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Natural Resources Committee
February 16, 2011

[LB395 LB498]

The Committee on Natural Resources met at 1:30 p.m. on Wednesday, February 16, 2011, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB395 and LB498. Senators present: Ken Schilz, Vice Chairperson; Tom Carlson; Annette Dubas; Ken Haar; and Jim Smith. Senators absent: Chris Langemeier, Chairperson; Mark Christensen; and Beau McCoy.

SENATOR SCHILZ: Good afternoon, everyone, and welcome to the Natural Resources hearing today. I'm Senator Ken Schilz, Vice Chair of the committee. Senator Langemeier, the Chair of the committee, could not be here today as to a previous engagement. So at this time I would like to get the hearing started. I'll go ahead and start by introducing the folks we have here on the committee. To my far left is Senator Jim Smith from Papillion, District 14. Next to him is Senator Ken Haar from Malcolm, District 21. Right here, Senator Mark Christensen, who will join us later, from Imperial, District 44. Laurie Lage, legal counsel, to my right. And then to my far right is Barb Koehlmoos, the committee clerk. Senator Beau McCoy who will be absent today. Senator Tom Carlson from Holdrege. And Senator Annette Dubas from Fullerton. Today we have two bills on the agenda, LB498 and LB395. And if you're planning on testifying, please pick up a green sheet in the back and fill that out and hand it into Barb before you testify. And if you're here, but you don't want to testify, but yet you want people to know whether you supported or opposed the bill, there's also another sheet back there that you can just sign in and put down whether you support or oppose the bill. As I said, fill out the sign-in sheet, give the sheet to Barb and, obviously, you can also submit comments in writing. There's no doubt about that. And if you have handouts, please make sure you have 12 copies for the pages to hand out to the committee. Please speak clearly into the microphone and make sure that when you come up here to testify that you spell your first and last names. At this time if I could ask everyone to turn off their cell phones or put them on vibrate or silent and keep your conversations to a minimum and that would be fine. We don't...if you have any displays or anything which you'd like to do, if you give them to the committee, we will keep them. So if you don't want the committee to have those, you need to not present them to the committee. You can show us afterwards or in a more convenient time. We will be using the light system. I don't think we will have any trouble with it, but today we will be using the light system. Every person will have five minutes to speak. Four minutes on green; one minute on yellow; and then you get the red light and we would prefer that at that time you sum it up and finish with your testimony. So at that juncture...oh, yeah, we also have a page here, Lacy Schuler from Tekamah, thank you very much. And she'll help you out if you need anything as it goes to testifying. So with that, I see Senator Louden is here. We would open up the hearing on LB498. Welcome, Senator Louden.

SENATOR LOUDEN: Well, thank you, Senator Schilz and members of the Natural Resources Committee. I'm here today to introduce LB498 that removes in situ mining

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from certain regulations related to the withdrawal and transfer of water from underground aquifers. The reason for this bill is to recognize that existing regulations are not effective when dealing with in situ mining in which the majority of the water is continually reinjected back into the aquifer after being withdrawn. This bill leaves in place the authority of the Nebraska Department of Environmental Quality to regulate the usage and flow of underground water by in situ mining through the state's aquifer exemption process and underground injection control permits. Now Crow Butte uranium mine is located in northwest Nebraska. It's been there for several years; I suppose they're going on there 20, 25 years. Some of the testifiers that will have come from Crow Butte today will be able to tell you exactly the days and how long they've been there. But that's been a huge economic driver for that area and also for Nebraska because they do pay a severance or excise tax on the uranium that they extract from Nebraska; they have for years. It's a subsidiary of Cameco that's headquartered out of Canada. Now they have various uranium mines, from my understanding, in Wyoming and different places like that. So this uranium is extracted, made into yellow cake, and shipped to Canada to be processed into fuel-grade uranium. LB498 has been introduced to clarify some of the statutes that deal with this type of mining. There are representatives here that will testify on the technological aspects of the system, so I would defer questions like that to them. But if there are any other questions that you may wish to ask about the area, why, I would be pleased to answer them. [LB498]

SENATOR SCHILZ: Thank you, sir. Any questions for Senator Louden? Senator Haar. [LB498]

SENATOR HAAR: And I can ask this of future ones, but tell me again what the changes are then, specifically the changes that this makes in the rules. [LB498]

SENATOR LOUDEN: Well, I'll do the best I can, Senator Haar, since I introduced the bill, but it has to do with the way they inject the water. I mean, they bring up...they use a lot of water, but...I shouldn't say use it, they circulate a lot of water because they pump it up and inject it back down into that same aquifer to get the uranium and, of course, there isn't that much of a consumptive use. And I think that was a clarification for industrial use and try to get this type of mining in statute. Since that's the only place in Nebraska where you have that type of mining, why, this is what they thought there needed some clarification in statutes on what we were doing there. And at the present time, the NRDs, as I talked to the ones that...the Upper Niobrara White there, they have no problem at all with it because they're down in there below any, what would you say, potable water, usable water, they're down there 600 feet in that type of formation. And as I say, I probably know just enough about it to be dangerous, so really if you want to know the exact answers to that or something a little better, in fact, Mr. Stokey is here and I had a great visit with him today because he was about two of my sons' teacher in Chadron State College so we got to talk over old times and now he's...I say, I asked him if he went up when he went to Cameco or if he went down, you know, from Chadron

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State College and he feels he's improved his position in life. And I'm sure he has. It's an interesting job up there and I visited the mine a couple of different times and it's real interesting the way they do that. I've been there when they were drilling wells, and, of course, I've been around well drilling all my life and things like that there's big machinery and deep holes is something guys like me like to watch. (Laughter) [LB498]

SENATOR HAAR: Thank you. [LB498]

SENATOR SCHILZ: Thank you, Senator Haar. Any other questions? Senator Louden, I guess I have one. [LB498]

SENATOR LOUDEN: (Exhibit 1) Oh, there will be an amendment that will be added to that. But I think Mr. McGuire will probably discuss that amendment with you and outline what it does. [LB498]

SENATOR SCHILZ: Okay. Thank you. Now we'll take proponents for LB498. [LB498]

MARK MCGUIRE: Mr. Chairman, members of the committee, my name is Mark McGuire, M-a-r-k, McGuire, M-c-G-u-i-r-e, lobbyist and general counsel for Cameco Resources and appearing on behalf of that company on LB498. My role is somewhat limited here. Let me talk about...and I'll talk about the current form of the bill if you will, and Mr. Stokay and Mr. Goranson will then be called as witnesses and testify as to what your type questions, Senator Haar, and others will explain the process and what's going on. Now, the amendment that came out today, and I hope you all got it, we had trouble getting it off the system, but it all makes sense. LB498, after the amendment, essentially becomes the first half of the second page. If you look at page 2 of the bill, Section 1 down to Section 2 is the bill. The other parts that are stricken by the original motion would be the material at the bottom of page 2 and the material on page 6. And those pieces are being taken off of, and the bill simply becomes, as I say, the first 10 lines of page 2. Due to some errors that occurred in the drafting, and my mother always had famous old sayings for everything, and her famous old saying in this situation would be too many cooks spoil the broth. In passing the prior drafts of the bill around, things got mixed up that shouldn't have been there. But it's...and then we worked with Senator Louden's office on the amendment. The amendment appropriately takes out Sections 2, 3, and 4. And that results in the bill being Section 1 with the new language that we set forth there. That then becomes the bill with the acceptance of the amendment. I hope that's clear. In any event I'll be happy to try and answer any questions if it's not clear. [LB498]

SENATOR SCHILZ: Thank you, Mr. McGuire. Any questions for Mr. McGuire? Senator Carlson. [LB498]

SENATOR CARLSON: Thank you, Senator Schilz. When we look at something like this

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it becomes confusing to me, but I'm going to ask you, because anything that is not underlined is current law. [LB498]

MARK McGUIRE: Right. [LB498]

SENATOR CARLSON: So it doesn't change current law. [LB498]

MARK McGUIRE: It adds to current law. [LB498]

SENATOR CARLSON: Right. But when we see the wording strike original sections, is that taking them out of law? Strikes Sections 2, 3, and 4. [LB498]

MARK McGUIRE: Does that take them out? [LB498]

SENATOR CARLSON: Well it takes...it takes...it looks to me like it takes (Section) 46-677 out of law and inserts (Section) 46-676. [LB498]

MARK McGUIRE: It is not intended to take anything out. [LB498]

SENATOR CARLSON: Okay. Okay. [LB498]

MARK McGUIRE: I understand your source of confusion because I've suffered from the same thing and you sort of catch yourself going around. But that clearly was not the intent. And if there was something... [LB498]

SENATOR CARLSON: I think it's supposed to clarify it in a little more understandable way. [LB498]

MARK McGUIRE: I think that would be helpful. And perhaps if the bill advanced we can work on, because I think everybody's mind is going to be here as to what was intended to be said. If the consensus is that's not...that goal has not been achieved, well, we'll work on doing whatever makes it necessary to get it straight. So I understand what you're saying completely. [LB498]

SENATOR SCHILZ: Any other questions for Mr. McGuire? Sir, I guess I would have one for you, if you don't mind. As it pertains to this, just one of the questions, the agencies that are also involved, DNR, DEQ, what are their thoughts on and where do they come down on this, do you know? [LB498]

MARK McGUIRE: Yes, I do know. Both the DNR and the DEQ, I've spoken to in-house counsel for them when the bill was first coming out. They neither support nor oppose. I asked both of them if they were planning to attend this hearing, if they were intending to offer any positions or opinions and I was told no. They're neutral, I guess, would be

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what we'd call it. [LB498]

SENATOR SCHILZ: Okay. Thank you, because I didn't see anyone here and I was just wondering if you had communication. [LB498]

MARK McGUIRE: Yeah, they told me they wouldn't be appearing. [LB498]

SENATOR SCHILZ: Thank you very much. [LB498]

MARK McGUIRE: Yeah. [LB498]

SENATOR SCHILZ: Thank you. Any other questions? Seeing none, thank you very much for your testimony. [LB498]

MARK McGUIRE: Yes, thank you. [LB498]

SENATOR SCHILZ: And now we'll move on to the next proponent, please. [LB498]

WILLIAM GORANSON: (Exhibit 2) Chairman Schilz and members of the committee, my name is William Goranson, that's W-i-l-l-i-a-m G-o-r-a-n-s-o-n. I'm the president of Crow Butte Resources, Incorporated, doing business as Cameco Resources in Nebraska. First of all I'd like to thank you very much for the opportunity, for this opportunity to speak on this legislation. I would also like to thank Senator Loudon for sponsoring this legislation and carrying it forward. Crow Butte Resources has been safely producing uranium since 1991 using in situ recovery methods that Mr. Stokey will be discussing in more detail following my testimony. This operation is being performed at our Crow Butte uranium mine located near Crawford, Nebraska, in Dawes County. Our product is a fuel used to generate clean energy using nuclear power and other products use...our products are used worldwide, even in Nebraska at the Fort Calhoun Nuclear Station. In our Crow Butte operation we employ 69 people with an average annual pay of \$50,000 and up per year. We also employ 20 long-term contracts. Our annual payroll is around \$4.2 million per year. Annually Crow Butte spends \$22 million per year in the local economy in western Nebraska. We also pay \$1.9 million per year on local, state taxes and royalties. Crow Butte Resources is part of a larger organization called Cameco Resources that represents the U.S. Division of Cameco Corp. where we have operations in Wyoming and other places in the U.S. And Cameco is a global supplier to the nuclear industry and the largest supplier of uranium in the United States. We are here supporting this bill because under the current laws and rules we have duplicative permits restrictions that not only govern the production limits of groundwater, but also places requirements on timely reclamation of our activities. In its current form, the permanent...we operate the industrial groundwater permit we operate under places significant restrictions on our ability to meet all of our requirements including those required for reclamation. Again, Jim will provide more detail on this. Also, under the

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current permits issued by Nebraska Department of Environmental Quality and their rules and regulations, we believe that there are very strong protections for the environment and groundwater protection. And we also have another layer at the federal level through the U.S. Nuclear Regulatory Commission which also has those same constraints. Thank you for considering these comments and I urge you to advance LB498 to the General File. Thank you. [LB498]

SENATOR SCHILZ: Thank you, sir. Any questions? Seeing none, thank you very much. We'll move on now to the next proponent. [LB498]

JIM STOKEY: (Exhibit 3 and Exhibit 4) Chairman Schilz and members of the committee, I'd like to thank you for giving me the opportunity to speak here today. My name is Jim Stokey, spelled J-i-m S-t-o-k-e-y. I'm the general manager of Crow Butte Resources uranium mine near Crawford, Nebraska. The mining process at Crow Butte can be explained in five simple steps. Number one is recirculate water through ion exchange and it is a process similar to Culligan. Two, we have a precipitation cell where we precipitate the uranium; we wash it, we dry it, and we package and ship it. Through this entire process, strict controls and monitoring are in place to protect our workers, the groundwater, and the environment. The mining activities affect only deeper aquifers, specifically the Chadron Formation, that are unsuitable for drinking water. The use of this aquifer is controlled under a Class III aquifer exemption permit authorized by the Nebraska Department of Environmental Quality. Monitor wells installed above and around the perimeter of the aquifer being mined assure that the mining solutions do not migrate away from the output area. The shallow Brule Aquifer from which the area draws its drinking water is not affected. We continually monitor our radiation dose to our workers. Water at the operation is continually recycled through a controlled loop system and our consumptive use is about 130 gallons per minute, or approximately the amount of water necessary to raise 225 acres of corn or about 1.5 center pivots. In comparison, there are over 1,500 center pivots operating in neighboring Box Butte County. When done mining, our operation will and is required to clean the water and restore the aquifer to at least the same class of use that it was before mining. It should be noted that the groundwater under the first well field that we put in operation back in '92 has already been restored. Today we are asking that LB498 be advanced to exempt any in situ recovery facility recirculating water from an exempted aquifer designated pursuant to the rules and regulations of the Department of Environmental Quality. I gave you a handout that looks like this. Okay? And I'll explain a little bit of what's on there. Crow Butte is currently permitted by the Department of Natural Resources to transfer a maximum of 5,871 acre feet of water per year from leased land to the original exclusion area. This equates to approximately 3,600 gallons per minute. A Class III permit issued by the Department of Environmental Quality allows us to have 9,660 gallons a minute of production flow with 11,000 gallons a minute maximum flow. Restoration flow is calculated as it's equal to the total production flow minus the maximum permitted flow. Our NRC license limits us to 9,000 gallons per minute maximum flow; the NRC does not

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restrict restoration flow. Crow Butte operates under the most restrictive conditions of the combined permits. Our production flow is limited to 9,000 gallons per minute, the Nuclear Regulatory Requirement. The restoration flow is equal to the total production flow minus the maximum permitted flow as required by NDEQ. I have a map of the area that I handed out. To date, we've been able to operate successfully within the permitted flows. However, our mining activities have steadily migrated from the center of the permit area and are now entering...nearing the extents of the mine. As production flow increases, increasingly comes from the area falling under the industrial groundwater permit, it's becoming clearer that restoration efforts will be drawn out due to the 3,600 gallon per minute limit. Experience has taught us that the most efficient way to mine with in situ recovery is to do it as quickly as possible. This limits the amount of water that needs treated from mining and subsequently reduces the time needed for restoration. If we are allowed to operate under the NRC and NDEQ regulations and increase our flow from the lands at the north and the south of the permit area, we can mine the ore more efficiently by operating more wells within the area longer, in turn decreasing the amount of ore under pattern and lessening the time needed to reduce the ore mobilized by the mining process. As production flow goes down, restoration from these areas could be maximized, lessening the time needed to restore the groundwater. Thank you for considering these comments and I urge you to advance LB498 to the General File. [LB498]

SENATOR SCHILZ: Thank you, Mr. Stokey. Are there any questions? Senator Haar. [LB498]

SENATOR HAAR: Okay. Thank you for being here. You're going to have to educate me somewhat so I'm going to ask some questions about... [LB498]

JIM STOKEY: I hope I can. [LB498]

SENATOR HAAR: Okay. Tell me...now I understand, I was a chemistry major so I understand dissolving uranium and bringing it up; what do you mean by restoration flow? What does that mean? [LB498]

JIM STOKEY: When we are done mining and by rule for NDEQ, we stop injecting any chemistry in that area. We don't put in any more oxygen; we do not put any more bicarbonate in there and we start recirculating the groundwater within that mining unit. It's a 3-step process. We go in there and we recirculate it through ion exchange and remove what uranium is left. After we do that, then we take reverse osmosis or reverse osmosis units and remove the salts and any of the chemistry that's left in the aquifer, putting a permeate back in. When that's done and everything is stable, we go back in and we recirculate it on ourselves; in other words, just stir it up... [LB498]

SENATOR HAAR: Um-hum. [LB498]

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JIM STOKEY: ...and make sure that everything is kind of homogenized. And then we let it sit. And then after it sits and we see no trends in any of the constituents in the groundwater, then we...it's determined by NDEQ and NRC that it is stable and it's written off as restored. [LB498]

SENATOR HAAR: As restored. [LB498]

JIM STOKEY: And that's what we did with Mining Unit 1. [LB498]

SENATOR HAAR: How long does that take to restore? [LB498]

JIM STOKEY: Oh, well it depends. And it's totally dependent on the size of the unit and the amount of groundwater that we're allowed to recirculate. Mining Unit 1 was very small, so it took us about...I think approximately three years to do that, but we were in the learning process in doing that and so it took a little bit longer to do that. We have since, though, increased the resin bed or the ability for us to recirculate more water and restore groundwater. And we will increase that as time goes on and our restoration activities increase. So it's probably going to be about a similar length of time. [LB498]

SENATOR HAAR: So it's a number of years, yeah? [LB498]

JIM STOKEY: Yeah. [LB498]

SENATOR HAAR: Now the aquifer that...the deep aquifer that you're going to... [LB498]

JIM STOKEY: Yes, the Basal Chadron. [LB498]

SENATOR HAAR: Yeah. That's not just a pool of water though, right? So we're talking about water migrating through an aquifer to restore...or is this actually sort of an underground lake in this case? [LB498]

JIM STOKEY: No, it's a water-bearing sand that's under the ground. [LB498]

SENATOR HAAR: Okay, yeah. [LB498]

JIM STOKEY: What it is, is we have the overburden above the Brule and then there's the Brule Aquifer. Well between the Brule Aquifer and the Chadron there's 300 feet of bentonitic clay. And then the Chadron is confined between the bentonitic clay above it and 800 feet of pure shale that's below it and both of those are very, very low permeability. So water can't travel up or down out of there. On the sides, the Chadron Aquifer erodes out to the east of us, to the north of us, and continues on, though, to the south. Our area that we mine is up just below the Toadstool Park area and it's a

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confined aquifer. After the pump tests that we did on it, it's a confined, nonleaking aquifer. [LB498]

SENATOR HAAR: Okay, now...so you're going down to the really low-level aquifer. Do you have to go through the Ogallala to get there? [LB498]

JIM STOKEY: The Ogallala doesn't exist at the mine. [LB498]

SENATOR HAAR: It doesn't exist in that part. [LB498]

JIM STOKEY: It's just the Brule. [LB498]

SENATOR HAAR: Okay. Then is that sealed in some way, after you've completed your restoration you seal so that there can't be leaking out of that aquifer? [LB498]

JIM STOKEY: Yes. When we're completely done, groundwater has been accepted as restored, we go back in and we put above the blank, or above the area where the well is screened, we put bentonite within the screened area and then 25 feet above that in the well casing itself. Then after we get that installed, we go in and fill the casing to the surface with cement. And after that then is dried we go back down, we dig down 5 feet, cut the casing off, put a cement cap on that and then return the overburden. [LB498]

SENATOR HAAR: Okay. And then the thing, the DEQ and so on, determines when it is restored. [LB498]

JIM STOKEY: Yes. [LB498]

SENATOR HAAR: And that's...do they drill additional well...additional holes, or they take samples of your water to do that? [LB498]

JIM STOKEY: We have samples that we took pre-mining, our baseline sampling. And we also have wells that are identified as post-mining sampling wells, one per acre in the mining unit itself. The constituents that are in those, we have to get them either to match the baseline, original water quality, or class of use. And after we do that and it becomes stable, then NDEQ, if they feel that we've met that, will write it off as restored. [LB498]

SENATOR HAAR: Okay. So what exactly, and thank you for that, that helps me understand how you do this. So what exactly is this law changing then that was...? [LB498]

JIM STOKEY: Would you take out this map. [LB498]

SENATOR HAAR: You bet, I got it right here. [LB498]

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JIM STOKEY: This one here. If you look, and if you look right here, the green and the, this is orange to me. [LB498]

SENATOR HAAR: Yeah, it is to me too. [LB498]

JIM STOKEY: Okay. Then there are blue areas at the top and the bottom of the map. [LB498]

SENATOR HAAR: Um-hum. [LB498]

JIM STOKEY: The green and the orange area, those are not...we can pump and recirculate as much water as we want governed by the NDEQ and NRC permit, the 9,000 gallons per minute, within that area. But if you take a look at where this little white dot is, that's our original mill and this is the original area that was not controlled by the industrial groundwater permit. These blue areas, however, out here on the top and bottom of the map, the extents of the mine to the north and to the south, they are governed by that, they do fall under that because this is leased land, we don't...we don't own it. [LB498]

SENATOR HAAR: Okay. [LB498]

JIM STOKEY: And you know the industrial groundwater permit, if we transfer water from here to here we can only do that at a rate. [LB498]

SENATOR HAAR: Okay, I see. [LB498]

JIM STOKEY: And it boils down to 3,600 gallons per minute if we take the acre feet and divide it on out. So the mining that is taking place here was where we originally started, but then as we progressed over time, we moved this way and this way as the center section became mined out. When we...we're now up into this blue section. We're mining a little bit of this section 12 up here right now. [LB498]

SENATOR HAAR: Okay. [LB498]

JIM STOKEY: We're not in 11. And we are starting to mine a little bit down in here. As we get further out into here, the 3,600 GPM rule is starting to come into play. [LB498]

SENATOR HAAR: Okay, I gotcha. [LB498]

JIM STOKEY: We know that that's going...because it's difficult to deal with, with the production right now, we know that it's going to be very difficult to deal with, with restoration. What you should know is that as we get to this point in the mine and these

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two mining units go into restoration the resin bed that we have right now and the columns that we're using right now can be taken out of production and they can be put into restoration and we can really increase the flow then that we have for that restoration activities north and south and we can get in there and restore it much faster. [LB498]

SENATOR HAAR: Okay. What's the scale on this map? Do you know what the...? [LB498]

JIM STOKEY: These are sections of ground, those are ones. [LB498]

SENATOR HAAR: Okay. Actually a section, 640 acres. [LB498]

JIM STOKEY: Yeah. [LB498]

SENATOR HAAR: And then you pointed out that you...let's see, your consumptive use is pretty small compared to just about everything. [LB498]

JIM STOKEY: Yes. [LB498]

SENATOR HAAR: What happens to...so you are using some...where does that water go? Does it go into a creek or does it...? [LB498]

JIM STOKEY: No, we have a deep disposal well and two evaporation...no, actually three evaporation ponds and we're drilling a second deep disposal well. But we intend to put all of our consumptive use in the deep disposal wells, the two, and stop using evaporation pumps. [LB498]

SENATOR HAAR: Okay. Well thanks, that helps educate me on this process. [LB498]

JIM STOKEY: Thank you. [LB498]

SENATOR SCHILZ: Thank you, Senator Haar. Any other questions for Mr. Stokey. Senator Carlson. [LB498]

SENATOR CARLSON: Yeah, thank you Senator Schilz. Again, just to clarify just a little bit more for me, you're pumping out of these...out of this deep aquifer that...and so other than...you have had water coming to the surface, and that's where the evaporation takes place? [LB498]

JIM STOKEY: Uh-huh. [LB498]

SENATOR CARLSON: But the rest of it is pumped back down. [LB498]

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JIM STOKEY: Uh-huh. [LB498]

SENATOR CARLSON: And what percentage is pumped back down, roughly? [LB498]

JIM STOKEY: One to one and a half percent. And that's what...excuse me, the other way around, 1 to 1.5 percent is what we dispose of, the rest is returned, the 98.5 to 99. [LB498]

SENATOR CARLSON: Okay, 98.5; so of the 9,000 per minute and so forth doesn't mean a whole lot when most of it ends up back down anyway. [LB498]

JIM STOKEY: Exactly. [LB498]

SENATOR CARLSON: And so I was confused a little bit by not wanting to have consumptive use count, but that helps clarify that, so thank you. [LB498]

JIM STOKEY: Okay. [LB498]

SENATOR SCHILZ: Any other questions? Yes, Senator Haar. [LB498]

SENATOR HAAR: So this is one of the biggest uranium mines in the world, is that what we heard? [LB498]

JIM STOKEY: Oh no, no. We produce about...we're licensed for 3 million, I think, pounds. We produce about 800,000 pounds per year right now. And there's another mine in Wyoming that produces about 2 million pounds. In northern Saskatchewan there's a very large mine up there, McArthur River and...20 million pounds up there. So Cameco has mines all over the world and they have one in Kazakhstan that's like ours right here, that I worked on when I was younger. [LB498]

SENATOR HAAR: So does your company see a growing future for nuclear power? [LB498]

JIM STOKEY: We certainly hope so. [LB498]

SENATOR HAAR: Or are you just maintaining? [LB498]

JIM STOKEY: No, we certainly hope so. And we'd like to expand out in our operation also as time goes on too. [LB498]

SENATOR HAAR: Have you estimated at all what the potential uranium is in that area? [LB498]

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JIM STOKEY: We do know somewhat about it, but, with our drilling? Can I tell the...
[LB498]

WILLIAM GORANSON: Yeah, you can tell them, because it's public information.
[LB498]

JIM STOKEY: OH, okay. So west of our mine there's probably over there 10 to 15 million pounds. And south of the mine probably another 20 million. [LB498]

SENATOR HAAR: So you'll be operation for quite a while. [LB498]

JIM STOKEY: We hope so. We'd like to stay in operation out there. We feel we are a good asset to the community and our jobs are really important to the people in Dawes County. [LB498]

SENATOR HAAR: Thank you very much. [LB498]

SENATOR SCHILZ: Thank you. Seeing no further questions, thank you very much.
[LB498]

JIM STOKEY: Thank you. [LB498]

SENATOR SCHILZ: (Exhibit 5) Any other proponents to LB498? Any...okay...oh, we do have a letter of support of LB498 coming from the Upper Niobrara White Natural Resources District and Lyndon Vogt so that will be entered into the record. And now at this point we will move on to opposition to LB498. [LB498]

KEN WINSTON: Good afternoon. Senator Schilz and members of the Natural Resources Committee, my name is Ken Winston, K-e-n W-i-n-s-t-o-n, appearing on behalf of the Nebraska Chapter of the Sierra Club in opposition to LB498. First of all, I believe that the proposed amendment improves the bill. I was planning to testify at length as to why I thought that language was improper so I think the proposed amendment is going in the right direction. There's a number of reasons why we think the bill has some issues and I guess I just want to briefly go through those things. First of all, I listened to the reasons that were given for the bill by the introducers and the proponents of the bill and I didn't hear a problem that they're currently unable to resolve. I mean, basically, it's something out there in the future that they would like to address. Sounds like everything is going just fine. They're able to address their water needs at the present time. They want to do something different and get some additional water and I guess my thinking is, if that's what the problem is, then why not amend that act as opposed to eliminating the oversight in that area completely. Then the second thing is, I haven't done a lot of work with this particular...with the Industrial Groundwater

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Regulatory Act, as a matter of fact, this is the first time I have every looked at it, but it looks to me like this would be an attempt to avoid a regulatory procedure. And I guess we have a couple of concerns in that area. One is that uranium has a lot of security issues and we believe there should be oversight of that process and there shouldn't be reduced oversight in that process. Secondly, it's my understanding this is a water shortage area and we think that anything that deals with water in that area, there should continue to be oversight of that process so that this doesn't somehow become a precedent so the next time somebody comes in and wants to avoid oversight of a water shortage area they could avoid that. Then, I guess the other thing that I wanted to mention is, I was looking at...I'm not aware of the definition of in situ. If there is one in statute, I'm not aware of it. So that...may be something that ought to be examined in regard to the bill. So that...and I guess the other thing is, just because of the fact that it is a water-shortage area, the fact that they are indicating they need more water, just wondering how that would impact other water users in the area and their needs. So those would be the issues we'd like to raise today and would be glad to answer questions if I can. [LB498]

SENATOR SCHILZ: Any questions for Mr. Winston? Senator Carlson. [LB498]

SENATOR CARLSON: Thank you, Senator Schilz. Ken, your objection based on the fact that it's in an area that is, you might say, water short. I don't argue that. But if going from a deep aquifer and they return 98.5 percent or 98 percent back to the aquifer, I don't understand how that's a problem. [LB498]

KEN WINSTON: Well, I understand what you're saying. I guess one of the things that I was wondering about is how that could be possible when they have evaporation ponds. And I'm just trying to wrap my mind around that because I do know, as the one witness indicated, that they have evaporation ponds. But I guess the main concern is is the fact that, as I said, it's a water-shortage area. I think one of the other concerns that we have is the...well I don't believe anybody is trying to drink this water, but the fact that the water is reinjected, have concerns about what is the quality of that water after it is reinjected? I mean is it...after it's been used in this process, is anyone ever able to...capable of being able to use it again? And so...so have concerns about taking water away from other uses that might be more beneficial. [LB498]

SENATOR CARLSON: Okay. I'm going to make a comment that I think I'm on the right track here, and our system of hearings and so forth doesn't allow us to turn around and talk to somebody else that has testified in front of you, but I'm going to say something and then I would encourage you to talk to these representatives when the hearing is over. My understanding is that there is such a layer between the top aquifer and the deep aquifer that once that water is returned to the deep aquifer it's not going to permeate and come back. I think part of the reason that not much of it is lost is because it's so deep to begin with, it's brought up and it is utilized, I'm guessing, I'm going to call

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it inside basis for a lack of a better term, and I don't know or understand the evaporation ponds, but I'm guessing that's a fairly small percentage of water used and then it's returned. So I think I could understand how not very much of it is able to evaporate. And when it is returned, it's in at least as good a shape as it was when it was pulled out. It's not drinkable when it's pulled out anyway. And if it's not going to reach the other aquifer, I don't see that as a problem. Now the unanswered question might be, you're taking water that deep to an aquifer that that's compartmentalized, if you take any of it out, does it ever return because I'm sure it takes a long, long time. But that's how I'm interpreting what I think I know and I just encourage you to talk to the members of that group when the hearing is over. [LB498]

KEN WINSTON: And I appreciate that, Senator. And I'm not trying to start an argument here. I guess one of the things that I'm raising some of these questions is, this is a situation where...it's my understanding there's going to be...there's some interest in doing some other in situ mining in other areas of the state and I'd be glad to...I haven't investigated that in any detail, but that's my understanding there's some other areas. And I guess I would have a concern that because of the fact that statutes don't just apply to one entity, that suddenly the members of the Legislature say, well, gee, why didn't we regulate this usage of water and it's being used differently from the way that the folks in Crow Butte are using the water. So I guess I'm concerned that it may be applied in other areas in ways that might be considered...where it might have...where we would want to have more oversight. And I also guess, like I said, I do have concerns about removing any kind of oversight when there's issues about water quantity or quality involved. [LB498]

SENATOR CARLSON: Okay. Well, we've had a little dialogue here and they can respond to it after the hearing. Thank you. [LB498]

KEN WINSTON: Thank you, Senator. [LB498]

SENATOR SCHILZ: Any other questions for Mr. Winston? Ken, I have one for you, and I'm just looking here, and it's your conversation and your testimony that...that brought this to light, and I just look at your three, and I know you're probably not familiar with this exactly, but just look at the three different permitting processes that are going on there and I'll get with people later, but do you know the differences in how those are managed, or how those are regulated? [LB498]

KEN WINSTON: I'm sorry, I shook my head, I need to say no. I...I...no, I haven't dealt with any of those kinds of things. I guess...it's just one of those things where when it's something like this, I guess I didn't hear a strong reason why that oversight is...what was being impeded? Was there anything they couldn't do as a result of that? And it sounded to...everything I heard was we're going fine, we're not being prevented from doing anything we want to do. [LB498]

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SENATOR SCHILZ: Okay. All right. Senator Haar. [LB498]

SENATOR HAAR: Yeah, my understanding, too, was that the problem came in the quantity of water that could be transferred from one place to another; that was the problem. But the suggestion, I think, is maybe not a bad one that if...because, you know, some other minerals have been discovered in Nebraska that if there's really very little law in this in the area of in situ, it might be worthwhile doing some kind of study this summer, whatever, so that we're not caught like we were with the pipelines wondering whether we have regulation where we need it and so on. So I think that's a useful suggestion. [LB498]

KEN WINSTON: Certainly, Senator. [LB498]

SENATOR SCHILZ: Thank you, Senator Haar. Any other questions? Seeing none, thank you, Mr. Winston. [LB498]

KEN WINSTON: Thank you. [LB498]

SENATOR SCHILZ: Any other opponents to LB498? Seeing none, any neutral testimony on LB498? Seeing none, Senator Louden, you're recognized to close. [LB498]

SENATOR LOUDEN: Well, thank you, Senator Schilz and members of the committee. As it was pointed out by Mr. Stokey and Mr. Goranson, the economic driver that's going on up in there, and, of course, that isn't just because the economic driver doesn't mean that we should do something if it isn't considered safe. And I would agree with Senator Carlson that when this water is returned, just what I would know about it as a layperson, you've taken the uranium out and you certainly couldn't drink it when the uranium was in there. If anybody of you has read the newspaper from the city of Grand Island, that's what they have is uranium in the water and I asked Senator Flood and some of them, well, what are you complaining about? You can sell that stuff. As far the kind of water when you put it back down, I have no problem with what they do because as it's been pointed out, it's down into this aquifer that's down in there over 600 feet down and with a layer of clay in there and stuff, it's probably never going to come up anyway because if it did, why we'd all be drinking water with uranium in it. So I think with that part, I'm sure that what they want to do is to more or less be out of the Industrial Groundwater Regulatory Act is what...the way I understand the bill, I think, as we're looking at here. And I think they explained that right. One thing I would mention to Senator Carlson when he wanted...oh, we're talking about the bill there with the amendment that would do away with any of this that's in there, and as you would look on the front page, Senator Carlson, there's no repealer of any statutes on there. They were going to amend Sections 46-676.01 which is Section 1 there. And then if the rest of it is out of

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there, 677 and 706, then that's all out of the bill. So there's no repealer in this bill, it's just amending that one Section 46-676. And so I think when he put an amendment in there to strike the rest of that, that whatever you're doing with it is out of there is the way I understood it over the years. So I...there's no problem there, I don't think, with that. Yes, Mr. Winston has brought up some ideas. He said he didn't know what in situ mining is. I think it's in the dictionary. I mean it means in-place mining, that's all it means. And in other words you're mining your product down there instead of bringing it all up and sorting it out above and doing like you do with a surface mine or some of these other mines. So in situ mining has been perfected and it's a way cheaper way of bringing up small quantities of valuable product. So whether we have to have some regulations on that, but I think that's a whole other ball game. Yes, if we're going to start doing a lot of that mining around the state of Nebraska, sure, there's got to be some regulations and it looks like we probably already laid a lot of groundwork on how it's done. So that would be either an interim study or something like that to go on something like that. At the present time, this is the only place in Nebraska that I know of that's doing that. Now there could some more areas starting to show up because this is a process; it's quite economical to, like I say, bring up small amounts of project. I would ask that you advance the bill and also I would mention that if you have any questions about any of this, which is a lot of technical questions here, to either call my office and we'll get you in touch with some of the folks up at Crow Butte or something like that, and we got e-mail nowadays and you can have your answer probably quite quickly and I'm sure Mr. Stokey or some of his people...I know a few people up there at the mines that I thought if they wouldn't answer your questions I'd go up there myself and beat it out of them, you know. (Laughter) So with that I appreciate the attention you folks have done with this today and I appreciate whatever you do with it. Thank you. [LB498]

SENATOR SCHILZ: Thank you. Is there any further for Senator Louden? Senator Louden, thank you very much. With that we'll close the hearing on LB498. And, Senator Carlson, would you take over while I introduce LB395? [LB498]

SENATOR CARLSON: Okay. Okay, we will open the hearing on LB395 and, Senator Schilz, you're recognized to open. [LB395]

SENATOR SCHILZ: (Exhibit 6) Thank you, Senator Carlson, and members of the Natural Resources Committee. Good afternoon. My name is Ken Schilz, spelled K-e-n S-c-h-i-l-z and I represent Legislative District 47. I come before you today to introduce LB395. LB395 would amend the Nebraska Environmental Trust Board so that the director of the Environmental Quality, director of the Natural Resources Department, and director of Agriculture, secretary of the Game and Parks Commission, and chief executive officer of Health and Human Services become nonvoting, advisory members of the board. It also strikes the language that requires a board member who is also a director of state agency to abstain from voting on applications for his or her own agency. LB395 also changes the number of votes required to deviate from the subcommittee's

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recommendation from eight to five. And then I also bring in an amendment here that I would pass out that would further simplify that section by stating that a majority of the voting members present is needed to deviate from the subcommittee's recommendation. This bill is one of those that every once in awhile you get people asking questions and wondering about whether things have changed and times have changed and just an opportunity to take a look and see what the situation is, how it goes forward at this point, and to see if there are any changes that need to be made moving forward to maintain our integrity and our objectiveness. So with that, I would encourage you...and I don't know if I have any supporters or not, but I would encourage you to listen to the testimony that's out here, ask questions of the folks that may come to testify. And with that I would be happy to answer any questions you might have. [LB395]

SENATOR CARLSON: Okay, thank you for your opening. Senator Haar. [LB395]

SENATOR HAAR: I'll ask you a few questions. Currently, who appoints the board members of the Environmental Trust? [LB395]

SENATOR SCHILZ: Currently, who, Senator? I don't know. I know Mark is here. [LB395]

SENATOR HAAR: Yes, is that the Governor? [LB395]

SENATOR SCHILZ: The Governor appoints some. Of course the ones that are the agency heads, those are basically in statute and automatic. As far as I know, it's the Governor. Now I see that Mr. Brohman is here. [LB395]

SENATOR HAAR: I guess we'll...yeah. [LB395]

SENATOR SCHILZ: And he would be able to...to make sure that I'm telling you correctly. [LB395]

SENATOR HAAR: Yeah, okay. I will ask him those questions because it sounds to me sort of like the Governor appoints everybody anyway. Okay, thanks. [LB395]

SENATOR CARLSON: Okay. Any other questions? Let me ask about the amendment. [LB395]

SENATOR SCHILZ: Um-hum. [LB395]

SENATOR CARLSON: On page 4, line 25, it's supposed to read then: with an affirmative vote of a majority, with an affirmative vote of a majority of the members of the board. [LB395]

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SENATOR SCHILZ: Um-hum. [LB395]

SENATOR CARLSON: Is that members attending or is that total members? [LB395]

SENATOR SCHILZ: It should be members attending. [LB395]

SENATOR CARLSON: Okay, members attending. Okay. Senator Haar. [LB395]

SENATOR HAAR: Do you think this is a good bill then or it's just sort of a way of looking at the board? [LB395]

SENATOR SCHILZ: Well I think...I think it is a good bill. I think that as you look at things, we need to be very careful as state government in making sure that not only are we doing things as transparently as possible, but also that there's not the perception, that there's not the perception that people could be taking advantage of a board, especially when we're talking about tax dollars. So I think it's a very important question to be asked. And quite honestly, it may be...it may be in the end that everybody decides that this is the way it should be and that's the process that we're in. [LB395]

SENATOR HAAR: Gotcha. [LB395]

SENATOR SCHILZ: But I do think that if I didn't think it was worth bringing, I would try not to waste your time. [LB395]

SENATOR HAAR: No, that was not...no, but do you feel this would be an improvement to the way the board operates? [LB395]

SENATOR SCHILZ: I..I...yeah, and...and as I've said before on bills like this where we come up with ideas, is this the best scenario? Not necessarily. Is it one way that may improve things or may look to help out where people see issues? Yes. But as with anything in this process, more than willing to take an objective look at it and work with folks where necessary if possible to get things done. [LB395]

SENATOR HAAR: Thank you. [LB395]

SENATOR CARLSON: Okay. Any other questions? Okay, Senator Schilz, thank you. And we'll proceed. Do we have anybody that wants to testify as a proponent? Seeing none, anybody as an opponent? Welcome. [LB395]

MARK BROHMAN: Good afternoon, Mr. Chairman, and members of the Natural Resources Committee. My name is Mark Brohman, M-a-r-k B-r-o-h-m-a-n. I'm the executive director of the Nebraska Environmental Trust and I'm here today in opposition of LB395. And I've just got a couple of talking points here and then I'll work some

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questions at the end of course. If agency heads are not allowed to vote, there's a good chance they're not going to attend meetings. We already have trouble getting a quorum at times. And so we think that the attendance would probably even be lower in the case of agency directors if they didn't have a stake in the vote and they felt they could express their opinion, but they couldn't actually vote on things that they probably...some of them wouldn't attend all the meetings, especially if they had more pressing issues which we know they all have a lot of things on their plate. The bill doesn't address the nonvoting member, whether they count as a quorum or not. And that's a big question we have; to get a quorum we have 14 people on our board right now so if five of them become nonvoting, do they count towards the quorum or not? That's something that needs to be addressed in this issue before we move forward if something does move forward from the committee. Our subcommittees are composed of four to five board members, depending upon which subcommittee you're talking about and they already have one or two directors on them. So now all of a sudden are they also nonvoting on the subcommittee? If that's the case, the grant subcommittee now has six board members; two of them are directors. So if the directors are nonvoting, that's only four votes to determine what the grant subcommittee would do. And that would mean either three or four would have to approve or deny anything to have a majority of that subcommittee because now there are only four people on that. So I see that as very problematic when you've got three or four people out of a board of 14 would be able to make major decisions. I mentioned before it was very tough to attain a quorum at times. The last board meeting we had eight. That's exactly a quorum so we barely had enough. Under my tenure, we haven't had to cancel a meeting, but in years past there have been few meetings that had to be postponed because a quorum wasn't attained. So as soon as you start lowering it down from 14 to say 9, a quorum could be difficult because the agency directors typically are here in town, so they, if anyone, has problems getting to meetings, they're the ones that weather usually doesn't affect and things like that. If the directors don't attend meetings, then their expertise is lost and their institutional knowledge, and I think we all can look at those five agency directors and understand the vast knowledge that they have. You've got the director of Game and Parks; the Department of Natural Resources; the Department of Ag; the Chief Medical Officer; the head of DEQ; those folks have a lot of knowledge and they bring that knowledge to the table and I would hate to lose out on that with our discussions at the Environmental Trust. One of the current directors has been on the board since day one, since 1992, so that's a lot of institutional knowledge that potentially if that person chose not to come or had things that were more priority on his plate. The citizens are appointed by the Governor and the citizens have a 2 to 1 voting marine right now, or almost a 2 to 1. There's nine citizens and five agency directors so anyone that says the agency directors are able to push the agenda or select, you know, where the trust is going, I think they would go wrong, because there are nine citizens on there and only five agency heads. There wouldn't be a cost savings with this because it's the citizens, typically, that have expenses, the mileage, the meals, the per diem thing, not per diem, but the costs that come associated with them coming to meetings and the directors

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don't submit expenses for that, but the citizens do. So I don't see there would be a cost savings at all with the bill. The directors have some accountability. They can be removed from office, some of them very easily, some of them are serving at the pleasure of the Governor. There's one person has a contract through his commission through his board and his board is selected by the Governor. So there is accountability with those board of directors that are agency heads. And then also some people say, well, we think there's a problem with people voting on projects that their agency has something to do with. And the statutes clearly indicate, they say voting on applications which would provide funding primarily for his or her agency is prohibited. So they can't vote on those projects; they abstain from those projects. And sometimes even if they just have some of their staff participating on the fringe of a project just as advisors, sometimes they will abstain from voting on a project just so there's no chance that people would see that as an impropriety. And then the last issue, as Senator Schilz mentioned, that these are tax dollars, but I'd remind the committee that by statute, we call these lottery proceeds. So I just want to make sure we don't have confusion there with these dollars. So with that I would be happy to answer any questions you might have, but that's our position. [LB395]

SENATOR CARLSON: Okay, thank you for your testimony, Mark. Senator Haar, I about called you Schilz. [LB395]

SENATOR HAAR: We look a lot alike. [LB395]

SENATOR CARLSON: You look alike. Sorry. [LB395]

SENATOR HAAR: We're confused all the time. So talk to me a little bit about the directors. They're appointed by the Governor for what terms? And then what would terminate them from the board? [LB395]

MARK BROHMAN: There's five agency heads that are on there. [LB395]

SENATOR HAAR: Right. [LB395]

MARK BROHMAN: I don't know how the Chief Medical Officer is selected. I don't know how you become the Chief Medical Director. [LB395]

SENATOR HAAR: Other than those, we know that those are gone. [LB395]

MARK BROHMAN: Brian Dunnigan is the head of the Department of Natural Resources and he is appointed by the Governor. And I don't know if there is a contract involved with his serving. [LB395]

SENATOR HAAR: No, but I mean the nonagency. [LB395]

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MARK BROHMAN: Oh, the nine agencies...there's nine citizens, three from each congressional district. They are appointed by the Governor for a term of six years. So there's three citizens appointed by the Governor. Those terms are staggered so that they don't all come up together. [LB395]

SENATOR HAAR: Right, right. [LB395]

MARK BROHMAN: But they're appointed for a 6-year term and they can be reappointed. We do have one citizen who has been on since the very beginning and we have one agency director who has been on since the beginning; everybody else has changed. The agency heads have changed; the people haven't been reappointed or asked not to be reappointed. So there are nine citizens, three from each congressional district appointed by the Governor, and then the five agency heads, whoever happens to be in those positions are...you know, serve those. [LB395]

SENATOR HAAR: So the 6-year term, if governors change in between, it doesn't matter. [LB395]

MARK BROHMAN: No. [LB395]

SENATOR HAAR: I mean, they're there for the six years. [LB395]

MARK BROHMAN: Yeah, they serve out their term. [LB395]

SENATOR HAAR: Okay. And who...do we, in this committee then, approve those recommendations? [LB395]

MARK BROHMAN: No. [LB395]

SENATOR HAAR: So the Governor just appoints them period. [LB395]

MARK BROHMAN: Right, they are appointed by the Governor. [LB395]

SENATOR HAAR: Yeah, good. Okay. I think the question of quorum is a good one. And also, if I can't vote or whatever, I'm much less likely...and I want to think about those points. [LB395]

SENATOR CARLSON: Okay. Any other questions? What is the application process for somebody that's not out of a state agency? [LB395]

MARK BROHMAN: One of the citizens, you mean? The Governor puts out a...occasionally there will be notice, and I got one just the other day for vacancies that

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are coming available; I shouldn't say vacancies, terms that are expiring or positions that are available to the public and there's a list by month of all the different agencies. I think there were 20 different state agencies that had different boards and commissions and we were listed because we do have two positions coming up this March that the Governor could reappoint those folks or select somebody different. But there is a listing and you can also go on the Governor's Web page and see when positions are open. [LB395]

SENATOR CARLSON: But if as a citizen I'm interested, how do I show that? [LB395]

MARK BROHMAN: You send an application; there's an application on the Governor's Web site, send it in to his office. [LB395]

SENATOR CARLSON: And does that ask...have recommendations on there...either letters of recommendations or people that would give a recommendation? [LB395]

MARK BROHMAN: I believe there's a section that you can put recommendations and you can attach anything you want to those applications. [LB395]

SENATOR CARLSON: Okay. Now I think that Senator Haar, he kind of stuck himself into this, he's not even listening to me. [LB395]

SENATOR HAAR: I am listening to you. [LB395]

SENATOR CARLSON: I think it's too bad that where somebody from a state agency is part of a board and they have to have the carrot of voting or they won't show up. And we're all busy. But the Water Sustainability Task Force for the Republican Basin has five senators on it and we're nonvoting. I don't like that we're nonvoting, but we are. [LB395]

MARK BROHMAN: Yeah. [LB395]

SENATOR CARLSON: And we've had good attendance and good interest. So I'm not criticizing you for saying it, it's probably the truth, but it is kind of too bad that it's the truth and I wish that weren't the case. But that was just a comment so it's not alone with the Environmental Trust, I understand that. [LB395]

MARK BROHMAN: Sure, and I've even had directors tell me that if they're going to become nonvoting, then maybe the Legislature should take them off the board. And that came from them. And, of course, no one is here to testify from my board, but I have been told by two board members that that may be the best way then, you know, rather than making nonvoting is to take them completely off the board which I would hate to see because that's a lot of expertise and a lot of knowledge. I mean, those five people

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possess a lot of information and they bring a lot of things to the table that a lot of people, the citizens, aren't aware of because they're in those agencies that typically deal with natural resources, health and human services, air quality, water quality. [LB395]

SENATOR CARLSON: No, I don't argue that at all. And I know that when you're on a board, until you've been on there for a while, you've got to learn what the board even deals with and then after that learning curve, if your term comes up, then it's time to train somebody else. Now they can be reappointed how many times? [LB395]

MARK BROHMAN: There's no limit. [LB395]

SENATOR CARLSON: Okay, that's where you said the one had been on there since the beginning. [LB395]

MARK BROHMAN: Right. Right. [LB395]

SENATOR CARLSON: Okay. Senator Haar. [LB395]

SENATOR HAAR: I not only listened to you, I bring you candy. That's from my office. [LB395]

SENATOR CARLSON: Oh, that's from you, thank you. [LB395]

SENATOR HAAR: And you can take that back to your office. Just sort of quickly, because I don't have a list of the board members or anything, are all these people on the board rabid environmentalists? How would you kind of characterize your board? [LB395]

MARK BROHMAN: We have a whole variety; and I don't know if I would say that any one member I would call a rabid environmentalist or tree hugger or whatever term you might want to use. We've got...out in the 3rd Congressional District we have someone who lives on a ranch and is primarily, you know, that's where their income is derived from. Another person's family is involved in irrigated agriculture and cattle production. Another person is involved in strictly agricultural row crop, irrigation, those three. The ones from the area here, you've got a retired banker who has ranches in the Sandhills. We've got a young rancher from southeast Nebraska that has a ranching operation with his father and his sister. We have a retired farmer from the South Sioux City area. We've got a couple of businessmen from the Omaha region. And we have a city employee from Omaha in the recycling end of things. [LB395]

SENATOR HAAR: So there's a quite cross-section. [LB395]

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MARK BROHMAN: So yeah, and I would say there's more representation on what I call the agricultural side from those names I just went through than there is on whatever other category you want to place them in to. [LB395]

SENATOR HAAR: Interesting. Okay, thank you very much. [LB395]

SENATOR CARLSON: Any other questions? Yes, Senator Smith. [LB395]

SENATOR SMITH: Thank you, Senator Carlson. Mr. Brohman, the nine citizens that are appointed... [LB395]

MARK BROHMAN: Um-hum. [LB395]

SENATOR SMITH: ...they're for staggered terms, you said? [LB395]

MARK BROHMAN: Right, yeah. [LB395]

SENATOR SMITH: And for how many years? [LB395]

MARK BROHMAN: Six years. [LB395]

SENATOR SMITH: Six years, okay. Then I guess my concern that I see here is that, you know, you have the nine citizens, you have five department heads. [LB395]

MARK BROHMAN: Um-hum. [LB395]

SENATOR SMITH: And you can have a huge swing in the makeup of that board of commission through the change in a department head, through the change in the administration and I could see where that could really affect some of the policy decision-making on that board. True that they would not necessarily be able to...the weight of their combined votes would not be beyond that of the nine citizens. [LB395]

MARK BROHMAN: Um-hum. [LB395]

SENATOR SMITH: But you could, whereas the others are staggered and election periods, you could have those five really change the makeup in the face of that in a very quick, immediate time. [LB395]

MARK BROHMAN: Um-hum. [LB395]

SENATOR SMITH: And I would also go back to what Senator Carlson was saying that hopefully, you know, hopefully you're...what you're saying is not a representation of the department heads. I would say that's a poor commentary that...to say that someone

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would not show up because they can't have the vote, I think that's...I see that as being part of their duties, their responsibilities as department heads. And, gee, if that were a problem, I sure would like to...for...at least for this committee be made aware if there was a problem of someone not showing up because they don't have an opportunity to vote. That certainly is not the type of folks we would want representing Nebraska. So I guess I would leave it with the five department heads together because they could change and make...change the makeup of that committee so quickly or that commission so quickly that that would be a concern to me. [LB395]

MARK BROHMAN: Can I address that, Senator? I've been around state government since 1981. I've seen administration changes, and those five positions have never, of course, completely flipped because one person has been there since the beginning. I haven't seen that happen. Maybe if one or two of those positions, over the years when you've changed administrations radically, I'm talking about party and not just one candidate to the next, so I haven't seen that happen. But like I said, I've only been around government since '81, but I haven't seen that happen. We've had several administrative changes from one party to the other. I've never seen more than two of those positions change during those changes. So I haven't seen it, but I'm not saying it couldn't happen, but say the secretary of the Game and Parks Commission, he's appointed for a term of either five or six years by his commission and so those commission members are appointed by the Governor. So when you change administrations, the new administration, the new governor couldn't change that position right away. He could reappoint some of that person's bosses, but it would take time before that position could be changed. Some of the others, Department of Ag could be switched immediately. DEQ and DNR could, and I'm not sure about the Chief Medical Officer, you know, how that's set up. But I don't think we would see that. We haven't seen it, but it's possible. [LB395]

SENATOR SMITH: But nonetheless, you have the potential of a large voting block? [LB395]

MARK BROHMAN: Yes, potentially four. If a new governor...I don't know how the Chief Medical Officer is selected, so there could be three or four on day one with a new administrator to head the state government. [LB395]

SENATOR CARLSON: Okay. Senator Haar. [LB395]

SENATOR HAAR: And this is just sort of an opinion of your part. Do you see...because I'm exploring the same thing that Senator Smith is exploring, do you see that there's...that the directors do...do they stand out by the way they vote together? Or do you see on different issues people voting, you know, some of the citizens voting with directors and some of the directors voting? [LB395]

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MARK BROHMAN: It's really all over the board depending upon the issue, whether it's recycling or air quality or habitat or, you know, whatever, you know, because they have such diverse backgrounds and some have regulatory control and some don't. But it really is all over the board when it comes to those type of issues. There's people that I would never suspect they would have voted one way or another on certain grants and they do. So I don't know what goes on inside their mind, but I do know they bring in a lot of expertise to the table and the discussion. [LB395]

SENATOR HAAR: You don't vote do you? [LB395]

MARK BROHMAN: No. No. [LB395]

SENATOR HAAR: Okay. And is your opposition to this today the opinion of yourself or your board? I mean, has that been... [LB395]

MARK BROHMAN: Of the board, but I think it's my personal opinion that if we would have the opportunity to lose people or when it came down to this obligation or that, which will I attend? Because, as you know, all these division heads have major obligations all the time. Sometimes it's a call to the Governor's office and they're unable to attend a board meeting; sometimes it's, you know, an emergency within the agency. Sometimes it's just a prioritization. Sometimes there's even a hearing or a meeting that they have to choose whether they're going to go to our board meeting or that board meeting. And so it depends on what we're addressing at that particular board meeting. If it's a hearing at our board meeting, they're probably going to try to come. If it's just our regularly scheduled quarterly meeting, they might not. [LB395]

SENATOR HAAR: And as senators, we understand that part. I mean, there are times we have to be four places at once. [LB395]

MARK BROHMAN: Sure. And we see it today. So I mean, it's very evident today at this hearing. [LB395]

SENATOR HAAR: Yeah. Okay. Thank you so much. [LB395]

SENATOR CARLSON: Senator Smith. [LB395]

SENATOR SMITH: Thank you, Senator Carlson. Mr. Brohman, Senator Haar just asked if your testimony here today reflects the board and you said...it sound like, more or less, it's your personal... [LB395]

MARK BROHMAN: No, it's the board's position, but I said I agreed...my personal opinion agrees with the board. [LB395]

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SENATOR SMITH: So was it unanimous by the board? [LB395]

MARK BROHMAN: The legislative subcommittee came with a recommendation and it was...let's see, there were four or five; I'm trying to remember the people present. No one objected to it. So it was either 4 to zero or 4 to 1; or four and one abstaining. I can't remember; I'd have to look that up. But then the full board when they met, said that they approved the subcommittee's position. [LB395]

SENATOR SMITH: What's the makeup of the legislative subcommittee? [LB395]

MARK BROHMAN: The current subcommittee...there's always two state agency people on the subcommittee. And so this year the legislative subcommittee is Sherry Vinton, Vince Kramper, John Campbell, Mike Linder and Brian Dunningan. [LB395]

SENATOR SMITH: So is that department heads? [LB395]

MARK BROHMAN: Yeah, two department heads and three citizens. [LB395]

SENATOR SMITH: And three citizens. [LB395]

MARK BROHMAN: Yes. [LB395]

SENATOR SMITH: Okay. And it may have been four with one abstaining. [LB395]

MARK BROHMAN: Yeah. I would have to go back and look and see. I think the two agency heads may have abstained on this issue. I'd have to go back and look. But then the full board approved the subcommittee's position. [LB395]

SENATOR SMITH: Okay. Thank you. [LB395]

SENATOR CARLSON: Okay. Any other questions? Thank you for your testimony. [LB395]

MARK BROHMAN: Thank you. [LB395]

SENATOR CARLSON: Okay. Next person in opposition. Welcome. [LB395]

SCOTT SMATHERS: Good afternoon, Senator Carlson and members of the committee. My name is Scott Smathers, S-c-o-t S-m-a-t-h-e-r-s. I am executive director of the Nebraska Sportsmen's Foundation. I'm here today on behalf of our members and our board of directors in opposition to Senator Schilz's bill, LB395. I wanted to correct one thing, I think, that when Senator Haar asked Mark in regards to if the Legislature approves the nine committee individuals, it states right in the current statutes that they'll

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serve once they're appointed by the Governor until the Legislature approves their appointments. So there is a Legislature approval. It is reviewed by your body. I guess basically without repeating a good portion of Mark's testimony, nine of those individuals are government appointed by the Governor; six of those are directly related to, in the current situation or the past, to farm and ag communities. I feel we have a very nice diversion of individuals and expertise levels on the current board. I looked long and hard at a lot of the grants that have been granted over the last ten years to see if there's an issue that seems to be...keep reoccurring within a lot of conversations, either publicly or privately, that there are some concerns as to voting directions of these directors and/or these nine individuals. When you break down who they are as individuals, and what departments they run, and also from their personal backgrounds or business backgrounds as individuals, there's a wide variety of interests, likes, concerns that they could have bringing to the table. And I think the record has stood very strong at this point that I would liken to change if necessarily changing something that is already working. I respect Senator Schilz's thought process to inspect what we expect; to review what history is and what could possibly take place in the future. It is a positive atmosphere. As somebody that is a director of a board and member of four, five different volunteer organizations on those volunteer boards, getting people to attend, whether they have a voting right or not, in this day and age is a difficult task. And when you start to move people in and out on an irregular basis, if you will, you lose consistency; you lose the history, as Senator Carlson alluded to. On all the board that I have participated in, you must start at the bottom, if you will, to earn your right through the ranks to understanding what those boards and this committee stand for. I respect the fact that Senator Schilz would like to open up the conversation. Do we need to tweak? Do we need to look at it? Is it the Governor and his appointments? Is it the directors? It's all healthy. We've heard this continually throughout different testimonies here in this room in regards to all of us coming to the same table, all of us working together as opposed to fighting each other. This is only a healthy exercise. However, I feel it could be accomplished outside the purview of this room and this body. I think that Mark and any of the directors and any of the individuals that are a part of the process are more than willing to sit down with Senator Schilz or any of the senators and have that conversation for, as we stated, transparency, it's important. I guess in talking to two of my board members, they likened this move to the fact of telling Tom Osborne he can sit in the booth, but he cannot say a word in regards to the athletic department at the university. You lose all those years of experience, dedication, and thought process. Sometimes they're going to agree, sometimes they're not. So I would urge the committee to take a hard look; is it possible there needs to be a different approach to the conversation. And really, I think perception has become some people's reality. Those need to be put on the table so that perception is reality for everybody, so we know what exactly everybody is talking about. If I can answer any questions, I'd be glad to. [LB395]

SENATOR CARLSON: Okay. Thank you, Scott. Any questions? Senator Smith. [LB395]

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SENATOR SMITH: Thank you. Senator Carlson. Mr. Smathers, thank you for being here. I would...from what I'm taking away from this, I think the analogy of Coach Osborne would be more, or less, his ability to provide himself a pay increase, not necessarily input on how his athletic department is run. And I'm really scratching my head on this one. I'm not certain what the issue is. If the department heads still are part of the discussion process, they simply refrain from voting and if that alone helps to improve the credibility from the perspective of the average citizen out there that there is a, you know, that we are protecting the appearance of impropriety, what harm is done? Can you point to a specific situation that you think would have gone negatively with the Environmental Trust if the department heads were not allowed to vote? Can you give me a tangible specific situation that would have resulted in a negative outcome?
[LB395]

SCOTT SMATHERS: Since I am not a part of the appointee from the Governor or the directorship that is appointed, and simply from an individual that has worked with the NET on various issues throughout the state over the course of years in a couple of different capacities, I guess from the concept of, I can't give you specific instances where I would see that we would have harm issues that occur. However, I can see that because...in our opinion as a sportsmen foundation, we are lessening the ability for open conversation that brings both the appointed governor's individual with a, for lack of a better term, Senator, with a commonsense street approach, if you will, from their personal experiences to the state directors who work in a lot of different atmospheres on a daily basis. When you combine the two atmospheres, you gain a knowledgeable base of individuals. That still could, that exchange of information could still occur, however, to me sometimes boards can become, and from personal experience on my own with my own boards, they can grab a hold of an issue and without somebody that has the background to overweigh a person's choices, if you will. That's why there's a democracy system in place on these boards that...opinions are going to vary on a regular basis, just as they do in this room, or any room, any board room, or any committee group. If you have five people that basically, in my opinion, are simply observers and providing opinions, their opinion becomes less important to the other individuals in the meeting because they know they can't do anything to them or for them. [LB395]

SENATOR SMITH: Well I appreciate your response. [LB395]

SCOTT SMATHERS: I don't know if I answered your question effectively, but I...but not being a part of the process on a daily basis...that's my thought process. [LB395]

SENATOR SMITH: Okay. Thank you. [LB395]

SENATOR CARLSON: Thank you. Any other questions? Thank you for your testimony.

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[LB395]

SCOTT SMATHERS: Thank you, Senators. [LB395]

SENATOR CARLSON: Anyone else in opposition? Seeing none, anyone in a neutral capacity? Seeing none, Senator Schilz, you're recognized to close. [LB395]

SENATOR SCHILZ: Thank you, Senator Carlson. I would like to say thanks to Mark and Scott for being here today. I think that their expertise and their understanding of this is very important so that we know what we're talking about. I guess to start out, you know, just like with any volunteer board, it is hard to get a quorum. It's hard to have people engaged, but, you know, I would hope that as our state employees and directors of agencies that they would find that something like this where we're going out and using lottery proceeds, the state dollars, to fund millions of dollars worth of improvements and programs that they would see that as an important reason to be here. I do...you know, I ask one question. There's all sorts of different rules as to how they vote and things like that, and, I mean, I think everybody is somewhat familiar with the Snake River vote that just went through and how that worked. And I just...it's a question that I don't know and it's one that needs to be asked. If a department head recuses himself from a vote, or it says, hey, I have to abstain from a vote, does that change the requirement of how many votes it takes to turn an action around by the board? And I'm not sure it does. And so the question is, are we creating a situation where the subcommittees' recommendations become very hard to overturn by the whole board because of constraints that have been put on through statute? And I think it is a serious question that needs to be looked at. I absolutely agree with Mark and Scott both that that expertise is absolutely essential to being able to make good decisions. But another analogy is that if you're going to equate those folks to Tom Osborne and how the football program runs, I would guess Tom Osborne isn't afraid to take his influence and not worry about whether he gets a vote because I'm sure that, you know, somebody that understands the issues, that's well respected, that has that purview can get peoples' ears and get them to understand what the story is. So I'm not so sure it's about a vote, it's about are you engaged in the process? It's about do you care enough to come and be there when you need to? And I understand that there's issues. But there's also agendas that I hope...I think agendas are put out, that I hope that those folks, if they see an issue why they can't be there, they can still have input on what goes on within that meeting through the same way that we do here if we can't be somewhere. We send a letter. We send somebody in our place. We do something like that to make sure that our positions are known. And with that I would hope that the committee will take this under advisement, will look at the situation as it is, maybe do a little exploring, a little research. I know I've found some new things that I want to explore. And hopefully we can move something forward that makes sense to help us all understand how this process could work and should work better. Thank you very much. [LB395]

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SENATOR CARLSON: Okay, thank you. Any questions of Senator Schilz? Seeing none, thank you for your testimony. [LB395]

SENATOR SCHILZ: Thank you. [LB395]

SENATOR CARLSON: And with that we close the hearing on LB395. Thank you for coming. (See also Exhibits 7, 8, 9, and 10.) [LB395]