and determining on the 2,500 acres, how would you foresee you'd determine who would get those permits if we were talking about pivots it would be about 16 or 17 pivots? [LB483]

ROD ZESSIN: Certainly, given the status that we're in right now in the Lower Elkhorn NRD...if I could briefly tell you that, in the Lower Elkhorn NRD, this bill would outline the areas within the 10/50 area or those areas which are the groundwater and surface water connected, but in our NRD we have areas that are not connected. And when the determination went out that we could be fully appropriated and that there was a temporary moratorium until a final decision was made, we took the rest of the 10/50 area, the non 10/50 area into a well moratorium in order to limit the potential development. Now what that leaves us with is outstanding well permits. So the question that you answer is what we're wrangling with right now. How do we address the issue of where do we put the development? Do we continue to take the permits that are outstanding? If I could give you a concrete answer to that question, I would. Senator Langemeier has given some...a little bit of potential look at that from the look at soils...class of soils, certainly potential development in areas that are less erodible than others, certainly in areas that could potentially have higher amounts of groundwater than in others. That's just a few of the looks that we would give. I don't really...I can't answer your question very well, so I'm sorry. [LB483]

SENATOR CARLSON: It would be difficult. [LB483]

ROD ZESSIN: It is a difficult question to answer because, certainly, you want to treat everyone equally and fair because in our district where you have 10/50 area and non 10/50 area it's certainly hard to treat those areas equally because they're determined differently with DNR's designation in the 10/50 area and the local NRD's designation in the non 10/50 area. [LB483]

SENATOR CARLSON: Would you explain for our benefit what 10/50 means? [LB483]

ROD ZESSIN: The 10/50 area come out of LB962 and for those of you...you may all know but being as you asked, the 10 would mean 10 percent of the water in a given well would show up as surface water over a 50-year period. That's how I understand it. If that's not correct, then I would retract that but I believe that to be the case. [LB483]

SENATOR DUBAS: Are there other questions? [LB483]

ROD ZESSIN: If I may, as I ended my testimony regarding the written testimony I would add one other thing. I would support Senator Langemeier and his choice when he quoted that as better science in making it right in this determination, the better science and the making it right would be in regards to the ELM model, which is largely used as the science behind the fully appropriated status. The ELM model comes from the U.S.

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Geological survey study that they performed which DNR is using for their data and is not complete. The best I can tell is 25 to 30 percent complete. The data in there, thus would require more time to make that more final and based on those numbers, that's why I support Senator Langemeier in his statement of better science. Thank you.  
[LB483]

SENATOR DUBAS: Thank you. Next proponent. Whenever you're ready. [LB483]

JOHN MIYOSHI: (Exhibit 11) Senator Dubas and members of the Natural Resources Committee, my name is John Miyoshi, spelled J-o-h-n, M-i-y-o-s-h-i. I'm the general manager of the Lower Platte North Natural Resources District located in Wahoo. And today I am testifying for our NRD and the Nebraska Association of Resources Districts in support of LB483. NRDs appreciate the leadership the Nebraska Water Policy Task Force and the Natural Resources Committee have shown in the past to preserve our limited water resources. One of the fears we all share is if a basin's status determination is reversed to not fully appropriated, what will happen? Of course, an immediate run on drilling well permits will take place. How each NRD handles these permits will depend on our own rules and regulations and the will of their board of directors. Ultimately, the change in status decision will be made by DNR Director Brian Dunnigan. One factor not in the science, but important to consider, is the number of new wells which may be drilled in a short period of time if a stay is lifted. Senator Langemeier's exit strategy gives both DNR and the NRDs a slowed reentry process. Much discussion on LB483 took place at our NARD legislative conference this week. Of course, a few NRDs felt the legislation is not needed, however, the great majority agreed LB483 is a good tool for us to have. The main disagreement on the bill itself is the 2,500 acres per year limit. Some felt this number was too low, others felt a percent of irrigated acres should be used, but in the end no one came up with a universal change that was more accepted than the bill as written. If discussion takes place on using a percentage, I have attached a summary of acres from the eight NRDs currently, preliminarily fully appropriated. Again, my NRD and our state association urge you to support LB483. [LB483]

SENATOR DUBAS: Thank you, Mr. Miyoshi. Are there any questions? Seeing none.  
[LB483]

JOHN MIYOSHI: Gosh, you're way too easy on me today. Thank you. [LB483]

SENATOR DUBAS: You did a good job, thank you. [LB483]

STEVE KING: Senator Dubas and the rest of the senators, I'm Steve King from Newman Grove, Nebraska, Madison County. I am a partner in a family farm. [LB483]

SENATOR DUBAS: Excuse me, Steve, could I have you spell your last name please?  
[LB483]

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STEVE KING: Oh. Steve, S-t-e-v-e K-i-n-g. [LB483]

SENATOR DUBAS: Thank you. [LB483]

STEVE KING: I've been to two informational meetings in Norfolk that the NDR--DNR put on and personally, and other people that I've talked to, am convinced that we're not going to change the thoughts of the DNR. They claim to have a scientifically figured out what the future holds. We've found several oversights in their facts. In our area, our groundwater has risen in the past ten to 15 years. We have...we, in our family, have two 1956 irrigation wells and the water level of the static water today is higher than it was the day they were drilled. With this being said and what I've heard today, I'm in full support of Senator Langemeier's bill. We are depending on and we need to work very closely with our NRDs and the legislators. The 2,500 acre deal--I just found out about this today so I'm going to shoot off the hip with this--I would have to say that kind of depends on the area. The local...each local NRD could have a different number depending on the ground types, the irrigation situations, but that was just a thought I came up with today after hearing this. We have a lot of different circumstances out there with this full appropriation or moratoriums out there. We have wells out there today, and I'm speaking as a farmer, we have wells out there today that are drilled, not been pumped out of. As of right now, the DNR says they can't pump an ounce out of them. They pumped them...my neighbor across the road has drilled two irrigation wells this fall after harvest. He's got a pump in them and as of right now, the moratorium says he can't pump an ounce of water out of them. That's one of our problems. We have a lot of permits out there that people are sitting on the fence. Every one of them, or not everyone but the most of them are funded through a local bank, as Mr. Tighe said. The loans are out there and they're waiting on a permit and basically indecisive and spring is upon us. In my own family, we have a...I have a nephew, he's 24 years old, just beginning to farm. He bought 240 acres in October. He bought it with the thought that he was going to irrigate it. He had Caterpillars come in and he had a lot of pasture in it and some trees and levelled it off and it's irrigatable and now he's got the money invested in the land, he's got the money invested in the Caterpillar work, and he filed a permit and the bank is saying, are you going to get irrigated or are you not going to get irrigated? Had he not got to irrigate it, would have made a determination on the purchase price, first of all. And second of all, had he got the Caterpillars to do the work without knowing. And right now, we're hanging out here with the Caterpillar work done so basically he is going to have to farm it dryland as of right now. And that's going to make it real tough for a young farmer to make a go of it because the bank may not have approved the loan knowing that it wasn't possible to irrigate it. With that, I'd like to welcome any questions. I want to thank the senators for giving us this opportunity and your time to address this. This is very important, it's not only important to me as a farmer but in our small town areas we have Lindsay Manufacturing on one side of us. If this thing becomes fully appropriated, that is one big company in our area that will

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probably go down and they employ a lot of people. So I'm talking for the community not only as a farmer, self-employed, but also it's going to devastate our communities. [LB483]

SENATOR DUBAS: Thank you, Mr. King. Questions? I see none. Thank you. [LB483]

STEVE KING: That was easy. [LB483]

SENATOR DUBAS: They made it easy on you. [LB483]

STEVE KING: Thank you. [LB483]

SENATOR DUBAS: (Exhibit 12) Next proponent. I do have a letter to read into the record from the Nebraska Cattlemen in support of LB483. Anyone else? Any opposition? Neutral? [LB483]

JAY REMPE: Senator Dubas, members of the Natural Resources Committee, my name is Jay Rempe, J-a-y R-e-m-p-e. I'm vice president of governmental relations for Nebraska Farm Bureau Federation, here today on behalf of Nebraska Farm Bureau in a neutral capacity on this bill. First, I want to commend Senator Langemeier for introducing the bill. I think it raises important questions that deserve some consideration and discussion. I appear today in a neutral capacity. Farm Bureau, if you've ever seen our policy book, we have extensive policy on a lot of different things and we do have policy on the LB962 process, it's very supportive. We have process or policy that supports the NRDs in taking the lead on development of integrated management plans and the management of groundwater. We don't really have policy that gets directly at this issue that Senator Langemeier is raising, which is what happens when we have a change in a basin's status from fully appropriated to nonfully appropriated. And over the course of the last couple of days we had our legislative conference, and I visited with a lot of members about this trying to seek their input on it and it was all across the board. So we really haven't nailed down exactly where we're quite at. But I just wanted to share with you a little bit of the discussion that we had and express our interest in the issue, and we're very much interested in working with the committee on this issue if they choose to move forward. Let me step back a little bit and take a look at current statute and how it would apply to the situation. If today, for example, if we received word that DNR decided that the Lower Platte Basin was no longer fully appropriated or their final determination was that it was not fully appropriated, we have in statute already, NRDs have the authority, and this was provided in LB701, to put in a temporary moratorium on new wells for 180 days without public notice, without public hearing. The board can get together, have a meeting, decide boom we're going to stop if they see a rush of well development. So that authority is out there. Also in areas, and that's under 46-707. In 46-739, in areas that are management areas, they have the authorities to put in controls. And two controls of particular note are, one, they can put in permanent

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moratoriums but then they can also limit irrigated acres. And these controls can be conditioned upon different provisions for different categories of groundwater use in varying climatic, hydrologic, geologic, and soil conditions. So the NRDs have some flexibility if they see some development occurring and they have concerns about it. If they have a management area in place they can do some things to provide some flexibility there. So there's already something in statute. Now, both those provisions are at the NRD's discretion, there's nothing requiring them to do it. The difference in what Senator Langemeier is asking is this...as I understand the bill, it would be the NRDs shall do this in the case of a change in status in the fully appropriated. So that's a difference there. And so if the Legislature wanted to put a foolproof mechanism in place to make sure that there was some conditions in place, they could do so through this legislation. Now, having said that, if the Legislature wanted to move forward there were some concerns raised about how this language would mesh with existing statutory authority. For example, if an NRD already had a moratorium in place when declared...when the area was declared fully appropriated and then that fully appropriated status were changed, can the NRD go back and put that moratorium back in place or does this language trump that? Does this language say, no, you can't do that; you've got to allow at least 2,500 acres? That was one question that came up. And then how does this language mesh with the other controls in 46-739, was another question. You've already heard the questions about the 24 acres and how do we decide which producers get the 2,500 acres and what types of uses would there be? Senator Schilz, you asked the question about industrial uses, that came up in our discussions as well. And then the other question that came up and Senator Carlson raised this was, the bill only applies to groundwater use. Where does surface water fit into this and it raised the question from this vein? If...well, when someone applies for a surface water appropriation, it's my understanding that DNR has to make a determination whether there's unappropriated water available for that. By definition, I would think if the department changes the status of a basin, it would be saying there's unappropriated water available. So if someone applies for a surface water permit on some irrigated acres or to expand some irrigated acres, I'm not sure how the department could limit that, saying that there's unappropriated water available, if you get my drift. If they said that it's not fully appropriated, that implies that there's unappropriated water available. And then the other part of that is an instream flow right, too, if you could apply for that. And then that may push us back into fully appropriated status, so I'm not sure how that all...that interplay. So I just wanted to raise those issues. Those are questions that came up. And again, we're still trying to wrestle with this and get a sense of where we want to head on this, but we're very interested in the issue and we'd very much be willing to work with Senator Langemeier. And I apologize to Senator Langemeier, I wanted to catch him this morning and visit with him about some of these, but he seemed to be busy on the floor this morning so. But we're more than willing to work with the committee and Senator Langemeier on this issue. With that, I'll be happy to answer any questions you might have. [LB483]

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SENATOR DUBAS: Thank you, Mr. Rempe. Are there any questions? Senator Carlson. [LB483]

SENATOR CARLSON: Senator Dubas. Mr. Rempe, is there...I don't know this, so is there something once a basin is determined to be fully appropriated, is there anything that automatically triggers a reevaluation? [LB483]

JAY REMPE: My memory of current law is that the department on its own initiative, if it learned something new and for some reason thinks that it needs to reevaluate the basin, it can. Or people can petition the department to reevaluate the basin to see if it's still in a fully appropriated status. So there's two ways to have them relook at it. And I believe that's under 46-713, that lays that out. [LB483]

SENATOR CARLSON: You don't know the extent of the petition? [LB483]

JAY REMPE: Hang on a second, let me check, I've got the statute with me. It's in 46-713(2) and I can't...I'm trying to find, it says a petition filed with the department by any interested person so. [LB483]

SENATOR CARLSON: Okay. [LB483]

SENATOR DUBAS: Any other questions? Seeing none, thank you very much. [LB483]

JAY REMPE: Thank you. [LB483]

SENATOR DUBAS: Any other neutral testimony? If not, Senator Langemeier, when you're ready you may close. Senator Langemeier waives closing so with that, that closes our...you did waive closing... [LB483]

SENATOR LANGEMEIER: It has to go into Executive Session, but we'll handle that in a minute. [LB483]

SENATOR DUBAS: ...okay, well, that closes our hearings for today. We thank you very much for your participation. (See also Exhibits 13 and 14) [LB483]

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Disposition of Bills:

LB379 - Placed on General File.

LB482 - Held in committee.

LB483 - Placed on General File with amendments.

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Chairperson

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Committee Clerk