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Natural Resources Committee
February 25, 2009

[LB666]

The Committee on Natural Resources met at 1:30 p.m. on Wednesday, February 25, 2009, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB666. Senators present: Chris Langemeier, Chairperson; Annette Dubas, Vice Chairperson; Tom Carlson; Tanya Cook; Deb Fischer; Ken Haar; and Beau McCoy. Senators absent: Ken Schilz. [LB666]

SENATOR LANGEMEIER: Good afternoon and welcome to the Natural Resources Committee. I'd like to welcome everyone in the crowd that's here watching us today as well as those that are watching us on closed-caption and those that get the opportunity to watch us on the Internet now with our live feeds as part of our continued ability to be transparent. My name is Chris Langemeier, I'm the Chairman of the Natural Resources Committee. I'd like to introduce those that you see sitting up here. I will give you all a little heads up as some of the members that aren't here now have other bills they're introducing in other committees, so you will see the senators get up from time to time and leave and go testify in other committees and then work their way back. So it has no reflection on your testimony, it's just we all do have other bills in other committees that are currently meeting as well. So starting on my far right or your far left we have Barb Koehlmoos, who is the committee clerk and you testify today you will give your testimony sheet to her; we have Senator Tanya Cook who is not with us, she will join us in a little while; and then we have Senator Tom Carlson from Holdrege, Nebraska, District 38; we have Senator Deb Fischer from Valentine, District 43 which is...she's real familiar to this crowd; off to my far left or your far right we have Senator Beau McCoy from Omaha, District 13; then we have Senator Ken Haar from Lincoln, District 21; Senator Schilz will not be joining us at all today; the Vice Chairman of the committee is Senator Dubas and she is opening on a bill in another committee, she will be here shortly, she is from Fullerton, District 34; Laurie Lage is the legal counsel for the committee; helping us today, we have two pages that if you have testimony you'd like to hand out they will be helping us with that. We have Malinda Frevert, from Omaha, and then we have Justin Escamilla, from Scottsbluff, Nebraska, will be helping. If you have testimony just hold it up and they will take it from you and hand it out. Those wishing to testify before the committee today, there are these green sheets located in the back corners of the room. We ask that you fill that out, that allows us to keep a good record of everybody's opinions and their testimony well organized. So if you would, you fill those out as you come forward to testify and give those to the committee clerk as you come up front. If you're here today to...and do have a position in support or opposition to a bill and you want to be on record, if you've already sent us a letter we will read those in a record, we don't need it for that point, but if you are in the committee and you don't chose to testify there are also these forms in the back of the room that we would ask that you put your name and address on, the bill number, well they're all going to be LB666 today, and then put in there support or opposition so you can put your name into the record if you're not going to testify. When you come up, I will do the introduction as

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

Natural Resources Committee
February 25, 2009

the primary sponsor of LB666. After my testimony we will then go to those that are in support or proponents, and then after that we will go to opponents, and then after that we will go to neutral testimony. When you come forward to testify, we would ask that you state your name and spell it, first and last. No matter how simple, we do ask that you spell it so we have a clear record of your name so we don't have to call you later and ask you. At this time, we would ask that anybody that has their cell phone to turn it off at this time, not to disrupt anybody that is testifying and their testimony. Just for an idea, how many people care to testify in some fashion today? Please raise your hand. Okay. We do use...thank you very much...we do use the light system. They're timed today at four minutes. You will get a green light when you start, you get a...it'll go for four minutes, excuse me three minutes on green, then it'll go to yellow. You get one minute on yellow and then when it goes to red, we'd like you to finish up and then allow yourself for questions from the committee. With that, I think I've explained everything I need to explain, and now, since our Vice Chairman is not here, Senator Fischer, would you open the hearing until she arrives? Thank you. []

SENATOR FISCHER: Thank you very much, Chairman Langemeier. With that I will open the hearing on LB666. Senator Langemeier as introducer of the bill, would you like to give your introduction please? [LB666]

SENATOR LANGEMEIER: I, too, have to fill in these forms, which I forgot. [LB666]

SENATOR FISCHER: Good afternoon. [LB666]

SENATOR LANGEMEIER: Thank you, Senator Fischer and members of the committee. LB666 would change and clarify the powers and duties of the Niobrara Council under the Niobrara Scenic River Act related to local management of the Niobrara River as a federally designated wild and scenic river. Here's some background. Public law 102-50, the Niobrara Scenic River Designation Act, in 1991 amended the Wild Scenic Rivers Act to designate a portion of the Niobrara River as units of the National Wild and Scenic River System. The purpose of the Wild and Scenic Act is to protect selected America rivers for the benefit of the enjoyment of everyone. Under this act, the administrating agency is to prepare a management plan and establish boundaries of protection of the river. The National Park Service completed a general management plan and environmental impact study. An option presented in that plan was the formation of a local management council that would work in partnership with the National Park Service in managing the river. The four affected counties, Brown, Cherry, Keya Paha, and Rock, formed the Niobrara Council. The council and the National Park Service entered into a cooperative agreement and the council was designated certain management duties. In March of 1998, a lawsuit was filed against the National Park Service for allowing the Niobrara scenic river to be managed by a local council consisting of local landowners, business owners, and politicians. In 1999, a federal court ruled that the National Park Service had unlawfully designated its management responsibilities on the Niobrara

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

Natural Resources Committee
February 25, 2009

Council and did not retain sufficient final reviewing authority. In response, the Legislature, the Nebraska Legislature authorized the council's creation so that would be acceptable to the Park Service, maintaining management of the river and authorize some zoning powers. Over the past few years it has become increasingly clear that there is no consistency among the various parties on actually what the Niobrara Council has for authority. This inconsistency is significant evidenced by a series of letters between the council and the Department of Natural Resources and the Nebraska Public Power District and needs to be resolved. This bill provides for some clarification and more importantly, a forum in which to discuss the differences of opinions that would come to be resolved today. As the Chair of this committee, I believe that it is my responsibility to create that forum to clarify these issues. This bill states in its mission of the council is to provide local representation to the National Park Service and report to the county boards of Brown, Cherry, Keya Paha, and Rock Counties due to their location within the Niobrara scenic corridor. The council is to be given consideration to local and government input as well as private landowners' rights in their efforts to maintain and protect the integrity of the land associated and water resources. This local representation is essential for managing the Niobrara River to meet the standards of the Wild and Scenic River designation and to maintain an aspect of local control which is important for the continued wise use of this very valuable resource. This bill significantly outlines the council's duties and objectives which are rooted in representing the local people. In LB666 the council representatives would reside in the scenic river corridor. Management of the Niobrara is accomplished through local partnerships in collaboration with the National Park Service. Additional responsibilities of the council include: monitoring land and water activities; being a source of information to citizens, local government, and the state; reviewing and recommending potential water and land uses and their alternatives; and serving as a facilitator between the citizens and the National Park Service. Relative to conservation easements, it is important for the council to work with and on behalf of the local landowners, so that the land is wisely cared for through private ownership that current exists. I'm willing to discuss any possible amendments to the bill that would allow the council to hold conservation easements, however, approval of such easements should be restored to the proper governing bodies as currently consisted in all other counties. LB666 will require the council to complete an annual report on their activities for the previous year. This is an important element to the council's role to make this possible and function well. The annual report establishes a level of accountability to local citizens, the county boards and the state. The National Park Service has consistently been explicit in their need for local assistance for management of the corridor. Nevertheless, it is also clear that a statutory obligation to maintain and administer the corridor falls on the National Park Service in order for them to comply with their federal law. Thus, it is the best interest of this state and the local people to have a voice of representation in correlation with the National Park Service for management of the scenic river. The people that live in the corridor and utilize its resources for their livelihood have a significant interest in maintaining the integrity of the Niobrara. It is the objective of LB666 to establish a body that truly represents the local

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

Natural Resources Committee
February 25, 2009

people in working with the National Park Service. The Niobrara Council is the voice of local people participating in wise management of the water and land in the scenic river corridor. There are diverse interests on the Niobrara, and it is important that all interests are represented to achieve a common goal of this remarkable river. Now, as the people testify behind in their minutes, I hope as this creates a forum for testimony today, I hope that the testimony goes beyond some of the letters we've gotten. We all agree that the Niobrara is scenic and one of the most treasured scenes in the state of Nebraska. I don't think anybody on this committee or anyone on this Legislature would argue that. What I hope to accomplish today as the testifiers come before us, both proponents and opponents, is they look at LB666 and I think we've touched about every issue out there so there's nobody that can say, well, it didn't affect me so I didn't show up today. I think we've added enough stuff to this to get everyone's attention and that was the objective. I hope they come forward and testify and tell us what parts they think they should keep that may be coming out in this bill and exactly why, and what facets or experiences they've had that would demonstrate they would need this particular type of authority or membership or something like that. So I hope that proceeds in that manner so we have that opportunity to fully explore all the positives of the Niobrara River. With that, I'll conclude my introduction and I look forward to the testimony. Are there questions? [LB666]

SENATOR FISCHER: Thank you, Senator Langemeier. Are there questions? I see none; thank you very much. [LB666]

SENATOR LANGEMEIER: Thank you. [LB666]

SENATOR FISCHER: At this time I would like to note for the record that we've been joined by Senator Tanya Cook from Omaha. And with that, I would ask that the first proponent for the bill please step forward. Any proponents for the bill? [LB666]

MIKE MURPHY: (Exhibit 1) Good afternoon, senators of the Natural Resource Committee. I appreciate the opportunity to visit with you this afternoon. My name is Mike Murphy, M-i-k-e M-u-r-p-h-y, and I'm here to testify on behalf of the Middle Niobrara Natural Resource District. The Middle Niobrara Natural Resource District is in support of LB666 and looks forward to working with the Natural Resources Committee on this bill. The bill has definitely created much needed discussion in north central Nebraska. It has opened up the eyes of man, the need for further defining what the council is supposed to do and why. As long as they are being, in part, funded by the National Park Service and the Nebraska Game and Parks Commission, the council should be held accountable to clearly identify what it is using tax dollars for. Natural resource directors across the state made it clear at the Nebraska Association of Resource Districts annual legislative conference when all 23 NRDs voted unanimously to support LB666. There is no doubt management is needed within the Niobrara River corridor. Both state and federal agencies have stepped up to the plate with monies for conservation practices,

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

Natural Resources Committee
February 25, 2009

the highly regarded practices being eastern red cedar control, forest fuel reduction, and water conservation practices. All of these practices fall under desirable management practices within the corridor. As we all know, state and federal funds come with requirements that have to be met. When landowners are using these dollars, they are working with our trusted partners, the Natural Resource Conservation Service, the Nebraska Forest Service, state's NRDs, and the Nebraska Game and Parks Commission. And we all make sure when we are developing conservation practices for the land and the landowner, excuse me, that they are within established guidelines for each specific practice, those practices being prescribed burning, forestry thinning, planned grazing, and irrigation practices. Do we need to have the Niobrara Council further review these already approved conservation practices? It seems that we could invest our time and efforts elsewhere and avoid some untimely delays due to the council needing to sign off on items such as prescribed burn permits, forestry management plans, and zoning permits. I've heard individuals proclaiming that projects on the river would not get done without the council. This simply is not the case. The Middle Niobrara Natural Resource District has successfully partnered with the National Park Service on several projects over the years to improve the area. We've worked with the Park Service on redoing fencing at a public access area, worked on taking out cement slabs and replacing them with the newer technology of Geowebbing and graveling at the NRD's public use landing. Currently, the National Park Service is also working with the Nebraska Forest Service and the Game and Parks Commission at Smith Falls State Park on an aspen stand regeneration project and a fuel reduction project. All of these projects were done with partners, not the Niobrara Council. Partnerships will exist and continue throughout the river corridor. I do not believe that there is a single county commissioner that wants to negatively impact our valuable resources that we have in our state. Let's continue to work with our county commissioners and planning administrators to do their jobs that they were hired and elected to do. The people of north central Nebraska have done an outstanding job of maintaining, protecting and enhancing all of our wonderful resource to this point. Let them continue to do the same into the future. They all will do what is right for the resource. We see it every day here in north central Nebraska and others from around the state and world get to come and see and enjoy what our local people have done. Production agriculture has led the way for caretaking and management of our local resources. These producers are the ones who are actively protecting, enhancing, and furthering economic benefits for north central Nebraska. We truly need to have local people be represented on this board. We all know of plenty of environmental groups that live here within the four counties. I've listed a few examples, Pheasants Forever, Friends of the Niobrara, Sandhills Cattle Association, Blue Birds of Nebraska. We are sure that there is a local person that can get involved in local management. As far as easements go, individual landowners have the right to do whatever they feel is best for their property. The council is just another holder of the easement tool. There are plenty of others out there than can hold easements, I've listed some examples there, the Park Service, U.S. Fish and Wildlife Service, and the Nebraska Land Trust. We need to make sure that the county board is

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

Natural Resources Committee
February 25, 2009

the one that approves conservation easements within its county. Let your locally elected officials and government work. If individuals and landowners feel that they have lost control of their rights now, please wait and see what happens when the United States Fish and Wildlife Service and the National Park Service exercise their federal water rights that they claim they have. Then any detrimental impacts inside or outside of the river corridor will fall under federal control. Whose rights will we be able to protect then? In short, let's help make the council more transparent, more accountable, and let them provide a local voice through local control. Respectfully presented, thank you. [LB666]

SENATOR FISCHER: Thank you, Mr. Murphy. Are there questions? Senator Cook. [LB666]

SENATOR COOK: Thank you, Senator. I have a question just to clarify. You have offered this on behalf of the Middle Niobrara NRD as well as the Nebraska Association of Resource Districts, this testimony today? [LB666]

MIKE MURPHY: ON behalf of the Middle Niobrara Natural Resource District. [LB666]

SENATOR COOK: Okay. And you're merely making reference in your testimony to the vote that was taken at that meeting? [LB666]

MIKE MURPHY: Yeah, correct. The annual legislative conference, correct. [LB666]

SENATOR COOK: Okay. Thank you. [LB666]

SENATOR FISCHER: Are there other questions? I have one, Mr. Murphy. You talked about partnerships and what the NRD is doing with the National Park Service in the corridor. Could you possibly elaborate on some of those? Not just...who else do you work with besides the Park Service? [LB666]

MIKE MURPHY: Senator, we work with everybody. You know, I mean we work with the Natural Resource Conservation Service on whole-ranch planning, tree design, carrying out cross fences, pipelines, water tanks. The Park Service has been, you know, a small partner due to our limited area that we have on the river. But over the years, an individual partnership's been formed and hands on, my NRD staff and their staff have been down in the river physically doing projects that I've mentioned, you know, the...to revamp and improve on our public access landing that is open to the public. You know, right now with some funding that was designated after the wildfires of 2006, the Nebraska Forest Service has come in and actively doing forestry management, i.e. mainly the fuel reduction cedar control. The Nebraska Game and Parks Commission has an individual based in Bassett that is actively working with landowners on cedar control in pastures and trying to improve our grass dams. All of this stuff ties back to better production agriculture for the landowners that are there that are using the land.

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

Natural Resources Committee
February 25, 2009

And that's, you know, how we all work together. [LB666]

SENATOR FISCHER: Thank you. Senator Haar. [LB666]

SENATOR HAAR: Thank you. So obviously, if it wasn't broke, you wouldn't be saying fix it. What are some of the problems you've experienced with the council in its current form? [LB666]

MIKE MURPHY: I think the biggest thing is these are already acceptable approved conservation practices, that the state's approved of, the Park Service has, you know, designed a management plan for the river. And here we are having to go and tie up time, efforts of state and federal employees to try to re-get approved these same conservation practices we are already working together on for the area. And it's just one more, I guess, step to slow down the process and further to, you know, complicate the matters for the different agencies when you're trying to work with landowners in a timely fashion. [LB666]

SENATOR HAAR: Okay. Well, I, in particular don't know how things operate currently. So could you describe, for example, how that would...some of the things you are talking about, give me a couple of good examples. [LB666]

MIKE MURPHY: Prime example, prescribed burning. Usually most of it's done in the springtime of the year. Usually landowners are working with the Nebraska Game and Parks, the Natural Resource Conservation Service on developing these plans. These plans are, and a lot of them are tied back to state and federal dollars. Prescribed burning has a narrow window to be executed. Usually you're talking, you know, probably mid to late March to green up, you know, beginning of May. And with the weather variables that are out there, wind, humidity, rain, on down the line in the springtime of the year, it even narrows that window further. By having to develop a plan with that landowner, go to the county fire chiefs, get it approved there, and then, one more step, having to come to the council to get it reapproved, it's just one more time delay in trying to get things done. And when it comes time for the spring, it gets tough because when it's time to burn, these landowners need to go and get it done now and you can't wait. Otherwise you're going to be waiting until next year. [LB666]

SENATOR HAAR: So for you the problem has been delay, I take it? [LB666]

MIKE MURPHY: I think that's just...it's just having...it's one more scrutiny in the process that has already been said this is acceptable. This is what we need to be doing here to manage our resources properly. [LB666]

SENATOR HAAR: Thank you. [LB666]

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

Natural Resources Committee
February 25, 2009

SENATOR FISCHER: Other questions? I see none, thank you, Mr. Murphy, for being here today. [LB666]

MIKE MURPHY: I appreciate your time. [LB666]

SENATOR FISCHER: Thank you. Other proponents? Good afternoon. [LB666]

DEAN EDSON: Good afternoon, Senator Fischer and members of the committee, my name is Dean Edson, D-e-a-n E-d-s-o-n, and I'm the executive director for the Nebraska Association of Resources Districts, testifying in support of LB666. As Mr. Murphy mentioned earlier about the vote that the association took, we reviewed this bill and support it unanimously to take a look at the roles of the council and their coordination with other political subdivisions. Dean Jochem had intended to come in today as a board member for the association to testify but due to some conflicts was not able to attend. I submitted his letter earlier this morning as part of the record. I'm not going to read that, you have that in front of you. But I wanted to touch on a couple of items here. As Mr. Murphy, just to reiterate what Mr. Murphy said, part of the problem is when we do all these coordinations with all these other federal and state agencies on conservation plans, it just becomes burdensome to then go back to another group to get another set of approval. And as he mentioned, on the prescribed burn that creates a problem. It also creates some other problems with some tree planting programs and some other time sensitive conservation programs that we're trying to get implemented. I also want to strongly point out we're not out here to try to get rid of the scenic river council, that's the furthest thing from our mind. In fact, we fully support the scenic river council and back having that local work group there. What we see in this bill is maybe some things that could address the way the council operates and who has the authority to approve zoning, disapprove zoning, approve conservation plans, or disapprove conservation plans. Those are some things that I think we need to take a look at. And it's really, when it comes down to it, is just determining what the council's role is. When we talk about the zoning issues...in Nebraska we've always given the counties the zoning authority and put that responsibility upon them. We have been, as NRDs, several have asked us why we don't do a better job in zoning for floodplain protection and flood protection and that's because we don't have zoning authorities. We allow...that's the counties' responsibility and we'll work with the counties on those zoning plans but we don't have veto authority over them either, and we don't want that. We want to try to work with those county zoning boards all across the state and make sure that we're coordinating with them. But we don't want to get in a position of having a veto authority or try to override any county zoning ordinance. And I think that's the question that comes up with this bill, too, and the current council's obligations. Another misnomer I'd want to point out, I've gotten a lot of phone calls and e-mails about why the association supported this bill and why do we want to make the Niobrara River go dry? And that's not going to happen. The Niobrara River is not going to go dry because of a change in operation of a scenic river council. LB962 has guidance over the water use in

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

Natural Resources Committee
February 25, 2009

that basin and now that it is declared fully appropriated, there's no more new uses that can come into that basin without offsets. So there's not going to be any change as far as increased water use. With that, I'll end and I'll try to answer any questions you may have. [LB666]

SENATOR FISCHER: Thank you, Mr. Edson. Any questions? Senator Haar. [LB666]

SENATOR HAAR: Thank you. As I've looked at what the material we've been provided, one of the main things is going from administrative to advisory board, right? And then also it looks like how membership is appointed or selected for that board. Could you just help educate me on that some? [LB666]

DEAN EDSON: I guess when we're looking at those issues, let's talk about the membership of it. I think it's good if you have on these councils, you have people that reside in the area that know what's really going on. And I think that's one of the positive aspects we looked at with this bill is that making sure that these are county residents. [LB666]

SENATOR HAAR: And how is it done now? [LB666]

DEAN EDSON: I'd have to go back and take a look at that, but I think it makes it clear in this that you have to be a resident of that county. [LB666]

SENATOR HAAR: Okay. [LB666]

DEAN EDSON: And I'm just looking at it from the policy standpoint, I'm not singling anybody out. [LB666]

SENATOR HAAR: Sure. [LB666]

DEAN EDSON: I'm just looking at it from the policy standpoint. And your first part of your question again was? [LB666]

SENATOR HAAR: That was just confirming that it would be going from an administrative to an advisory board? [LB666]

DEAN EDSON: Yeah. And that kind of gets back to what I said in my comments here is that the counties have been granted the zoning authorities to do all that zoning activity and zoning ordinances, etcetera. And we're looking at it from that standpoint just to make sure those counties maintain that and somebody, some other entity doesn't have oversight or can veto those zoning ordinances. [LB666]

SENATOR HAAR: Okay. Because right now the council has zoning? [LB666]

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

Natural Resources Committee
February 25, 2009

DEAN EDSON: Well, it's...there's some questions in here of whether they have the authority to veto or approve of some zoning ordinances and I think that's why you got the bill in front of you. And those are just some policy issues that we see in this that probably need to be reviewed and looked at. [LB666]

SENATOR HAAR: Okay. Thank you. [LB666]

SENATOR FISCHER: Other questions? I see none, thank you, Mr. Edson. [LB666]

DEAN EDSON: Yep, thank you. [LB666]

SENATOR FISCHER: Are there others proponents for the bill? Good afternoon. [LB666]

DALLAS DODSON: Good afternoon, Senator and committee members. My name is Dallas Dodson, D-a-l-l-a-s D-o-d-s-o-n, and I ranch in Cherry County, and in fact, on a good day I can throw a rock from the house and hit the Niobrara River from there. I'm here today to testify in favor of LB666. If this bill passes, it would put the zoning authority and final assessment of conservation easements back in the elected commissioners' hands where it rightfully belongs. As I sit here today, citizens in Brown, Cherry, Keya Paha, and Rock Counties are deprived of their right to vote for an elected official that makes decisions related to zoning and conservation easements. The Niobrara Scenic River Council has superseding powers over the elected county commissioners of these four counties when it comes to the matter of zoning and conservation easements. With the exception of these four counties, voters in all remaining 89 counties in Nebraska have the opportunity to make their voice count. Everyone else in Nebraska has the assurance that their voice, that their vote for county commissioner will allow for the commissioner to function to full capacity provided to them by state statutes. Under current statutes, the Niobrara Scenic River Council has the power to approve conservation easements which in turn may lower property valuations in the very county that our elected officials levy taxes. Because of this, the council has the ability to affect every property taxpayer in the entire four-county region, not just those within the scenic river corridor. With the exception of these four counties, every other voter in Nebraska has been protected by this state's laws which allows them to elect county commissioners to implement a land-use plan for zoning purposes. In Brown, Cherry, Keya Paha, and Rock Counties, we don't have that same right. Yes, we have a land-use plan for zoning, but the council can override our commissioners if it is within the scenic river corridor. It seems as though the only opinions that matter are those opinions that have been appointed, not elected. Senators, as a voter of Cherry County, I hope that you are just as concerned as I am that not all voters in Nebraska are treated equally. One of the most important aspects of government is to protect the rights of its people and to accomplish this, our government, be it federal, state, or local, have many avenues in place which allow the people to be heard. Current statutes give the

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

Natural Resources Committee
February 25, 2009

Niobrara Scenic River Council the power to zone or approve easements and there is no meaningful hearing process that must be followed prior to the Niobrara River Council making a decision that affects the people within the scenic river corridor as well as the four county region. By passing LB666, the voices of the local voters would be heard through the elected county commissioners concerning zoning and conservation easements. Any change in zoning or the approval of a conservation easement would be treated just like it is everywhere else across the state of Nebraska. The people would have the ability to go through a hearing process when something comes before the county planning commissions. Sure, we can go to the Scenic River Council meetings and yeah, we can stand up and voice our opinion, but in the end they're not held accountable to anyone and can proceed however they wish, again, because these council members for the most part are appointed not elected. So what we have here in my estimation is the Governor-appointed council which has been given power that should be reserved for elected officials. I'm asking you to correct this situation and give the voters back their voice. And Senators, I'd like to point out today that as I sit here before you guys that have been elected by the voters in your districts, I'd ask you to look around. We have people behind me that are opposed to this bill, we have people behind me that are in favor of this bill, this is the way government works. The people have the ability to come before you or before our local government, county commissioners and we can decide these things. And I think that's really lacking in the Niobrara Scenic River Council is that when you get down to the bottom line, they're not voted on and I think that we need to protect that right of the people up there in those four counties. Thank you. [LB666]

SENATOR FISCHER: Thank you, Mr. Dodson. Are there questions? Senator Haar. [LB666]

SENATOR HAAR: Thank you. Do you know according to if this goes through what those with the council...and I know it's going from administrative to advisory, would it be elected or still appointed? I can find that out later, too. [LB666]

DALLAS DODSON: I'm not sure. What I'm hoping with the passage of this bill, that they would be in an advisory council to the county commissioners and to me, that's what is important, because the county commissioners are voted upon, the people can go before them through hearing process and the Scenic River Council can be an advisory to those elected officials as well, and then ultimately it would be up to the elected officials to make the decision. [LB666]

SENATOR HAAR: Thank you. [LB666]

SENATOR FISCHER: Mr. Dodson, your last comment when you said it would be up to the locally elected officials to make the decision, are you speaking just on the zoning and the easements that you referenced in your testimony or are you talking about

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

Natural Resources Committee
February 25, 2009

decisions on burn practices in the corridor, or tree removal, or setting up toilets, or other practices within the corridor? What are you addressing specifically there? [LB666]

DALLAS DODSON: I am addressing conservation easements and zoning practices. [LB666]

SENATOR FISCHER: Okay. Do you...what are your feelings about the council holding conservation easements? Do you have a problem with that? [LB666]

DALLAS DODSON: It's not, no. It's not a concern of mine that the council holds a conservation easement. But the right to approve those easements I feel should be back in the hands of the county commissioners, where the people in those four counties can go before them and we can have a session like this. [LB666]

SENATOR FISCHER: So you would like to see it in the bill that the council could hold conservation easements. I'm just trying to clarify. You would like to see it in the bill that the council could hold conservation easements, but the approval for such easements would be done by the county board, the elected county board? [LB666]

DALLAS DODSON: Yes. [LB666]

SENATOR FISCHER: Okay. Other questions? Senator Carlson. [LB666]

SENATOR CARLSON: Senator Fischer. Having...I had to step out a minute, so coming back in I want to ask something that maybe has been covered, but I think if I heard you right, you are supporting LB666 because of it's limiting the power of the council and bringing back decisions in the hands of elected officials. Is that the biggest factor in this whole bill? [LB666]

DALLAS DODSON: Yes. [LB666]

SENATOR CARLSON: Okay. [LB666]

DALLAS DODSON: For me. [LB666]

SENATOR CARLSON: Okay. Thank you. [LB666]

SENATOR FISCHER: Any other questions? I see none, thank you for being here today. [LB666]

DALLAS DODSON: Thank you. [LB666]

SENATOR FISCHER: Are there other supporters for the bill? Good afternoon. [LB666]

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Natural Resources Committee
February 25, 2009

LEE SIMMONS: (Exhibit 2) Good afternoon, Senator Fischer and committee. Thank you. Lee Simmons, L-e-e S-i-m-m-o-n-s. And just to start out, the last speaker, I was completely in agreement with in his closing statement. But to start out, I don't have anything prepared to hand to you all, but I'll just kind of muddle through this. Who I am is a rancher in the local area. I was born and raised there, my father and grandfather were ranchers there, and now I'm a rancher there. And incidentally, my grandfather and grandmother homesteaded right there in 1913. In 1969, I graduated Valentine High School and went to college down here in Lincoln and immediately upon arriving down here I became aware of how fortunate I was to be in such a beautiful area up there in the Niobrara valley. So I began taking people from this area, groups of people up and down the river, and I still do that to the present time. But then in about 1997, I decided to commercialize the operation and do it for a larger sector of the public so that many more people could enjoy that beautiful river valley up there. And now, I've got six cabins and can house 100 people or so that do float vessels down the river, do horseback rides and all that and have a very good clientele of people come back every year. And presently, and now if you've got that handout that I just gave you, on page 6 is a picture of the river. And presently I own five miles on the north side which is from the Fort Niobrara Wildlife Refuge, the green area there clear down to Smith Falls. And on the south side I own about three miles which includes the spring that the water, the Smith Falls comes from. So the water comes off of my land that comes over the falls. Now, I just want to give you a few examples of some of my interaction with the council and the National Parks. In '98, I was there and could see that there was a significant danger of fire of burning up all of our trees and having no scenic river valley anymore. So I went to the NRCS and asked them if they could assist me with some kind of erosion control dam that would...that yellow light just came on and I don't know what to do...but anyway... [LB666]

SENATOR FISCHER: You can just keep talking. [LB666]

LEE SIMMONS: ...but it would restrict the flow of one little stream, it would provide a watering hole so that fire trucks and everything could get down here and pump out of it and put out a fire should we have one, or when we have one. I went to the NRCS, I went to the NRD, I went to the environmental studies people, I went to the Corps of Engineers, I got all my permits to do all this stuff. I had money coming from the NRD, they had put a bunch of time into surveying a dam for me and then I went to the council and the National Parks to ask...I thought it'd just be a free flow-through to get this thing done, it was back away from the river, nobody would ever see it. And all of a sudden, they said no, you can't do that because it restricts the flow of the river and it might go dry. Okay, well, I had nowhere to go. I had no appeals. I did nothing. I spent all of my money and time, and the NRD and the dam was done. For another example. [LB666]

SENATOR FISCHER: Mr. Simmons, it is a red light, but I'll let you give us another

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Transcriber's Office

Natural Resources Committee
February 25, 2009

example. [LB666]

LEE SIMMONS: Okay. [LB666]

SENATOR FISCHER: If you're short. [LB666]

LEE SIMMONS: Another example was, I asked the National Parks and the council to help me with removing cedar trees to reduce the fire hazard, to give me some money, to give me some advice, to do anything. I've been doing this for nine years, I get nothing. Okay? And then, but the last two or three years there has been some money come from the state of Nebraska for cedar removal so we are now trying to get worked in to do some of this fire reduction. It seems like the only thing that I can get from the National Parks and the council is what I cannot do. They don't seem to help me do anything. [LB666]

SENATOR FISCHER: And I will have to cut you off there. [LB666]

LEE SIMMONS: Okay. [LB666]

SENATOR FISCHER: Unless someone has a question for you to continue. Are there any questions? Senator Haar. [LB666]

SENATOR HAAR: Sure. Thank you. Now, even if this LB666 goes through, you still have to deal with National Parks, right? Is that correct? [LB666]

LEE SIMMONS: I suppose we do, yes. [LB666]

SENATOR HAAR: Um-hum, yeah. Okay. [LB666]

LEE SIMMONS: And I'm not in favor of doing away with any kind of a management facility up there. [LB666]

SENATOR HAAR: Gotcha. [LB666]

LEE SIMMONS: Certainly not that. We do need somebody up there to help with that. [LB666]

SENATOR FISCHER: Senator Cook. [LB666]

SENATOR COOK: Thank you, Senator. Mr. Simmons, do any other ranchers in the area get assistance in terms of financial assistance for the kinds of projects that you identified in your testimony? [LB666]

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Transcriber's Office

Natural Resources Committee
February 25, 2009

LEE SIMMONS: Yes. Yes I think they do from various agencies. [LB666]

SENATOR COOK: Okay. And is your feeling that the decision is somewhat arbitrary? I'm sorry, I interrupted you. [LB666]

LEE SIMMONS: Yes. [LB666]

SENATOR COOK: As to who gets and who doesn't get? [LB666]

LEE SIMMONS: It seems to be, yes. [LB666]

SENATOR COOK: Okay. Thank you. [LB666]

SENATOR FISCHER: Other questions? Senator Carlson. [LB666]

SENATOR CARLSON: Senator Fischer. So to follow up on Senator Cook's question, are you saying that other ranchers get help from the National Park Service and you've asked for help and don't get it? [LB666]

LEE SIMMONS: I don't know that any of them got it from the National Park system. [LB666]

SENATOR CARLSON: Okay. Okay, I think that's an important factor. On the couple of examples that you gave, why do you think that the answer has been no? [LB666]

LEE SIMMONS: I can't answer that. Because they're a government agency, I guess. [LB666]

SENATOR CARLSON: Is local control a concern of yours? [LB666]

LEE SIMMONS: Yes. We need to have elected officials that are in there with some of the control. [LB666]

SENATOR CARLSON: Okay. Thank you. [LB666]

SENATOR FISCHER: Mr. Simmons, there are elected officials on the Niobrara Council right now. Each county has...of the four counties has a county commissioner on the council. You don't feel that those people when they're on the council in that capacity are representing their constituents? [LB666]

LEE SIMMONS: I think they're probably representing their constituents, but they're certainly outnumbered by other people on that council. [LB666]

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Transcriber's Office

Natural Resources Committee
February 25, 2009

SENATOR FISCHER: And there's landowners on the council, correct? [LB666]

LEE SIMMONS: Yes. [LB666]

SENATOR FISCHER: And an outfitter and a timber representative. How would you like to see that representation change? [LB666]

LEE SIMMONS: Well it. [LB666]

SENATOR FISCHER: Or do you think it needs to be changed? [LB666]

LEE SIMMONS: I feel like that we need to have more transparency in that council so that at least people can monitor what's going on and possibly more elected officials on the board some way instead of appointed. [LB666]

SENATOR FISCHER: Okay. Other questions? Senator Haar. [LB666]

SENATOR HAAR: Again, just exploring this a bit. You brought up more transparency, have you had problems finding out what they've done or why they've done it or. [LB666]

LEE SIMMONS: It's funny you should ask that question because that's part of the rest of my notes here but I had been going to the council a couple years ago, almost every meeting. But it appeared that the public had very little comment, they didn't listen to the public and every time they had to make a major decision it seemed to be in executive committee behind closed doors. So the last couple of years I've just kind of quit going because it serves no purpose for the public. [LB666]

SENATOR HAAR: Thank you. [LB666]

SENATOR FISCHER: Other comments, questions? I see none. Thank you for being here today. [LB666]

LEE SIMMONS: Thank you. [LB666]

SENATOR FISCHER: (Exhibits 3, 4, 5, 6, 7) Is there anyone else who would like to come forward in support of the bill. Any other proponents? Seeing none, would the first opponent step forward? Oh, I'm sorry, thank you Laurie. We do have some letters that need to be read into the record in support: one from Richard Tetherow of Valentine; John Ravenscroft, Valentine; Betty Palmer, Springview; Dean Jochem from the Middle Niobrara NRD and the Nebraska Association of Resource Districts; and Harlin Welch from Meadville. Now, would the first proponent step forward? I'm sorry, the first opponent please step forward. Come on up, Pete. [LB666]

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Transcriber's Office

Natural Resources Committee
February 25, 2009

PETE SAWLE: (Exhibit 8, 9) I thought that's what you meant. [LB666]

SENATOR FISCHER: Good afternoon and welcome. [LB666]

PETE SAWLE: Good afternoon. My name is Pete Sawle, P-e-t-e S-a-w-l-e. I'm the current chairman of the Niobrara Council. And the Niobrara Council has carefully examined LB666. In its present form, the Niobrara Council does not support this bill. Since being formally authorized by the Nebraska Legislature in 2000 under section 72-2007 of the Nebraska statutes, the Niobrara Council has worked to fulfill its mandate of being a state-authorized body given the express authority and responsibility to manage the Niobrara scenic river corridor in conjunction with the National Park Service. The unique makeup of the council has provided a rare opportunity for the voice of the local populace to participate in the actual management of this national scenic river and not simply acting in an advisory capacity. As this is a novel approach to cooperative management not only in the state of Nebraska but also throughout the nation, there have been situations in which the council has been unsure of the limits of its authority and responsibility. As a result, the council has made efforts to clarify these duties and has worked with all diligence to limit the scope of activities to the authorities outlined in statute or delegated by the National Park Service, to maintain and protect the integrity of the resources associated with the Niobrara national scenic river corridor. Through the past nine years, the council has developed a trust with landowners, businesses, counties, and other stakeholders as an organization that represents the local voice yet works well with the National Park Service in cooperative management of the Niobrara national scenic river. The basis for the Niobrara Council's cooperative management with the National Park Service originated in the enabling legislation passed by Congress requiring the National Park Service to work with the local council that would manage the Niobrara scenic river because of the unique situation in Nebraska, that being that the river was located in largely private land. Pursuant to that direction, the National Park Service did work with and delegate to the local council certain management responsibilities. In 1999, the Federal District Court for the District of Columbia found that the National Park Service had wrongly delegated management activities to the council, saying that the delegation was without limitation and was to a council that did not have specific directions and requirements for its work. Consequently, according to the Court's decision, the National Park Service would be prohibited from participating with the council in cooperative efforts to assist in managing river resources with a council that is purely advisory due to the prohibition of delegation of any management oversight to a powerless council. Thereafter, the Nebraska Legislature in 2000, created the Niobrara Council to reconstitute the council in as close a form as might be acceptable to the National Park Service to continue to maximize the local control and to continue to have the council actually doing most of the actual management, recognizing that the real management tool was zoning powers that were established in that legislation. The council believes that removing the ability to hold land reduces local public voice in land management and moves that responsibility further toward the federal government. The

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Transcriber's Office

Natural Resources Committee
February 25, 2009

National Park Service and the council believe that removing council zoning oversight ignores legislative intent to establish a local body charged with the obligation of protection of the scenic river free-flowing condition, water quality and outstandingly remarkable values including scenery, recreation, geology, paleontology, and fish and wildlife. By limiting this authority to the county commissions only, the legislated focus of protecting these resources through zoning is obliterated and leaves protection of those resources to bodies with widely varying agendas. Additionally, in the event the Niobrara Council becomes advisory only, the National Park Service will be obligated to manage the river as dictated by the original legislation and by its statutory obligation. Additionally, the National Park Service advised that the proposed legislation would further remove its ability to work with the council due to the fact that the same may be a violation of the Federal Advisory Committee Act which provides that a state cannot establish an advisory board to a federal agency. This inability to cooperate may result in the impairment of federal funds in the four county area for projects including cooperative management, conservation easements, and so on. [LB666]

SENATOR FISCHER: Go ahead and finish. [LB666]

PETE SAWLE: Okay, thank you. Due to the shortness of time to discuss LB666 with stakeholders as well as within the council and in keeping with the aforementioned efforts, the council asks that the Natural Resources Committee table the discussion of LB666 for this legislative session. We also invite the members of the Natural Resources Committee to visit the area and float the river, meet with the council in session and see what is being accomplished. The council also encourages an interim hearing in the area with local landowners, businesses, stakeholders, and state and federal agencies to determine if the council is fulfilling its legislative mission in giving consideration and respect to local and governmental input and private landowner rights. If the council is filling its legislated mission, the passage of LB666 is unnecessary. The council welcomes the opportunity to work with the Legislature in identifying its course, its mission, and its authorities. [LB666]

SENATOR FISCHER: Thank you, Mr. Sawle. Are there questions? Senator Carlson. [LB666]

SENATOR CARLSON: Senator Fischer. Mr. Sawle, tell us a little bit who are you, where do you live, what's your position...I know you're president of the council but. [LB666]

PETE SAWLE: Yeah, I live north of Meadville about three and a half miles right on the edges of the breaks of where the valley starts. I'm the timber representative. I own a sawmill with my brother, my partner. We harvest trees. We do a lot of the fuel load reduction things that you hear about, we do a lot of those. I think we're on our eighth one now. We harvest trees in and out of the corridor, so, depending on where we're currently at sometimes we're directly in the corridor, sometimes we're not. But that.

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Transcriber's Office

Natural Resources Committee
February 25, 2009

[LB666]

SENATOR CARLSON: Now do you own land on the Niobrara River? [LB666]

PETE SAWLE: Not on the Niobrara River, no. No. [LB666]

SENATOR CARLSON: In your report here, I'm kind of just asking to clarify. Your first statement is that the Niobrara Council has carefully examined LB666 but then, it's not numbered but it'd be the third page, third paragraph. You say, due to the shortness of time to discuss LB666 with stakeholders as well as within the council. So in one case it's been carefully examined and in the other case there's not been enough time. Can you clarify those two statements? [LB666]

PETE SAWLE: Yes, thanks. The legislative committee was able to look at this after our January meeting when it came out but we didn't have another scheduled regular meeting until February and so we couldn't really come out with a formal statement until we met as a board. The legislative committee was able to analyze the bill and come forth with a recommendation but until our February meeting we weren't able to make a statement. And what ended up happening is we had a lot of people in that are wanting a response from the council but we were unable to give one until we had met as a full board. [LB666]

SENATOR CARLSON: Okay. Thank you. [LB666]

SENATOR FISCHER: Other questions? Senator Haar. [LB666]

SENATOR HAAR: Yes, thank you. Could you tell me from studying LB666, how would the representation on the board change? I mean, obviously the one big change is going from administrative to advisory, but how would the actual membership change? [LB666]

PETE SAWLE: The nonprofit conservation would be required to be reside in one of the four counties. Other than that, as far as the representation changing I'm not sure there are any major changes in representation. [LB666]

SENATOR HAAR: Because some of the members are still appointed by the Governor, and so on. [LB666]

PETE SAWLE: Yeah. In LB666 that would still...except for the county commissioners and the government board members, government agency board members. [LB666]

SENATOR HAAR: What do you think that you've done as you've been a member of the board that would change substantially if this went through? [LB666]

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Transcriber's Office

Natural Resources Committee
February 25, 2009

PETE SAWLE: I think the biggest thing if LB666 passed in its current form would be the likelihood that the Park Service wouldn't be able to form a cooperative agreement with us, so we would lose our funding and probably, you know, with the limited funding we'd have no programs, no projects, no ability to obtain easements and that would be the biggest changes. [LB666]

SENATOR HAAR: Thank you. And what role right now does the Park Service play in what you do as a council and in that area and how would it...would they just sort of be taking over the functions you're doing now or. [LB666]

PETE SAWLE: The Park Service, right now, works cooperatively with the council in any management issues that come up or projects. If the council was not there, the Park Service would work directly with the landowners but it would be on an individual case by case basis. You wouldn't have the information available out there on current projects, things that are going on, the resources that are available through the council at the office on different things that are available. I'm losing my train of thought here on everything...there's a whole area, broad resource there that's available through the council whether it's a voice for the locals, whether it's projects or it's education about the river that would be gone. And the Park Service would be dealing with each county on an individual board by board basis rather than dealing with the council and the council having their commissioner representatives on there would be able to take information back to their boards. [LB666]

SENATOR HAAR: What are some of the kinds of...you've mentioned projects a number of times. What are some of the projects the council has done? [LB666]

PETE SAWLE: We've put several permanent concrete vault toilets in along the river replacing the old, like, port-a-potty types. And then the MNWAG, the Middle Niobrara Weed Awareness Group. The council has been very active in helping fund that as far as for noxious weed control. We've given money for noxious weed control. We've done several day camps with the children in the area as far as natural resources education, working with the Park Service on that. We have one conservation easement in place, two more that we're currently working on. Boy, the list goes on and on. We've helped sponsor fuel load management awareness workshops. Actually, if I can look at my notes I don't want to leave anything important out. [LB666]

SENATOR HAAR: Okay, Sure. [LB666]

PETE SAWLE: And this would also be in the packet that was sent out to you. [LB666]

SENATOR HAAR: We get so many packets. [LB666]

PETE SAWLE: Yeah. I understand, and this one was...I don't know, maybe this one

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Transcriber's Office

Natural Resources Committee
February 25, 2009

wasn't big but it seems like it to me. [LB666]

SENATOR HAAR: I don't think I read your packet. Okay. [LB666]

PETE SAWLE: Yeah. I mean, there's...this is, you know, a list from the beginning on through here. Boy, let's see if I can find some major big ones. [LB666]

SENATOR HAAR: Well maybe you could... [LB666]

PETE SAWLE: I'm sorry, go ahead. [LB666]

SENATOR HAAR: ...give that to one of the pages and they could make copies because I'd like to see the kinds of things that you do. [LB666]

PETE SAWLE: Sure, yeah. [LB666]

SENATOR HAAR: If that would be okay with you? And then do you actually bring money to the table or do you just funnel money into these projects? [LB666]

PETE SAWLE: How do you mean? [LB666]

SENATOR HAAR: How are you funded, just tell me a little bit how you're funded right now. [LB666]

PETE SAWLE: Okay. Some of our funding comes from Nebraska Game and Parks and some comes from National Park Service. A lot of our projects like we did some car body cleanup removal from the river banks, things like that. Projects like that and toilets and things some of that money comes from the Game and Parks funding. Our staff, office costs and things associated with that comes from the National Park Service funding. Our easement money is grant money and I can't cite the exact sources until I get that back but it's grant money from several different sources. We've got grant money for road improvements, and repaving of roads down there. So but our main funding source is for day to day activities and our projects are from Park Service and Nebraska Game and Parks. [LB666]

SENATOR HAAR: And so, and I saw from your testimony, but you're saying if you were an advisory council you could no longer receive money or cooperate or what the with federal people. [LB666]

PETE SAWLE: Yeah. The Park Service cannot partner, and I'm sure that they'll...they're making a statement later, I don't want to talk for them but it's unlikely, I think, that the Park Service will partner--be in a cooperative agreement--with a council that is an advisory council only. Because that was the basis of the whole lawsuit that sent this to

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

Natural Resources Committee
February 25, 2009

the Nebraska Legislature and changed this to a council with management capabilities so the Park Service could partner with us, because in losing that lawsuit, they were no longer able to partner with us. So the Legislature changed us to a state-recognized agency with management powers, the ability to own property, the ability to work with zoning, and then the Park Service was in compliance with what the lawsuit was based on and now are able to have a cooperative agreement with us. [LB666]

SENATOR HAAR: Okay, thank you. [LB666]

SENATOR FISCHER: Other questions? I just have a few, if that's okay. [LB666]

PETE SAWLE: Sure, yeah. [LB666]

SENATOR FISCHER: I wanted to clarify on the membership changes. It does not just affect the conservation position on the council by having it that all the members must reside within one of the four counties. It would affect your position, it would affect the outfitters position. For example, if someone in Lincoln owned an outfitting business in the area but they didn't reside there they could not be a member of the council so it affects those positions too. [LB666]

PETE SAWLE: Right, yeah. It's just the nonprofit conservation that can be from outside the four counties. [LB666]

SENATOR FISCHER: Not in this bill. All of the positions have to be a resident in the county. [LB666]

PETE SAWLE: Yeah, Yeah. I understand that. [LB666]

SENATOR FISCHER: But currently, I was just saying an outfitter could be somebody lives in Lincoln and just owns an outfitters business and they could be appointed to the council as the current law is. So that's why the change is in there that they all have to be residents. Another thing, when the council was formed did all four counties have zoning plans? [LB666]

PETE SAWLE: When the council was formed, I don't believe so, but I wasn't on the council when it was formed. But I don't...I believe there was one county and I'm not sure which one didn't have... [LB666]

SENATOR FISCHER: I don't remember if it was one or two. [LB666]

PETE SAWLE: ...yeah. [LB666]

SENATOR FISCHER: But since all four counties have zoning plans now, why do you

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Transcriber's Office

Natural Resources Committee
February 25, 2009

believe the council should still have a voice in zoning if all four of the county boards have zoning plans. And it's my understanding that each of those plans addresses the corridor separately, they're treated separately and they have their own designation in those zoning plans. Why do you think the council should still have the power to veto a county zoning permit? [LB666]

PETE SAWLE: With regard to zoning, the council...and I mean ideally, the council would rather work directly with the zoning boards in setting up their zoning regulations so everything is in compliance with what the National Park Service also wishes for the scenic river corridor. If a county, if their zoning regulations are in with compliance with what the National Park Service requires, then the Niobrara Council, you know, has no issue with it. But what we would wish would be a standard format of zoning regulations for the corridor that was the same for all four counties. And this is an area that we would like to expand into working with the zoning boards on the counties to try and get everything the same for all four counties within the corridor, the zoning regulations all uniform. So. [LB666]

SENATOR FISCHER: Could you support that the council would have the power to review and make a recommendation on any zoning permit that would be filed with the county board within the corridor? [LB666]

PETE SAWLE: Should the council have their right to review? [LB666]

SENATOR FISCHER: Do you...would that be a compromise that you could support that the council could review that and make a recommendation to the county board but they would make the final decision? I don't want to put you on the spot. [LB666]

PETE SAWLE: Yeah. [LB666]

SENATOR FISCHER: You don't have to answer because you...that's fine. I just thought that was possibly an option out there to...so the council would have involvement with it but yet the local officials would still have the final say. [LB666]

PETE SAWLE: But it would be advisory only so we still wouldn't be able to manage the river. I mean, if they have the last say in it, they can still...we can tell them what we think but they can build whatever they want. [LB666]

SENATOR FISCHER: So you believe that the council has to have that veto power over the locally elected county boards? [LB666]

PETE SAWLE: I don't see it as a veto power. I see it more as working with the county on their zoning regulations to where you don't get a situation where you have...I mean, it should be clear cut on what you can and can't do with zoning. [LB666]

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Transcriber's Office

Natural Resources Committee
February 25, 2009

SENATOR FISCHER: Well, but what if you get to a situation where a county board wants to grant a zoning permit within the corridor and the council doesn't want it. Who wins? [LB666]

PETE SAWLE: Who wins? [LB666]

SENATOR FISCHER: Who wins. [LB666]

PETE SAWLE: Probably National Park Service. They're going to be the ones that ultimately, if it's within the corridor, I would think...that they're not. [LB666]

SENATOR FISCHER: I, maybe when the representative comes up he can clarify that. I didn't believe the National Park Service had a voice in zoning regulations. I thought within the corridor it was the... [LB666]

PETE SAWLE: Not necessarily with. [LB666]

SENATOR FISCHER: ...county boards or the Niobrara Council. [LB666]

PETE SAWLE: With zoning regulations, yes but... [LB666]

SENATOR FISCHER: Right. [LB666]

PETE SAWLE: ...but I mean ultimately with activities that they place in the scenic river corridor...I think if you....with the zoning permit. [LB666]

SENATOR FISCHER: But with the zoning permit, with the zoning permit if the county board says that this permit is fine for whatever and the Niobrara Council said no it isn't, we're going to veto it. How do you understand your current duty, do you trump the county board or will the county board decision trump you? [LB666]

PETE SAWLE: If the zoning permit that was in question didn't, wasn't consistent with the continued preservation of the scenic river corridor we would have to vote against it. [LB666]

SENATOR FISCHER: And that means it wouldn't happen? [LB666]

PETE SAWLE: Yeah, well, the council would vote against it. [LB666]

SENATOR FISCHER: But would that mean the permit would not be granted? [LB666]

PETE SAWLE: In the way that it's currently set up with the scenic river corridor, yes.

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Transcriber's Office

Natural Resources Committee
February 25, 2009

[LB666]

SENATOR FISCHER: Okay. The word advisory, if we take out the word advisory in the bill and substitute something else in, that should take care of some problems, do you think? [LB666]

PETE SAWLE: I'm sorry, could you please repeat that? [LB666]

SENATOR FISCHER: The word advisory, we're hung up on the word advisory here and with the National Park Service saying they won't deal with an advisory body. Some people think you're advisory already, in a lot of respects, so if the National Park Service isn't going to deal with an advisory body, if we take out the word advisory out of the bill and does that solve problems with that? [LB666]

PETE SAWLE: I believe the bigger issues are the management capabilities, you know, whether we have the ability to own property or work with zoning as far as...if we had no management powers, I don't think it's just the word advisory. It's having the ability to manage. [LB666]

SENATOR FISCHER: Okay. Thank you. Senator Haar. [LB666]

SENATOR HAAR: Thank you. [LB666]

SENATOR FISCHER: You shouldn't have been the first one up, Mr. Sawle, we just pepper you with questions. [LB666]

PETE SAWLE: No, that's fine. You know, I will try to find the information and answer as best I can, so. [LB666]

SENATOR FISCHER: And I appreciate that. Senator Haar. We're an inquisitive bunch on this committee. [LB666]

PETE SAWLE: Yeah, and this is what we've been waiting for is a chance to, yeah. [LB666]

SENATOR FISCHER: Oh, you bet. [LB666]

SENATOR HAAR: Again, since I didn't read your packet, I'll admit I don't know where it went. [LB666]

PETE SAWLE: Yeah. [LB666]

SENATOR HAAR: But how wide is the corridor along the river? [LB666]

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Natural Resources Committee
February 25, 2009

PETE SAWLE: It varies on the western end, which is the end that's more where the tourism goes, is more exposed to people, it's quite a bit wider. As you go downstream it narrows up quite a bit in some areas, it's just the first level up above the river level. In areas where the major access points, the roads that are coming through that are intersecting the river, the corridor will go up either side of the road for a ways to protect the viewshed in there. [LB666]

SENATOR HAAR: Like five, ten miles or. [LB666]

PETE SAWLE: No, no. [LB666]

SENATOR HAAR: Okay. [LB666]

PETE SAWLE: Boy, I couldn't tell you at the widest point. [LB666]

SENATOR HAAR: But just to give me an idea because I don't know. [LB666]

PETE SAWLE: Directly along the river where there's not a major road intersecting, on average no more than a quarter of a mile and then there's some areas where I believe it'll go a little more than a mile away from the river up a major...like one of the bigger highways, there are no major highways up there, but one of the bigger highways, you know, it'll go up the road just to insure against development there. [LB666]

SENATOR HAAR: And then, who set those boundaries, is that? [LB666]

PETE SAWLE: National Park Service. [LB666]

SENATOR HAAR: National Park Service, so that has nothing to do with you. Do you have an instances where you trump the local zoning authorities? [LB666]

PETE SAWLE: Not that I'm aware of. [LB666]

SENATOR HAAR: You could, but it hasn't happened? [LB666]

PETE SAWLE: Yeah. Boy, you know, the permits that have come before us that I've voted on have been very well prepared building permits with drawings and everything. And they're in compliance, they usually sail right through. [LB666]

SENATOR HAAR: Would that be for things like cabins or? [LB666]

PETE SAWLE: Yeah, for cabins, things like that, homes. You know, and it'll deal with the screening issues and building height and things like that but there may have been

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

Natural Resources Committee
February 25, 2009

before I served on the board some. There are instances if we know something is coming up where the development committee members may go look at a site before we vote. But I don't know of any that have been an issue, you know. [LB666]

SENATOR HAAR: Have you seen...you mentioned you'd really like to see continuity from one county or not just continuity, but actually the same zoning for all four counties. Could you describe a little bit for me how those are different right now? [LB666]

PETE SAWLE: Oh, specifically I couldn't tell you, I mean, from one county to the next who has major differences. Some counties have got zoning regulations that are closer to what like would be in the Park Services' general management plan. Some of the differences are just wording. It's just trying to get everything the same to make it easier for everyone to make decisions to make it easier for people that are applying for permits or wanting to do things to be able to know ahead of time if it's going to work, if it's going to be in compliance. You don't run into that many zoning issues or things that people are wanting to do that are not within compliance because most of the people that are in that area want to see it continue the way that it is, you know. [LB666]

SENATOR HAAR: Good. Okay, well, thanks. [LB666]

SENATOR FISCHER: Senator Carlson. [LB666]

SENATOR CARLSON: Senator Fischer, just one more. This really isn't a question, it's kind of a request. We got the copy of the projects. There's ten years of them and I don't...you know, I can't sit here and go through these. I've scanned them. I would ask you maybe before the end of the hearing today if you'd look through here and see if you can't identify a project or two that you referred to as a signature project. [LB666]

PETE SAWLE: Absolutely. [LB666]

SENATOR CARLSON: In other words, what kind of thing that you like to have come to somebody's mind when they hear Niobrara Council and this is what we've done. [LB666]

PETE SAWLE: Okay. Yeah, sure. [LB666]

SENATOR CARLSON: Thank you. [LB666]

PETE SAWLE: And if I could add one more thing. At the end of our statement, that's one of the things that we would like to stress is that we would really enjoy the legislative committee coming up to that area and spending some time and seeing some of the things that we've done and seeing the area. [LB666]

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

Natural Resources Committee
February 25, 2009

SENATOR FISCHER: One final question. [LB666]

PETE SAWLE: Sure. [LB666]

SENATOR FISCHER: On the boundaries of the corridor, how are those established? I think they're established under the management plan that the Park Service comes up with. Am I right or wrong on that? [LB666]

PETE SAWLE: I believe you're right, but I'm going to leave that for Park Services because I believe he's coming up... [LB666]

SENATOR FISCHER: Okay. [LB666]

PETE SAWLE: ...to speak and he can tell you how it was established. [LB666]

SENATOR FISCHER: And you want to leave now. [LB666]

PETE SAWLE: So if there's no more questions. [LB666]

SENATOR FISCHER: Thank you. Thank you very much, appreciate you being here today. [LB666]

PETE SAWLE: Yeah, thank you. [LB666]

SENATOR HAAR: Madam Chairman? [LB666]

SENATOR FISCHER: Oh. [LB666]

SENATOR HAAR: I would just ask... [LB666]

SENATOR FISCHER: Senator Haar wants to ask you just one more. [LB666]

SENATOR HAAR: ...just one more question. I would like to have one of those folders now that we have heard, you know, had this session and so on that you were handing out...that you sent to us apparently. [LB666]

PETE SAWLE: One of those what? [LB666]

SENATOR HAAR: You said you sent us some information. [LB666]

PETE SAWLE: Oh, the packet? [LB666]

SENATOR HAAR: Yeah, the packet. [LB666]

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

Natural Resources Committee
February 25, 2009

PETE SAWLE: Yeah, I submitted one and there's one there for a copy. So there is an extra one, right now that you could probably look at before you get a copy of it. [LB666]

SENATOR HAAR: I don't need it right at this moment but if you could get them I appreciate that. Thank you, that's it. [LB666]

PETE SAWLE: Yeah, yeah. So okay, they have one there for copy so. [LB666]

SENATOR FISCHER: Thank you, Mr. Sawle. [LB666]

PETE SAWLE: Yeah, thank you. [LB666]

SENATOR FISCHER: Next opponent, please. Good afternoon. [LB666]

DAN FOSTER: (Exhibit 10) Good afternoon, Senator. I figure it is probably appropriate that I come next since I am the National Park Service representative. I am Dan Foster, that is D-a-n F-o-s-t-e-r, and I'm the superintendent at Niobrara national scenic river. Since the designation of the Niobrara national scenic river in 1991, the National Park Service has solicited local participation in the management of this national treasure. Under a general management plan completed in 1997, the National Park Service shared management of the scenic river with the Niobrara Council. However, a Federal Court Judge ruled in 1991 that the National Park Service could not delegate responsibility to a local entity not bound by statutory obligations of the National Park Service or the Wild and Scenic Rivers Act. In 2000, the Nebraska Legislature passed the Niobrara Scenic River Act which reconstituted the Niobrara Council with the express authority and responsibility to manage the Niobrara scenic river corridor with the National Park Service. This reorganization of the Niobrara Council as a subunit of the state government authorized the Niobrara Council to assist the National Park Service in river management and charged it to enforce zoning regulations within the Niobrara scenic river corridor under the guidance of the Federal Wild and Scenic Rivers Act, or the guidance of a general management plan as written by the National Park Service. This gave the Niobrara Council specific statutory authority and obligations to work under the auspices of the Wild and Scenic River Act and a plan developed by the National Park Service. In addition, the Niobrara Council was given direct authority to purchase, accept gifts of or to trade real estate and may obtain conservation easements. This provided the Niobrara Council and the National Park Service with a provision for a locally legislated body to purchase lands or easements as allowed under the National Wild and Scenic Rivers Act and the enabling legislation of the Niobrara national scenic river. As a result of this legislation and due to the fact that the Niobrara Council now had authority to affect change, a new cooperative agreement was established between the National Park Service and the Niobrara Council in 2004 with the objective being to address selected stewardship issues with respect to the management of the scenic river

Natural Resources Committee
February 25, 2009

and outlined five areas in which the Niobrara Council was to participate, and these being funding, land protection, infrastructure improvement, noxious weed control, and resource management and education. In 2007 a new general management plan was completed for the Niobrara national scenic river and the Niobrara Council was a major cooperator in its completion. The plan delineated the boundaries of the national scenic river and identified the outstandingly remarkable values that formed the basis for management of each river segment. In addition, the plan called for continued cooperative management of the river with the National Park Service providing stewardship through federal, state, and local partners on a landscape that would remain largely in private ownership. Thus, the cooperative relationship between the National Park Service and the Niobrara Council was strengthened. We've already mentioned some of the projects that the Niobrara Council has completed, but this bill would legislatively alter four key components of the Niobrara Council that entice a cooperative partnership by the National Park Service in management of the Niobrara national scenic river. These are one, removing Niobrara Council zoning oversight ignores legislative intent to establish a local body specifically charged to protect the scenic river's free-flowing condition, water quality, and outstandingly remarkable values and by removing this authority and placing it only in a county commissions, the focus of protecting these resources is obliterated and leaves this protection of these resources to bodies with widely varying agendas. Number two, revocation of Niobrara Council ability to hold land or conservation easements minimizes local ability to directly protect lands within the scenic river corridor and places a greater onus on the National Park Service and the federal government to move forward in this area. May I continue and finish? [LB666]

SENATOR FISCHER: Yes, please continue. [LB666]

DAN FOSTER: I have two more points. Relegating the Niobrara Council to an advisory capacity removes their authority to act. This would be contrary to the federal court mandate that the National Park Service not delegate any management oversight to a powerless council. Under this scenario, the National Park Service would not be able to participate with the Niobrara Council in cooperative efforts. And number four, the proposed designation may remove the ability of the National Park Service to work with the Niobrara Council and may constitute a violation of the Federal Advisory Committee Act which states that only the federal government can establish an advisory group for a federal agency. The National Park Service continues to support the efforts by the Niobrara Council to fulfill its legislated mandates. This bill undermines years of hard work and if enacted, could impede the progress that the state of Nebraska, the Niobrara Council, National Park Service, and other cooperators have made in providing a local voice with authority to act and meet statutory and legislative requirements to protect the free-flowing condition, water quality, and outstandingly remarkable values of the Niobrara national scenic river. As a result, the National Park Service is opposed to the passage of this bill. I would be happy to attempt to answer any questions. [LB666]

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Transcriber's Office

Natural Resources Committee
February 25, 2009

SENATOR FISCHER: Thank you, Mr. Foster. Are you here today representing the National Park Service? [LB666]

DAN FOSTER: Yes, ma'am, I am the superintendent of Niobrara national scenic river. [LB666]

SENATOR FISCHER: And whose authority are you here on? Did your superior ask you to come today or...? [LB666]

DAN FOSTER: My regional director knows that I'm here, yes, ma'am. [LB666]

SENATOR FISCHER: Okay. Thank you. Any questions? Senator Haar. [LB666]

SENATOR HAAR: Thank you. Excuse me. In the four things that you enumerated here about the four key components, the last one you use the word may a lot. [LB666]

DAN FOSTER: Yes. [LB666]

SENATOR HAAR: Would that have to be determined by a court, then? [LB666]

DAN FOSTER: Yes, I believe it would. It may have to be determined by the National Park Service, but the only way that we can deal with a committee that is established by the Federal Advisory Committee Act is by legislation or Congress. And that's how the Niobrara national scenic river, excuse me, the Niobrara Council Advisory Committee was established under the national scenic river designation in 1991. So that's one. The President could designate it or the Department of the Interior could designate it, so. [LB666]

SENATOR HAAR: Okay, so are these four items the four key components you listed, are these things that the Park Service could do by itself? [LB666]

DAN FOSTER: We do not have the authority to manage zoning. The zoning is done by the local entities. However, the one thing that is very nice and is very unique about the legislation setting up the Niobrara Council is that it gave the Niobrara Council to focus their attention on the management of the Niobrara national scenic river. And their zoning authority is only within that corridor and so they focus on that. They're not focused on all these other issues that do come to the county commissions and so that's a very nice, appealing aspect of that particular legislation. [LB666]

SENATOR HAAR: So you mentioned something about zoning and that's come up before. So if LB666 passes the way it is and now counties--county boards--do the zoning, if they would not follow the rules for some project within the corridor designation,

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

Natural Resources Committee
February 25, 2009

could the Park Service step in then, or not? [LB666]

DAN FOSTER: That's a good question. Under my estimations right now I don't believe that we could, okay? However, what happens in those situations where the county commissions may permit things that would be outside of what we would like to see and what the Niobrara Council helped the National Park Service develop in the general management plan, if the county commission doesn't agree with those things, then it eventually degrades the quality of the outstandingly remarkable values that we've seen. And it was asked before, what would the Niobrara Council like to see in zoning ordinances? The National Park Service would like to see consistent zoning ordinances as well. In specific, we would like to see the playing field leveled, i.e. everybody who comes to the table to present something to a county or a Niobrara Council zoning commission, they all need to be coming from the same position. And we see that that may not be happening at the current level because some people, if they're rated in this category they don't have to present anything to the county commissions or the Niobrara Council. They could just do what they want to do. [LB666]

SENATOR HAAR: Could you give an example of that? [LB666]

DAN FOSTER: We have one example right now, in the situation where agriculture is allowed to put structures up that they would like to put up. And we have one person who is an outfitter who also claims to be an agriculture person who is building a structure that...it's unclear what the structure is going to be used for but we're pretty sure it's going to be used for outfitting. Yet, we have no authority to say no to that, even though it's pretty clear that it's not going to be used for agriculture. And so because he's coming to the county commissions as an agriculture person, he's not subject to the same regulations as other people. [LB666]

SENATOR HAAR: So even the council can't. [LB666]

DAN FOSTER: No. [LB666]

SENATOR HAAR: Is this council unique in the United States or are there other examples of this? [LB666]

DAN FOSTER: I believe this is very unique. I do not know of any other situations in which the United States has been told that we will participate with a local entity that has authority to act. And I think it's a very unique and also a very great opportunity to have a local voice in what the National Park Service does on behalf of the people of the United States. [LB666]

SENATOR HAAR: So it's one case we can tell the federal government what to do. [LB666]

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Transcriber's Office

Natural Resources Committee
February 25, 2009

DAN FOSTER: It's one case where...it's not necessarily tell. [LB666]

SENATOR HAAR: I know. [LB666]

DAN FOSTER: But it's...we work together to achieve a common goal. [LB666]

SENATOR HAAR: Gotcha. Thank you. [LB666]

SENATOR FISCHER: Any other questions? Senator McCoy. [LB666]

SENATOR McCOY: Thank you, Senator Fischer. And thank you for your testimony this afternoon, Mr. Foster. You touched on it a little bit earlier, but I guess elaborate if you will on what you would do if this bill were to pass, and I guess specifically would this require you to change your general management plan? Kind of elaborate if you would on what would be the ramifications in your judgment. [LB666]

DAN FOSTER: This bill does not require us to change the general management plan, as our general management plan says that we will work with other state, federal, and local entities including private landowners. We have the authority to do that, however, the Niobrara Council has a unique situation in which they can come as the voice of the people and work on behalf of the people in the local area and work with the National Park Service. If this bill passed and the authority to act was taken away from the Niobrara Council for land ownership, we may have to do that particular aspect with individual landowners. We may have to do that with other conservation organizations or, as a last resort, the National Park Service may have to act on our own and either purchase land to purchase the easements, but the last, the very last, resort, the National Park Service does have condemnation authority for a small segment of land. We don't want to go there at all. We would much rather work with a local entity that has the authority to hold easements. As with regard to the zoning ordinances, we would probably work straight with the county commissions in working with them and developing zoning ordinances that would work in that corridor, and also to try to affect some similar ordinances outside the corridor, but we don't have any authority over that, so. [LB666]

SENATOR McCOY: So would you have any other option other than managing the river and the corridor on your own? Is there any other option that would see other than that? [LB666]

DAN FOSTER: We still do have the option to do cooperative agreements with other agencies or entities that have the authority to do things on land. For instance, if an agency owns land, a private individual owns land, we can work with them. So yes, we do have that authority. [LB666]

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

Natural Resources Committee
February 25, 2009

SENATOR McCOY: Okay. Thank you. [LB666]

SENATOR FISCHER: Thank you, Senator McCoy. Other questions? Senator Carlson. [LB666]

SENATOR CARLSON: Senator Fischer. Mr. Foster, does the National Park Service now have the power of eminent domain? [LB666]

DAN FOSTER: Could you explain your question for me? [LB666]

SENATOR CARLSON: Well, my next question is going to be does the Niobrara Council have the power of eminent domain to take property? [LB666]

DAN FOSTER: The National Park Service has the authority to do some condemnation. I can't give you the exact amount but we have...and it's written in the Niobrara national scenic river legislation. It was very limited, and we don't even want to look at that, we don't even want to go there. [LB666]

SENATOR CARLSON: Okay. So the council has never entered into that? [LB666]

DAN FOSTER: As far as I understand, the council has never been delegated that. The National Park Service has not delegated that. The only other direct authority that the National Park Service has is the river itself. We have no authority on land as we own no land. And we would prefer to keep the land in private and local ownership. [LB666]

SENATOR CARLSON: I'd be interested in a little bit of your background. You've told us who you are and what your position is, but what's your training, where did you come from, where do you live? [LB666]

DAN FOSTER: I currently live in Valentine. I've worked with the National Park Service for 18 years, I'm going on my 18th year. I grew up in Georgia and Kentucky, I'm a second generation college person. My father was a farmer and he went to college and he encouraged me to go to college so I went to college. I graduated from Brigham Young University, worked for the state of Utah in the Department of Natural Resources for 11 years as a geologist and a wildlife biologist in energy production and wildlife habitat and habitat restoration and management. In 1992 I went to the National Park Service and through subsequent and various moves I've come to Nebraska. [LB666]

SENATOR CARLSON: Okay, thank you. What--because I don't know this--four of the members of the council are four county commissioners? [LB666]

DAN FOSTER: Yes. [LB666]

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

Natural Resources Committee
February 25, 2009

SENATOR CARLSON: And how many more members of the council are there? [LB666]

DAN FOSTER: There are 14, 16 members of the council, all told. [LB666]

SENATOR CARLSON: So it would be 12 other members. [LB666]

DAN FOSTER: There are twelve others. There are two members of the council that are federal government employees, myself, as a representative of the National Park Service, and then there is a representative of the U.S. Fish and Wildlife Service. There are four county commissioners. There are two representatives from the NRDs,...the I believe it's the Middle Niobrara and the Lower Niobrara NRD. There is a representative from the Nebraska Game and Parks Commission. There are four landowners, one from each of the four counties, Cherry, Brown, Rock and Keya Paha County. There is an outfitter representing recreation, there's a timber person, and then there is a person representing the conservation groups and, in our opinion, that's a person who represents more than just the local community. [LB666]

SENATOR CARLSON: Okay. Thank you. [LB666]

SENATOR FISCHER: Other questions? Did you have some, Senator Cook? Okay. I have a few. On the eminent domain issue, what I hear from constituents and what I hear from landowners along the corridor is fear that if this bill passes the Park Service won't work with the council anymore and they're going to come in and take our land. How would you respond to that? Do you...is there a plan by the Park Service that if the bill passes that you're going to exercise your powers of eminent domain? [LB666]

DAN FOSTER: No, ma'am, there's no plan like that. We would then revert to working with the county commissions in zoning... [LB666]

SENATOR FISCHER: Right. [LB666]

DAN FOSTER: ...and then we would work with other conservation agencies, landowners, and other agencies in doing the land protection that we feel that the Niobrara Council has been doing for us. [LB666]

SENATOR FISCHER: If the Niobrara Council were still able to hold and contract for conservation easements, I assume you would continue to work with the council on that then? [LB666]

DAN FOSTER: Yes. Yes, we would. [LB666]

SENATOR FISCHER: How do you decide funding for the council? Because I know

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

Natural Resources Committee
February 25, 2009

that's another concern with members of the council too, who have told me that if this bill passes they're going to lose \$125,000 from the National Park Service for funding. How would you respond to that? [LB666]

DAN FOSTER: I would respond to that, that if we see through the bill, if it passes, that we can't work with the Niobrara Council, then we would remove that funding and put that funding to uses with either private landowners, other agencies that could accomplish the same things that we have been trying to do. However, if the Niobrara Council still has the ability to accomplish the work that we would like to see done and we believe that the Legislature wanted to see done, then we would continue to work with the Niobrara Council. [LB666]

SENATOR FISCHER: So if the Niobrara Council were still able to contract for easements, you could still work with them on that. If they...if the zoning language was taken away, you could work with the local county commissioners on that. Would there be a problem with your funding the council then? [LB666]

DAN FOSTER: No, there would be no problem in funding the council, but may I expand just a little bit? [LB666]

SENATOR FISCHER: Of course. [LB666]

DAN FOSTER: If the zoning authority was taken away, we would have to work with the county commissions but we would then be working with a county commission who doesn't have that specific focus anymore. The Niobrara Council had been told that they will look at the scenic river corridor and manage it under the auspices of the Wild and Scenic River Act. If we're working with the county commissions, they don't have that same responsibility and they may not look at zoning with the same eyes that we do and it's a much, much more difficult process. And, however, we feel that the Niobrara national scenic river is a state treasure. We feel that there are many people and most of the people in the state that would love to see it protected and don't want to see things that are allowed to go on in that corridor that would diminish or degrade the quality of the experience of the people that go on the river or the people that own land there. So having a focus for zoning ordinances is really important. [LB666]

SENATOR FISCHER: If you look at the transcript from the '98 floor debate on LB656, it was said on the floor, and I think this determines to some extent what the legislative intent was, that each of the counties will have their own zoning and do that, but the council will coordinate it, and that was by Senator Jones. Senator Witek then said, okay, so the county will be the higher authority over the council? Senator Jones: Yes. Senator Witek: And that's very clear. Senator Jones: For the zoning part, yes. So currently right now the county, according to legislative intent, has the higher trump card, I guess, on zoning by that legislative intent. Do you interpret the current law that way? [LB666]

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

Natural Resources Committee
February 25, 2009

DAN FOSTER: No, I don't. [LB666]

SENATOR FISCHER: Okay. [LB666]

DAN FOSTER: I haven't seen that in the current law. [LB666]

SENATOR FISCHER: Okay. [LB666]

DAN FOSTER: The way I interpret the current law is that the counties are responsible to initiate a zoning ordinance. They are... [LB666]

SENATOR FISCHER: Okay, but I was just... [LB666]

DAN FOSTER: Yeah. [LB666]

SENATOR FISCHER: ...with court cases, you know how that goes. [LB666]

DAN FOSTER: Right. [LB666]

SENATOR FISCHER: We pull out transcripts. That's why we all have to be careful what we say... [LB666]

DAN FOSTER: Yeah. [LB666]

SENATOR FISCHER: ...because transcripts are pulled out. And I think it was very clear that the legislative intent was that the counties have the ultimate authority on zoning. [LB666]

DAN FOSTER: And that may be so, but what came out in the legislative bill appears to be different. [LB666]

SENATOR FISCHER: Okay. [LB666]

DAN FOSTER: So... [LB666]

SENATOR FISCHER: Another question. The way I interpret the court case, as I've looked at it, the Park Service has the ultimate authority on how the Niobrara River is managed. Would you agree with that? [LB666]

DAN FOSTER: Yes. [LB666]

SENATOR FISCHER: How do you utilize the council then? You need the council, I

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

Natural Resources Committee
February 25, 2009

believe, in order to have any effect on the zoning. Is that right? [LB666]

DAN FOSTER: Well, remember, we put together an agreement and in that cooperative agreement that we had we gave the Niobrara Council five areas that we wanted them to work in. One is that they needed to go outside of themselves and to garner additional funding besides what they got from the Legislature and from the National Park Service, and we feel that they have done that specifically through getting additional money for easements. [LB666]

SENATOR FISCHER: And they've done a good job. Yes. [LB666]

DAN FOSTER: We think they've done a very good job of it, and we think that that should continue because they are a local voice and they are able to do things that if we brought in federal dollars we would have federal mandates tied to those dollars as well. And sometimes those are good and sometimes those are bad. So, but we think it's good to have a local authority... [LB666]

SENATOR FISCHER: Yes. [LB666]

DAN FOSTER: ...that can handle the money, okay? The second area was land protection and the land protection, that's where the easements really come in, whether it's owning land, trading land, or buying land easements. If the Niobrara Council has the authority to do that, then the National Park Service can step back and we don't have to do that. Yet, if the lands are owned in...by the Niobrara Council and they are delegated that responsibility by the state Legislature, they are also or have been told under the original law that they will manage it according to the Wild and Scenic Rivers Act. So we can turn that over to them and feel comfortable that they'll do a good job of doing that. [LB666]

SENATOR FISCHER: So do you believe that the National Park Service has delegated authority to the Niobrara Council? [LB666]

DAN FOSTER: We believe that we have shared authority with them. [LB666]

SENATOR FISCHER: Do you believe you've delegated authority to the council in regard to the zoning or to easements... [LB666]

DAN FOSTER: No, that... [LB666]

SENATOR FISCHER: ...or to management activities? [LB666]

DAN FOSTER: We don't have any authority to do any zoning. [LB666]

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

Natural Resources Committee
February 25, 2009

SENATOR FISCHER: Have you delegated authority, though, with management? I'm trying to remember the wording. I've been looking this over and I don't know if it's in current statute. Doesn't it say that the Park Service has delegated the...delegated duties, management duties to the council? How does that...how does that read. Do you remember? [LB666]

DAN FOSTER: In the general...I can't remember the exact words, but we have delegated some responsibilities for land protection to the Niobrara Council, and that's in the general management plan. [LB666]

SENATOR FISCHER: Oh, okay. [LB666]

DAN FOSTER: And the land protection, again, is the acquisition of lands or easements to protect them, and the Niobrara Council has done a very good job of coming up with a rating system of how they would...how they would rate easements that they would want to look at, and we agree with those. We've sat in on those discussions to help develop those rating systems, so... [LB666]

SENATOR FISCHER: In effect, if you were...can the Park Service obtain conservation easements? [LB666]

DAN FOSTER: Yes, we can. [LB666]

SENATOR FISCHER: So have you delegated that authority to the council that they're doing the easements instead of you? [LB666]

DAN FOSTER: We have delegated that authority but we can still do it, but we would, again, the general management plan said that the National Park Service desires to work on the river with land that remains largely in local ownership. [LB666]

SENATOR FISCHER: And I appreciate that greatly, and I'm being sincere about that. I think that is necessary and needed. Did the courts say who you could or could not partner with? [LB666]

DAN FOSTER: No, they did not. To my knowledge, they did not. But what we cannot do is we cannot give up management authority to any agency that doesn't have authority to do things. For example, we couldn't partner with a landowner...we couldn't partner with an individual who does not own land and have them make management decisions about that land. It just...we can't do that, so... [LB666]

SENATOR FISCHER: Nobody can do that. [LB666]

DAN FOSTER: Yeah. [LB666]

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

Natural Resources Committee
February 25, 2009

SENATOR FISCHER: You have to work with the person that holds the deed. [LB666]

DAN FOSTER: Right. And, unfortunately, that's what the National Park Service appears to have done in the '97 general management plan. [LB666]

SENATOR FISCHER: When the first...I hate to belabor this but I'm just...I'm happy you're here and I get to do this. (Laugh) [LB666]

DAN FOSTER: That's fine. [LB666]

SENATOR FISCHER: You're a wealth of information. In the first council that was set up, that was by an interlocal agreement, correct? [LB666]

DAN FOSTER: The first true Niobrara Council? [LB666]

SENATOR FISCHER: Management, advisory, management, yeah. [LB666]

DAN FOSTER: Yeah, it wasn't...it wasn't the advisory committee. That was set out by Congress. But the first Niobrara Council was set up by the four counties in an interlocal agreement, yes. [LB666]

SENATOR FISCHER: And the current council was established by Nebraska statute, by action of this body. [LB666]

DAN FOSTER: Yes. Yes. [LB666]

SENATOR FISCHER: Correct? [LB666]

DAN FOSTER: Yes. [LB666]

SENATOR FISCHER: Wouldn't you say that by establishing the Niobrara Council, say they are established in statute and that's what gives them the authority to partner with you? [LB666]

DAN FOSTER: That does give them authority to act. That gives them authority to effect change on the ground. However, they were given some specific authorities that made it available for the National Park Service to partner with the Niobrara Council and those authorities specifically were zoning and the ability to own land. [LB666]

SENATOR FISCHER: Okay. I appreciate that. Thank you very much. Any other questions? I see none. Thank you, Mr. Foster, for being here today. [LB666]

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

Natural Resources Committee
February 25, 2009

DAN FOSTER: Thank you. [LB666]

SENATOR FISCHER: Next opponent to the bill, please. If I may, I would like to say that I have a bill coming up in Revenue Committee and so if I leave, I apologize, but I do have a bill coming up and I'll be flagged out of here maybe soon. But I want to apologize, especially to my local people who came down here, if I have to leave. So welcome. [LB666]

LANCE KUCK: (Exhibit 11) Thank you, Senator Fischer, members of the committee. My name is Lance Kuck, L-a-n-c-e K-u-c-k, and I with my family own a ranch on the Niobrara River in Rock County, north of Bassett, Nebraska. I am also a Rock County landowner representative to the Niobrara Council, but I come here today before you as a landowner first, a council member second. Since I derive the majority of my income from our ranch as a hunting outfitter and a rancher, I must oppose LB666. There has been and will be testimony stating the possible results of LB666's passage will be the end of the Niobrara Council, and I agree with this. Without the ability to own land or hold easements, oversee zoning, or physically manage the river corridor in any way, the council would serve little or no purpose to the National Park Service, local landowners, or the citizens of Nebraska. These responsibilities give credibility to the 16 members of the Niobrara Council and allow them to hold some level of accountability over the National Park Service. This accountability, however large or small it may be, is the last bit of local control left in the scenic corridor, the last bit of accountability that a landowner can count on to help them continue with a livestock production system that may not fit the federal standards of a national park. Without the Niobrara Council, how would a landowner approach with concerns over National Park Service policy and how this policy would affect their private property? I've been told this responsibility would fall on the county commissioners. Of the four counties bordering the scenic river, two county commissions voted to oppose LB666, one chose to monitor, and one county commission voted to oppose the bill, then discussed the possibility of changing their motion and voting again at their next meeting. This inconsistency and the presence of widely varying agendas among counties and commissioners will do nothing to help facilitate effective management of a mainly private landscape with largely federal oversight. Without the Niobrara Council's oversight, the only check in place to maintain zoning at a standard that meets the requirements of a wild and scenic river is direct federal intervention, which could include condemnation. If the Niobrara Council is relegated to an advisory board or if it just loses its zoning oversight, it will be local control that will be lost forever. The National Park Service will move on and fulfill their responsibilities to the citizens of the United States without the Niobrara Council's assistance. It will be highly unlikely that the state of Nebraska will have the opportunity to go back and say, we screwed up, we need to have some of this oversight back. The National Park Service will continue down their path of more and more oversight and considering the fact that the wild and scenic river designation will be with us forever, I hate to think of what the river may look like in 100 years. The Valentine office of the

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Transcriber's Office

Natural Resources Committee
February 25, 2009

National Park Service opened in 2001 with one full-time staff member and today there are, and I believe this is correct, six full-time employees with an additional person in the selection process, advertisements for three seasonal employees, and discussion about other full-time positions. While this is going on, we are discussing weakening or essentially getting rid of the only local control we have left. It is my belief that this hearing today should be on proposed legislation that would strengthen the Niobrara Council and maybe go so far as to create a completely new entity with not only zoning oversight but increased management abilities in all components of the Niobrara national scenic river. In closing, this bill's origin is based on, in addition to zoning oversight, water jurisdiction and the holding of conservation easements. The Niobrara Council questioned if surface appropriations were state sponsored activities that the council would be responsible for reviewing and the council was told no, with no further action being taken or considered. Believing that taking away the council's ability to hold conservation easements will somehow make them disappear is not true. If I would ever choose to exercise my rights as a private landowner and donate or sell a conservation easement, I would be better suited to have a local group like the Niobrara Council hold that easement rather than a federal entity or a land trust based in New York City. Thank you for your time today and I would be happy to answer any questions. [LB666]

SENATOR FISCHER: Thank you, Mr. Kuck. Are there questions? Senator Carlson. [LB666]

SENATOR CARLSON: Senator Fischer. Mr. Kuck, you use the term "oversee zoning." Now if I'm understanding it right, the counties have the zoning authority, not the council. So what does that mean, oversee zoning? [LB666]

LANCE KUCK: Oversee zoning, we go back to what has been stated so far. The counties all have zoning in place now. At the time of the formation, three counties had zoning, one didn't. When the council oversees zoning, right now our task has been or the tasks that we've chosen to follow has been solely to coordinate zoning to get at that consistency, the consistency that the Park Service desires. I use oversight as kind of a generalized term because when we start saying to regulate or something else, I don't believe that's completely correct either. I like to see it as the council has the ability to oversee the zoning in...or the council has the ability to oversee the zoning in the corridor and, by overseeing that, we hopefully facilitate it to a level that can keep everybody happy at this point in time. [LB666]

SENATOR CARLSON: Would "monitor" be a word that would fit? [LB666]

LANCE KUCK: "Monitor" right now does not fully reflect our total...our duties, but I would feel right now as a council what we are doing is monitoring. That doesn't mean tomorrow or next month or we would be required to take some action, but at this point in time right now we would be monitoring. I hope that answers your question. [LB666]

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Transcriber's Office

Natural Resources Committee
February 25, 2009

SENATOR CARLSON: Well, I think I'm seeing or I'm believing that "oversee" simply means you're watching things. [LB666]

LANCE KUCK: Uh-huh. [LB666]

SENATOR CARLSON: I don't know how that's different than monitoring. You're paying attention to what's happening. You may be trying to have input into zoning of the various counties, but that's not your decision. That's a county decision. [LB666]

LANCE KUCK: The county's decision to...you would hope the county would obviously choose to zone the corridor. We'll just speak specifically to the corridor because the rest of the county has everything in place. The rest of the county does not have this third party called the National Park Service involved either. But the county comes up with the zoning regulations. The council then strives to achieve continuity throughout the corridor, but at the same time, if there is a...the one thing that hasn't come out, what if there's a variance? The county commissioners can grant variances and waivers. If there's something that's not consistent there then the council has an issue as well. So that would go above...we would still be overseeing but at that time you would be required to take some action. Statutorily, with the way things are now, we'd be obligated to do that. [LB666]

SENATOR CARLSON: So now the council actually has the authority to override a county's zoning decision. [LB666]

LANCE KUCK: Yes. [LB666]

SENATOR CARLSON: Okay. [LB666]

LANCE KUCK: There is a process you go through on review of that as well. [LB666]

SENATOR CARLSON: Okay. Thank you. [LB666]

SENATOR FISCHER: Other questions? Senator Haar. [LB666]

SENATOR HAAR: Thank you. What would that process be? [LB666]

LANCE KUCK: If I remember correctly, and I know we've gone over this and I can tell you specifically, the county, if there's a zoning...let's say, we'll use a variance granted, the council would have the ability to deny that, which would be essentially a documented procedure, I guess. Then if I remember correctly, and somebody is going to have to answer this better than me because we've never had to do this and I...in the short term I don't foresee it, is it all right if we go over this quickly? [LB666]

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Transcriber's Office

Natural Resources Committee
February 25, 2009

SENATOR HAAR: Quickly, yeah. [LB666]

LANCE KUCK: The council...I guess I'm not sure where this is, what the exact...this was in...this should have been in the packet you got. Okay. If the governing...if the council rejects a zoning regulation or variance, the governing body enacting the regulation or variance has six months to present an alternative to the council. If no alternative is proposed or the alternative is also rejected, the council may adopt zoning regulations for such area. If the counties...this is when they're going through the zoning in the situation we're in. This is where we could go back without...being counties without zoning, the council may develop it. I'm trying to get to the part where we can override. Okay, the council has 90 days after the date of that proposal is received to make a determination of whether or not the proposed action is consistent with the purposes of this section, and it's Section 72-2011. If the council determines that the proposal is not consistent with the purposes of this section, the council shall notify the agency and the agency shall proceed with the action until after justification for the action has been submitted to the Governor and approved by the Governor in writing. [LB666]

SENATOR HAAR: Okay. [LB666]

LANCE KUCK: So there is a Governor in there too. [LB666]

SENATOR HAAR: Now earlier we heard some concerns about transparency and the council not listening. Could you respond to that from your viewpoint? [LB666]

LANCE KUCK: Yeah, as far as transparency, we go to any length any citizen would desire as far as our minutes are available. We don't...we don't engage in anything that would really be not transparent. [LB666]

SENATOR HAAR: Do you go into Executive Session then too? [LB666]

LANCE KUCK: Those are only personnel issues. No, we have...and it's been raised that on occasion that our reliance on legal counsel is too much sometimes, but at the same time we're very careful about Executive Session. We're very careful about open meeting laws. We're very careful about all of those because that issue keeps getting brought up. We do not have that much attendance at our meetings. You know, we have a monthly meeting that is open to the public with a period at the end of the meeting for public comment. So as far as transparency or not listening to the public, I don't believe that's true at all. [LB666]

SENATOR HAAR: Because you only go into Exec Session like I did on the city council if you're discussing personnel. [LB666]

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Transcriber's Office

Natural Resources Committee
February 25, 2009

LANCE KUCK: I've been on the council I believe...well, since 2001 I believe it was, but I can think of Executive Session we've maybe been in, and I may be incorrect, maybe four or five times. It's always on personnel issues, discussing potential compensation or termination or anything of that nature, and--excuse me, I need to correct that--the negotiation of conservation easements to a point. When we have the specifics of that conservation easement to a level that both parties agree, then it becomes public record as well. But the conservation easements, there is some Executive Session on that as well in the initial stages. [LB666]

SENATOR HAAR: Do people ever call you at home and talk about stuff or...? [LB666]

LANCE KUCK: My landowners do in Rock County, yeah. But we don't...you got to remember, too, where we're at countywide there's not a lot of people. You take it down to a 76-mile stretch consisting of, I think, 23,000 or 25,000 acres, is what the scenic river corridor is all it's allowed to encompass. There's just...there's not a lot of people. We have in Brown County, we have one landowner that owns 30 miles of river, you know. So as far as discussion, it's very easy for me if I think I need to talk to other Rock County landowners. They're pretty easy to find for the most part except for one nonresident landowner that's a very large landowner. [LB666]

SENATOR HAAR: You pretty much know them all. [LB666]

LANCE KUCK: Yeah, correct. [LB666]

SENATOR HAAR: Okay. Thanks. [LB666]

LANCE KUCK: You're welcome. [LB666]

SENATOR FISCHER: Other questions? I have a question, Mr. Kuck. As a matter of public policy, do you think it's good public policy that the Niobrara Council, an appointed board, can overrule an elected group, an elected board? [LB666]

LANCE KUCK: The Niobrara Council isn't a truly appointed board. We...the county commissioners recommend us to the Governor, so the county commissioners recommend three people so they have... [LB666]

SENATOR FISCHER: But you're appointed by the Governor. [LB666]

LANCE KUCK: Yeah. Yeah, correct. And to overrule an elected board, in this situation, yeah. [LB666]

SENATOR FISCHER: Okay. Any other questions? Thank you very much for being here. Next opponent, please. Good afternoon and welcome. [LB666]

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Transcriber's Office

Natural Resources Committee
February 25, 2009

BETTY HALL: (Exhibits 12 and 13) Thank you, Senator Fischer. Thank you for the opportunity to be here, to those of you on the committee. My name is Betty Hall, that would be B-e-t-t-y H-a-l-l, and I am the Keya Paha County landowner representative to the council and I have held that appointment since 2004. My husband and I and our family have a cow/calf operation in Keya Paha County with frontage in the Niobrara corridor. We have celebrated 100 years of ownership of that property in 2001. I also want to remind you that I am appointed only because I am recommended by my county commissioners and so they have a little say in that. I'm opposed to LB666 and my primary opposition to the bill is because it changes the status of the council from a management council to an advisory council. And I believe that the people that I represent deserve to have a greater voice at the table than that of an advisory council. We are the people who own the land. We are the people who have been the stewards of the land for generations. And I greatly appreciate those who very early on recognized and had the consideration, had the wisdom to include the landowner at the table in management. It truly was a considerate thing to do and it truly was a wise thing to do. I also oppose the advisory council concept because I think it is unduly cumbersome. And I try to imagine a 16-member advisory council on the one hand working with Park Service and four county commissioners' boards on the other, and the obstacles of time and place make it difficult for me to see how anything ever gets done. If you're working with advice on one hand, recommendations on one hand, decisions over here, I just think it slows the process of any of the projects that are important to us and the things that we would have the opportunity to achieve there. I also oppose the advisory council designation because...and we have heard from people who know greater things than I about that, but I think there's reason to believe that it jeopardizes the ability of the Park Service to work with us and it jeopardizes the ability of the Park Service to fund the projects that are important to us on the corridor, as residents and as landowners there. I leave it to you to read my personal little story about the zoning question. It's a little story about another set of eyes, a regretful husband at my house, and it's my story of how I feel about the council having some oversight, some say, some involvement in zoning. It's that other set of eyes that can possibly keep something from happening that we would regret in future times. And as I see that...as I've heard that conversation going on, the way I remember the zoning legislation, the council had the ability to approve regulations and had the ability to approve variances, and we then, as a courtesy, we review other applications for consistency. That's not a bad set of rules right there. And I would certainly leave for debate the question of who would have the final ruling on a variance. but if the regulations are satisfactory then there should be no problem with that. So maybe the only thing we're dealing with here is a question about who rules, who has the final rule on a variance. With respect to the conservation easements, somebody is going to hold those conservation easements. Somebody is going to have that ability. Would it not be better to be a local, broad-based agency that has the ability to sort of step in and take care of the public trust issue of enforcement of those easements? I think that is an authority that could stay with the council and the area

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Transcriber's Office

Natural Resources Committee
February 25, 2009

would be well served. I guess as I hear the other testimony today and I think about the things that are important for me to say is that I want you to look very carefully at this broad-based group of 16 people. Rarely when you work as a public servant do you ever get the opportunity to sit at one table with all of the players, and that's the beauty of this council, is all of the players are at the table at one time, making decisions together, hearing what's important to each other, hearing the reasons why things are important to each other. And I certainly think that that's an entity that is very worthy of salvaging and that it should continue to be the management entity. We can deal with all of those other issues, you know, coming in from the outside, but if you move that to strictly county commissioners, whatever, you've taken away the landowner, you've taken away the recreation person. We need to be at the table in management. [LB666]

SENATOR FISCHER: I'm going to have to cut you off, Mrs. Hall. [LB666]

BETTY HALL: I wondered as I...when was I going to see that red light. And I know that's a little part about Betty Hall that you're going to get used to. [LB666]

SENATOR FISCHER: (Laugh) You're going to be asked questions, don't worry. [LB666]

BETTY HALL: Okay. That's fine. [LB666]

SENATOR FISCHER: Thank you. I'm going to ask the first question. I don't usually do this when I chair the committee, but I'm worried I'm going to be called out to go to a bill I have up in Revenue. I had a call this morning from a resident in Keya Paha County and they told me that the Park Service had...if this bill is defeated and the Niobrara Council stays like it is, that the National Park Service had pledged at the last county commissioner meeting that they would finance road and bridge repairs within the county. Do you know anything about that? [LB666]

BETTY HALL: No, I'm not aware of that conversation. [LB666]

SENATOR FISCHER: Okay. I just wanted to check with that before I was called away. So any other questions? Senator McCoy. [LB666]

SENATOR McCOY: Thank you, Senator Fischer. And thank you, Mrs. Hall, for your testimony today. I enjoyed your second set of eyes example. As a ranch kid and farm kid myself, I appreciate that. [LB666]

BETTY HALL: It's good, isn't it? It's good to have that other set of eyes. [LB666]

SENATOR McCOY: I guess a question that I would have, and I'm not sure where this paperwork originated but it's the Niobrara Council's strategic planning notes, and it's an interesting document where you kind of go through what I guess some of your

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

Natural Resources Committee
February 25, 2009

perceived strengths and weaknesses on the council, and I wondered if you could address, because it does have a role in what we've been discussing this afternoon, a weakness that I presume you must perceive on the council, and that's a perception of Niobrara Council as an ineffective, do-nothing organization by some in the community. I don't think really anyone has necessary touched on that so far. Do you mind elaborating on whether, if I'm interpreting this correct, that that's a perceived, I assume, a pros and a con...pros and cons list that maybe you all put together? Am I perceiving this correctly as to that? [LB666]

BETTY HALL: I think what you're seeing there is an individual who said that sometimes in the community people perceive that we're not getting anything done, that it's a council that doesn't do a lot. And part of that is, you know, we don't have 250 public school kids running in and out of our...you know, some boards have a real obvious outcome. But I think there is a perception that we're there not accomplishing a lot, and certainly it's not a group of people that wants to be gung-ho into everything that's going on. So I think that is a weakness, that perception that we're not getting anything done. But I think if you look at what kinds of things we have really accomplished, and that would be securing \$4 million of federal road money that's going to give relief to the county road budgets up there; and that would be improving public access and toilet facilities and signage; and that would be a major removing trash project, and working on little projects, the trash bag projects, to reduce litter; and working with the other agencies in our area to correlate efforts to control weeds in the corridor, working now, beginning now to work with control of red cedar in the corridor; having our own projects where we provide information to the landowners that is pertinent to them as landowners in forestry questions, timber management in the area; and working with the schools and with the day camp for environmental education. So there's a perception we're not getting a lot done by some people and that was listed as a problem in our strategic planning meeting. But as reality, yes, I think we're getting some important things done because we collaborate well. Does that...did I...? [LB666]

SENATOR McCOY: It does, thank you. I guess my second, my last question would be this same document, just the bullet point below that talks about zoning oversight as legislation is being empowered by legislation. Do you mind elaborating on that? Obviously, there has been some conversation and some testimony about that earlier. What your interpretation of that as far as what your interpretation of oversight is? And there's been some conversation as to what the meaning of that might be and might be open to, somewhat, interpretation. Do you mind sharing what your interpretation of that is? [LB666]

BETTY HALL: This is my interpretation. If there are zoning permits that are requested in the corridor, each of the zoning administrators in the county make that zoning permit available to us. And we simply look at it and make a determination, is this consistent with the desired future conditions. We don't have...we don't say, no, this permit cannot

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

Natural Resources Committee
February 25, 2009

be approved. We simply review them for consistency. In my time there we've not sent any back. In my time there we did send one burning permit back in a similar kind of situation, and we review burning permits as well. And so in the specific instance of the burning permit that we returned to the local fire person that is responsible for that, we said...this was a burning permit to burn down an old barn and we said we think maybe this barn is worthy of preserving historically. Would you reconsider this burn permit. That's all we said. We didn't say no. We said, would you reconsider. You know what? The burn permit didn't ever come back to us. We just said, would you reconsider, and maybe it caused that person to reconsider and they never came back and said...but they are not complaining because they could not burn down the barn. I think it gave them an opportunity to...well, actually what I think it really did was it gave the true landowner, the owner of the property, an opportunity to look at what his land manager had asked to do. I think that's what it really did, but that's beside the point. My point is we just say, would you take another look at this. And so the only real authority...and not since my time have we ever had an opportunity to look at a zoning regulation and be asked to act on that. But I assume that we would take action, as I read our obligation in the law to approve a regulation, so if there was a new regulation for zoning in the corridor that came from my county in Keya Paha, it would come to us for approval in the process that Mr. Kuck read to you from the law. And we have never had a variance request that came to us, but it is my belief, from what I read in the law, that if a variance came to us and we said this is not consistent with the desired future conditions, this is not consistent with expectations for the corridor for us, that we would reject. And if I read the law now, we would have that ability to reject a variance, but it's only a...the only things we have now, as I see it and understand it, the only ability that we have to reject is a regulation or variance. A simple permit just simply comes as a courtesy and I'm sure we've looked at 50 or 60 of those in the four years I've been there and I give you only that 1 example that is a fire permit that we sent back and said please take another look and see if there isn't another choice. That's the way I see it. We're not...I don't think we're a group that is wanting to get into this area in a heavyhanded sort of way at all, not at all. Neither do we want to see a variance permit...a variance granted for a structure or a project that was inconsistent with the scenic river designation. There needs to be really a lot of thought given to that question--what happens if? And I think if I can add to that, as I hear what's coming, the people who are coming to the table and they're talking about everybody in Nebraska needs to be represented in the same way, and I agree with that, except that we have this one little thing that's different and we have a federally designated area that is within our borders. And that maybe makes that...that makes the question for me and the question for us just a little bit different than it does for every county in the state that would not have that difference. So I think there's a little difference here in how some of that would be looked upon. That would be my answer. [LB666]

SENATOR McCOY: Thank you. [LB666]

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Transcriber's Office

Natural Resources Committee
February 25, 2009

SENATOR FISCHER: Other questions? Senator Haar. [LB666]

SENATOR HAAR: Yes, thank you. [LB666]

SENATOR FISCHER: See, we told you, Mrs. Hall, that we'd let you talk. (Laugh)
[LB666]

BETTY HALL: I knew if I just got away from that script I'd have an opportunity. [LB666]

SENATOR HAAR: You get to talk more. The document you handed out, your planning document is interesting because, you know, like at job interviews you're always asked what are your weaknesses and it's hard to tell. But what you've listed here, for example, individual comments, right, as people testified or like the one wanting control of all the watersheds that run into the...someone brought up that as a concern. [LB666]

BETTY HALL: Yes. [LB666]

SENATOR HAAR: But you can't do that, can you? I mean... [LB666]

BETTY HALL: No. No. [LB666]

SENATOR HAAR: ...your only control... [LB666]

BETTY HALL: No. Yeah. Yes. [LB666]

SENATOR HAAR: Okay. [LB666]

BETTY HALL: You have to understand, and maybe we were ill-advised to bring our own...I mean, if you're talking about disclosure, if you're going to disclose what happened in your strategic planning session, you're disclosing. Those are individual comments. That was a concern of one individual who sits on the council who participated in that. But, no. Perhaps there are some who think there's somebody there that wants more control than what we have. I don't see that as a big problem there myself. [LB666]

SENATOR HAAR: Well, computers is my profession and when people ask me that, what are your weaknesses, I say I can't type very well, so (laugh)... [LB666]

BETTY HALL: That's good. [LB666]

SENATOR HAAR: ...it sort of begs the question. One of the questions I just have around this bill is this old saw that if it ain't broke, don't fix it, you know. Do you see things that are broke here right now and is the reason for changing what's going on? Or

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

Natural Resources Committee
February 25, 2009

what do you see as broke? [LB666]

BETTY HALL: You know, that was one of the statements I had to take...if I had really kept on and on and on, you know, this would have been several pages long, and one of the things that I had dealt with in my conversation here was it seems to me we're taking a vehicle to the shop that doesn't really need to be repaired, and we're spending a lot of time at doing that. And so I do not see...I do not see significant things there that are broken that need to be fixed, I do not see. And at one point in time, as Senator Fischer asked, Betty, would you go through there and kind of write some amendments, and I went home and I thought I would amend it by saying skip this, skip this conversation; we're doing pretty well here, I don't see a lot broken. I don't see a lot wrong with the existing law. [LB666]

SENATOR HAAR: So what kind of feedback do you get from the folks in your county? [LB666]

BETTY HALL: The people in my county, and I have sort of a unique situation there where I do a little bit of financial work for the commissioners in Rock County but I am a Keya Paha County resident and I am appointed by Keya Paha County. Both of the boards of commissioners that I have conversation with, very open conversation with about this, I have not heard any comments from any of them about problems with the situation as it is, from the Rock County commissioners or from the people who attended the Rock County commissioners' discussion of this bill, or from the Keya Paha County commissioners. Now there was discussion at the Keya Paha County commission meeting relative to the zoning, you know, does the council really need to be involved in zoning. Yes, there were...there was one individual there at the Keya Paha County commissioner meeting that questioned does the council really need to be involved in zoning. [LB666]

SENATOR HAAR: And the concern, do you remember what that concern of that council member...or that county commissioner was? [LB666]

BETTY HALL: And it was not a county commissioner. It was an individual. [LB666]

SENATOR HAAR: Oh, okay. [LB666]

BETTY HALL: It was not a county commissioner. It was an individual who attended the meeting...none of those county commissioners. What I'm hearing from those two tables of county commissioners is, Betty, we've appointed you, we've appointed a commissioner to go there, we've appointed...we have recommended--they haven't appointed me, they have recommended me--we think we have good people there. You get in there and do your work and let us know what you're doing, because they feel they have so many other assignments, so many other boards and commissions that they are

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Transcriber's Office

Natural Resources Committee
February 25, 2009

responsible to. So the county commissioners who have spoken to me about this in Rock and in Keya Paha County are very supportive of this very diverse, 16-member group of people, very supportive of the ability that we have to sit down and have conversation and come out with the best decision. [LB666]

SENATOR HAAR: Now we heard some testimony earlier that having to check, for example, burn permits with the council delays things. [LB666]

BETTY HALL: Do you know, we had conversation about, not at our very last meeting but at our January meeting, and in particular what we were dealing with on that day was a couple of burn permits that had gone through Game and Parks and that had gone through that very rigid process that they have. The expectations that they have for burn permits that go through them are very rigid, and we had conversation about that, that if those burn permits are initiated from an agency that has that much authority and that much oversight, that we...you know, we asked the question, could we have a policy that just says, yes, we approve any of those that come from that source? But we did not want to say that about every burn permit because my husband (laugh), bless his heart, could put in a burn permit, you know? And somebody needs to have the opportunity...well, the fire chief has that opportunity. But yet we felt that there still remained a need where those did not go through that other process with a lot of oversight. We actually dealt that day with, do you think we could have a policy that said, if you've gone through this other process, using the example of the Game and Parks deal with a burning plan, with an approved burning plan, perhaps those permits do not need to come to us. But if they just are an individual that goes to the fire chief and comes to the...the individual that goes to the fire chief, it I believe was the consensus, though we didn't take a consensus, we didn't have a show of consensus, I believe there's a feeling that, yes, we need to review those. [LB666]

SENATOR HAAR: Yeah, because I'm trying to figure out, you know, what's kind of at the bottom of what's broken. And do the...do you have bylaws or something that go down to the level of saying you have to approve burning permits or how do you decide you do burning permits? [LB666]

BETTY HALL: We have policies that say, yes, these are the things that we would like to see from the counties and burning permits and to review those things, to review those things for consistency, yes, it is our policy that within the corridor, and that's what we're managing is the corridor, within the corridor, yes, we want to review those permits. Yes, that is our policy, we want to review those permits within the corridor. [LB666]

SENATOR HAAR: And you set that policy or that's in state law that says burn permits, for example? [LB666]

BETTY HALL: No, no, that is not in state law. The only state law is the zoning, and the

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

Natural Resources Committee
February 25, 2009

only state law that I see relative to the zoning are regulations and variances. I do not...there's nothing that I see in the state law even that says you need to review a zoning application. The only law that I see that has to do with zoning is simply regulations, to approve regulations and variances, to weigh in on those two issues. [LB666]

SENATOR HAAR: So if your husband puts through a burn permit, you get to decide. That's cool. (Laugh) [LB666]

BETTY HALL: Trust me now, I wanted a little bit to say about that silage pile and, you know, it's one of those ugly suckers with black plastic and those used black tires, and it's there in my viewshed between my living room window and the river. I'll be weighing in next year. He knows that. (Laughter) [LB666]

SENATOR FISCHER: (Laugh) Other questions? [LB666]

BETTY HALL: He regrets that and, you know, I just think that's it. People with a common interest, somebody makes a decision like that, that's not good, and it's not a bad thing to have another set of eyes, somebody else that can weigh in on that decision. That's the way I look at council with respect to those zoning issues. [LB666]

SENATOR HAAR: Thank you. [LB666]

SENATOR FISCHER: Thank you, Mrs. Hall. Other questions? I see none. Thank you very much. Next opponent, please. Good afternoon and welcome. [LB666]

JASON APPELT: Good afternoon, Senators. I'm Jason Appelt, J-a-s-o-n A-p-p-e-l-t, Brown County landowner representative on the Niobrara Council, resident of Brown County, lived on our own family ranch for 35 years in the Niobrara River Valley. I'm here to point out a few of my reasons for opposing this bill. I think everybody before me has hit a lot of them, so I'll try and keep it short so you can ask questions. I've been on the council since the state statute created it, I think in 2000, 2001. I've worked, along with my family and friends, all my life to keep the local control on the Niobrara River. Think we have as much local control as we can hope for right now. The Park Service is in town. Congress enacted the Wild and Scenic Rivers Act on the Niobrara. Until we can change that, we do not have total, complete local control. Other than the Niobrara Council, there's really nobody standing between us and the Park Service. And I do not think that we can coordinate with the four counties with no power. That's just my feeling. We move at a snail's pace right now and people are disappointed in the outcome because it's slow. I think if we go back to the county commissioners and have to review this and be advisory, and then they have to take considerations for months, it could take longer. Most of these things are already set out in 30- or 60- or 90-day limits for us. I could see that it could take over a year to get something approved. I believe passage of

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

Natural Resources Committee
February 25, 2009

the bill will increase the burden on the counties for money because the Park Service would take our funding away. The counties would still probably have to have a four-county coordinator like the person we hire. I don't think lowering our budget to \$25,000 will be what you'll be looking at. I think you'll be looking at giving each of the counties probably \$100,000 of the Game and Parks Commission budget. The counties are burdened with plenty of things to do right now and they look to us to give them recommendation and things like that. A third point was to invite all of you to any of our council meetings to see firsthand the issues we deal with and work with us so maybe we can get this all taken care of. I'll try to answer any of your questions so we can keep this moving. [LB666]

SENATOR FISCHER: Thank you, Mr. Appelt. Yeah, you finished and you're on green even. [LB666]

JASON APPELT: Well, I figured we had questions yet to answer, and most everybody has hit a lot of the topics. I'd like to ask for questions, I guess. [LB666]

SENATOR FISCHER: Appreciate it. Any questions? Senator Haar. [LB666]

SENATOR HAAR: Again, I'm trying to figure out why we need LB666. Do you see something that's broken here? [LB666]

JASON APPELT: I'd say the only thing in LB666 that I have seen that I'd like to see changed is probably the people need to live in the four counties. I think in the old bill it said in the basin and which I would not disagree with that maybe that they need to live in the basin, but I don't agree with somebody being able to be on the council that's not in the local area, living, having to deal with it. [LB666]

SENATOR HAAR: So you'd like to see really local people, even if they're appointed. [LB666]

JASON APPELT: Yeah. [LB666]

SENATOR HAAR: Yeah. [LB666]

JASON APPELT: And the appointment, I've joked with people, the only way for me to get off is to die because there's about ten landowners in Brown County, and if you have to live in the basin to be on the council, there's maybe two or three people. [LB666]

SENATOR HAAR: (Laugh) So are there any members of the board right now, for example, Game and Parks, if everybody had to be from within the counties or whatever, that would stretch it? [LB666]

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

Natural Resources Committee
February 25, 2009

JASON APPELT: I'm not...I'm sure Game and Parks could come up with somebody in the county. I mean most everybody could be appointed from the counties or the basin. I think the basin would even be broader scope because there's a lot of ranchers. It could be landowners in the corridor and maybe live in the basin, 30, 40 miles away, in a different county. I can't think of it off the top of my head, but there's a situation where you, maybe in the four counties, might not even work. I think you might have to stay within the basin to have a qualified person in the county to even represent the county anymore. [LB666]

SENATOR HAAR: Could...just sort of looking around in the council members in your head, where do they come from right now? [LB666]

JASON APPELT: I think everybody lives within the basin except our conservation person lives in Lincoln. [LB666]

SENATOR HAAR: And is that a head of some agency or just happened to be an appointment? [LB666]

JASON APPELT: I'd have to ask in the back. Dave Sands with Nebraska Land Trust? Nebraska Land Trust? [LB666]

DAVE SANDS: What? I'm sorry. [LB666]

JASON APPELT: You with Nebraska Land Trust? [LB666]

DAVE SANDS: Yes. [LB666]

JASON APPELT: Okay. He's with Nebraska Land Trust. [LB666]

SENATOR HAAR: Is that a designated position on the board that somebody has to be from the Land Trust or...? [LB666]

JASON APPELT: No, it's conservation group. [LB666]

SENATOR HAAR: No, it's just... [LB666]

JASON APPELT: It could be the fish and...or it could be, like somebody else said earlier today, Pheasants Forever. I suppose it could be from any conservation group in Nebraska to represent the public, I guess, or public interests for conservation. [LB666]

SENATOR HAAR: Okay. Gotcha. Thank you. [LB666]

SENATOR FISCHER: Other questions? I see none. Thank you very much for coming

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

Natural Resources Committee
February 25, 2009

today. [LB666]

JASON APPELT: Okay. Thank you. [LB666]

SENATOR FISCHER: Appreciate it. Next proponent, please...or, I'm sorry, next opponent please. [LB666]

ANITA MASTERSON: I'd have to sit back down. [LB666]

SENATOR FISCHER: Good afternoon. [LB666]

ANITA MASTERSON: (Exhibit 14) Hi. Good afternoon, Senators. I am Anita Masterson, A-n-i-t-a M-a-s-t-e-r-s-o-n. I am here as a mother. Everything comes back to me as being a mother. And so I have a letter here I don't think you guys really need me to read it, do you? (Laugh) I am just here...I have a group of parents that have signed this letter. We all oppose this because of the Niobrara's day camps and what it brings to us as parents and what it brings to our children, like my son which I have with me down here somewhere. You can tell he's tired. And so our concern is, is that you will be taking away the funding, the funding that goes to these camps that get our kids outside, that get our kids into the river and that they learn so much about our river and how to take care of it, how to manage. I mean they even have learned about water quality testing. You know, where else are kids going to do this? And, you know, and who is going to fill your guys's seats in 30-40 years? It's our kids. And if our kids are not here and if we aren't teaching them how to take care of our land, who's going to be there? You know, we have got to stop pulling from education. Seems like every time something comes up it's as if we're taking candy from a baby, but it always comes back to our kids, that the money always comes from a place where it affects our kids. And that's what I see in this. This is how it affects me and the other parents I have listed here that were in agreement that this is not the right act for Valentine because not only do we lose our camps, we look the council, we lose all of this for our kids. And you know there's jobs also that we will lose in Valentine, and Valentine, a community of 2,800, two jobs and the money that comes in for these camps, that means a lot in a town that size. Because I lived in Houston, you know, and to go to Valentine, the concerns, my gosh, they are amplified. You know, to go into a small community, it's like, wow, the changes. And it's important. This, you know, to your guys with all the other bills you see, this may be small, the money may be small, but to my child, to me, this is big. And, you know, I don't know if you guys are aware of the book, the Last Child in the Woods, but this goes back to it. And if we do not get these kids into the woods, away from our TVs, away from their video games, where are they going to be? Where are they going to be in 30-40 years? Are they going to be in your seats? Probably not. That's all I have to say. [LB666]

SENATOR CARLSON: Okay. Thank you for your testimony. Any questions? Senator Haar. [LB666]

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

Natural Resources Committee
February 25, 2009

SENATOR HAAR: Thank you. Just real quickly describe what these camps are like that your kids go to. [LB666]

ANITA MASTERSON: Oh, the camps are wonderful. I should have my son...I should have my son... [LB666]

SENATOR HAAR: Can I send my grandkids? [LB666]

ANITA MASTERSON: Yes. Well, Kalli, can't he? If you pass this, no, you can't. You will not be able to send your kids because the funding won't be there. But they get them into the rivers, I mean, because I helped. I help with everything. You know, I'm a Scout leader. I, you know, everything that comes up, yes, I'm there, and you can't. I mean we get the kids in the river. They did testing for water quality. They even put tracking collars on deer to see what their lifestyles are, you know, because we know what our lifestyles are. We go home, we have our snacks and watch TV. But, yeah, you can...I mean, it's great to get our kids outdoors and it's one more thing that we have...that I had as a parent that was fighting the TV, that was fighting all these electrical games, you know, that, you know, the Wii systems, the Xboxes that I don't have in my house because I know we need to be outdoors, that we need to be learning from our environment. And so, yes, you could, you could send your children to our river, that, you know, I feel if we lose our council that's one more thing. Because, sure, we have our park systems, but those services don't come after our kids the way the council does. And I am a leader of a Scout group. I have 14 kids. All the other groups have 5, but I have 14 and it is my goal to keep those 14, and they're second graders now. And we have even taken them to the council and they...we did recycling, we did our three Rs with the council, and they also went over water quality and had a whole water table that they set up for them so they could see how everything impacts our water. And these boys know, because of the council, that we can't live without our water. We can't live without our quality of water. And so all those little things, you know, I see with this bill, the money won't be there and that, you know, it affects all of us, maybe not today, but when those kids are still sitting in their houses and not outside it's going to affect all of us. [LB666]

SENATOR HAAR: Well, just a comment in the letter, "outraged," "our senator," and so on, just kind of for information, I don't want you to respond to that, but we all kind of sponsor bills for different things. [LB666]

ANITA MASTERSON: Yes. [LB666]

SENATOR FISCHER: Sometimes it's to get discussion. And since we haven't voted on this in any way yet, that's...I would say probably, yeah, premature and unwarranted. But anyway, I appreciate your testimony. [LB666]

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Transcriber's Office

Natural Resources Committee
February 25, 2009

ANITA MASTERSON: But it promoted discussion, didn't it? [LB666]

SENATOR HAAR: It is. [LB666]

ANITA MASTERSON: Yes. [LB666]

SENATOR CARLSON: Okay. Any other...any other questions? Thank you for your testimony. I do... [LB666]

ANITA MASTERSON: Thank you. [LB666]

SENATOR CARLSON: ...I want to make a statement here. [LB666]

ANITA MASTERSON: Okay. [LB666]

SENATOR CARLSON: ...because I appreciate your concern for education. What a lot of people don't understand is that in these times of economic difficulties, where we're really struggling with budget, part of the reason that there might be a struggle here is because there's been a decision made on the increase in the budget for the next two years, 85 percent of it is going toward education. That means there's very little left for all the other things that are done. And so I want to tell you, as a Legislature, we're not shortchanging education. [LB666]

ANITA MASTERSON: Good. [LB666]

SENATOR CARLSON: But we're in some difficult times. [LB666]

ANITA MASTERSON: Good. [LB666]

SENATOR CARLSON: But I appreciate your defending a program because it's good for kids. [LB666]

ANITA MASTERSON: Yes. And you know, and that is one of the reasons why we are in the state of Nebraska and why we chose to stay in Valentine, was because of the education system. [LB666]

SENATOR CARLSON: Okay. [LB666]

ANITA MASTERSON: Because we have the whole country, you know? And so I thank you. [LB666]

SENATOR CARLSON: Okay. All right. Thank you. Next testifier in opposition. [LB666]

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

Natural Resources Committee
February 25, 2009

BRUCE KENNEDY: Mr. Chairman, members of the council, my name is Bruce Kennedy, B-r-u-c-e K-e-n-n-e-d-y. I'm here this afternoon to represent Friends of the Niobrara. Friends of the Niobrara is a citizens' group, statewide citizens' group that works with the various entities to maintain the natural beauty and environmental integrity of the Niobrara River and Niobrara River valley. Over the last few years we have had a lot of workings with the council and we have been 100 percent pleased with the performance, with the way that the council handles themselves and that the job...and the job they are doing. It is a tremendous effort that they have undertaken and we have seen nothing but stellar performance from the council. The council, we have also observed over the years that the council has a real good working relationship with all of the entities that it is involved in, and it's involved with the Game and Parks, the National Park Service, the NRDs, the counties, the landowners, the outfitters. And we just have never heard anybody that didn't get a really fair shake from the Niobrara Council. I think Betty Hall said it best. They go out of their way to...they go out of their way to accommodate all of the people that they are involved in, and we are just...we are just tremendously pleased. The Friends organization would just hate to see the council reduced to nothing but an advisory board. You have, as Betty said it so well, all these people brought together, landowners, county commissioners, the whole works brought together to make decisions on the Niobrara River, and it is working. And believe me, if it wasn't working, Betty would have told you because she is one that speaks her mind and if there was anything wrong she would have told you. Yes, she would. We want the council to hold easements. We want the council...we want the council to have that second pair of eyes looking over when it comes to zoning considerations. We want...we would like to have a representative from our part of the country, and that...and I say our part of the country, that could actually mean the entire state, on the council, and that is a representative that we have. This is sort of like an at-large person that handles environmental interests and we want to have that person. We feel a part of what's going on up there and we think we have a...we should have a say about what's going on there. So that's tremendously important to us. We want the council to continue having the budget that they are presently enjoying. They have a lot of work to do and they're not getting very much money as it is, and they're doing a great job with the little amount of money that they've got. So basically what we're saying is it ain't broke, let's not try to fix it. [LB666]

SENATOR CARLSON: Okay. Thank you for your testimony, Mr. Kennedy. Questions?
Senator Haar. [LB666]

SENATOR HAAR: Thank you. Mr. Kennedy is a constituent of mine, so...who do you see now as your representative on the council? [LB666]

BRUCE KENNEDY: Our representative is Dave Sands. [LB666]

SENATOR HAAR: Okay. And his...and I'm still trying to kind of understand the whole

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

Natural Resources Committee
February 25, 2009

construct of the council. [LB666]

BRUCE KENNEDY: Incidentally, Dave takes the time to come to our meetings and listen to what we have to say and I assume takes that back to decision making at the council level. [LB666]

SENATOR HAAR: So are there actually at-large members on the council? [LB666]

BRUCE KENNEDY: Well, I use that as a term and I'm not... [LB666]

SENATOR HAAR: Yeah. [LB666]

BRUCE KENNEDY: That's probably not a correct term. [LB666]

SENATOR HAAR: Okay. Just simply again an appointment. Okay. Good. How did you get connected with the Niobrara Council? [LB666]

BRUCE KENNEDY: I bet your pardon? [LB666]

SENATOR HAAR: How did you get connected with Friends of the Niobrara? [LB666]

BRUCE KENNEDY: Well, the council does things like day camps that you heard about and we cost-share with that, with them on that, and they have done one easement that we have cost-shared on. They do a river cleanup which we are involved in, that type of thing. [LB666]

SENATOR HAAR: And the "we" is? [LB666]

BRUCE KENNEDY: Friends of the Niobrara. [LB666]

SENATOR HAAR: Oh, okay. [LB666]

BRUCE KENNEDY: And the council. [LB666]

SENATOR HAAR: Gotcha. Gotcha. Okay. Thank you very much.. [LB666]

BRUCE KENNEDY: Further questions? [LB666]

SENATOR CARLSON: Any further questions of Mr. Kennedy? Thank you for your testimony. [LB666]

BRUCE KENNEDY: Thank you for the opportunity to testify. [LB666]

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

Natural Resources Committee
February 25, 2009

JACKIE CANTERBURY: My notes, and I have a little fuzzy for you guys that I'll give you later, just a picture of the Niobrara that I'll give later. [LB666]

SENATOR CARLSON: Senator Dubas is Vice Chair of the committee and she'll resume responsibility here. [LB666]

JACKIE CANTERBURY: Great. Thank you. Thank you. [LB666]

SENATOR DUBAS: Thank you. Go right ahead. [LB666]

JACKIE CANTERBURY: My name is Dr. Jackie Canterbury, J-a-c-k-i-e, last name, C-a-n-t-e-r-b-u-r-y. Okay. I am going to be an outlier here in the sense that I'm a landowner outside the scenic river, so I own about three miles of riverfront on the Niobrara River and so I'm not in the scenic corridor. But I also want to tell you about my opposition to the bill, and I did something a little bit different in the sense that what I did is I thought that it was really important for you to understand that even though that you don't represent people in the Niobrara, in the valley itself, or people like me, the landowners, that you know how people feel about the Niobrara. And I know that Senator Fischer said that that had already been discussed, but I'm going to discuss it again. And I think one of the reasons I'm going to is because I think this is a really unique landscape because of the fact that it is in private ownership. It's unlike anything else. I'm actually originally from the west and in the west you have a lot of federal lands and they're managed differently, and this is a very unique situation and I can't stress that enough. It is a landscape in private ownership, so it becomes very difficult and, in that sense, you must have diversity and you must have oversight. And so I question...I like the way the council works right now. I have had some opportunity to work with them but basically sort of my landowner friends have had positive experiences with them. But in the sense of private ownership, I want to now talk a little bit about some of the reflections of individuals in your individual district about the Niobrara. This is from a survey that was conducted by the Bureau of Sociological Research, University of Nebraska-Lincoln in 2008. And basically it was a random sample of about 3,000 households and they asked questions about how you felt about the Niobrara, and I'm just going to go through a couple of them to make it short, because I know this has been a long day. Number one, are you familiar with the Niobrara? Eighty-four percent said yes. Do you think there any potential risks for future recreational opportunities? Fifty-eight percent said yes. Do you support or oppose protecting streamflows for fish and wildlife? Eighty-one percent said yes; seven percent opposed; twelve percent, no opinion. Do you think the state of Nebraska should actively be working to protect opportunities on the Niobrara? Seventy-three percent, yes. Do you support these efforts on the Niobrara even if they impede agricultural industry? Fifty-eight percent, yes, throughout the state. Senator McCoy, District 39, 50 percent of the people; Senator Haar, 58 percent of those surveyed in the Lincoln, greater Omaha district; Senator Fischer, 58 percent of those surveyed in counties surrounding the Niobrara River. So I

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Transcriber's Office

Natural Resources Committee
February 25, 2009

think that gives you great cushion for support to actually say no to both bills that have been in front of this committee. The second thing that I wanted to add is that I did actually get some information, because I was very interested in the financial aspects, and what I found, that the proposed legislation has...eliminates the intent and powers and duties of the Niobrara Council. Under this legislation, the council will lose its regulatory abilities, which we all know. The council acts on its own behalf to secure additional funding. The council has received a General Fund appropriation of \$50,000 annually for the past few years and has similar requests. In addition to the General Fund appropriation, the council has received operating grants from the Park Service for \$125,000, which Senator Fischer alluded to. And then the proposed changes would make them ineligible for the current federal funding from the Park Service, which is \$125,000, ineligible for the current Nebraska Environmental Trust for conservation easements, which is \$635,000, and perhaps subject then to reimbursement. So, in other words, without any grant money, I would imagine that the current operating expenses could not be met. And personally, as a landowner on the Niobrara, I think that would be a travesty. And I will leave you a copy of this, if you like. I received all this from Game and Parks, so... [LB666]

SENATOR DUBAS: Thank you very much, Mr....Dr. Canterbury. Excuse me. [LB666]

JACKIE CANTERBURY: You're very welcome. (Laugh) [LB666]

SENATOR DUBAS: Questions? [LB666]

JACKIE CANTERBURY: Yeah, I hope I don't look like a mister yet. [LB666]

SENATOR DUBAS: Senator Haar. [LB666]

SENATOR HAAR: Thank you. [LB666]

JACKIE CANTERBURY: Yes. [LB666]

SENATOR HAAR: Well, my wife and I have been guests of Jackie on her...and I caught poison ivy on your property. [LB666]

JACKIE CANTERBURY: At the Niobrara, you did. [LB666]

SENATOR HAAR: Yes. [LB666]

JACKIE CANTERBURY: Yes, you did, so you know it well. [LB666]

SENATOR HAAR: So do you see what's broken here? [LB666]

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Transcriber's Office

Natural Resources Committee
February 25, 2009

JACKIE CANTERBURY: No. I don't think there's anything broken,... [LB666]

SENATOR HAAR: Okay. [LB666]

JACKIE CANTERBURY: ...no, in either sense. And so I guess I'm going to say one more thing to end it up and that is that I think we should have had a forum like this. There was some incredible testimony today and, to me, this should have taken place way before a bill of this magnitude was ever introduced. So, no, I don't think it's broken at all. [LB666]

SENATOR HAAR: Thank you very much. [LB666]

JACKIE CANTERBURY: You're very welcome. [LB666]

SENATOR HAAR: And next time I'll tuck my pants in my shoes instead. Thank you. [LB666]

JACKIE CANTERBURY: (Laugh) Thank you very much for the opportunity. [LB666]

SENATOR DUBAS: Other questions? [LB666]

JACKIE CANTERBURY: Other questions? [LB666]

SENATOR DUBAS: Senator Carlson. [LB666]

SENATOR CARLSON: Senator Dubas. Dr. Canterbury, I'm going to just respond to not the survey that was taken, that's okay. [LB666]

JACKIE CANTERBURY: Sure. [LB666]

SENATOR CARLSON: I'm going to respond to the way you phrased it because I don't need a cushion to tell me how to vote. I'm here to represent people. I understand agriculture is a number one industry in Nebraska and a lot of people that respond to a question about a beautiful river, because I think the Niobrara is,... [LB666]

JACKIE CANTERBURY: Yeah, it is. That it is. [LB666]

SENATOR CARLSON: ...some ways it can be a knee-jerk reaction and they forget about the hand that feeds them. And so I take a little bit of the results of a survey like that with a grain of salt. And this an agricultural state and I will be interested in the environment but I'm going to defend agriculture. Thank you. [LB666]

SENATOR DUBAS: Any other questions? I would have one for you, Dr. Canterbury.

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Transcriber's Office

Natural Resources Committee
February 25, 2009

[LB666]

JACKIE CANTERBURY: Sure. [LB666]

SENATOR DUBAS: In regards to that survey,... [LB666]

JACKIE CANTERBURY: Yes. [LB666]

SENATOR DUBAS: ...how extensive were the questions? I mean was it a very...
[LB666]

JACKIE CANTERBURY: It was pretty extensive, actually. [LB666]

SENATOR DUBAS: And this was done by the university, is that correct? [LB666]

JACKIE CANTERBURY: Yeah, it's done by the university and there was actually about 2,850 people surveyed and one-third in Omaha-Lincoln, one-third in counties around the Niobrara, and then one-third the rest of the state. And I can leave you...you can get it on-line, so I can...but it actually was Bureau of Sociological Research, University of Nebraska-Lincoln, Department of Sociology. [LB666]

SENATOR DUBAS: Thank you. I appreciate. [LB666]

JACKIE CANTERBURY: So it was pretty well done and a random sample as well.
[LB666]

SENATOR DUBAS: Appreciate that information. [LB666]

JACKIE CANTERBURY: Yeah. Thanks for the good question. [LB666]

SENATOR DUBAS: Other questions? Seeing none, thank you very much. [LB666]

JACKIE CANTERBURY: Okay. Thank you very much. [LB666]

SENATOR DUBAS: Next opponent. [LB666]

KEN WINSTON: (Exhibit 15) Good afternoon, Senator Dubas and members of the Natural Resources Committee. For the record, my name is Ken Winston, last name spelled W-i-n-s-t-o-n, and I'm appearing on behalf of the Nebraska Chapter of the Sierra Club. I'm not going to read my testimony today. You can read it. I will make a few comments. First of all, I want to say that I was here for Senator Langemeier's opening and I do appreciate the fact that he's made an offer to work with all interested parties to discuss issues of authority and membership of the Niobrara Council, and I want to say

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

Natural Resources Committee
February 25, 2009

that I would like to be involved and the Sierra Club wants to be involved in any discussions of that nature and that we want to work constructively, to the extent that there are discussions that may take place with regard to this bill. The things that I want to discuss in terms of my testimony is just to run through a couple of the basic things that are laid out in my letter. The first thing is to just talk about some principles of legislation. One of the most basic principles of legislation is that it should advance a public good or address an issue that is harmful to the public. When I read the statement of intent, I did not see anything that indicated what problem was being addressed or how this would enhance the...advance the interests of the public and, therefore, if there's no supporting rationale then we would question the basis for LB666. Today is the first time I have heard any reasons what were in support of...that indicated any problems related to the Niobrara Council and some of the problems that were related, I'm not sure that the changes that are being proposed will address those problems. Another important principle is that legislation should benefit the widest possible constituency. And as stated in the statement of intent, the Niobrara River has been designated a national wild and scenic river and the purpose of this designation is to protect the river for the benefit and enjoyment of all. So any enactments, any changes should be for the benefit of as many people as possible, that it should provide benefits for both local and national interests. And I do want to make a comment about one specific provision of the bill and that is...and I know there's been a lot of comments about a lot of different provisions, but I'm certainly and the Sierra Club is a strong supporter of local control. And I know that I appear in front of committees and invariably will testify in support of local control for local zoning authorities, and that's a firm principle that we stand by. But in this particular instance I think there is a situation where there may be some benefit to have some people who are outside of that area, who are on the council, who may have some knowledge and perspective that they can provide to the council. And to limit it solely to people who reside in that area, and as I understand it right now there's only one person who is not currently a resident of that area, I...it appears that that would not necessarily benefit the council to limit it solely to people who are residents of that area. There are people from throughout the world that visit that area and love its unique characteristics. And also there are some people from throughout the country and throughout the state that come there and spend money there. Then finally I guess I just want to refer to the medical principle that states, first, do no harm. We're concerned that enactment of this bill, as it's drafted, would do harm to a process that appears at the present time to be working. So therefore, we are opposed to LB666. And as I indicated, would be glad to visit with the introducer and any other interested parties on this issue, and answer questions if I can. [LB666]

SENATOR DUBAS: Thank you, Mr. Winston. Questions? Seeing none, thank you. [LB666]

KEN WINSTON: Thank you. [LB666]

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Transcriber's Office

Natural Resources Committee
February 25, 2009

SENATOR DUBAS: Next proponent...or opponent, excuse me. Go right ahead. [LB666]

JOHN NEIL GRAHAM: (Exhibits 16 and 17) Hello, Senator Dubas and the committee members. My name is John Neil Graham, J-o-h-n N-e-i-l G-r-a-h-a-m. As you can see, my testimony has changed since I've been here for the last three hours. Probably a good thing I didn't testify right away. (Laugh) I am very passionately against this bill because I'm the lone easement holder with the Niobrara Council. I was the first and only right now and I waited 43 years to take care of this land and I entered into the agreement in 2003 with the Niobrara Council, a local group, people that I know. And now we have another fight on our hands, in my opinion. This land, as you can see from the map, there is a 20-acre or 19-acre alfalfa field up top. Down below there's like 20 acres of accredited land, so the total is 100. The 60 acres in between the lower river basin area and the top agricultural land you got to realize is a 45 to 60 degree slope. You know, the agriculture value on this land is little to none. I do have a person that rents it. And so, you know, it was very important, for two reasons I did this easement, because this took hours and days of thought because I tied this up forever. I protected it, kept it in the family. And now where does it go? To another like organization? I signed on with these local people right here behind me. And now we're going to throw it all away? I thought, you know, I researched this. I thought we had national...you know, the National Park Service behind this, the Legislature behind this. Now all of a sudden, well, let's get some discussion on this issue. Well, for me, it's pretty passionate because my easement gets given to somebody else. I don't want to be a part of that. I want the local people there that I entered into. My uncle would have put this land up to the highest bidder. I doubt, you know, somebody local would have bought it, probably couldn't have afforded it. You know, some people want to develop land and some people want to save it. This easement gave me that opportunity to do that and I just don't think we can lose it, very important. I know it takes away from the right of the land but I think my...I know my grandmother and father would have wanted this. And just in closing, you know, I was a willing landowner who entered into this agreement with the Niobrara Council because they are a group of local people. They know how to deal with local people on issues. They have and will continue to do a masterful job of fulfilling their statutory duties, according to the National Park Service management and the Nebraska Unicameral. LB666 takes this very personal, valuable option of easements away from landowners and the Niobrara Council. In taking away the Niobrara Council's right to obtain easements, LB666 will destroy an important protection avenue, the Niobrara River. It will cause the Niobrara River land to be unprotected, unpreserved. The local council that I agreed to be a partner with in protecting my family's land and the scenic aspect of the Niobrara River, because this is riverfront property, will be affected well into the future if LB666 is passed. Now I just object to the easement part, but I would passionately ask that you kill this bill. Thank you. [LB666]

SENATOR DUBAS: Thank you very much, Mr. Graham. Questions? Senator... [LB666]

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Transcriber's Office

Natural Resources Committee
February 25, 2009

SENATOR HAAR: Haar. [LB666]

SENATOR DUBAS: ...Haar. (Laugh) I'm having a hard time getting back engaged here. [LB666]

SENATOR HAAR: You've had a long day too. [LB666]

SENATOR DUBAS: Excuse me. [LB666]

SENATOR HAAR: So this is the only easement so far the council has. [LB666]

JOHN NEIL GRAHAM: Yes. [LB666]

SENATOR HAAR: Okay. [LB666]

JOHN NEIL GRAHAM: They're controversial in our part of the country because I don't let...the land won't be developed. The Niobrara Council has the developmental rights to my land. Notice the houses on the bottom of that map, Meadville and the housing district right below there? There's some houses. I think there's six, seven of them now, can't remember. Won't be any more built to the north and west. [LB666]

SENATOR HAAR: Because that's your property. [LB666]

JOHN NEIL GRAHAM: That's my property and the Niobrara Council has the developmental rights. [LB666]

SENATOR HAAR: Do you know how those houses, now that I'm looking at it, I see the houses, how those houses got built there? Was this before the council came into...are they...? [LB666]

JOHN NEIL GRAHAM: I don't know. [LB666]

SENATOR HAAR: Okay. [LB666]

JOHN NEIL GRAHAM: Don't know on that one. [LB666]

SENATOR HAAR: But they're older houses or pretty recently? [LB666]

JOHN NEIL GRAHAM: No, they're newer ones, yeah. [LB666]

SENATOR HAAR: Recently built, okay. [LB666]

JOHN NEIL GRAHAM: Yeah. I built. I own two sections of land, three lots of land south

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

Natural Resources Committee
February 25, 2009

of Sparks in Cherry County and this 80 acres in Keya Paha County. I built a cabin on those three lots of land before the scenic river actually went into place because it was going into place. I had to get something done if I was ever going to do anything. And I didn't have the money to fight or get involved in anything, so we put up a cabin quick. We hid it. It's away. There, you know, this was developed years ago, so I've been on both sides of this issue. But this bill is very, very passionate to me because it did save the family land, stopped a family fight. And the Niobrara Council is a great organization. You know, I've taught their kids, I've worked for them. They're people that I know. [LB666]

SENATOR HAAR: When you said a minute ago that the council is...what was the word used, in the area, controversial. [LB666]

JOHN NEIL GRAHAM: Conservation easements are controversial,... [LB666]

SENATOR HAAR: Oh. [LB666]

JOHN NEIL GRAHAM: ...not the council, in my opinion. [LB666]

SENATOR HAAR: Okay. Just tell me a little about that because I'm trying to understand all this. [LB666]

JOHN NEIL GRAHAM: Well, because I have...nobody can develop this land. Nobody will build, you know, houses, divide it up, subdivide it, because the Niobrara Council has that right and they're not going to let that happen. And some people say it's not worth as much. In my opinion, it's worth more, but it's going to be for my family. The kids know that, you know? [LB666]

SENATOR HAAR: Okay. I appreciate your testimony. Thank you. [LB666]

SENATOR DUBAS: Other questions? Seeing none, thank you very much, Mr. Graham, for coming today. [LB666]

JOHN NEIL GRAHAM: Yep. [LB666]

SENATOR DUBAS: Next opponent. [LB666]

TIM KNOTT: (Exhibits 18 and 19) My name is Tim Knott, K-n-o-t-t. I live in Lincoln and I'm representing the Wachaska Audubon Society. That's the local Audubon chapter in southeast Nebraska. We're opposed to LB666. And I'm just going to pass out my testimony, won't read it. The only thing I'm going to...since most everything has been covered already, the only thing I'm going to talk about is what I think was one of the best comments of the day by Betty Hall and that is we need a second pair of eyes to keep an

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Transcriber's Office

Natural Resources Committee
February 25, 2009

eye on the Niobrara River, because it's so unique and because once changes take place up there, they can't be changed back to the way they were originally. The pictures I'm passing out are pictures of development. That development of primarily vacation homes and some businesses that have taken place along the river, most of it before the management plan was finally put into place, some of it on the boundary of the scenic river corridor. Because the scenic river is so narrow--the scenic river corridor is only a quarter of a mile on each side of the river--it's so narrow that you can put a house on the top of a bluff and it can be seen all up and down the valley, these kinds of things, if they continue, will eventually destroy the scenic quality of the river. And we need something, some entity like the Niobrara Council to minimize that development and keep the Niobrara scenic as it is today. So just look at those pictures and see what would happen if something like the Niobrara Council is not in place. So I guess that's all I've got to say. [LB666]

SENATOR DUBAS: Thank you very much, Mr. Knott. Questions? Senator Haar. [LB666]

SENATOR HAAR: Yes. I don't know if you could answer this or not but we've talked a lot about zoning today and does the council have authority outside the corridor or only inside the corridor? [LB666]

TIM KNOTT: I think probably Mr. Foster would be the one to ask, but the authority outside the corridor is very limited if it exists at all. I don't think they have much authority outside the corridor. [LB666]

SENATOR HAAR: Okay. [LB666]

SENATOR DUBAS: Other questions? Seeing none, thank you, Mr. Knott. Next opponent. [LB666]

DAN STAHR: (Exhibit 20) Senator Dubas, members of the Natural Resources Committee, my name is Dan Stahr, D-a-n S-t-a-h-r. I'm the executive director of the Nebraska Wildlife Federation and I'm just sending our letter around to you today. I think everything has been said today in opposition to LB666 and we would also like to let you know that we are against the bill as it is currently. And I think one of the things I've heard most today is, if it's not broke why fix it, and I think we stand behind that. And we feel that the Niobrara Council is an effective organization to deal with the jewel of our state. And I had the opportunity to canoe the Niobrara the first time last spring and I plan on going back many more times. And we're just mainly concerned about protecting what we have there. I grew up in the western part of the state, Chappell. We had the Lodgepole Creek run by our town. Spent many hours out there as a youth and today there is no Lodgepole Creek. The only time it flows is because of, you know, excessive rain or something of that sort. So I grew up in an agricultural family. My father is a

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Transcriber's Office

Natural Resources Committee
February 25, 2009

farmer, my father-in-law is a farmer, so I understand the agricultural side of it. But I also understand once you have a natural resource that disappears, it's very tough to get it back and that's why I think we're very adamant about trying to protect the Niobrara. And I just really feel that it's something that is unique to Nebraska and, you know, once it starts deteriorating it's going to be very expensive to bring it back, so...but that's all my testimony. And if there's any questions, I would attempt to answer them. [LB666]

SENATOR DUBAS: Thank you very much, Mr. Stahr. Questions? Senator Carlson. [LB666]

SENATOR CARLSON: Senator Dubas. Dan, you were here before, weren't you, and testified? Didn't I ask you about Nine Mile Creek? [LB666]

DAN STAHR: No. [LB666]

SENATOR CARLSON: Okay. I thought you had been here before. I'll talk to you about it afterward. [LB666]

DAN STAHR: I testified in Alliance about the Lodgepole Creek so... [LB666]

SENATOR CARLSON: Okay. Oh, maybe I asked you about that there. Okay. [LB666]

DAN STAHR: It was on the instream flows there. [LB666]

SENATOR CARLSON: Okay. All right. Thank you. [LB666]

DAN STAHR: You bet. [LB666]

SENATOR DUBAS: Other questions? Seeing none, thank you. [LB666]

DAN STAHR: Thank you. [LB666]

SENATOR DUBAS: Next opponent. (See also Exhibits 21-37.) Seeing none, anyone in the neutral capacity? I do need to read some letters into the record in opposition: Ed Heinert with the Niobrara River Outfitters Association; Sandy Benson from Springview; Robyn Johnston from Maywood; Penbrook Partnership, Valentine; Brad Arrowsmith, Bassett; Hugh and Carma James, Springview; Pamela Sprenkle, Valentine; Jean Hunt, Ainsworth; Megan Estep, Chief Division of Water Resources, United States Fish and Wildlife Service. So is there any neutral testimony? Oh, didn't see the second page, okay. It's all right, I should have looked. Pat Neujahr, Valentine; Mike and Deb Tuerk, Springview; Andrea Scholl, Valentine; Joyce Stahl, Bassett; Dave Beck, Mills; Amy Brt, Lincoln; and a resolution from the Keya Paha County Board of Commissioners. So I think that's it for opposition. And there is no neutral testimony, so Senator Langemeier.

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Transcriber's Office

Natural Resources Committee
February 25, 2009

[LB666]

SENATOR LANGEMEIER: First of all, I'd like to thank the committee for their attention to this matter and all those that took the opportunity to come to Lincoln and experience the legislative process. I think, as you've seen through the hearing today, I think that the chairman of the Niobrara Council, although Betty Hall, who I know had very good comments, I think the Niobrara Council president said it the best when he said when we look for statutory guidance on what we do, we go to the National Park Service. Their charter is a state charter. It's a state statute charter, they should come to the state of Nebraska and not the National Park Service, and I think that further demonstrates the confusion that's out there. So I'm more than happy to continue to work with this group that came before us today as we look to solutions for the future. Thank you. [LB666]

SENATOR DUBAS: Thank you, Senator Langemeier. Questions? Senator Haar.
[LB666]

SENATOR HAAR: Now that I've heard all the testimony (laugh), I have some questions. Could you just tell me a little bit what the genesis of this bill is? You started out with that and it didn't have much meaning. There were letters that were coming... [LB666]

SENATOR LANGEMEIER: We have a number of letters currently floating out there between Nebraska Public Power, DNR, what the Niobrara Council...their own legal counsel's opinion of what they should do. And so there's a number of letters out there in conflict. And so typically in this situation, if we don't resolve conflict, the court cases resolve conflict. And as you've seen that once already that we've had a court ruling into this subject matter, I think it is our responsibility. If we can foresee the problems that are brewing, that we try to address them in some fashion before we get to a court ruling. Now I'm not saying that...and I made this comment earlier, is that LB666 was designed to make sure everybody came to the table. We didn't want somebody to sit back and say, oh, they're not touching us so we're fine. As you can see, the conservation easements were put in there to make the testimony work. It has. It has. That's not the focus of the bill. But again, we tried to touch all aspects so everybody would come and participate. [LB666]

SENATOR HAAR: Okay. And one thing I appreciate about working with you, as committee Chair, is you try to cover the stakeholders and I appreciate that. So the...in other words, the components of this bill are proposals in a way, kind of a menu of items.
[LB666]

SENATOR LANGEMEIER: I think one thing you and I have experienced on this committee is, as we sit down and we can make this detailed list of players, whether it's in your case as we've been working on wind energy, I guarantee you as you and I sit down and make this list of players and then when we put it out tomorrow, that's when

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Transcriber's Office

Natural Resources Committee
February 25, 2009

we're going to find out who we missed. [LB666]

SENATOR HAAR: (Laugh) No doubt. [LB666]

SENATOR LANGEMEIER: And so with this I think they've been...that group has come forward and that's the goal of this, is they've come forward, now we know who to deal with and who we can continue to pick their brain in issues, and it gives us that opportunity to do that. [LB666]

SENATOR HAAR: Okay. And for me that helps create a context for the whole bill and I appreciate that. Thank you. [LB666]

SENATOR LANGEMEIER: Oh, you bet. [LB666]

SENATOR DUBAS: Other questions? Seeing none, thank you, Senator Langemeier. [LB666]

SENATOR LANGEMEIER: Thanks. [LB666]

SENATOR DUBAS: And that concludes our hearing for the day. (See also Exhibits 38, 39) [LB666]

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Natural Resources Committee
February 25, 2009

Disposition of Bills:

LB666 - Held in committee.

Chairperson

Committee Clerk