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Natural Resources Committee
March 02, 2011

[LB526 LB595 LB596 CONFIRMATION]

The Committee on Natural Resources met at 1:30 p.m. on Wednesday, March 2, 2011, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on gubernatorial appointment of Mark Pinkerton; LB526, LB595, and LB596. Senators present: Chris Langemeier, Chairperson; Ken Schilz, Vice Chairperson; Tom Carlson; Mark Christensen; Annette Dubas; Ken Haar; Beau McCoy; and Jim Smith. Senators absent: None.

SENATOR LANGEMEIER: Good afternoon everyone and welcome to the Natural Resources Committee hearings with the Nebraska Legislature. My name is Chris Langemeier; I'm the Chairman of the Natural Resources Committee. I'd like to introduce my committee members that are with us here today. Starting with my far left or your far right we have Senator Jim Smith from Papillion. And then standing here we have Senator Ken Haar from Malcolm. And then we have Senator Mark Christensen is not with us, but he will be joining us shortly from Imperial, Nebraska. Then we have the Vice Chairman of the committee, Senator Ken Schilz from Ogallala. Then we have Laurie Lage who is the legal counsel for the Natural Resources Committee. To my right or your left we have Senator Annette Dubas of Fullerton. And then we have Senator Tom Carlson of Holdrege. And then we have Senator Beau McCoy from Elkhorn and west Omaha area. At the end of the table we have Barb Koehlmoos is the committee clerk. As you come forward today and hand things out, we'd ask that you give the papers to Barb as we get started. We have a page with us, is Katie DeLashmutt who is from Burwell, Nebraska, and is a senior at UNL with us this year. If you care to testify, in the corners of the room, you're going to see a green sheet like that. We ask that you pick one up and fill it out in its entirety and when you come up to testify if you would give that to Barb, it helps us keep an accurate record of today's events. If you want to be on the record but are not planning to testify, there's also kind of a spreadsheet form in the corner that you can fill your name and address out on and whether you oppose or support a particular bill so we have a record that you were here but you did not testify. At this time we would ask that you turn your cell phones off so we don't disrupt those that are here to testify ahead of us. If you have something you would like to hand to the committee, we ask that you have 12 copies. If you know now you're short a couple copies, raise your hand and Katie will be over to help you make those additional copies. Anything you give to us to look at we will keep for the record so if there's anything personal of nature that you want to show us, a family photo, photo of the family farm, we ask that you show that to us from the table, because if you do give it to us, we are going to keep it for the record. At this time when you come up to testify, we allow five minute testimony in Natural Resources Committee. You'll see the green light will come on when you start. When the yellow light comes on, you have one minute remaining. And when the red light comes on we ask that you discontinue your testimony and allow yourself open for questions. With that today, we're going to take the bills in the order they were posted. But we first have a confirmation hearing to do first. If Mr. Pinkerton would come

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forward. We have Mr. Mark Pinkerton which is a reappointment to the Nebraska Game and Parks Commission. Welcome.

MARK PINKERTON: Thank you. Chairman Langemeier, senators of the Natural Resources Committee, I'm pleased to be here today. How would you like us to go forward with this? [CONFIRMATION]

SENATOR LANGEMEIER: I need you to say and spell your name first.
[CONFIRMATION]

MARK PINKERTON: Okay, very good. [CONFIRMATION]

SENATOR LANGEMEIER: And then tell us a little bit about your background and also tell us why you want to be back on the Game and Parks Board. [CONFIRMATION]

MARK PINKERTON: (Exhibit 1) Okay. My name is Doctor Mark Pinkerton, M-a-r-k P-i-n-k-e-r-t-o-n. And I'm from Beatrice, Nebraska. I grew up there; lived there all my life; I live out in the country now. Graduated from high school in Beatrice; attended the University of Nebraska in Lincoln and the UNMC College of Dentistry. I've been practicing dentistry since 1987. I've been active in my communities over the years. I've served on chamber of commerce boards in both Beatrice and Wilber, Nebraska, where I presently practice. Served on my school board at Tri-County and probably one of the highlights of, I guess, my career even before I served on the school board is as all small districts with declining enrollment face, we faced some tremendous budget challenges and after losing ten full-time instructors it was made known to us that we could do a patron levy override that had never been done in the history of the state before. So I spearheaded that and from a Tuesday afternoon to a Friday afternoon at 4:00 we had a special election in place ready to go, all set up, and we did pass it and we stabilized our funding and our Tri-County School is one of the better small districts around and I don't know anything more satisfying that you could do than make a difference in your children's education. So that's one thing I was really proud of, to be involved in. As far as my dental background, I've served on the Nebraska Dental Association Board of Trustees and been involved in active dentistry and the politics of dentistry throughout my career and that has been very rewarding also. Obviously, I'm an avid outdoorsman, hunter, fisher, and been a hunter education instructor since 1985. So I've tried to stay involved on many levels. And that's a short background on some of the things I have...I have three boys that...two in college and one in high school still. And so at that point I think that's enough background information on myself and whatever questions you'd like to ask me. Or did you want me to talk about why I want to be back on the board at this point? [CONFIRMATION]

SENATOR LANGEMEIER: What's your vision for the Game and Parks?
[CONFIRMATION]

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MARK PINKERTON: Well my vision for Game and Parks, and this is typical, you find it all across the country, the trend nationwide is decreasing permit sales and decreasing involvement. And my vision for the state of Nebraska is to turn that around and something I've been very involved with over the past several years is our recruitment, development, retention plan. I've been involved with that from the ground floor up. We're trying to reverse that trend and what we're trying to do is we've got plans out to 20 years out to get more kids involved in our outdoor activities whether it's hunting, fishing, bird watching, anything outdoors, because we don't want to lose that generation, because once we lose that generation, you're never going to get those people back and the more urbanized we become, the harder it is to keep those kids involved. So that's, I think, one of the most important things that we need to do out there. [CONFIRMATION]

SENATOR LANGEMEIER: Very good. Are there any other questions? Senator Haar. [CONFIRMATION]

SENATOR HAAR: Well this is just a comment. I want to thank you for what you do. I live a half mile from Branched Oak Lake. [CONFIRMATION]

MARK PINKERTON: Um-hum. [CONFIRMATION]

SENATOR HAAR: And so we frequent the parks quite often and I know the resources have been dwindling; hopefully we can raise the entry fee this year to help with things. But thanks for all you do, because we have just a wonderful park system. [CONFIRMATION]

MARK PINKERTON: Thank you very much. It's very rewarding to work with a group like ours. We have an excellent group of commissioners and our administrative staff and our personnel are all just the consummate professionals. They all are very passionate about what they do and it's not just an 8:00 to 5:00 job, it's their life and it's what they love to do and you can see it in the way they go about it. [CONFIRMATION]

SENATOR LANGEMEIER: Senator Carlson. [CONFIRMATION]

SENATOR CARLSON: Thank you, Senator Langemeier. And Mark, thank you for your service. I was going to ask you to give a full assessment of the performance of Senator Karpisek in the Legislature, but I'll leave that for another day. But you talk about reduced sale of permits and so forth; why do you think that is? [CONFIRMATION]

MARK PINKERTON: Well I think our youth has so many more opportunities to do so many things with organized sports, organized club sports, all the electronic technologies, things like that. In the past our gateway...and I should clarify, actually with our big game permits and some of those things, we're actually...we're gaining on the

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process, but our gateway entry permits where kids started hunting before used to be, you know, pheasant, quail hunting, and upland game hunting, things like that, and with changes in farming practices and with just declining populations, those kind of activities aren't as available out there. So it's a little more difficult to recruit some of the kids in just because of the logistics of that. However, now with no age restrictions on turkey hunting and the booming turkey population, that's a great entry level way to start a kid hunting and it's usually a one-on-one experience; one-on-one participation where you are able to keep a lot closer track on what the young hunter or the young student is doing so that you can make sure they're safe and having a good experience. [CONFIRMATION]

SENATOR CARLSON: The reduction in places to hunt certainly, I think, has been a factor. And that may be something that I know Game and Parks is trying to deal with. But those other things you mentioned, I don't know how you deal with those. Really there's too many activities these days. [CONFIRMATION]

MARK PINKERTON: Yeah. That's really tough. And one thing we've got going is up at Platte River State Park we're retooling that whole thing and making it into kind of a showcase for youth of all the different activities that are out there available: archery, hunting, rifle hunting, 22..it's something that when we get that completed I'd like you all to come up and see it because it's going to be really very special and it's one facet that we can use to get more kids involved. But you hit the nail on the head with the access issue. That's going to continue to be more and more difficult all the time and for us to even come up with ways to offer incentives to landowners to make more access, that's get more difficult all the time with input costs of farming and with the price of land and with all those issues, it's a lot harder to set aside land to just make it available for outdoor hunting. And we understand that and so we as an agency have to find a way to be good partners with all the landowners out and across the state. [CONFIRMATION]

SENATOR CARLSON: Good. Thank you. [CONFIRMATION]

SENATOR LANGEMEIER: Senator Schilz. [CONFIRMATION]

SENATOR SCHILZ: Thank you, Senator Langemeier. Mr. Pinkerton, thanks for coming in today. And thank you for the work that you've done... [CONFIRMATION]

MARK PINKERTON: You bet. [CONFIRMATION]

SENATOR SCHILZ: ...and the service that you've offered. I have a couple questions and one of it has to do, you know, with the situation that we're in with the budget shortfalls and things like that. We've actually had a couple of bills in front of us to move some parks or recreational areas or whatever they are... [CONFIRMATION]

MARK PINKERTON: Uh-huh. [CONFIRMATION]

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SENATOR SCHILZ: ...back to other communities or other subdivisions and I was just wondering, being out around Lake McConaughy, how do you foresee dealing with that going forward? I mean there's...I mean on the one hand you're giving stuff up on one side and then on the other side there's folks that want you to take over and manage even more. And I was just wondering how you foresee to deal with that in the future. How do you make that work? [CONFIRMATION]

MARK PINKERTON: That's a good question. First of all... [CONFIRMATION]

SENATOR SCHILZ: And I'm sorry that you're the one sitting there, but you're the first opportunity. [CONFIRMATION]

MARK PINKERTON: Oh that's okay, I've been here before. First of all, with some of those small areas, obviously, with tough economic times some of those small areas are important to communities locally and our budget is stretched pretty thin with 80-some-odd parks across the state. And a lot of those parks we received...the parks with, obviously, no funding or management ability to go with them, we just inherited that issue. But, so we're looking for partners in some of these smaller areas. And these areas we're surplus are usually very small and they aren't places that attract big numbers of people and they're probably not real big budget items. But they're things...they're areas that local communities or groups can, a lot of times, take on and manage well or with our help, so we're looking to be efficient and to be forward thinking that way. As far as taking on more parks and managing more and more and more, that gets really, really tough in these financial times. We have plans in place for all of our six districts across the state that if it becomes more than we can manage, then we'll prioritize and make sure that all of our services are available in each of the six districts. But I personally would rather have half the number of parks if they're quality parks and run well than take on too much or have too many parks that fall into disrepair or that aren't doing the job or serving the public the way they should. [CONFIRMATION]

SENATOR SCHILZ: Right. Well I certainly...and I appreciate that, thank you. I guess from my perspective, as I think that...you're exactly right. I think it needs to be...you guys need to be careful going forward that you don't...in trying to "protect" something, end up leaving it worse off than it was before. And I think some of those concerns are...a lot of folks are talking about it out there and so I think it's something that you guys need to be thinking about. [CONFIRMATION]

MARK PINKERTON: Our board is also very strong in advocating for economic development and supporting the small communities across the state. And we know how much impact what we do has on local areas; and so we take that responsibility very seriously as we move forward. [CONFIRMATION]

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SENATOR SCHILZ: Thank you. [CONFIRMATION]

SENATOR LANGEMEIER: Very good. Are there any other questions? Seeing none, thank you very much for your testimony. Appreciate it. [CONFIRMATION]

MARK PINKERTON: Thank you, Chairman Langemeier. [CONFIRMATION]

SENATOR LANGEMEIER: Is there anyone that would like to testify as a proponent to the appointment of Mr. Pinkerton? Seeing none. Is there anyone that would like to testify as an opponent? Seeing none. Is there anyone that would like to testify in a neutral capacity? Seeing none. That concludes the confirmation hearing for Doctor Mark Pinkerton to the Game and Parks Commission. Thank you very much for coming in. We will now move to Senator Carlson. This is Senator Carlson day in the Legislature. We're going to start with LB526. Welcome. [CONFIRMATION]

SENATOR CARLSON: (Exhibit 2) Thank you. Good afternoon, Senator Langemeier, and members of the Natural Resources Committee. I am Tom Carlson, spelled C-a-r-l-s-o-n representing the 38th District here to introduce LB526. There was a meeting in my office this morning between groundwater irrigators, natural resource district people, and surface water people to work out an amendment that I'm going to pass out after I go through my introduction here. LB526 is necessary as NRDs in the future look to surface water to offset groundwater depletions. The bill relates to water transfers and provides a second alternative which would be the entire amount of a surface water irrigation right for a nonconsumptive use. The amendment clarifies that such a transfer must not be adverse to other appropriators, a multi-state agreement, or other Department of Natural Resources prior agreements. LB526 maintains the other transfer purpose if both the current use and the proposed use are for irrigation. The number of acres to be irrigated will not increase after the transfer and the location of the diversion from the stream will not change. As I said, this bill as amended was agreed upon by the parties involved and I ask for your support in moving it forward. And those who testify behind me will explain more in detail about the bill. I'll try to answer any questions you may have, but I'm sure that you'll have those questions answered through the other testifiers. [LB526]

SENATOR LANGEMEIER: Okay. Are there any questions for Senator Carlson? Seeing none, they'll wait for you at closing. You've heard the opening on LB526. We'll now move to proponents, anyone that would like to testify as a proponent. Welcome. [LB526]

JOHN THORBURN: (Exhibit 3) Thank you, Mr. Chairman. Good afternoon, Chairman Langemeier, members of the Natural Resources Committee. I'm John Thorburn, J-o-h-n T-h-o-r-b-u-r-n, I'm manager of Tri-Basin Natural Resources District in Holdrege. I would like to testify in support of LB526 on behalf of Tri-Basin NRD and the Nebraska Association of Resources Districts. LB526 is a simple bill. Its purpose is to assist NRDs

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as we work to help the state meet requirements of agreements and compacts that it has made with other states and the federal government. We're also required by integrated management plans to reduce impacts to streamflows that result from groundwater pumping. One of the more cost-effective methods to offset depletions and increase streamflows is to lease water rights from irrigation districts. Unfortunately, current state law says that we need to preserve existing hydrology. Not natural hydrology, but existing hydrology. Therefore, the Department of Natural Resources interprets the existing statutes to require that some water associated with these water rights needs to continue to be diverted, limiting us as the lessee to only be able to leave in the stream the water that was estimated to have been consumed by the former irrigation use. Since this bill was introduced, legitimate concerns have been raised by representatives of Panhandle irrigation districts about how this change in law would affect their operations. I want to address their concerns. We believe the current law protects existing water users from harm. And I would point that under subsection (d) in the same statute, the director has authority to insure that transfers of irrigation rights to instream use don't adversely affect other water users. That said, we will support an amendment to the bill, which the senator has already mentioned. Our basic argument is that we think that existing law needs to be revised to enable an entity that wants to restore streamflows to leave water in a stream and not require water to continue to be diverted to maintain some artificial condition. I'd like to thank Senator Carlson on behalf of my district and NARD for introducing the bill. I thank the members of the committee for your time and ask you to advance this bill to the floor of the Unicameral. Thank you. [LB526]

SENATOR LANGEMEIER: Thank you. Are there any questions? Seeing none, thank you very much, well done. Further testimony in support. Seeing no one else, is there anyone that would like to testify in opposition? Come on up, don't be shy. It's early, we're pretty tame really. Welcome. [LB526]

JEFF SHAFER: (Exhibit 4) Chairman Langemeier and members of the Natural Resources Committee, my name is Jeff Shafer, J-e-f S-h-a-f-e-r. I am a water resources advisor for the Nebraska Public Power District. Today I am testifying in opposition to LB526. I would like to start with a little history. In 2002, the Water Policy Task Force was charged with, among other things, evaluating the need for allowing temporary water transfers and, if deemed useful, developing draft legislation and procedures for authorizing and implementing a temporary water transfer law. The task force carried out that charge and its recommendation which was made a law through passage of LB962 in 2004 included the provision that temporary surface water transfers should not negatively affect other water users. It was determined this could be best accomplished by not transferring the entire amount of a surface water right, but only the consumptive portion of the existing use. The water which is diverted, but not consumed, includes water which returns directly to the river and water which seeps into the ground to recharge the local aquifer. This nonconsumed water is important to the area hydrology and it serves the supply for the next downstream use or to recharge local and

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downstream aquifers. These concepts can be found in the present surface water statutes which include 46-294(1)(e), 46-294(3) and 46-291(1)(f). The language in LB526 which allows the entire amount of an appropriation to be transferred seems ambiguous and raises technical questions related to how that volume is calculated. For example, surface water appropriations are often administered based on priority. There might not always be enough water for that surface water appropriation to receive the entire amount. Some surface water users who experience those shortages may utilize storage water to make up that difference and in those cases there are two water appropriations. How is the entire amount apportioned between the two appropriations? And 46-231(3) states that an irrigation surface water appropriations allotment shall not exceed the least amount of water that experience indicates is necessary in the exercise of good husbandry. We are curious as to how that amount will be determined. Additionally, we do not believe the statutes define a nonconsumptive use. We believe it is necessary to define the beneficial uses that would be designated as nonconsumptive. We would also note that rules and regulations of the NRDs generally reflect that when transferring groundwater to a different type of use, the transfer is limited to the consumptive amount or the transfer cannot increase the consumption. We question why the Legislature would want to treat the transfer to a nonconsumptive use differently than the transfer to a consumptive use. The impact of the transfer on other uses needs to be addressed and we're concerned that this proposed legislation does not do that. The Water Policy Task Force designed the transfer process to be as simple as possible. By transferring only the consumptive use, it was understood that other water users would not be harmed because their supply would not be affected. LB526 allows the nonconsumed water, which is aquifer recharge and river returns, to be included in the transfer process. In those cases to ensure that other water users are not harmed, costly and time-consuming engineering analyses of water supplies, economic analyses related to socioeconomic impacts and attorney involvement will be needed as part of every part of this type of transfer. For the reasons above, we request the committee not advance LB526. I'd be glad to answer any questions. [LB526]

SENATOR LANGEMEIER: Very good. Senator Dubas. [LB526]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Mr. Shafer, for being here. Have you had a chance to see the amendment that Senator Carlson put together? [LB526]

JEFF SHAFER: We weren't at the meeting, but I did see the amendment. [LB526]

SENATOR DUBAS: Do you feel that the amendment addresses any of the concerns that you've raised? [LB526]

JEFF SHAFER: I don't believe it does. I think our testimony would not change based on the amendment. It is...because of the cost to other users that are going to be caused by

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this type of transfer. [LB526]

SENATOR DUBAS: Even with...this is the first I've seen the amendment, but as I quickly read through it, we're talking about adversely affecting any other water appropriator, Nebraska's ability to meet its obligations under a multi-state agreement or the ability to administer prior appropriations that you still don't feel like those... [LB526]

JEFF SHAFER: I believe it could be done, but here's the...the person applying for this type of transfer is going to have to do the engineering analysis and the economic analysis to prove to the department that no harm was done. The people who potentially are affected, it's going to be up to them to decide whether or not they believe that analysis. And if they don't believe it, they're going to incur costs because they're going to have to hire their own engineering analysis and their own economic impact analysis to either verify or go into opposition of the transfer. [LB526]

SENATOR DUBAS: Okay, so you feel to meet those specific requirements that were outlined in the amendment, the burden is going to be on those people who are... [LB526]

JEFF SHAFER: It's going to be on all parties. It's going to be the people applying and the third party people because I don't know if I'm going to believe every study that says I'm not impacted. [LB526]

SENATOR DUBAS: Okay, thank you. [LB526]

SENATOR LANGEMEIER: Other questions? I do have one, Mr. Shafer. Thank you for your testimony. You talked about others, and other people, and others might be impacted, I want to hone this down to Nebraska Public Power. How do you think this negatively impacts public power? Where and why and... [LB526]

JEFF SHAFER: I believe this could negatively impact our surface water canals in the Central Platte. We are at the bottom of the system. We have all the canals on the Platte River above us; we have all the canals on the North Platte River above us. What they do not consume becomes our supply for our irrigation canals. Now, if they propose protecting the water they did not consume in the past, and therefore that water gets approved by the department and we cannot consume water...divert water in the past we have historically consumed, that's where it's going to affect our canals. [LB526]

SENATOR LANGEMEIER: So you think if they are going to...if I understand that right, you're fearful that if they divert, what do I want to say, one appropriation upstream from you and it's more than just the consumptive use, it's the entire allocation, that the canal will be dry when it gets to your facilities. [LB526]

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JEFF SHAFER: I don't think it will be dry to us. Let me describe it as this way. There are three components of a surface water appropriation, that which is consumed, it is evaporated, it goes into the atmosphere. There's the water that goes into the aquifer as recharge; there is water that is returned to the river. The recharge to the aquifer and that which is returned to the river becomes our supply downstream. Now, if you take a portion of what is returned to the aquifer or returned to the river or recharged to the aquifer and remove it, my supply is reduced. [LB526]

SENATOR LANGEMEIER: Okay. Are there other questions? Seeing none, thank you very much for your testimony. Further testimony in opposition to LB526. Welcome. [LB526]

RON WOLF: Chairman Langemeier, members of the committee, my name is Ron, R-o-n, Wolf, W-o-l-f. We're the poor Wolfs, we can't afford the "e." I'm here today representing the Nebraska Water Coalition; it's a pretty diverse statewide group composed of NRDs, municipality, people on there that represent recreation, surface water irrigation, groundwater, recreation wildlife enhancements, pretty diverse. I come down here planning to testify against this bill because it will cause, I think, irreparable harm to the surface water rights as they are established in the state today. I had a glance at the senator's proposed amendment. I haven't had time to mull it around and if I...I guess I'm more comfortable with this bill with that amendment. Return flow is a really difficult concept to envision if you're not involved in it. You can have a small creek with 3 cubic feet a second total supply and you can have 4.8 cubic feet of water rights on it, all of which can be met. So if you're upstream "A" appropriator has a 2 cubic foot diversion right, right below his diversion, there's 1 cubic foot left in that stream. But if he's 60 percent efficient, what gets back to the stream is another eight-tenths. The next fellow downstream can divert a foot too, there's six-tenths going by him if he's 60 percent efficient. There's another five-tenths on top of that; the next fellow, there's your other foot. If you transfer 100 percent of that top 2 feet past those other two appropriators, they can watch it run by, but there's not enough water there to meet their needs, especially if that was the senior water-right that you transferred. So this 100 percent transfer of water without safeguards can really mess up, not only small streams, but large streams. So, as I say, I haven't had a chance to really sit down and mull this amendment over. I think it's a good effort. If this bill proceeds, I would certainly urge that that amendment be attached as a primary measure. The bill even with the amendment does something that I hate. It complicates Nebraska water law even more. But I think that's a sign of the times and I don't think we're going to see legislative proposals that will simplify Nebraska water. So I would oppose the bill on behalf of the commission as written and ask that this committee support Senator Carlson with his amendment to the bill. [LB526]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Dubas. [LB526]

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SENATOR DUBAS: Thank you, Senator Langemeier. Welcome, Mr. Wolf. I'm going to ask you a question to help me understand this better from my personal perspective. You know where my farming operation is. [LB526]

RON WOLF: Yes, ma'am, I do. [LB526]

SENATOR DUBAS: And what we irrigate on that. So tell me what, if any, impact this bill would have on my ability to irrigate my corn and beans. [LB526]

RON WOLF: This particular bill probably will have no impact on you personally. But that is due, number one, to the physical structure of the way districts, surface water, and wells are in that portion of the Loup Basin. For one thing, your water is diverted from the next to the uppermost major diversion in the basin. There's one small diversion that is senior above your...where your water is diverted. That diversion is not major enough to dry up the canal serving you if it would be transported by us, so to speak. Unfortunately, this situation does not exist elsewhere. There are two senior diversions below where water is taken out for your farms. You can put a call on your water under existing conditions. So if your district, my district, should for some reason be called upon by the two lower ones, due to a transfer down stream or the upper one, that's the only condition this would affect you. We do count on some of the return flows from that upper diversion north and west of Taylor. Some of those return flows we do pick up in the Kent Canal to bring down as far east as Fullerton. You have other conditions though, Upper Platte, especially. I think areas we're already in trouble, have been for years, Spotted Tail Creek, Pumpkin Creek, systems like that, it can be a disaster because there's times those are on the edge already; they're fully appropriated. You move that water totally out of the system and give no one else a chance to recycle it, that's where the big effect is going to be. [LB526]

SENATOR DUBAS: Okay. So, do you...you understand...do you understand what Senator Carlson is trying to achieve through his amended bill? [LB526]

RON WOLF: It is my understanding the amendment would allow it only if there's no detrimental effect on any other appropriator. Do I...if I'm correct, I hope that's what the amendment means. [LB526]

SENATOR DUBAS: That's my understanding, yes. [LB526]

RON WOLF: Okay. [LB526]

SENATOR DUBAS: And so based on what the previous testifier said about the burden of making that determination, would you agree or disagree with what he said? [LB526]

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RON WOLF: Oh, I would agree with it because in certain streams...this isn't a nice thing to say, and this is...but I do believe it's true, science studies, computer modeling, projections, if you ask for a study on a given water subject, I can just about anymore tell you how it's going to turn out if you tell me who commissioned the study. So there's going to be a need for those that feel they may be affected to spend money to defend themselves or to ensure that that study is accurate. Like I say, I think this bill will further complicate water law. I do not see where this bill precludes someone from taking the route that's already available and say, hey, we'll take the 60 percent, 70 percent consumptive use and bypass all this other stuff. I think...I don't think this bill removes that option. If you wish to sidestep the costs and the fight, since LB962 historically you can transfer the consumptive use. So if there's someone feels that they need the water transfer, I don't know, to me personally, under what circumstance the cost and the heartache and the fight over the 30...25 percent, whatever the nonconsumptive portion is is going to pay you long-term. [LB526]

SENATOR DUBAS: Okay. So you just said you felt like there was already the opportunity to transfer the consumptive use, but what about the nonconsumptive use? [LB526]

RON WOLF: No. Right now transferring the nonconsumed portion, unless it remains within use of the same diversion point, is not allowed, or hasn't been to my knowledge. As a matter of fact, I think existing statutes state that fairly plainly: quantitative water that is transferred for diversion or other use at a new location will not exceed the historic consumptive use under the appropriation or portion thereof being transferred. That's existing statute. [LB526]

SENATOR DUBAS: Okay. Thank you. [LB526]

SENATOR LANGEMEIER: I think I have one final question. Just to clarify your testimony; you're in opposition, but in your...kind of in your closing which you said is adopt the amendment and go forward. I guess I'm taking your testimony as is you don't want to see this go forward, but if it does, we should adopt the amendment. [LB526]

RON WOLF: You should adopt the amendment. [LB526]

SENATOR LANGEMEIER: But you're still opposed to the idea. Do I have that right? [LB526]

RON WOLF: I understand there's a need, sir, but if it has to go forward to make this state work, please adopt the amendment. [LB526]

SENATOR LANGEMEIER: Okay. Just wanted to clarify that so there wasn't confusion. Seeing no other questions, thank you very much for your testimony. [LB526]

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RON WOLF: Thank you. [LB526]

SENATOR LANGEMEIER: Further testimony in opposition. Seeing none, is there anyone who wants to testify in a neutral capacity? Welcome. [LB526]

DON KRAUS: Thank you. Senator Langemeier, members of the committee, my name is Don Kraus, general manger of the Central Nebraska Public Power and Irrigation District. We operate Lake McConaughy...yes, sir. [LB526]

SENATOR LANGEMEIER: Don, I need you to spell it. [LB526]

DON KRAUS: D-o-n, sorry, K-r-a-u-s. [LB526]

SENATOR LANGEMEIER: Thank you. [LB526]

DON KRAUS: Lake McConaughy provides irrigation for about 100,000 acres; another 100,000 acres benefit from wholesale sales of water; 100 megawatts of hydrogeneration; 300,000 acres of received groundwater recharge; and benefits for generator cooling; about a million days of recreation last year in an environmental account. I support many of the comments that have presented on both sides today and some with concerns, but in general I support the protections. Lake McConaughy relies on return flows for 80 percent of its water supply, looking at the big picture and the long-term averages. So we're very concerned about return flows and as we listen to folks say yeah, we want to look at possible changes, it's something that we are very concerned about. Obviously, there are the natural effects on return flows, draught. It may not be natural, but it's something we certainly encourage is more efficient use such as center pivots; that's going to reduce return flows. But also the areas we do have more concern on and that's groundwater pumping above McConaughy and potential transfers that don't protect return flows. So as we think about it, in the world of over and fully appropriated, we support transfers. We think that's the way the world is going to go. You've got to have ways to transfer from one type of use to another and I think that is an important topic for the committee to be thinking about. Some of the comments from NPPD I think are on point. If there's an applicant that brings in a transfer, they're going to cover the cost of evaluating that situation and they'll cover that through the beneficiary will help support those costs, I think. If you're a third-party impact, if you're somebody outside that depends upon it, I'm not sure how it works. I think you've got to be at the table and be, you know, watching, and for us at Lake McConaughy, if there were a consumptive use transfer above us going downstream, we'd probably be very interested in that and be checking the calculations. And I don't have a good answer for that; and I don't have a...I don't know that you can mandate a "you will abide by this science", it's going to have to be the best science. That's going to be the standard, I think, that's in the law now. And I don't have an answer on how you decide or how you

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put language in the law to decide. So it is an issue. But in general I support the concept of transfers, but I think it's something we have to work on. To the extent there is not another appropriator that would be impacted by, perhaps it does make sense. And I also wonder about the idea of nonconsumptive versus consumptive use that NPPD brought up. I think that may need some further study; it may have some merit. So it just...it doesn't have to be done now, it's just...but it is something that I think...what is the distinction? I don't...I'm sure John can maybe explain it to me, and I may be satisfied, but I'm just not sure where that came from. With that I'll stop and potentially answer any questions. [LB526]

SENATOR LANGEMEIER: Are there any questions? Senator Schilz. [LB526]

SENATOR SCHILZ: Thank you, Senator Langemeier. Don, thank you for coming in today. I don't disagree, I think you're exactly right. In order to get to where we need to be, we're going to have to use transfers. But I do also agree that there could be some serious issues if you're transferring that whole amount and not taking it into consideration. So I guess my question is, is that if we're looking at this properly, you know, and if we're doing what...if we want to make this as simple possible, the key would be to find excess water, find a way to store that somewhere and then find out how to transfer that to the uses that we're talking about rather than take away what is already within the system and working to keep everything whole. Does that make sense? [LB526]

DON KRAUS: All things being equal, sure. You go for the water in excess of all permitted needs. And that works great in a wet cycle and you've got some extra water. There's not much extra floating around in a drought. And so you've got kind of the tough times too that one answer doesn't fit that other cycle, so I generally agree. [LB526]

SENATOR SCHILZ: Yeah. Thank you. [LB526]

SENATOR LANGEMEIER: Don, I have a question. Have you seen the amendment? [LB526]

DON KRAUS: Briefly, I have seen the amendment just...I saw it about a month ago and I saw it again today and I generally like the idea of the protections that are included. Hadn't thought much about the potential financial impacts to third parties and that aspect of it. And generally agree that if you're downstream, you're going to have to do the studies and I don't have a...we don't have, at this point, a "universally accepted model" or a set of...and John and I have been working on a transfer. We got a transfer application pending before the department and we had to kind of deal with some of these and essentially where we're following the current statute, what is maintain the return flow, so to that other block of water we're going to put it back in the canal and let it seep in so it replicates the historic return flow pattern. That's the way we're going to do

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it under our existing transfer. And I know there's a financial impact for the NRD and so it's like I'd really like to have more flexibility, but we're following the existing law. [LB526]

SENATOR LANGEMEIER: Okay. Any other questions? Seeing none, thank you very much for your testimony. Further testimony in a neutral capacity. Welcome, Brad. [LB526]

BRAD EDGERTON: Good afternoon, Senator Langemeier, and members of the Natural Resources Committee. My name is Brad Edgerton, B-r-a-d E-d-g-e-r-t-o-n. I'm here to testify in a neutral position on the amendment. I was at the meeting this morning; looked it over briefly, but we've had discussions prior to this morning's meeting. So just a little bit of my understanding of our water rights with Frenchman Cambridge Irrigation District is they state that we have the right to divert water and put it to beneficial use, period. It stops there; that's our right to use that water. I never assumed that we had the right to the return flows, the recharge, and once that water reaches a natural stream it's subject to appropriation and downstream water users are entitled to that. We're both an upstream water user and a downstream water user. There's permits upstream to us with senior priority dates and then also downstream water users below Harlan County that also have the exact same priority date as our water right. So it seems like this would modify our water right and say that we would now have the ability to sell that return flow. So I don't think that's where we want to go. We have a lot of return flows from our systems so I guess I would support the amendment if that's what we need to do to go forward, but I don't really see the statutes as being broke at this time. I think the task force got this one right, so I'd just as soon leave it alone if we could. But I understand there's issues in the Platte River that need resolved too. So thank you for your time. Any questions? [LB526]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Edgerton? Seeing none, thank you very much, well done. Further testimony in a neutral capacity. Seeing none. Senator Carlson, would you like to close? [LB526]

SENATOR CARLSON: Senator Langemeier and members of the committee, thank you for listening to this bill today and I thank those who came to testify. Our meeting this morning was productive because...and I need to check further on really the position perhaps with another individual or two with NPPD, because I sense that their position changed somewhat with our discussion this morning, although they weren't there and I want to check that out. Certainly you heard Mr. Edgerton's testimony and Mr. Wolf and there was some changing there. Simply would remind that the amendment says that this transfer will not diminish the supply of water available or otherwise adversely affect any other water appropriator; adversely affect Nebraska's ability to meet its obligations under a multi-state agreement; or result in administration of the prior appropriation system by the Department of Natural Resources which would not have otherwise occurred. Now, in words that's saying nobody is hurt. So that's certainly the intent. And

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I'll try and see what additional information that I can get to perhaps make the committee feel a little more comfortable with this as we discuss it. So thank you for listening and if there are any questions, I'd try to answer. [LB526]

SENATOR LANGEMEIER: Senator Haar. [LB526]

SENATOR HAAR: Okay. Not to put you on the spot, but I'm still learning a lot about water appropriation and so on. Could you just sort of paint me a picture where this is needed and how this works? I mean, using some actual examples. [LB526]

SENATOR CARLSON: Now I'll do my best here. [LB526]

SENATOR HAAR: Sure and that's all I can ask for. [LB526]

SENATOR CARLSON: And I may...John Thorburn may faint behind me. But he can...if I'm not exactly right, he'll set me straight, then I'll talk to you more directly. Each case is a little bit different. As I understand it, this is a case where water would be taken out of the Platte River and near Johnson Lake. Johnson Lake has another return to the Platte River very...within a mile or two below Johnson Lake, east of Johnson Lake and it's not very far back to the river. And this water would be diverted and then returned back to the river. If it's done that way, there's not much loss in terms of evaporation and there's not much seepage into the aquifer. Where if it went clear down the canal all the way to Holdrege and the remainder of the Tri-County system, there's quite a bit that would seep back into the aquifer which is a positive thing. But that's a loss of water in one respect. [LB526]

SENATOR HAAR: Sure. [LB526]

SENATOR CARLSON: So the hope here is that they could get full credit for that amount of water that's diverted because it's not run down through the canal. And Mr. Kraus talked about that if they did run it through the canal then Tri-Basin would only get a credit of about two-thirds of the water. So I understand why they would like to have this different. And if it meets the requirements of the amendment, I would think that would be okay. But that's a little bit of Tom Carlson's explanation and as I say, Mr. Thorburn will set me straight if I've got something wrong and we can talk about that later. [LB526]

SENATOR HAAR: No, that helps me, but that's the situation that developed out of was to get more water into Johnson Lake? [LB526]

SENATOR CARLSON: No, it's not...that's not really Tri-Basin's concern... [LB526]

SENATOR HAAR: Okay. [LB526]

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SENATOR CARLSON: ...to get more water into Johnson Lake, but it's to be able to get credit for buying some of that water, but not running it clear down the canal, just returning it back to the river; buy it and return it. So conceptually we didn't use any of it. We didn't lose much of it; we should get credit for all of it. [LB526]

SENATOR HAAR: Gotcha. Thank you, that really does help me. [LB526]

SENATOR CARLSON: Okay. [LB526]

SENATOR LANGEMEIER: Senator Schilz. [LB526]

SENATOR SCHILZ: Thank you. Senator Carlson, so the way I understand this, in this one scenario that you're talking about, there's no other diverters in between, correct? [LB526]

SENATOR CARLSON: I don't think so. [LB526]

SENATOR SCHILZ: And so...okay. All right. [LB526]

SENATOR CARLSON: And that...you know, every case is different. [LB526]

SENATOR SCHILZ: Yeah. Well, and that's just it, because when you run into problems is when you're trying to bypass other diverters possibly. Okay. [LB526]

SENATOR LANGEMEIER: And that was the one thing I wanted to talk about, is the intent to use this is not to take one senior appropriator's right and divert it. The idea is to get some larger volumes to go in whether we're trying to meet the Platte River Recovery or something like that. It's not where we're going to go as in the example that Mr. Wolf gave, is we're going to take one senior and that might affect you. We're going to buy quite a bit of it and try to advert it, is my understanding. [LB526]

SENATOR CARLSON: That's my understanding also. And if you think in terms of it being taken out briefly and returned, there's not much loss there. But if it serves a purpose and it doesn't hurt anybody, then it may be worthwhile. [LB526]

SENATOR LANGEMEIER: Very good. You've heard the closing on LB526. And while Senator Carlson is there, we will open the hearing on LB595. [LB526]

SENATOR CARLSON: Again, good afternoon Senator Langemeier and members of the Natural Resources Committee. I am Tom Carlson, spelled C-a-r-l-s-o-n here to introduce LB595. LB595 would establish a state fund for NRDs to use as a financing mechanism for water resources projects to assist with water management. The Water Resources Revolving Fund would have oversight by the Natural Resource Commission

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which will also make interest-free loans to districts to match other funding sources. A fund shall be held as a trust fund for the purposes and uses described in the act. The fund shall consist of federal grants, estate appropriations, repayments of principal and interest on loans and other money designated for the fund. The department may make an interest-free loan from the fund for not more than 40 percent of the cost of a project to an applicant which is an NRD or a joint public agency if the applicant agrees to match the...to match...excuse me, if the applicant agrees to make the match. The department may make an interest-free loan from the fund for not more than 40 percent to an applicant which is an NRD and...I'm finishing my statement here, I'm sorry, I got mixed up here, if the applicant agrees to match the amount of the loan with bonds, other financing, or other funding sources. So it's not more than 40 percent of the cost of a project. The rest of it is matching or bonds or other financing. Loans from the fund shall be only available to an NRD or a joint public agency in connection with a project which is to be owned, operated, or financed by the NRD or by the joint-public agency for the benefit of its member NRD. Projects must be commenced within six months after receiving the loan. Loans from the fund may be made to finance or refinance projects such as acquisition of surface and groundwater rights; vegetation management, including the removal of invasive species; augmentation of river flows; and development, storage, or conveyance of water. The fund will be created using one-half of the funds remaining in the Water Contingency Cash Fund which was created to receive deposits of loan repayment from LB1094 two years ago, as of the end of the first calendar month following the effective date of this act. Further payments by NRDs to the Water Contingency Cash Fund would all be directed to the new Revolving Loan Fund. NRDs authorized to levy an occupation tax upon the activity of irrigation of agricultural lands within the district not to exceed \$10 per acre may use the proceeds to pay for projects authorized under the Water Resources Revolving Loan Fund Act. The committee this session has heard other bills dealing with providing dollars for water issues and projects. This bill recommends using dollars which are currently being used directly for water issues. LB595 would retain a portion of those loaned dollars for the Water Resources Revolving Loan Fund. I think this is a logical action. LB595 would allow one-half of the repayment for the loan granted to the Republican River Basin NRDs under LB1094 in 2008 to be directed to the Water Resource Revolving Fund and one-half to the Cash Reserve Fund. I'd ask you to listen carefully to the testimony and then I'd ask for your consideration and support of LB595. I'll try to answer questions you may have, but I'm interested, as, hopefully, you are in hearing what the other testifiers have to say about this bill. Thank you. [LB595]

SENATOR LANGEMEIER: Very good. You have heard the opening on LB595. Are there any questions for Senator Carlson? Seeing none, we will move to proponents, those that would like to testify in support of LB595. [LB595]

JASPER FANNING: Senator Langemeier and other members of the Natural Resources Committee, my name is Jasper Fanning, J-a-s-p-e-r F-a-n-n-i-n-g testifying today on

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behalf of the Nebraska Association of Resources Districts, as well as the Upper Republican Natural Resources District, of which I'm the manager. Senator Carlson did a very good job of laying out the purpose of the bill and I think it's quite simple. This committee has other bills before it that put together pieces of the funding puzzle for water issues. LB229 has state funding component, very, you know, very, very valuable. Something that we've been after for a long time is significant state funding for water issues. We have already had and made amendments to the occupational tax that we're allowed to impose upon irrigated lands, the activity of irrigation, as Senator Carlson highlighted. We have bonding authority in that, but for some projects, bonding makes sense and for others it doesn't. And if we can establish a revolving fund which we can use as a bank to fund projects and put funds back into, especially in times of higher interest rates where we can put projects on the ground cheaper than we can in going out into the private world of bonding and such and financing. Today it's not a big deal, but down the road we know that it can be. I think it's important to illustrate that this concept or a similar piece of legislation was introduced last year and many of the questions at that time were what are the types of projects that you would fund with this. And of course, in the Republican we talked about surface water leases, but I think maybe we didn't do a good enough job at that time in identifying what those projects are. And surface water leasing is one example of something you might be able to pay for, but I think more likely what you'll see is projects like the one that we're beginning to implement, an augmentation project where you're retiring irrigation using the aquifer for storage and putting infrastructure in place to manage the water to generate more streamflow in the Republican. Other districts are doing very similar things on the Platte. The re-regulation reservoirs that are be talked about by different natural resources districts. John Thorburn will talk a little bit more about that in his testimony, I believe. But the Central Platte is looking at a reservoir that's much larger than what they themselves need, but it could be a joint project with other entities involved in those types of things on the Platte. So it's really the infrastructure that we can put in place to manage water and the projects centered around that. And again, the re-regulation reservoirs and infrastructure for augmentation, those types of things are just two examples. A lot of other things that you could probably use it for, Lake Wanahoo, you know, the RDF Fund, those things. There's water issues other than just the Platte and Republican that are out there; projects that, you know, districts are having a hard time finding a way of financing and getting them on the ground, so they're stacking up for years and it's costing the taxpayers a lot of money in terms of the increasing costs over time. And this revolving fund component is something that we can, you know, let's get it put in place, it doesn't have to be a huge cash injection at the state level at this time, but down the road there might be opportunities to put more money into it from other sources whether it be federal money or additional state money down the road when times are better. But we know where there's about three and three-quarters million dollars that we're going to be paying back to the state from our district when the Supreme Court rules that LB701 was constitutional, that occupational tax. And I certainly appreciate Senator Carlson's effort to try to retain some of those funds that the state provided us for longer term

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financing solutions. And with that I'll try and answer any questions you might have. [LB595]

SENATOR LANGEMEIER: Very good. Are there any questions for Jasper? Seeing none, thank you very much, well done. [LB595]

JASPER FANNING: Thanks. [LB595]

SENATOR LANGEMEIER: Further testimony in support of LB595. [LB595]

JOHN THORBURN: Hello again, Mr. Chairman. John Thorburn, J-o-h-n T-h-o-r-b-u-r-n, manager of Tri-Basin Natural Resources District in Holdrege. And Tri-Basin NRD encompasses portions of the Platte, Republican, and Little Blue River Basins and so we face challenges in all three of those basins. We have been able to receive some state assistance in the Platte Basin and we're very thankful for that. We do have the ability to charge the occupation tax in the Republic Basin. We haven't taken advantage of that yet. But in the Little Blue Basin which is a basin generally doesn't have interstate issues on it, but eastern Kearney County we have seen some localized groundwater declines and we're in the process of investigating potential for a groundwater recharge reservoir along what's called Sand Creek just east of Minden, Nebraska. That, I think, is a good illustration of a project that would fit well into the Revolving Loan Fund because a groundwater recharge reservoir does not fit well into existing programs like the resource development fund; doesn't provide a lot of flood control; doesn't provide a lot of recreational benefits because generally it will fill up and seep away. But does provide the important benefit of groundwater recharge, and so for that localized area would be a very beneficial project. And we think that if the Revolving Loan Fund were made available to us, this might be an excellent project for us to apply for those funds to be able to build the project now when construction costs are relatively reasonable, be able to pay that back over time as those benefits accrue and keep irrigated agriculture on a firm footing in eastern Kearney County. So I just wanted to bring that out as an example. Really appreciate Senator Carlson's willingness to provide us with this potential new source of funding which NRDs can use to be enterprising in our efforts to conserve our natural resources. [LB595]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Dubas. [LB595]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Mr. Thorburn. How many NRDs do you think would take advantage of this program? [LB595]

JOHN THORBURN: As you know, Senator, we had the NRD managers here in town and we talked this over this morning, and I think there would be regular applications. We didn't really take a straw poll or anything, but certainly a number of districts have a

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number of projects that, as I mentioned, don't necessarily fit well to existing funding sources; might be relatively local in terms of their benefits, or a little out-of-the-box in terms of how they work. And so, yeah, I think it would have benefits around the state. In the Loup Basin, certainly hasn't been a priority because, again, we don't have the interstate issues and don't have the water supply limitations that we have in other parts of the state. There may be opportunities there I'm sure. [LB595]

SENATOR DUBAS: Do you feel that this money would be able to be paid back just within the normal course of your budget or would you be having to look at generating additional revenue to pay back the loan? [LB595]

JOHN THORBURN: Well, of course, just as in state government, local government has challenges with funding, but, yeah, it would be our hope that as we look to developing these projects, we would understand that that repayment requirement we could build that into our budgets and be able to make projects probably relatively small-scale projects; we're not going to develop another Lake McConaughy this way, but relatively small scale projects could be done quite readily with the Revolving Loan Fund. [LB595]

SENATOR DUBAS: Thank you. [LB595]

SENATOR LANGEMEIER: Senator Haar. [LB595]

SENATOR HAAR: Yes, the \$9 million due to the state that was borrowed from the three natural resource districts in the Republican River to pay for the surface water purchase from irrigators, where did that come from in the first place? Was that state General Fund? [LB595]

JOHN THORBURN: Yeah, Senator, my district wasn't one that borrowed the money, but I do believe that's correct. It came from General Funds originally. [LB595]

SENATOR HAAR: Okay. So it came from General Fund, now go into the Water Cash Fund. [LB595]

JOHN THORBURN: Yes, that's the intent, I believe. [LB595]

SENATOR HAAR: Okay. [LB595]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much for your testimony. [LB595]

JOHN THORBURN: Thank you. [LB595]

SENATOR LANGEMEIER: Further testimony in support of LB595. Welcome. [LB595]

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RON WOLF: Chairman Langemeier, members of the committee, my name is Ron, R-o-n, Wolf, W-o-l-f. I'm here representing the Nebraska Water Coalition. And we would like to support this bill with an amendment. I've talked to several NRD managers, that we discussed this during a recent coalition meeting. It's a bill constructed by the NARD, the Nebraska Association of Resource Districts. I have the same fault, if I'm meeting, in a meeting with a bunch of surface water districts we talk surface water districts. I don't think we were excluded deliberately from this, but I would ask that there be an amendment offered if possible to include public power and irrigation districts, reclamation districts, and water companies be eligible to receive these loans. Some of the oldest water infrastructure we have in this state are surface water districts. There is some pretty good opportunities out there for some water conservation and stream enhancement and they're tough to do without proper funding. I've worked for districts in the past, in the '70s, that were totally open systems. Some of the laterals were quite sandy. And as Senator Carlson has pointed out today, there are some benefits from seepage into the aquifer. There's also some benefits from never diverting that water from the stream in the first place; leave it in the river. But on a totally open system, you divert a lot of water and swallow your losses to try to get adequate irrigation. I recently priced some 30-inch pipe; we wanted to do about a mile of open replacement. That pipe is going to run \$31 a foot just for the material; so you're talking \$150,000 a mile. It's hard for a 20,000-acre district or even a district our size to whack everybody in the district that many dollars in one year so you can go buy the pipe. If a water company or an irrigation district could obtain these funds, match it through apportion and budget out the repayment over a period of several years, there could be some progress made on some of these projects like this. One of the net results that we've learned laying pipe is you divert less water and you use less water. Those of you that have been involved with the surface water irrigation, it's not done for entertainment. It is hard work. And the less water you have to divert and handle, be you the district or the farmer, the better it works for everybody. There's also opportunity there for fuel savings. Open laterals, historically, have very little head pressure; people are pumping to get it off the fields. You can lay some of these things in pipe, pick up some head pressure, do away with the motor, provide them the pressure along with the water. It makes more consistent delivery. But it's tough to get that first mile in at \$150,000 a crack for the material. There are other structures of course, check structures, diversion structures. I'm aware of districts in the state still trying to use overhead flumes to cross canyons. And replacement of these structures are going to have to happen and an opportunity to obtain these funds would certainly be welcomed. I'd for the amendment if you could find a way to do that. [LB595]

SENATOR LANGEMEIER: Very good. Are there questions? Senator Haar. [LB595]

SENATOR HAAR: I was wondering whether we could just do you a deal with Keystone Pipeline to get some soon. [LB595]

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RON WOLF: Actually, Senator Haar, Keystone Pipeline will be crossing our facilities. [LB595]

SENATOR HAAR: Really. [LB595]

RON WOLF: Just far enough upstream to mess up the Dubas operation. So we're watching it very closely. We've checked with the Bureau of Reclamation who is the oversight federal agency for our project and we were kind of told that this is an international project so deal with the Army Engineer Corps. So this should be entertaining. [LB595]

SENATOR LANGEMEIER: Good. Are there any other questions? Seeing none, thank you very much for your testimony. [LB595]

RON WOLF: Thank you. [LB595]

SENATOR LANGEMEIER: (Exhibit 5) Further testimony in support of LB595. Seeing...oops, I do have a letter from the Nebraska Natural Resources Commission in support of LB595. Is there anyone that wants to testify in opposition? Opposed. Seeing none. Does anyone want to testify in a neutral capacity? Welcome. [LB595]

KEN WINSTON: Good afternoon. Good afternoon, Chairman Langemeier 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 Sierra Club. I'm just going to make a couple of brief comments. First of all we wanted to commend Senator Carlson for his work in trying to find solutions to the many issues related to water in the state. So I wanted to publicly commend him for his work in that area. And particularly for looking for tools to fund water projects. And...but the concerns...there were a couple...the reason that I'm here in a neutral capacity is there is a couple of provisions that...well, first of all, if something like this were to be enacted, we would like to see the potential of it being...having a wider application than what the bill currently contemplates. And then I guess the other things is that there's a reference to fund XXX. We don't know what that's about. If it were some long-term stable funding source that was going to be used to fund this, we'd be more inclined to support it, such as, for example the General Fund. So those are my comments related to LB595. [LB595]

SENATOR LANGEMEIER: Are there any questions? Seeing none, thank you very much for your testimony. [LB595]

KEN WINSTON: Thank you. [LB595]

SENATOR LANGEMEIER: Is there anyone else that would like to testify in a neutral capacity? Seeing none. Senator Carlson, you're recognized to close on LB595. [LB595]

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SENATOR CARLSON: Senator Langemeier and members of the committee, again, thank you for listening to testimony for LB595. I would simply state in closing that we all understand and recognize what kind of financial situation we're in. And there's a lot of things that need to be done across the state in relationship to water and there's simply not money available. I commend the NRDs for being willing to tax their people. And that's the way a lot of these things are going to be able to be accomplished. But I think it would also be reasonable if we considered this Water Resource Revolving Loan Fund as an avenue of dollars that they could use for various projects; get the projects done up front and then pay those amounts back over a few years and have that money available for other projects throughout the states. So I think the concept is sound. It may be a rather bold move under the situation we're in to advance a bill like that, but it takes courage to do things and I'd encourage you to do that. And with that I'll close my comments on LB595. [LB595]

SENATOR LANGEMEIER: Very good. Are there questions? Senator Haar has a question. [LB595]

SENATOR HAAR: Just curious, on a revolving loan like this, is interest charged, Senator Carlson? [LB595]

SENATOR CARLSON: It could be set up either way. Under this plan the Department of Natural Resources would have the authority to make it an interest-free loan. [LB595]

SENATOR HAAR: Okay. Yeah that's a nice deal. Let's see, I was going to ask you something else about this; oh, is there a fiscal note to this? [LB595]

SENATOR CARLSON: No, there's not a fiscal note. [LB595]

SENATOR HAAR: Okay. [LB595]

SENATOR CARLSON: And we're not trying to hide what the source of dollars are. [LB595]

SENATOR HAAR: No, no, certainly not, no. [LB595]

SENATOR CARLSON: Okay. And I believe those dollars are very close to being in a position to be repaid. [LB595]

SENATOR HAAR: Well sometimes fiscal notes sneak up on us, so that's why I ask that. Thank you. [LB595]

SENATOR CARLSON: Right. Okay. [LB595]

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SENATOR LANGEMEIER: Very good. Seeing no other questions, that concludes the hearing on LB595. Now we'll open the hearing on LB596. [LB595]

SENATOR CARLSON: Good afternoon, Senator Langemeier and members of the Natural Resources Committee, I am Tom Carlson spelled C-a-r-l-s-o-n, here to introduce LB596. As state senator for District 38, I am committed to support agriculture; irrigation; groundwater wells, and I will say that a groundwater well is an asset, not a liability; surface water irrigation; livestock production; and rural economic development. Critics of agriculture, irrigation, or livestock production should be aware that they're in for a battle with me. We handle our agriculture concerns well. And any group inside or from without who tries to interfere with or disrupt our number one industry is in for a ferocious battle. In my five sessions in the Legislature, I've felt that there are times when surface water users seem to be on the periphery or at the end of the table during discussions about water issues. NRDs have responsibilities to plan and implement integrated management plans, IMPs. These plans can affect surface water irrigation districts. Now I may not fully understand the legal definition or use of standing, but I believe discussion of LB596 is important as a part of the legislative process. That said, the bill would allow any entity affected by a river basin's integration management plan to have standing if a court case or administrative proceeding becomes necessary due to such plan as alleged by the group wishing to bring the suit. Standing is simply explained as the judicial right of a plaintiff to bring a suit in a court of legal determination. The entity wishing standing must be seeking damages for some wrong. There's a background reason for this bill and I'll let the testifiers behind me bring that information to you. But thank you for your attention and for listening to this bill and I'd try to answer any questions you may have. [LB596]

SENATOR LANGEMEIER: Are there any questions for Senator Carlson? Doesn't look...not yet. You've heard the opening on LB596. We will now move to proponents, those that would like to testify in support. Welcome back, Don. [LB596]

DON KRAUS: (Exhibits 6 and 7) Senator Langemeier and members of the Natural Resources Committee, my name is Don Kraus, K-r-a-u-s. I'm the general manager of the Central Nebraska Public Power and Irrigation District. Central owns and operates Lake McConaughy in western Nebraska which provides water for irrigation, groundwater recharge, hydropower generation, cooling for Nebraska's...cooling benefits for Nebraska's largest coal-fired power plant, an environmental account for the Platte River threatened and endangered species, and nearly a million days of recreation last year. Central supports LB596 which would clarify that irrigation districts, reclamation districts, public power and irrigation districts, mutual irrigation companies, canal companies, and municipalities would have standing to participate in legal or administrative proceedings related to integrated management plans. There is a long history of these entities representing the interests of their irrigators, customers, and

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citizens in these matters. The appropriations held by these districts, companies, and cities are not simply for their own use, but are held in trust for the benefit of others. Historically, when the water supply is at risk, these entities have been responsible for protecting the interests of the users. When senior irrigators need protection from junior diverters, it is the canal company or irrigation district, not the individual farmers that appeal to the department for administration of the river. When the Federal Energy Regulatory Commission sought water supplies for instream flows in the 1990s, the power and irrigation districts worked to protect the water supplies of their customers. Should there ever be a prospect of there not being enough water for people to drink, it is the city, and not each citizen, that would secure and protect the needed water supplies. I was a member of the Water Policy Task Force which helped develop LB962. During this discussion, concerns from surface water interests were raised about the lack of authority to influence an IMP. Assurances were given that if adequate protections were not provided for surface water appropriations, judicial review of a decision by the DNR or a natural resources district would be available. Unfortunately, this expectation of a right to appeal was thrown into disarray as the result of an opinion in the Nebraska Supreme Court in August of 2010, and I've got a partial copy attached to the testimony, regarding Central's attempted appeal of a management plan in which the court concluded that Central did not allege injury to its water use interests as opposed to the interests of others sufficiently to confer standing to seek judicial review under the Administrative Procedures Act. Essentially, the court concluded that it was Central's irrigators that used the water to grow crops, not Central, and therefore Central is not injured when there is a shortage of water for irrigation and therefore does not have standing to seek judicial review of the decisions of the DNR and the NRDs. Perhaps Central's irrigators would have been able to appeal the decisions that are hurting their water supply, but Central apparently may not. Instead of a single irrigation district or canal company being able to represent the interests of its irrigation customers, each irrigator must now be responsible for seeking to protect their rights, something that they may not have the resources, expertise, or time to do. Cities might have standing to protect against harm to its pumping facilities, but may not have standing to protect supply used by its citizens from groundwater pumping. To expect individual users to each appeal the harmful integrated management decision of an upstream NRD, rather than allow the holder of the appropriation to act on their behalf, would be a terribly inefficient system and poor public policy. LB596 is neutral regarding the merits of any potential claim a surface water entity might bring. However, the legislation does provide the opportunity for judicial review of an IMP that might harm those listed previously. While Central would prefer that concerns about integrated management plans are resolved by discussions with the DNR and the NRDs, we believe the opportunity for judicial review should be obtained without additional burdens imposed. Therefore, Central supports LB596 and we thank Senator Carlson for introducing the bill. Now it is my understand that there have been some concerns raised recently about whether the Legislature can define standing. And to the extent that is a concern, we have thought about this a little bit and have a proposal at least for your consideration. I'm not

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necessarily saying it's needed, but I am going to submit it at this time. All right, I have to...that has not seen, you know, widespread review; have not talked to the Surface Water Coalition. I would to do that and submit a letter to the committee saying they have, you know, give it thumbs up or thumbs down and at least provide that input to you. Okay, with that I would close and be available to answer any questions. [LB596]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Kraus? Seeing none, thank you very much for your testimony. Further testimony in support or proponent to LB596. Welcome. We're getting good use of your trip down here today. [LB596]

RON WOLF: Mr. Chairman, members of the committee, my name is Ron Wolf, W-o-l-f. I represent the Nebraska Water Coalition and I thank you for scheduling these three bills all in one day; saves me a lot of miles. I support this bill. Historically, districts have represented their users in water matters. I agree with what Mr. Kraus said. I was a little amazed, I guess, that we didn't have standing. Part of what I understand of the discussions when LB962 was passed was that the Department of Natural Resources would be the advocate/protector, if you will, of surface water interests. That has proved to be impossible. Pretty hard for a judge to protect someone who may be sitting in front of the bench. They're also the administrative office for the...in the initial hearing on these problems, so I would certainly ask that this bill giving standing to irrigation companies, districts, public power and irrigation districts be passed to give us a chance to bring forth our problems. There will probably be opponents to this bill who will tell you that the law does now contain language which says that the department and the affected natural resource districts shall consult with irrigation districts, et al. prior to forming an integrated management plan. This morning I asked an attorney to look up the word "consult" in his Black's Law Dictionary. The version he has, "consult" is not in it. Webster's, "consult" is ask for an opinion or advice. So when you consult with somebody, that doesn't mean that whoever you are consulting with has any real input. Any information or advice they give you can or cannot be discounted at your will. I understand the problems associated with some of this, but I do ask that you support this bill and would try to answer any questions you might have. [LB596]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Wolf? Senator Haar. [LB596]

SENATOR HAAR: One thing when talking to constituents and so on, when one government entity sues another government entity it makes everybody look bad. So is consulting an option, or how do we...or are there times when you feel really it's got to be that, you know, they both come to? [LB596]

RON WOLF: Senator Haar, there are some things I'm sure that can't be worked out, and it will end up in court one way or another. But most of the, if not all of the integrated

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water management plans that I see being formed in this district are going to have a surface water component as a major component. Some of the bills you've heard today, we're solving our water problems with surface water. But allowing those that have...that hold the water rights for most of the surface water users to have no input into the process other than we can give you advice,... [LB596]

SENATOR HAAR: Um-hum. [LB596]

RON WOLF: ...that doesn't give us a chair at the table. I think...I think "consult" is not a strong enough word possibly for the position we should hold. [LB596]

SENATOR HAAR: So possibly from your standpoint, legally giving you a place at the table might actually reduce the number of lawsuits. [LB596]

RON WOLF: I think so. The more input...it's like these hearings, the more input and discussion that any of the groups in this room today can have informally, get the truth on the table, work some things out prior to these hearings, the better we are. The better the legislation you pass, the less chance of conflict later. [LB596]

SENATOR LANGEMEIER: Very good. Are there...Senator Schilz. [LB596]

SENATOR SCHILZ: Thank you, Senator Langemeier. Mr. Wolf, thanks for coming in today. Just a question, and I know you...when you say "consult," during the...have you or anyone been involved in the IMP processes as they were created and formed? [LB596]

RON WOLF: I have not directly, no. We in the Loups we're blessed; we're not to that point. I'm sure there will be one coming. [LB596]

SENATOR SCHILZ: Do you know that if and when if you would be involved in that, do you know, there's room for stakeholders at the table. Is that enough of an input or seat at the table to help develop those? [LB596]

RON WOLF: It's an aid. I'm on a local NRD and I think most of them we got in the state are trying to do the right thing and they're trying to gather people together to gather what information they need. That does not mean that any decision they make without any definitive or any way for someone like me to say, no, this is not going to work, you better relook it. It still is an up-front, arbitrary decision. Right now, to the best of my knowledge, and especially since this Supreme Court ruling, there is no place for someone like my district or any other district in the state to go if they feel that an IMP infringes upon a district's water right. Following this ruling...we always have the right to appeal; always have the right to appeal the Supreme Court. If we lose that appeal, the ceiling just dropped on us. We have no place to go. [LB596]

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SENATOR SCHILZ: Right. And then I guess the other question is, isn't the IMP and LB962 process itself supposed to get us to those places...isn't...I guess what I'm trying to say is, is that not the solution to everything we're talking about here so we don't have to go to lawsuits? [LB596]

RON WOLF: It was hoped to be. LB962 passed I think the year after there were some massaging and changes and it's happened every year since. I think LB962 is still a work in progress. [LB596]

SENATOR SCHILZ: Right. [LB596]

RON WOLF: And I believe this recent case pointed out one of the weaknesses that probably needs corrected. I don't think it was foreseen,... [LB596]

SENATOR SCHILZ: Right. [LB596]

RON WOLF: ...because I know I've always assumed, I've moved water rights for my people and everything else as their representative. I always assumed I could represent my irrigators. Evidently I was wrong. [LB596]

SENATOR SCHILZ: Right. Okay. Thank you. [LB596]

SENATOR LANGEMEIER: Very good. Are there any other questions? Seeing none, thank you very much for your testimony. [LB596]

RON WOLF: Thank you very much. [LB596]

SENATOR LANGEMEIER: (Exhibit 8) Further testimony in support or proponents. I have letter from Tom Knutson, from the Farwell Sargent Irrigation Districts in support. Seeing no others, is there anyone that would like to testify as an opponent, in opposition to LB596? [LB596]

JOHN THORBURN: I guess I ought to come to your hearings more often; I seem to have an opinion on everything you're talking about today, Senators. [LB596]

SENATOR LANGEMEIER: That's good. That's why we do this. [LB596]

JOHN THORBURN: (Exhibit 9) I'm John Thorburn, J-o-h-n T-h-o-r-b-u-r-n, manager of Tri-Basin Natural Resources District in Holdrege. I'd like to offer testimony on behalf of my NRD and the Nebraska Association of Resources Districts in opposition to LB596. Tri-Basin NRD cooperated with the state and worked closely with local stakeholder representatives to develop an integrated management plan, or IMP, for the Platte Basin

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portion of our district. We also participated in the development of the Platte Basin-wide management plan. We believe that the current integrated management plan development process enables NRD boards, representing the interests of their local constituents, to effectively advocate for those interests when we work with DNR, which represents the interests and policy objectives of the state as a whole. The Tri-Basin NRD board of directors take their responsibilities as elected representatives of the people very seriously. The district's planning committee worked diligently for several years to develop an IMP that effectively balanced local needs against state requirements. We were careful to provide adequate notice to the general public and to representatives of specific stakeholder interests like our local irrigation district, Central Nebraska Public Power and Irrigation District. The NRD board also consulted regularly with an appointed citizen's advisory group that participated in development of both our local IMP and the basin-wide plan. Three of the five members of that committee are Central Irrigation District customers. The management plans that we developed were well received by the general public and we have worked aggressively to implement them. The only negative testimony that we received about our IMP when we held public hearings came from Central. Even though we were careful to consult and collaborate with Central, even though we made sincere attempts to look out for the best interests of Central and its customers as we developed our IMP, there were some aspects of both our IMP and the basin-wide plan that weren't satisfactory to the Central District. A few short weeks after our IMP was finalized, Central sued our district and the other four NRDs in the Platte Basin. Central's many lawsuits against the state and NRDs over IMP implementation were all unsuccessful. Their lawsuit against Tri-Basin NRD was just dismissed a couple of weeks ago. Several courts have made it clear that Central has no business trying to impose their will on state and local government through the court system when they are unable to persuade their elected local representatives or representatives of the state of the value of some of their proposals. Now they seek to achieve through legislation what they couldn't accomplish with litigation. The issue were that if this bill passes, Central and other irrigation districts will no longer have any incentive to work with NRDs or the state to develop IMPs. They can just sit back and wait until our plans are completed. Then, if they don't like the plans, they will sue us. Furthermore, a wide variety of other special interests will seek standing to object to plans and actions of NRDs and other political subdivisions. If this bill advances, local representative government will be undermined and NRDs will be subject to endless rounds of expensive litigation from disgruntled special interests. I urge the committee to allow our system of representative government to work as it was intended. Trust elected NRD directors to represent all of their constituents to the best of their ability. Please do not advance this bill out of committee. Thank you. [LB596]

SENATOR LANGEMEIER: Are there any questions? Senator Haar. [LB596]

SENATOR HAAR: I would ask you the same question I asked of Ron Wolf, and that's about the perception that the public has when they see, you know, one state body suing

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another one or...how do you respond to that? Wouldn't getting them at the table make that difference? [LB596]

JOHN THORBURN: Well certainly, Senator, we don't like to be sued or have to be involved in legal action related to the work that we do. Central was at the table; they were at all of our planning committee meetings when we worked on our IMP. As I said, our board had a stakeholders group and many of the members of that group were Central customers. Central is a very important part of our district and part of our water resources management and very critical to the water supply of my district. We wouldn't intentionally work against their interests any more than we would work against the interests of our groundwater users who are also our constituents. So, I think the false perception has been created that NRDs represent groundwater irrigators; we don't. We represent the citizens of our district. And that includes customers of irrigation districts;, people that live in towns, people that live in the country that don't irrigate. We're...my directors are elected to represent all the people. And so to elevate a group like an irrigation district to some special standing just doesn't seem to help the dialogue, help the planning process, in my opinion. [LB596]

SENATOR HAAR: Are...and then this part of my education even though I've been on this committee for two years, do irrigation districts have elected board members? [LB596]

JOHN THORBURN: Yes they do. And I think the process varies depending on the type of district. Some districts might elect just from their patrons. Central, their directors are elected from...by the general public and so there is some variability depending on the type of district. [LB596]

SENATOR HAAR: So you have both groups being elected by the public; but your focus is groundwater, isn't that correct? [LB596]

JOHN THORBURN: Well no, Senator, certainly that's an important part of what we do and groundwater management has been a focus of NRDs, there's no question about that. But we are also tasked with what's called integrated water management, the interconnected groundwater and surface water resources. And while it isn't done so much in my part of the state, surface water management is an important task that NRDs do as well. And here in the eastern part of the state, that's been focused on flood control, of course. So NRDs are responsible for managing soil and water resources whether they are above the ground or below the ground. [LB596]

SENATOR HAAR: Okay. Thank you. [LB596]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much for your testimony. [LB596]

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JOHN THORBURN: Thank you. [LB596]

SENATOR LANGEMEIER: Further testimony in opposition. You might get the award for the farthest drive today. [LB596]

RON CACEK: Probably, that's right. [LB596]

SENATOR LANGEMEIER: Welcome. [LB596]

RON CACEK: (Exhibit 10) Good afternoon, my name is Ron Cacek, R-o-n C-a-c-e-k, and I'm the general manager of the North Platte Natural Resources District in Scottsbluff. I would like to thank the Natural Resources Committee for the opportunity to testify on LB596. On September 14, 2009, the joint North Platte NRD-Department of Natural Resources integrated management plan became effective. The plan was developed over a six-year period utilizing a stakeholder group comprised of local and basin-wide interests including Central Nebraska Public Power and Irrigation District. A public hearing was held to solicit input on the proposed plan and all testimony and exhibits received were considered by the North Platte NRD and the DNR prior to the adopting of the IMP. Following the effective dates of the North Platte NRD IMP and basin-wide management plan, Central filed lawsuits against the North Platte NRD on the adoption of the IMP and the basin-wide plan. They also filed suits against the other four overappropriated Platte Basin NRDs on the basin-wide plan and have filed petitions with the department on the basin-wide plan and the North Platte NRD IMP. Central's primary objective in these filings is to require a contested case hearing regarding the adoption of these plans. All of the lawsuits against the NRDs have been dismissed, however the petitions before DNR are still pending. In addition to these lawsuits and petitions, Central formally requested a revision to the basin-wide plan to address their concerns. The five NRDs and DNR evaluated their request and determined that such changes to the basin-wide plan were not warranted. These actions illustrated the pointed effort Central has made to circumvent the collaborative and incremental process of returning the Platte River Basin to fully appropriated status. They desire an immediate return of the North Platte River upstream of Lake McConaughy to a fully appropriated status and for the North Platte NRD to take actions drastic in nature to assure that happens. Since they have not been successful in achieving these desires through the current statutory framework or through the judicial system, they are now seeking the Legislature to amend the current statutes. Passage of LB596 would most assuredly result in ongoing litigation continuing to make it difficult for the North Platte NRD to focus all available resources on meeting the statutory obligations of LB962 and would place a legislative rule-making process in the hands of the judiciary. It is imperative to remember that integrated management is a long-term process. The issue that the IMPs and the basin-wide plan are addressing developed over a long period of time and therefore cannot be solved in a short period of time if the socioeconomic

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viability of the area, and in turn the state, is to be maintained. During the recent historic drought that gripped the western part of the state, less surface water was entering the state from Wyoming which had a significant impact on all water users. Thanks to Mother Nature the flows in the North Platte River last year were high, resulting in Lake McConaughy filling. This year due to early releases from the reservoirs in Wyoming, and Central is currently releasing water from the lake so it does not exceed authorized storage capacity. One should never underestimate Mother Nature on its water supplies for all water users. Given the fact that the IMP process has begun and the courts have already ruled multiple times that Central does not have standing with respect to their challenges of the adoption of the basin-wide plan in the North Platte NRD, we ask that the committee not advance LB596. [LB596]

SENATOR LANGEMEIER: Very good. Is there any questions? Seeing none...oop, Senator Haar has one. [LB596]

SENATOR HAAR: Yeah. Going back to that idea of...do you feel that Central is at the table right now in developing these plans? Or they were? [LB596]

RON CACEK: They were at the table when the plans were developed, yes. And we had, in fact our NRD had several private meetings and discussions with Central that were not successful in arriving at some kind of conclusion. There has been no further contact of that nature during the pending litigations. [LB596]

SENATOR HAAR: Without going into the technical detail, because I'm not familiar with exactly what's going on, what are some of the issues that aren't agreed upon? [LB596]

RON CACEK: I think I tried to point that out in my testimony that statute provides for incremental solution to the issues... [LB596]

SENATOR HAAR: Okay, yeah. [LB596]

RON CACEK: ...that arise in the Platte River and there are certain goals that we have to meet for the first goal is returning the river to the 1997 levels and then beyond that to a fully-appropriated status. And I think our NRD is on track to do that within the time frames that we established. And like I said, the process takes time to accomplish that and still maintain your viable socioeconomic situation. [LB596]

SENATOR HAAR: And you're feeling that Central is saying, got to have it now. [LB596]

RON CACEK: It seems so, yes. [LB596]

SENATOR HAAR: Okay, thank you very much. [LB596]

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RON CACEK: Um-hum. [LB596]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much for your testimony. [LB596]

RON CACEK: Thank you. [LB596]

SENATOR LANGEMEIER: (Exhibit 11) Further testimony in opposition. I do have a letter from Steven Smith from Scottsbluff in opposition. Is there any testimony...then we'll move to neutral capacity. Is there anyone that would like to testify in a neutral capacity? Welcome. [LB596]

BRAD EDGERTON: Good afternoon, Senator Langemeier and committee members. My name is Brad Edgerton, B-r-a-d E-d-g-e-r-t-o-n. I'm the manager of Frenchman Cambridge Irrigation District located in the Republican River Basin. And it's Frenchman Cambridge belief right now that we do have standing in the IMP process. And we would like to see it in statutes to basically clarify it though. In 2007 Frenchman Cambridge Irrigation District did enter into a lease agreement with the NRDs and we did sell our storage water from Harry Strunk Lake and passed it downstream. Then we also curtailed deliveries on Cambridge Canal. It was this action that allowed Nebraska to achieve compliance in 2008. The board of directors for Frenchman Cambridge Irrigation District believed they had the legal authority to enter into this lease agreement. If we don't have standing in these legal matters, it would be very difficult in the future to convince the board that they could legally lease this water and more than likely the NRDs would have to go through each individual patron of the district to accomplish this which would be probably next to impossible because the irrigation district holds the water right also. So with that I'll answer any questions. [LB596]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Haar. [LB596]

SENATOR HAAR: So in your opinion, would LB596 create more or less lawsuits? [LB596]

BRAD EDGERTON: I think it would create less lawsuits. [LB596]

SENATOR HAAR: And just finish that for me. [LB596]

BRAD EDGERTON: Yeah, yeah, I mean we are able to provide testimony at the IMPs and those process, but we have recently asked for a hearing with the department on the adoption of the surface water controls in those IMPs and we're waiting for a decision from the department on whether we can offer additional testimony in that process. [LB596]

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SENATOR HAAR: Okay. Is it a problem at all that obviously some of the NRD districts don't exactly coincide with the irrigation districts? [LB596]

BRAD EDGERTON: To a certain extent it is a problem. I mean, different districts create or create rules to govern what we call commingled acres. And in some districts those rules are different. So it affects what producers can do and it really affects their well, not necessarily their water right, but it affects their well. [LB596]

SENATOR HAAR: Okay, thank you. [LB596]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much for your testimony, well done. [LB596]

BRAD EDGERTON: Yep. [LB596]

SENATOR LANGEMEIER: Further testimony in a neutral capacity. Seeing none, Senator Carlson, you're recognized to close. [LB596]

SENATOR CARLSON: Senator Langemeier and members of the committee, again I appreciate those that came to testify concerning this bill. It's obvious that Central Nebraska Public Power and Irrigation has some frustrations with things that have happened to them in the past. Now in conclusion, I'm going to say that the ruling that came down August, 2010, was not the fault of Tri-Basin NRD or any other NRD. That's the way the court ruled and it's been a difficult thing for Central Nebraska Public Power. To say that Central Nebraska over the period of 70 years hasn't had a tremendous influence on the water supply in south-central Nebraska would be totally false because they have. They have had a tremendous impact and that's benefitted groundwater irrigators in that area. Over that period of time, Gosper County groundwater levels raised 35 feet. In Phelps County which is intense irrigation, groundwater levels in Phelps County raised 26 feet over that period of time. Now I'm told that the water mound which is between the aquifer and the surface, which is right in the center of Tri-Basin NRD, has enough water to fill Lake McConaughy six times. That's a tremendous impact that surface water irrigation has had over the years in that part of the country. Because of that water mound, part of it seeps into the Republican Basin and so the Lower Republican NRD benefits, as do Middle and Upper, from that seepage. Elwood Reservoir, which is a holding for a portion of the irrigation system and as water fills Elwood Reservoir there's a lot of seepage that occurs and half of that seepage comes back to the Platte Basin and half of it goes into the Republican. So the impact of Central Nebraska Public Power and Irrigation over the years is tremendous in terms of being able to supply water for this portion of Nebraska. And I understand the difficulties they face. And as I said in my introduction, I've sensed over the years that many times surface water seems to be at the end of the table. And so whatever can be done to try and rectify that and not interfere with what the NRDs do, I would appreciate

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that kind of input and consideration from the committee. So again, thank you for listening and I'll try to answer any questions, except for Senator Haar, I don't want to answer his questions. (Laughter) [LB596]

SENATOR LANGEMEIER: In that case he doesn't have one. No, just kidding, Senator Haar. [LB596]

SENATOR HAAR: Gosh, now I almost lost my question. [LB596]

SENATOR CHRISTENSEN: It worked. [LB596]

SENATOR HAAR: It must have been really important. You're a clever man, Senator Carlson. No, in your opinion then, do you...the point I brought up earlier, people in this part of the state, they pick up the Journal Star and they say wow, you know, Central is suing whatever NRD and it looks kind of bad. Do you think that this legislation would increase or decrease the amount of litigation going on? [LB596]

SENATOR CARLSON: I don't really know the answer to that. Certainly it would be hopeful that it would decrease. But remember, water is so vital, it's the lifeblood of agriculture and everybody that has any management responsibilities, whether it be ground or surface water, they're going to guard those responsibilities and try to fulfill them. So it's difficult to put away all disputes that occur because that's just the way water is. But whatever could be done to lessen that would be important whether it's a bill, whether it's actually in statute, or whether it's some other way that we bring people to the table and try to get them to cooperate. We had cooperation in my office this morning. And that's the way to do it. Get together and hash things out and get it in the open and then settle on a solution. [LB596]

SENATOR HAAR: So you're not just bringing this bill to the committee, but you want to see this enacted and try this out is what you're saying. [LB596]

SENATOR CARLSON: Well I brought it on behalf of Central Nebraska Public Power and Irrigation District. They are in my district. [LB596]

SENATOR HAAR: Sure. [LB596]

SENATOR CARLSON: They are important constituents and I understand what their frustration is. So any way that I could be of help, I'd want to be, and we'll have further discussion on this bill in committee and decide whether or not it's the right thing to move it out. [LB596]

SENATOR HAAR: Okay. Thank you. [LB596]

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SENATOR LANGEMEIER: Very good. Seeing no other questions, that concludes the hearing today on LB596. We'd like to thank everybody that came and participated and everybody have a safe trip home. (See also Exhibit 12 and 13.) [LB596]