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Natural Resources Committee
March 03, 2011

[LB127 LB655 LB656]

The Committee on Natural Resources met at 1:30 p.m. on Thursday, March 3, 2011, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB127, LB655, and LB656. 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: (Recorder malfunction) ...Resources Committee, my name is Chris Langemeier, I'm the Chairman of the committee. I'd like to introduce the committee members that are here with us today and we're going to have kind of an in and out session. We have three individuals that are testifying first up in other committees, so you're going to see them come and go as the day goes on. And I have another one at 2:00, so I'm leaving as well at 2:00. And then Senator Smith has one being introduced today so you're going to see a lot of in and out today. I'd like to start to my far left or your far right, we have Senator Jim Smith from Papillion. We have Senator Ken Haar from Malcolm. We have Senator Mark Christensen from Imperial. Senator Schilz is in Revenue Committee and he'll be with us in a little while. We have Laurie Lage who is the legal counsel for the committee. To my right we have Senator Annette Dubas who is in another committee, will be here shortly. Then we have Senator Carlson who is opening on a bill in Judiciary, he's from Holdrege; he'll be with us in a little bit. And Senator Beau McCoy from Elkhorn and Omaha will be joining us in a little bit. If you'd like to testify today on any of the three bills, we ask that you fill out one of these green sheets; they're located in the corners of the room. If you'll fill those out in their entirety and when you come up and turn them in, we ask that you give them to Barb Koehlmoos who I did not introduce. Barb Koehlmoos is the committee clerk for the Natural Resources Committee. As you come up, give that to her; it helps us keep an accurate record of your testimony in today's hearing. If you were here and you want to be on the record as having an opinion on a bill, you'll see there's kind of a spreadsheet-type form in the corners of the room that we ask that you fill out and put on there whether you support or oppose a particular bill. You don't have to do both; just that if you want to be on the record of being here, but you don't plan to testify, we would sure appreciate it if you would fill that out. Today we have two pages that are going to be helping us. We have Ian Vosburg who is a sophomore at UNL studying political science from Holdrege, Nebraska. And then we have Katie DeLashmutt is from Burwell and she is a senior at UNL and will be helping us with the Natural Resources Committee this year. If you have a handout that you'd like to hand out, we ask that you have 12 copies. If you know right now you're short a couple copies, please raise your hand and one of the pages will come help you make those copies immediately. If there's something you want us to see that you don't want us to keep, we ask that you show it to us from the table and then allow for us to look at it maybe after the hearing, because if you do give it to us, we are going to keep it for the record so if you have a family photo or something that you want to keep, we ask that you just show it from the table so we

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don't keep it for the record. At this time we would ask that you turn your cell phones off so we don't disrupt those that are going to testify before you. We'd also like as you come up to the Natural Resources table, we ask that the first thing you do is say and spell your name. No matter how simple it is, we ask that you say and spell your first and last name. It helps us keep a more accurate record of a transcript for this hearing. We do use the lights in the Natural Resources Committee. We do allow five minutes, although this doesn't look like this is going to be a big issue today, but we do allow five minutes of testimony. You will see the green light will come on; the yellow light will come on when you have one minute left; and when the red light comes on we would ask that you cease your testimony and allow yourself available for questions if there are any. With that said, we are going to take the bills as they were posted on the door, LB127, LB655 and then LB656. So with that, we'll open the hearing on LB127; Senator Avery, welcome back to the Natural Resources Committee.

SENATOR AVERY: Thank you, Mr. Chair, it's good to be back. Maybe it will go better this time, huh? [LB127]

SENATOR LANGEMEIER: We'll see. (Laughter) We hope so too. [LB127]

SENATOR AVERY: (Exhibit 1) My name is Bill Avery, B-i-l-l A-v-e-r-y. I represent District 28 here in Lincoln. I am bringing to you LB127 that will amend current law relating to Nebraska's Groundwater Management and Protection Act. What I'm trying to do here is include the Nebraska Game and Parks Commission as a recognized voting stakeholder during the development of integrated management plans in fully or overappropriated water basins. The goals of these IMPs are to manage water resources in the integrated management area in a manner to balance water use and water supply while optimizing economic, social, and environmental benefits for the near and long term and to protect to the extent possible existing users, the local economy, environmental health, and recreation uses. NRDs have statutorily established formal stakeholder committees to pursue and evaluate studies and methodologies and to make recommendations on how water should be managed and used within these specified water basin. According to statute, the members of the stakeholder committees are irrigation districts, reclamation districts, public power districts, canal companies, mutual irrigation companies, municipalities that rely on water and other water users and stakeholders as deemed appropriate by the department or by the affected natural resource district. Amending the law to require the Game and Parks Commission to be included on the list of parties who participate in these MIPs (sic) will ensure that fish, wildlife, vegetation, and recreational interests and nonconsumptive interests have a seat at the negotiating table when these management discussions take place. These natural resources, you all know of course, belong to all Nebraskans and protection of them are vital to the future of our state. In fact, adding Game and Parks as a required voting stakeholder in these MIPs (sic) would, I believe, help us protect and optimize our environmental health and recreation uses of our water and would further protect that

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precious resource. As voting stakeholders, Game and Parks expert field biologists can provide essential scientific information, historical information, migratory impact information on populations and the health of our fisheries and wildlife before the final IMP determinations are made. Currently, the Game and Parks Commission may weigh in; later in the MIP (sic) process this consultation is only sometimes requested with respect to the Endangered Species Act. Not necessarily are they asked to get involved in other fish, wildlife, or other kinds of issues, and often it's during the public comment phase of the IMP construction. It seems to me that the department has too many resources that could be valuable in the integrated management plans and leaving them out just doesn't seem to make sense. I am asking that we do this in the interest of protecting, particularly some of the most fragile of our resources. The Niobrara River is one; this is a crossroads of habitats for many species that are on the edge of their range. I think there are 83 eastern species that reach their western range limits at the Niobrara. Forty-seven western species approach their eastern limits in this area as well. And these, I believe, need to be protected. The timing is right. The Niobrara IMP process has not yet begun. If Game and Parks could participate as a voting member in the IMP stakeholder committee and have the opportunity to bring their expertise to bear on those discussions seems to me that this would potentially do a great deal to help us protect wildlife and natural resources. As they say, if you don't have a seat at the table, you'll probably going to be on the menu. So what I would like to see is to have Game and Parks at the table protecting our resources. I have...I want to make one other argument. I'm going to ask the page to come and distribute this for me. This is a table that shows the population changes from 2000 to 2010 along many of our most important waterways. Significant population decline and you all are aware of this. Many of you live in these areas. Perhaps this bill, putting the Game and Parks Commission right in the middle of these integrated management plans, perhaps this would lead to the protection of wildlife or recreation on these waterways. Perhaps it would spur economic development with recreation and more outfitting of wild game and fishing activity. And perhaps it could contribute a little bit to help diminish this disturbing population loss along...in the communities along these waterways. You may think that's a stretch and I can't say that there is a clear linkage, but we need to be looking at everything we can do to stem the population loss in these areas. So I would ask you to give serious consideration to advancing LB127 to General File. Thank you. [LB127]

SENATOR LANGEMEIER: Okay. Senator, just for clarification for the record, you referenced MIPs and IMPs in your testimony. [LB127]

SENATOR AVERY: Did I? [LB127]

SENATOR LANGEMEIER: And I just for the record, you use those interchangeable,... [LB127]

SENATOR AVERY: IMPs, integrated... [LB127]

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SENATOR LANGEMEIER: ...but you meant integrated management plans, right?
[LB127]

SENATOR AVERY: Yeah. [LB127]

SENATOR LANGEMEIER: Okay, just wanted to make that clarification. [LB127]

SENATOR AVERY: The other acronym actually does stand for something, but it's not appropriate for now. [LB127]

SENATOR LANGEMEIER: That's why I want to clarify it. We deal with a variety of subjects, but I didn't want to go there. Senator Christensen. [LB127]

SENATOR CHRISTENSEN: Thank you, Mr. Chairman. Thank you, Senator, for coming in today. Your understanding then, if this passed, they would just be voting...joining the NRD in voting at the time the IMP process is done. The rest of the time they wouldn't have a seat at the NRDs' meetings? [LB127]

SENATOR AVERY: Correct. These are just for the IMPs. [LB127]

SENATOR CHRISTENSEN: Thank you. [LB127]

SENATOR LANGEMEIER: Are there any other questions? Senator Haar. [LB127]

SENATOR HAAR: And you're talking about a...actually a vote for Game and Parks.
[LB127]

SENATOR AVERY: Yes, a formal position on the negotiating team with a vote. [LB127]

SENATOR HAAR: Okay. And I'm still learning how all this stuff works so if you can answer this question for me. Who is at the table to vote at the IMPs right now to vote?
[LB127]

SENATOR AVERY: Irrigation districts are there, reclamation districts, public power districts, canal companies, mutual irrigation companies, and cities that rely on water in the basin and they have...the NRDs can, of course, add other members that they might choose to add, but they're not required to have the Game and Parks there. I think that since all of our rivers are important to our recreation and wildlife, that the Game and Parks probably ought to be a part of all of those plans. [LB127]

SENATOR LANGEMEIER: Is there any other questions? Seeing none, thank you very much, Senator Avery. [LB127]

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SENATOR AVERY: I am not going to be able to stay because we have Exec Session in Government and they're starting without me. [LB127]

SENATOR LANGEMEIER: Well maybe we should hold you here a little longer. What are they "execing" on? No, just kidding. Thank you, Senator Avery. You have heard the opening on LB127. We will now move to testimony. Those that would like to support, or proponents of LB127, please come forward. Good afternoon. [LB127]

KEN WINSTON: (Exhibit 2) Good afternoon. Good afternoon, Chairman Langemeier, and members of the Natural Resources Committee. This afternoon I'm appearing on behalf of the Wachiska Audubon Society. My name is Ken Winston, K-e-n W-i-n-s-t-o-n; also appearing on behalf of the Nebraska Chapter of the Sierra Club in support of LB127. And I jumped up at the start because of the fact I've got lots of things I'm supposed to be doing today, not that I'm the most knowledgeable person on this subject. I think there are others who will follow me who know more about this issue than I do. But there's one particular thing I wanted to point out and that was something that Senator Avery talked about a little bit and that's the provision...there's a current provision in law that says that if there's any issue related to endangered or threatened species...threatened or endangered species that there is required to be a consultation with Game and Parks regarding that. And we think it makes more sense for that consultation to be done up front as opposed to waiting to the end of the process. There could be a plan that's all worked out and all figured out and suddenly the process could be overturned and you'd have to end up redoing it. We just think in terms of efficiency of the process it makes a lot more sense for the Game and Parks Commission to be involved up front and, of course, there's the other areas that they have expertise, the issues related to just fish and wildlife in general which may be important in the process. And, of course, the tourism issue, as Senator Avery, that the tourism and sporting use of the resources. So we think those are all reasons why the bill is worthy of support and reasons why the Game and Parks Commission should be part of the integrated management planning process. [LB127]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Winston? Senator Smith. [LB127]

SENATOR SMITH: Thank you, Senator Langemeier. Mr. Winston, your testimony, I think you...at the top it says, you refer to LR51CA; that was oversight, right? [LB127]

KEN WINSTON: That's an oversight? Yeah, I'm trying... [LB127]

SENATOR SMITH: There's no connection. There's no connection. [LB127]

KEN WINSTON: There's no connection. I'm trying to do too many things at once.

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[LB127]

SENATOR SMITH: All right. Thank you. [LB127]

KEN WINSTON: All right. So yeah, I need a proofreader, Senator Smith. Thank you for noting that. [LB127]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much for your testimony. [LB127]

KEN WINSTON: Thank you. [LB127]

SENATOR LANGEMEIER: Further testimony in support of LB127. Don't be shy, come on up. Welcome. Good afternoon. [LB127]

GENE ZUERLEIN: (Exhibit 3) Good afternoon. Senator Langemeier and Natural Resources Committee members, my name is Gene Zuerlein, G-e-n-e Z-u-e-r-l-e-i-n. I am the assistant division, fisheries division administrator for the Nebraska Game and Parks Commission and I'm here on behalf of the commission in support of LB127 which would amend state statute 46-714, 715, and 717 as follows: it would add the Game and Parks Commission to each of the above sections as an entity with which the Nebraska Department of Natural Resources and affected natural resource districts shall consult with during the time period between a preliminary and final determination designation if developing an IMP in a nondesignated, overappropriated or fully appropriated basin, or (c) if developing an IMP for a fully or appropriated river basin, subbasin, or reach. Basically, identifying the Game and Parks Commission in these three areas would help increase communication and the ability of the agency to share scientific information to the best of their ability during the IMP development process rather than after the fact or after a public meeting. Fish and wildlife resources are public trust natural resources in Nebraska along with surface and groundwater resources. Once a basin, subbasin or reach is declared fully appropriated or overappropriated, NRDs select members of stakeholder committees which make recommendations to the NRD board on how water should be managed and used. Nebraska Game and Parks field personnel in...across the state with knowledge of public trust resources are often not consulted during the IMP process as it is now because it's optional under the law. With the exception of, I think the North Platte, maybe the Upper White Niobrara, our field people from Alliance, North Platte, and Kearney have experienced problems being heard during the IMP development process. I'll just give you a few examples. One of our fisheries people was not allowed on an IMP board, but he was allowed on the subcommittee and he was the only person on the subcommittee they had to vote on, on whether or not he could vote as a member of that particular subcommittee. Another fisheries person was told by the NRD that there was no seat available on an IMP board, but told they would consult with us and it never happened. Fishery personnel told by another NRD that they would have

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liked NGPC input, but the IMP was already done. Another fish and wildlife representative participated in an IMP process and he provided quite a bit of verbal and written input on aquatic resources, but most of it was not deemed pertinent because it dealt with consumptive uses of water. Fish and wildlife personnel were asked to review a completed IMP, which means we didn't have any input until after the fact. Stakeholder committees seek to develop consensus, but scientific information we have and are collecting on the Niobrara involve relationships between Niobrara flows and recreation, as well as fish and wildlife. Since the Niobrara IMP process has not yet started, if Nebraska Game and Parks could participate in stakeholder committees early on with a voting privilege, their opportunity to share that scientific information and data about existing fish and wildlife resources would be increased. The same is true for the Lower Platte when it becomes fully appropriated, or if they decide to do an IMP without being declared fully appropriated. So what are the benefits from the proposed changes if they're passed. Well because this bill specifies consultation with Game and Parks, it would give more direction to the NRDs and DNR to help ensure the existing scientific information is shared early on in the IMP process so environmental health, as well as existing fish, wildlife, and recreation needs are defined for the near and long term. I mentioned attachment A and I'll touch on that in a little bit. Ultimately, IMPs are consultable plans with the Game and Parks Commission. Consequently, it would be advantageous if IMPs for the Niobrara and the Lower Platte could take advantage of the existing science before they are finalized and the agency is consulted on the nongame, threatened, and endangered species. And just to wind things up, the attachment...I looked at 11 IMPs and there's only lip service given to a goal referring to the environmental health. And very few of them have objectives to back up and substantiate the goal of protecting the canal and environmental health of a stream or river. So, and LB962 does state, as Senator Avery mentioned earlier, that the economic viability, social and environment health is supposed to be considered. I'll be glad to take any questions you have. [LB127]

SENATOR LANGEMEIER: Very good. Senator Christensen. [LB127]

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you, Gene, for coming in. Have you guys ever taken information to DNR and sat down with them ahead of time here, because they are an equal player with the natural resources? I would think that would be an appropriate place to take scientific information. [LB127]

GENE ZUERLEIN: If...I can't say that. I have, but if they ask for it, I'm sure we have. [LB127]

SENATOR CHRISTENSEN: I guess my thought is, have you considered just taking that as a proactive step to work with, because they're very influential with this process. [LB127]

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GENE ZUERLEIN: Right. [LB127]

SENATOR CHRISTENSEN: And I just wondered if you looked at that direction. [LB127]

GENE ZUERLEIN: We wouldn't be against it. I can't say that we did, but one of the advantages of being involved with the crew, so to speak, during the IMP process is to share the scientific information. I can give you a report after the fact, but explain it to me. So our people would be able to explain the science behind it and put it in some terms that the local people could understand. [LB127]

SENATOR CHRISTENSEN: What about if you was allowed to be at the table nonvoting? Wouldn't that be a big benefit to you? [LB127]

GENE ZUERLEIN: Yes, it would. But, you know, if...water is our public resources and if we only deal with consumptive uses, people are using the resource, it seems fair to me that the state agency with the stewardship mission of protecting the public trust resource should have a vote too. [LB127]

SENATOR CHRISTENSEN: I'm going to read one more thing because this is a testimony done here by Kirk Nelson on LB924 from 2008 when I was on the committee previously. And I just want to get your comment to this: so at this point with the Nongame and Endangered Species Act as it is, we'd just as soon be allowed to operate in the mode that we are now and if we feel there are some things that are not...we're not doing, then let's work with them. The other part of this bill that concerns us is in streamflows. Since 1984 there has been three instream flow rights granted in Nebraska; two for Nebraska Game and Parks; one for Central Platte NRD. That's almost 25-year period when we've had three instream flow rights. It's not a big issue. They're extremely cumbersome to put into action; they're expensive documents. The hearings are, in our opinion, well conducted through Department of Natural Resources. All these various parties get the opportunity to bring forth their testimony and their expert witnesses. Then there is what we would like to consider an impartial ruling by a very informed person, that being the director of Department of Natural Resources. So our concern is that if we are to mandate to negotiate or to work with the NRDs that are going to be affected by this area, it's going to make the process more cumbersome and more expensive than it is. I guess...I have a little bit of struggle here when they don't want the NRDs involved in talking about instream flows on the Endangered Species Act and yet now you're asking to be part of the IMP process because I got to agree with every one of their arguments. It's going to be more cumbersome; it's going to be more expensive; it could take longer. I just throwing back some argument that were used in reverse this time. [LB127]

GENE ZUERLEIN: Right, right. Well I think we've come a long ways. If you look at the 11 IMPs that have been completed and you can find them on the Internet with DNR. I'm talking about, you know, an instream flow process is one thing, but the IMP process,

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we're talking about being involved in an informal consultation process so we can share the information we have to all the stakeholders that are on the committees. And at the end, we'd rather do that than at the end they give us a completed IMP process for our professionals to review and say it's not adequate, you know, because if we can share information, those people can use that information and maybe they can set different goals, different objectives and just be knowledgeable about the resource itself and how valuable it is. [LB127]

SENATOR CHRISTENSEN: That was my point when asked the early question about sitting at the table but not voting. It's a whole different process than I think I've seen done before to bring them in and vote, but to have them involved in the process and information, I can see very good. [LB127]

GENE ZUERLEIN: Yeah. Well, you know, LB962 that was passed in '04, we were not a member of that process. Our people sat on the sideline, provided technical expertise when it was asked for and that worked to some degree, but it's not the same as being at the table and having a voice. [LB127]

SENATOR CHRISTENSEN: Thank you. [LB127]

SENATOR LANGEMEIER: Any other questions? [LB127]

GENE ZUERLEIN: (Exhibit 4) I do have just one exhibit. This is the type of science we have. It's worth a million bucks on the Niobrara River. And this is the type of information we would be able to share with the stakeholders, NRDs. And if you would like...these are really...these are kind of technical. And so I'll just give you an example of the science that we've spent money from sportsmen and sportswomen generating and we'd be willing to share that information. [LB127]

SENATOR LANGEMEIER: Very good. Thank you very much. Further testimony in support of LB127. Welcome. [LB127]

CARA BRENNER: (Exhibit 5) Thank you. Senator Langemeier, members of the Natural Resources Committee, my name is Cara Brenner and that is spelled C-a-r-a B-r-e-n-n-e-r and I am the executive director for the Nebraska League of Conservation Voters and I'm here to testify in support of LB127. As they've testified previously, current law requires that overappropriated and fully appropriated watersheds do integrated management plans and that these plans be a collaborative effort including irrigation districts, power districts, Department of Natural Resources, municipalities and other water users. The reasons these organizations are included in these plans seems obvious, they're stakeholders. They're stakeholders, insofar as they are directly affected by the management of these waters. However, it is important to remember that the management of these watersheds affects more than just farmers, irrigators, and

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municipalities. The management of these waters will also have a director impact on the stability, integrity, and beauty of the wildlife in these areas. In order to maintain a continued ecological balance in these communities, the proper experts in the field should be consulted, those with the experience and degrees in wildlife management, biology, and ecology. In my experience with conservation across the state, which starts when I was about four years old and my dad used to take me fishing, it seems to be that the people most aptly suited to testify on behalf of these fragile and incredibly valuable ecosystems is the Nebraska Game and Parks Commission. By not allowing the Game and Parks Commission to have a say in the development of these IMPs, it seems to me that we are neglecting a very important part of our community, the BIOTIC community. And with that I would like to thank you for your time and encourage you to support LB127 so that the Game and Parks Commission has a permanent seat at the table when addressing integrated water management plans. Thank you. [LB127]

SENATOR LANGEMEIER: Very good. Are there any questions for Miss Brenner? Seeing none, thank you very much, well done. [LB127]

CARA BRENNER: Okay, thanks. [LB127]

SENATOR LANGEMEIER: Further testimony in support. Welcome. [LB127]

JAREL VINDUSKA: (Exhibit 6) Thank you. Good afternoon, Senator Langemeier and members of the...rest of the committee. My name is Jarel Vinduska. Jarel is spelled J-a-r-e-l, Vinduska is V-i-n-d-u-s-k-a. I'm here to represent the Nebraska Wildlife Federation and the handout is our views on this issue. We're here in support of LB127. We would like to thank Senator Avery for bringing this legislation forward. I won't be redundant on what's in our letter; it spells it out pretty plainly. But I'd like to throw in a couple of my own two cents in there too. You know where we all should be this afternoon, don't you? Not here. We should be in a canoe somewhere between Kearney and Grand Island floating down the Platte River because the most spectacular wildlife display that is happening on the continent right now is in that stretch with the migration. You know, hundreds of thousands of geese and ducks and the Sandhill Cranes are beginning to pour in. It's pretty spectacular. And the reason we've got that is because there's water in the rainwater basins and in the river. Well not just the Platte, but that's where the hot spot is right now, but all of our rivers. And it's been plain over the years that the consumptive uses have had a substantial voice in how our rivers and streams should be managed. And that's okay, we're an agricultural state and that's what our economy is based on. But we've got a natural environment too, something that is very valuable also that we need to take care of. And the Nebraska Game and Parks Commission is who is charged to take charge of that resource. So it just makes sense that they should be at the table early on to have a voice in protecting that resource. And Senator Christensen, I think I could answer your question. You asked if it wouldn't be more expensive...the process be more expensive if this integrated management plan

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was included...included the Game and Parks Commission. But I would suggest that it's more expensive not to plan for the environment to start with in natural resource, nonconsumptive use because look at the millions that we're going to spend to fix the Republican River problem and look at what we've been discussing already this year about taking \$11 million a year out of the Environmental Trust; \$77 million to...lion's share of it to retire wells in the Platte Valley to protect endangered species. That's money, taxpayer money that could be put to a much better purpose that we're going to have to spend because we didn't plan and we over-consumed. So I would suggest that, you know, planning from the start is way more appropriate and cost-effective. Actually I hope this doesn't sound too radical to you, but on page 17 of LB127 on line 13, I think it would be very appropriate to add the word in the sentence on 13 where it says, to offset and enhance and encourage economic development opportunities and economic sustainability, I would inset the word "economic and environmental sustainability" because if we're not sustaining the environment, it's short-term thinking. Short-term thinking is costly, and so that's what we should try to avoid. Thank you. [LB127]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Christensen. [LB127]

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you, for testifying. I agree with having the information up front and working with it can save a lot in the process. I might address one thing you said about the Republican and that is the fact that most people don't understand that the Legislature prohibited moratoriums back when the Upper Republican was trying to do them. And after trying to get that, they went into well spacings and tried to work on their own issues. They didn't do it quick enough; they know that. They wanted the moratorium quicker. The Legislature drug their feet and giving them the rights to do it and the lack of planning of the Legislature caused quite a little problems in the Republican. And so it's not always just the NRDs that make mistakes; the state makes mistakes whether it be DNR or the state senate body and themselves. And the Republican is a classic example of how we're all paying for that right now. And you're right, the information being there to provide information as we go is a good thing. Thank you. [LB127]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much, well done. [LB127]

JAREL VINDUSKA: Thank you. [LB127]

SENATOR LANGEMEIER: Further testimony in support. Welcome. [LB127]

DUANE HOVORKA: Good afternoon, Senators. My name is Duane, D-u-a-n-e, Hovorka, H-o-v-o-r-k-a, and I'm here on behalf of the Nebraska Council of Sportsmen's Clubs to indicate our support of LB127. The council is a group of hunting, fishing,

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recreation, and wildlife groups from around the state that all get together and look at state legislation. And in January we agreed to endorse and support LB127, so I wanted to make sure that the council was on record in support of the legislation. And other people have already made all the good arguments, so I just want to emphasize what you're doing and what you're not doing with the bill. What you're not doing is putting the Game and Parks Commission on the NRD board to vote on the integrated management plan. Ultimately it's the Department of Natural Resources and that NRD board that gets to decide and vote on what that plan is. What you're doing, and I think it's very valuable, is putting the Game and Parks Commission as an adviser on whatever stakeholder groups or advisory group, you're making them part of the group that's consulted by the NRD board when they develop the plan. So I just want to make it clear that what you're doing and what you're not doing. [LB127]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Haar. [LB127]

SENATOR HAAR: I have a question. I wish I could take that part of your brain that understands water and just put it in mine. But go over that again, because I am still a little bit confused. You first have the stakeholders that vote and then the NRDs vote. What's the difference between those two? [LB127]

DUANE HOVORKA: Sure. Well I left my statutes at the office. So you're relying on a brain that's probably getting fuzzier as the years go on. But my understanding of the way LB962 was crafted is that it gave the responsibility jointly to the natural resource district and the state Department of Natural Resources to develop those integrated management plans. And the statute, and the one we're specifically looking at today, requires that those NRDs consult with a list of entities which includes irrigation districts, power districts, etcetera. And what the bill would do is add the Game and Parks Commission to that list of entities that must get consulted. And then each NRD...my understanding is each NRD decides how they're going to do that development. And so some have created like an advisory group; some have created a stakeholders group in order to help that NRD develop that plan. And so that's kind of the process. Ultimately the NRD board has the responsibility jointly with the Department of Natural Resources to decide what the plan is going to look like taking consultation with those folks. Does that help? [LB127]

SENATOR HAAR: Yeah, yeah, that does, thank you. [LB127]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much. [LB127]

DUANE HOVORKA: Thank you. [LB127]

SENATOR LANGEMEIER: Further testimony in support of LB127. Welcome. [LB127]

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LARRY HUTCHINSON: (Exhibit 7) Good afternoon, Senator Langemeier and committee members. My name is Larry Hutchinson, L-a-r-r-y H-u-t-c-h-i-n-s-o-n. I'm here on behalf of the Nebraska Chapter of the American Fisheries Society. And the first chapter of our handout is basically boilerplate from the chapter. I want to kind of emphasize that on the second paragraph that we believe this LB127 will help the Game and Parks Commission be a fundamental and meaningful member of the stakeholder groups that are empowered to help with developing IMP plans for the NRDs. We do...the Game and Parks does have staff in all river basins across the state and facilities that are knowledgeable about the resources in the river basins and the NRDs. They can provide good information on environmental conditions for aquatic resources and wildlife and in many cases have good information on socioeconomic values associated with them and the river basins. So we think it's very good counsel to be involved in that directly up front before final plans are developed, and to help assist with development of those final plans by being a board member of a stakeholder group. In that regard, I guess we would really request that you advance this bill to the Legislature for debate and then vote and help encourage its passage in the Legislature. [LB127]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, thank you very much, well done. [LB127]

LARRY HUTCHINSON: Um-hum. [LB127]

SENATOR LANGEMEIER: (Exhibits 8 and 9) Further testimony in support. I do have...oh, come on up, while we're waiting here, we do have a letter of support from Joe Herrod with the Nebraska Council of Sportsmen's Clubs and from Stu Lutich from Geneva. Thank you. Welcome. [LB127]

MARJORIE KENNEDY: (Exhibit 10) Hello. I've been here a lot, but I've never testified. So this is the very first time, but I won't be here long because I've got a handout and I noticed that everything I said in this letter has already been said. [LB127]

SENATOR LANGEMEIER: I do need you to say... [LB127]

MARJORIE KENNEDY: Marjorie, M-a-r-j-o-r-i-e, Kennedy, K-e-n-n-e-d-y. And I am representing Friends of the Niobrara, Incorporated. I would like to say just briefly, Friends of the Niobrara was incorporated in, I believe, 1999. I was one of the incorporators, so I should remember. But we are a 501(c)(3) nonprofit and our mission is "to preserve the natural, historic, and scenic qualities of the Niobrara River Valley, including the National Scenic River Corridor through a program of education and promotion of projects to accomplish this goal." And we find LB127 to be absolutely in line with our mission as far as Game and Parks being a stakeholder in the IMPs for the Niobrara. I think that would be a wonderful thing. And otherwise, I don't think I have

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anything. I think it's all been said and very well. [LB127]

SENATOR LANGEMEIER: Very good. Senator Haar. [LB127]

SENATOR HAAR: Marjorie is almost a neighbor of mine. [LB127]

MARJORIE KENNEDY: Yes. [LB127]

SENATOR HAAR: And our biggest shared waterway is Elk Creek, I think, which is... [LB127]

MARJORIE KENNEDY: I believe so. [LB127]

SENATOR HAAR: Okay. Just to kind of get a perspective on this of putting sportsmen and Game and Parks into the whole mix of things; so how did your interest in the Niobrara develop, Marjorie? [LB127]

MARJORIE KENNEDY: Oh, back in 1978 we took our first trip on the Niobrara because we heard about it from friends of ours who lived in eastern Nebraska near us. They had already been down the river, so we went. And once you go, you're absolutely hooked and you go every year. That's just how it is, yeah, canoeing. Canoeing and camping and appreciating the fabulous beauty, practically untouched, just wonderful. The river is one of the best I've ever seen. [LB127]

SENATOR HAAR: Okay. We're going to take our grandkids; we're not sure whether we're going to canoe or tube at this point, but. [LB127]

MARJORIE KENNEDY: Oh, canoe. [LB127]

SENATOR HAAR: Okay. [LB127]

MARJORIE KENNEDY: Yes, yes, we had our kid in there when he was two years old. [LB127]

SENATOR HAAR: Okay. But you didn't roll it, whereas I did with my granddaughter and now she's (inaudible). [LB127]

MARJORIE KENNEDY: Well, that's true. [LB127]

SENATOR HAAR: But on kind of a bigger issue, okay, all these various interests are connected to our waters...if somebody told me the first day I was in here, whisky is for drinking, water is for fighting. [LB127]

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MARJORIE KENNEDY: Um-hum. [LB127]

SENATOR HAAR: And so what's the role of urban people and...because you're sort of urban in this whole thing, in managing these state resources? I mean, how do you see your role in support and contrasting to ag? And I don't want to make that too complex, but just to get that balance. [LB127]

MARJORIE KENNEDY: Well the way I see it, the water belongs to all of us and we all have a stake in it, urban and rural and we all have uses for it. And actually if the water is gone, in particular, why then what do we do? That water is definitely the most valuable resource we have. If we don't have water, I guess we won't be around. So it matters to all of us equally, I think, for different reasons. [LB127]

SENATOR HAAR: Okay. Good, thank you. [LB127]

MARJORIE KENNEDY: Okay. [LB127]

SENATOR DUBAS: Any other questions? Seeing none, thank you very much for coming today. [LB127]

MARJORIE KENNEDY: Thank you. [LB127]

SENATOR DUBAS: Any other proponents? Any opponents? Welcome. [LB127]

MIKE MURPHY: (Exhibit 11) Good afternoon, Senator Dubas and other senators of the Natural Resources Committee. My name is Mike Murphy, M-i-k-e M-u-r-p-h-y; represent the Middle Niobrara Natural Resources District and the Nebraska Association of Resources Districts. Senators on the Natural Resources Committee, I want to thank you for your time today. I'm testifying in opposition to LB127. I want to make it clear that we do not oppose the Nebraska Game and Parks Commission being involved with other stakeholders in developing an integrated management plan. In fact, they have been involved in stakeholder groups in the Platte and Republican basins and in the Niobrara ones that have started. In addition, the Niobrara...or the Nebraska Game and Parks Commission consults with the Nebraska Department of Natural Resources on integrated management plans known as the IMP. I would like you to...just a quick example of how this process works. The local NRDs develop stakeholder groups to provide input to the district on an IMP. This process involves an educational process of what the issues are and what possible solutions the district may have to address the issue. This also involves the Nebraska Department of Natural Resources. These meetings are all open to the public and advertised. Public hearings are also held after the proposed plan is developed which provides another opportunity for stakeholders and the general public to have input. For the Nebraska Department of Natural Resources, they also consult with the Nebraska Game and Parks Commission on the

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plan. Also important to this process is that both the NRDs and DNR have to agree on the IMP before it can be adopted by both the Department of Natural Resources and the NRDs. What our major concern with this is is that one organization is being provided preferential treatment by mandating they have two seats at the table, one with the NRD and the other with the consultation side with DNR. By adding this organization, what about all the other groups? It starts to raise the question of what groups have to be included. How long should this list be? Once we start down this road, we run the risk of excluding some group. In the development of LB962 in 2004, the issue came up of who should be included. The same rationale was given about included or inadvertently excluding someone. That is why the language was left as stakeholders. I want to reiterate there's nothing to prevent them from being involved with the NRDs now as stakeholders. All they have to do is be willing to work with the NRDs and the other stakeholders to develop realistic and workable plans that help protect the economic viability of the area, address the concerns of all water users and also protect the water resources for future generations. Thus, I would encourage you to indefinitely postpone LB127. [LB127]

SENATOR DUBAS: Thank you very much, Mr. Murphy. Questions? Senator Haar. [LB127]

SENATOR HAAR: Okay. Well, I'm exploring this issue today of what's the difference between the stakeholders and the general public then in the process as you see it? [LB127]

MIKE MURPHY: Well, in the Middle Niobrara we had just gotten started when everything kind of got put on hold. We had created our stakeholder group and what we called our technical advisory group. We had started down the path. We had had three meetings and those were...everybody that hopefully that was by legislation and that we hoped that wanted to be involved and through...and anybody else that wanted to come to these meetings. And to come and listen and explain, go through the issues; where we got to how we did on the Niobrara, how the determination of fully appropriated became fully appropriated on the Niobrara. And then with, fortunately or unfortunately, the "contestment" of challenging the determination of fully appropriated and whether NPPD's water right is valid. And unfortunately that all started back in 2008. And as of today, we're six months out of a Supreme Court determination, that the hearing was held back on September 2, 2010. Hopefully, we can get past that and move forward. But it was an opportunity that everybody can come to the table, understand the issues, provide input, data, that technical assistance that Nebraska Game and Parks and other entities like USGS, the Forest Service--Nebraska National Forest Service, the Park Service, Fish and Wildlife Service; I mean, our list is pretty large there on the Niobrara. We get all the different federal and state entities. So we made it specifically, you know, to include all those people. In all the three initial meetings that we had, we had the local Game and Parks representative, Ben Rutten, had been involved in all those. I've sat in

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meetings with Kirk and Larry and Gene and them here in Lincoln in Kirk's office at the time, discussing a lot of this stuff and what's going on in the IMP and with the water resource issues on the Niobrara. Trying to keep, you know, that's the whole point, is trying to keep everybody abreast because that's the best thing about the Niobrara, Senator, is it's not all messed up. We don't have a broken system. But unfortunately, we get to learn a little bit more about it. We got some time, you know, understand the resource better and hopefully we can make better management decisions and continue on into the future with those good decisions. [LB127]

SENATOR HAAR: But from what I've heard, the stakeholders get to vote at some point. Tell me how that works. [LB127]

MIKE MURPHY: I think, basically, when you come up with your rules and regulations and what you want to include or not include in your integrated management plans, let's just use transfers. I know that's going to be an issue for us in the Niobrara. [LB127]

SENATOR HAAR: Yes. [LB127]

MIKE MURPHY: It would be determining if you want to allow transfers to the adjoining section, or maybe you want to allow them from one end of the basin, you know, or one end of the district to another; or maybe another part of the basin, you know, go inner-district transfers. And maybe through science, through looking at groundwater and surface water flow in static water levels, maybe it's going to be determined that maybe its best to keep that more localized. You know, we run into the issue in northern Brown County because of a surface water project and all the recharge that we have, we have a mounding of water there. Well, we have stream degradation, erosion issues that continue to go on; we're talking...we've been trying to work with the irrigation districts and the county because we got an old county cement box culvert there north of Ainsworth that 30 years ago there was a dam design that was designed to try to help minimize the stream degradation erosion and because of funding, or whatever, it fell apart. Well in the ten years that I've been with the NRDs, we've discussed this three more times and it just keeps coming back up, funding, money issues. And I mean, at some point you got to, you know, accept that. Well, in that example of Brown County where you have that mounding water, are you going to completely not allow those individuals to use that water? They've had to proceed and ask for federal assistance because of flooding at least two times since 1965 when the Ainsworth Irrigation District project went in just because the groundwater levels have come up so much. So there's going to be those that...that's where that local stakeholder group will have that involvement and I guess, hopefully, with looking at what information is available, provide what everybody agrees on is...would be the right way to approach it. And then...so then that's what the local NRD board would have to take those recommendations into consideration when we're sitting down at the table with the Department of Natural Resources and coming up with that completed IMP. [LB127]

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SENATOR HAAR: So, and I was trained as a computer analysis and stuff, so I'm trying to put this into bubbles in my head and how this thing flows. So the NRD puts together a group of stakeholders and according to what's in the law and then you can add counties or whatever. [LB127]

MIKE MURPHY: Yeah. We actually, I mean, we sat down with DNR and we, you know, at the time and we just...we put everybody's name that...an entity that we could think of. [LB127]

SENATOR HAAR: As a stakeholder. [LB127]

MIKE MURPHY: As a stakeholder. Stakeholder slash..I mean, some people call them advisory groups; some of them call them technical. But I mean, yeah, the bottom line is, they're all stakeholders. [LB127]

SENATOR HAAR: But if somebody gets a vote, I mean that's more than just an advisory thing. Is it...that's what I'm trying to figure out. Okay, if you've designated your group of stakeholders, at some point they get to vote, right? [LB127]

MIKE MURPHY: I would hope that when you have...when you come to an agreement or a subject that needs to be, I guess, thought out and if that's something that's truly going to be included or not included in the IMP process that you would have a consensus or, you know, I guess, a hand-raised vote, or a yea or nay vote of those entities so that way we as a local NRD know exactly what all the constituents, you know, were on and what side they were on. And I mean, there again, maybe it's for it, maybe it's against, but at least you have an understanding where all the local constituents were at. [LB127]

SENATOR HAAR: And then you're...when you get together the NRD with the DNR, you're not required to follow whatever that vote said. It simply sort of a, here's what the stakeholders agreed to. [LB127]

MIKE MURPHY: But...no...well, because we've got to follow the state law and state statutes. But you got to remember, in that stakeholder process, DNR has been sitting at the table so hopefully...my understanding and with the limited involvement that we had before everything kind of got tailored off because of the "contestments." I mean, hopefully with everybody being there and DNR and the NRD sitting at the table, you already have that background or understanding of why you can do something or why you can't and how the two agencies are going to have to move forward. [LB127]

SENATOR HAAR: Okay. So you...in opposing this, do you feel that sort of ballooning the number of stakeholders that you have to have or that parks and rec is going to be...get in the way or why do you oppose it? [LB127]

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MIKE MURPHY: Well, bottom line is, if ultimately...if the Nebraska Game and Parks Commission has a vote, this would be more than just a stakeholders vote the way we read this legislation. This would be a vote of the Department of Natural Resources, the Game and Parks Commission and the NRDs; that's three votes. Well, state law right now says the two agencies are the two agencies that have to work together and come up with that final plan. If we got one more entity involved, that's where the...I think that's where the complication becomes. [LB127]

SENATOR HAAR: Okay. That's not my understanding from...and I'm not badgering... [LB127]

MIKE MURPHY: No, that's fine. [LB127]

SENATOR HAAR: I'm not badgering you. I'm just trying to clarify the whole thing. Is it okay to ask our legal counsel a question? Are we creating a third vote at the top level or is it simply in the stakeholders group that this bill creates that vote? [LB127]

SENATOR SCHILZ: We can talk about that during exec session. [LB127]

SENATOR HAAR: Okay, okay, that's fine. [LB127]

MIKE MURPHY: Okay. I mean, as stakeholders I guess...I mean, like to my knowledge, like I said, I know on the Platte, Republican, the Upper Niobrara White has a completed IMP. The Game and Parks has been involved in that process. And just like we had, you know, included them in our initial, you know, brief few meetings that we have had on the IMP process, you know, they've been able to come to the table and hear all the information and stuff that was presented and, you know, we haven't gotten to any type of, you know, taking action, so. [LB127]

SENATOR HAAR: Well, Mike, I appreciate what you're doing there in the Niobrara. It is beautiful. [LB127]

MIKE MURPHY: Thank you. [LB127]

SENATOR HAAR: Thank you. [LB127]

SENATOR SCHILZ: Thank you very much. Any other questions? Okay, thank you. Further opposition to LB127. Okay, seeing none, any neutral testimony to LB127? Seeing none, that will close the hearing on LB127. And we will move to Senator Christensen's LB655. Senator Christensen, welcome to the Natural Resources Committee. [LB127]

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SENATOR CHRISTENSEN: (Exhibit 12) Thank you, Mr. Chairman, members of the Natural Resources Committee, I'm Senator Mark Christensen, C-h-r-i-s-t-e-n-s-e-n. I represent the 44th Legislative District. LB655 would amend Sections 2-3226.05 to allow eligible a natural resource district a second option for levying an occupation tax upon the activity of irrigation of irrigated land in lieu of the current occupation tax available to the eligible NRDs in this section. The new optional occupation tax would have an average \$10 per acre cap on the maximum annual revenue for the eligible NRDs. It would use the projected annual need of the eligible NRD's project currently allowed in statute and divide by the annual need by the total acre feet of groundwater and surface water used in the previous year within the NRD to calculate the rate per acre foot. This rate then would be multiplied against the irrigator's water use to calculate their portion of the annual projected need which would be levied on their water use for that year. I can have a...I have a handout, an example that explains the process more clearly. Just to go through that handout a little bit, just take for an example that the need come up to be \$4 million. You know that could be...because they have 400,000 acres, it could be because they have 600,000 acres, but just take the need as long as it's under that cap; divide it by the usage which I used 30,000 acre feet. You come up with \$13.33 per acre foot. And what you got an example here down below is that somebody used on a 130 acre pivot used 13 inches, they would end up paying \$1,877. If somebody used 10 inches, they'd pay \$1,444; or if they used 8 inches, \$1,155. The advantage to this being the people that use more water pay more; those that are more conservative, pay less. It should be an incentive to the farmers to use no more water than necessary by increasing every time they use additional water. I believe this option provides an incentive for those who use less. Those who use more water within the district will pay more. In addition, the formula would allow the NRD to maintain their needed annual revenue to meet the projected payment schedules for any of the eligible projects. LB655 depends on the previous year's groundwater and surface water use within the district to calculate the current year's rate. I think this is necessary to allow the adequate calculations of the water use and the time for the county assessor to include on the occupation tax with the property tax statements. The thing I like about LB655 is that it would provide the NRDs with an option for their district to raise revenue for eligible projects outlined in Section 2-3226.04. An eligible NRD could either have a fee up to \$10 per acre on occupation tax on activity of irrigation, or the NRD could levy an occupation tax based on per acre foot usage to pay for the projects, not both, one or the other. This decision could be made...would be up to the elected board, representatives by the...who are elected by the district. More options and more flexibility would be a positive thing for local communities. Some concerns have been brought to my attention regarding the calculation of surface water to be used to the total water use within the NRD. Calculating the total water use would require reporting the surface water is necessary by irrigation districts. The concern brought to me deals with where the surface water would be measured and how this information would get to the irrigation districts...from the irrigation districts to the NRD. For one, I would suggest amend LB655 to say the measurement of surface water is at the farm gate, farm meter or whatever

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current measuring device is used. Second amendment be the bill so that the usage of the information would go from the irrigation districts to the Department of Natural Resources which regulates the irrigation districts or surface water, and that information then be given to the NRDs. I want to clarify that I'm not trying to put surface water underneath the NRDs. That was never intent. The intent is to give enough alternative way of charging the farmer for the amount of water they used as a per acre foot or per inch if you want to break it down further, instead of being a flat fee per acre; still staying within the guidelines of the original bill that was passed of being up to \$10 per acre to meet the needs to hit compliance with and projects they feel necessary. I'd be glad to address any additional concerns or questions people have...bring up today with the committee. Thanks for your consideration of LB655 and I urge its advancement to General File. [LB655]

SENATOR SCHILZ: Thank you, Senator Christensen. Any questions? Senator Haar. [LB655]

SENATOR HAAR: Do we charge sales tax on this occupation tax? (Laughter) [LB655]

SENATOR CHRISTENSEN: I don't believe so. [LB655]

SENATOR HAAR: Well I want to compliment you; keep looking for better ways to do this. Again, from what you said, it depends...so this wouldn't force, for example, the use of meters where there are no meters. It would simply say that whatever is used now would be sufficient. [LB655]

SENATOR CHRISTENSEN: Just give an example; on surface water, originally my water was delivered to the gate and measured by running over a board or concrete structure. You measured the depth, and the height of it would give you a measurement. It could be that meter; it could be by power records that are another source that is used. There's three different ways that different type of metering or measurement has been done within the district. [LB655]

SENATOR HAAR: So your bill really does not have to do whether the tax...whether to tax or not to tax in this case, but how another method for assessing that tax. [LB655]

SENATOR CHRISTENSEN: This was brought to me or mentioned to be by a couple of the different NRD districts that I represent and I thought it was an appropriate way to provide the incentive to use less. Because if everybody is going to pay \$10 an acre, if it goes to the max, then it don't matter if they use their full allocation or not, it costs them the same. But if you change it so if you can get by with eight inches,... [LB655]

SENATOR HAAR: You bet. [LB655]

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SENATOR CHRISTENSEN: ...you might put on only eight instead of well I'll put on that little safety run because all it's going to cost me is whatever it takes to get it into the pipe if it's gravity and surface water or pump it up into the pipe or out of the well. [LB655]

SENATOR HAAR: So it's also sort of a price signal for water conservation. I like that idea, thank you. [LB655]

SENATOR SCHILZ: (Exhibit 13) Thank you, Senator Haar. Any other questions for Senator Christensen? Seeing none, thank you, Senator Christensen. And at this time we will take proponents for LB655. Any proponents? Okay, seeing none. Any opponents for LB655? Seeing none. We have...oh, I see here we have an opposition letter from the Nebraska Corn Growers Association which will go into the record. Okay, at this point then any neutral testimony on LB655? Come on up, you're the next contestant. [LB655]

JEFF SHAFER: (Exhibits 14 and 15) Senator Schilz, members of the Natural Resources Committee, my name is Jeff Shafer, J-e-f-f S-h-a-f-e-r. I'm a water resources advisor for the Nebraska Public Power District. Today I'm testifying in a neutral position on LB655. To give you a little background about the Nebraska Public Power District, it is the largest electric utility in the state in terms of gross revenue, kilowatt hour sales, and geographic area served. NPPD is the primary wholesale supplier for electricity for 52 municipalities and 25 public power districts and cooperatives. NPPD serves 80 municipalities at retail levels. NPPD has over 5,000 miles of transmission and subtransmission lines and NPPD has over 3,000 megawatts of generating capacity. What happens in the Platte River is important to the Nebraska Public Power District because approximately 50 percent of our total generation capacity is in that basin. We store water for power, power plant cooling, and irrigation in Lake Maloney, Lake McConaughy and Sutherland Reservoir. And NPPD delivers storage and/or natural flow water to 82,000 acres in the Central Platte River Valley. And I've handed out this map. The canals and reservoirs in orange are our facilities; and all the irrigated lands that are the darker shade of blue are our canals or our customer canals. We have raised our concerns with Senator Christensen and we really appreciate his willingness to work with us on those concerns. We did have the concerns about surface water and how is it measured, whether it's at the field or at the head gate. We still think that potentially canal seepage which benefits the aquifer may need to be considered in this type of bill and whether storage water, if it should be treated differently or not. And as Senator Christensen said, we were concerned that the Department of Natural Resources has jurisdiction over all matters pertaining to surface water and that may be the more appropriate reporting entity. I would answer any questions you may have. [LB655]

SENATOR SCHILZ: Any questions for Mr. Shafer? Senator Christensen. [LB655]

SENATOR CHRISTENSEN: Thank you for coming in. I appreciate your willingness to bring up these concerns to me and let me address them and be glad to work with you

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any more in the future. [LB655]

JEFF SHAFER: Thank you. [LB655]

SENATOR SCHILZ: Any other questions? Thank you, Mr. Shafer. Any other opponents...neutral, we're on neutral testimony, thank you? Any other neutral testimony for LB655? Seeing none, we will move to close. Senator Christensen waives closing and we will move on to LB656 as soon as Senator Janssen arrives. Senator Janssen, welcome to the Natural Resources Committee. [LB655]

SENATOR JANSSEN: Thank you. Sorry about that. Had a last minute change to my testimony. [LB656]

SENATOR SCHILZ: We'll take it out in questions. Senator Janssen, you are welcome to open on LB656. [LB656]

SENATOR JANSSEN: Thank you, Vice Chair Schilz. Members of the Natural Resources Committee, my name is Charlie Janssen, C-h-a-r-l-i-e J-a-n-s-s-e-n, I represent District 15 which is Fremont and all of Dodge County and I appear today to introduce LB656. I'm very hopeful that today's introduction doesn't last nearly as long as yesterday's introduction of a bill. During the 2009 legislative session we passed, and Governor Heineman signed LB160. The bill allowed the Papio-Missouri Natural Resource District to issue general obligation bonds of the district entitled Flood Protection and Water Quality Enhancement Bonds. These bonds are payable from an annual special flood protection and water quality enhancement bond levy not to exceed 1 cent on each \$100 of taxable valuation. Pursuant to 2-3226.10, LB656 would limit the issuance of bonds to flood protection and water quality projects; recreational facilities funding would be expressly prohibited. Why is this important? LB160 was the first time that the NRD was granted authority to issue bonds. In the future, other NRDs will likely come before the Legislature for the same authority. I am concerned that we cannot afford ambiguous and broad language like the multipurpose projects found in the enabling statute of 2-3226.11 especially when it comes to the use of public funds. LB656 would not interfere with the NRDs' ability to issue bonds for the construction of dams and water basin structures to control flooding and water quality. It simply ensures that the bond proceeds are used for the purposes specifically described in LB160, flood protection and water quality enhancement. Finally, NRDs can and should continue to undertake recreational projects. However, under LB656 these projects will be funded from the districts' general fund, not bond funds. I thank you for your time and I believe somebody will be here to talk a little bit more in detail about that. [LB656]

SENATOR SCHILZ: Thank you, Senator Janssen. Any questions for Senator Janssen? Senator Haar. [LB656]

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SENATOR HAAR: We can't let you go without a question or two. I like the idea of the sunset provision in there so it can be reviewed. I think we ought to see that in more bills. [LB656]

SENATOR JANSSEN: Senator Pahls is a big fan of that one too. [LB656]

SENATOR HAAR: So thank you. [LB656]

SENATOR JANSSEN: You bet. [LB656]

SENATOR SCHILZ: Thank you, Senator Haar. Senator Janssen, I just have a question in here. You put in here flood protection. Is that any different than flood control or is that...what's the intent there? [LB656]

SENATOR JANSSEN: You know, I don't know that. [LB656]

SENATOR SCHILZ: Okay. [LB656]

SENATOR JANSSEN: I think protection would...was before the flood starts and I think control would be after it started. That's just my...based on protection and control there, so. [LB656]

SENATOR SCHILZ: Okay. We'll see if somebody else can help us out there. Thank you, Senator...oh. [LB656]

SENATOR DUBAS: Senator Schilz, I have a question. Senator Janssen, when you refer to recreational facilities, I know in the past some of the projects that are being proposed are being proposed for flood control and protection, but in turn could or would be used for recreational facilities. Would we be having...would they have to be making some kind of determination between...if they're going to use a bond to make sure they absolutely can't be used for recreation? [LB656]

SENATOR JANSSEN: Well yeah, in this case what I'd like to see is...say you got a vote before the people to do this bond, but they're enticed because this certain neighborhood would really like to have a bike trail through their backyard or have outhouses or whatever else in their backyard which would enhance their property so they may be voting for...we're talking a flood protection, but in reality what's pushing them to vote is that they really want this...which they should do, but it should come out...or could do, but it shouldn't come out of the bonding authority and be used, dangled in front of people as, if you pass this, you'll get a bike trail. [LB656]

SENATOR DUBAS: Okay. Thank you. [LB656]

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SENATOR JANSSEN: Okay. You bet. [LB656]

SENATOR SCHILZ: Thank you, Senator Dubas, sorry about that. [LB656]

SENATOR DUBAS: That's okay. [LB656]

SENATOR SCHILZ: Any other questions for Senator Janssen? Seeing none, thank you, Senator Janssen. [LB656]

SENATOR JANSSEN: Aha, that's great. [LB656]

SENATOR SCHILZ: If you want we can...yeah, at this point we will take proponents for LB656. Welcome. [LB656]

MICK MINES: (Exhibit 16) Good afternoon, Senator Schilz, and what's left of the committee. For the record my name is Mick Mines, M-i-c-k M-i-n-e-s. I'm a registered lobbyist here today on behalf of the 600 members of the Papio Valley Preservation Association or the PVPA in support of LB656 and we really would like to thank Senator Janssen for his hard work and effort in putting this bill together. As was stated by Senator Janssen, LB656 does not interfere with the ability of the Papio-Missouri NRD to use bonds for the construction of dams and water basin structures to control flooding and water quality. It simply ensures that these bonds and the funds from these bonds, which were the first of their kind authorized by the Legislature, are used for the purposes specified in LB160 back in 2009. And that purpose is flood protection and water quality enhancement. And Senator Schilz, to your question about control versus protection, I believe it's changed in language simply because throughout the rest of that statute, it says water protection...or flood protection rather than flood control. The Papio NRD is unique among all NRDs in Nebraska. The district is comprised of six counties representing about 40 percent of the state's population with 715,000 people. The taxable valuation of the district is \$50 billion. Of the 11 members on the board, only one member represents rural interests representing about 54,000 people in the counties of Dakota, Thurston, Burt, and Washington, one representative. Sarpy County and Douglas County with a combined population of about 660,000 people is represented by ten board members. Consequently, the Papio NRD is weighted 10 to 1 in favor of urban interests, particularly interests in creating recreation in and around Omaha. Let me give you an example of why PVPA shares Senator Janssen's concerns about flood protection and water quality enhancement bonds being used for recreation. The first page of my handout is a map of the Papillion Creek Watershed. It identifies the existing and proposed dams in that watershed. But I would like to direct your attention to the pink area, that's Washington County, and particularly Dam Sites 1 and 3A. As you can see, those dam sites are considerably larger than any others proposed. And in fact, if you notice the village of Washington, that little piece of yellow that's left, that dam site would take out the village of Washington. Clearly, obviously, they're the largest and they

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are the most controversial dam sites that were in that plan. I now ask you to turn to page 2 and what page 2 in the handout is, is the Papio-Missouri NRD's executive summary of a preliminary study conducted by the Papio Creek Watershed. You'll see the highlighted areas under this summary; highlighted on the left you'll see the Dam Sites 1 and 3, wet dams. And if you go over the total estimated cost is \$108.9 million. And if you go to the right, you'll see recreation and for that same...those two same facilities it's \$47,400,000. So there is clearly an interest in the Papio NRD constructing...adding 40 percent to the cost of the project. And the last handout illustrates the Papio NRD's bonding for 2010. And for those of you who were engaged in that debate in 2009, you might recall the critical nature. The arguments were, my gosh we're going to kill people, we're going to...if there's flooding, it's going to not only endanger lives, but property as well. You might just note that of that visual, the Papillion Creek Watershed, the blue part of the circle, that's the bonding authority being requested for the Papio Creek Watershed, 35 percent. Sixty-five percent of the bonding that was illustrated to be for saving life and property has been allocated to other projects within the district. We don't oppose a concept of recreation in the NRD, but we do want bonds that are for...the bonds were intended for flood protection, the water quality enhancement, not for trails, not for playground equipment, not for rest rooms, and not for roads. I do appreciate your time and would be glad to answer any questions. [LB656]

SENATOR SCHILZ: Thank you, Mr. Mines. Questions? Senator Christensen. [LB656]

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you, Senator, for coming in. [LB656]

MICK MINES: Thank you. [LB656]

SENATOR CHRISTENSEN: I might have missed part of this note and I wasn't in here right at the beginning, but explain the difference...how you see how the recreation involved in this...I understand the past, cutting them out, that's not an issue. But explain the difference between the flood control and irrigation projects in the west, Lake McConaughy, Harlan County, Enders, Swanson, and these where we use it for the flood control and irrigation, then the by-products, recreation, housing around it, different things this way, and how you see this project. I see the recreation again and housing things this way is by-products of this. Explain how this is different; why this should be exempted. [LB656]

MICK MINES: You know that's a fair analogy. However, the NRD is proposing...or under current statute they can and likely will use bonds, the only NRD in the state that has bonding authority. The bonds were specifically authorized by this body as water quality and flood protection bonds, not recreation bonds. So all we're saying is, and there's one word in statute, it's called "multipurpose." By striking "multipurpose" it simply codifies and clarifies that the legislation that was adopted by this body in 2009 was for flood

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protection and water quality, not for building trails, not for building roads, not for building parks, playground equipment, those kind of things. The by-product, I think, of water activities, access to water activities, fishing, and, in fact, trails, my organization completely agrees that those are worthy. However, there are general funds that should be used for that, like every other district in the state, not bonds. And by the way, this NRD has sufficient bonding authority. You know, they have a \$50 billion valuation. And I think they're authorized 4.25 cents per hundred dollars of valuation. And they're right now about 3.35 cents. So the difference is bonding and we just want to clarify that bonding was authorized for a specific purpose, not for other purposes like recreation. [LB656]

SENATOR CHRISTENSEN: And I guess, how do you feel recreation gets thrown in on this? What am I missing here? [LB656]

MICK MINES: It's not precluded from using bond funds. In other words, language there is a...that one word "multipurpose" is broad enough that it's...you could use these funds for just about anything else. So we...we, along with Senator Janssen, propose removing "multipurpose" and specifically identifying recreation as a nonpermitted use of those bonds. [LB656]

SENATOR CHRISTENSEN: Have you considered trying to pump that water to the Republican; we'd take it off your hands? [LB656]

MICK MINES: You have bonding authority, do it. [LB656]

SENATOR CHRISTENSEN: Thank you. [LB656]

SENATOR SCHILZ: Thank you, Senator Christensen. Senator Haar. [LB656]

SENATOR HAAR: I'm not sure...like I live close to Branched Oak Lake and some of the obviously...you know, the cement you put down for parking trailers and stuff is separate, but some of the things like building the dam wider so you can build a road across for recreation, how do you segregate some of the recreation from the flood control? [LB656]

MICK MINES: We're not segregating flood control from recreation. [LB656]

SENATOR HAAR: But you are for the funding. [LB656]

MICK MINES: We're simply saying the funding... [LB656]

SENATOR HAAR: Right. [LB656]

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MIKE MINES: ...was identified by this body for flood control or flood protection and water quality. In statute in LB160 it said nothing about recreation; said nothing about using funds for the construction of office buildings. But those are not restricted as long as that "multipurpose" word is in statute. And we're simply requesting that be removed, not the functions themselves. [LB656]

SENATOR HAAR: I understand that part. Yeah. [LB656]

MICK MINES: Again, the authority has the...they have money in their general fund budget to... [LB656]

SENATOR HAAR: But we could really start to quibble then is that dam is going to...and I'm just thinking how many times are we going to come back to this issue because, you know, I mean the dam could be built simply to be a dam, or it could be build a little wider to accommodate a road. And so will we hear...I mean, is that just going to create more squabbles? [LB656]

MICK MINES: I don't believe so, Senator, just simply because we are clearly identifying what it can...what these bond funds can and can't be used for. If during the design process, this NRD, and I believe future NRDs, will be before this committee asking for that same authority. As long as they have funding ability in their general fund, why use bonds for these purposes, when, by the way, the bonds are not a vote of the people. It's a vote of the 11 members on the NRD board. This doesn't even go to the people for a vote for bonding. [LB656]

SENATOR HAAR: But go to planning for a minute. So you're planning this Dam Site 3C, or whatever, and certainly you plan up front for recreation. Okay, so then you take the planning dollars and you split \$8 this way and \$2 this way. [LB656]

MICK MINES: Yes, yes. [LB656]

SENATOR HAAR: Okay. So you'd want that kind of segregation of the costs. [LB656]

MICK MINES: Yes, and it should. If you identified a bill, for instance, that used bonding dollars specifically for recreation... [LB656]

SENATOR HAAR: Um-hum. [LB656]

MICK MINES: ...and there was an NRD that was going to use those dollars for another purpose, I think you might be a little concerned about that. These are public funds that were identified for a purpose; they're not being used for the purpose and we just merely ask that that be clarified. [LB656]

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SENATOR HAAR: Okay, thank you. [LB656]

MICK MINES: Thank you. [LB656]

SENATOR SCHILZ: Thanks, Senator. Senator Dubas. [LB656]

SENATOR DUBAS: Thank you, Senator Schilz. Are there any of the dams that are proposed here being proposed specifically or exclusively for recreation? [LB656]

MICK MINES: No, they're not. [LB656]

SENATOR DUBAS: Okay. [LB656]

MICK MINES: There are several already that have long been completed. There is one, you might note, Dam Site 15A is one of the second largest dams just to the left...top left of the yellowed area and that was intended as a water control facility and there is a brouhaha brewing, neighbors surrounding neighbors are concerned that there will be additional purposes, like recreation, that infringe and can affect their property values. Plus there will be land taken through eminent domain, there will be threat of eminent domain to capture the land. So these, as you know, are very contentious, but none are designed specifically as recreational facilities. [LB656]

SENATOR DUBAS: Would there be a difference in the design if it was just recreation versus just...? [LB656]

MICK MINES: I presume it would be. They wouldn't need as much land. They have to have overflow areas. So if it was just recreation, yeah, they could contain a lake. The one that comes to mind, and from our perspective, there's a...near Bennington, Nebraska, let's see, what is this one called? It's called...I'm sorry, it escapes me, we call it Bennington Lake, but that's not it. Anyway, it's a facility that was designed...or supposed to be a flood protection, water control thing, and in fact, to keep the lake full, there is a pump in a wetlands area to pump water into the lake. It was a public/private partnership and the NRD dollars were used to secure...help secure the land and help in construction. And the private developer went bankrupt. And so there's a difficulty in, okay, who takes maintenance? Who is liable? But that particular dam site is surrounded by concrete...it's beautiful, concrete...like a wall, concrete wall, bricks, these great big things you see around Walmarts and those kinds of things; completely surrounds the lake. It's much less a water retention pond than it is a recreational lake for those million dollar homes within that property. So there's...you can draw a nexus between that recreation and whether or not it's for flood control, but that's as close as I can come to that definition of a recreational lake. [LB656]

SENATOR DUBAS: Okay. Going back to what you talked about segregating the dollars.

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[LB656]

MICK MINES: Yes. [LB656]

SENATOR DUBAS: So you've got one of these dams and it's going to cost X amount of dollars and they want to issue a bond for that so they could say we're going to issue a bond for this many dollars and that will go to addressing the flood control issues. [LB656]

MICK MINES: Um-hum. [LB656]

SENATOR DUBAS: But then we would spend General Fund dollars to do other things that would make it more...that would bring the recreational use into it. That's what you're envisioning with this. [LB656]

MICK MINES: Sure. Right. And that's merely an accounting error...error...an accounting function where you through an engineering process you identify we need an earthen structure this big, but if we want to put a road or trail on it, we may have to widen it to this and it's X number of dollars more. And, again, I think the real point is that LB160 identified these bonds; the first time in the history of Nebraska, the NRDs have had bonding authority, identified them for a specific purpose and now we are seeing those bond funds being used for other purposes. And we believe that a deal is a deal. [LB656]

SENATOR DUBAS: Thank you. [LB656]

MICK MINES: Thank you. [LB656]

SENATOR SCHILZ: Senator Christensen. [LB656]

SENATOR CHRISTENSEN: Thank you, Mr. Chairman. Thank you, Mick. I've been up to this recreational... [LB656]

MICK MINES: Newport Landing. Newport Landing is the name if it. [LB656]

SENATOR CHRISTENSEN: I've been there and looked at it and I have some of the same concerns you have shared here that make sure that we're not using this bonding stuff for a personal developer that thinks this direction. I know I asked a lot of questions there. Can a public/private partnership though, isn't it still possible that the engineer figures up this is what we need for the lake that is to be bonded for the project; then turned around and sell the land around it to a local developer, then if they want to put the walls up on the side and make it fancier for the big homes, still could be done and still have the money accounted for and separated and achieve both? [LB656]

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MICK MINES: If that's the way it worked. And I'm on dangerous territory here, because I...first of all I forgot the name of Newport Landing. Secondly there is a development way out on West Dodge Road, cannot remember the name of it; it's near the Elkhorn area. Another incident of public/private partnership only this time the NRDs participated in purchase of the land. I can't tell you if they used the eminent domain authority that they have. You can take a guess on that. The area was developed. The developer went upside down and there is an obligation again by the NRD to the bond holders. It was a bonded project, to bond holders. These are incidents that...I believe in public/private partnerships and I believe in the good intentions of that NRD, however, if we're going to use the public's money to participate then we need protection. That's a whole different discussion than what we're doing here on this bill, but public/private partnerships are okay as long as the public dollars are not open to exposure. [LB656]

SENATOR CHRISTENSEN: Okay, thank you. [LB656]

SENATOR SCHILZ: Any other questions for Mr. Mines? Seeing none, thank you, sir. [LB656]

MICK MINES: Thanks, Senator. [LB656]

SENATOR SCHILZ: Other proponents to LB656. Seeing none, we'll go to opponents for LB656. Welcome. Good afternoon. [LB656]

ALICE DEFFENBAUGH: (Exhibit 17) Good afternoon, Senator Schilz and the committee for the Nebraska Natural Resources. I'm Alice Deffenbaugh, A-l-i-c-e D-e-f-f-e-n-b-a-u-g-h. I'm the financial management analyst for the Parks and Recreation and Public Property Department for the city of Omaha. LB656 takes away a significant tool for the city of Omaha and other Nebraska communities to develop comprehensive outdoor recreation for our citizens and our many visitors. Therefore, I am testifying today in opposition to LB656. This is a very simple bill that has monumental impact. It amends LB160, as we've heard, which was enacted less than two years ago by the Legislature. LB160 was the result of many years of hearings and debate on alternative legislative language. The final bill contained numerous concessions designed to address the concerns of all sides. This new bill, LB656, prohibits the use of NRD flood control and water quality enhancement bonds for recreational facilities. The target of the bill is projects that, in addition to stormwater management, provide recreational benefits for our public. The benefits at risk are economic, health and environmental and social in scope. In other words, LB656 will remove a very comprehensive approach to flood control projects which include recreational facilities which actually reduce stormwater facility costs and improve flood control. The city of Omaha partners with many agencies and organizations to provide recreation space. Specifically, the Papio-Missouri NRD is an important partner of ours which provides matching funds to develop recreational facilities around stormwater

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projects. The NRD has also provided funding for such recreational improvements as the new Youngman Lake at 192nd and Dodge in the Elkhorn area. The NRD partnership with the city provides funds for regional parks that are built during stormwater projects. It is an efficiency which allows for coordinated land acquisition that provides land for regional parks which otherwise would not be affordable to the city. Through partnerships with the Papio-Missouri NRD, the Army Corps of Engineers and the state of Nebraska Game and Parks Commission, the city of Omaha has benefitted from the addition of parks at Zorinsky Lake, Cunningham Lake, Standing Bear Lake and the new Youngman Lake. These parks bring positive economic impacts to both the city and the state. At a time when cities face the loss of state and federal funding, it would seem that it is more important than ever for the natural resources district to be allowed to distribute bond funds for projects with multiple benefits to our citizens. If a particular flood control or stormwater management project can result in a public recreational benefit and lower costs for flood control and stormwater retention, I see no reason for the state to restrict recreational development. On behalf of the city of Omaha I respectfully request that the committee indefinitely postpone LB656. [LB656]

SENATOR SCHILZ: Thank you, Ms. Deffenbaugh. [LB656]

ALICE DEFFENBAUGH: Thank you. [LB656]

SENATOR SCHILZ: Any questions for this testifier? Seeing none, thank you. [LB656]

ALICE DEFFENBAUGH: Thank you. [LB656]

SENATOR SCHILZ: Next testifier in opposition to LB656. [LB656]

JOHN WINKLER: (Exhibit 18) Senator Schilz, members of the committee, my name is John Winkler, J-o-h-n W-i-n-k-l-e-r. I am the general manager of the Papio-Missouri River Natural Resources District and I'm here to testify in opposition to LB656, as well as to provide some facts on some of the previous information that was given. As you know, I won't go over the history, LB160 was debated for several years and several concessions were made in that bill. A number of those concessions, eminent domain, also public access, mentioned was the lake in Bennington, Newport Landing, and in the bonding bill language that was passed, 100 percent public access is required on all of those reservoirs that are bonded. So a project like that, again, could not occur using bonding revenue in the future. LB656 is attempting to amend existing law to prohibit the use of NRD flood control and water quality enhancement bonds for multipurpose projects for stormwater management. The apparent target of the bill is projects that result in recreational benefits for the public which is also a mission of the NRDs, as well as flood control. At a time when NRDs face the loss of state aid funding, it would seem that it is more important than ever for the district to make the most efficient use of bond funds possible rather than limiting stormwater management projects in this way. If a

particular flood control or stormwater management project can also result in a recreational benefit, I see no reason why the state would want to place an arbitrary restriction on the NRD to prohibit such multiuse projects. This bill runs counter to the desire to have 100 percent public access in all flood control projects. If the NRD was prohibited from constructing recreational amenities as part of a project, what would the benefit to the public have to have access to it? LB656 appears to be an attempt to limit the ability of the Papio NRD to make effective use of the bonding authority granted to it by the Legislature just two years ago. We believe it effectively undermines the compromises made in good faith; a deal is a deal; and secure passage of LB160 after eight years of debate. On behalf of the Papio NRD and the Nebraska Association of Resource Districts, I ask the committee to indefinitely postpone LB656. And in order to clarify a couple of statements made, the Elkhorn Youngman Lake in Elkhorn was built and completed before bonding authority was granted. So that is not a bonded project. Also, our recent acquisition of a flood control reservoir in Papillion, WP-5, all property was acquired without eminent domain or the threat of such. And in the \$50 billion valuation, that number seems to be thrown around a lot, the NRD only realizes \$16 million in property taxes. So with a budget of around \$50 million, we bought a 2 to 1, 3 to 1 ratio of other funding that we used to complete our projects. Since bonding authority was granted, our property tax levy hasn't decreased for the last three years or four years. So our stance is, if you try to take a project and divide out the pieces of it, for example recreational component of it, and say, okay, you can use general funds for that, then, obviously, all of our other projects and programs that we use that \$16 million to fund then we're going to have to pull them into, you know, complete the recreational components. So the only way to possibly maybe complete the recreational components is to raise property taxes to make up that general fund which we're not receiving from the bonding funds. So that's just the reality of budgeting. And so I'd be happy to answer any questions if you have them. [LB656]

SENATOR SCHILZ: Any questions? Senator Haar. [LB656]

SENATOR HAAR: Yes. Could you give me the numbers again? What's the...how much do you get for the bonding and how much overall? [LB656]

JOHN WINKLER: According to the statute, we're allowed one cent of our current mill levy which is 4.5 cents, is the maximum the state allows from the NRDs. So we can not exceed...ever exceed that 4.5. It is just one cent of the 4.5 that we can use for bonds. The additional, it, again, is used for the other projects and programs we have. So we...so the \$50 billion valuation, we only really realize about \$16 million in property taxes. So, you know, that number is big and we're fortunate to have that in the Papio, but again, it doesn't generate a huge, huge amount of revenue. [LB656]

SENATOR SCHILZ: Any other questions? [LB656]

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JOHN WINKLER: Does that answer your question, Senator Haar? [LB656]

SENATOR HAAR: Thank you very much. [LB656]

SENATOR SCHILZ: Any other questions for Mr. Winkler? Mr. Winkler, thank you very much for coming in today. [LB656]

JOHN WINKLER: Sure, thank you. [LB656]

SENATOR SCHILZ: Next opponent. Welcome. [LB656]

MARK STURSMAN: (Exhibit 19) Thank you. Vice Chair, members of the committee, my name is Mark Stursma and that is spelled M-a-r-k, the last name is spelled S-t-u-r-s-m-a, and I represent the city of Papillion. I am the planning director and I am here to testify in opposition to LB656. I did submit a letter which you hopefully already have a copy of from our mayor indicating the city of Papillion's opposition to this bill. We are part of the Papillion Creek Watershed Partnership. We are in the end stages of building one of these reservoirs. I can tell you that it's a complicated process from an engineering standpoint, from a land acquisition standpoint, from just the process of getting a project done, trying to separate out where funding for one part comes from and then a separate funding for something else give us great concern. The idea that the water itself could be considered recreational because it would be opened up for fishing or some other form of recreation. The fact that a road may be necessary to provide access for maintenance, but may also lead to a boat ramp. Is that road then recreational or is it functional and where do you draw the line? The proposed amendment does not define that; it simply strikes recreational. And I can see there being lots of problems with...we trying to define that over time. The recreational aspect of these projects is very important for a number of reasons. As has been said, it provides an incredibly valuable recreation and health amenity, often there is a quality of life amenity to the public. But there is another aspect of it. Some of the opponents to these projects will cite that we are losing land that could be developed, therefore losing property value by doing these projects. There are studies that clearly show that when there is a recreational amenity as part of these projects, surrounding property values are increased. And that's not necessarily just property that abuts the water, but just property in proximity to...using an example, Zorinsky Lake in Omaha, and so, yeah, we are losing some valuation by taking land out of development, but we're increasing valuation by creating this public amenity. The other things I intended to say have already been said, so I think I'll leave it at that. We request that the committee indefinitely postpone LB656 and I'd be happy to answer any questions that you have. [LB656]

SENATOR SCHILZ: Thank you, Mr. Stursma. Any questions for Mr. Stursma? Seeing none, thank you very much. [LB656]

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MARK STURSMA: Thank you. [LB656]

SENATOR SCHILZ: Next opposition testimony for LB656. [LB656]

MATTHEW MARTIN: (Exhibit 20) Good afternoon, Senator Schilz and the members of the committee. My name is Matthew Martin, M-a-t-t-h-e-w M-a-r-t-i-n. And I am here on behalf of Omaha Bikes and I am speaking in opposition to LB656. Omaha Bikes is a coalition of individuals and organizations whose mission is to promote and advocate for improved transportation, utility, and recreational bicycling infrastructure, opportunities, and experiences for the people of Omaha, Nebraska, and the surrounding area. Our specific concerns with LB656 center on the proposed striking of the word "multipurpose" and the proposed prohibition on using bond proceeds for recreational facilities. I'd like to make two points. First, generally speaking, bond proceeds may play a significant part in development, execution, and continual enhancement of the Metro Area Trails System and Omaha Bikes is concerned that passage of LB656 would unnecessarily tie the hands of the Papio NRD in providing funding for the maintenance and expansion of that trail system. The Metro Area Trails System has been a huge success beginning with the first three-mile stretch of the Keystone Trail back in 1990 and continuing through today with enhancements such as the Bob Kerrey Pedestrian Bridge to encompass a networked system of trails stretching nearly 150 miles on both sides of the Missouri River. The growth of the size of the system is matched by the growth of people using it for recreation and transportation as evidenced by a recent study directed by Donald Greer, professor at the University of Nebraska-Omaha. The study found that in 2007 there were approximately 1.36 million trail users annually. Over 90 percent of those trail users used the trail at least weekly and over 75 percent use the trails even more frequently. Survey respondents overwhelmingly reported that the city is more attractive and a better place to live due to the trails. Additionally, Omaha is seeing a growing number of bicycle commuters, many of whom report using an NRD-built trail as part of their route. At a time when Omaha is on the cusp of creating a viable, networked, integrated Omaha bike system, utilizing a mix of nearly 30 miles of bike lanes, shared lanes, and the trail system, it is counterproductive to restrict Papio NRD's ability to fund such recreational facilities when appropriate under flood control and stormwater management projects. Second, more specifically, Omaha Bikes is concerned that the proposed restrictions on funding for recreational facilities run counter to the intent of the original legislation authorizing the bond issue contained in LB160 and subsequently in Nebraska statute only two years after the statute has gone into effect and only two years into its ten-year life span. The text of LB160 as passed provides for multipurpose use and additionally it expressly provides for recreational use to quote: for projects funded under Section 2 of this act that result in a reservoir or other body of water having a permanent pool suitable for recreational purposes, the district shall provide public access for recreational use, etcetera. Clearly, the intent and explicit language of LB160 as passed into law in 2009 was to allow for multipurpose projects including recreational facilities paid for through bond proceeds. Omaha Bikes argues it would be unwise for

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the Legislature to change course now. Thank you for your time and attention. I welcome any questions. [LB656]

SENATOR SCHILZ: Thank you, Mr. Martin. Any questions for Mr. Martin? Senator Haar. [LB656]

SENATOR HAAR: Could you tell me what Community Bike Project is? Is that a public/private sort of thing in the city of Omaha or what is that? I have never heard of it before. [LB656]

MATTHEW MARTIN: Sure. It is a private nonprofit 501(c)(3) that is based in Omaha that our mission is to provide access to bicycles for people in Omaha. [LB656]

SENATOR HAAR: Okay. Well just one person, this is not on this topic, but you ought to talk to Senator Gloor who is an avid bike rider and believes we could get a lot more recreation out of Nebraska's bike trails and draw people from other states and so on. [LB656]

MATTHEW MARTIN: Thank you, Senator, I will. [LB656]

SENATOR HAAR: Okay. [LB656]

SENATOR SCHILZ: Any other questions for Mr. Martin? Seeing none, thank you very much. [LB656]

MATTHEW MARTIN: Thank you. [LB656]

SENATOR SCHILZ: Next opponent to LB656. Opponents? I see none. Any neutral testimony on LB656? Good afternoon. [LB656]

SCOTT JAPP: (Exhibit 21) Good afternoon, Senators. My name is Scott Japp, S-c-o-t-t J-a-p-p. I'm a director, District 1 of the Papio-Missouri NRD district and I'm not here representing the district. I'll wait till you get your exhibits. [LB656]

SENATOR SCHILZ: You are on the clock. So go ahead. [LB656]

SCOTT JAPP: Oh, okay. Well, in the handout, Exhibit A is the cost of the stormwater management plan that the partnership, this is a billion dollar project. This stormwater management plan, when the Papio-Missouri NRD entered into it was never represented it to the board. As a board member, I have never...was never...saw this billion dollar plan. I was told by a friend in the engineering company that this plan exists and I had to ask for it. Page 2 is just a summary of the data out of this plan and page 1 is just blowing it up so I can read it. Page 3 is a project at Pigeon Jones up in Dakota County

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that the NRD is doing. When we see a project, the costs are broken down. The cost...the dam construction on Pigeon Jones is \$1.3 million. The construction cost for the recreation is \$2.4 million. What I'm concerned about is if recreation funds on similar projects correlate with the Pigeon Jones, we have a \$1 billion construction project. We may be building a \$1 billion recreational project for Omaha. The next handout, Exhibit B I have on here, approximately in the last seven years, we've had \$236 million in revenue. Approximately \$90 million have been built on projects. Our administration cost is about 15 percent. The rest of our capital or revenue that we receive is going into what the audit calls capital improvements. The NRD buys land and then donates it to other entities. Like in Washington County they donated 4,000 acres to the Game and Parks on the Dial Realty development site on 192nd and Dodge. That was donated to the city of Omaha. And Walnut Creek site was donated to the city of Papillion. We're using the NRD taxpayer money and then donating those projects to other municipalities. Last week I was at a partnership meeting and the partnership gave a presentation on if there was a possible flooding at 84th and L. The surprising thing is, is \$1 billion worth of dams would not have stopped one iota of that water that would cause that major catastrophe at 84th and L. And this is General Manager Winkler's letter stating that. Exhibit 3 is...in the partnership last year, we appropriated approximately \$13 million in bond revenue. Only 60 percent of that...there is 60 percent of that was used for projects outside of the district...excuse me, outside of the partnership. Now what I'm concerned about is, in the partnership agreement the only person...the only entity group which is the partnership was the only people that approved this plan and this is the minutes that state this plan was approved by the partnership. So if you have any other questions, I'd gladly address them since I see my time is almost up. [LB656]

SENATOR SCHILZ: Thank you, Mr. Japp. Any questions for Mr. Japp? Senator Haar. [LB656]

SENATOR HAAR: Could you tell me the difference between the partnership and the NRD? [LB656]

SCOTT JAPP: The NRD is a member of the partnership. [LB656]

SENATOR HAAR: Okay. [LB656]

SCOTT JAPP: Now the partnership includes the city of Omaha, Papillion, Ralston, La Vista, Bellevue, and Sarpy County. [LB656]

SENATOR HAAR: Okay. [LB656]

SCOTT JAPP: What's not a member of the partnership is Washington County and Douglas County. However, in this plan, there are water quality-built structures that are yet...are going to be built in the plan and Washington County is not even a membership

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of the partnership. Just as we've used bond money to build the dams... [LB656]

SENATOR HAAR: Uh-huh. [LB656]

SCOTT JAPP: ...we haven't spent it yet, but we've allocated money to build dams and recreational projects up in Dakota County. [LB656]

SENATOR HAAR: So the areas are the same, but you're just saying it's the governmental entities are the partnership that are within the NRD land area, I guess, to put it that way. [LB656]

SCOTT JAPP: Yes. [LB656]

SENATOR HAAR: Okay. [LB656]

SCOTT JAPP: But as a board member, I have...I was never presented the plan. You know, as...I would have liked to, if the flooding that could occur at 84th and L maybe as a board member we could...if that was brought to us, maybe we would have allocated funds to that. But it was the partnership that decided what we were going to do,... [LB656]

SENATOR HAAR: Gotcha. [LB656]

SCOTT JAPP: ...not the board. [LB656]

SENATOR HAAR: Okay. Thanks for clarifying that. I appreciate that. [LB656]

SENATOR SCHILZ: Any other questions? Senator Carlson. [LB656]

SENATOR CARLSON: Thank you, Senator Schilz. You talk about something being done in Washington County. Isn't it possible that a project done there would be done to protect the portion of the NRD that's south? [LB656]

SCOTT JAPP: The projects in this plan are water quality basins above Cunningham Lake. So those water quality basins would not affect any of the flooding downstreams because Cunningham is downstream and already protecting Omaha. [LB656]

SENATOR CARLSON: So nothing that was, in your opinion, nothing that was done in Washington County would have any affect of protection below Washington County? [LB656]

SCOTT JAPP: With the...just for the dams that were proposed in this plan. Now, if you're...let's go for an example, let's take this possible catastrophe that they had in here.

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Yes, there could be projects that would occur up in Washington County that would help alleviate that. But our NRD district, in your handout, what Washington County has been building storage terraces for 20 years. In 1906, the NRD appropriated approximately \$1.4 million for those types of soil conservation projects. Over the last four years, we have cut funding from \$1.4 million to \$800,000. We are not...we're taking funds that would help alleviate the problems that would occur downstream. [LB656]

SENATOR CARLSON: Okay. You said 1906, I think you meant 2006. [LB656]

SCOTT JAPP: 2006. Okay. [LB656]

SENATOR CARLSON: Okay. Thank you. [LB656]

SENATOR SCHILZ: Thank you, Senator Carlson. Any further questions? Seeing none, thank you, Mr. Japp. [LB656]

SCOTT JAPP: Thank you. [LB656]

SENATOR SCHILZ: Any other neutral testimony on LB656? Seeing none, Senator Janssen, wish to close? Senator Janssen waives closing. So with that, that will end our hearing on LB656 and our hearing for the day. Thank you very much for coming in. (See also Exhibit 22.) [LB656]