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Natural Resources Committee
November 08, 2011

[LB4]

The Committee on Natural Resources met at 1:00 p.m. on Tuesday, November 8, 2011, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB4. Senators present: Chris Langemeier, Chairperson; Ken Schilz, Vice Chairperson; Tom Carlson; Mark Christensen; Annette Dubas; Ken Haar; Beau McCoy; and Jim Smith. Senators absent: None.

SENATOR LANGEMEIER: Good afternoon and welcome to the Natural Resources Committee. My name is Chris Langemeier. I'm the Chairman of the Natural Resources Committee. I'd like to welcome everybody that is here watching us live, and those that are watching us on the Internet, as well as closed-captioned television within the building. Welcome. I'd like to start off by introducing the Natural Resources Committee. I'm going to start to my far left or your far right. We'll start with Senator Jim Smith from Papillion; then we have Senator Ken Haar from Malcolm; and then we have Senator Mark Christensen from Imperial; then we have the Vice Chair of the committee, Senator Ken Schilz from Ogallala. And then we have Laurie Lage is the legal counsel for the Natural Resources Committee. And then to my far right or your far left we have Barb Koehlmoos who is the committee clerk. When you come up and you have any paperwork you're going to hand out, you're going to give it to her right before you sit down. And then we have Senator Beau McCoy from Elkhorn and represents part of Omaha; and then we have Senator Tom Carlson is from Holdrege, Nebraska; and then we'll have Senator Annette Dubas, was with us, she'll be back. She is from Fullerton. And that completes our committee. We do have one page today. We have Emily Gilmore, who is a senior at Southeast Community College and is from Lincoln. She will be here to assist in handing out anything you'd like handed out. Today in the Natural Resources Committee in the corner of the room you'll see these nice green sheets. Anybody that's going to testify or come to the table and testify before the committee, we ask that you fill this out in its entirety. It helps us keep a more accurate record of today's hearing with the transcript. If you're here today and you are not planning to testify but you want to be on the record as having been here, there's a sheet in the corner that looks a little more like a spreadsheet. And we ask that you sign in on that and tell us your name and address and the bill, although we only have one bill today, but you are here in support or opposition. You do not have to do both. You can do this sheet or you can do the green, you only have to do one. As you come up to testify, if you have something you would like to hand out to us, we ask that you have 12 copies. If you know you're short a copy or two now, raise your hand and Emily will help you get a couple more copies made. Okay, that will be great. She'll help you with that when we get closer to that. She'll help make enough copies that you can hand it out to the committee. We also remind you that if you hand something to the committee we are going to keep it. So if you have a photo of something you want to show us in this particular bill, if you show us a right of way or a pasture or farm ground or something, if you give us a photo we are going to keep it. If it's something you'd like to show us but

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yet keep, just show it to us from the counter as you...or at the table as you testify. And allow yourself at the conclusion of the hearing the opportunity for senators to come look at it in a little more detail. We ask that when you come up to testify you give Barb the green sheet. That helps us keep track of this. We also want you to sit down and I'm going to say welcome. But we need you to sit down and tell us who you are and we need you to spell your first and last name. No matter how simple it is we ask that you spell it. It helps us keep a more accurate record of today's hearings. At this time, I would ask everybody, including myself, to look at your cell phone and make sure you turn them off. We talk about this, or to vibrate, we talk about this each and every time, but yet we always have one or two cell phones go off. Anyway, we ask that you do that at this time. We ask that we show no...we have respect for the person that's testifying in the room today. We ask for no public display, either in support or opposition, of a statement that somebody may or may not make. This is the opportunity for that individual to testify. In Natural Resources Committee you do get three minutes. There is lights at the front of the table. When you start, the light will be green. It will remain green for two minutes. When the yellow light comes on, that's your one-minute warning, keep going, you have another minute. And when the red light comes on, if you're really close to your testimony we'll let you quick finish it up. But we ask that you respect the lights. It helps the process. We also have a history in the Natural Resources Committee of if the red light cuts you off in the middle of a thought that's intriguing to the committee members, they will ask you a question and let you finish that thought. That seems to always happen. And so that has not been an issue. With that, at this time I'm going to turn the committee over to the Vice Chairman, Senator Schilz, and we'll start the hearing on LB4.

SENATOR SCHILZ: Good afternoon, Senator Langemeier. At this time, you're recognized to open on LB4.

SENATOR LANGEMEIER: Good afternoon. My name is Chris Langemeier, it's C-h-r-i-s, Langemeier is L-a-n-g-e-m-e-i-e-r. I am senator for the 23rd District and reside at Schuyler, Nebraska. I introduced LB4 on my own decision. As we were asked to come into a special session the keynote statement was, let's go have a discussion. And as we prepared to have that discussion, we had no vision of what to talk about. And so I started looking into things and start, what could we expand this discussion? I knew Senator Dubas had given us a preliminary bill. But I wanted to make sure that we had all facets discussed here today. And so that's why I introduced LB4, to broaden our discussion. As you look at the call, we came in on a pretty broad call. But we make sure we had the legislation introduced to take us through that broad, broad call. So LB4, the Oil Pipeline Route Certificate Act, or in government shouldn't we turn that to acronyms, the OPRCA. Didn't come up with any good things behind that. We came here to talk about routing, what is routing? As the Natural Resources Committee we have been dedicated to this subject for more than two years, and routing has been a big issue. There's been claims out there we don't have routing authority, we do. I think as a

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committee we understand that, we just don't fully understand how we can affect this pipeline or what we want to do as routing in Nebraska. That is the big question. Let me tell you what I think routing is not. It's not about leaks in the aquifer, it's not about large-scale oil spills, it's not about 22,000 censors down a pipeline, it's not about frequent flights over a pipeline. As we talked about yesterday, that's safety. We had that discussion yesterday on LB1. So back to routing. I'd like to think of it a little bit as zoning, maybe for a statewide purpose. We're not here to inflict statewide zoning on anyone. We appreciate allowing our cities and our counties to have that authority. But as we look to events that happened in the state of Nebraska to become a state importance, let's think a little bit about it more like zoning. So routing, what is it? I believe it's Nebraska, the good life. Let's talk about the good life. It's a vibrant economy in the state of Nebraska, it's clean air, it's pristine water, it's open, natural spaces and, of course, it's the people that makes the good life of Nebraska. Let's talk about for an example one icon about the good life. And I picked the State Capitol because we're in it. As you go across the state of Nebraska there's probably not a citizen that, if you showed them a picture of our State Capitol, that does not know what it is. There's probably an extremely lower number of those individuals have ever been here. As I've had the opportunity to talk to fourth grade classes, I make it a precedent, when fourth graders come to the Capitol, to talk to the students as well as the parents. And it's a pretty low percentage of those parents say, we've never been here before. So...but they recognize the State Capitol as we go across the state. This building is of state interest to the citizens of Nebraska. And so how do we take that as a state interest? We've created the Capitol Commission. The Capitol Commission looks at I would call it routing or zoning around this great building. We control what the height of each building is around it. We control what modifications, as you saw the State Board of Education building, as they put glass in one floor of their building, the Capitol Commission determined how much glass they could have and the effect on a state interest--the State Capitol. You might say they protect the environment surrounding the Capitol. So let's talk about a second issue. And I could go on and on all day, as I don't sleep much, as I sat through the night after our last hearing thinking about things. But let's talk about the Sandhills and let's talk about one example within the Sandhills. Let's talk about a world-famous golf course. Why is it a world-famous golf course? We have no oceans, we have no mountains. Why is it a world-famous golf course? And it's in the middle of most would say nowhere, although I kind of like that nowhere. So why is it world famous? It's the scenery, it's the open spaces, it's the natural grass, it's the native prairie that surrounds that golf course, that's of interest and of financial and economic interest to the state of Nebraska. That unique native grass makes that golf course a world-famous golf course for the environment in which it's in. And again, that's a financial interest. So how do we decide what is the best route for a pipeline or anything else of statewide interest in Nebraska? It's all about the good life. It may be about the ability to reclaim land. All land can be reclaimed. We've heard it's going to be done, but at what cost, at what risk? Let's talk about water. We've talked about reestablishing grass. And we can water grass in the Sandhills, but what's the practical ability to run

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water trucks across Nebraska watering grass? We've talked about wind damage of prevailing northwest winds going southeast. We've talked about drainage. We've talked about high water around a pipe. But let's talk about "dewatering." If we "dewater" in an area of the state, that pushes water onto somebody else. As members of this committee, we've had people come in and complain, you're draining water on us, don't drain water on us. What's the effect of a large-scale drainage project to allow in a construction area? What impact does that have on the downstream flow? Do we flood communities with excess water in a high rainy season? We add more water to the Shell Creek, Schuyler gets flooded a little more when we have floodwaters. It's all about timing. Now are any of these things unrepairable? No, they're all fixable, they all have remedies. But what's the cost of a remedy? So when you make the decision, and I asked Senator Dubas that question yesterday, mainly to get people to think. But as you try and discuss about putting a pipe per se in a sandy area versus a clay or soil at some other location in the state, you can weigh in things. You can weigh in that windblown area. You can weigh in the effect of moving water to allow for construction. I'm not talking about leaks. I'm not talking about spills, we're talking about routing. So those are just some examples. Now let's talk about the bill itself. And you don't have to follow along. Section 5 of this particular piece of legislation, you'll see it requires an application fee. We left that, as you see three Xs, you always get a few questions, well, what do those mean? That means we haven't set up the fee yet, it will come. But what does it get to the state of Nebraska? Many of us have heard from many, many people across the state that there's not enough information out there. We need information. We need a source to have information. Well, what does it get us? It gets us the name of the applicant, a description of the route, the materials proposed to be carried in a pipeline, the reason this particular route was selected. It gets us an emergency response plan. It gets us many, many things. What protections do those have for our economy, our agricultural resources and our communities? It gets us any other material that the department thinks would be appropriate. As part of this application, the application must submit material, reports, and studies submitted by or used by the applicant as part of a federal or state permit. We're not asking them to re-create the wheel for Nebraska. Just give us a copy of what you applied on a federal level. We have a time line there. We're going to have a public hearing. Nebraskans want a seat at the table, let's give them a public hearing and have that seat at the table and solicit input. Now who is this going to? The Governor shall appoint members to a panel. Let's talk about those members. First is the Lieutenant Governor. Our Lieutenant Governor is our chief terrorist/homeland security officer for the state of Nebraska. If we're looking at routing in Nebraska, does that not make sense to have the chief homeland security officer of the state of Nebraska to participate? I think so. It adds the director of the Department of Environmental Quality. It adds the director, or their designee on all these, from the Department of Natural Resources. It adds a representative from the Game and Parks Commission. It adds a member from the Public Service Commission because they deal with some other pipelines, I think there might be some crossover. It adds members from county boards, helps us in the participation of a decision. It allows us to look at county

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zoning. It also gives us some eyes and ears to what impacts anything might have on county roads or county structures as you come through. And we put a landowner in there to give us that personal feel to what it takes to reclaim per se the Sandhills or six miles of a Sandhills region. It gives a time line of 60 days after the application for written comments to the Governor from this panel. It looks to see if the route is...complies with all Nebraska Ground Water Management practices, protection...and Protection Act, Nongame and Endangered Species Act as it looks to deal with this. It considers in written mitigation plans. How are we actually going to do what we promised to do? And what mitigation plan is the best and what the effect is on the state. Again, it allows for the public to weigh in. Now the Governor, the Governor gets this opportunity to approve or deny. And many have asked, why would you want to give the Governor that kind of power? If you flip back to page 4, item (10), "The Constitution of Nebraska, Article IV, Section 1, authorizes the Legislature to delegate to the Governor the duty to administer certain statutes and programs." It's underlined in this bill but it's not new language. That's in our constitution. And under (12), "The Constitution of Nebraska, Article IV, Section 6, clearly states that the supreme executive power shall be vested in the Governor, who is to take care of the laws" that "faithfully executed" in the state of Nebraska. So you have a committee with the Chief Executive Officer of the state of Nebraska to weigh in on state issues. You have a committee designated of extremely knowledgeable individuals to subject matters that are of interest to the state. You have the Department of Environmental Quality, you have the Department of Natural Resources, you have the Game and Parks Commission, you have the Public Service Commission, you have county officials and local landowners to help weigh into this. Now we heard about the Public Service Commission making this decision yesterday. And the Public Service Commission has the right to inquire to the Department of Natural Resources, the right to inquire to the Department of Environmental Quality, but they have no obligation to respond. As the Governor is trying to make this very important decision that affects the economic vitality of the state of Nebraska, the good life, he has the authority, because these agencies fall under him, to, if they don't respond, make them respond and to continue to delve into subject matters that he may or may not still have questions about. So with that, I've kind of given you the bill in a nutshell. And I think as we talk about this, this bill takes us down a path of routing. So with that, I would take any questions. [LB4]

SENATOR SCHILZ: Thank you, Senator Langemeier. Are there any questions for Senator Langemeier? Senator Haar. [LB4]

SENATOR HAAR: Does your bill, Senator, include the emergency clause or...? [LB4]

SENATOR LANGEMEIER: It does. [LB4]

SENATOR HAAR: It does. Okay. [LB4]

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SENATOR SCHILZ: Anybody else? Yes, Senator Dubas. [LB4]

SENATOR DUBAS: Thank you, Senator Schilz. Thank you, Senator Langemeier. I think it is important that we broaden this discussion and we bring all of these ideas to the table because that's the only way we can get to the bottom of anything. So I appreciate your work on this. Have you visited with DEQ about the requirements that you have for them in this bill? [LB4]

SENATOR LANGEMEIER: I have not. [LB4]

SENATOR DUBAS: Okay. So you wouldn't know then if they have the expertise on staff or if they'll probably need to go outside and bring others in? [LB4]

SENATOR LANGEMEIER: I would hope they have the expertise. [LB4]

SENATOR DUBAS: Okay. I guess my next question goes to DEQ also. So since you haven't visited with them, I won't ask you that question. [LB4]

SENATOR LANGEMEIER: Well, to follow up on that a little bit, as we looked to the Department of Environmental Quality, if what we're asking for in this type of a routing type of a bill is something they don't have on hand, they're going to have to bring it in. Number two, I don't think anything in this is of that space-age that they shouldn't already have that. As this committee deals with DEQ and DNR on a regular basis, they both have a whole bevy of, number one, legal counsels as well as a whole bevy of scientists within their purview. I would think they would have the ability to make those decisions. [LB4]

SENATOR DUBAS: I know in visiting with the PSC on my bill they made similar comments that, you know, they felt it was important that they had access to those agencies because of what you just stated and the expertise that they had. Because at one time we thought about making that a "may" rather than a "shall." But the PSC felt very strongly that they needed to be able to go to those agencies for that input. And I guess I will ask you my follow-up question because it was an issue I struggled with in my bill was the timing, you know, and how long it takes to process an application for this or any other project you don't want to make the burden...make it a cumbersome project, process, excuse me. So I went to eight months. You have 60 days. Those are probably maybe at the extreme ends of the spectrum. But your 60-day, you felt that that was... [LB4]

SENATOR LANGEMEIER: Nowhere in my testimony did I say this is a perfect bill. [LB4]

SENATOR DUBAS: I hear you. (Laugh) [LB4]

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SENATOR LANGEMEIER: And dates can always be played with. But the reality is we all know government, they're going to use as much time as you give them. So if you give them 90 days, they're probably going to take 90 days. If you give them 30 days, they're probably going to take 30 days. And if you don't give them a time frame, you might be like some other agencies, I'm still waiting on rules and regs a year and a half later on another bill that I passed two years ago, so. [LB4]

SENATOR DUBAS: I totally agree with you, there is that fine line. You want to give them the opportunity to do a thorough and fair job, but yet you don't want to make it a process that gets drug out and again makes it difficult for those people who are going through the process. [LB4]

SENATOR LANGEMEIER: We would hope that the applicant, or in this case a pipeline, would have enough background done for their federal permit that they should have all the information readily available to apply for this application. And with that said, you don't have...they shouldn't be having to run around to find stuff. They should be able to make that available, if they didn't provide it from the start. [LB4]

SENATOR DUBAS: Very good. Thank you. [LB4]

SENATOR SCHILZ: Thank you, Senator Dubas. Senator Smith. [LB4]

SENATOR SMITH: Thank you, Senator Schilz. And, Senator Langemeier, thank you for your opening on this bill. And I just wanted to make a special thank you to your work leading this committee in some really difficult and unusual times. And I know no one has worked harder on this legislation than you have over the year. Just a couple questions I have. One is dealing with Section 2 (9), dealing with some of the Endangered Species Act, conservation act. Is there anything that you know of in that language that oversteps or treads upon some of the responsibilities of the U.S. Fish and Wildlife or Game and Parks Commission? [LB4]

SENATOR LANGEMEIER: No. That is actually current law. It's underlined in here because it's new to this bill, but it's already in law. [LB4]

SENATOR SMITH: Okay. [LB4]

SENATOR LANGEMEIER: You'll find everything up to about Section 4 is all just a restatement of current law. I had to put it together in the bigger scheme. [LB4]

SENATOR SMITH: Okay. And one of the questions that was asked yesterday, is this legislation intended to deal with safety? [LB4]

SENATOR LANGEMEIER: No. [LB4]

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SENATOR SMITH: All right. And help me with this. I know the term "welfare" is being used quite a bit in both the bill that was introduced yesterday as well as this bill. And I'm not an attorney. I don't claim to be real knowledgeable of, you know, the legal definitions and their impacts. But to me welfare and well-being are synonymous. And they both deal with components of health and the state of being, you know, free from illness and from injury and things of that nature. How do we, you know, is there...do you sense any component of safety in the use of the terms "well-being"... [LB4]

SENATOR LANGEMEIER: Again I'm not an attorney either,... [LB4]

SENATOR SMITH: ...or "welfare"? [LB4]

SENATOR LANGEMEIER: ...which, knock on wood I'm proud of that. But welfare is more than just, in my mind, is more than just your health, it's your financial ability to provide for your family. It's your mental soundness that you can sleep at night. There's none of that that I would deem as a safety issue. That's how you live, that's what you do, that's the risks you take. As in your welfare, I don't jog because I don't want to have pain in my knees. That's my welfare. My happiness is to have no pain in my knees, so I don't jog, just to take it kind out of context. But your welfare is your total life, you know. I have two children that are a big part of my welfare and my family. Some people don't have children. But it's more than just whether or not my cholesterol is good or I'm drinking good water or I'm eating good food. If you see, I drink a lot of Mountain Dew, that probably wouldn't be a positive thing for my health. [LB4]

SENATOR SMITH: But say that running track that's constructed for you to run on is constructed to...for your welfare, for your well-being so you can run on that track. Yet the construction of that track, it needs to be level so that you don't trip and injure yourself. So once again, its construction is for, it has to be constructed a certain way for your well-being, your welfare. [LB4]

SENATOR LANGEMEIER: I would say it's for my well-being, not for my welfare. My welfare is the fact that I wouldn't run on the track because that's not part of me. I don't choose that for exercise. If it's part of your welfare, it's your activity. Your well-being would be your activity within that track that you don't fall down and get hurt. But I would say your welfare is how you live your life. [LB4]

SENATOR SMITH: Okay. And then one more question. A little bit of a different subject as well. In the bill that was introduced yesterday, it puts the oversight back into the hands of elected officials. And this bill likewise does it, not to the same degree, but yet it does leave it with a potentially political oversight. And I guess, you know, I know that there's...if we look at public service commissions, there's other commissions out there. Whenever you have, you know, such a critical issue that has an economic component

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as well as an environmental component being placed into the hands of elected officials, sometimes you don't necessarily get the most objective outcome or analysis or assessment performed. And I know that there are some commissions that are appointed positions. So that, depending on how it's done, you may have, you know, it may be an overlap of where no particular governor or authority, you know, ensures that that commission is always their people. I mean, it can be kind of an overlap type of arrangement. But wouldn't something like that do a better job of ensuring that you have professionals, such as engineers or attorneys or accountants or whatever those people are mixed in with the people that have firsthand knowledge of the conditions, like the property owners, as opposed to elected officials? Wouldn't...is there some concern about putting this back into the hands of elected officials? [LB4]

SENATOR LANGEMEIER: As an elected official, no. (Laughter) I would argue that we were a country founded on the voice of electing officials to make decisions, mainly because we all can't get into one room and we all can't have a vote to make a lot of decisions. So you elect elected officials to do that. And so you make that decision to pick the Governor in this case. He stands for election. They are term limited out, so if they...if the current one or the next one is someone you don't agree with, you have the opportunity to vote them out and move on. But you hope you have quality candidates that want to run to represent the citizens of the state in which...the state or district in which they're running for. [LB4]

SENATOR SMITH: Okay. Thank you, Senator. [LB4]

SENATOR SCHILZ: Thank you, Senator Smith. Any other questions? Senator Carlson. [LB4]

SENATOR CARLSON: Thank you, Senator Schilz. Senator Langemeier, if you'd take your bill and go to page 6, now line 19, and this has been mentioned. But, "As a part of the application, the applicant may..." I think that needs to be "must," because "may submit any material, reports, or studies submitted by or issued to the applicant as part of a federal or state permit." Well, by having it a "must" nobody has to go look for it. If somebody doesn't want to provide it, I don't think their application ought to even be considered. That's just a suggestion. [LB4]

SENATOR LANGEMEIER: I would probably argue it to say "shall," we don't typically use "must" in... [LB4]

SENATOR CARLSON: Yeah, okay. Okay. [LB4]

SENATOR LANGEMEIER: ...legislative terminology. But I agree. [LB4]

SENATOR CARLSON: Okay. Then line 22, I had a question first, but I think I got it

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answered. "Within thirty days after receipt of the application, the department shall provide notice and hold a public meeting." So in 30 days there will have been a public meeting regarding the route of the oil pipeline. And I don't mind that kind of limitation on get her done. I think that's okay. I agree with that. But that's what that means, within 30 days after the receipt there will have been a public meeting, correct? [LB4]

SENATOR LANGEMEIER: Correct. [LB4]

SENATOR CARLSON: Okay. And then we go to page 7, I like your reasoning on the Lieutenant Governor being chairperson of the panel. You had DEQ, DNR, Game and Parks, and Public Service Commission. What about Oil and Gas Commission? [LB4]

SENATOR LANGEMEIER: I'm open to any discussion. [LB4]

SENATOR CARLSON: I would suggest there would be a member or consider having a member on there from the Oil and Gas Commission. And I don't have any qualms with the way the rest of the members are determined on that panel. But your last statement, the last word in 21 and then line 22, "Panel members shall serve for two-year terms." And you said it's not a perfect bill, but I don't think you mean they can only serve two years. So are there term limits? Are we going to have some section on how long they can serve and so forth? [LB4]

SENATOR LANGEMEIER: The idea to that was that the Governor could call this group together and form it today. And those individuals would be on that panel for two years before they had to be reestablished, to try and prevent having to call a group together for this application, and then call them together in six months for the next application if there was one. The group that was called together would stand for a two-year term. And if we need to reword that to make that clearer, that's...but that was the intent is to try and give someone that applies, they would have the ability to know who's on it for a little more time than we make application. And then you kind of fear for who are they going to put on it, you know. [LB4]

SENATOR CARLSON: Well, I think it's good that they serve for two years. That's very clear. Maybe just an additional statement, Governor may reappoint for additional two-year terms or something. Okay. Now let's go to page 8. And point (2), "Not later than sixty days after the department receives an application." So within 30 days we're going to have a meeting. And within 30 more days we're going to have a written recommendation to the Governor. That is challenging but I like it. And I agree with the point that government is notoriously slow. And I think a lot of these things could be and should be moved along a lot more quickly than they are. So I'm just making that comment. But is that correct, the 60 days does include the public meeting? [LB4]

SENATOR LANGEMEIER: Correct. [LB4]

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SENATOR CARLSON: Okay. And then page 9, under point (3). "If the panel finds that the applicant has affirmatively met each of the criteria" and so forth, then it sends a recommendation to the Governor. Now does recommendation mean that the panel is saying the permit should be granted or it's totally up to the Governor? [LB4]

SENATOR LANGEMEIER: It's up to their recommendation. If they want to say yes or no, that's their recommendation to the Governor. [LB4]

SENATOR CARLSON: Okay. So if they affirmatively meet the criteria in Section 7, that doesn't make the panel have a mandatory requirement that they recommend the permit. They're simply informing the Governor that these criteria have been met, okay? [LB4]

SENATOR LANGEMEIER: Everything is here, here it is. [LB4]

SENATOR CARLSON: Okay. [LB4]

SENATOR LANGEMEIER: Now we can make the recommendation...they, I shouldn't we, they can make the recommendation--we have everything but still don't like it or they can say we have it all but our recommendation is to approve. [LB4]

SENATOR CARLSON: Well, it might be helpful for the Governor if...you worded it pretty well there. They met the criteria, but we've got some reservations and they should certainly share those reservations rather than just pass along the word they've met the criteria. [LB4]

SENATOR LANGEMEIER: Yeah. You have two steps there. Number one, you met the criteria and then, number two, there's a recommendation from that panel. And if we need to clean that up we can. But the idea is, yes, everything was submitted, but now. Just because you have all the I's crossed and...T's crossed and I's dotted, it still doesn't mean it has to go. [LB4]

SENATOR CARLSON: Okay. That probably does need a little bit of clearing up. And then one other. Let's go to page 10, starting in line 16, which has to do with eminent domain. And this fits the time line pretty well because they must have that, it's clear, they've got to have that permit in hand before they utilize eminent domain. But what about using it as a pressure point to get people to cooperate? [LB4]

SENATOR LANGEMEIER: You couldn't use it as a pressure point. [LB4]

SENATOR CARLSON: Okay. [LB4]

SENATOR LANGEMEIER: It would allow you to go out and start the negotiation, which I

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would argue you need to allow people to have that right so they can, as they're determining a route, if you won't let them even talk to them, how do you know what your route is really going over? So you have to allow them to go out and do the surveying and look at then. And then before they could send that infamous letter that we've heard about on two occasions, you would have this state permit. [LB4]

SENATOR CARLSON: Which in most cases this would pretty well have been taken care of before they probably asked for a permit from the state anyway. [LB4]

SENATOR LANGEMEIER: Could or couldn't? [LB4]

SENATOR CARLSON: Could be. Okay. Thank you. [LB4]

SENATOR SCHILZ: Thank you, Senator Carlson. Senator McCoy. [LB4]

SENATOR McCOY: Thank you, Chairman Schilz and Senator Langemeier. If you could elaborate, if you would, I'd like you to elaborate if you would, on placing this kind of authority. And you mentioned in Article IV, in Sections, I think, it's 4 and 6 of the state constitution, has this ever been done before that you know of? Has the Legislature delegated this kind of authority to the Governor? [LB4]

SENATOR LANGEMEIER: The Governor has that authority already to deal with Endangered Species Act, to deal with anything that might threaten the Endangered Species Act that has statutorily not been addressed. So if something were to arise today that has a great effect on Sandhills crane and we're not in session and not the ability to affect it via statute, we've already given the Governor that authority to take action. [LB4]

SENATOR McCOY: Do you know, in your research on this legislation has there been any other state that you know of that has, we're talking about a pipeline here and obviously the endangered species that you mentioned. But are there any other precedents that you know of that this has been done anywhere else in the country on a...it would be hard, I guess, to re-create a situation like this, but in a manner like this? [LB4]

SENATOR LANGEMEIER: I don't know of anything identical. There are states out there, in our research, and I should have brought that with me, that have on occasion given their governor this kind of authority. [LB4]

SENATOR McCOY: So there is a precedent for this, maybe not an identical situation, but... [LB4]

SENATOR LANGEMEIER: I believe there is. [LB4]

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SENATOR McCOY: Thank you. [LB4]

SENATOR SCHILZ: Thank you, Senator McCoy. Any other questions for Senator Langemeier? Senator, I guess, I would just have a couple questions. And after hearing some of the discussion yesterday on LB1 and looking at the safety side of it, I tended to have some of the same questions that Senator Smith did. And as I looked through and I see the criteria that is to be used for some of that stuff, especially I think it's on page 6. And my question would be, that if this panel gets information like the details of an emergency response plan, and then they use that emergency response plan as one of their criteria for not allowing a pipeline, would that be considered getting into the safety issue? I mean, could it be construed that way? And if so, is there anything that we can do to change that so that we don't end up, because as I've seen in this whole process and what we've looked at is that it always seems to get back to that when it comes right down to it. It always comes back to that safety issue. [LB4]

SENATOR LANGEMEIER: This bill requires that the safety plan be submitted, it doesn't say anything about reviewing it, making a judgment decision on that plan. [LB4]

SENATOR SCHILZ: Okay. All right. I think that's something that we need to be really careful of so that we don't end up on the wrong side of that. I guess that's it. Is there any other questions? Senator Langemeier, thank you very much. [LB4]

SENATOR LANGEMEIER: Thank you. And for the record, you're all kind of scary from this side of the table. (Laughter) No, just kidding. [LB4]

SENATOR SCHILZ: It's because the bright lights are shining maybe. Okay. At this time we would take proponents for LB4. So anyone that is a proponent go ahead, come on up, take a stab at it. [LB4]

JANET WOOLSONCROFT: (Exhibit 1) My name is Janet Woolsoncroft, spelled J-a-n-e-t W-o-o-l-s-o-n-c-r-o-f-t. I am not a public speaker. I'm going to ask you to bear with me because I'm scared to death. I'm also going to ask you, if you have any question, if you would wait until I finish because I've got this timed to about three minutes. (Laugh) I'm a landowner who had a pipeline cross my property in 2006. They promised me that there would be no harm to my property, and you would never know they had been there. That proved to be false. I had environmentally sensitive property with underground springs feeding two ponds on this land. The pipeline ended up releasing over a million gallons of silt-filled water on my property which has an 85-foot drop. This water went downhill through my 160 acres of land with such force that it washed out the ends of both pond dams and took out a 20-foot overflow tube which has never been found. It filled my spring-fed ponds with clay, fine sediment and silt. And if there is ever an oil or gas spill, it will follow the same downhill path into my springs and ponds. As a landowner, I did everything possible to protest the placement of this

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pipeline on my property. The pipeline hired experts who said there would be no damage to my property. After my property had been damaged, the pipeline denied any liability and hired experts to say that there was no damage to the ponds. But their expert never took water quality samples and simply walked around the ponds and said the water looked fine. In short, the pipeline and their experts never foresaw any problems beforehand and wanted to deny liability afterwards. My land lies in Kansas, not Nebraska. There was no state legislation in Kansas to protect my property. I encourage Nebraska to pass this law or one similar to it. I assure you the pipelines are not interested in protecting landowners or water resources. A pipeline's interest is geared toward getting a pipeline in as quickly as possible and holding down their costs. I ask you to make sure that this bill is broad enough to include environmentally sensitive land such as mine which has springs and which used to have beautiful clear water in its ponds before the pipeline came. I would also ask you to consider eliminating the language in this bill on page 6, in Section 5, subparagraph (2)(d), which gives preference to routing pipelines in existing corridors. This language may come back to haunt you someday. The pipeline which damaged my property was placed in an existing corridor--a corridor established in the 1950s before EPA protected wetlands and before anyone cared about preserving water quality or viewed water as a valuable resource. If the pipeline on my property had been moved a mere 400 feet to the south of my property line, over the hill into an area where there were no springs, no ponds, and no wetlands, none of this would have happened. I believe a state will listen to its landowners and use common sense to protect environmentally sensitive land long before a federal agency will. The state needs to protect water resources even if they are smaller water bodies like springs as opposed to an aquifer. I am proof that pipeline promises and pipeline actions do not always match. I encourage this committee to pass a bill to protect landowners and water resources. Thank you. [LB4]

SENATOR SCHILZ: Thank you, Ms. Woolsoncroft. Any questions for Ms. Woolsoncroft? I was, Senator Dubas, do you have a question? I was just going to say I was about ready to tell you, you need to get ahold of the Attorney General because we just passed a law last year on reclamation. But then I see you're from Kansas, so. [LB4]

JANET WOOLSONCROFT: I think it's very important, if there had been any law similar to what this committee is considering now, I think the pipeline could have been rerouted and moved away from my environmentally sensitive property and away from the springs. And there was nothing to help me. And landowners are basically at a terrible disadvantage because the pipeline has eminent domain and they threaten you constantly with it. And they tell you that the pipeline route cannot be moved and you're going to have to have it on your property, so you might as well sign their documents and get it over with. [LB4]

SENATOR SCHILZ: Thank you. Any questions? Senator Haar. [LB4]

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SENATOR HAAR: Yes, so in Kansas is there anywhere you can go or is it simply you have to go to the pipeline? Is there any advocacy in between? [LB4]

JANET WOOLSONCROFT: There was none that I found. And I tried several different avenues. I went to the Farm Bureau Association, I went to the Sierra Club, I went everywhere that I could think of that might be interested in protecting landowners, water resources, property rights, anyone. And I found no one who would help me. I actually did the best I could on my own. And that's why I think it's so important for you to take the step to pass a bill such as what is before you today. [LB4]

SENATOR HAAR: Yeah. So are you still looking or have you just sort of resolved that that's where it is? [LB4]

JANET WOOLSONCROFT: Well, I had no choice because I was threatened with eminent domain. And the pipeline did go across my property and they ended up damaging it. And it took me four years to get them to make any kind of a settlement with me, which was not nearly enough to repair my property. [LB4]

SENATOR HAAR: Thank you very much. [LB4]

SENATOR SCHILZ: Any other questions for Ms. Woolsoncroft? If not, thank you very much. We'll now go to the next proponent for LB4. [LB4]

BRIAN VANDEVENTER: (Exhibit 2) My name is Brian Vandeventer, B-r-i-a-n V-a-n-d-e-v-e-n-t-e-r. My ancestors homesteaded in Nebraska. They lost land to eminent domain and they followed the profit and commerce of eminent domain with the railroads. I can trace my roots to the Brownville v. Omaha territorial capital dispute. I grew up in Box Butte County where one town absconded with the courthouse, but I come to be heard today from Douglas County. I am here to make clear one concise message. The right of eminent domain in Nebraska should not extend to any foreign entity. The right of eminent domain and its use in Nebraska should be up to Nebraskans in discussion with one another. If I am to believe the ads currently running in our newspapers, radios and televisions, thanks for that bit of commerce by the way, the Keystone XL pipeline is the safest sieve ever designed. Let's get beyond the rhetoric from each side as Nebraskans and protect ourselves. Fortunately, common sense is a gift most of us share. Bring on the pipeline, but assure it allows established routes already designated for pipelines. The company says it's too costly to divert the route. Nonsense. The pipeline company has valued this project in the billions. Let them. This is a drop in the bucket and they still have profits on the horizon. The established route would require more study and crosses more waterways, good. Study and be sure, then build it in the established lane. It is the safest ever designed. We'll help you study it. We will help them build it in the established lane. Senators, please keep this simple. Take the initiative to protect Nebraska for Nebraskans, whether it is LB3, LB4 or an amended

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combination of either one. Abandon any consideration of crossing the Sandhills or the aquifer. [LB4]

SENATOR SCHILZ: Thank you, Mr. Vandeventer. Are there any questions for the testifier? Seeing none, thank you very much. [LB4]

RICHARD HEDRICK: (Exhibit 3) I am Richard Hedrick, in support of LB4. As I stated, in my support for LB3,... [LB4]

SENATOR SCHILZ: Excuse me, sir, sir, sir. Can you please spell your name for the record. [LB4]

RICHARD HEDRICK: H-e-d-r-i-c-k. [LB4]

SENATOR SCHILZ: Thank you, sir. Go ahead. [LB4]

RICHARD HEDRICK: As I stated in my support for LB3, I don't know why the socialists in the Sandhills believe they are the only people, property owners who have been and will be abused by eminent domain. I call these protestors socialists because they are here in Lincoln making their voices heard. Socialists do not believe that any corporation or person is sovereign. I am a socialist and admit it. I belong to a church that the people run Farmers Coop--a co-op started by people who did not like selling their crops by asking, what will you pay me?--a credit union and labor union. Of course, like the rest of the people here today, I am exercising my right to form a new part of our government. Any part of this bill, LB4, that does not strictly pertain to oil pipelines should be addressed to the eminent domain, Chapter 76-701. To me, Chapter 76 relates to 1776 and property rights. Eminent domain is a derogation of property rights and anything to protect property rights from the sovereign should be put in eminent domain law. The sovereign, king, corporation, federal or state government like to take property but do not want to pay for the property taken. They go on the cheap. I have the experience of having my property taken by the sovereign and believe to those who are protesting. Thank you. [LB4]

SENATOR SCHILZ: Thank you, Mr. Hedrick. Any questions for Mr. Hedrick? Seeing none, thank you very much. We'll move on to the next proponent of LB4. Any other proponents? [LB4]

DAVID HIBLER: (Exhibit 4) Good afternoon and thank you for welcoming me back. I am still Dr. David J. Hibler, that's H-i-b-l-e-r, otherwise known as Dr. D. Presently residing in north Omaha, Nebraska, and formerly living some 30 years in the Bohemian Alps, on the edge of the Ogallala aquifer, where I still own several properties that would be adversely affected by a catastrophic leak in the Ogallala aquifer. We're on the backside of the cover. Yesterday, I spoke also on behalf of the 408 members and 642 guests of

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the Benson Plant Rescue who share an interest in this matter because as plant lovers we all value and respect the land itself and the water that nourishes it. But today I'm speaking solely on my own because I haven't had time to review this with BPR members and guests. Additionally, I'm in the process of founding a new nonprofit environmental action group called Nebraska Says No! Now if you'd flip to the other side here for just a second, we'll go through the shorts. I think LB4 is a good framework in need of tweaks. One, guarantee public...adequate public notice; two, involve all local media; three, cooperate with environmental groups; four, get maximum public input; and five, demand a mitigation plan regarding terrorist attack, which is my main ax to grind still. Stylistically, LB4 is just plain too wordy and needs to be edited skillfully to reduce clutter. Apologies to Senator Langemeier, but good ideas, just goes on and on a little bit too much. A 30-day deadline to public hearings is too short, needs to be extended to 90 days or at least 60 days. The need to publish ten days before the meeting, date and publication schedules of county, town newspapers makes the 30 days virtually impossible to negotiate with adequate public notice. In addition to publishing in all the appropriate newspapers, the committee should develop an e-mail list serving notices to every radio, television station in the state, plus environmental groups. To the list of committee members who hold their appointments ex officio, should be added the state representative of the Sierra Club and the Natural Resources Defense Council. Some would argue that this is capitulating to tree-huggers, but it is folly and foolishness to ignore the research and intellectual findings of fact by people just because we don't think much of their philosophy. County government should select their own representative by some majority vote process from every county in each Congressional district to ensure the widest representation, and not just get a good old boy pick. And I think you guys have been around politics, know what I'm talking about. Interested landowners should just be allowed to register and then have a random pick, perhaps, on-line. A mitigation plan for a terrorist attack should be a required aspect of any type of permit application. Then on the backside, which I see the light is on already, we're not going to have time to go there. I do give you some selections of possible language as substitutes for the language in the bill. And I give you observations of other areas where I think language should be added in order to achieve these means. I think that LB4 is a very good start with a little bit of tweaking. The thing I really like about it is I do think that the representation of the committee covering both state agencies and county government and citizens at large is perhaps a better fit than the Public Service Commission, which I thought of running for it once, and I did run for county government once. But it seems to me the Public Service Commission frequently, at least in the day when I was thinking about running for it, had kind of a good old boys feel to it. It was a place that you put people out for a political patronage job at the end of their careers sometimes. I don't know if it's that way still. But it had that feel at one time. Let's say I'm old enough, I'm almost 70, okay? So I've been around the block a few times and I kind of know the way politics works. But I got to shut up, I'm out of time. Thank you. Any questions, I'd be happy to... [LB4]

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SENATOR SCHILZ: Thank you, Dr. Hibler. Are there any questions for Dr. Hibler? Seeing none, thank you very much for your testimony. [LB4]

DAVID HIBLER: Thank you. [LB4]

SENATOR SCHILZ: Next proponent. [LB4]

DELLA WILSON: My name is Della Wilson and I am a 13...oh, wait. Della Wilson, D-e-l-l-a W-i-l-s-o-n. My name is Della Wilson and I am a 13-year-old eighth grader from Logan Fontenelle Middle School in Bellevue, Nebraska. I am a second generation native of Nebraska. I won first place in aquifer science in April's Nebraska Science Olympiad State Championship and have studied the ways to protect our earth's waterways. I am here today to ask for your support of Senator Langemeier's bill and for the protection of the Ogallala aquifer. I realize that the issue of the pipeline and the aquifer is complicated. I know that our nation needs oil and jobs and that the promise of both from a pipeline is one that is hard to pass up. But XL has had a past history of leakage. Even one leak in our shale aquifer can ruin those natural water resource that provides water to millions of people in eight states. I've studied the cost of restoration and it's a lot. And sometimes the leak can't even be cleaned up at all. Many of you have political reasons for being here. You belong to a side--an environmentalist, a pro oil person, a Democrat or Republican and so on. But at 13 years old, I don't belong to a clique or party. I just believe in my heart that placing the pipeline across this aquifer is wrong. This aquifer was placed here millions of years ago for our use. And we have an obligation to be good stewards of it. Trading clean water for jobs and oil may seem like the right thing to do given our economy. And many of you are at an age where you won't be around to feel the effects of this decision. But your decision will affect me and my children and my grandchildren. Why not move the pipeline to a place where we are able to achieve everyone's goals--secure the jobs, the oil, and protect the aquifer. I came here today because I know this will cause problems if it's allowed to proceed in its planned spot. According to the water project, over 1 billion people on this earth struggle to find clean, safe water today. Oil and jobs are important, but they are not required to sustain life, clean water is. Don't sacrifice it and cause me and my generation to have to suffer the consequences in the future and join the billions of others who struggle to find safe water. Please support Senator Langemeier's bill and the other bills that give Nebraska a say about where the pipeline is placed. Please save our aquifer because your children and grandchildren will remember your choice. Thank you for your time. [LB4]

SENATOR SCHILZ: Well, thank you very much. Any questions for Ms. Wilson? Senator Christensen. [LB4]

SENATOR CHRISTENSEN: Thank you, Chairman. You done a great job, just wanted to tell you that. Thank you. [LB4]

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DELLA WILSON: Thank you. [LB4]

SENATOR SCHILZ: Any other? Senator Dubas. [LB4]

SENATOR DUBAS: Thank you, Senator Schilz. Thank you so much, Della, for coming today. And I believe you won some type of a contest or you participated in some type of an event... [LB4]

DELLA WILSON: Yes. [LB4]

SENATOR DUBAS: ...and you did some research. Would you like to tell us... [LB4]

DELLA WILSON: Science Olympiad, I was a...I was in the event, Awesome Aquifers, which means you study about aquifers and the damage done to them by pipelines or damage done by essentially humans. [LB4]

SENATOR DUBAS: What were some of the things that you, personally, discovered through your participation in this? [LB4]

DELLA WILSON: That it cannot be cleaned up. Even though scientists are trying to find new ways to clean up the aquifer, you know, using bacteria that will eat the oil and stuff, it's still a very, very...it won't happen, it won't happen if it leaks. [LB4]

SENATOR DUBAS: Did you know much about the aquifer before you became involved in this project? [LB4]

DELLA WILSON: No, I knew what an aquifer was--an underground water resource. But otherwise from that, I did not know anything before last year. [LB4]

SENATOR DUBAS: Has this sparked your interest to maybe continue to... [LB4]

DELLA WILSON: Yes, I'm actually in aquifers this year for Science Olympiad as well. So I'm going to be competing in April as well too. [LB4]

SENATOR DUBAS: Very good. Well, again, appreciate you coming and sharing your information. And you did an outstanding job. [LB4]

DELLA WILSON: Thank you. [LB4]

SENATOR SCHILZ: Any other questions? Ms. Wilson, thank you very much for coming in. You did, like everybody said, you did a great job. [LB4]

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DELLA WILSON: All right. Thank you. [LB4]

SENATOR SCHILZ: Any other proponents? [LB4]

BRUCE BOETTCHER: (Exhibit 5) Bruce Boettcher, B-r-u-c-e B-o-e-t-t-c-h-e-r. I support Senator Langemeier's bill, LB4. I think the most positive provision in this bill is that the panel evaluating whether the company may be issued a permit consists of a diverse group of individuals, including landowners. One of the other points that I like in Senator Langemeier's bill is that he values both...the water both as a resource and also the economic impact that it has on our state. I'm glad that he included this language at the state level because our federal government has already seen the value that the Ogallala aquifer provides to the country. I hope that our state government would also realize this, especially since the heart of the aquifer sits in the middle of Nebraska. I also like the provisions that the property cannot be condemned until a routing certificate is issued. I think this is very important and something we should think about since TransCanada has already been constructing...been construction before a federal permit has been issued. Will they start condemning property next? Who's going to police them? I also think that we include language to allow the public comment, unlike TransCanada who has threatened Nebraskans with eminent domain, disclosure and confidential clauses to keep them quiet and not let their voices be heard. In addition, I like that he asks companies to support their reasons for not choosing the existing route. This is exactly what is going on right now. While Keystone I was being constructed in the spring of '09, plans for a Keystone XL were already underway, in fact they began in '08. Why was this route changed? I support this bill for the reasons. However, I feel that it could be strengthened by including language from Senator Haar's bill. Although I would change the language in Senator Haar's bill to talk specifically of soil types--that oil pipelines not be placed in sandy soil but only in clay-based soils. I also think you should add on Avery's bill of the bond and increase the bond amount to an invaluable figure, because our water is invaluable to us. We need to protect the state of Nebraska, not TransCanada. [LB4]

SENATOR SCHILZ: Thank you, Mr. Boettcher. Any questions for Mr. Boettcher? Senator Dubas. [LB4]

SENATOR DUBAS: Thank you, Senator Schilz. Thank you, Mr. Boettcher, for being here today. Do you have personal experience with the Sandhills? Do you understand the Sandhills or...? [LB4]

BRUCE BOETTCHER: Yes, I've lived there all my life. [LB4]

SENATOR DUBAS: Are you a rancher or...? [LB4]

BRUCE BOETTCHER: Yes, I'm a rancher. [LB4]

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SENATOR DUBAS: Okay. [LB4]

BRUCE BOETTCHER: I'm an organic rancher, in fact. So this would have great impact on me because you can't, when you're organic, you can't even put creosote posts in the ground. And so, you know, you have a toxic pipeline running through this water system. If it leaks, well, how am I supposed to tell my certification company that, you know, my whole water system is contaminated? You know, in relationship to a creosote post, you know, it's no different. So I think there would be grave effects of my operation per that aspect. [LB4]

SENATOR DUBAS: Have you talked with your certification company about... [LB4]

BRUCE BOETTCHER: No, I haven't yet. The inspector was here the other day. And I told him my situation. He said to contact them. But I haven't had time to do that right now, but I am. [LB4]

SENATOR DUBAS: Is this certified beef or do you raise crops? [LB4]

BRUCE BOETTCHER: I'm certified organic grass fed beef, yes. [LB4]

SENATOR DUBAS: All right, thank you. [LB4]

SENATOR SCHILZ: Thank you, Senator Dubas. Any other questions for Mr. Boettcher? Seeing none, thank you, Mr. Boettcher. Ms. Zulkoski, welcome. [LB4]

KATIE ZULKOSKI: Good afternoon, Senator Schilz, Chairman Langemeier, members of the Natural Resources Committee. My name is Katie Zulkoski, Z-u-l-k-o-s-k-i. I'm testifying today on behalf of the Nebraska Chapter of the Sierra Club in support of Senator Langemeier's LB4. The Sierra Club is in favor of a process, as most of you know, we have discussed...as we have discussed, that gives Nebraska and Nebraskans a say in the process that relates to pipeline routing. We do have some concerns. The Sierra Club does have some concerns regarding certain provisions of this bill and we hope the committee does look seriously at including provisions of Senator Dubas' bill in the process language. Some of the things from Senator Dubas' bill that are especially important, we think, is a decision-maker, such as the PSC. In addition, the reapplication process provided for in Senator Dubas' bill, we think really speaks to the fact that if, as Ms. Wilson said, building this in a way that benefits everyone. If we are serious about a way for the pipeline to be built, then allowing them to address the concerns that have been brought up rather than a straight up or down vote on the pipeline is something important that we should think about including. And finally, we did really appreciate Dr. Goeke's comments yesterday, that perhaps we should allow for some scientists to be involved in any panel that is created to look at this. That we should allow for some

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scientists to be able...the concerns that were raised yesterday were very interesting and I think would be helpful to the discussion. [LB4]

SENATOR SCHILZ: Thank you, Ms. Zulkoski. Any questions for Ms. Zulkoski? I guess, I would have one, if no one else does. You say that you're interested in seeing some entity, such as the PSC or something like that. Is that a...rather than the Governor, is that correct? Is that... [LB4]

KATIE ZULKOSKI: That would be correct. [LB4]

SENATOR SCHILZ: Yeah. Can you expand on that a little bit as to why you believe that's important. [LB4]

KATIE ZULKOSKI: Yes, I can. And I think it has to do, Senator, with the fact of the way people look at the fairness of the process. And when someone has stated their position beforehand and then the decision is given to them is there is some kind of argument about whether we really went into that with an open mind. [LB4]

SENATOR SCHILZ: All right. I understand. Okay. Are you concerned at all about, you know, as we heard yesterday, and I don't know if you were in the hearing yesterday, I think you were here for part of it. [LB4]

KATIE ZULKOSKI: Oh, all of it. I would like to clarify, all of it. (Laugh) [LB4]

SENATOR SCHILZ: And I was just, as we were talking about language before, does the Sierra Club have any qualms or any concerns and to make sure that any of the legislation that we pass can meet constitutional muster so that we don't have to end up back here trying to figure out how we...I guess, I don't want us to enact a law or a bill that could invite more lawsuits. And I was just wondering what their position is on that and how they look at this and what they heard yesterday, what we all heard yesterday, whether that impacts this bill or any of the bills. [LB4]

KATIE ZULKOSKI: We certainly appreciate the question, Senator, and appreciate the concerns on all the sides. And I think that's why we are so thankful that we are taking a long time, why we were all here until 10:00 p.m. last night, to really look at the issues. And that would be the reason that we brought up the concerns about the PSC versus the Governor making the decision, if it's certainly based on the Governor's stance on the bill, I would love for him, and the things that he has said about the pipeline, we would love for him to make the decision. But I think looking at things and claims that could be made in a court I think that's something our state should really look seriously at. And we certainly would hope that we were all doing that. [LB4]

SENATOR SCHILZ: Right. And specifically, I mean, does the language, welfare and

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protection and all of that and responsibility of the state for that, does that...do those raise any concerns for your organization? [LB4]

KATIE ZULKOSKI: Certainly. The concerns that everyone was talking about yesterday, the safety concerns, I think that we're all aware of, those need to really be looked at carefully. And that is why we have been working with Mr. Peterson on his legal analysis and looking at all of the bills and really thinking about what it is that the state can do. We've looked at lots of other states, looked at the cases, the Kinley case that you heard about yesterday, the Minnesota case that upheld the law that looked similar to what Senator Dubas and what some of the provisions in Senator Langemeier's bill would do. So we certainly think as most others have said, that there is an area that the state can regulate within. And we just need to be careful to make sure that we're going down that path. And that would be...I think, we would hope like all of you would that we would be able...that we would stick within that path and do what we could within the state's authority. [LB4]

SENATOR SCHILZ: I think we need to be extremely careful. Thank you, Ms. Zulkoski. Any other...Senator Carlson. [LB4]

SENATOR CARLSON: Thank you, Senator Schilz. Something you just said now triggers a question because you've come in support of LB4. But the essence of LB4 is to give the Governor the decision. And yet you want to change that decision to Public Service Commission, correct? That's a big change. And then you've indicated you want some of Senator Dubas' bill amended in. So why don't you just support Senator Dubas' bill? [LB4]

KATIE ZULKOSKI: (Laugh) Excuse me. Those are wonderful questions, Senator. And I think, and we had a representative here, Mr. Peterson was here representing the Sierra Club yesterday in support of Senator Dubas' bill. And the provisions of Senator Langemeier's bill that we would support would be the process. We are certainly in support of a process that gives our state and our state citizens a say. And Senator Langemeier's bill does do that. There is a committee that would look at this and appointed representatives that would allow for public hearings. And those are certainly parts of the bill that we support and really appreciate that you have provided for a discussion. [LB4]

SENATOR CARLSON: So you support the process, which means that you're okay with the 60-day limit on start to finish and making a decision. And that's what his bill is, and that's the process. So you would approve of that process? [LB4]

KATIE ZULKOSKI: To the extent that that can be done in that time frame, I think we would certainly approve of that process. I have never worked on that side of state government and never had to hold a public hearing and organize that and be sure that

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citizens and others had time to prepare for that. And if we can do that within 60 days, Senator, I don't see a reason we wouldn't support 60 days. [LB4]

SENATOR CARLSON: Okay. So you like the process on Senator Langemeier's bill, but you like some things about Senator Dubas' bill. But her process is different. So you don't like her process. So what out of her bill would you take into Senator Langemeier's bill, LB4? [LB4]

KATIE ZULKOSKI: I do want to clarify that we certainly appreciate Senator Dubas' bill and have not...I don't want the record to reflect that we do not appreciate her eight-month time period. I think that certainly to the extent that you all work with the agency or whatever ultimate decision maker is chosen and work with them as to what can be done with the time frame, that certainly would be something that they would know more than the Nebraska Sierra Club would know. But I do think specifically from Senator Dubas' bill, as I said, the reapplication process I think is something that is a helpful provision of that bill. It does allow for someone, anyone that has applied for a permit to come in and say, if these are the concerns that are causing us to not be granted this application right now, can we address those and come back and say we've addressed that. Now can we get the permit? I think that's a very helpful portion of Senator Dubas' bill that is not in this bill. [LB4]

SENATOR CARLSON: Okay. So you're still okay with that being done in 60 days? [LB4]

KATIE ZULKOSKI: If that's what we can do. [LB4]

SENATOR CARLSON: All right. Thank you. [LB4]

SENATOR SCHILZ: Any other questions for...yes, Senator Smith. [LB4]

SENATOR SMITH: Thank you, Senator Schilz. Ms. Zulkoski, thank you for being here. Thank you for your testimony today, appreciate it very much. Along the lines of my questioning yesterday, I've asked some of the folks presenting testimony to reflect back on the process that's been followed over the last two to three years. And the process that's been followed for the last two to three years, my understanding is, has had multiple points involved, many of the state agencies and organizations that are outlined in this bill as being engaged in the process. What do you see in this bill, in this process that is going to bring about a different result or an improved result over what we've seen over the last two to three years? Or is it simply just to create a new state oversight for this? [LB4]

KATIE ZULKOSKI: I think yesterday's hearing was probably a perfect example of why we think this would be important when Nebraska agencies may have been, and they have been, involved in the process and have had some input. I think that we have all

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started to see and I think that I at least have started to see where more input would have been very helpful. And I think when you say the concerns, I was very...I think a good example was when Mr. Taylor was up here testifying yesterday, talking about the Sandhills to a group of Nebraskans that understand the Sandhills. That the notion of the prevailing winds and how we build our fences made a lot more sense to this committee than maybe it would to someone working in the Department of State. And that I think is an example of how Nebraskans looking at what Nebraska state agencies and what our citizens are saying is an important part of any process. [LB4]

SENATOR SMITH: All right. Let's say in that particular instance, under this piece of legislation that you're supporting how would that have been remedied any differently than in the past? Would it have required someone from a state agency to speak up and say, hey, I have past knowledge of this particular situation, and therefore the northwest winds are going to affect the erosion. What happens if that information is not brought out, it's not forthcoming? I mean, what is this process going to do differently that is going to ensure that those participants in the process speak up when they know of something when perhaps in the past they have not spoken up? [LB4]

KATIE ZULKOSKI: As a Holt County landowner myself, I can tell you that when someone feels that their land is threatened they will speak up. And I think that state agencies' involvement and citizens' involvement at a much...at an earlier stage in the process versus where we are now, called into a special session looking at what process Nebraska should have in place, this is an example of how earlier testimony and earlier public testimony that Senator Langemeier's bill and that Senator Dubas' bill would both provide time for would allow that. And I think that's an important process. [LB4]

SENATOR SMITH: Thank you. [LB4]

SENATOR SCHILZ: Senator Haar. [LB4]

SENATOR HAAR: I guess at the very basis of why I even suggested that we have to deal with this in a special session is that the whole process now makes me feel like a beggar. We beg to Washington, we send letters, we send letters, sometimes we get responses and sometimes we don't. You know, we begged Secretary Clinton, we begged the President, we begged our, you know, our representatives in Congress. And we've heard from TransCanada that Nebraskans do have a say, that they've listened, and listened and listened. But it still makes me feel like a beggar. How do you see, whether it's Senator Langemeier's bill or Senator Dubas' or whatever, what...instead of the word "beggar," where does that put me? [LB4]

KATIE ZULKOSKI: Senator, I think what you have said points to the fact that TransCanada has said that they are listening. And so far I would say maybe what citizens are feeling hasn't been there is that the state of Nebraska hasn't had a process

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in place to allow them to say that they have been listening. And these bills would provide for that. [LB4]

SENATOR HAAR: So we've had a say, but we haven't been in...I mean, nobody in Nebraska is in the position of decider. And I think all of our bills go from, you know, we're beggars to we're deciders. And that's what makes me willing to support any of these bills. [LB4]

KATIE ZULKOSKI: I would certainly agree with that. [LB4]

SENATOR SCHILZ: Thank you, Senator Haar. Senator Christensen. [LB4]

SENATOR CHRISTENSEN: Thank you, Chairman Schilz. Thank you, Katie. Yesterday we heard a lot about safety issues and we had a number of people testify that...that's a federal issue. Do you agree with the testimony yesterday that that's on the...something that the state cannot deal with is the safety side of things? [LB4]

KATIE ZULKOSKI: I do agree that there are the federal statutes that say that states cannot, and I didn't bring it with me, and I apologize for not having it in front of me, so I should not try to quote that statute. But there are federal statutes that would lead us all to believe that the state does not regulate safety. But there are other directions in the law that lead us to believe that the state does have siting authority. So I would agree with those conclusions from yesterday. [LB4]

SENATOR CHRISTENSEN: Thank you. [LB4]

SENATOR SCHILZ: Senator McCoy. [LB4]

SENATOR McCOY: Thank you, Chairman Schilz. And thank you, Ms. Zulkoski, for being here this afternoon. Can you tell me, you're testifying on behalf of the Nebraska Chapter of the Sierra Club, what is the chapter's stance overall on the Keystone XL or has been in the past? [LB4]

KATIE ZULKOSKI: The Nebraska Sierra Club has consistently said throughout the hearing process in Nebraska that we support a process that gives Nebraska as a state and Nebraska citizens a say in where a pipeline would be sited. [LB4]

SENATOR McCOY: And if you could as well, if you know, what's the stance of national Sierra Club been on the pipeline? [LB4]

KATIE ZULKOSKI: I cannot say that. We represent the Nebraska chapter, and so those would be the answers that I would give you would be Nebraska chapter specific. [LB4]

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SENATOR McCOY: Are they affiliated between national and state? [LB4]

KATIE ZULKOSKI: I'm embarrassed to tell you that I do not know. [LB4]

SENATOR McCOY: Okay. Do you also know whether...what the stance the Nebraska Chapter of Sierra Club has been on fossil fuels in general? [LB4]

KATIE ZULKOSKI: We represent the Nebraska Chapter of the Sierra Club solely on pipeline siting issues at this point. So I do not know that answer either. [LB4]

SENATOR McCOY: Okay. Thank you. [LB4]

SENATOR SCHILZ: Senator Carlson. [LB4]

SENATOR CARLSON: Thank you, Senator Schilz. Following up on Senator McCoy's question, you're representing the Nebraska Sierra Club. So if the Nebraska Sierra Club was given the decision today build or not build a pipeline, what would Nebraska Sierra Club say? [LB4]

KATIE ZULKOSKI: I think we would agree with the testifiers that came right around 9:30 last night that said, there are probably some unanswered questions that we would want to have some answers to before we made the decision. [LB4]

SENATOR CARLSON: So in saying that, your interpretation of the Nebraska Sierra Club's position is they don't want a pipeline today, maybe ever, depending on further study that was done and whatever that study finds out? [LB4]

KATIE ZULKOSKI: I think that's assuming we know the results of the study. And I think what...my interpretation of what I was saying is that we think there are some questions that are unanswered. And when those questions are answered, then I would be more comfortable saying to you what the Sierra Club's position was on building the pipeline. [LB4]

SENATOR CARLSON: And this is important, because it's one decision not to want a pipeline now and maybe not to want it later. It's another decision to say, we're okay with the pipeline now, we just don't like this route. But I think you're telling me we're not okay with the pipeline now and on any route. [LB4]

KATIE ZULKOSKI: What I'm trying to tell you, and what I mean to be telling you is that we don't like this route and it's because we think there are some unanswered questions that deal specifically with portions of this route. [LB4]

SENATOR CARLSON: And the unanswered questions means nothing should be done

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until those questions are answered, which by further research and study, it's not something you answer overnight. That's something that takes time. So the Nebraska Sierra Club does not want the pipeline now and may not want it later, depending on the outcome of these future studies that haven't been done. [LB4]

KATIE ZULKOSKI: We seem to be quoting each other and not maybe, no. I am saying that the Nebraska Sierra Club does not like this route and to the extent that we like other routes, I don't know that we have another route to be looking at right now that we all would agree is an option, that we know we should even be commenting on. [LB4]

SENATOR CARLSON: Okay. Thank you. [LB4]

SENATOR SCHILZ: Thank you, Senator Carlson. Any other questions? Senator Haar. [LB4]

SENATOR HAAR: Well, just to follow up on that. You're a lobbyist for the Sierra Club on this issue, right? [LB4]

KATIE ZULKOSKI: Yes, I am. [LB4]

SENATOR HAAR: Okay. Are you also hired to speak on every other issue for the Sierra Club? [LB4]

KATIE ZULKOSKI: No. We are working only on this issue with the Sierra Club. [LB4]

SENATOR HAAR: Thank you. [LB4]

SENATOR SCHILZ: Thank you, Senator Haar. Senator Carlson. [LB4]

SENATOR CARLSON: Thank you, Senator Schilz. So this may...I don't know the answer. But is it normal for a lobbying firm to represent a group on a specific issue and not even want any other knowledge about what that group stands for? [LB4]

KATIE ZULKOSKI: I would answer that question in two parts. It is common for a lobbying firm to represent a group or an association or anything on one specific issue. I think this issue we have come about in a particular way. This is an issue that affects my family, Senator. And so that's why I have been involved in it for awhile. And then in talking over this issue, as we all spend quite a bit of time together in the Capitol and just visiting with this issue with others, it came to our attention that we...I was working on something that the Sierra Club was also working on. And so we've come together to work on this particular issue. So it's led up to something, it's led up to our representation of a client in a way that we don't always lead up to representing clients. [LB4]

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SENATOR CARLSON: Okay, all right. Thank you. [LB4]

SENATOR SCHILZ: Senator Haar. [LB4]

SENATOR HAAR: Would you agree with a lobbyist who's working on the other side right now, and I didn't want to hear this exactly, but he said, lobbyists represent their clients. You are the policymakers. Does that kind of...because the discussion here is sort of what, you know, what do lobbyists do? Do you set the policy or do you represent your client on an issue? [LB4]

KATIE ZULKOSKI: I'm pausing only because I'm trying to think about what you meant when you said you didn't want to hear this. (Laugh) But I think that's probably a very precise statement of what the difference between what a lobbyist would do and what an elected official would do. We certainly are involved in policy and discuss policy. But we can't set policy. [LB4]

SENATOR HAAR: Well, what I meant by that, you know, obviously I'd like people to be on the same side I am. And sometimes I see lobbyists that I work with on some issues that I agree with and some that I...I wish they'd always agree with. [LB4]

KATIE ZULKOSKI: Luckily, I think on this one we do agree. [LB4]

SENATOR HAAR: Thank you. [LB4]

SENATOR SCHILZ: Thank you, Senator Haar. I like people to agree with me too. (Laugh) Senator McCoy, please. [LB4]

SENATOR McCOY: Thank you, Chairman. To follow up on that question I asked you earlier, Ms. Zulkoski, I'm holding in my hands a printout from earlier today from the Nebraska Chapter of the Sierra Club in which some pictures from one of the protests. And it very clearly states with some signs that have the Sierra Club name on them to stop the TransCanada pipeline, not change the route. So when I asked you that question of what is the Nebraska Chapter of the Sierra Club's position on the overall pipeline, it would seem to be from this that the stance is not change the route but stop the pipeline. Perhaps you'd like to elaborate on that. [LB4]

KATIE ZULKOSKI: I can see only the top of the handout you're holding. And I have not seen those pictures, Senator. And I don't recognize that handout, so I... [LB4]

SENATOR McCOY: Sure, I understand that. I just...perhaps you'd like to elaborate more on is this truly about the route or does the chapter of the Sierra Club truly want to stop the pipeline altogether? [LB4]

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KATIE ZULKOSKI: I would imagine based on the picture that you're referring to that this Nebraska Chapter of the Sierra Club has some members that would proudly hold a sign that said stop the pipeline. But our position here today that we have been representing to you all since this discussion has started is that Nebraska needs a process that allows Nebraskans a say in pipeline siting decisions. [LB4]

SENATOR McCOY: Thank you. [LB4]

SENATOR SCHILZ: Thank you, Senator McCoy. Any other questions? Ms. Zulkoski, thank you very much. [LB4]

KATIE ZULKOSKI: Thank you. [LB4]

SENATOR SCHILZ: How many other proponents do we have? Couple, three. Okay, thank you. Next, please. [LB4]

JOHN K. HANSEN: (Exhibits 6, 7) Vice Chairman Schilz, members of the committee, for the record my name is John Hansen, J-o-h-n, Hansen H-a-n-s-e-n. I am the president of the Nebraska Farmers Union and I appear before you today as our organization's lobbyist as well as our president. And we view this process as part of a conversation about what the nature of the issue is and how it is that we move forward. And so the two handouts that I have given you today are in response to the discussion and the conversations that we had yesterday. And the one is in response to Senator Carlson's question about what the Farmers Union policy is as well as our special order of business, which are really different in a way. The policy is the longstanding policy. The special order of business is more specific and topical. And they are enforced for one year at a point in time. But they represent the organization's focus at that point. And I also included our organization's policy on eminent domain that I thought might be important or pertinent, just so that we put all of our cards on the table as we appear before the committee. And the other handout is from one of our landowners, in response yesterday to the eminent domain question from Senator Smith. But the issue that we've had relative to not having a process in place and not having an entity in place that provides guidance or that clarifies information or the rules of the game at all is that the handout, which came about two months after the hearing last spring, indicated that they were fixing to move forward with eminent domain in 30 days. If you read the language, it certainly looks like eminent domain is imminent--you either take this deal or we're moving forward with eminent domain--so thus, the need to help clarify when it is in fact that eminent domain is in force. And because when it is or when they do or don't have it changes the dynamic of the acquisition of the easement from a willing buyer, willing seller when you're doing business with somebody that you think currently has eminent domain and is threatening to initiate eminent domain proceedings in 30 days. So I just wanted to clarify that and I thought that that copy of that contract might be useful to the committee and I wasn't aware of whether you had one or not. I have all

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kinds of contracts available during all different periods of time and so we track what the story is at a given point in time. And I see my light is red, but I would say that we support the need to develop a process and that we continue to support Senator Dubas' bill but we also see some things in LB4 that we like and, as far as we're concerned, we're interested in being a part of the discussion in order to move the process forward. With that, I would end and answer any questions. [LB4]

SENATOR SCHILZ: Thank you, Mr. Hansen. Any questions? Senator Haar. [LB4]

SENATOR HAAR: Yes. I've referred to this letter a number of times, but this was the October 18, not too long ago, letter to Senator Flood in which TransCanada says we also treat our 60,000 landowners with respect and fairness. What in this letter do you think is not fair or is not respectful? [LB4]

JOHN K. HANSEN: I think we have a real question as to whether or not...when eminent domain in this particular case comes into being. Is it...does it exist before there is a public...clearly, any kind of basis for and authority or a public need by the pipeline before a permit is issued? We think not. We think that after the permit is issued by the State Department, in this case, then I think that's when eminent domain proceedings will commence in this state. But to round up all of the easements that have been rounded up under the pretense that while you were talking to them you had the eminent domain authority in place unfairly tips the negotiating table to the advantage of TransCanada, because the implication is, if you read that paragraph, the third from the bottom on page 2, it indicates that, by golly, you know, you either do this or you don't but at the end of 30 days we're fixing to move forward. Well, not at some point in the distant future or should the permit be granted by the State Department, but if you're a landowner and you read that you're thinking, I'm up against the blades here. And so it increases the pressure. It distorts the current legal position and it creates a lot of the ambiguity and lack of clarity that exists when the state doesn't step up and assume the authority to clarify the rules of the game up-front. The rules of the game ought to be clear to everyone up-front before you begin and that seems fair and reasonable. And in this case, our landowners, and this committee heard that yesterday and we heard it in the hearing again this morning in Judiciary, but it's a constant complaint with my landowners where they say: You know, I've been sending these guys registered letters; I've been writing them; I've been calling them up; I've been trying to, you know, figure out what is the deal; I've been trying to communicate with them; you know, how do you have a negotiation with a company when the company won't respond to a landowner? So then all you get are either the verbal representations of the land agent or you get these letters, but if you're getting this letter and you're a reasonable person and you read the language, you would have every reason to think that in about 30 days, if you didn't take the deal, they were fixing to initiate proceedings. And so it goes. It's just...it's part of the prickly business of an unclarified process. And so we're in support of LB4 because we think we got to have...we need to begin this conversation about how we get a process in

place that protects landowners in Nebraska. Those are the folks I represent. [LB4]

SENATOR HAAR: Well, yesterday we heard at least one testifier talk about how, for probably three years, this was an issue of great stress, and I think I understand that. But in working with your landowners in your organization, any anecdotal information about that? I mean, are people really worried about this or is it just sort of a legal thing that shows up in the mail? [LB4]

JOHN K. HANSEN: We think that, based on the members that we have in the route, we think we probably have probably 50-some landowners that are our members. We also have landowners who are not our members who contact us on these issues. So we have, you know, a fair amount of contact. We have folks who send us contracts. We have, you know, we...I kind of got tired of saying to landowners, well, I don't know but we'll try to find out. And so when they were asking us questions because they couldn't get information about who's in charge and how does this process work and, you know, what about this and what about that, you know, we just kept constantly saying, well, we don't know. And I was reminded of what my grandfather used to say, which was just because you're confused, that doesn't mean you don't understand what's going on. And so there was a lot of confusion and a lot of ambiguity and out of that, when you combine that with the pressure that was brought to bear on folks, I had people who called up and I went through the same process on wind easement contracts with wind, and when people call up and you can tell it in their voice and they're worried, they need answers now, and they're animated. I've had both men and women call up and break down crying and said they just...they couldn't take the pressure anymore; they just couldn't do it. They just...they felt an enormous amount of pressure. And so when you ramp up the pressure and the rules of the game aren't clear, it's not a straight-up process. It doesn't treat our landowners with fairness or respect. And so that's why we continue to bring those issues back to the committee and other, you know, and the body and say, you know, can you help us out here. Our guys aren't asking for the sun and the moon; they would like the same amount of clarity about how the eminent domain process works in this area that they're used to in all of the other areas of eminent domain that we have, which is very carefully prescribed, very limited, very defined, very prescriptive and very limited and precise in terms of its definition, its mission, and its use. In this area it's kind of the...it is the Wild West. [LB4]

SENATOR HAAR: Well, I guess one thing and I said earlier one of the things that really bothers me in this whole process and that got me emotionally involved with this, this feeling of being a beggar. And it just seems strange to me, and I'd like your reaction to this as well, that in a state like Nebraska where so often we rail against the federal government for this and that, here we're saying, ah, the feds know what they're doing or that, you know, TransCanada knows what they're doing; we really don't need Nebraska's involvement. [LB4]

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JOHN K. HANSEN: Well, me personally, as a former local public official, but also my organization, we continue to believe that decisions are a lot more likely to be appropriately made when the folks who have the most information, are the most familiar with the particulars of the decision-making process and the variables in the equation and who are also going to live with the consequences of the decisions they make, make those decisions. So we support local control whenever it is that it's possible. And we realize that local folks sometimes, like everybody else, every other public official, get it wrong. They make a bad decision. They make a bad call. But you know what? They have a vested interest in straightening out the decision they made because they're actually having to live with the adverse consequences of the decision they made, unlike folks who are farther away who don't have any skin in the game. And so we support local control. We support state control. We support local control over state or federal control, and we support state control over federal control. And we acknowledge that there's areas where federal control is absolutely appropriate but, to the extent possible, we support local decision making conceptually and we've been...you know, on a whole wide range of issues before this committee in my 22 years we have consistently argued that, not that local decision making is infallible. It's just better than the rest. (Laugh)
[LB4]

SENATOR HAAR: But, John, they have the experts. They have whole boardrooms full of experts. [LB4]

JOHN K. HANSEN: Well, I think that expertise is a relative thing. My grandfather's definition was that it was a full at least 50 miles from home. He always said in my case it was just a matter of miles. And there's experts and there's experts, but we've gone through and we went through the process with the State Department and we've become increasingly uncomfortable. And if you've read my comments to the State Department relative to the EIS, I don't know how it is that you have a process, as a former public official, I don't know how it is that you have a process, quite frankly, where you let the consultant of the company who's involved be the designated consultant for the State Department, who then evaluates the company for whom they have the financial relationship and list them on their Web site as the entity that was one of their primary clients, and then they evaluate and make the EIS and all those things. So as we have delved into more of the expertise at the State Department and how this process has worked, we've become increasingly...we've never been through this before, quite frankly, Senator, we've never, but conceptually it's hard to defend a process where you hire your own folks and are able to control the hiring of the public entity that does that. It just seems bizarre. It seems...it's not what the Lower Elkhorn NRD would have ever done. It's not what you would do with any other government entity. And so if the rules of the game at the federal level will allow that, it seems like a very strange standard. And so, I mean, we're concerned about that, and so as we poke holes into the...and drill in a little deeper, we've become increasingly concerned about what we hear and what we see, and the numbers don't add up when we do the numbers. [LB4]

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SENATOR HAAR: Well, I appreciate your spending your time with me on this. It brings my emotions quite close to why I'm even interested in this whole issue, so thank you very much. [LB4]

JOHN K. HANSEN: And thank you. [LB4]

SENATOR SCHILZ: Thank you, Senator Haar. Senator Carlson. [LB4]

SENATOR CARLSON: Thank you, Senator Schilz. John, Senator Haar has mentioned twice he feels like a beggar. I sympathize with that. I don't like to feel that way; you don't like to feel that way. In what he's talking about, we all have an opportunity next year in the election to make a difference to see if somebody else might not make us feel like a beggar. So that's what we have as voters. You made a statement about things need to be clear from the start when you go into something, as you're talking about it ought to be clear, everybody ought to understand, and I agree with that. So then TransCanada starts the process three years ago, a little over three years ago of this permitting process; at that point in time the rules should have been clear. So how fair is it in the second half or the fourth quarter, whatever it might be, to change those rules? [LB4]

JOHN K. HANSEN: Sure. And I, you know, I understand TransCanada's concern on that issue. A year ago at our state convention we had Paul Blackburn and we also had Jeff Rauh of TransCanada at our convention, so we had the opposing points of view. We had a very lively give-and-take, back-and-forth discussion on the merits and the particulars of the pipeline and all that. And as the moderator, I just facilitated the questions, but at the very end I asked Jeff Rauh a question and the question was, you know, it appears to us that other states have assumed more of the responsibility relative to the authority for siting and routing and other aspects of the pipeline, and if the state of Nebraska public officials thought that that was a reasonable thing to do and they passed bills that did that, what would your company do? And he thanked me for the opportunity to appear before our convention, was very polite, and he smiled and he said, we'd do what we do in the other states; we'd comply. And so in our view in this issue we're talking about, Senator, a partnership with somebody that we're going to have for probably about 100 years, we need to make sure we get it right. And until the State Department signs off on the pipeline, we think that these issues are open for discussion. And in our view, we think our state would be better served if we would do that which we think protects the interests of landowners and the public interest. It would be better to do it later than never at all, in our view. And we also view this as through the...our organization is 98 years old. We've been around for a while and so we try to take the long view on things, and our view is this is not the last pipeline that's going to be coming through the state of Nebraska and so, you know, we need to tussle with this issue and we need to come up with something that works and represents our interests on down the road. [LB4]

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SENATOR CARLSON: Okay. Now I'm going to ask you one other thing because I asked you some definite questions yesterday about your organization's thoughts on pipelines and so forth. You answered those directly. On the sheets that you handed us out, on the bottom it says, "WHEREAS, The competition from the Keystone XL Tar Sand Oil Pipeline may hinder our growing energy economy that farmers greatly depend on for competition in agricultural marketplace for their production." What does that mean? [LB4]

JOHN K. HANSEN: Oh, I didn't draft it, our members drafted it, but what I took it to mean is that if we had our druthers we would rather have a lot more renewable energy, a lot more ethanol, a lot more wind, a lot more biodiesel. We like to see a lot more robust commitment to doing those things that represent more renewable energy, sustainable energy. And since we represent a farm organization, we think farm-based renewable energy is a pretty darn good thing, whether it's wind or biodiesel or cellulosic or corn ethanol. [LB4]

SENATOR CARLSON: And I don't argue with that but "hinder our growing energy economy" and "competition," if that pipeline is there then we're told it's going to lower our fossil fuel prices, and so that is a negative then in terms of competition in the agricultural marketplace if it lowers the cost of gasoline and diesel. I think that's what that tells me. Is that correct? [LB4]

JOHN K. HANSEN: Well, I think I would go back at it and I, you know, I spend a fair amount of time trying to divine just what it is that our members had in mind when they passed our policy, to tell you the truth, in several areas, but it is their policy and they pass it and it's my job to try to understand it and enforce it. But, you know, we've been such a leader in the area of renewable energy for so long on so many issues, on so many fronts, that I think that that was most of their thinking; that they were thinking spending our time and money trying to bring, you know, this oil from Canada down we could be creating more jobs, we could be helping our economy a lot more, it would be a lot more beneficial if we would make an even more concerted effort that we do to create homegrown renewable energy. [LB4]

SENATOR CARLSON: Okay. Thanks. [LB4]

JOHN K. HANSEN: I think that's what I take it to mean. [LB4]

SENATOR CARLSON: Okay. [LB4]

SENATOR SCHILZ: Thank you, Senator Carlson. Senator Haar. [LB4]

SENATOR HAAR: Well, we'll talk more about this on the floor, Senator Carlson, but I

will use you as the sounding board. There's a very interesting report put out by the Canadian Association of Petroleum Producers, "Crude Oil Forecast, Markets and Pipelines." It's put out every June and I've actually read that. And one of the neat things I love is maps and it has maps of all the crude oil pipelines and I'll bring those when we have floor debate. But in 2009, in their report, and it's not in 2011 but in 2011 there was a dotted line, means proposed pipeline that comes directly from Canada--and I'll bring that, too, to the debate--that goes through the Sandhills again and over an even deeper part of the aquifer to the west of where Keystone XL route is right now. So, you know, they said, well, in the 2009 report, it probably wouldn't be built right now, but that dotted line is right there. I guess what I'm trying to say is that this probably won't be the last pipeline. So, John, if we elect a different President in 2012 and Nebraska has not put into place any Nebraska regulations, would we be any better off in Nebraska than we are now,... [LB4]

JOHN K. HANSEN: Could you... [LB4]

SENATOR HAAR: ...in your opinion? [LB4]

JOHN K. HANSEN: Could you give me kind of the... [LB4]

SENATOR HAAR: Are we going to be in any different situation as Nebraska, the Nebraska beggars? Are we going to be in any different situation in 2012 if there's a new pipeline, that dotted line appears again, or if, you know, there's a new President? Would that put us in a different beggar position? [LB4]

JOHN K. HANSEN: Well, it goes back to whether or not, in my opinion, the state of Nebraska claims the authority that we clearly believe that we have relative to siting and routing, liability, and other things in the state of Nebraska. So until we do that, until we claim that authority and we do that which is in Nebraska's strategic and primary economic as well as natural resource interests to do, we're going to continue to be vulnerable and at the whims of whoever it is somewhere who makes that call. [LB4]

SENATOR HAAR: And so just because it might be President Clinton instead of President Obama wouldn't make a difference? [LB4]

JOHN K. HANSEN: I (laugh)...I think we're asking for speculation above my pay grade and I'm still trying to figure out why it is that the President stuck that particular hot potato in his pocket and I'm not quite sure exactly why he did that. But I will tell you that in my discussions with some of the public officials at the national level in the House and the Senate, as well as representatives of the State Department, their view of the state of Nebraska is, well, if you guys care so much about this, how come you haven't done anything about it yourselves in order to help yourself out; so you're asking us to help you do things that you weren't willing to do on your own behalf. So in my opinion, you

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know, the state of Nebraska has got to kind of, you know, step up to the plate and at least do those things which they see other states doing, and until then they're going to say, well, this is not that really big of an issue for your state. And yet when we look at the amount of public push back on the part of landowners, there's no other state that's come close to the state of Nebraska to having the kind of push back on this proposed pipeline as there is in Nebraska. There's no question about that. So our landowners think it's a big issue. [LB4]

SENATOR HAAR: No more questions. [LB4]

SENATOR SCHILZ: Senator Christensen. [LB4]

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you, Mr. Hansen. I want to see if I can clarify where you're at on eminent domain. You would prefer anybody, until they have a permit, could never use the words "eminent domain" until the permit is in place, correct? [LB4]

JOHN K. HANSEN: No, I don't think so. I think that we have to be clear about when it is that eminent domain actually comes into use, and so if it's...you know, at what point in the process does that happen. And so at what point does eminent domain get used and when do they actually have the authority for it? And so this shouldn't be...and I'll tell you that you can talk to a lot of different lawyers and you can get a lot of different answers, and that was pretty clear this morning, based on who thinks who has what authority when. And so what our point is on this issue is that it puts landowners at the short end of the straw and in the weak end of the negotiating table when they don't have any clarification about when that is. But when the company...and they, you know, there's not a penalty for them doing it, but if the penalty doesn't exist and the company is inclined to do it and you have nothing prescribed to prevent it and they aggressively claim that they have eminent domain authority, you end up with those kinds of perceptions on the part of landowners that's reflected in that letter that I sent out, I passed around. Because if I was a landowner and I was reading that, I was thinking, you know, I've got to fish or cut bait here because if I don't I'm going to get eminent domain and they're going to start on it, based on that paragraph, oh, in about 30 days. [LB4]

SENATOR CHRISTENSEN: So since you don't think they have to have the permit first, if it just said it could be mentioned but not executed till the permit, is that where you would fall? [LB4]

JOHN K. HANSEN: Well, I would go back to the beginning and say we have to have clear rules of the game about when it is that eminent domain...what the standards are for eminent domain. And in this particular area, Senator, as a former public official and as someone who has been before this Legislature for a very long time on eminent domain issues, I would just say that in this particular area, unlike all of the other areas

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I'm familiar with, we do not provide a comparable amount of clarity or guidance, and so therefore it's kind of open season. It's kind of like who's got what when. [LB4]

SENATOR CHRISTENSEN: Yesterday I heard landowners say...some of them said we'd just as soon never be notified until...about the use of eminent domain until the permit is issued. I still disagree. I think I'm in a minority. But I say if I was the one out getting permits and I didn't have to tell people about the process, then I would go in, let's say you're bidding \$30,000 for one, soon as you can get that permit you can come back and say, well, you either take \$5,000 or we start eminent domain proceedings. All of a sudden you just put a person in shock. To me, there ought to be a canned response that could be put out ahead of time, something like once a permit is issued eminent domain can be used to obtain permits according to Nebraska Revised Statute 57-1101, and be a canned response that can be used ahead of time so everybody understands the process. But as my illustration, I think you're just going to cut the legs out from under somebody if you wait until the permit is issued before they can ever mention it. And I'll go back and use an illustration on the first pipeline where a particular farm crossing was offered \$30,000; they insisted to go into eminent domain proceedings and got \$9,000. And I think you'd see a lot of that if people didn't know eventually it could go to this type of process. Now ignorance of the law don't count. Everybody is responsible under the law. I found that issue very...the hard way myself once, not on eminent domain but had one red light on the back of a tractor instead of two, by law. Some idiot hit me and we were at fault. So ignorance of the law don't count. So every landowner needs to know the law. But I don't think it's my duty to sit here and hide it from them. I think if TransCanada is offering, or anybody, since this is the subject now, offering to buy an easement, they ought to have to put a canned response from the state in there that says once a permit is issued, eminent domain proceedings can be used to obtain permits. Then everyone gets the same response. How do you feel about that? [LB4]

JOHN K. HANSEN: If you look at...if you look at the guidance that we have on how the process works and how it's delineated for public officials who use it in all other areas of the state, we do, I think, an outstanding job of making it clear to landowners what the rules of the game are. So, you know, there finally gets to be the point, and, Senator Langemeier, you know, having served on an NRD board, you know, all of us who have had that authority before, you finally get to the point where you have exhausted the process. You've been clear, you've informed landowners, you have gone through it, you have had hearings, you have had this back and forth, you have gone...you have sat down, you've talked to them, you have exhausted every possible opportunity to do it, you know, in another way, in a voluntary willing buyer, willing seller setting, but if that particular piece of land is what it takes in order to be able to make the project work and that's in the public interest to do it and protect lives in the case of a flood control project or you need that right of way for a road or those things, you have to have the authority to proceed. And we're, you know, we're on the same page in all of that, I think. But what

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I want is something in this particular area that mirrors I think the kind of process that you support, if I understand your question right, that mirrors what we do in other areas. And so, yeah, landowners need to know up-front. And if you get to the very end and as a landowner, you know, and you want to take your chances and say, well, you know, we're in disagreement, I understand the process, I understand when it can... eminent domain can be used, but, hey, you know, I'd rather take my chances in court because I think that I might get more money or better terms, and if you're thinking you're getting better terms that's probably... your lawyer is probably not giving you good advice, but if you want to take your chances in court, and there's some people that that's the way they're built and they're going to accept a court judgment better than they will a different kind of judgment. They're willing to throw the dice and do it. Fine. And you know, you might come out better, you might come out worse, you might come out about the same. But I agree with you that you need to be real clear what the rules are up-front and folks ought to know. [LB4]

SENATOR CHRISTENSEN: Thank you. [LB4]

SENATOR SCHILZ: Thank you, Senator Christensen. Any other questions? Okay. Mr. Hansen, thank you. [LB4]

JOHN K. HANSEN: Thank you, committee members, for your time. [LB4]

SENATOR SCHILZ: And I have just one or two for you. When you were talking... [LB4]

JOHN K. HANSEN: I tried. [LB4]

SENATOR SCHILZ: ...when you were talking you were saying that you wanted to... you talked about people that had skin in the game. Can you... and I've lost a little bit of the context of that as the questioning has gone on. But when you say skin in the game as far as within this genre and what we're talking about here, who would have skin in the game? [LB4]

JOHN K. HANSEN: The folks who are going to bear the consequences of the action. Local planning and zoning is a great example. So, you know, I mean we could have federal planning, we could have state planning, we could have local planning and zoning, and the reason that we so strongly support local planning and zoning is those are the folks who actually live with the consequences of the decisions they make and so they're going to, right or wrong, they're going to bear either the fruit or the consequences of the decision they made. And so if they get it right, great; if they don't, they've got a reason to want to try to fix it. And so, you know, having a state mechanism in this particular case seems like a reasonable thing because that at least gives landowners who are unhappy an opportunity to get dispute resolution, get conflicts cleared up, or bring complaints to. So like right now when a landowner calls me up and

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says, well, I'm really, really unhappy about this, who shall I tell him to go to? I don't know. (Laugh) I mean... [LB4]

SENATOR SCHILZ: Right. [LB4]

JOHN K. HANSEN: ...I've been saying I don't know for quite a while here... [LB4]

SENATOR SCHILZ: Right. [LB4]

JOHN K. HANSEN: ...and I just think somebody ought to be in charge. [LB4]

SENATOR SCHILZ: Sure. Would there be any others that would have, quote unquote, skin in the game? I mean would TransCanada or any other pipeline manufacturer not have to deal with the consequences of their actions if they would put that in? [LB4]

JOHN K. HANSEN: Well, I think that the amount of skin they have in the game is, to a certain extent, determined by how clear the rules of the game are up-front relative to them for liability and other kinds of consequences. [LB4]

SENATOR SCHILZ: Uh-huh. [LB4]

JOHN K. HANSEN: And so if they clearly, by up-front saying in state law, you know, things go wrong it's your pipeline, you're operating it, if there's a leak, if it impacts the neighbor, if it impacts the landowner, if it does whatever downstream it's on you, it's not on the landowner, then I think that makes them a more responsible player. [LB4]

SENATOR SCHILZ: Right. And do you believe that that exists in the pipelines that are currently within the state and to future pipelines? [LB4]

JOHN K. HANSEN: And I'm not an expert on all of the different kinds of regulatory authorities that exist for other kinds of pipelines but it seems to me, relative to oil pipelines, we have a bit...a significantly different kind of regulatory scheme at the federal level and that our treatment is significantly different than we have for the majority of the pipelines that we have in our state that operate I think overall very successfully. So I think that in the case of oil pipelines, we're looking at a bit different situation than we are most of the rest of the regulatory scheme relative to other kinds of pipelines, from what I can tell so far, Senator. [LB4]

SENATOR SCHILZ: Right. I guess we've heard from folks on the other side that have said the process that dictate...the federal process that dictates oil pipelines isn't run through FERC but it's run through another agency, but that that model was directly modeled after the FERC process, the NEPA process. Do you believe that the NEPA process is an all-encompassing process or are there things that it's missing that the

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state of Nebraska can do within its authority, which means nothing about safety? And when we start talking about leaks and things like that, we start to get into that realm. And now even believe you start talking about welfare, start talking about all that, you end up with some of those questions as well. Does the NEPA process not take all of this into consideration? I'm just trying to figure out how much more we need to do. [LB4]

JOHN K. HANSEN: Boy, I wish I'd looked at the NEPA stuff more before (laugh)... [LB4]

SENATOR SCHILZ: I think it's a very important thing that we understand what that process is. [LB4]

JOHN K. HANSEN: Yeah, and I'm a little cautious to comment, quite frankly, without having reviewed it. But... [LB4]

SENATOR SCHILZ: Okay. [LB4]

JOHN K. HANSEN: ...I must tell you that I'm pretty much, regardless of what you might think, but I'm actually pretty much focused on wind next week. [LB4]

SENATOR SCHILZ: I understand. Yeah. [LB4]

JOHN K. HANSEN: And that has been my focus here for the last several... [LB4]

SENATOR SCHILZ: Okay. And then I won't trouble you too much more, but as I know you handed this letter out, I very much appreciate it. This is one of the first times that I think myself has been able to look at any of this. And as I look at this, and obviously we're back to the eminent domain question now, and as I look at this the first thing that notice is that we have a date of April 7 of 2011. And it's obviously from TransCanada and it's signed on the back by one of their land coordinators. And it says in here, and I'll just take out a few excerpts, not that I'm leaving anything out but for brevity, and it talks about "the proposed route of a crude oil pipeline," and then about, you know, "the federal regulatory review of this proposed project continues" and that they "expect a decision from the federal government in the first half of 2011." Okay. And then it says also in this, a couple paragraphs down from that, "It is our strong preference to negotiate a voluntary easement acquisition with each property owner." And then it says, "You are receiving this letter because our discussions and negotiations are not progressing to a voluntary settlement in a timely manner." And it also says in there that they had started some of these proceedings in 2008. Were there subsequent or were there previous letters that were provided to this particular landowner before this one? [LB4]

JOHN K. HANSEN: I'm trying to think what I have in the files. I know that I have subsequent letters... [LB4]

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SENATOR SCHILZ: Uh-huh. [LB4]

JOHN K. HANSEN: ...but I don't remember if this was the first one or not. [LB4]

SENATOR SCHILZ: Okay. [LB4]

JOHN K. HANSEN: You know, and we've got...we have different kinds of...in our files we also try to mark a little bit over whose letters we can have their permission to share, which ones we don't and all of that kind of thing, but I don't remember in this particular landowner a letter before that. I remember letters to this particular landowner after this. [LB4]

SENATOR SCHILZ: Okay. Sure. [LB4]

JOHN K. HANSEN: And there seemed to be a significant change in departure. I think that there was another letter in May or maybe first part of June, and then there was...but there seemed to be fairly late in the process, a late summer type thing, where there was a significant change in the letters and the departure that we were getting from our landowners and the communiques they were getting from TransCanada. It was...we did this hard push to kind of round them up and get them all in the catch pen, if you will. My background in the cattle business helps gear my thinking here, but they were rounding up the strays, trying to get them in, and they were trying to gate crowd them and push hard, and then all of a sudden they backed off and they backed away and there was a very different change, and they said, oh, we're not really going to use eminent domain now. [LB4]

SENATOR SCHILZ: Right. [LB4]

JOHN K. HANSEN: And there was a real change in their departure and that's mirrored in public comments that they started making after that. And I don't know what their change was... [LB4]

SENATOR SCHILZ: Sure. [LB4]

JOHN K. HANSEN: ...but there was a change. [LB4]

SENATOR SCHILZ: Yeah. And I just want to...and it also goes on to say that projects that are viewed to be in the broader public interest can use eminent domain to acquire the easement. And once again it mentions things about last resort. It gives dollar figures here for what they want to do and everything else. And I guess...I guess my last question for you on this is that do you think that maybe their position somewhat changed because of them actually having the realization that this process was going to

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be put off, and so all of a sudden the time line had changed and with that time line change it changed how much time they had to do their business as well? Could that be part of it? [LB4]

JOHN K. HANSEN: Yeah. Yeah, I think that could be part of it and I also think that the letter that was sent around was the kind of letter that I would suspect would be sent around. And I think the one paragraph that I tried to highlight is the one that may have got them maybe not quite where they wanted to be and I think that's the one that where they maybe got out on the ice a little too far and they pushed a little too hard. And I think that that...I think that, in my opinion, just looking at...having no knowledge whatsoever but just reading their stuff and getting the stuff from our landowners, to me, it just looks like legal counsel changed the way they were doing things. [LB4]

SENATOR SCHILZ: Well, welcome to big companies, huh? [LB4]

JOHN K. HANSEN: But I'm, you know, I'm not a lawyer (laugh), but things changed, attitude changed, verbiage changed. It was like, hey, we're, you know, we're backing away. It's a very different thing. And so to be fair to TransCanada, going back to the rules of the game up-front, it is to the benefit of everyone when you set up a process as contentious as eminent domain, and of all the issues that I've been involved in, in my lifetime, I can't think of any that draw more fire, and rightly so, than the use or misuse of eminent domain. And you know, the Game and Parks used to have eminent domain authority. They abused it and the Legislature took it away from them. And so, you know, what landowners think counts, and so how it gets used is clear. So if I was TransCanada, you know, there's some advantages in having clear rules of the road, when we come to Nebraska, here's how we do business, here's how things operate in Nebraska, here's how the game works and here's, you know, so we're knowing what it is that we need to do in our state. And I think that that's fair to landowners but I also think it's fair to TransCanada. [LB4]

SENATOR SCHILZ: Yeah. Absolutely. I don't... [LB4]

JOHN K. HANSEN: In our view, that's how we look at it. [LB4]

SENATOR SCHILZ: I don't disagree myself and I do believe that it is good to have rules in place and that it is also good to follow those rules throughout a process. And I truly believe that we have to be very careful that we don't change rules in the middle of the stream. Thank you very much for your answers. Senator McCoy. [LB4]

SENATOR McCOY: Thank you, Chairman, and thank you, Mr. Hansen. Does your organization, does Nebraska Farmers Union feel that there would be any positive benefits to the construction of the Keystone XL pipeline? [LB4]

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JOHN K. HANSEN: Yeah. [LB4]

SENATOR McCOY: Okay. [LB4]

JOHN K. HANSEN: I mean we...our primary concern, if you read our policy, is the lack of clearly delineated process and this route is problematic in our view. And because we didn't have authority in place, we got a route that we don't like. [LB4]

SENATOR McCOY: You had said earlier in your testimony, and I believe that I'm correct or quoting you correctly, that we as an organization try to take the long view on things. I'm referring to your page you handed out on your special orders of business for 2010 and 2011 as it refers to...as it pertains to Keystone XL pipeline. There are 12 "whereas" clauses and 3 "therefore be it resolved." I think it would be safe to say that not one of those sections mentions anything positive about the pipeline. So I'm curious, if, as you say, your organization believes that there are some positive benefits to the pipeline, what would they be and why were they not part of your stated policy on pipeline. [LB4]

JOHN K. HANSEN: Because we're under heavy fire from our landowners who are furious over this process, they are not a happy bunch of campers, this issue consumed our convention. So everything that had anything remotely to do with policy development or the pipeline, we were completely off schedule. And as you can imagine after yesterday's hearing, a lot of these issues are not new issues to us. And so the amount of time that was spent in our policy day, which went on way past the normal boundaries and the efforts that we made, you know, what I do as the state president is I try to get folks who are in disagreement and unhappy to get together and work things out and then try to come to agreement so we're not fighting and parsing over words when we get things out on the floor, and so we went through an enormous amount of time and effort within our own shop to be able to come up with anything that was acceptable. And so this product, this special order of business represented all the folks who were upset about this issue, one way or the other, getting their own particular "whereas" in there. And they were not...they were unhappy with the lack of process and all these things. They weren't thinking warm, positive thoughts (laugh) about the pipeline. They were unhappy over what was happening to landowners. [LB4]

SENATOR McCOY: So... [LB4]

JOHN K. HANSEN: And so they were unhappy and they were reacting to that. And my only caution to them was...is to try to take the long view on our policy document and remember that you can't be against pipelines and for electrical transmission. (Laugh) [LB4]

SENATOR McCOY: Well, I'm glad... [LB4]

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JOHN K. HANSEN: You just got to have clear rules in both cases how it works and to try to look at it through the eyes of landowners. And so we...this was the best compromise that could get passed and still send us home. [LB4]

SENATOR McCOY: Well, I'm glad, Mr. Hansen, that your organization takes the long view as it relates to wind, which, as you well know, our committee has delved into very thoroughly in the last two to three years. [LB4]

JOHN K. HANSEN: Yes. [LB4]

SENATOR McCOY: I think that, though, peculiar and curious that you take the long view on that but yet, again, in these 12 "whereases" and 3 "therefore be it resolved," I don't see 1 we take the long view stance as in regards to the pipeline, particularly in reducing dependence on foreign oil. As Senator Carlson pointed out to you earlier in the "whereas" at the bottom of the page where it talks about your organization believing the pipeline may hinder our growing energy economy, an economy that farmers greatly depend on, again, what would be the positive of the organization's? If they aren't stated in this special order of business, what would be those...what would be your organization's belief as positive side benefits to the Keystone XL pipeline? [LB4]

JOHN K. HANSEN: The people who were in favor of the pipeline in our organization argued that it would reduce our dependence on foreign oil. That was their argument. They thought that they'd rather get oil from Canada than the Mideast. That was their...but they didn't insist on a "whereas." And so all these "whereases" represented somebody's particular issue and they didn't insist on that. And when that came up, when that very question about how much of the oil that comes from Canada is actually going to be destined for U.S. use, then there was a strong view that there was a lot of folks who didn't think that very much of that oil was going to end up in the U.S. and they thought it had more to do with the owners of the tar sands getting their oil to the east coast of Texas than it had to do with getting U.S. oil into the heartland. [LB4]

SENATOR McCOY: Well, I would take that to...I guess I would take that to mean, Mr. Hansen, that if it didn't end up in the "whereases" that perhaps your organization concluded there weren't any sufficient benefits of the pipeline that rose enough to the importance level to be included in this long list of thoughts on this issue. Is that correct? [LB4]

JOHN K. HANSEN: Well, I don't know if it's correct or not, but I've not, in my 22 years of doing this, I've not seen an issue that has burned hotter, longer from our members, and the folks who weighed in, and if you've been a public official, I got a lot of calls when I was a public official but I never had a happy camper call me up once at 5:00 in the morning and wonder what in the world I was doing. (Laugh) I never got a happy camper call at midnight. I never got...you know, the folks who tend to weigh in are not happy

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and the folks in our organization who have a strong opinion on this issue were the folks who were underneath the...they were involved in the process and they were unhappy with it. And so I just...that's why I felt it was important to have a special order of business who let them reflect what they felt. It's their organization. They set the policy. That's the way the deal works and I do my best to carry it out. And I was pleased that we had a longer term policy that was more enduring that I thought made, you know, made good sense over the long term, which was to assume the authority, to have clear rules up-front, clarify liability, clarify, you know, financial assurance, to clarify the rules of eminent domain, all those things that, if you think about it, if you're a landowner you'd want to know. That's the best I can... [LB4]

SENATOR McCOY: Thank you. [LB4]

JOHN K. HANSEN: That's the best. I'm not sure whether my answer (laugh) is adequate, but it's...I live with what my members do. [LB4]

SENATOR SCHILZ: Senator Haar, did you have one? [LB4]

SENATOR HAAR: Yes. This may be my last question. I just want to relate it quickly. As Senator Christensen was talking, I went...at one point I was trained as a mediator for small claims court. It was very interesting and the first thing after, hello, I'm so-and-so and introducing ourselves, was to...is say, you know, we can either come to an agreement here or you can go back and talk to the judge. Okay. And so that served two purposes. One, it was a threat to get something done, but the other, it was a power balance because, for example, if there was a lawyer trying to collect fees from somebody, and there was a number of cases like that, that person who wasn't a lawyer could feel that if they couldn't work something out with this professional, you know, that then they could go to the judge and the judge would do it. So again, two things; one, it hastened an agreement. In most cases we came to an agreement, I'd like to think because of my skill as a negotiator, but it was both people had to recognize that they had power in that situation. And I think that's what we need to aim for with citizens, is that they need to know that they can go to the judge when it comes to eminent domain but they also have to know that that puts them on a level playing field with that person that they're trying to negotiate with. And so I see...you know, so, yeah, company has power but so the citizen has power as well and they both understand what that power situation is. Does that kind of sound like what your members would appreciate? [LB4]

JOHN K. HANSEN: Well, I think so. And, you know, yesterday I commented on dispute resolution and conflict resolution and all those kinds of things, but when you have a contentious process and you have no rules in place and you have no process for helping clarify things, then things escalate and hard feelings escalate. And so I think, in part, you know, the amount of landowner angst that I've been dealing with for some time now on this issue goes back to the business of not having clear rules up-front and not

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having the rules of the game clear, nor having anybody to go to when you're mad or angry or upset or have questions, and nobody can tell you anything. And so, you know, if you look at the state of Nebraska and you look at how we do as a state relative to eminent domain issues, we do, I think, a fantastic job compared to most other states, I really do, and I think we have good rules. I think we have good guidelines. We have good process and I think it yields good results, and that's good government that works to everyone's advantage. And so what our hope is in this particular issue is to do something similar in this area that we do in the other areas that we know works. We know that works. And so while you have isolated examples where there's hard feelings...I mean if you know what the rules of the game were and you wanted to hold out for eminent domain and you took your whooping or whatever happened there. And I had a neighbor who did that with relative to the state of Nebraska Roads Department. The only way that he was going to be happy is when the court told him there was going to be no negotiation. So in his case that was fine, but he was...as people went up and down the road, everybody else felt like they had a clear process and they understood things. So I think that there's merit to take a page out of the book of things that work. [LB4]

SENATOR SCHILZ: Senator Smith. [LB4]

SENATOR SMITH: Thank you, Senator Schilz. And, Mr. Hansen, we had a good exchange yesterday and, you know, at that time you talked about how you've had a good deal of experience with eminent domain issues with your time at the NRD. And I assume also with the large number of members that you have, you probably have dealt with eminent domain issues in transmission line sitings, and other things as well. I mean, it's not...it's not something unique to TransCanada. And so what I'm trying to parse out here is, you know, the...once again, we came to this agreement yesterday when we were talking, there's a...anytime you're dealing with eminent domain, it's very emotional. And there's truly no favorable outcome to that. Someone is going to be dissatisfied with the outcome. Help me understand, with your experience in other cases, maybe represented by your members, have there been other cases and how does this line up with some of the other experiences and process that's been followed? For example, this type of a letter. Do you...have you seen letters in other eminent domain cases and how were they structured? [LB4]

JOHN K. HANSEN: If you were a landowner in the other areas, you had a much more clear road map of how things had gone before, but you also had places to go. So, you know, we've had folks that were...trails, for example, that the use of eminent domain for recreation and at what point in the case of NRD authority, when does multipurpose run out of gas? And when is multipurpose single purpose? And all those kinds of things. But in those cases the rules were much more clear, I think, at least there was more precedent for it. And there was some place you could go to. If you were unhappy with the NRD, you could call Dean Edson. If you were unhappy with wherever it was, there

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was somebody that you could call. That there was some...and in this particular case, there's, you know, you rely on the company to represent the process and the state doesn't really have a designated entity. I don't know if you've ever done business with the State Department, but they're not the most helpful group of folks at sharing information. And so there seems to be this kind of a...in this particular area, kind of a dead spot, or at least an area of ambiguity that there's not in other areas. And so it was just my thought, Senator, that doing those things in other areas that are much more clearly delineate the process; that...what it can be used for, what it can't be...when it's enforced, what the limits are, what the process leading up to it is, all those things. If we can make those things a bit more...a lot more clear, frankly, then that helps reduce the amount of conflict that the...at the point here of conflict. My hope is to end up with a process that people understand and whether they win or lose they, at least, think it's a fair process. [LB4]

SENATOR SMITH: Okay. [LB4]

SENATOR SCHILZ: Thank you, Senator Smith. Any other questions for Mr. Hansen? Seeing none, thank you so much for your testimony. [LB4]

JOHN K. HANSEN: Thank you. Good luck. [LB4]

SENATOR SCHILZ: Other proponents of LB4. Good afternoon. [LB4]

LARA SKINNER: (Exhibits 8, 9) Hi. Hello, Vice Chairman Schilz, and Senator Langemeier, and other members of the committee. My name is Dr. Lara Skinner, L-a-r-a S-k-i-n-n-e-r, and I'm with Cornell University's Global Labor Institute, School of Industrial and Labor Relations. Thank you for the opportunity to speak today. Cornell released a report in September examining the jobs claims made by TransCanada Corporation. TransCanada has claimed Keystone XL is a \$7 billion project that will create 20,000 direct construction and manufacturing jobs and 119,000 indirect jobs. However, Cornell's analysis of Keystone XL has found that TransCanada's numbers are unsubstantiated and that the project will produce far fewer jobs than they claim. TransCanada's unsubstantiated and misleading job claims demonstrate the need for the state to have a process in place that gives Nebraska a say in who puts a pipe where, including tightening the eminent domain statutes to stop big corporations from scare tactics to coerce Nebraska landowners into selling to the lowest bidder. The number of jobs that could be created by the construction of Keystone XL is by no means insignificant, especially to the working people that receive these jobs. However, the U.S. is currently facing a serious unemployment problem and this problem should not be trivialized by TransCanada Corporation vastly overstating the number of jobs that will be created by Keystone XL. I want to underscore four main points that explain how TransCanada has misled the public on the jobs and economic impacts of the pipeline. First, TransCanada claims that the Keystone XL is a \$7 billion project. Actually

Keystone XL's U.S. project budget is only \$3.3 billion. TransCanada has inflated the U.S. project budget by including \$1.6 billion that will be spent in Canada; and approximately \$2.6 billion that has already been spent or committed to the project. In reality, Keystone XL's U.S. project budget is less than half what TransCanada claims, and this means a lot less jobs will be created. The Perryman Group, the firm TransCanada hired to do their jobs and economic analysis, also uses an unrealistically high multiplier for indirect and induced jobs. You may have seen The Washington Post article last week where the Perryman Group is quoted as saying that their job estimates include dancers, choreographers, and a speech therapist. Second, steel pipe is the main material input for Keystone XL. To date, TransCanada has manufactured almost 50 percent of the pipe outside the U.S., even though they claim Keystone XL will create 7,000 manufacturing jobs in the U.S. TransCanada has made a significant investment in the pipe for Keystone XL that is largely generating economic activity and job creation outside of the U.S. Third, according to TransCanada's own data supplied to the State Department, the project will create no more than 2,500 to 4,650 temporary direct construction jobs for two years. And then fourth, because of the pipeline, Midwest consumers will pay 10 to 20 cents more per gallon of gas and fuel, totaling \$2 billion to \$4 billion in additional costs to Midwest economies. Just one year of fuel price increases as a result of the Keystone XL pipeline diverting oil from Midwest to Gulf Coast refineries would cancel out some or all of the jobs created by the project. They've also failed to consider the negative employment and economic implications that result from inland spills, spills into freshwater supplies like the Ogallala aquifer and increases in greenhouse gases and other pollutants that incur huge human health and economic costs and job loss. To finish, I'm here to support any increase in the state's input on who puts a pipe where and allows Nebraska to vet companies coming into your state, because as my testimony on the job impacts of the pipeline demonstrates, TransCanada cannot be trusted to protect the livelihoods and economy of Nebraska. Thank you. [LB4]

SENATOR SCHILZ: Thank you, Dr. Skinner. Questions? Senator Christensen. [LB4]

SENATOR CHRISTENSEN: Thank you, Senator Schilz. Dr. Lara, explain to me why if \$2.6 million has already been spent on a project; another \$3.3 (million) has to be spent on it, that wouldn't be part of the project? [LB4]

LARA SKINNER: That's a good question. It's simple just in that the claims are now that the pipeline will create 20,000 jobs, direct construction and manufacturing jobs, and that it will create 119,000 indirect jobs. They're saying this is why this project is so great; this is what it's going to do. I can show you hundreds, if not thousands of press releases that show that. The truth is, that a lot of that money has already been spent. So those jobs have already been created and should not be included in the estimates that they're making for future job creation. [LB4]

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SENATOR CHRISTENSEN: I guess I'd have to look at the ad to see how it was classified; because I know if I had spent \$2.6 million...or billion, sorry, on a project, and had to spend \$3.3 (billion), I would add them together and call it \$5.9 (billion). That would be simple math for me, come out of my pocket. So I... [LB4]

LARA SKINNER: Yeah, the ad says that it's a \$7 billion boom to the U.S. economy and will create these jobs. So I think there just could be more clarity and honesty around how much has already been spent, which, in my opinion, has been hidden. [LB4]

SENATOR CHRISTENSEN: I would have rather had you say, I'd like to see more clarity on this then to make that statement, because I don't know whether to trust you now because, you know, to say that isn't accurate. It's been spent on the project as part of it. It's kind of like saying that I put a \$10,000 down payment on a car and spent another \$20,000, say it cost me \$20,000. No, it cost me \$30,000. So another one here, on your fourth one, it says...where do you get that they're going to spend 10 to 20 cents more per gallon? Would you explain that to me? [LB4]

LARA SKINNER: Yeah, can I just make one more comment on the last point? [LB4]

SENATOR CHRISTENSEN: Sure. [LB4]

LARA SKINNER: I think just one other point that I'll make, which I mentioned there is that, for example, the steel, that's part of the 7,000 manufacturing jobs that's supposedly going to be created by the project. And those are, again, quoted as U.S. manufacturing jobs that will be created. And already 50 percent of the steel has been made outside of the U.S. So, I mean, that's a very verifiable claim that that steel has been made outside of the U.S. and should not be counted as U.S. jobs. And then the second point is, which I said in my statement, is that their multiplier for indirect industry jobs is much higher than is typically used by other major developers of pipeline projects. On the fuel prices, I'm not going to pretend to be an energy economist, I'm not one. We worked with an energy economist to do this economic and jobs analysis. I'd be happy to put you in touch with him if you really want to get down into the details of it. Basically, my understanding is that the pipeline is going to help address a surplus of crude that currently exists in the Midwest. So Midwest prices are currently suppressed because there's a surplus of crude oil at the Cushing refineries. The refineries in Texas have been upgraded to handle crude oil. Now that could be crude from the tar sands via Keystone XL, or it could be crude via Venezuela. But at any rate, they have been updated to handle more crude. And overall this means that there's now, with the construction of the pipeline, there would be the ability to put more crude oil out into the global energy system. Okay? I think a significant point is that the fastest growing investment pool in the tar sands is from China's state-owned oil company. That gives you an example, I think, of what sort of the strategy is with the pipeline. So, again, I'd just say at the end of the day, I think there's an export strategy that's at the base of this

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which would allow the companies to sell their oil on the global market where they could fetch a higher price than they currently can in the Midwest. [LB4]

SENATOR CHRISTENSEN: Well, I guess I'm going to explain to you how the Oil and Gas Commission from Nebraska explained this. And that is, there is oil, as you said, can be a minor glut in there, and we're getting depressed prices to our producers because they have to truck it. So if crude is \$100, and it takes \$20 to truck it, the producer is getting \$80. If by putting in this line they shift more of it onto the XL project and more off of the Platte project, then the producer is going to get the \$80...sorry, get the \$100 instead of the \$80, because he's not going to pay the trucking charge. The cost of the crude is going to be the same to the refinery. And so I guess I would recommend you, maybe, get some clarification on that. I'd love to talk to your guy on it, because that's how I understand it. I threw the questions at, like I said, the Oil and Gas Commission of Nebraska. [LB4]

LARA SKINNER: Yeah, I would be very happy to connect our energy economist with you and he's not alone in his assessment. There's, actually, quite a bit of consensus around there being the potential to increase Midwest fuel prices. So I think that it's something that we should continue to discuss. [LB4]

SENATOR CHRISTENSEN: Oh, I'd love to discuss it. Thank you. [LB4]

SENATOR SCHILZ: Thank you, Senator Christensen. Senator Haar. [LB4]

SENATOR HAAR: Thank you. Why is the Cornell University International Labor study group interested in the XL pipeline? [LB4]

LARA SKINNER: Cornell has supported me attending the hearing and we undertook this study of the pipeline because we work with unions and workers' organizations and workers' unemployment issues. And about six months ago we became aware of a roiling debate within the labor movement about whether to support the pipeline or not. Many unions were unsure of whether they should support the pipeline or not and were seeking clarity on the issue. And the jobs argument was being used as one of the main arguments to support the pipeline. So we felt that it made sense to help the people that we work with get a more accurate assessment of the jobs that would be created by the pipeline. [LB4]

SENATOR HAAR: Okay. And I know you just put out a report called "Pipe Dreams." I actually read the whole thing. So I'm going to ask some questions about that. Here's an article that just...this is in Prairie Fire, full-page ad, and we see it all over...20,000 new jobs for America, okay. The Labor Institute is for one thing saying that these aren't all new jobs, that it includes current employees of... [LB4]

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LARA SKINNER: Yes. So for the direct construction jobs, which TransCanada has claimed that it will create 20,000 direct construction and manufacturing jobs, our assessment, as I said earlier, is that it will actually create 2,500 to 4,650. That number is slightly lower than the State Department's number. But that number, both the State Department's number and the number that we calculated, is based on information that TransCanada provided to the State Department. And the State Department does include a number of current TransCanada employees in their estimate, so that explains the discrepancy between our two numbers. [LB4]

SENATOR HAAR: So they're not all new jobs for America. Are we just talking about the U.S. or is Canada and Mexico, from your report, are included in those jobs? [LB4]

LARA SKINNER: Yeah, I mean, again, the claims are that it's 20,000 construction and manufacturing jobs for the U.S.; for, you know, U.S. jobs. But, you know, the steel, I think, is the, sort of, most poignant example where it's indicated that the steel is going to be made in the U.S., as actually TransCanada says in their information to the State Department that 75 percent of the steel will be made in North America. Yet, there's no verification of that. And we have records of about 10 percent already being imported from India from the multinational Welspun, who manufactured 80 percent of the steel for Phase I of Keystone. And then another 40 percent has been produced in Canada. Still unknown where the other 50 percent is going to be produced. Although there's been indication that Welspun is going to be the major producer of the steel. And their plants are mainly based in South Korea, India, and China, although they recently opened up a plant in Little Rock, Arkansas. Although, TransCanada has been importing raw steel from India, in addition to the rolled pipe, and then doing just the finishing work at the Arkansas plant. So, that's something that we're still researching. [LB4]

SENATOR LANGEMEIER: I need to break in here. I need you to lift that mike up. That's a recording device only. It's just mumbling your testimony for you. [LB4]

LARA SKINNER: Oh, sorry. Okay, sorry. [LB4]

SENATOR LANGEMEIER: So it will pick up from there. It doesn't amplify. Sorry. Back to Senator Haar. [LB4]

LARA SKINNER: And then I just have one other point on the U.S. jobs. You know, a part of figuring out the indirect and induced jobs is that you make estimates for how many jobs will be created further down in the supply chain. And in the past a lot of jobs related to pipeline work have been done in Texas, but more and more there is evidence of that work being done in Alberta, specifically related to increased tar sands development. And that is the case, as well, with Keystone XL, is more of this work is being done in Alberta rather than Texas. [LB4]

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SENATOR HAAR: So despite the fact that the 20,000 new jobs for America...and one of the things that just upsets me a lot about what we've been going through here, is the misinformation or the nuance...this doesn't say for the U.S., it just says for America. [LB4]

LARA SKINNER: Um-hum. [LB4]

SENATOR HAAR: And even though this is three times as high as the State Department's estimate, even the State Department's estimate is saying not necessarily new jobs. Yet your report also points out that this number that TransCanada publishes includes some pipeline that's not even part...includes jobs for a section of the Keystone...this is from the summary of the "Pipe Dreams"...includes jobs for a section of the Keystone project in Kansas and Oklahoma that's not part of the KXL and has already been built...20,000 new jobs for a pipeline that's already been built. [LB4]

LARA SKINNER: Yeah, and that's another point that I should have mentioned in response to your question, Senator Christensen, but, yes, approximately \$2.6 billion has already been spent or committed. And part of that money that was included to create the \$7 billion project was money that was spent on Phase II of Keystone, so not related to XL. [LB4]

SENATOR HAAR: And then finally a point here that the Perryman report of economic impacts...first of all cannot be independently verified, and they give their economic impact in terms of a hundred years. Is that normal for economic impact studies to talk about...this is going to be the impact on employment and economics for a hundred years? [LB4]

LARA SKINNER: No, it's not normal. I would say that, you know, 50 years is pretty normal, but a hundred years is a very extended time frame to calculate the multiplier effects of a project. Yeah, and I mean, a large part of the problem that we face with the Perryman Group and trying to verify those job estimates that have been put out so widely and the U.S. discourse is that there's no information provided on the inputs into that model, it's a proprietary economic model. There's no details provided onto the inputs that they're using to gain the outputs, which is the jobs that will be created by the pipeline. So there's actually no way to independently verify where those numbers come from. [LB4]

SENATOR HAAR: But then when the State Department used the numbers, they came up with about a third of that, the 20,000. [LB4]

LARA SKINNER: Yes. [LB4]

SENATOR HAAR: And then when they talk about, you know, I guess I've spent too

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much time reading this stuff, but in the...when they talk about 20,000 jobs, new jobs for America, that's twenty...and I'm not agreeing with their twenty...but 20,000 job years...what's the difference between "jobs" and "job years"? [LB4]

LARA SKINNER: A job year is one job for one year. [LB4]

SENATOR HAAR: So if I worked three years on the pipeline, that's three jobs. [LB4]

LARA SKINNER: Exactly. [LB4]

SENATOR HAAR: Okay. And I guess my...just my sensibility would say that way over estimating, three times what the State Department does, giving no information that can be verified, new jobs...when some of these have already happened, for America when that includes Canada and Mexico, "job years" instead of "jobs," this is all an effort to mislead. I don't know how else to read that kind of information. And most people are just going to look at this, wow, 20,000 new jobs for the United States and boom. [LB4]

LARA SKINNER: Yeah, I mean this is exactly why we decided to look at the issue further. I mean, you know, most people know that unemployment in the construction industry is some of the highest that it has been in decades, some of the highest of any economic sector. And so there was true concern among many unions, both in the construction industry and outside of the construction industry, about whether this, actually, was going to be an economic or jobs game changer as was being claimed, especially given that there were other concerns with the pipeline. And, you know, people just...that we're working with...did not want the unemployment problem that they're facing to be trivialized by false claims about the number of jobs that would be created. [LB4]

SENATOR HAAR: And it puts me in a terrible bind, then this whole issue has created strange bedfellows, unions working with the chamber of commerce who would just as soon not have unions; conservative ranchers working with environmentalists, they're conservationists, but not necessarily environ...so it's created strange tensions as we all know. Is the labor movement itself 100 percent back of the, you know, the jobs? And I really feel badly that the unemployment rate is 40 percent, I believe, in construction workers, and that's very alarming, but this whole cry of jobs...everything that you hear nowadays coming from politicians has the word "jobs" in it and that's immediately grabs our emotion and at least makes us smile to begin with. But do all the unions smile about the Keystone project? [LB4]

LARA SKINNER: Probably many of you know that about a year and a half, maybe two years ago, four unions signed a project labor agreement to construct the Keystone XL pipeline and have been very supportive. More recently another union signed onto a project labor agreement as well. On the other side there's four unions that are opposing

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the pipeline. And it is my understanding that a number of other unions have been conflicted about what to do and have spoke to Obama privately about their concerns with the pipeline. [LB4]

SENATOR HAAR: Puts him in a big bind, too, doesn't it? Yeah, yeah, okay. I'm done (inaudible). Thanks. [LB4]

SENATOR SCHILZ: Thank you, Senator Haar. Senator Smith. [LB4]

SENATOR SMITH: Thank you, Senator Schilz. Miss Skinner, can you tell me, what is your Ph.D. in, is it economics? [LB4]

LARA SKINNER: My Ph.D. is in sociology with a specialty in political economy. [LB4]

SENATOR SMITH: Okay. So you're not really an expert in economic analysis, or some of the numbers you're espousing here? [LB4]

LARA SKINNER: I have quite a bit of experience in economic analysis. As I said earlier, I'm not an energy economist, but we worked with a team of energy economists and experts in economic modeling to complete the report. [LB4]

SENATOR SMITH: Tell me a little bit about the unions that you say you've been in contact with that are in opposition to this project. [LB4]

LARA SKINNER: There's currently four unions that have publicly opposed the pipeline. And based on the statements... [LB4]

SENATOR SMITH: Can you name those? [LB4]

LARA SKINNER: Yes. There's two transit unions, the Transport Workers Union and the Amalgamated Transit Union. And the other unions are the Domestic Workers United and the National Domestic Workers Alliance. [LB4]

SENATOR SMITH: Okay. And are any of those representatives that you've spoken with, are they located here in Nebraska? [LB4]

LARA SKINNER: Those four organizations, to the best of my knowledge, all have members in the states that the pipeline route runs through. But I would want to check on that before saying that confidently. [LB4]

SENATOR SMITH: Because we've had lengthy testimonies and contact and information provided to us by a number of the labor organizations in Nebraska that seem quite knowledgeable of what impact this pipeline is going to have on their union members in

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Nebraska. And I'm struggling here not...I mean, I welcome you to come and testify and I appreciate your testimony. But these are folks, these are jobs that are located in Nebraska that are talking about firsthand the impact this pipeline is going to have in Nebraska. And I've seen a lot of numbers thrown around and I'm just...I'm baffled, quite frankly, because it's so far apart from what we've heard in testimony over the last day. And I agree with my colleague, Senator Haar, there's so much emotion swirling around this. We really do need to parse out the emotion from this and deal with the facts. Can I...I just need to ask you... [LB4]

LARA SKINNER: Can I just...can I respond to what you just said quickly? [LB4]

SENATOR SMITH: Sure. [LB4]

LARA SKINNER: That I will send the full report, the 40-page report to you all by e-mail so...which includes all the information about the methodology used to obtain the job estimates. And I'd also say that it's interesting that you say that about sort of trying to figure out what is the truth around the job estimates. Just today, actually, I had a union member come up to me after I testified in the last hearing saying, oh my gosh, I didn't know some of this information; I really wish I'd connected with you sooner. You know, I didn't know that the steel was not being produced in the U.S., that would have been important for us to know. Same thing happened at a hearing in D.C. when we had presented on the report when it had first come out. So, yeah, I hope that the information will get out farther. [LB4]

SENATOR SMITH: Now let me ask you, where...what impact do you believe that energy prices, be it fuel prices, be it electricity, natural gas prices, what impact do prices have...of energy have on the manufacturing sector in our country, or on jobs in our country, or on the economy as a whole, what impact do the prices of energy have on it? [LB4]

LARA SKINNER: You know, I don't know if I can answer that question. It's not my area of expertise, but I mean, I think it's important. [LB4]

SENATOR SMITH: Yeah, you told me you have some knowledge of economics. So, with your training in economics, you should be able to answer that question: the role of pricing of energy in job growth. [LB4]

LARA SKINNER: Yeah, I mean, I think in general, you know, high energy cost is prohibitive from manufacturing companies and industries where they consume a lot of energy. But I can only speak about it generally. I mean, have to talk about more specific situations. [LB4]

SENATOR SMITH: Surmise for me, what impact would the price of fuel have on the

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construction of new vehicles in this country...the manufacturing of new vehicles in this country by GM, by Chrysler, by Ford? [LB4]

LARA SKINNER: I would imagine that it would have a significant impact. [LB4]

SENATOR SMITH: Would that create jobs? [LB4]

LARA SKINNER: If the price went up? [LB4]

SENATOR SMITH: If the price of what went up? [LB4]

LARA SKINNER: If the price of energy went up for auto manufacturers? [LB4]

SENATOR SMITH: Oh, I thought I heard you say the price of energy went down, it would create more manufacturing. [LB4]

LARA SKINNER: Oh, I thought that that was what you were saying. You asked me what impact it would happen, for example, if the price went...I thought you said if the price went up. [LB4]

SENATOR SMITH: What would happen if the price of energy went down? What impact would that have on manufacturing? [LB4]

LARA SKINNER: Again, you know, I don't think I can answer that question in general terms. I think it really depends on the sector. [LB4]

SENATOR SMITH: You provided us a lot of information here. I would think you would have, at least, an opinion on that. [LB4]

LARA SKINNER: Like I said before, I mean, energy costs are a significant part of what manufacturers have to expend costs on. So having that go up would inhibit their ability to manufacture. [LB4]

SENATOR SMITH: Would that create jobs? [LB4]

LARA SKINNER: Uh, no. [LB4]

SENATOR SMITH: It would not create jobs? [LB4]

LARA SKINNER: It depends, you know, on how more energy is being created. Is it being done in labor-intensive sectors? [LB4]

SENATOR SMITH: Thank you very much. [LB4]

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SENATOR SCHILZ: Senator Langemeier. [LB4]

SENATOR LANGEMEIER: Thank you, Senator Schilz. And, Dr. Skinner, he took part of my question, I was going to ask you tell us a little bit about your background and what your Ph.D. is in, but you've done that. I want to talk about that report and I appreciate the opportunity to get that. Describe for me, in your testimony here you call it a report. [LB4]

LARA SKINNER: Um-hum. [LB4]

SENATOR LANGEMEIER: Is it a scientific report? Is it an evaluation of facts report? Is it an advocacy report? How would you describe it? [LB4]

LARA SKINNER: It's definitely a research report that uses both primary and secondary data to arrive at the analysis that we come to. And like I said, all the methodology used in it is methodology that is supported by economists and energy economists; it's the consensus within those fields and it is all explained in the report. So, it's a scientific report. [LB4]

SENATOR LANGEMEIER: So you think it's a scientific report? [LB4]

LARA SKINNER: Um-hum. [LB4]

SENATOR LANGEMEIER: Okay. So in your testimony here you use the word "stop big corporations." Are those scientific terms? [LB4]

LARA SKINNER: No, they're not. [LB4]

SENATOR LANGEMEIER: Okay. I appreciate you coming in and I appreciate the information. I look forward...hopefully you can get that to us sooner than later. [LB4]

LARA SKINNER: Um-hum. [LB4]

SENATOR LANGEMEIER: I look forward to reading it. [LB4]

SENATOR HAAR: Here, just pass this over. [LB4]

LARA SKINNER: Yeah, and I'm... [LB4]

SENATOR LANGEMEIER: Okay, we'll distribute it. [LB4]

LARA SKINNER: Yeah, and this...you know, again, just what we...we only analyzed one

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very specific part of this project. And so I think this is just one example of how, in our opinion, the public has been misled around the jobs impact of the pipeline. [LB4]

SENATOR LANGEMEIER: Can we copy this? [LB4]

LARA SKINNER: Sure. [LB4]

SENATOR LANGEMEIER: Okay, I'll handle distributing it then. [LB4]

LARA SKINNER: Okay, great. [LB4]

SENATOR LANGEMEIER: Thank you. Senator Haar. [LB4]

SENATOR HAAR: Make sure all the pages are in there. I think I did it right, they should all be there. [LB4]

SENATOR LANGEMEIER: Okay, we'll count them. [LB4]

LARA SKINNER: I can send it to you as well. [LB4]

SENATOR LANGEMEIER: Thanks. [LB4]

SENATOR SCHILZ: Thank you, Senator Langemeier. Senator Carlson. [LB4]

SENATOR CARLSON: Thank you, Senator Schilz. Dr. Skinner, tell us a little bit about Global Labor Institute. [LB4]

LARA SKINNER: The Global Labor Institute is part of the School of Industrial and Labor Relations at Cornell. And we work with labor unions and workers' organizations and allies of the labor movement, legislators, on a variety of employment issues. [LB4]

SENATOR CARLSON: Now was this report a project that you took on and took responsible for? [LB4]

LARA SKINNER: Are you speaking of me personally or the institute or...? [LB4]

SENATOR CARLSON: Well, either one. Who's responsible for taking on this...the project that resulted in this report? [LB4]

LARA SKINNER: It's coauthored by the Global Labor Institute, as well as the Goodman Group, which is the energy economist team that I referred to earlier. [LB4]

SENATOR CARLSON: Where did the resources come from to fund this study and this

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report? [LB4]

LARA SKINNER: The Global Labor Institute and this project is funded by a variety of sources. It includes private foundations, major donors; we're also a land grant institution so we receive funding from the state. [LB4]

SENATOR CARLSON: So this would be institutional funds that were provided for this study? [LB4]

LARA SKINNER: Yeah. [LB4]

SENATOR CARLSON: What...and you live in the Cornell area, is that true? [LB4]

LARA SKINNER: Um-hum. [LB4]

SENATOR CARLSON: Okay. What brought you out to testify? And it's fine that you did, because that's your right. What brought you here to testify? [LB4]

LARA SKINNER: We just felt that the findings of our report had not reached very many people. And we felt that we had spent a lot of time, you know, analyzing and producing this report and wanted to show the results of it. [LB4]

SENATOR CARLSON: And you used the term "we," so that's you and... [LB4]

LARA SKINNER: The Global Labor Institute. [LB4]

SENATOR CARLSON: The Institute, not the coauthor. [LB4]

LARA SKINNER: Right. [LB4]

SENATOR CARLSON: You said "coauthor," so how many are involved? [LB4]

LARA SKINNER: There are two of us at the Global Labor Institute and there's um...I'm actually not sure like if there's one author at the Ian Goodman Group and then there's a bunch of research support staff, I'm not sure, actually, if they're referred to as authors or not. I'd have to check on that. But several people at each institute. [LB4]

SENATOR CARLSON: Now, because coming from Cornell and all the way out here to Lincoln takes dollars, was this trip funded by the institute, or was it funded by any other group? [LB4]

LARA SKINNER: It's funded by the institute. [LB4]

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SENATOR CARLSON: By the institute. [LB4]

LARA SKINNER: Um-hum. [LB4]

SENATOR CARLSON: Okay. Thank you. [LB4]

SENATOR SCHILZ: Senator Haar. [LB4]

SENATOR HAAR: You know, I had to go do some research too on the ILR because I'd never heard of it before. Is...are you truly pro labor or are you socialist or what? (Laughs) I mean, it kind of has to get asked. [LB4]

LARA SKINNER: Are we truly pro labor? I'm not sure if I know what you mean. [LB4]

SENATOR HAAR: Do you support the labor union or just little parts of it you want to support? What's the credibility of the ILR? [LB4]

LARA SKINNER: The School of Industrial and Labor Relations is one of the oldest institutions focusing on the world of work and employment issues in the country. And the majority of what we do is provide trainings to labor unions, workers' organizations, but also other organizations--a lot of employers on employment-related issues. So we work on compensation issues; we work on employment law; we work directly with labor unions, but that's only one subset of what we do. [LB4]

SENATOR HAAR: So like would your institute be pro collective bargaining do you suppose? [LB4]

LARA SKINNER: Actually that's...the School of Industrial and Labor Relations would not take a position on that. Again, we're an educational institution mainly providing trainings to employers, unions, workers' organizations on labor issues and employment issues and employment law issues. We even do a bunch of human resources work. [LB4]

SENATOR HAAR: Okay. So, basically, working with labor, would you agree that a statement I made earlier that there's...this issue has put some pretty strange pressures on people? And how have you seen that at the Labor Institute? [LB4]

LARA SKINNER: I mean, different unions have sort of different cultural traditions; and some unions, typically, work very closely with their employers, and even sort of industry groups. I have seen more collaboration between unions and the oil and gas industry and TransCanada, in this case, than I think is normally typical. For example, like forming 501(c)(4)s together, that's not that common, so, to approve the pipeline. So, yeah, it has...it's created a lot of tension within the labor movement about how to deal with difficult issues like this at a time when there's high unemployment in the country. [LB4]

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SENATOR HAAR: So do you take sides in "Pipe Dreams" or do you feel that's an objective research? [LB4]

LARA SKINNER: I mean, I don't think that we take sides in the report. I think that what we do is examine the job figures that are being put out and the public discourse, very widely the 20,000 and the 119,000, and we evaluate whether those claims are true or not. We also say that neither the State Department nor TransCanada in their analysis have looked at any of the potential job loss or negative economic implications of the pipeline which we were not able to do fully in the context of this report, but is something that we support doing in a comprehensive evaluation of a project like the pipeline. [LB4]

SENATOR HAAR: Now, and this was in the Lincoln Journal Star, and not just in your report, but some economists, in fact one of them comes from the University of Toronto, whatever it is, Canadian, a Canadian economist who said this will actually increase oil prices in the Midwest; and some are saying it won't. So we have economists...we shouldn't assume at this point, probably, without more economists in the room and more data, and I'd like to get that to be able to argue either it's going to hurt oil prices in the Midwest or it's going to help them. And my understanding, and again, this is from other articles in the Journal Star, you know, there was...we've seen both sides reported separate from what you're reporting. [LB4]

LARA SKINNER: Yeah, I mean, I would just say that I really agree with you that I think that it's something that warrants further examination because there's a lot of very legitimate energy economists out there that are saying that it's going to increase fuel prices in the Midwest, which, obviously, would have a very detrimental impact on the economy. There's also economists saying that it's going to actually lower fuel prices. But I think it's something that needs to be sorted out in order to really do a good evaluation of the project. [LB4]

SENATOR HAAR: Would it be...over the discussion of LR1, Senator Dubas' bill, she listed some Nebraska agencies that should be consulted, and yesterday we added another one, the Hydrology Department and so on, would it be appropriate for when a state is looking at a pipeline route to...that maybe the Department of Labor, or whatever that would be in the state, that...because I'm really unhappy. I've talked...I don't know whether prices are going to go up or down and would you see that as a legitimate state issue to be engaged with? [LB4]

LARA SKINNER: Yes, I would. [LB4]

SENATOR HAAR: It would be interesting. Thank you. [LB4]

SENATOR SCHILZ: Thank you, Senator Haar. Senator Christensen. [LB4]

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SENATOR CHRISTENSEN: Thank you, Senator Schilz. Explain your comment on the multipliers that was used--50 year versus a hundred year, I believe you quoted. Is that just on the length of the estimated life of the pipeline? [LB4]

LARA SKINNER: It's on the estimated impact of the project on the broader economy. [LB4]

SENATOR CHRISTENSEN: But it's also going to have to go based off of the longevity of the pipeline? Correct? [LB4]

LARA SKINNER: Right, yes, definitely. [LB4]

SENATOR CHRISTENSEN: And so would that be assuming you guys are saying, or maybe industry standards say 50 years is normal life? [LB4]

LARA SKINNER: Yes. [LB4]

SENATOR CHRISTENSEN: Okay, I wonder...we've got a pipeline in the state that's been buried for 60 years, still working, it may blow up today, I don't know. [LB4]

LARA SKINNER: Um-hum. Yes. [LB4]

SENATOR CHRISTENSEN: I don't know what the right length is, you know, to say...I just wanted to clarify for my own part, if I understood that correctly. [LB4]

LARA SKINNER: Um-hum. Yes. And I think, probably, the more sort of important point in the discussion around the multiplier of indirect and induced jobs is that the Perryman Group and TransCanada, they use an estimate of 18 person-years of employment per million spent. Whereas, most major pipeline developers use an estimate of 11 person-years of employment per million spent. So that's a very significant difference in the number of jobs that...induced and indirect jobs that you expect to be created from the spending related to the pipeline and, you know, that basically would mean about half the amount of indirect and induced jobs that have been claimed by TransCanada and the Perryman Group would actually be created. [LB4]

SENATOR CHRISTENSEN: Well, I appreciate that. I will be asking them them questions too. But I took economics in college, but to me, just a little common sense is if you got oil in a glut, as you and I agree that there is, and if it moves to a refinery, and we ship oil down through a pipeline instead of shipping it in on a boat to be refined, it's got to decrease prices. Now, demand could go up and actually we would be paying more at the time it come in, but without it, it would have been higher yet. It's just a commonsense approach to me. I get in trouble, because I think relative. But anyway,

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thank you. [LB4]

SENATOR SCHILZ: Thank you, Senator Christensen. Senator Carlson. [LB4]

SENATOR CARLSON: Thank you, Senator Schilz. In your experience in studying job creation and so forth, if there were 10,000 jobs created in a project and it's a three-year project, would the State Department record that as 10,000 jobs or 30,000 jobs? [LB4]

LARA SKINNER: I have no prior experience of how the State Department handles these issues. This is the first time that I've been involved in a project that requires State Department approval. [LB4]

SENATOR CARLSON: So you don't know how the State Department reports jobs? [LB4]

LARA SKINNER: I don't. [LB4]

SENATOR CARLSON: Okay. All right. Thank you. [LB4]

SENATOR SCHILZ: Senator Haar. [LB4]

SENATOR HAAR: Well, when a newspaper says 20,000 new jobs, what...what, just in your opinion, as a reader of the newspaper, what does that say to you? You don't have to answer that. I'd like to ask you another...and maybe the answer to Senator Carlson's question gets at this. Are you aware of why--because my understanding is that the State Department started with TransCanada numbers--why their estimate is only a third of what TransCanada's is? [LB4]

LARA SKINNER: Well, the 20,000 in direct construction and manufacturing jobs is part of the job estimates that we cannot verify. So the State Department's estimates, our own estimates on the direct jobs, again, are based on the information that TransCanada provided to the State Department about how many workers they would need per pipe spread, per pump station, you know, per tanker station, that type of stuff. [LB4]

SENATOR HAAR: So when you apply...when you apply the multipliers, I guess the safe net that is to use, sort of the standards, right? [LB4]

LARA SKINNER: Um-hum. [LB4]

SENATOR HAAR: And what's the standard again? [LB4]

LARA SKINNER: It's 11 person-years of employment per million spending. [LB4]

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SENATOR HAAR: And there's no way to verify why TransCanada used the larger number? [LB4]

LARA SKINNER: There's not. We don't even know what the project budget that they're using for in those jobs estimates for the indirect and induced jobs. I mean, we know that they're saying that it's a \$7 billion boon to the U.S. economy. But in the Perryman Group report, which is the report that TransCanada commissioned, none of that information is provided. [LB4]

SENATOR HAAR: Okay. So it's a \$5 billion project for the United States. I mean that's one of the things I got out of your report. [LB4]

LARA SKINNER: Yeah. [LB4]

SENATOR HAAR: And that's just looking at the budgets and how much it's going to...what part of the pipeline is going to be in Canada and what part is in the U.S. and so on. [LB4]

LARA SKINNER: Yeah. I mean, if you actually subtract what's going to be spent in Canada and what's already been spent or committed in the U.S., it's actually \$3.3 billion remaining for the U.S. budget. [LB4]

SENATOR HAAR: Okay. But I would like...I would like some help in trying to unravel this question where we see economists on both sides. [LB4]

LARA SKINNER: Okay. I will definitely connect you with the appropriate people on our team and look forward to that discussion. [LB4]

SENATOR HAAR: And that we'll use that as one source, right? [LB4]

LARA SKINNER: Yes, exactly. [LB4]

SENATOR HAAR: Just as one...and that has to be soon because debate in the Chamber probably starts next week, so. [LB4]

LARA SKINNER: Okay. [LB4]

SENATOR SCHILZ: Thank you, Senator Haar. Senator Smith. [LB4]

SENATOR SMITH: Thank you, Senator Schilz. Dr. Skinner, again, let's go back to what causes price fluctuation, you were talking about price fluctuations and in your study increasing the cost of oil. Counting 20,000, 30,000-foot level, what are some of the things that affect higher prices in oil from your understanding? And I'll give you...let me

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start out with...let's say for example, war and conflict, does that have any impact on the cost of oil in this country? [LB4]

LARA SKINNER: Yes. I would think so. [LB4]

SENATOR SMITH: All right. So if we were able to have a supply that was not subject to war and conflict or the effects of war and conflict, that would likely do what to price? [LB4]

LARA SKINNER: It would probably put prices down. [LB4]

SENATOR SMITH: Okay, great. In terms of consumer confidence, if the consumers had more money in their pocket, what kind of impact do you see...fuel prices, or oil having on consumer confidence? [LB4]

LARA SKINNER: Again, I would think it would depend on the context. For example, there's been exponential increases in people using public transit that is not completely related to their discretionary spending. [LB4]

SENATOR SMITH: All right. Regulations, what kind of impact do you...redundant regulations have on the price of energy, have any idea? [LB4]

LARA SKINNER: They have a significant impact. But again, I would say that it depends on the economic sector. There was a lot of concerns among the unions that we worked with how some of the new legislation introduced by the EPA would impact manufacturing costs in the U.S. And in a lot of cases, they found that a lot of the regulations that were going to be required would increase energy efficiency. So was actually going to have a positive impact. [LB4]

SENATOR SMITH: Let me ask it a little differently. Excessive regulations, regulations that are not necessary, but that cost the supplier money, what kind of impacts would that have on pricing? [LB4]

LARA SKINNER: Again, I think in general most people would assume that, you know, that would have a detrimental impact. [LB4]

SENATOR SMITH: Okay. [LB4]

LARA SKINNER: But I think, again, studies at the EPA have shown that actually regulation for clean air and clean water have had very little economic impacts on, for example, the manufacturing industry. So I think it's something you have to look at on a case-by-case basis. [LB4]

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SENATOR SMITH: All right. So then going back to your report, you talk about prices increasing. [LB4]

LARA SKINNER: Um-hum. [LB4]

SENATOR SMITH: Now, kind of keep it in simple terms for me, what is causing that price increase again? [LB4]

LARA SKINNER: And again, I'm not an energy economist, so I'd prefer to put you in contact with the energy economist who did this section of the report. But my understanding of it is that there's currently a surplus of crude oil in the Midwest and the construction of the pipeline would alleviate that surplus and would be moving crude oil down to the refineries that have been upgraded in Texas, as well as allow it access to the world market. [LB4]

SENATOR SMITH: Well, I personally think this is probably one of the most critical issues facing our country today in terms of energy reliability. And if you have energy experts, I sure wish they would have been here today to talk to us. [LB4]

LARA SKINNER: Okay. Well, I will certainly put you in contact with them. [LB4]

SENATOR SMITH: Thank you. [LB4]

SENATOR SCHILZ: Thank you, Senator Smith. Senator McCoy. [LB4]

SENATOR McCOY: Thank you, Chairman Schilz. And thank you, Dr. Skinner, for being here today. In your prepared testimony, I don't see it mentioned the Goodman Group, but that's come out in some of your answers. If you would elaborate, what is the Goodman Group? [LB4]

LARA SKINNER: The Goodman Group is a consulting firm that works with various individuals and organizations mainly on evaluating the economic and employment impacts of energy projects. [LB4]

SENATOR McCOY: Does the Goodman Group fund the Global Labor Institute at Cornell? [LB4]

LARA SKINNER: No, they don't. [LB4]

SENATOR McCOY: Okay. Now you've...in some of your answers to Senator Smith on the economics of this, appears that the Global Labor Institute there at Cornell has farmed out sections of this from the economic standpoint of this to the Goodman Group, is that correct? Is that what you're referring to when you talk about energy consultant?

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[LB4]

LARA SKINNER: Um-hum. Um-hum, exactly. [LB4]

SENATOR McCOY: What is the Goodman Group's position on the Keystone XL pipeline? [LB4]

LARA SKINNER: You would have to ask the Goodman Group that, but I'm pretty sure that they have no position on the pipeline. And I actually looked into them a little bit...well, you know, quite a bit before we decided to work with them on this project and found that they have a pretty stellar record of not taking any positions on the projects that they're working on. In fact, I didn't find one example where they had taken a position on one of the projects that they were evaluating. [LB4]

SENATOR McCOY: Well, Dr. Skinner, I find that curious in that I'm holding in my hands a client list off the Goodman Group's Web site in which Greenpeace and the Sierra Club are listed as clients of the Goodman Group. [LB4]

LARA SKINNER: Um-hum. [LB4]

SENATOR McCOY: So I find it curious, when you talk about energy consultant as to, and I asked you what the position is of the Goodman Group on this particular issue, it appears the Goodman Group had quite a bit of impact on your report and you've mentioned them a number of times in your testimony, mentioned in your prepared testimony, but clearly they have taken a position in there with their client list. Did they represent Sierra Club or Greenpeace as they helped you put together this information for this report? [LB4]

LARA SKINNER: Absolutely not. [LB4]

SENATOR McCOY: Thank you. [LB4]

SENATOR SCHILZ: Thank you, Senator McCoy. Any other questions for Dr. Skinner? Okay, Dr. Skinner, thank you very much for your time. [LB4]

LARA SKINNER: Thank you. [LB4]

SENATOR SCHILZ: Other proponents for LB4? Go ahead, sir. [LB4]

MARK WELSCH: Thank you. Is this the right...do I just not touch this, is that the key? [LB4]

SENATOR SCHILZ: You'll be just fine. [LB4]

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MARK WELSCH: Okay, I won't touch it. I would have done the same thing. And thank you, Senators Schilz and Langemeier for having this, and other senators, thank you for being here to listen to all of this testimony. My name is Mark Welsch, M-a-r-k W-e-l-s-c-h. I live at 5611 Howard Street in Omaha, Nebraska. And I'm here representing Nebraskans for Peace and I'm also the secretary...I'm the Omaha coordinator for Nebraskans for Peace and I'm also the secretary for a relatively new group, The Nebraska Chapter of 350.org, which is very concerned about global warming and climate change. Now I understand that pipeline companies, and many people in our state, would want fast action on a pipeline routing decision. You know, I in the past have wanted faster action from Health and Human Services and the Attorney General and the Governor on a smoke-free bill. I wanted the regulations passed and adopted and everything, but it took a long time. It took well over a year to get that done, because there is a process in that system, a check and revision process to make sure that the end result is a good one. It can take well over a year to adopt rules and regs for a new law. I have no idea how long it will take to adopt rules and regs for this one. I would like to go through here very quickly and just point some things out that I've made some notes on. On page 6, on line 22, you say, within 30 days after receipt of an application the department shall provide notice and hold public hearings. Well, I'm curious, what happens if a key person or persons in the department are on vacation for a week or two, or god forbid three, when that application is received? On page 7, line 3, it says, location or locations for meetings. That seems like that's a little too broad. What happens if a governor is elected who believes the 98 percent of the global scientists in this country that global warming is caused by human activity, burning fossil fuels, and that governor just says no to every pipeline? Would that make all of you feel really good that you gave that much power to a future green governor? Not saying that this Governor isn't green, but that could be the case even now. Should the people appointed by the Governor be accepted and approved by the Legislature? I think that's sort of a standard thing, but there's no language in here talking about that. And again, you've got, on page 8, you've got another deadline of 60 days. On page 8, on line 13, you talk about--as prescribed by state law. Well, I don't think there's any law that protects the Sandhills and the Ogallala aquifer now. In page 9, Section 8, it starts out with 30 days, but you never mention the Attorney General review. Is there not going to be an Attorney General review of this committee that is set forth? And what happens on page 9, line 19, if the Governor is not...if the Governor doesn't issue a written directive in a certain amount of time, then I don't think he's doing his job. I don't think you should allow the Governor to just sit moot on this. You know, it seems like he should...or she, in the future, could...should make that decision. But let me make it clear, we are supportive of this bill. Like I mentioned, I think there are changes that need to be made to this to make it better, or at least questions need to be asked and answered to make it more clear. And if somebody wanted to ask questions of an organization that does think that this Keystone pipeline should be stopped, not just rerouted, I'm your man. [LB4]

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SENATOR SCHILZ: Thank you, Mr. Welsch. Any questions for Mr. Welsch? Senator Langemeier. [LB4]

SENATOR LANGEMEIER: Thank you, Senator Schilz. I do have one question for...and you brought up a whole new concept I hadn't thought of. Is there any AG review of the committee? Should there be an AG review of LB1, LB3, LB4, LB5 and LB6? [LB4]

MARK WELSCH: Well, I'm most familiar with Health and Human Services bills regarding smoking, because that's what I worked on for 20 years. And the process they go through with Health and Human Services is they have a public hearing, you know, they adopt rules and regs; or they don't adopt them, they write them; they have a public hearing; they revise them possibly; and then they may or may not have another public hearing. And then they go to the Attorney General. The Attorney General reviews them and he may send them back to Health and Human Services for them to review depending on what he sees...or she, and then they go to the Governor for his or her review. And then he or she could send them back to the AG. You know, that whole process you've got checks and balances all over the place in that process. And I don't know if that's standard with all of the rules and regs that are adopted by different agencies. But that is the process with Health and Human Services. [LB4]

SENATOR LANGEMEIER: Okay. I appreciate it, thanks. [LB4]

MARK WELSCH: You're welcome. Thank you. [LB4]

SENATOR SCHILZ: Thank you, Senator Langemeier. Any other questions for Mr. Welsch? Seeing none, Mr. Welsch, thank you very much for your testimony. [LB4]

MARK WELSCH: Thank you very much. [LB4]

SENATOR SCHILZ: Further proponents for LB4? [LB4]

DUANE HOVORKA: Good afternoon, Senators. Glad to be here. I'm Duane Hovorka, D-u-a-n-e H-o-v-o-r-k-a, executive director of the Nebraska Wildlife Federation and I'm pleased to be here to testify in support of LB4. What I want to do is highlight three provisions that are in the bill that we think are pretty important and just explain why. Section 9 is the section that deals with eminent domain. The Fifth Amendment to the U.S. Constitution was passed, in part, to give...make sure that if a private property holder lost their property to the government there was a clear public use, due process of law, and just compensation. Those are things that public interest test is not there in current Nebraska eminent domain law. And so this bill would give the Governor the authority by approving the permit, the certification, that would, essentially, be the public interest test that said there is a public interest for this project. And so the extraordinary powers of eminent domain would then be okay to use by a private company. Second, in

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Section 6 of the bill, there's some very direct participation by our state agency heads in the decision-making process. We think that's important to bring the best and the brightest that we have in our state agencies and bring those opinions to bear in terms of what the impacts are going to be on Nebraska and there's a written recommendation. Again, that's good transparent government. And third, in Section 7, if my math is right, I think there's a 60-day...60 days for the committee to act after it receives an application. And then following the recommendation, there would be 30 days for the Governor to act on the recommendations. So you've got, I think, 90 days total, start to finish. As government actions go, that's pretty darn fast. And I'll let you be the judge of whether that's too fast. But certainly it's not too...it's not too slow for a private company to expect a decision. And so I think that kind of...clear deadlines and a clear, swift participation, I think is...I think it's a reasonable thing for a private company to expect out of the decision-making process. So I'll stop there and see if you have any questions. [LB4]

SENATOR SCHILZ: Thank you, Mr. Hovorka. Any questions for Mr. Hovorka? Seeing none, thank you very much for your testimony. [LB4]

DUANE HOVORKA: Thank you. [LB4]

SENATOR SCHILZ: Other proponents of LB4. Good afternoon. [LB4]

AMY SCHAFFER: Hello. Hi. My name is Amy Schaffer, A-m-y S-c-h-a-f-f-e-r. I am the daughter of a landowner in Rock and Holt County. My families both have ranches there. That's where I grew up. I'm in support of Senator Langemeier's bill, LB4. And I think with the announcement yesterday that the Inspector General is going to be investigating the EPA, I think there's an opportunity here where we can protect the landowners in Nebraska. And I think we should capitalize on that opportunity. And I think there's also some other good bills, Senator Haar's bill, Senator Avery's bills, that you can combine and we can take care of the landowners in Nebraska. They deserve this. That's what supports Nebraska. So we need to stick up for Nebraskans. That's all. [LB4]

SENATOR SCHILZ: Thank you, Ms. Schaffer. Any questions for Ms. Schaffer? Seeing none, thank you so much for your testimony. [LB4]

AMY SCHAFFER: Thank you. [LB4]

SENATOR SCHILZ: Other proponents for LB4? [LB4]

RAYMOND MOLLER: Good afternoon. My name is Raymond Moller, R-a-y-m-o-n-d M-o-l-l-e-r. I am one of the landowners that has received letters threatening eminent domain. We received letters in July 2010 and April 2011. The TransCanada field reps led my mother to believe, initially, that if she did not sign the easement agreements that they would take it by eminent domain and she would get nothing; which I know is not

correct. I'm a former pipeline employee. I used to work for Northern Natural Gas and Enron, and, yes, I did lose my retirement. But I do kind of know how that system works. Most all the things that the TransCanada field rep has told us over the last two years have been very contradictory to what's been coming out in the news and press the last six months. It seems to me that their story changes with the direction of the wind. The jobs created, where the oil is going, we were told directly by the TransCanada rep for the last two years that the oil was headed down to the Gulf Coast to the refineries, because it could be easier access to worldwide markets and, ultimately, sold to China. Some of the other things that we were concerned about, as far as our property in Merrick County, is we've been telling them for two years that the aquifer is within two feet of the surface. And with four feet of cover over this pipe and a 36-inch diameter pipeline, that puts it at seven foot into the aquifer. Just recently they've designated 35 miles in Holt County as wetlands area and stated that they would protect the pipe with concrete to aid in any possible damage to the pipeline. That is false. We were told...because I asked the gentleman that directly a year ago, I said, you cannot dig a hole out here...dig a trench without it filling with water as fast as you can dig it. How are you going to sink that pipeline? He said, we will have to encase it in concrete to get it to sink into the aquifer. That's something that people have not been told about. One of the other things that I'm very concerned about is the life span of the pipeline. When they determined that its life span is up, according to the easement agreements, it would be turned back over to the landowner, abandoned in place, then it becomes our responsibility. We asked them if they would dig it up and cap it at each end. They said absolutely not, it will be abandoned in place. As a former pipeline employee, I know that when they abandon a pipeline, the cathodic protection is shut off, all the safety systems are shut down, there is nothing. You have the pipe with residual oil in the pipeline that's going to settle down into the lower areas which we are at in the Platte River Valley in Merrick County. So that's some of my concerns and wanted to express my opinion and support to Senator Langemeier's bill and several of the other bills that's been introduced. And I guess I would just encourage all the senators to listen to the citizens of Nebraska and pay more attention to the citizens of Nebraska who elected you as our representatives and, basically, take care of the Nebraska needs and not TransCanada. That's all. [LB4]

SENATOR SCHILZ: Thank you, Mr. Moller. Senator Dubas. [LB4]

SENATOR DUBAS: Thank you, Senator Schilz. Thank you, Mr. Moller, for coming today. Have you signed your easement with... [LB4]

RAYMOND MOLLER: No, I have not. [LB4]

SENATOR DUBAS: Okay. I would assume, knowing the territory in Merrick County that some of your property may be declared wetland, is there any wetland...? [LB4]

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RAYMOND MOLLER: Not according to TransCanada. [LB4]

SENATOR DUBAS: But has, like through NRCS, do you have wetland designations? [LB4]

RAYMOND MOLLER: No. [LB4]

SENATOR DUBAS: No, you don't. Okay. My question was going to be if you have any designated wetlands, if you've had to deal with NRCS... [LB4]

RAYMOND MOLLER: No. [LB4]

SENATOR DUBAS: ...and any requirements that the pipeline going through, but you don't have any wetlands on your ground then? [LB4]

RAYMOND MOLLER: No, we do not. [LB4]

SENATOR DUBAS: Okay. Thank you. [LB4]

RAYMOND MOLLER: We're about a half mile...half to three-quarters of a mile south of the Platte River. [LB4]

SENATOR DUBAS: Okay, thank you very much. [LB4]

RAYMOND MOLLER: Um-hum. [LB4]

SENATOR SCHILZ: Senator Carlson. [LB4]

SENATOR CARLSON: Thank you, Senator Schilz. I simply want you to verify your initial statement in this hearing today that you are saying that the representative from TransCanada said that the purpose of that pipeline is to move crude down to the Gulf Coast to be refined for the worldwide market. [LB4]

RAYMOND MOLLER: That is correct. [LB4]

SENATOR CARLSON: And that was the main...he presented that as the main purpose of the pipeline? [LB4]

RAYMOND MOLLER: That is correct. [LB4]

SENATOR CARLSON: And said nothing about the possible benefits to the Midwest of this refined oil? [LB4]

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RAYMOND MOLLER: No, he did not. [LB4]

SENATOR CARLSON: Okay, thank you. [LB4]

SENATOR SCHILZ: Thank you, Senator Carlson. Any questions of Mr. Moller? Seeing none, thank you, sir, for coming in today. We appreciate your time. [LB4]

RAYMOND MOLLER: Thank you. [LB4]

SENATOR SCHILZ: Other proponents for LB4? [LB4]

LEN SCHROPFER: Good afternoon, again, Chairman Langemeier. Members of the Natural Resources Committee, I'll be quick because I said a lot yesterday. [LB4]

SENATOR SCHILZ: Excuse me, I need you to spell your name. [LB4]

LEN SCHROPFER: (Exhibit 10) Oh, the spelling of my name, I'm sorry. L-e-n, Len, Schropfer, S-c-h-r-o-p-f-e-r. I just want to chime in on this business of...Nebraska does need to have some clear guidelines for the use of eminent domain. I've been trying to read these various bills. I suspect that it finally will be a matter of consolidating the best from LB3 and LB4 and LB1, I hope you can do that. I, especially, wanted to speak just now because the question of whether this will lower our gas prices has come up again and again. I would like to quote...this is from TransCanada's application to build the pipeline. It's their words. If I may read it, it's quick: existing markets for Canadian heavy crude, principally U.S. Midwest are currently oversupplied, resulting in price discounting for Canadian heavy crude oil. Access to the U.S. Gulf Coast by the Keystone XL pipeline is expected to strengthen Canadian crude oil pricing in the U.S. Midwest by removing this oversupply. This is expected to increase the price of heavy crude to the equivalent cost of imported crude. Similarly, if a surplus of light synthetic crude develops in the U.S. Midwest, the Keystone XL pipeline would provide an alternative market and therefore help to mitigate a price discount. The resultant increase in the price of heavy crude is estimated to provide an increase in annual revenue to the Canadian-producing industry in 2013 of U.S. dollars, \$2 billion, to U.S. \$3.9 billion. And I'm sorry, I only...I have three copies of this, I'd be glad to supply at least one to Senator Christensen, if you'd like. That's the main thing I wanted to point out to corroborate, I think it was Dr. Skinner's testimony, or whoever else brought this up. This will not lower the price of gas to us. [LB4]

SENATOR SCHILZ: Thank you. Thank you. [LB4]

LEN SCHROPFER: Thank you. [LB4]

SENATOR SCHILZ: Senator Christensen. [LB4]

SENATOR CHRISTENSEN: Again, we get back to basic economics. If you look at what the price refineries are paying as worldwide price on the futures market. It's as I explained it before. If Canada has a surplus, or I used the Nebraska surplus in an area, if crude is \$100 and it takes you \$20 to get it shipped to where it can be used, then producers are going to get \$80, because \$20 is in transportation. The actual price to the refineries is the world market. That's the basic economics of this. So if it's up there, if crude is \$100 and they're only getting \$65 because of the \$35 decrease, that's because of the glut and what it takes to ship it to a place. So if they can get it shipped cheaper, get rid of the trucks or whatever is hauling it, then they'll get the \$100 because the price is still the same to the refinery. That's set by the world trade market. So it's not going to increase or decrease the price unless we increase supply. And that's where I made the comment, if we can increase the supply down there, that will help lower the market. That will increase Canada's, yes. I agree with what it says. It is saying the same thing I am. You're not understanding basic economics. That's why I'm trying to use the illustration. If the refinery price is \$100, and I just took out one step, but maybe through the pipeline it costs \$10 so they get \$90. But right now because they got to truck it, it costs \$35, they get \$65. So their price will go from \$65 to \$90. It's just simple economics. The price at the refinery is still the same. It's based off of the world market. [LB4]

LEN SCHROPFER: Sir, I do thank you. May I give you this? I'm sorry I don't have extra copies. [LB4]

SENATOR CHRISTENSEN: Please give it to her and we'll all get it. [LB4]

SENATOR SCHILZ: There we go. [LB4]

LEN SCHROPFER: I'll give you all three copies of this. I'm sorry I don't have more. Thank you very much. [LB4]

SENATOR SCHILZ: Okay, are there any other questions for this gentleman? Seeing none, thank you very much. [LB4]

LEN SCHROPFER: Thank you very much. [LB4]

SENATOR SCHILZ: Further proponents for LB4? Good afternoon. [LB4]

DAVID HUTCHINSON: (Exhibit 11) Good afternoon. My name is David Hutchinson, D-a-v-i-d H-u-t-c-h-i-n-s-o-n. Well, I used to buy diesel fuel for 15 and 17 cents and I guess employment did go up when it was \$3.90 now. Senator, State Senator Bob Skarphol from North Dakota, tells me that their oil find up there is bigger than anything in Saudi Arabia. South Dakota has a lot of oil. And Gordon Howard from western

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Nebraska will tell you that we have a lot of oil in western Nebraska. So if you're wanting oil, I think we have it. While buffalo is one thing the white man hasn't screwed up, but he keeps trying. And that's kind of like the Ogallala aquifer, let's leave it alone. I have a certified organic ranch in Rock County. When the pipeline leaks, and because all pipeline eventually leak, we will lose our certification for organics. Our certifiers have already notified us that that would happen. We raise organic beef, buffalo, goats, potatoes, and squash. We are against the Keystone XL pipeline. Not only would it pollute the water and affect the wildlife in rural areas, but also harm people in all the cities like Lincoln and Omaha, Grand Island, Columbus, North Platte. If an engineer, geologist, biologist, would have just taken the time to walk and study the Sandhills, walk the land through the wetlands, through the sandy hills, they would understand the problem. On our ranch we have 17 artesian wells. Four-inch casing this high, you uncap it, the water is this high. That's a lot of pressure, gentlemen. That's just one of them. I have an irrigation well that if I stood up would be chest high. It takes two 55-gallon barrel drums to stop that water. That's a lot of pressure. And these people when they dig those pipelines are going to open up a lot of wet areas. We call them sinkholes. You walk out there on that ground and you're just like walking on a trampoline. And this could...if the pipeline really leaks, it's going to contaminate the Ogallala aquifer. It's like MTBE versus the ethanol. Ethanol makes gasoline burn clean. A few years ago the EPA approved that to burn clean. The only problem is, when it leaked into wells, just a few drops, would contaminate all the wells. That happened in Colorado and California a lot. I'm sure you're familiar with that. Well, it's not available anymore, they took it off the market. Well, those were these supposedly experts that knew what they were talking about. And in Alaska, you know, they have a pipeline in Alaska, but do we get any of that oil? I think we ought to check on that. I think most of it goes to Japan. And like it's been stated, this oil is going to Texas and I don't think it's going to get back here to the Midwest to benefit us. You know I think we'd be thinking about fish and wildlife and what we're doing to the environment. It was mentioned about the golf course a little bit ago. I think that's great the golf course, but they left the land alone and they built the golf course according to the land. I'm against the Ogallala...I'm against the pipeline going through the Sandhills for that reason. If you're going to put the pipeline in the state of Nebraska, it needs to be where there's hardpan, clay pan, but not sand, not a high water table. If there are any questions. I appreciate the time and thank you. [LB4]

SENATOR SCHILZ: Thank you, sir. Senator Christensen. [LB4]

SENATOR CHRISTENSEN: Thank you, Mr. Chairman. Thank you for testifying. Now I'll totally agree with you, we don't need this pipeline. If we had everybody working on the federal government and drilling offshore, we could fill that refinery down there. Not build the pipeline, and not even be having this discussion. But unfortunately, we've got a lot of...you might have heard the phrase used, "strange bedfellows" around here. We got groups supporting each other. We've got people on...that say support the pipeline, let's just move it...on their Web site say, windmills, not oil spills. They really don't support oil.

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But it's a...convenient right now to try to move it, hopefully to kill it. There is so much politics going on right now, you won't believe it. But truth is, if everybody is working as hard to get the offshore drilling and drilling in places you said, we don't need this pipeline. If we're going to drill in South Dakota and stuff, we'll have to get it down there. But the fact is, we got plenty offshore, and yet we don't allow it drilled. Other nations come in, just outside of our jurisdiction, drill the wells, move it in. It is so ridiculous the nation's policy. I'm a hundred percent, we don't need this pipeline. If we had a federal government with their head screwed on, but we don't. So we're doing the next best thing that we can do to work around their stupid rules. And that's being very blunt and honest. Probably not good in the transcript, but it is a fact. [LB4]

DAVID HUTCHINSON: Well, we don't need it through the Sandhills where the Ogallala aquifer is. And a lot of people have stated in testimonies, you know, that aquifer is through the whole state. It's not through the whole state. They need to know where, geographically, it is. I had a banker 25 years ago, he uses me in his example, he says, you had the dumbest idea in the world, bottled water. Today he says he's the dumbest banker in the world because he didn't promote that bottled water. And we have some of the...since I'm certified organic, according to organic standards, we have to have our water tested and we have some of the purest water there is. They said that when we have it tested by the University of Nebraska laboratory they said the only thing purer is distilled water. Let's keep it that way. Anything else? [LB4]

SENATOR SCHILZ: Senator Dubas. [LB4]

SENATOR DUBAS: Thank you, Senator Schilz. Thank you, Mr. Hutchinson, for coming today. Would you give us a little bit of a better understanding of what you have to go through to become a certified organic producer? [LB4]

DAVID HUTCHINSON: Well, you have to be chemical free for three years. And I advertise beyond organic, beyond natural because I think my standards are higher than what theirs are, but you can't have any chemicals. You have to use things that...well, if you're going to use like a fertilizer you might be using manure; or you could use organic raw milk; or certain fish sprays if you're going to spray it on weeds. We just use grass. We're 100 percent grass fed. In fact, I advertise grass fed, grass finished. If it's not grass fed, it's not gourmet. But you have to...and you can't use any chemicals on your...or certain shots on your animals. And you have to have your water tested. Like it was mentioned earlier, you can't use creosoted posts. You have to use posts that don't have creosote on them. [LB4]

SENATOR DUBAS: Is there any kind of an auditing process to make sure that you're doing that? [LB4]

DAVID HUTCHINSON: Yes. We have to be inspected yearly and you have to keep

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records if you hayed your cows or your calves; or if you...what you feed them. You have to have the records when you did it, how you did it, when you moved them from pasture. Your pastures have to be numbered and so...when you move them. [LB4]

SENATOR DUBAS: How easy would it be for you to lose your...how difficult would it be for you to lose your organic certification? [LB4]

DAVID HUTCHINSON: Well, if you had somebody came...when you enter my ranch, it says toxic sprays prohibited. You couldn't spray your...like a weed killer. In fact, anything that...the dirt doctor, Howard Garrett from Texas, he took on Texas A&M a few years ago and he says I can do anything organically that you tell me you're using for sprays. And like if you were going to spray something...like thistles, this is a thing that I've really complained about with the state, you have all these weed control districts. Well, if they're going to do that, if you have a problem with weeds, use vinegar. You can use the 5 percent vinegar you buy in the store, but we use about a 20 percent vinegar that's organic and then you can spray it on the weed if you had a problem. Or see why you have a problem. It's usually a soil imbalance. But we can use...like fly control, we have a diatomaceous earth you can use. If you treat them for...say you had an animal cut himself, well, we could use hydrogen peroxide, food-grade hydrogen peroxide. You could use organic aloe vera, it's very healthy for animals. [LB4]

SENATOR DUBAS: If there were a spill, not on your property, but somewhere else, could that still jeopardize your organic certificate? [LB4]

DAVID HUTCHINSON: Well, yes, if it jeopardized the water supply or if it got close to me, yes, it would. They've already told me that. We've checked into it. [LB4]

SENATOR DUBAS: All right, thank you. [LB4]

SENATOR SCHILZ: Thank you, Senator Dubas. Any other questions? Sir, excuse me, sir, sir, we have another question for you from Senator Smith. [LB4]

SENATOR SMITH: Thank you, Senator Schilz. [LB4]

DAVID HUTCHINSON: You want to buy some of that 15-cent oil...or diesel fuel, right? (Laughter) [LB4]

SENATOR SMITH: No, (inaudible) about that. But I'd like to...I find it very interesting learning about the organic farming. Are there...are you aware of any organic farms that are located in close proximity to the current pipelines that crisscross? [LB4]

DAVID HUTCHINSON: Yes, I am. [LB4]

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SENATOR SMITH: Okay. There are some? [LB4]

DAVID HUTCHINSON: There's one right here...that's testified. [LB4]

SENATOR SMITH: Okay. So there are some that are very close to them. [LB4]

DAVID HUTCHINSON: Or going through them, yes. [LB4]

SENATOR SMITH: And how long...any idea how long those pipelines... [LB4]

DAVID HUTCHINSON: Well, Bruce Boettcher testified, it goes through his ground. And Bob Bernt is going to testify, I believe. [LB4]

SENATOR SMITH: So the pipeline itself doesn't jeopardize the licensing? [LB4]

DAVID HUTCHINSON: Well, technically if you...it could. That area where it did...you could not certify that ground because you're bringing equipment in there; they spill oil; you can't do that. You have to recycle your oil. If you take your oil and change it from your tractors or your automobiles, you have to take it...like we take ours to Sioux City to a place that's certified for refining oil. You can't just dump it on your ground. I mean, I'll guarantee you those people are going to have oil leaking from their vehicles and their tractors. You can't even imagine this. This is what dumbfounds me. You have a wet area. Please go look at it and walk through it. I've said in Atkinson I'd buy them...I'd cook them an all-organic meal if they just walk five miles with me. If you'll just walk a mile with me, I'll cook you an organic meal. [LB4]

SENATOR SMITH: So it's your understanding that...that necessarily that the construction would jeopardize your licensing for organic farming. [LB4]

DAVID HUTCHINSON: That part of the place where it went through, in a certain buffer zone would not be certifiable. [LB4]

SENATOR SMITH: Okay. But, evidently, well after the fact, some of these other organic farms have maybe become organic farms well after the pipeline that they're nearby was in the ground, so they're okay now. [LB4]

DAVID HUTCHINSON: Well, or they'd have to go through that three year... [LB4]

SENATOR SMITH: Is it three years? [LB4]

DAVID HUTCHINSON: Yes. I wished it would be about seven or ten years. But it's three years. [LB4]

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SENATOR SMITH: Okay. All right. Thank you, appreciate it. [LB4]

SENATOR SCHILZ: Thank you, Senator Smith. Any other questions? Thank you, sir, very much for your time. I appreciate your testimony. [LB4]

DAVID HUTCHINSON: You're welcome. [LB4]

SENATOR SCHILZ: Any other proponents for LB4? Proponents? Okay. Would...should we take another break here or should we just move into the...should we take a little break? [LB4]

SENATOR LANGEMEIER: I'd take a five-minute break. [LB4]

SENATOR SCHILZ: Why don't we go ahead and...are you a proponent? [LB4]

SENATOR LANGEMEIER: Wait a minute. Are you a proponent? [LB4]

SENATOR SCHILZ: Okay, please come forward. [LB4]

SENATOR LANGEMEIER: Don't hesitate or we'll skip over you unintentionally. [LB4]

SENATOR SCHILZ: Sorry about that. [LB4]

EMILY LEVINE: Well, I was trying to be polite, see if somebody... [LB4]

SENATOR LANGEMEIER: Don't be polite. [LB4]

SENATOR SCHILZ: Don't worry about that with us. [LB4]

SENATOR LANGEMEIER: Knock people down to get up here. [LB4]

EMILY LEVINE: Well, I know some of you aren't so polite, but I try. My name is Emily Levine, E-m-i-l-y L-e-v-i-n-e. I've never done anything like this and I'm nervous, but I shouldn't be. Anyone who knows me knows that I would normally have a perfectly written out thing with a ton of footnotes and I'd been writing it in my head for a week. I've just got scribbles. I want to talk about land. In the United States of America, Europeans came here so they could get land. And that was a mind-boggling thing for people who never could own land. You could come to Nebraska, get 160 acres, if you were a Kinkaid you get 640. That's what makes America different. The Jeffersonian Democracy, when he talked about a nation of yeoman farmers, he understood about owning land. There are people who think you can't own land. You're just stewards of the land, whatever. If we're talking about eminent domain, which is the question at hand, we have to accept the concept that you can own land. The thought that a corporation could

take your land that was your grandparents' and your great-grandparents' and your great-great-grandparents' and blood and sweat and tears I think you understand why this is so important. We pay you guys. You need to protect us. There's a growing feeling in the state that this body is not protecting the landowners, let alone the water or the land itself. There's a feeling among people in the state, why didn't you deal with this before so we weren't stuck with this? I'm going to run out of time. TransCanada is asking a lot of us and of our state. They are desperate so you can understand just how different the Alberta tar sands bitumen is, how different its extraction is, and also how different it will be in a pipeline and in our land and water when it leaks. I would think that the least TransCanada can do, given that they're asking for our land, is to fly every single legislator up to Alberta and let a nonpartisan person, not them, show you around and explain it to you. There's a lot of ignorance. You guys hadn't even seen eminent domain letters. It's like where have you been? We all know about this. Why is it new to you? I want you to ask me questions because I had a couple more things to say. [LB4]

SENATOR SCHILZ: Go ahead if you want, as long as just make it concise, please. [LB4]

EMILY LEVINE: I could go for hours (laughter) so I'm going to be real concise. You can trust energy and utility corporations to do one thing: They will lie. We know that. We've seen it and we've seen it and we've seen it. Twenty-two "godzillion" sensors in the pipeline, what could possibly go wrong? Well, the Deepwater Horizon wondered how the hell back flow preventer fail as well. TransCanada doesn't have a clue how to clean up tar sands bitumen spilled on wet hay meadows or what to do when it leaches into the sand. It's about as silly as them talking about restoring grasses in the Sandhills. When it comes to justifying a potentially disastrous project by stating that it will create jobs or lower the price of gasoline, this is simply disingenuous and sets us on a slippery slope. [LB4]

SENATOR SCHILZ: Thank you, Ms. Levine. Any questions for Ms. Levine? Seeing...yeah, Senator Haar. [LB4]

SENATOR HAAR: I was just wondering where you're from, ma'am. [LB4]

EMILY LEVINE: I was going to start by talking about that. [LB4]

SENATOR HAAR: Okay. [LB4]

EMILY LEVINE: I'm not from the Sandhills, but I wish to heck I was. I should be because that's what my heart is about. I was fortunate to be brought here when I was 11 months old so 54, 55 years ago. So I'm from here. [LB4]

SENATOR HAAR: From Lincoln. [LB4]

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EMILY LEVINE: Yeah. [LB4]

SENATOR HAAR: Yeah. [LB4]

EMILY LEVINE: Every chance I get I go west. This is as far east as I can stand to be. [LB4]

SENATOR HAAR: Okay. Thank you. [LB4]

EMILY LEVINE: Please listen to Nebraskans. You notice in all of this the only people testifying against these things are people paid by the corporation, not the people in the state. You know that. You all know that. [LB4]

SENATOR SCHILZ: Thank you, ma'am. Any other questions for Ms. Levine? If not, thank you very much for your testimony, appreciate it. Other supporters for LB4? Come on up. [LB4]

BEN GOTTSCHALL: (Exhibits 12, 13) Hello. My name is Ben Gotschall, that's B-e-n G-o-t-s-c-h-a-l-l. I live here in Lincoln. I grew up on a ranch in the Sandhills. My family still has a ranch there and I still have a cattle business there. I'm here representing myself. I brought some information that I'll submit for the record that I hope you'll look at, just some general statements and then something I want to talk about. I'd also like to echo Dave Hutchinson's comments earlier. Our family is a certified organic grass-fed ranch. We've had buffalo. We do beef and dairy right now, and the possibility of contamination to the water is a big issue for organic farmers and ranchers like my family and many others, our neighbors and ranchers and one of them too. And since the earlier...testimony by an earlier person talked about jobs, I just wanted to enter something into the public record. It's TransCanada's statement on forward-looking information which accompanies all their press releases about jobs and most all their press releases about anything that you read. So I would urge you to make sure that you know whether or not the information that you're getting from TransCanada is forward-looking information or not. Because forward-looking information, according to the last paragraph of this statement, goes as follows. "Readers are cautioned not to place undue reliance on this forward-looking information, which is given as of the date it is expressed in this news release or otherwise, and to not use future-oriented information or financial outlooks for anything other than their intended purpose. TransCanada undertakes no obligation to update publicly or revise any forward-looking information, whether as a result of new information, future events, or otherwise, except as required by law." So basically what they're telling you there is that they're going to give you this information and if some new facts come out, whether it's from them or anybody else, they don't have to change that information. It's basically their opinion. It's basically their belief. So I'd just like to make sure that when you're getting information

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from TransCanada, clarify whether or not that information is forward-looking. Because I think this statement would call into question some of the validity of that information, and I just wanted you to be aware of that. So I have copies of that and that section that I read is highlighted. And I also would like to say that I have had the opportunity to travel along the pipeline route from Texas to Nebraska. I've met with landowners in other states about this, and I have also been out to Michigan where the Kalamazoo River oil spill was. And I believe that there's been some misleading information put forth in these hearings about whether or not oil floats or not. Again, an earlier testifier in a different committee talked about the substance that's in the pipeline. And it's diluted bitumen, which is composed of two main elements: the bitumen and the diluent. The diluent is higher...sorry, lighter volatile hydrocarbons that allow the bitumen, which is the oil substance, to flow through the pipe. So there's two different things in there. And when a pipe leaks like it did in Michigan where I saw this myself--I walked in it, I saw the rivers, I dug in the bottoms of this Talmadge Creek which was the main point of site--there was oil on the bottom of that creek. Not only that but the oil company, Enbridge, or the pipeline company was covering that up with sand and gravel in an attempt to hide it. And when you dig on the bottom of that creek with a shovel or rake it with a garden rake, that oil comes up. It doesn't float. Some of it does float to the surface because of the nature of the mixture; it's not just one consistent substance. Some of it does float to the top and it's able to be seen at least; I don't know if it's able to be cleaned up, but some of it does sink to the bottom and they're having real problems out there in Michigan. They've already spent over...they're going to spend over \$700 billion to clean this up and they're not even close to getting it done. They've recovered almost all the oil they said they thought spilled and they're nowhere near getting it all cleaned up. And this is a very big issue for us here with this pipeline crossing so many of our rivers because it will...this type of oil doesn't necessarily float; it will sink. And I've seen this and it's a huge problem I think that we need to think about. [LB4]

SENATOR SCHILZ: Okay. Thank you. Any questions for Mr. Gotschall? Seeing none, thank you very much, sir, for your testimony. [LB4]

BEN GOTSCHALL: Thank you. [LB4]

SENATOR SCHILZ: Yeah. Any other proponent testimony for LB4? Seeing none, I think at this point I think we'll take a five-minute break. I could use a little bit of one. I'm sure everybody else could too, and we'll come back and start up then. Thank you. [LB4]

BREAK

SENATOR SCHILZ: At this point in time, we would invite opponents for LB4 to come forward and testify. Mr. Jones. [LB4]

ROBERT JONES: (Exhibits 14-17) Good afternoon, Vice Chairman Schilz, Chairman

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Langemeier, and members of the Natural Resources Committee. My name is Robert Jones, J-o-n-e-s. As you know, I represent TransCanada Keystone Pipeline LP, a U.S. company headquartered in Houston, Texas, with U.S. field operations headquartered here in Omaha, Nebraska. I'm responsible for the implementation and development of the Keystone pipeline system. LB4 would require a crude oil pipeline project to apply to the Department of Environmental Quality for a route certificate from the Governor prior to constructing the pipeline. The bill provides that the Governor first appoints nine members to a panel to advise him regarding the issuance of a route certificate. The panel consists of representatives of several state agencies, county board members, and landowners. The department may then promulgate rules and regulations necessary to carry out the act. I appreciate that LB4 is trying to set up what is a streamlined state review process for crude oil pipelines. Unfortunately, there are several fundamental problems with the bill, particularly as it would apply to Keystone XL. First, we have a bill analyzed by two prominent law firms that have concluded that it is unconstitutional. I will defer our legal witnesses who will follow me in detail the several constitutional flaws with the bill. Second, the bill is unnecessary as applied to Keystone XL. The bill ignores the fact that the Keystone XL project has undergone a rigorous, comprehensive three-year review process by the Department of State. That process has involved input from numerous federal and state agencies with specific expertise in technical and environmental issues that the bill directs the panel to consider. The types of environmental impacts and issues to be addressed in a pipeline's application are the same types of issues the State Department review has considered. As I testified yesterday on LB1, the State Department review considered a number of alternative routes, concluded that the proposed route was the least environmental impact. The focus on the materials to be transported seems to ignore that those issues were addressed fully in the State Department's FEIS. It is not reasonable to think that a hastily assembled panel, given two months, can do a better or more complete review of the complex issues raised by the impacts of a pipeline than that was done over the past three years. Third, the bill is unfair as applied to Keystone XL. The Keystone XL has been very well-known in the state of Nebraska and elsewhere for over three years. Keystone has submitted to every federal and state process that was in effect during this period. For Nebraska to now, well after the eleventh hour, to impose a new state review process on Keystone XL, is fundamentally unfair and jeopardizes the viability of the project. Further, the process established in the bill leaves the ultimate decision on the route solely in the hands of the Governor. He has unilaterally refused to approve the pipeline route that has been approved by the FEIS, the federal EIS. It is apparent to anyone who reads the Governor's statements that his mind is already made up on the routing issue. Therefore, the outcome of this process is already predetermined. Fourth and finally, as I have already suggested, the bill would jeopardize the project. At best, the bill delays the start of construction for the time that it takes to appoint...first of all, it takes the time to appoint a panel, develop rules and regulations for the panel to follow, and for the panel to consider the application, hold public meetings, and make a recommendation to the Governor, and then for the Governor to act on the application.

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At this very late date, this type of delay will make it very difficult to start and complete construction on time and requires the project's commercial arrangements. We have a responsibility to our customers to deliver oil for U.S. refineries in 2013. I'll stop there. [LB4]

SENATOR SCHILZ: Thank you, sir. Thank you. Any questions for Mr. Jones? Senator Christensen. [LB4]

SENATOR CHRISTENSEN: Thank you, Mr. Chairman. Thank you for coming in again. I'm really probably not going to hit on your testimony too much but more on a bunch of the questions that come up in the first half of testimony. Have you went to inhouse land representatives or are you still hiring them outside? [LB4]

ROBERT JONES: We hire specialized land agents. You know, these land agents have to have expertise and experience whether they're with pipelines or hydroines. So, you know, it's a specialized field. And TransCanada works on various project, but we never have constant work for these folks, so the industry does. So it just doesn't work for us to have permanent land agents, so, yes, we continue to contract them out. Now that being said, when we bring these people on board, we make sure they, first of all, have a real estate license in Nebraska. Second, we have to train them. So we impress upon them TransCanada's core values, and there's four of them: responsibility, integrity, collaboration, and innovation. We then instruct them to make sure that they treat our landowners with fairness and respect. Then they go out and they discuss these easements, potential easements with the landowners. And this process, as you know now with the EIS in the 39th month, has been going on for a long time. I suggest the frustration that you're hearing today is that this has been a process that we expected it to be 18 to 24 months and has now dragged on, and that extended length of time has made it challenging. That being said, we've been able to voluntarily negotiate easements for 91 percent of the people from Montana all the way to Texas, and 91 percent...I'm sorry, 92 percent along the route; 91 percent here in Nebraska, and 95 percent in the Sandhills. So the tactics we use that I hear about I really think, you know, there's no doubt, we're very persistent. We want to keep talking because the last thing we want to do is use the right of eminent domain. And we use it very, very little. But you...every linear infrastructure project, whether it's a railway, an interstate, a pipeline, you know, linear infrastructures have to rely on the right of eminent domain. Now people say that it's threatening. I agree it's threatening. But we also can't bait and switch them. We have to tell them up-front that we have that right. And I tell you, every time I've been involved in this conversation, it doesn't take very long before the subject comes up. So I think it would be very unfair for us not to absolutely be frank with them and tell them that, yes, under Nebraska state statutes, we have the right of eminent domain because we're a common, carrier pipeline. [LB4]

SENATOR CHRISTENSEN: I know that's...I disagree with a few that think it shouldn't

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be told until the permit is there. That's still, you know, if there's a concern, I would say we ought to go to a canned speech or form, whatever you want to call it, because to me that's the only way we're going to handle that particular issue. [LB4]

ROBERT JONES: I've heard this morning in LB3 testimony that people were talking about a handbook or something they could hand out. [LB4]

SENATOR CHRISTENSEN: On talking about what are TransCanada's claims on number of jobs and projected jobs, did you use an unusual multiplier? You know, the accusation was made you used a higher multiplier than the other. Is there a reason? And, in that same question, why are you using a 100-year versus a 50-year total project multiplier in that multiplier? Can you address that? [LB4]

ROBERT JONES: First of all, let me address the Perryman report. So we, in order to substantiate our regulatory filings, hired the Perryman Group under the direction of Dr. Ray Perryman who, by the way, is a renowned economist, to do the analysis, to come up with the jobs in the different states and across the country. Where we are...by the way, that was 2008 I believe is when we first hired Mr. Perryman and we had him do the study. Since that time, 2011, here we are, I sit here in front of you, you know, we can have all the studies you want. You're looking at the guy that's actually signing the contracts for the jobs. So let me break it down to you this way. There's 30 pump stations that need to be built in the United States, 10 in Canada. Each one of these pump stations is going to require a variety of different workers from concrete workers to electrical. We estimate there's about 100 different jobs associated with each pump station. From Cushing down to the Gulf Coast, those are six construction spreads that we're going to try to complete in one year. Each construction spread is approximately 500, minimum 500, individuals that need to work on each one of those spreads. From Montana down to Steele City, Nebraska, the plan is to build that over two years. Eleven spreads, again, minimum 500 laborers required and welders and specialized operators to build those spreads. Then on top of that you need inspectors, you need project managers, you need project services people looking at counting the invoices, paying the invoices, hundreds of folks. And our U.S. operation is based in Houston. And right now alone, we've got 400 people just working on the project management activities getting ready for construction. Then we've got the manufacturing jobs. We heard this morning about the pipe. No doubt the plant in Little Rock, Arkansas, is going full out and we hope to keep them going based on the fact that we are planning on an early January start. But we've also got manufacturing jobs coming from Ohio for the motors; Pennsylvania for the variable frequency devices, the transformers; the pumps in Oregon. I mean, I could go on. This is manufacturing jobs across the United States. So to just pick on one location...now I don't know anything about the study that was done in Cornell. They certainly didn't solicit us or ask us for any information. And as for the issues with regards to the unions, I think there will be better people after me to testify on the support of organized labor and just the support of the chamber and all the other

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people that are much...very much looking forward to us putting all these folks to work.
[LB4]

SENATOR CHRISTENSEN: Is any of this pipe being manufactured overseas? [LB4]

ROBERT JONES: There is some of it being manufactured overseas. There's a very small amount of heavy wall pipe that's very specialized that needs to be manufactured overseas. [LB4]

SENATOR CHRISTENSEN: Okay. Again, I know you answered it yesterday, but it came up again so I'm going to ask again. Who benefits from this oil pipeline? Is the oil going to be shipped overseas, the refined product overseas, or is it for the United States? [LB4]

ROBERT JONES: As I testified yesterday, again, I'm the guy that's actually building and designed and assembling, my team is assembling the construction drawings to actually deliver the oil into refineries, U.S. refineries. We are not delivering it into a seaport where the oil can then go on some tanker and then, I don't know, pass the supertankers coming in from Saudi Arabia. The other thing is that our shippers, Valero, ConocoPhillips, Shell, have all come out and said that this oil is not destined for offshore sources. You know, the other thing, you know, we all need to remember is that in order to export oil from this country, you need to get a permit, you need to get a license to do it, and nobody has applied for one. So, you know, this crude isn't going offshore. [LB4]

SENATOR CHRISTENSEN: One last question. At the end of the lease, I've got one of your leases but it's been too long since I read it, who owns the pipeline, and if it's abandoned, is there any clauses in there who removes it? We had that talked about today. [LB4]

ROBERT JONES: Well, as said earlier today, you know, the Platte pipeline has been operating for 60 years. You know, when we're going to abandon this pipeline is hard to say. You know, we believe that it's more than 100 years that this pipeline will be operational because it's going to continue to serve the American people. So we basically know that we will have to do whatever the laws will be in the future. Right now if for some unknown reason, let's say the Platte pipeline, for example, no longer needed to be done, what do pipelines do in order to be abandoned? So what they do is they have to drain the oil out of the pipeline; you have to clean it; and then they do have to keep the cathodic protection on to make sure that it doesn't decay. And so then it's the most stable thing is just to leave it in the ground with the cathodic protection. And, by the way, I've passed around the picture. As you can see, why would you want to disturb it again and take the pipe out of the ground? That would cause more environmental impact. So we just leave it inert. We typically a best practice would be to put nitrogen in the line as well. Not all pipeline companies do that, but that would be something we

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normally would typically do. [LB4]

SENATOR CHRISTENSEN: Thank you. [LB4]

SENATOR SCHILZ: Thank you, Senator Christensen. Senator Smith. [LB4]

SENATOR SMITH: Sure. Thank you, Senator Schilz. Just a couple of questions I wanted to follow up on from the folks that were speaking as proponents earlier today. Can you talk to me about organic farming? And it sounds as if some of the certification for organic farming could be affected based on the pipeline construction. Have you run into that before? And can you speak to that a little bit as to how that would be remedied? [LB4]

ROBERT JONES: You know, I'm not an expert on that, but I can tell you that we would work with the landowners. I know that we have crossed landowners that do have organic farms and we've been able to work with them to restore it back to its original capability. And, again, you can tell from those photos that it...you know, we do an extremely good job at that. [LB4]

SENATOR SMITH: So you don't recall running into that particular situation before that someone lost revenue because they lost their certification? [LB4]

ROBERT JONES: In the position I have, typically if there was a problem, I'd hear about it because very often do I hear about, well, we did a really good job, and somebody forwarded me a letter and said, yeah, thanks for doing your job. So I've never heard of an issue with our ability to restore that. [LB4]

SENATOR SMITH: All right. And I'll let you speak to this. I think I probably understand the answer to this. But Mr. Gotschall, the last person to testify as a proponent, was looking at the Web site and he was seeing the verbiage about forward-thinking information, some of the comments that, legal comments that were being made about, you know, protecting investors I assume. Can you speak to that as to why that type of language is used? [LB4]

ROBERT JONES: Certainly. TransCanada is a publicly traded corporation. We trade on both the Toronto Stock Exchange and the New York Stock Exchange. We have SOX requirements. One of those requirements is that we have to advise our investors of those forward-looking statements. [LB4]

SENATOR SMITH: And what would be the risk of not doing that? [LB4]

ROBERT JONES: Well, you know, if you're going to buy shares in TransCanada, you know, there, obviously, you have to balance the risk. So when you look at our

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presentation or you look at our disclosures, you know, there is always a degree of risk and you have to understand our business. [LB4]

SENATOR SMITH: Okay. And then going back to the eminent domain, just touching briefly on Senator Christensen's questions to you, what were the...can you give me kind of a general rundown as how many property owners voluntarily worked out an agreement with TransCanada? And then how many are at risk of going to eminent domain? [LB4]

ROBERT JONES: So in the first one, which is where we have to go back for a history to get an idea, in Nebraska, we were able to voluntarily negotiate 98 percent of the easements. Now I don't have exact numbers of landowners for you. But on this one, we're at 92 percent. A lot of the landowners that are remaining have told us we want to wait for the Presidential Permit. I respect that. That being said though, we will always have the door open. They have the phone number of our agents. It has been a long process for both parties. And so once we receive the Presidential Permit as we...you know, the Department of State has given us an indication that could happen by the end of the year, then we hope that we will be able to negotiate quickly so that we can start construction in the spring. [LB4]

SENATOR SMITH: Okay. Repeat those two percentages again; 98 percent reflected what? [LB4]

ROBERT JONES: The first pipeline that went through. [LB4]

SENATOR SMITH: Okay. And this one is at 92 percent. [LB4]

ROBERT JONES: Ninety-one. Sorry, 92 for the nation; 91 for Nebraska. [LB4]

SENATOR SMITH: Ninety-one percent voluntary agreements. [LB4]

ROBERT JONES: That's correct. [LB4]

SENATOR SMITH: Okay. Thank you. Thank you, Mr. Jones. [LB4]

SENATOR SCHILZ: Thank you, Senator Smith. Senator Carlson. [LB4]

SENATOR CARLSON: Thank you, Senator Schilz. I'm going to ask you a question that I think is a tough question. We've listened to testimony for two days. We try and be careful, particularly people that are willing to come here and testify and they're not paid attorneys or paid lobbyists or anything, to be civil to them. We want them to share their feelings. We want them to share what their thoughts are. And in the process, up here we're told once in a while it doesn't look like we know what we're talking about. But I do

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know what I'm talking about on the question I'm going to ask you. In my experience in the Legislature, if I have a bill and I want to give every opportunity for that bill to have a good hearing and have a good impact on the committee and be voted out of the committee for debate or if I want to defeat a bill, I would make sure that I had enough testifiers lined up so that they would tell my side of the story the way I want it told. Now I don't know if we're going to hear from any ranchers that are satisfied tonight, but we haven't so far, very few, very few. Why? [LB4]

ROBERT JONES: First of all, the landowners that we have contacted on the first Keystone project, you know, there's a lot of challenge with them because either they're working. Many of them actually have other jobs and so this, the hearing during this day, and it's kind of what's their skin in this game. You know, the pipeline already runs through it. So we've contacted them and we've asked them to show up. They've said, well, when can we show up? I said, well, we're last, so I don't know. So it's very, very challenging for us. For the landowners I would say that, especially the ones in the Sandhills, there's a great deal of intimidation. And they really don't want to be identified. And so I would say that we've not had much success asking them to...and we have asked. It's just that: (a) the time to get here; (b) we don't pay them; (c) they are intimidated. [LB4]

SENATOR CARLSON: And I'll agree with you on the schedule of what goes on in a hearing. If somebody is coming in to oppose a bill, it's impossible to tell them a time because they may miss it altogether. And yesterday when we started at 10:00 in the morning and finished at 10:00 last night, there were some people that had to be here the entire time not knowing when they were going to be able to testify. I understand that. [LB4]

ROBERT JONES: Yeah. We lost a couple of landowners yesterday. [LB4]

SENATOR CARLSON: Now there can be some funny expressions when I ask you this perhaps, but what...you've given some percentages, but if we were to find the number of property owners that are...have no complaints, are satisfied and, in fact, would be complimentary, what percent do you think that would be? [LB4]

ROBERT JONES: I don't know. That's clearly speculative. I mean, because we haven't built the pipeline yet, they've got...we've been able...you know, we've compensated them. I think they may be anxious waiting for construction and we keep on delaying it. I would say that they would say that. They're frustrated that, you know, when is this going to happen? You know, am I going to be...what am I going to do next spring? I can't...I can tell them that we're going to start construction, but I can tell you they're all very anxious about that. And so, you know, it's a really hard question for me to ask. I would think that if I was them, though, I would be concerned about what's really going to happen. [LB4]

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SENATOR CARLSON: Okay. And I can understand that. It is a difficulty, that that's a hurdle that I can see why you really can't overcome that right now. But thank you for your response. [LB4]

SENATOR SCHILZ: Senator McCoy. [LB4]

SENATOR McCOY: Thank you, Chairman Schilz. And thank you, Mr. Jones. I find these pictures that you handed out to be helpful. I don't recall when we discussed this in the session earlier this year, discussed this issue, I don't recall ever seeing any pictures quite like this. Perhaps for our benefit, if you don't mind, kind of detailing where these might be and what the difference in the time period may be from the...kind of during construction. For the benefit of those who don't have them sitting in front of them, these are during construction pictures of a pipeline. I assume it's the Keystone Phase I. [LB4]

ROBERT JONES: It's the 30-inch pipeline, Keystone Phase I in Nebraska. And as...what's really obvious is that if you have corn or soybeans, that kind of fertile land, you can see that restoration virtually one year later is back to full productivity. But we also wanted to show was just the different kind of terrain and that we're...how the pipe is strung, the equipment we used for restoration. So it just gives you kind of a wholesome picture, the before and after. Now that being said, we're still working on some of these sites. I mean, we have not finished full restoration and the pipeline has been in operation for quite some time. That's because throughout, you know, we're going to have to just continue to be diligent and listen to our landowners. [LB4]

SENATOR McCOY: And in one set of these pictures that the land happens to be more rolling hills with some red cedar and it looks like pastureland. And the after picture shows what appears to be, although it's hard to tell for sure from the picture, a different grass mixture it would appear at least from the picture. And I ask that question, Mr. Jones, in light of some neutral testimony last night on LB1 from a professor here at the University of Nebraska who brought up, I thought, some interesting points as it related to replacement of cover vegetation to the state it was before or just something that would provide cover to keep the sand from blowing. Perhaps, if you could, it would be helpful I know to me, perhaps the other members of the committee, to elaborate on how that process works as it pertains with you guys to how you go about restoring after construction is done. [LB4]

ROBERT JONES: Right. And there's...thank you, Senator. The land that's in crops is certainly easier to restore than native prairie or ranch lands. The restoration with grasses, and the discussion yesterday had to do with restoration in the Sandhills in the challenges with regards to wind and water and just the terrain itself. And it will be challenging. Now we have worked in Sandhills in other parts of North America, but we recognize that it is unique here in Nebraska. So we are soliciting information from the

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university, from state agencies, and specifically from the landowners because they are the most helpful. For example, the seed that you had talked about, this will be seed that we will need to get their permission to...I would suggest that it's young seed. That's why it looks different. We also know that typically in prairies, ranch land, it takes almost five years to get back to where you are, and I think that was in the testimony you heard yesterday. The one I did discuss with that professor after the hearing yesterday, the temperature, he was under the...when he read the analysis, he was under the impression that the temperature change six inches below the ground would be ten degrees warmer when, in fact, the study said ten inches from the pipe would be ten degrees different. And he's going to go back and have another look at that and I appreciate it. I'm going to continue to work with him on that and have my manager of environment work with him on that as well. That being said, he did say that it's not going to be something we couldn't manage, and so we will continue to work with them. [LB4]

SENATOR McCOY: So if I hear you correctly in what you're saying that your manager of environment may very well consult with some of these experts in the Sandhills, and we have here at the university or in other areas of the state on how best in that process of restoring these grasslands in particular, they may very well be consulted further on down the road. Is that something I presume as we get closer to construction you would begin to start that effort or does that...would that process begin...would that be initialized very soon or what would be kind of the time frame on when those type of experts would be brought into the process? [LB4]

ROBERT JONES: Already it's part of the FEIS. We did consult with them because that's the information we needed to put in the final environmental impact statement for the State Department. But you're right. As we get through construction and we need to work with the landowner, ultimately we have two pieces of paper: you have an easement and you have a construction services agreement. And in the construction service agreement, this is where you're really going to outline from the landowner what it is we need to do to restore the land. And that's really the most important document. Sure, the other one we register a title just like he has for power and sewer and everything else, but what this construction is what we're going to do during construction and after construction. And that's where we're going to talk about different seed mixes or mats or fencing or if we need temporary water for cattle. That's where that gets discussed, and that's all part of the easement negotiations. When we start enacting that stuff is immediately during construction. And in the Sandhills, we're going to have to do some very unique construction compared to traditional because we're going to have to keep the front end and the back end very tight so that we can start restoration as soon as we...as quickly as we started exposing the topsoil to the one side. [LB4]

SENATOR McCOY: I believe it was that same professor from the university talked about his concern for...or his appreciation and admiration for a lot of landowners in the Sandhills that care very deeply about their land. And I happen to come from a ranching

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background and I would agree with that assessment, but that admiration from the ranchers and farmers that I know. And he expressed a concern about absentee landowners may use some land you may cross for a pipeline route, were it to stay as it's proposed now, may use it for hunting purposes, may not be as in tuned physically with what's going on with their property as some landowners. If I may, or maybe you'd like to elaborate on, do you, with your manager of environment and otherwise with your practices, do you have a plan or a way to address that, Mr. Jones? How you may interact with landowners that I assume you might exchange in the mail, some of these easement documents, and maybe that's the lion's share of the contact you might have with that landowner? Do you have a way to kind of be in tuned and take that into account, be maybe a little sensitive to that? And how do you go about that? I assume you've encountered that in the past. [LB4]

ROBERT JONES: Yes. In fact, when you look at the 2 percent that we were not successful in negotiating, there was a couple of cases where we actually had estates that were in dispute or the titleholder had passed away. And so you actually had to go through a judicial process in order to just resolve the case. But you're right. There in that case you don't have a construction services agreement. That doesn't take away our responsibility with regards to restoring the land, and we would treat it the same. And so, you know, when we hire our contractors to go in there and reseed and restore it, as you saw there, whether it's...the landowner is there or not. And a lot of landowners aren't now. You know, many of them may own the land but live somewhere else; they're not on the quarter or the parcel. You know, we still need to treat the land with respect. [LB4]

SENATOR McCOY: So I would assume from that, and this might be the first I've heard of this, and this might be helpful, so it's a contractor that...or I would assume that you're talking about that's responsible for part of the restoration process. When you go about that process, and it may be a number of years, let's say there was a neighbor along a route that knew the neighboring property was owned by someone who lives out of state and they notice something that might be of concern to that landowner, are there ways that you...practices you put into place whereby that individual could get ahold of your company, could express that concern and have that be addressed, just being neighborly and trying to take care of, you know, something maybe the neighboring landowner may not be aware of? How does that process work? I assume this contractor would be visible out in the county and the communities along the route. I assume is it...is it fairly easy to get ahold of those individuals and express those kinds of concerns? [LB4]

ROBERT JONES: You bet. Even now we have land agents strategically located along the pipeline right of way. And, you know, we've had open houses so a lot of these land agents have been able to pass their cards around. That all being said, we have a Web site and a 1-800 number and people can provide us communication that way as well. [LB4]

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SENATOR McCOY: Thank you. [LB4]

SENATOR SCHILZ: Senator Haar. [LB4]

SENATOR HAAR: Yeah, just a couple of questions or more. You mentioned intimidation. Talk about that again. I'm sorry, I was...I didn't quite catch that. [LB4]

ROBERT JONES: Oh, the question was what about landowners in...the Keystone XL landowners, why aren't they here. We did have some here yesterday. The time period expired and they had to go home. But when we have asked some of them to come here and testify, they've indicated that they feel that intimidated. [LB4]

SENATOR HAAR: Could they even testify because most of them have nondisclosure things in their contracts? [LB4]

ROBERT JONES: They may believe that that gives them some harm, but we've asked some and they've just told us that they're not comfortable coming here, just the public perception. [LB4]

SENATOR HAAR: Okay. Okay. Yeah. Well, and I won't stay on this too long. But as you can probably, you know, that I feel that we've been treated in a really condescending manner by TransCanada. And I'll give you an example and I guess I would like a response, not today but just send me an e-mail around this, that when one of our scientists did a...he responded to the EIS, and three of your people, and these are...we have the names, Maria...I can't pronounce them, I'm sorry, but I have the names right here, responded with this. To his response, "This is simply the latest case of opportunistic fearmongering dressed up as an academic study." And frankly I think he deserves an apology. But I'd like to know if that's an engineering response to his report or where did that kind of language come from? And the reason it's important to me because it appears in the FEIS from a...you know, about a Nebraska scientist. [LB4]

ROBERT JONES: You know, it certainly would be nice for TransCanada and this panel to cross-examine all sorts of witnesses with different series of expertise. You know, there's no doubt I was disappointed that scientist yesterday testified in a neutral capacity because he, quite frankly, isn't neutral. And, you know, he makes a lot of very disturbing assumptions that just are incorrect. And so that is the reflection of our analysis. It wasn't our choice to put it in the FEIS. That wasn't done by TransCanada. That was the choice of the State Department. [LB4]

SENATOR HAAR: Yeah. Again, it doesn't sound like engineers responding, "opportunistic fearmongering dressed up as an academic study." I find this kind of condescending language coming...you know, or people talking about the no-brainer, if we just understood this, it'd be a no-brainer and stuff like this. You know, I think we have

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some legitimate concerns, and that's what we're trying to get at in this. And I think name calling doesn't do a lot of good. That's all I have to say. Thank you. [LB4]

SENATOR SCHILZ: Thank you, Senator Haar. Senator Carlson first. [LB4]

SENATOR CARLSON: Thank you, Senator Schilz. You said that you've restored some...reclaimed some Sandhills in America. That's probably in Canada. [LB4]

ROBERT JONES: That's correct. The Saskatchewan Sand Hills. And... [LB4]

SENATOR CARLSON: What kind of time did that take and what were the results? [LB4]

ROBERT JONES: The Saskatchewan Sand Hills don't have the luxury of the vegetation nor the rainfall that we have here in Nebraska. We have a much different issue there. We have blowing sand that continually moves. And so...and also our Sand Hills are a state, national state...not a state, sorry, provincial park, and so we have additional challenges with that as well, just from an access perspective. But, no, we've worked with our landowners. The ones that do have irrigation, they can get enough moisture on it. You know, we've worked with them. That's been far more successful. You can imagine if you can...any time you can get water on something you get better vegetation with it. But it's a different animal up in Saskatchewan because there is far more blowing sand constantly than there is down here. [LB4]

SENATOR CARLSON: So in your opinion it's more difficult to reclaim the Sand Hills in Saskatchewan than it is in Nebraska? [LB4]

ROBERT JONES: You know, there are degrees of difficulty. I don't want to diminish how difficult it's going to be here. It's going to be difficult here too. [LB4]

SENATOR CARLSON: But with your experience in Canada, have you been able to be...now obviously if you've got water available, that's a big difference. [LB4]

ROBERT JONES: Um-hum. [LB4]

SENATOR CARLSON: But there must be some areas then that you don't have water available, and have those been successful? [LB4]

ROBERT JONES: Yes, they have. [LB4]

SENATOR CARLSON: Okay. [LB4]

ROBERT JONES: We've been able to restore them, but we've also been there since 1957 and we've put in six different pipelines beside each other for natural gas service,

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so we're constantly going in and having to restore those. [LB4]

SENATOR CARLSON: Okay. All right. Thank you. [LB4]

SENATOR SCHILZ: Senator Smith. [LB4]

SENATOR SMITH: Pass, thanks. [LB4]

SENATOR SCHILZ: Okay. Thank you, Senators. Any other questions for Mr. Jones? Seeing none, thank you for your testimony. Next opponent to LB4. [LB4]

RON KAMINSKI: Thank you, Chairman and members of the Natural Resources Committee. My name is Ron Kaminski. I was a little bit hopeful that I would be able to testify and you guys would be out of here before the sun went down today, but no problem with deja vu. I am here representing today Laborers' Local 1140 based here in the state of Nebraska in southwestern Iowa, the Laborers' International Union of North America which represents over 500,000 members, the Omaha and Southwest Iowa Building Trades Council, Lincoln Building Trades Council, and the National Building Trades Council to oppose LB4. The reason we are opposed to this bill is due to the fact that we believe that this is another attempt by some to try to delay this project. We would look forward to working with this committee in the Legislature on bills that would be moving forward on future pipelines, but as of right now we oppose LB4. Today, I would like to talk a little bit about some of the testimony I have heard here earlier, not only in this committee in testimony here, but also in the other committee regarding the Cornell report in their jobs numbers. First of all, as working with pipeline contractors and constructing the first Keystone line, I would assume, and maybe assuming things in this point of the game is stupid of myself, but I am surprised that not myself nor any other organization that built that pipeline was contacted for that study. TransCanada works with the Pipe Line Contractors Association. The Contractors Association is signatory with four trades to construct pipelines, that is your laborers, your teamsters, your operating engineers, and the UA. Those four trades construct the pipeline. Now, there are other contractors that are hired underneath that agreement to construct the pump stations. The pump stations that are proposed on this route here in the state of Nebraska will be five within the state and one on the South Dakota border. We're looking at approximately five construction spreads which takes up to 500 construction workers and could take actually more because of the condensed schedule on this. It takes approximately 100 workers per pump station. If you add those numbers up, you're looking at over 2,000 workers here in the state of Nebraska. So I don't understand how their numbers are so incomplete, and we were never even contacted for that study. My time is up. [LB4]

SENATOR SCHILZ: How much more do you have? [LB4]

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RON KAMINSKI: Just a few more quick points. [LB4]

SENATOR SCHILZ: Go ahead if you're quick. [LB4]

RON KAMINSKI: Like I said, none of our organization were contacted on this study. And to talk a little bit about organized labor in this pipeline, of the hundreds of unions that are affiliated with the AFL-CIO on a national level, to my understanding only two unions have come out against the pipeline; none of those in the construction trades. Today, I heard that it was four, and that's perfectly fine if it's four, but none of those have anything to do with construction of pipelines. I believe that this was an attempt to bring this report in here to try to water down what the truth is. I stand by my word. I put these, you know, men and women to work to build these pipelines, we train these workers, and I think and I would hope that this board would see that a little bit more insightful than a young lady coming in from Cornell University with a report that was paid for by environmental groups. And that's all I've got. [LB4]

SENATOR SCHILZ: Okay. Thank you, sir. Any questions for Mr. Kaminski? Senator McCoy. [LB4]

SENATOR McCOY: Thank you, Chairman Schilz, and thank you, Mr. Kaminski for your testimony today. To elaborate a little bit on the Cornell study that you mention, if you would expand on this, in the report Dr. Skinner mentioned a roiling debate over...on the part of organized labor over to support the pipeline or not. So if I understand your testimony correctly, that was not the case here in Nebraska. [LB4]

RON KAMINSKI: To my understanding, Senator, that's not the case here in Nebraska, and I know it's not the case here in Nebraska because the two unions that have come out publicly, to my understanding they have maybe 50 members in the whole state of Nebraska. Now on a national level, I know that there has been a minor amount of turmoil, but nothing that is a battle or there's unions fighting against each other on this project. That's just unheard of. [LB4]

SENATOR McCOY: And there was some testimony, I think it may have been earlier today, perhaps it was yesterday, from a member I believe of the IBEW representing electrical workers union. Can you speak to these union jobs as pertains to...is there any special licensing in the state of Nebraska, any special requirements that will mean...that essentially make certain that these jobs will be filled by Nebraska workers? [LB4]

RON KAMINSKI: Yeah. Okay. Senator, it's kind of a two-part question as I hear it. First of all, when it comes to the licensing, with electrical work you have to be licensed in this state. When it comes to our training in our scope of work on pipelines, we want, I want, the best-trained people out there from Nebraska, if possible, to construct these pipelines. In our system, we do...there's a few things that we go through. If we have a

person that comes off the street that would like to go work on a pipeline, it's going to take you a little while to get there. Initially, we send all of our members through an apprenticeship program registered with the federal government that requires hours of on-the-job training as well as classroom training at our new...or at our training facility. Then there are requirements under the Pipeline Contractors Association agreement that each individual that is referred to work has to have so many hours of experience or training to even get on that pipeline. Okay. So we have things in place that require that we have the best people out there. Now when it comes to local hires in the state of Nebraska, and this is something where I think...and to be perfectly honest with you, I haven't read through the whole Cornell report. I've seen just bits of it here and there and just by those bits I could tell that there was flawed math in it. But just...for example, the pipeline, the proposed pipeline--and I'll speak actually about the existing Keystone line, okay--that pipeline is broken down into construction spreads, right, depending if it's 50 miles or 100 miles or 120 miles, that each aspect of that is broken down for the whole pipeline. Those construction spreads are broken down at, say for example, the border in South Dakota and Nebraska. Right. So there's a clear, defined area of whose jurisdiction and whose responsibility it is going to be to construct that pipeline. Underneath that agreement that TransCanada has signed, when they come into Nebraska, they are required to get in touch with us and for us to provide that manpower to construct the pipeline. So to say, I had heard numbers of there would only be 12 Nebraska residents to construct this pipeline in Nebraska, it's flat lie. That's impossible. I know that just from the Keystone line and the amount of people that we sent out there for that project that that report was flawed. [LB4]

SENATOR McCOY: And the last question I have for you, Mr. Kaminski, a proponent, the Dr. Skinner from Cornell also talked about new jobs versus, you know, existing jobs and all that. I happen to be part of the construction industry myself in what I do outside being in the...here in the Legislature. Perhaps you'd like to speak to the high unemployment in the construction industry. I would take it to mean that a new job, if we are going to employ, whether it be union, nonunion, someone that is currently unemployed, I would propose that that is a new job. That person is currently not working. Is that how you would interpret that to be or do you have a different definition for new jobs versus the pipeline may or may not create? [LB4]

RON KAMINSKI: No, I would agree with you 100 percent. When you have people that are unemployed, especially in the construction field...and this is one thing I hear a lot of, these are temporary jobs. These are temporary jobs. If you can find me one job in construction that's not temporary, it's all defined in how long temporary is, right? It's not defined...I mean, temporary, it makes it sound like it's, oh man, this is going to be a two-day job and everything is going to be over with. All jobs in construction are temporary. Now when it comes to your question about the unemployment, we see upwards sometimes in some areas, now we run about 20 to 28 percent unemployment. We had a lot of work with the flood that happened on the Missouri River. We protected

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the Fort Calhoun Nuclear Power Plant, rebuilt levees, things like that. That helped us get through this year. But when it comes to is it a new job, if you're sending somebody out to work and they're receiving a paycheck, how can that not be a new job? [LB4]

SENATOR McCOY: Thank you. [LB4]

SENATOR SCHILZ: Senator Smith. [LB4]

SENATOR SMITH: Thank you, Senator Schilz. And good to see you, Mr. Kaminski. Thanks for coming back and testifying. And as far as testifying while the sun is up, the sun is up somewhere in this world, so. [LB4]

RON KAMINSKI: Yeah, that's true. That's true. It's 5:00 somewhere, right? [LB4]

SENATOR SMITH: We've got that going for us. You mentioned the unions that are involved in the construction of the pipeline. You mentioned Teamsters. Who were the others? [LB4]

RON KAMINSKI: The Teamsters, the UA. You heard from Mr. McColley last evening. The Teamsters, the UA, the laborers, which I represent here in the state and in southwestern Iowa, and the operating engineers. [LB4]

SENATOR SMITH: Okay. And can you say who the two unions are that are opposing the pipeline? [LB4]

RON KAMINSKI: I believe one of them, the Transport Workers was one of them, and the...the first two she said earlier today were correct. [LB4]

SENATOR SMITH: Okay. And do you have a sense as to why they're opposing it? [LB4]

RON KAMINSKI: Yeah. I've actually researched it in Washington, D.C. And the president...from what I've heard from the national groups talking with our international presidents is the president, the new president of the Transportation Workers is a pretty heavy environmentalist. [LB4]

SENATOR SMITH: Okay. So there may be some other factors involved there other than opposing the construction of the pipeline, it may be environmentally based is what you're saying. [LB4]

RON KAMINSKI: I'm saying that's a possibility. I'm not saying that's 100 percent sure, but that's what I have heard. [LB4]

SENATOR SMITH: All right. And then you were talking about the temporary jobs in the

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construction industry and that's because of the seasonality. There's construction season and oftentimes there's full employment for these workers during that period of time. You go into the winter months and there's no construction and they're unemployed during that period of time. [LB4]

RON KAMINSKI: Yeah, correct. And I would...you know, right now it's kind of tough in the sense of traditionally that's how it works. About 75 percent of our members when times are good before, say, 2007, they would work, 75 percent of them would work all year round. But when the economy hit the tank, there's real high unemployment... [LB4]

SENATOR SMITH: And so they...your members feel like there are going to be jobs created. [LB4]

RON KAMINSKI: A hundred percent, a hundred percent. [LB4]

SENATOR SMITH: And there's no doubt in their minds there's going to be jobs created. [LB4]

RON KAMINSKI: No doubt at all. [LB4]

SENATOR SMITH: Okay. And any particular reason they may be thinking that way? [LB4]

RON KAMINSKI: Because of past experience. For example, the Rockies Express Pipeline that I talked a little bit about yesterday that runs through the aquifer west to east. [LB4]

SENATOR SMITH: Probably maybe a dozen jobs created there, do you think? [LB4]

RON KAMINSKI: Couple dozen? [LB4]

SENATOR SMITH: Maybe a dozen jobs. [LB4]

RON KAMINSKI: Oh, no. There was thousands and thousands created on that project, the Keystone line. In some of our guys...I guess what the good thing is for our state here and some of my vision, and I've talked about ethanol and biodiesel and windfarms and weatherizing homes to reduce energy. But one of the good things about all this stuff is we've been able to train these workers. And some of them have been able to find work to hold over in other areas of the country because of the training they received here in the state. [LB4]

SENATOR SMITH: So they're not basing their understanding of the creation of jobs on an economic formula. They have real life experiences. They've seen the jobs created.

[LB4]

RON KAMINSKI: That's exactly right, and that's what I based my opinions on too. [LB4]

SENATOR SMITH: Okay. I want to ask you also something about that I think Dr. Skinner mentioned this, about the PLA agreement that TransCanada has with some of the unions and I think you probably are familiar with this. If people are not familiar with PLA, project labor agreements, that take place. And it's a private project labor agreements and there's probably not a stronger free market person and fair competition person than myself, but in those particular cases that's an agreement that's reached between a private enterprise and the labor unions, right? [LB4]

RON KAMINSKI: And the labor unions, yeah. And what it sets forward is pretty much...it sets forward the basics. Right. For example, it sets forward the wage, you know, what somebody is going to receive, what type of training they have. You know, there can be a base wage. There can be ten other add-ons per hour depending on what type of experience they have in training. Then it sets forward your benefits, your health and welfare, your insurance for your family. It sets forward pension contributions. It sets forward that there's not going to be strikes on this project, but we're going to agree to this. So it's kind of a harmony clause to say we're in this together, we're going to provide you the best trained people, you're going to pay them a fair wage, we're going to construct this project, and we're all going to walk away happy. [LB4]

SENATOR SMITH: Are these private PLAs? Is this unique or do these occur around the country, private PLAs? [LB4]

RON KAMINSKI: They occur more in the pipeline field. I know that there has been somewhat of a push to get these in other places. You don't see a lot of them. But when you can have a private company that wants to sit down and get business taken care of and wants to pay a fair wage, it's all set in stone. [LB4]

SENATOR SMITH: So you're not seeing something sinister there? [LB4]

RON KAMINSKI: No, I'm trying not to. (Laugh) [LB4]

SENATOR SMITH: Okay. With the presence of a project labor agreement? [LB4]

RON KAMINSKI: No, no. Me personally, I think it's a great thing. It sets forward...it eliminates a lot of possible issues. [LB4]

SENATOR SMITH: Not uncommon. Okay. Thank you. Appreciate it. [LB4]

RON KAMINSKI: Yep. Thank you, Senator. [LB4]

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SENATOR SCHILZ: Thank you, Senator Smith. Any other questions for Mr. Kaminski? Seeing none, thank you, sir, for your testimony. [LB4]

RON KAMINSKI: Thank you, guys. I hope you're not here all night. [LB4]

SENATOR SCHILZ: We're working on that. Next opponent to LB4. [LB4]

DAVID CARPENTER: (Exhibit 18) Good evening. I'm David Carpenter, C-a-r-p-e-n-t-e-r. As I told you yesterday, I'm a partner in the law firm of Sidley Austin. I specialize in federal constitutional law. I've litigated a number of cases that have challenged state regulations that affect interstate transportation, energy, and communication systems. As I testified yesterday that it's my opinion that LB1 is patently unconstitutional on federal preemption of commerce clause grounds, LB4 adopts a somewhat different procedure to address the underlying concerns about the environmental effects of this pipeline on the Ogallala aquifer. But the differences aren't constitutionally significant and I also think that LB4 is patently unconstitutional. What both of these bills have in common is they prohibit construction of this international Keystone pipeline until a state official makes a public interest determination, finds it in the public interest based on the state official's assessment of the risks that the pipeline poses to the environment and natural resources in Nebraska. The main difference between the two bills is LB4 has a different decision maker; it's the Governor following a recommendation from an advisory panel, whereas it's the PSC under LB1. And there's a different time period. The final decision is required in 90 days under LB4, where it's 8 months following the federal approval in LB1. But these differences are constitutionally immaterial. First, both bills are preempted by the federal Pipeline Safety Act. Both give a state agency the authority to prohibit construction of a pipeline along a particular route based on the state agency's judgment that the pipeline creates undue risks of environmental harms. Under the federal Pipeline Safety Act, those determinations are exclusively for the Department of Transportation. It has exclusive jurisdiction to determine whether and when pipelines pose undue threats to persons, property, and natural resources, including specifically areas, "that are unusually sensitive to environmental damage," like the Ogallala aquifer. It expressly preempts state safety regulations, and under various well-settled law, these regulations are preempted if they have the primary purpose or effect of regulating...protecting persons and natural resources from threats posed by interstate pipelines. So I think this is, you know, quite clear under the case law. I met Mr. Alan Peterson in the audience today and he told me he didn't testify, but I did hear a member of the Sierra Club testify, relying again on this unpublished Minnesota Court of Appeals decision. As I explained yesterday and I'll expound in more detail if you...in the Q&A if you'd like, this is not a decision that's a precedent that can be cited in support of this bill. But even if it were, the fundamental point is the rule that the Sierra Club is extracting from this decision has been rejected by the Supreme Court and federal courts of appeals repeatedly. The fact that a state statute says that it's not regulating safety is irrelevant. If the purpose and

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effect of the statute and the impact is going to be regulation of potential harms of a pipeline to the environment, it's preempted. It's really very simple. I also testified yesterday that... [LB4]

SENATOR SCHILZ: I have to ask you to kind of sum up and if you've got a couple of more points, go ahead. [LB4]

DAVID CARPENTER: Okay. I really had the same basic point I made yesterday. Like LB1, LB4 will permit or require delays in the construction of this pipeline after there's a federal decision that the...based on extensive federal review that this pipeline poses no undue environmental threats, that there's no better route, that it promotes other national interests, and that it should be built now. And there's no local interests sufficient to justify that burden on commerce, and any local interest could have been equally well advanced with a lesser burden of commerce if you'd just enacted a statute three years ago. So there's no basis to enact a statute that would apply to this pipeline now. So that's... [LB4]

SENATOR SCHILZ: Thank you, sir. Any questions for Mr. Carpenter? Senator McCoy. [LB4]

SENATOR McCOY: Thank you, Chairman Schilz. And thank you, Mr. Carpenter, for your testimony. I'd like you to expand if you would on...you mentioned the case law and you referenced it again that we talked about yesterday with LB1. It sounds as if you're...when you talk about Enbridge Energy v. Dryda Minnesota Court of Appeals case. But you're finding many of the same similar constitutional concerns between both of these two pieces of legislation where we're talking about this evening LB4 as with LB1. [LB4]

DAVID CARPENTER: Right, right. [LB4]

SENATOR McCOY: If you could expand a little more on why you believe that to be the case. [LB4]

DAVID CARPENTER: Why these two proposed bills present the same constitutional issue? [LB4]

SENATOR McCOY: Well, perhaps even a little...expand a little more on what specifically...you talked about it being an unpublished opinion... [LB4]

DAVID CARPENTER: Yes. [LB4]

SENATOR McCOY: You talked about the dormant commerce clause. Is there anything else that you see in this Minnesota case that causes concern in your mind as far as

constitutional...? [LB4]

DAVID CARPENTER: Well, now, you know, one thing I learned since I testified yesterday, yesterday I said I didn't think it would even be permissible to cite this case in federal court litigation that challenged the constitutionality of one of these bills. And one of my associates looked up the rules of the Eighth Circuit, which is where a constitutional challenge would be litigated, and under the rules of the Eighth Circuit, the rule is that unpublished opinions generally can't be cited, period. There's an exception, two exceptions: one is to demonstrate that the issues in the case were previously litigated to the same parties. You know, for those of you who are lawyers, you know, *res judicata collateral estoppel*. That exception, obviously, doesn't apply here. And there's another exception for federal court decisions that were issued after 2007. Now that's because in 2007, there was a change in the federal rules of appellate procedure putting courts on notice that, you know, unpublished opinions should be written carefully and should be intended to be complete statements of the law when they're going to end up on LexisNexis and Westlaw and people are going to know about them. But, you know, state opinions I don't think under this rule they could be cited at all. Now, secondly, I also discovered that the Eighth Circuit has had cases where it's had to rule on questions. By the way, the Eighth Circuit rule is Rule 32.1A. Second, there are situations in which the Eighth Circuit has to rule on questions of state law, you know, diversity of citizenship jurisdiction. And in one such case, I think in its own research, it came on a question of Minnesota state law came upon an unpublished decision of the Minnesota Court of Appeals. And it said, "an unpublished decision of the Minnesota Court of Appeals, however, is not precedential," and cites the Minnesota statute that says it's not precedential. So it didn't rely on it. And then another point I made yesterday is, and this reporter told me afterwards he didn't understand, is that the...even if this were a case that could be cited, it doesn't present the...it didn't present the issue that would be posed by the statute. The issue that's posed by this statute is whether the state can prohibit the construction of a pipeline based on environmental concerns, and that's what I say is preempted. That wasn't the issue in that appeal. That was in a landowner's appeal of an eminent domain order. No one was complaining that the state had regulated against environmental harms. The complaint was that this person's land had been taken and there was no environmental issue at all. To the extent there was comment on the lawfulness of the statute, it would be what we lawyers call comments common on the facial validity of the statute. A statute is facially invalid if it's incapable of any constitutional application. So that's all this court could have been commenting on. In this case, the statute would be applied to regulate potential environmental threats and it would be squarely preempted. So there's nothing in that decision that, even if it were a precedent that could be cited, that would support the lawfulness of this statute. And, finally, as I said in my prepared remarks, no federal court would rely on this decision even if it supported the constitutionality of this statute, because the rule that's been, you know, extracted from it is that a statute is not preempted if it says it doesn't regulate safety. But the Supreme Court has said over and over and over again that federal

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courts are not bound by the state Legislature's characterization of its statutes, and the courts independently determined if the purpose or effect of the statute is to regulate safety, and if it is, it's preempted. So I don't think there's any possibility that this Minnesota court opinion could cause a court to uphold application of this statute to this international pipeline. [LB4]

SENATOR McCOY: Thank you, Mr. Carpenter. And I guess for the benefit of those who aren't attorneys, I know you have from you explaining your credentials yesterday on testimony on LB1, your extensive experience in federal courts and dealing with that law in your career. Can you...is there a way to explain in practice how that would work? Obviously we're in the Eighth Circuit. When you go through the rules of what applies in the Eighth Circuit as it pertains to unpublished opinion on LB4 that we're talking about tonight, in practice, how would that...what would...walk me through how that would work, a case, if you could briefly. [LB4]

DAVID CARPENTER: Well, I have no idea what the company would do if you passed a statute. [LB4]

SENATOR McCOY: And I'm not asking you to speculate on that. [LB4]

DAVID CARPENTER: Yeah. But one option the company would have would be to file an action in the federal district court here in Nebraska. It would be brought against whatever state official is charged with enforcing this statute, be PSC under Senator Dubas' bill or the Governor under LB4. And it would seek to enjoin the application of the statute to this Keystone pipeline project. Probably seek a preliminary injunction, and then that would be...there would be briefing. And the district court would decide whether to issue a preliminary injunction or not. A decision granting or denying a preliminary injunction is immediately appealable to the Eighth Circuit. And it would be appealed to the Eighth Circuit and you have, you know, full...and if the court denied the motion for preliminary injunction, the company would have the option of seeking an injunction pending appeal of the application of the statute. And the same basic...the court of appeals and ruling on that request would apply the same basic standards that the district court would apply in ruling on a motion for preliminary injunction. Then you'd have, you know, briefing in the courts of appeals. And in the briefs, each side would present arguments similar to the kind of arguments that are laid out in the written testimony that I've given you twice. Each side would cite cases and argue based on, you know, accepted principles of law. And what I was suggesting is that because of this circuit Rule 32.1A, I don't think...let's put it this way, I would not cite this unpublished opinion if I were defending this statute in court in light of the circuit rule that says that generally you shouldn't cite unpublished opinions to us, particularly in light of the...of what this court, the Eighth Circuit, has said about unpublished decisions of this court of appeals, Minnesota Court of Appeals. So that means the Eighth Circuit wouldn't even be considering this decision. But as I said, if it did consider it, it's not germane, for the

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reasons I explain, to the lawfulness of the application of this statute to the Keystone pipeline. And if it were to remain, it's inconsistent with the authoritative Supreme Court decisions and the decision of every court that I'm aware of that's addressed federal preemption issues in particular and issues of the preemptive effect of the federal Pipeline Safety Act in particular. So that's...those are my reasons for thinking that this decision is not going to be relied upon by anyone and that if you enact this statute, a court would invalidate it as applied to this pipeline. [LB4]

SENATOR McCOY: Thank you. [LB4]

SENATOR SCHILZ: Thank you, Senator McCoy. Any other questions for Mr. Carpenter? Seeing none, thank you very much for your testimony. [LB4]

DAVID CARPENTER: Thank you. [LB4]

SENATOR SCHILZ: We'll go to the next opposition testimony on LB4. [LB4]

PATRICK PEPPER: (Exhibit 19) Good evening. Senator Schilz, members of the Natural Resources Committee, my name is Patrick Pepper, P-a-t-r-i-c-k P-e-p-p-e-r. I'm with the Nebraska law firm McGrath North and I'm here to testify in opposition to LB4 for two reasons. The first reason is that this statute, LB4, by virtue of the classifications contained within LB4 and the nature of this special session, is unconstitutional special legislation. The second reason is because as applied, this statute will likely result in the Governor enacting a regulatory taking, exposing the state of Nebraska to the obligation to pay just compensation for the taking and damaging associated with that regulatory taking. The context of this legislation is important. It is offered as part of a special session which was called for the express purpose of affected the Keystone XL pipeline, which is an interstate pipeline. Keystone filed its application for the Presidential Permit in 2008, during which time the project has undergone an extensive review by the Department of State with the final environmental impact statement having been issued in August of this year. Governor Heineman's October 28 letter and proponents of this pipeline legislation have repeatedly voiced concerns over safety, directly and indirectly. The focus now has shifted in terms away from safety. But, as Mr. Carpenter pointed out, terms don't necessarily save the statute. Additionally, other constitutional problems exist. As I indicated initially, the Nebraska Constitution Article III, Section 18 prohibits special legislation. In other words, where a general law can be made applicable, a special law must not be entered or enacted. The second point, and I see I'm coming close to time, is regulatory taking. And as my partner Lee Hamann testified to last night on LB1, any time the state enacts legislation or affects the regulation which constitutes a regulatory taking, a deprivation of property interests legally acquired, the state is required to pay compensation to that property owner in the form of what was taken and how the property was damaged. Keystone has already acquired over 90 percent of its easements at considerable cost. I don't know the exact number of that. But if the

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Governor, as he has indicated, would force a route around the Ogallala aquifer, a large, if not all, of those easements would be rendered valueless. And by enacting LB4, that would encourage a regulatory taking for which damages could be considerable. The problem... [LB4]

SENATOR SCHILZ: Finish your last thought. [LB4]

PATRICK PEPPER: The problem with legislation that has a predetermined outcome in a predetermined special session is that it is very difficult to craft legislation that is constitutional, both because of special session and because, in this instance, it will likely cause a regulatory taking to occur. [LB4]

SENATOR SCHILZ: Thank you very much. Any questions? Senator McCoy. [LB4]

SENATOR McCOY: Thank you, Chairman Schilz, and thank you, Mr. Pepper, for your testimony this evening. I'm curious if you could develop and expand, if you would, please, when you're speaking of regulatory taking and your colleague, Mr. Hamann, spoke last night in response to Mr. Alan Peterson's testimony on LB1 yesterday. And while Mr. Peterson didn't testify today on LB4, I'd still like you to address in the construct of LB4 here the differences between a regulatory taking as you're defining it, and damages if a court were to find damages, or is there a difference? We had a discussion yesterday that perhaps the state of Nebraska couldn't be held liable for damages but possibly could for attorney's fees and court costs. Could you develop that and share with us, if you could, what those differences would be, if there are any? [LB4]

PATRICK PEPPER: Absolutely and there are differences. The United States Constitution mandates that any sovereign that takes property must pay just compensation for the taking. Nebraska's Constitution has expanded that. It says you must pay just compensation for the taking and damaging. So and a lot of times it's damage to the remainder of the property. If, for example, a highway were to bisect a piece of property and leave a very small corner that could not be utilized, that property is not necessarily taken by the Department of Roads, but it's damaged because it's not useful anymore. Now a regulatory taking is where the state enacts laws that by their effect cause property to be rendered valueless. Now that doesn't mean that the injured party, the condemnee, is limited in their recovery or just compensation to the value of that property. They're also entitled to recover their damages. There was a case that cited on materials and it's the Scotfield case where the Supreme Court of Nebraska held that a landowner was entitled to go back to the trial court and prove his damages which, in that instance, the landowner had alleged was loss of income from hunting. And admittedly, Nebraska law is not much more developed than that, but certainly loss of income from the use of property, at least as the law stands today, is the type of compensation or just compensation that would be awarded under regulatory taking. Now you also asked about attorney's fees and things of that nature. And I think what

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that testimony was getting to was if the legislation violates the dormant commerce clause then one of the opportunities an injured party would have in that instance would be to file a lawsuit under Section 42 or Chapter 42, Section 1983 of the United States Code. And under Section 1988 of that same chapter, attorney's fees are awarded to the prevailing party. [LB4]

SENATOR McCOY: Thank you. [LB4]

SENATOR SCHILZ: Senator Carlson. [LB4]

SENATOR CARLSON: Thank you, Senator Schilz. Would you expand a little bit on the situation that if LB1 or LB4 became law and then TransCanada sues either the Governor or the state of Nebraska, explain a little bit some possible damages. Define damages a little bit further and not necessarily in amounts but what kind of damages could TransCanada claim? [LB4]

PATRICK PEPPER: The measure, and I certainly, as Mr. Carpenter said, I don't know what TransCanada would do. And the measure of damages for the taking would likely be what are these easements worth. And I believe and I'm led to believe that these easements have considerable value. If all of a sudden a route has to go completely to the other side of the state and all these easements that were through the Ogallala aquifer and the Sandhills are no longer useful for any pipeline construction, then I believe those have considerable value or at least were acquired at considerable cost. The damage aspect, which I think you're getting to, is a little bit more difficult to define because it's not entirely clear what the legislation would look like. But as in the Scofield case, I think income from the use of that property is potentially an available remedy. [LB4]

SENATOR CARLSON: All right. And the easements, I understand that that would be probable in those damages claimed. But if it caused a two- or three-year delay in the pipeline, are there additional damages claimed during that time or because of the loss of that time? [LB4]

PATRICK PEPPER: Well, simply for a delay? What would...I guess I need to get a little clarity on your question if that's all right. [LB4]

SENATOR CARLSON: Well, if the pipeline goes through, they're going to complete it and they'll be in business... [LB4]

PATRICK PEPPER: Correct. [LB4]

SENATOR CARLSON: ...at a certain point in time. But if the delay is two or three years because of LB1 or LB4, then are there additional damages because there's two or three

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years of lost revenue? [LB4]

PATRICK PEPPER: Senator, I think the effect of that hypothetical would be litigated first on an interstate commerce issue, and I'm not sure we'd ever get to a regulatory taking. Because if there was a burden placed on interstate commerce that was as significant as you've outlined, it may very well be that the burden on interstate commerce is too great to withstand a challenge. Now I can't...I simply don't know how the damages would shake out if there was merely a delay not associated with some other type of taking. [LB4]

SENATOR CARLSON: Okay. Thank you. [LB4]

SENATOR SCHILZ: Thank you, Senator Carlson. Any other questions? Senator Haar. [LB4]

SENATOR HAAR: Yeah. We have heard a number of numbers like a billion dollars yesterday and so on and then maybe Texas and Oklahoma and all those places can sue us. Does that fit into your scheme of thinking? [LB4]

PATRICK PEPPER: I don't know if Texas or another state would sue the state. I would think if there was an unconstitutional law that affected their tax base you would have some upset Texans, but I can't speak for them. [LB4]

SENATOR HAAR: But does our sovereignty protect us from Texas or not? [LB4]

PATRICK PEPPER: I don't think our sovereignty protects us from passing laws that violate the dormant commerce clause. [LB4]

SENATOR HAAR: I'm not too worried about upsetting Texans (laugh). [LB4]

PATRICK PEPPER: Fair enough. [LB4]

SENATOR SCHILZ: Thank you, Senator Haar. Any other questions for the gentleman? Seeing none, thank you very much for your testimony. [LB4]

PATRICK PEPPER: Thank you. [LB4]

SENATOR SCHILZ: Next person in opposition to LB4. Thank you, sir. [LB4]

KEN MASS: Senator Schilz, members of the committee, good evening. My name is Ken Mass, M-a-s-s, and I'm here for the AFL-CIO. And the AFL-CIO, we are in support of the pipeline, but today we're opposing LB4. The reasons have been stated. We can't foresee any...hopefully there's no delay in the pipeline being started. And as I said a

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couple of hours ago in another committee, we have a dream. On December 23 the pipeline has its permit and January 1 we start digging. So it will be a good Christmas for a lot of workers. As Ron Kaminski said earlier, the amount of employment is tremendous for Nebraska. It's been a long couple of years. It just hasn't been one year, it's been a long couple of years for a lot of the building trades. And as you stated and I have heard this and I have got phone calls, well, why are you guys so up on support of that pipeline? It's just a temporary job and all this good stuff, temporary and that kind of thing. Well, there is no full-time jobs in the construction industry. They're temporary. They're temporary until they get done. But having said that, there will be some full-time jobs on the pipeline manning those pump stations as they go along as it gets completed. So there will be people manning those, observing so they'll be full-time people on the pipeline payroll. So there's some, yes, it's temporary to build it; but to maintain it is permanent. So there will be some individuals throughout Nebraska that become permanent jobs so. And again, a conversation I had with other states...there are a lot of eyes in other states that are watching the progress of the pipeline through Nebraska, and they are waiting and willing to see what happens here. So any questions? Feel free to answer them. [LB4]

SENATOR SCHILZ: Thank you, Mr. Mass. Senator Smith. [LB4]

SENATOR SMITH: Thank you, Senator Schilz. Good to see you this evening. Why are these other states looking at...why are their eyes on Nebraska? Do they think this is going to create jobs? [LB4]

KEN MASS: Oh, yes, very much so. And if it becomes a situation where Nebraska cannot fulfill the job situation, there will be people from other states coming in and it could be our people. [LB4]

SENATOR SMITH: What's your basis for believing that...what is their basis for believing that there are going to be jobs created? Is it based on... [LB4]

KEN MASS: On history. [LB4]

SENATOR SMITH: By history. [LB4]

KEN MASS: Yes. [LB4]

SENATOR SMITH: Okay. [LB4]

KEN MASS: Sure. [LB4]

SENATOR SMITH: Great. Thank you. [LB4]

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SENATOR SCHILZ: Thank you, Senator Smith. Any other questions for Mr. Mass? Seeing none, thank you, sir, for your testimony. [LB4]

KEN MASS: Thank you. Take care. [LB4]

SENATOR SCHILZ: Other opponents for LB4, please. Good evening. [LB4]

JOHN KUEHN: (Exhibit 20) Good evening, Senators. John Kuehn, J-o-h-n K-u-e-h-n. I live at Heartwell, Nebraska, again representing the Southern Power Board of Directors in opposition to LB4. I'm circulating my written testimony. Opposition has not changed significantly from those issues which we discussed last evening. So in the interest of time, I will not repeat them. I would just like to take this opportunity to state that in the course of a number of hearings today, questions relative to various individuals' motivations for testifying and involvement in this issue has come into question. And I would just like to state that I, too, and my colleagues on the board are elected public officials representing a constituency, and we have seen this as an important enough issue that while many of our colleagues in public power and other local boards have chosen not to engage in the debate or discussion or wade into the controversy, we have felt that it was critical as our role as public servants to take a stand and express our opinions. And in doing so, it has required a lot of time and commitment on our part, but we, as you, see that as part of our civic duty. And that ultimately is our sole motivation and involvement in this process. So if you have any questions, otherwise, appreciate your time in considering the testimony. [LB4]

SENATOR SCHILZ: Thank you, Mr. Kuehn. Any questions of Mr. Kuehn? Sure, Senator Smith. [LB4]

SENATOR SMITH: Thank you, Senator Schilz. Mr. Kuehn, thanks for being back this evening and thanks for your short testimony. Can you expand on that a little bit? I'm not quite certain I'm following you with questioning your reason for supporting this. [LB4]

JOHN KUEHN: Oh, I just think the question has come up several times today in conversation and some conversation with media...Senator Carlson had inquired yesterday evening about Southern's standing to benefit because we had a pumping station. And I think when we're dealing with a highly politicized issue as this has become, when in reality it is fundamentally a utility issue, questions of how and why people are engaging in the issue and within our own district we've had a number of questions about why would you be concerned or why does this affect you directly. And in a project of the scope and magnitude such as this, it involves everyone in the state indirectly. And for those of us who work in energy infrastructure, those of us who in my generation who are young professionals who have chosen to come back to rural Nebraska in particular to make this our home, this is really a watershed issue. And what happens in the course of the special session sets a tone for future economic

development. It sets a tone for the level of state regulation of critical infrastructure projects. And as such, I think it's just important to recognize that in no way have I been unduly influenced or have any personal skin in the game or profit in that sense. It simply is my commitment that brought me to run for a public power board at my age. I'm pretty atypical for my involvement in the issue and why I think it's important to be at the forefront in leading issues, particularly in rural Nebraska. [LB4]

SENATOR SMITH: So you believe this represents your ratepayers well. [LB4]

JOHN KUEHN: Yes, I think it does. I mean, you know, some of our analysis has showed that simply by having the pumping station within our district and the way in which it will spread overhead fixed costs over our district with a very limited investment in infrastructure that it can have as much as a 35 to 50, depending upon the size of the pumping station's final analysis and final capacity downward pressure on rates, which we all know are increasing. We've looked at a \$50 annual for a 40-horsepower irrigation service. That's a very real effect in the short term. In the longer term, you know, we have struggled with and dealt with issues of eminent domain and complications with transmission line projects which have gone through our district, specifically the Axtell-Spearville transmission line currently being constructed by Nebraska Public Power District. I've been at a number of hearings with Senator Carlson where we've heard much of the similar NIMBY type issues, not in my backyard, and challenges to simply building a critical piece of transmission infrastructure. And as we see these challenges come forward, we fully recognize that to separate out one utility or one infrastructure project from another really becomes an artificial and an arbitrary distinction. It's all a cooperative effort relative to how it is we are going to maintain a quality of life, how are we going to maintain continued economic development and viability in what is no longer just a series of isolated states, but truly a cooperative, interstate, and global type of economy. [LB4]

SENATOR SMITH: All right. Great. Thank you very much, appreciate it. [LB4]

SENATOR SCHILZ: Thank you, Senator Smith. Any other questions? Senator Carlson. [LB4]

SENATOR CARLSON: Thank you, Senator Schilz. John, thanks for testifying. And I'm glad you came back to rural Nebraska and that's where you're settled in. I think you bring a point, and this is not a reason for a project, but we focused on jobs and how many and we've focused on some permanent jobs that would be there. But just what you shared with Southern Power and if there's five pumping stations and one on the border... [LB4]

JOHN KUEHN: Um-hum. [LB4]

SENATOR CARLSON: ...how many...what are the other...do you know the other power companies that would benefit from those other stations? [LB4]

JOHN KUEHN: There are the other districts that are involved. We did collectively bargain so the same agreement, for example, infrastructure, reimbursement is all similar for all of the districts in this particular project. I can't speak to their exact economic analysis because I don't know the actual finances under which those districts run. But what I can state is that Southern is the largest of all the rurals. With 25,000 customers in terms of customer accounts, we're substantially larger than many of the rurals for which this will be their single largest load. So when you look at a high power factor, continual use type of load like this, you look at some of the really small districts, this is a huge boon to their ratepayers in terms of ability to really have a high load factor and high kilowatt hour sales with a very low fixed cost. And so while, you know, our analysis is moderate, but to a family, \$35, \$50 a year is \$35, \$50 a year in the name of increasing rates. For some of the smaller districts, this just makes common sense, would have an even greater economic impact to them and in their operation and function. [LB4]

SENATOR CARLSON: And this, we could almost say on a permanent basis, is outside money coming into rural communities. [LB4]

JOHN KUEHN: Yeah. That's the beauty of this whole scenario which I really feel has been overlooked in the discussion is...and this is a hypothetical so obviously there are no plans, but take, for example, the issue for renewable regeneration in the state of Nebraska. One of the greatest impediments, and this committee has heard it year after year, is the ability to build a transmission infrastructure into some of the remote parts of our state. Look at exactly where these pumping stations are located and look at where the transmission infrastructure that's being paid for by TransCanada is being constructed. We're going a long way at a million dollar a mile transmission line to building transmission infrastructure into some pretty remote, highly fertile for wind development, for example, areas of the state. And that is an indirect effect that no economic analysis can possibly take into account at this point in time. But surely if you're a wind developer, for example, and you have transmission line six, seven, eight miles closer at a \$6 million, \$7 million, \$8 million cost less to develop five or six years from now, it only stands to reason that that suddenly becomes much more economically feasible. And suddenly we're seeing an expansion of renewable energy that before was not really possible. And those are some of the details that are, I think, overlooked in this discussion to this point. [LB4]

SENATOR CARLSON: Okay. Thank you. You may have just won Senator Haar over. (Laughter) [LB4]

JOHN KUEHN: Well, good. I'll look forward to a Christmas card. (Laughter) [LB4]

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SENATOR HAAR: But send it to H-a-a-r and not H-a-r-r because I've gotten a lot of his birthday cards. (Laughter) [LB4]

SENATOR SCHILZ: Senator Smith, please. [LB4]

SENATOR SMITH: Thank you, Senator Schilz. Mr. Kuehn, what is the total load expected for those five pumping stations or the four? [LB4]

JOHN KUEHN: The pumping station we're looking at right now is we're building to a 24-megawatt capacity which is the ultimate, but right now...we're assuming right now it will start out at 15 megawatt depending upon how much and how many units they bring on-line at that point in time. [LB4]

SENATOR SMITH: Layman, what is that like average number of homes? What does that represent? [LB4]

JOHN KUEHN: Oh, in our analysis we looked at a monthly consumption of a 1,200-kilowatt-hour-per-month household so that, you know, would be obviously 1.2 megawatts per month in terms of a typical household. [LB4]

SENATOR SMITH: Wow, fantastic. [LB4]

JOHN KUEHN: A significant load. I mean for us in Southern, that's not...it's not going to be our biggest load. We serve five ethanol plants and we also serve the natural gas pumping station that's just three miles from my home, which is our single greatest load. So for us, it's having a significant impact and still does not even remain our largest load. So for the small districts for which it is their greatest load, it's a significant economic impact. [LB4]

SENATOR SMITH: Well, public power is one of Nebraska's greatest assets and provides a lot of jobs and fuels the economy. And if I were one of your ratepayers, I would expect you to be here representing my interest so thanks for testifying. [LB4]

JOHN KUEHN: Thank you. I appreciate that. [LB4]

SENATOR SCHILZ: Thank you, Senator Smith. Any other questions for Mr. Kuehn? Seeing none, thank you, sir. [LB4]

JOHN KUEHN: Thank you. [LB4]

SENATOR SCHILZ: Have a good evening. Next opponent to LB4. Welcome, Herb. [LB4]

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HERB KNUDSEN: Good evening and it's been a long night and long day too. I am Herb Knudsen, H-e-r-b K-n-u-d-s-e-n, and I live in the deep, deep, deep part of the Ogallala aquifer in Ogallala, Nebraska. By education, I'm a chemist and a lawyer, and I'm an entrepreneur, head of a number of companies who are dedicated to create a new industry based on milkweed. One of the things that's been very exciting to us about this project that I saw four years ago the first picture of where the XL pipeline was going to go or the Keystone pipeline and I was going like, hooray. There is a lot of oil up there in the northern part of North America, and it's exciting to see that new oil field come to fruition and to see the need to be able to transmit it to the markets. And that's exactly what proposal has been made to the federal government and that's what's been approved. I'd also say that I'm very proud of our government officials who have over four years worked with the Keystone pipeline company and encouraged them to take on this project, have worked on different things. And even in the last month or so those friendly negotiations within the current law have continued. And now I think we're at a point where the issue in my judgment is do we let it go through or do we fight? And where I come out on it is we ought to not pass any one of the legislative bills regarding the pipeline. Any one of those bills in my personal opinion is that would be a fight. And I have expressed to people in high authority within our state that my view is that that's a fight that we're not going to win. And I think that's what you're going to see and they're kind of...even their statements are going to say, I don't know how we can do anything at this point in time. My feeling and my belief is that you may...you made the right decision in the first...in the regular session of the Legislature--you let it pass and no legislation was added on. Now you get a second chance to take a look at that, and I hope you make that exact same decision--nothing should be approved in this special session. Or if you decide you're going to approve something, do it on a nonemergency basis. I'd be happy to answer any questions you have. [LB4]

SENATOR SCHILZ: Thank you very much. Are there any questions for Mr. Knudsen? Well, thank you for coming all the way from Ogallala. [LB4]

HERB KNUDSEN: You're going to give me an immunity to go to Ogallala (laugh). [LB4]

SENATOR SCHILZ: Thank you, sir. [LB4]

HERB KNUDSEN: Give me a get out of jail free. Thank you. [LB4]

SENATOR SCHILZ: Thank you, sir, for your testimony. All right. Next opponent, please, to LB4. [LB4]

MARK WHITEHEAD: Senators, thank you once again. It seems like it wasn't too long ago. My name is Mark Whitehead, that's W-h-i-t-e-h-e-a-d. I'm the president of the Nebraska Petroleum Marketers and Convenience Store Association. As I indicated yesterday, we passed a resolution in September in support of the Keystone pipeline.

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We did not do that lightly, principally because we do not have a direct economic impact to this. I sent you an e-mail this morning. Some of you have probably seen that. I have had some people that have told me I'm crazy for coming in and getting involved with this sort of thing, and that's why I'm careful to say I do that as president of our state association. I am obviously president of Whitehead Oil Company. You said some kind words yesterday, Senator Haar, and I neglected to thank you for your business. And that's principally in...and that's a primary thing that we're involved with. We survive by the...each individual company survives by the grace of their company...by the grace of their customers rather. And we're certainly very appreciative of that. One of the things that we do think we understand is the distribution of fuel, a little bit as well as the supply, the dependency on the supply that we need to have for that particular fuel. We've got...we also fully understand that an awful lot of people don't entirely understand everything that we're about. Granted, 98...and when people pull in, they expect the dispenser to work, and it's not their problem to understand our particular issues. Ninety-eight percent of the people don't understand the problems. Now granted, the questions I get to answer on a daily basis have a whole lot more to do with price and some of those sorts of issues, but certainly this is one example. As I indicated, there's a tremendous amount of ignorance for people who don't fully understand the things that we do. One of the things I'd correct on the information that I sent you this morning is I fully don't understand some of the things that Keystone does. I made some representations this morning in an e-mail that I'd sent to you on some of the assumptions that I use on underground storage tanks when, in fact, anything after 1998 by federal regulations on tanks that we replaced we have got 100 percent confidence because of cathodic protection with the sacrificial anodes and the rest of that. And I made some representations in reference to what TransCanada may do that might be similar to ours. The reality that I was informed this afternoon was that they, in fact, have much higher standards than what we rely on. So where we've got 100 percent confidence on the new technology of tanks that we apply within our locations, and I've got well over 100 underground storage tanks, our issues are not with the tanks that we've put in since 1998. It's on the much, much older tanks without that same cathodic protection. I indicated some issues that we...how careful we are to make sure that no clay gets next to the tank as a matter of corrosion when, in fact, the pipelines that they utilize are already coated so that's not even an issue for theirs. So they've got a much higher degree of understanding on that as well. So with that, I'd be glad to open it up for any kind of questions. I've got the red light so. [LB4]

SENATOR SCHILZ: Thank you, Mr. Whitehead. Any questions? Senator Smith. [LB4]

SENATOR SMITH: Thank you, Senator Schilz. Mr. Whitehead, 100 tanks, how many gallons do you think you have in storage? [LB4]

MARK WHITEHEAD: An average tank that we've got is 12,000 or, yeah, 12,000 gallons for an average tank. [LB4]

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SENATOR SMITH: And they're located all over the state or what particular area? [LB4]

MARK WHITEHEAD: We're principally located here in Lincoln. We are in a couple of small towns outside of Lincoln. We also have five locations in western Iowa as well around the Council Bluffs area. [LB4]

SENATOR SMITH: And your 100 percent confidence is based on no leaks? [LB4]

MARK WHITEHEAD: Based on the fact that the technology (inaudible) improved dramatically. What happened...also rough, I've been doing this for...president of a 52-year-old company. We've had an awful lot of old tanks where I've seen the technologies change dramatically. I'm going to be painting broad brush strokes here, but in the late '70s, early '80s cathodic protection became prominent within the industry. Around the mid-'80s it occurred to the federal government that, in fact, there were issues with contamination that needed to be addressed. The wild, wild west was between the '85 and 1990 and that was the scenario where they demanded that the industry clean up the entire history of the industry's problems within a very short period of time. And it was at that point that there become uninsurability. There were real issues within the industry. The people were trying to find themselves. There were no standards to what you cleaned up to. Therefore, when the Department of Environmental Control for the state of Nebraska came in, they said you will clean this up and you will clean it up to a standard that they couldn't even define. Right around 1990 to '91 is where Title 200 came into being and that's funded, I think as most of you are aware, by nine-tenths of a cent per gallon by petroleum marketers and by tank owners rather. I estimate that we spent about, based on that nine-tenths, right around...just shy of \$400,000 a year into that particular fund for that liability issues. And what also happened in the late '80s is the federal government gave the industry ten years to clean up their act, get rid of every single problem tank within the industry. April 15, 1998, was the deadline. And at that point, there were a variety of ways that you could meet that compliance, but the main issue was putting in underground storage tanks that were either fiberglass or cathodically protected. To my knowledge, we have never had an issue with it. We have not had any kind of indication of any corrosion of the tanks that we put in since 1998, and we say that with a high degree of confidence. [LB4]

SENATOR SMITH: Thanks. [LB4]

MARK WHITEHEAD: More than you probably asked for. [LB4]

SENATOR SCHILZ: Thank you, Senator Smith. Any other questions? Senator Haar. [LB4]

SENATOR HAAR: I was just going to say that that station was at 13th and J where the

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Blue Cross Blue Shield and probably my one claim to fame is I got to wash Johnny Cash's car when he was at Pershing (laugh). You were a kid yet. You were probably two. [LB4]

MARK WHITEHEAD: Yes, I...well, I have been doing this since I was in fifth grade so I've been doing it for an awful long time. Any other questions? [LB4]

SENATOR SCHILZ: Yeah, any other questions for Mr. Whitehead? Seeing none, thank you very much for your testimony. [LB4]

MARK WHITEHEAD: Senators, thank you very much. [LB4]

SENATOR SCHILZ: Next opponent to LB4, please. [LB4]

TOM BYERS: (Exhibit 21) Good evening. Thank you, Chairman Schilz, members of the committee and committee staff. My name is Tom, T-o-m, Byers, B-y-e-r-s, and I am the senior government affairs representative for Magellan Midstream Partners. During this committee's hearing yesterday on LB1, I presented several concerns that we have with the various pipeline bills that have been introduced during this special session. And because those concerns are also applicable to LB4, I provided you with another copy of the testimony that I gave yesterday. Just suffice it to say that we continue to have those concerns and that LB4 would have some chilling negative impacts on Magellan's assets in the state of Nebraska. And I'll quit with that. [LB4]

SENATOR SCHILZ: Thank you very much. Any questions for Mr. Byers? Seeing none, thank you very much for your testimony. [LB4]

TOM BYERS: Okay. Thank you, Senators. [LB4]

SENATOR SCHILZ: Next opponent of LB4. [LB4]

DAN GUNDERSON: Thank you, Mr. Chairman, members of the committee. My name is Dan Gunderson, G-u-n-d-e-r-s-o-n. I'm with the American Petroleum Institute. I guess I gave the wrong sheet, didn't I? [LB4]

SENATOR SCHILZ: It's getting late. [LB4]

DAN GUNDERSON: And I'm based out of Minneapolis, Minnesota. I'll keep it real brief. As we were reviewing LB4, those of us that have been working on this together who work in a number of states on public policy issues, and I have experience, either registered as a lobbyist or an issue manager in ten states throughout the Midwest. We're beginning to speculate about what would happen if this were to pass into law. And one of the first things we hit on with our experience was, well, we'd probably see it

in other states. And imagine, if you will, Republican North Dakota, Democrat Minnesota, Republican Wisconsin administration, and Democrat Illinois creating siting authorities based on their governor's proclivities or his or her inclinations. And what you will see is a vulcanization of the pipeline industry. And I guess the question might be whether any of these pipes would actually meet up at the border. The other thing that I had an opportunity to look at that I thought was an important point was OPEC reported in a study just yesterday that oil sands production that they expect to compete and possibly put them out of the business of importing into the U.S. will reach...the oil sands production will reach 16 million barrels per day by 2035. That's up from 12 million today. I believe that OPEC imports 2 million barrels a day into the U.S. right now. So I would just again reiterate a little bit of what I said yesterday which is to imagine a world where we weren't brought to our knees, at least twice in my lifetime, by OPEC over oil and we are no longer in any way, shape, or form dependent upon the organization of petroleum exporting countries for a substantial portion of our imports. With that, I'll be happy to answer any questions. [LB4]

SENATOR SCHILZ: Thank you, Mr. Gunderson. Any questions for Mr. Gunderson?
Senator Smith. [LB4]

SENATOR SMITH: Thank you, Senator Schilz. Mr. Gunderson, thank you again for your testimony. And, you know, I don't know. Prior to these hearings I haven't really known much about cattle grazing and organic farming, and I've learned a lot. And it's really, really important to Nebraskans, and so those are some things I don't know much about, but I feel like I do have a little knowledge on economics and business. And I'm still struggling with some of the testimony we heard previously about the impact of this project on prices, prices of energy, prices of fuel, and job creation. And can you help me with that a little bit? Do you...what do you see? Do you see this creating jobs? Do you see this reducing or lowering fuel prices? [LB4]

DAN GUNDERSON: Across...let me put it this way. Historically, the United States of America since oil was discovered in Pennsylvania in mid nineteenth century the flow of oil came out of Texas and Oklahoma and then the gulf and moved north. States like my home state of Minnesota, we were at the end of every pipeline. States like Nebraska have no refineries so they're really at the end of every pipeline. And what we're seeing now with this dramatic new boon, if you will, in energy is a reversal of that infrastructure and with it comes tens of thousands of jobs. I would just suggest that you Google BP refinery in Whiting, Indiana, and look at the number of jobs that are working on that multibillion-dollar upgrade in the system to accommodate oil sands crude into the United States market, some of which is coming into, I believe, into eastern Nebraska. So, yes, there are jobs there, a lot of jobs. I also represent Enbridge and was working on a pipeline almost identical to this one in terms of its construct through four states, including Wisconsin and Minnesota. And there were 26 million union hours in four years. And these are jobs that are paying for people without a college degree but

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training highly skilled craft workers, paying \$80,000 to \$100,000 a year with benefits. We have testimony that I haven't provided but I could from motel, innkeepers, restaurateurs, tavern owners all across northern Minnesota, all across Wisconsin talking about the construction period for that pipeline, saying it saved us. As a matter of fact in one case, one winter there was no snow in northern Wisconsin and it had...we had people saying it saved our enterprise because the snowmobilers didn't show up, but the pipeliners did. So there will be jobs. Again, as far as price is concerned, I can't predict the pricing. I can only suggest this. If you look at the United States of America prior to 1973 and OPEC, you had a stable, reliable, plentiful supply of crude oil into this marketplace. And we enjoyed a very lively auto industry, a very lively economy, even in spite of the Vietnam War. And since OPEC and our dependence on foreign oil from unfriendly nations, we've seen that change. So I think you will see a dramatic increase in jobs, and I think that based on past experience the stability of having the supply here can only help us. [LB4]

SENATOR SMITH: Thank you. [LB4]

SENATOR SCHILZ: Thank you, Senator Smith. Any other questions for Mr. Gunderson? Seeing none, thank you, sir, for your testimony. [LB4]

DAN GUNDERSON: Thank you very much. [LB4]

SENATOR SCHILZ: Next testifier in opposition. [LB4]

MICHAEL WHATLEY: (Exhibits 22, 23) Good evening. My name is Michael Whatley, W-h-a-t-l-e-y, and I'm the executive vice president for Consumer Energy Alliance. And as I mentioned last night, we are strong supporters of the Keystone XL pipeline. CEA is made up of more than 300,000 individuals and 170 different affiliate organizations that represent every sector of the U.S. economy, including truckers, highway users, shippers, manufacturers, iron and steel producers, farmers, chemical manufacturers, truck stop operators, convenience store operators, refiners, and energy producers. As the folks that get the fuel to the pump and every consumer that puts a pump in a tank, we will be the true beneficiaries of this project. Keystone XL will create more than 120,000 jobs across the United States, including 7,500 here in Nebraska. These numbers come from a study completed by a respected economist, Ray Perryman, which I have submitted to the committee tonight. The project will generate hundreds of millions in federal and state and local taxes and will create \$20 billion in economic growth nationwide and generate more than \$150 million in government receipts for the state of Nebraska. That's a lot of money that will go to improving public schools, roads, and hospitals. It will also strengthen our national security and it will reduce gas and diesel prices. The 700,000 barrels of oil per day that this pipeline will bring to the Gulf Coast refineries will be coming from places like Oklahoma, Texas, Montana, the Dakotas, and Canada, our neighbor, our closest ally, and our largest trading partner. As

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of this morning, the United States has imported 2.95 billion barrels of oil since January 1 at a total cost of over \$313.5 billion. This equates to more than 11 million barrels per day out of the total of 19 million barrels that we consume as a nation every day. To suggest that the oil from the Keystone pipeline, which is currently discounted somewhere between \$25 and \$40 per barrel versus world market, will cause the U.S. to become an exporter or would raise gas and diesel prices, as some have alleged tonight, betrays a fundamental lack of understanding of the U.S. oil markets. It also doesn't take into account the fact that the oil sand formation in Alberta there is currently pipeline and rail capacity to get oil sands up to the Pacific coast where it could be loaded into supertankers and sent to the Chinese markets. Instead, suggesting that we would have some folks, producers, put it in a 1,700-mile pipeline down to Port Arthur, load it onto smaller tankers, send it through the Gulf of Mexico and then through the Panama Canal in order to get it to those Chinese markets is simply ridiculous. CEA urges both the Natural Resources Committee and the entire Legislature to cautiously approach any legislation which addresses oil pipeline siting. As introduced, LB4, which seeks to change state laws to effect ongoing oil and pipeline construction projects such as Keystone XL, raises concerns over fundamental fairness and could violate the intent, if not the letter, of the constitution's prohibition against ex post facto laws. Further, given the fact that the State Department would need to conduct a new environmental impact statement for any new proposed route, which will restart a process that has taken over three years to date, it is safe to say the actual impact of any legislation which would result in a new route would be to seriously jeopardize this incredibly important project. Thank you. [LB4]

SENATOR SCHILZ: Thank you, sir. Any questions for Mr. Whatley? Senator Christensen. [LB4]

SENATOR CHRISTENSEN: Thank you. You hit on the pipeline or rail to the Pacific west. Would you mention that again. I've had several people question me and tell me it can't be built there or they would be going there. [LB4]

MICHAEL WHATLEY: Well, there already is capacity. There is one pipeline already that goes from the fields up to the Pacific Coast as well as rail capacity with tanker cars. And Enbridge is currently going through its paces to build the Western Gateway pipeline project which would be a major pipeline route just like TransCanada is going through its paces here with Keystone XL. I think frankly it's very safe to say that we are far more likely to send oil to China if this project is not built than we would be if it is built. [LB4]

SENATOR CHRISTENSEN: And I'd be correct in saying you not only have contracts with the United States to deliver oil, but you have contracts with China to deliver oil so you had to have access to the West to get that done. [LB4]

MICHAEL WHATLEY: That's absolutely correct. [LB4]

SENATOR CHRISTENSEN: Thank you. [LB4]

SENATOR SCHILZ: Thank you, Senator Christensen. Any other questions for Mr. Whatley? Seeing none, thank you very much for your testimony. [LB4]

MICHAEL WHATLEY: Thank you. [LB4]

SENATOR SCHILZ: Next opposition testifier, please. [LB4]

BILL SYDOW: For the record, my name is Bill Sydow, last name spelled S-y-d-o-w. I live in Sidney, Nebraska. I don't have any handouts because what I prepared I gave to you yesterday. I serve as director of the Nebraska Oil and Gas Conservation Commission, and I appear today in opposition to LB4. I'll say we certainly, I believe, have a right as a state to participate in any authorization process of all types of pipelines. However, again, I think LB1 (sic) is pointed directly toward oil pipelines. In fact, it's more broad than LB1. This involves the refined products lines. I want to just say again for the record that crude oil is a naturally occurring liquid hydrocarbon. It floats on water. It doesn't dissolve in water. And it's more benign than diesel, gasoline, or ethanol. LB4 and this particular one ignores natural gas pipelines. In sitting here for several days, I listened to it all when I could. What if we had a natural gas pipeline want to come through the Sandhills? The issue will be construction. And it may not be the safety of our drinking water, but that's not out of the realm of possibility. We potentially have oil and gas exploration potential in the Sandhills and in the center part of South Dakota. What are we going to do about oil pipelines there? I don't know how that would affect it in this hypothetical. A couple of things specifically about this bill: In Section 4 it states that my sister agency, if you will, the DEQ would regulate all oil pipelines. Well, we regulate flow lines in the oil field and LB4 makes no distinction for that so I have a big problem with that. Right now we have sole jurisdiction and we do on our statute so there would be maybe a little bit of a legal problem there, but we can't support Section 4. Section 4 also defines oil pipelines and flow lines and includes flow lines. I'll just be honest. I don't like it. It needs to be more specific, and Senator Dubas' LB1 takes that into account I believe. Section 5 states that anyone who constructs an oil pipeline should apply for a route certificate. As it stands, people in the oil field operating on oil and gas leases would have to apply to DEQ, wouldn't have to come or work through us. So I want to keep oil and gas jurisdiction under our agency. Those sections there have a problem. Section 6, I would request that if a bill like this was passed that maybe we could have a seat at the table with those other agencies. I don't know what we could bring a lot to bear, but at least we have experience in crude oil. Maybe just my last comment, you know, food and water are important, but what's also important is fuels. And I believe I could say that the health and welfare of our citizens in Nebraska, in the United States depend on oil and gas. We can't grow food, harvest food, process food, get it to there; we can't make medicines; we can't make clothes without oil and gas. It's

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valuable and I just want everybody to know that. So thank you very much for your time, Senator Schilz. [LB4]

SENATOR SCHILZ: Thank you, Mr. Sydow. Thanks for coming in. Any questions? Senator Haar. [LB4]

SENATOR HAAR: Yes. Not tonight anymore because it's getting late, but could I...you know, we heard scientists last night say to ask for the data. Could I talk to you later about the data to support the statements in your advertisement that (inaudible)? [LB4]

BILL SYDOW: Yes. [LB4]

SENATOR HAAR: Okay. [LB4]

BILL SYDOW: And I'd be glad to right now. I mean everybody is tired, but I'd be glad to do that. And just off the top, I had the opportunity, I believe, to educate people in Nebraska or other states about the nature of crude oil. Everything in that particular page was directed toward crude oil, and I think it's important that people know that. Some words, I talked about viscosity yesterday and the viscous nature of crude oil. Well, I didn't feel maybe I could say that. Who knows what that is? Feel for it, but it's thick and sticky. And I'll say it again, I said it yesterday, we've produced 500 million barrels of oil in our state on top of the aquifer and we have never contaminated an aquifer with crude oil. And I believe that to be true because I believe it's physically impossible if you get on an oil spill in a very short...and I'm not even going to say a very short time, a couple of days, that the gravitational effects cannot overcome the viscous effects. They cannot overcome the capillarity effects in the nearest...in the soil profile to pull it to the water table if it's substantially far away. [LB4]

SENATOR HAAR: Okay. Well, we'll be in touch for that data. Thank you. [LB4]

BILL SYDOW: Okay. Thank you. [LB4]

SENATOR SCHILZ: Senator Christensen. [LB4]

SENATOR CHRISTENSEN: Thank you, Chairman. What you hit on, we heard testimony, I don't know if you heard it earlier, about that spill up there where they said oil sank to the bottom. Could you explain that a little bit? [LB4]

BILL SYDOW: I did hear that testimony and, Senator Christensen, I've never been there. I know it was an Enbridge spill. I don't know about that, but I can tell you this. If...I was able to go up to Fort McMurray. I went to the Suncor mining operation. And when they mine this rock that has the oil in it that is degraded and lost all of its hydrogen atoms, when they haul it...they haul it in 400-ton Caterpillar trucks. Caterpillar sells all of

the equipment up there, but they break that rock up and it goes to about, I would say, 10,000-barrel volume tanks full of hot water. They disaggregate that sand which is not cemented up in the hot water. The oil floats to the top. The sand goes to the bottom. And they recycle the water, they take the oil to their upgrader and the sand is pumped out, free of oil, and it goes to these pits to be reclaimed where they've mined it out. So, Senator Christensen, for what I saw and the way that they do it, that oil floats and that's the nature of it. I've seen some oil that wouldn't float, and it came from offshore, if you will, in the Great Salt Lake and it was eight gravity and had about 30 percent sulphur and it would sink. But that is a very low gravity and this upgraded crude that however they upgrade it, and I believe Shell has a process where they add hydrogens. Suncor has a process where they take carbon out. They upgrade it so that it is the consistency, viscosity of about a 32-gravity crude oil, 32 API. I would contend that it floats. [LB4]

SENATOR CHRISTENSEN: Okay. Thank you. [LB4]

SENATOR SCHILZ: Senator Smith. [LB4]

SENATOR SMITH: Thank you, Senator Schilz. Mr. Sydow, tell me, you've already...you've been here before testifying and I don't recall. Can you tell me your credentials, a little bit more about yourself, and then also a little bit more about your agency. [LB4]

BILL SYDOW: Okay. I'd be glad to. Thank you for asking. I'm a native Nebraskan. I was born in 1953 in Rushville, Nebraska, 1,200 people in the northern Panhandle. My folks were...my dad was born in a sod house in 1909 and my mom was born in 1920, so my grandparents were homesteaders up there. I graduated from high school, lucky, went to school in Chadron for about three years. We had a great earth science program there. I transferred to the South Dakota School of Mines and I earned a bachelor's degree in geological engineering. And I had to go to work in the oil field because the mining jobs weren't there and I was married and I was broke and I went to work for Amoco Production Company in Riverton, Wyoming, in January of 1977. I worked for them for four years doing production engineering, completion engineering, and I was a reservoir engineer for about two and a half years. And I left there in about 1980, went to Oklahoma City, I consulted one year at an engineering company that did bank evaluations. And then I had a partner who got me down there, we started our own exploration company that was called Barrick Exploration Company in 1981, right at the collapse. We explored in frontier areas of the United States, Mississippi Embayment, south Texas deep Anadarko Basin, and Montana. We had that company until 1986 when the price collapsed and I got fired. And I was able to, the Lord blessed me with a job in Midland, Texas, with King Ranch Oil and Gas which was a wholly owned subsidiary company of King Ranch. I worked for King Ranch basically about ten years. I did exploration as an exploration manager for the onshore and then I went back into the production department. And we moved to Houston and we set up operations in offshore.

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I was the spill coordinator for King Ranch Oil and Gas in offshore. And finally I guess it came to the point where my boss, my old partner didn't want to hire anybody and we were working all the time and I said uncle. And the Lord provided me with a job in Sidney at a greatly reduced rate and I took it in 1995 so I've been in Sidney for about 17 years. And our commission that I work for, three commissioners, they are appointed by the Governor to four-year terms. The law says that one must be...have experience in oil and gas production. They rotate on four-year terms, and I'll tell you of the three men we have--and Mr. Jim Gohl is up for...the Governor has reappointed Jim--I believe we have the best set of commissioners of any oil and gas organization in the 30 producing states in the country. We're cash funded and we operate on a conservation tax that is paid by the working interest owners of an oil and gas well and by about the 12.5 generally, the 12.5 percent royalty which is the mineral interest owners, could be the surface owner, could not be, but the mineral interest owners fund us. We're funded off sales. We have the ability to lower or increase our mill levy. And so the oil and gas business and our agency is kind of like this. When everybody is doing good in business, we're doing bad. And when everybody else is doing bad, we're doing good because that's the nature of oil prices--it's up and down. And oil is so strong it affects our economy in such a strong way in the price of energy. So right now our budget appropriations, we were appropriated around \$875,000. We're in the process of creating a position of a deputy director and then we'll be looking for a young, I'll say a younger person, but we're looking at a person to fill that petroleum, the staff petroleum engineering position. Our activities has ramped up really in the last five years. There's exploration plays that are going on in our state, both in southwest Nebraska in the McCook, going back to the west over to Benkelman, 3-D seismic acquisition. So we're finding some new fields; 2009 was a really good year down there. We have people acquiring three-dimensional seismic in the Panhandle and exploring for D and J sands. There's a company from Houston and I can say they're Fairways Exploration and Production Company. They may have leased over a million acres. I don't know that, but they have leased a tremendous amount of acreage in the Panhandle. They have 60 land...they're contract land people just, I'll say, you know, we talked about the contract right of way people. These are contract land men, could probably do the same job but they make contact with mineral owners, hunt them down, take oil and gas leases. I do not know what kind of oil and gas play they're going to have, but they're going to spend some money. And I think that they're going to look at drilling horizontal wells into the Niobrara chalk. Those wells are probably going to cost \$3 million or \$4 million and at least I hope we do and so there's that play. In northern Sioux County or this would be north of Scottsbluff so that would be in really Senator Loudon's district in that part of the world, but we just got a drilling permit on an exploratory well up there. And there were great oil and gas shows. We had some discoveries in the 1980s, and so I've been working with this engineer to try to tell him to spend some more money on a well design on a wildcat and they're going to do it. And, you know, we may have some discoveries. You know, I'm positive about it. I love oil and gas. It's been a great life, and I think we do a great job. You know, we have good regulations. We're there to promote the development of the state's oil and

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gas industry. And I think you do that by having good, solid regulations operating, environmental, and you enforce those to do that. At the same time, we collect data. We require oil and gas operators, we permit all the wells, but they have to give us all the data on the wells and keep it confidential for one year. But after that we're going to put it out on our Web site. We have...I'll just tell you I think we have the greatest oil and gas Web site in the country. We've built it inhouse. We maintain our own Web site. My IT, our IT engineer, he's a master's University of Nebraska agricultural engineer. He's great on computers, can do anything, and I think we got a good operation. [LB4]

SENATOR SMITH: Thanks, appreciate it. [LB4]

SENATOR SCHILZ: Thank you, Senator Smith. Any other questions, please? Seeing none, thank you very much for your testimony. Other opponents of LB4? Any other opponents? Seeing none, any neutral testifiers on LB4? [LB4]

ANTHONY SWIFT: Thank you all for the opportunity to speak tonight. I know it's been a long night. My name is Anthony Swift. I'm a policy analyst with the Natural Resources Defense Council. Am I speaking to the mike here? I will try to keep my comments as short as possible. I should mention that I'm speaking neutrally not because the NRDC doesn't have a position on the route. We do oppose the route for the pipeline, but we haven't analyzed the bill itself to make a position on it. But I come from a family with four generations in the oil and gas business, starting with my great-grandfather who laid some of the country's first pipelines in Texas. My father is still in the oil business, so are both of my brothers. And they all agree that there's a right way to do things and a wrong way to do things. And given the choice between safety and saving money, safety comes first. And right now we're here because, well, in its communications with the State Department, TransCanada's primary rationale for proposing the route of Keystone XL through the Sandhills has been based on the fact that it's the cheapest route. And I'd like to just mention a few points which are...which regard the state's ability to control the route of pipelines. Nobody...the federal government does not have authority over the routing of pipelines. There are many, as far as natural gas pipelines are concerned, there is an agency called FERC that has some regulatory authority. In this case, the State Department is doing an environmental assessment on Keystone XL only because it crosses an international border, but states remain and have that authority, and I'll talk to you more on that if I have just a little time. But speaking about the State Department's environmental review of Keystone XL, in it they reviewed the impact of an oil spill 250,000 gallons in size or greater on the wetland areas of the Sandhills and have found that an oil spill of that size would have catastrophic impacts on the Sandhills lasting for years and having a regional effect. And I should mention that they didn't consider some of the new attributes that we've seen with diluted bitumen. It does sink. Bitumen is heavier than water. It's got a gravity below 10. I believe what was spoken about in previous testimonies was synthetic crude oil which is upgraded into something that is more akin to conventional crude. Bitumen, diluted bitumen is a new substance that we

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haven't seen in a pipeline system yet. And there are many indications that it is more hazardous to pipeline systems and once pipelines fail, to the environments where those spills happen. And I should mention that all pipelines fail. There's been talk about the Platte pipeline and its safety record. I just a moment ago looked at its safety record, and I haven't done a comprehensive look, but just between 1989 and 1996 it's leaked 300,000 gallons. TransCanada's operation of Keystone I has been particularly telling in that it's had 14 leaks in one year. I see that I'm out of time so I'll conclude here, and I'll be happy to answer any questions that you all may have. [LB4]

SENATOR SCHILZ: Thank you, Mr. Swift. Any questions for Mr. Swift? Senator Haar. [LB4]

SENATOR HAAR: Yes. I'm trying to take notes. Where was the 300,000 that you said? What is this again? [LB4]

ANTHONY SWIFT: Well, there were a series of about seven spills between 1989 and... [LB4]

SENATOR HAAR: On which pipe? [LB4]

ANTHONY SWIFT: ...1996 on the Platte pipeline. And I haven't had time to do a comprehensive review of that pipeline, but since it's come up on innumerable occasions, I thought I would take a look. And it just serves a really telling example of the fact that, you know, right now all pipelines have problems. And what you have to think about is if you have a pipeline that you can't guarantee won't leak, and nobody is claiming the Keystone XL or even Keystone I when it was first proposed wouldn't leak. The questions have just been how many times will it leak and what magnitude. But when you have something that you know is going to leak, you don't put it through a resource that you can't afford to have leaks. And right now, you know, a lot of talk has been focused on the Ogallala aquifer, but really, you know, I feel that the biggest concerns has been the Sandhills region, which is a much smaller region that has, you know, a high percentage of the Ogallala aquifer's water and no crude oil pipelines currently cross it. [LB4]

SENATOR HAAR: Well, there was an article in the Lincoln Journal Star about the Platte pipeline express or whatever it is. And I can't remember exactly how many gallons, but I... [LB4]

ANTHONY SWIFT: I think... [LB4]

SENATOR HAAR: ...but that information is available or... [LB4]

ANTHONY SWIFT: Yes. PHMSA, the federal pipeline regulators, actually keep that information. It is very difficult to find. It's in a very large spreadsheet. But I can get the

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full history of that pipeline if you'd be interested. I remember seeing a Star article that mentioned an 8,100-barrel leak on it in '81. But... [LB4]

SENATOR HAAR: There was one in Wyoming at one time. But anyway...and we've also heard that it's been shipping the same kind of tar sands oil. [LB4]

ANTHONY SWIFT: I think I should make a clarification on that. There is synthetic crude oil which, as has been mentioned, is upgraded into something that is more like conventional crude oil, does float on water. What is happening in Canada is they have already exceeded their upgrading capacity, and there's been a decision that it's just cheaper to mix the raw bitumen with natural gas liquids to make a very thick substance that you can move on high pressure through pipelines. And that decision has really only happened in the last ten years. We were only importing about 100,000 barrels of diluted bitumen in 2000. We're now importing over 600,000 barrels, and that is the direction of production in Canada. And tar sands diluted bitumen moves at higher temperatures, has significantly more abrasive particles. And our federal pipeline regulators have told Congress that they haven't...they can't vouch for the safety of it in pipeline systems. And in fact right now there are two bills in Congress that are...that would require a study of the safety impacts. But essentially we're dealing with an unknown quantity. And the pipelines that it has been moved on have had significant problems. We haven't done a full study, but, for instance, Enbridge's Lakehead System has had significant problems with corrosion abnormalities. They've had a number of spills. And the pipelines in the northern Midwestern states where most of this stuff has been traveling have a...have essentially over the last five years leaked I think three times as many barrels per mile as the national average, which is saying something. [LB4]

SENATOR HAAR: But that's still open to study. [LB4]

ANTHONY SWIFT: Say that again. [LB4]

SENATOR HAAR: That's still open to study. [LB4]

ANTHONY SWIFT: Oh, yes. I mean essentially what needs to happen is that study. There are significant indications that this stuff...I mean it is more corrosive. The question is, is it so corrosive that it is going to serve an imminent threat to pipeline systems? There are indications that that may be the case, but it really does need to be studied. And the issue is neither the pipeline companies themselves nor the regulators have done that study. And, you know, the principle of due diligence would suggest that you make sure you can operate a pipeline safely before you build it. [LB4]

SENATOR HAAR: So what other chemicals would we find in dilbit besides the bitumen? [LB4]

ANTHONY SWIFT: Well, you...okay, so you have the bitumen and then to thin the bitumen you'd have some sort of very light, very volatile diluent, maybe natural gas condensate. What happened in the Kalamazoo spill in Michigan was that large quantities of benzene were used to thin the bitumen, and that posed a significant health risk to the residents and spill responders had a, you know, noted the increased contamination from the benzene initially. And as I said, as far as the Enbridge spill goes, it was an 800,000-gallon spill that they expected to have cleaned up in two months because the spill responders were predicting it would behave like conventional oil does. It's now 15 months in. They spent \$700 million and they're expecting to find heavy oil in that watershed for years to come. And that's another problem is that we haven't developed the practices and technologies to deal with these spills when they occur. And to some extent, you know, we know that a 250,000-gallon spill in the Sandhills would be catastrophic because State Department says it would be. But we really don't know the full extent of the damage when you're dealing with a tar sands spill. My final point is that with the bitumen those hydrocarbon molecules are so large and have so many heavy metals it's...there's significant research out there that would suggest bacteria would have a hard time processing it and eliminating it through natural mechanisms. [LB4]

SENATOR HAAR: So then the deal of does oil float or sink? [LB4]

ANTHONY SWIFT: Well, essentially what happens is when it's released it's very hot and you have kind of a mixture of a very light diluent that boils away at temperatures between 80 and 160 degrees. And what you'll have is the diluent will gas off very rapidly and as it gases off, the remaining bitumen becomes heavier and it sinks into the water column. And we found it in Kalamazoo. Essentially it's a great case study of this happening. So the bitumen sinks into the water while the diluent gases off and becomes soluble. [LB4]

SENATOR HAAR: But in soil... [LB4]

ANTHONY SWIFT: What's that? [LB4]

SENATOR HAAR: But in soil it would just clump at the top? [LB4]

ANTHONY SWIFT: The bitumen would sink in water essentially. In a watershed, we haven't had real-world experience of a tar sands spill in an aquifer. We...the one spill that was noted was a conventional spill in an aquifer in Minnesota. Some key things there is you had...I think it was a couple hundred thousand gallons and the spill was in 1980. The oil is still there and the oil percolated down into the water table, and that was conventional oil that was lighter than water. Essentially we haven't...nobody has studied exactly what this diluted bitumen would do in an aquifer setting. But based on its properties, in all likelihood it would behave significantly different than conventional crude. And what we know about it would suggest that it would break in ways that would

make it, you know, harder to deal with and in the, you know, basically in the aquifer for a longer period of time. [LB4]

SENATOR HAAR: The whole thing of we're just dealing with siting as I understand it and maybe use of eminent domain, but that will still be around siting. You know, what about financial obligation? [LB4]

ANTHONY SWIFT: TransCanada is already obligated to pay \$350 million through the Oil Pollution Act. If there is no finding of gross negligence, that's their cap of liability for cleanup. And so to some extent, again, we've seen with the Kalamazoo spill, which is, you know, it ballooned to \$700 million in costs, these spills can be significantly more. You know, they can be above the spill cap the federal law places on pipeline facilities. So to some extent the guarantee of \$100 million for spill cleanup (a) simply duplicates what the company is already obligated to do under federal law and (b) is unlikely to pay for a full cleanup of an aquifer in the event of a large spill. [LB4]

SENATOR HAAR: Where is that cap of 350? [LB4]

ANTHONY SWIFT: That's in the Clean Water Act. The part of it was the Oil Pollution Act, and that was the cap that was placed on onshore pipeline facilities. [LB4]

SENATOR HAAR: So, you know, the question will come up so I'll just ask it. Well, how does the fact that you're with NRDC color your testimony here today? [LB4]

ANTHONY SWIFT: Well, my testimony has been fact based. And essentially we believe that the route for the pipeline is particularly bad. We think that there are a number of other reasons why this particular project is a bad project. And so the route isn't the only reason we oppose it, but right now there are no other crude oil pipelines through the Sandhills. And we would oppose this route for the project on its own merits. [LB4]

SENATOR HAAR: So I get, you know, just extending that further, I mean, what...so what business do you have in Nebraska? [LB4]

ANTHONY SWIFT: Well, essentially I'm coming from the perspective of a pipeline safety advocate. I've testified before Congress on matters of pipeline safety and I've been, you know, raising the alarm bell of the lack of oversight when it comes to pipeline safety in general and, in particular, these particular types of pipelines. But, you know, to look at another...I mean one of the reasons that I wanted to come in particular was because of my federal experience. I'm a little concerned that the science is being misrepresented and the arguments that are being made are being misrepresented. And to some extent I think that the bounds of federal preemption on pipeline safety would surprise most pipeline safety regulators in Washington, D.C. So that's why I'm here. [LB4]

SENATOR HAAR: Surprise them in what way? [LB4]

ANTHONY SWIFT: Well, I think that, you know, pipeline, when...the times that I've talked to the Pipeline and Hazardous Safety Materials Administration they always tell me that we have no control of the pipeline routing. And from that perspective, the idea that any decision regarding the routing of pipeline that could have an environmental consideration, essentially every pipeline routing decision has an environmental consideration. I mean the reason why you'd want to reroute a pipeline is because of some sort of geographical issue with the other proposed route. And so I think that given the pipeline safety regulators in D.C. disclaim authority over the routes of pipeline, given the State Department says that it doesn't have authority over the route of pipeline, if Nebraska doesn't, then you're basically left to conclude the only group with pipeline routing authority are the pipeline companies themselves. And that is not a conclusion that is in the public interest. And I should say that, you know, in all the briefs that have been put forward regarding pipeline preemption issues, you know, none of them have dealt with a law that simply dealt with a pipeline routing law that was based on environmental considerations, aside from a few ones that dealt with natural gas pipelines. But as I said, when you're dealing with natural gas pipelines, you've got another agency, the Federal Energy Regulatory agency, that does provide protection over the routing of pipelines. With hazardous liquid pipelines, it's only left to the state to do that. If the states don't do it, you know, companies like TransCanada can dictate terms. [LB4]

SENATOR SCHILZ: Thank you, Senator Haar. Senator McCoy. [LB4]

SENATOR McCOY: Thank you, Chairman Schilz, and thank you for your testimony, Mr. Swift. I understand were you based out of Washington, D.C., when you talk about your federal background? [LB4]

ANTHONY SWIFT: Yes, yes. [LB4]

SENATOR McCOY: And how did you come to be here today? Were you asked to be here? [LB4]

ANTHONY SWIFT: I wanted to be here today. But I...when the hearings were taking place, essentially I inquired about the process and, you know, NRDC is supporting my travel to here to give the expertise that I've developed over the past few years. [LB4]

SENATOR McCOY: And did any other organization or advocacy group ask you to be here? [LB4]

ANTHONY SWIFT: I have been in contact with Bold Nebraska, it is true. [LB4]

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SENATOR McCOY: Okay. Well, frankly, your neutral testimony stretches the bounds of credulity in my mind. You mention this as a bad project and talked about your disbelief in the experts that have talked about pipeline safety. You do realize that you were testifying in a neutral capacity. Is that correct? [LB4]

ANTHONY SWIFT: Yes. And I failed...I meant to explain that in the beginning of my testimony... [LB4]

SENATOR McCOY: Please do. [LB4]

ANTHONY SWIFT: ...which is essentially I said at the very beginning that NRDC is opposed to the pipeline route and also believes that the project is...has other problems associated with it. The reason that I'm testifying in a neutral capacity is because the institution hasn't had the opportunity to fully assess its position on LB4 in particular. So I'm testifying in my capacity as an expert witness on pipeline safety and diluted bitumen. But we don't have a position pro or con on the legislation at hand. [LB4]

SENATOR McCOY: What is the Natural Resources Defense Council exactly? [LB4]

ANTHONY SWIFT: It is an environmental organization that advocates for sustainable environmental policies. [LB4]

SENATOR McCOY: I see. Thank you. [LB4]

SENATOR SCHILZ: Senator Carlson. [LB4]

SENATOR CARLSON: Thank you, Senator Schilz. Is NRDC a federal agency? [LB4]

ANTHONY SWIFT: It is not. It is a... [LB4]

SENATOR CARLSON: So how is it funded? [LB4]

ANTHONY SWIFT: Through donations. [LB4]

SENATOR CARLSON: Through donations. Would NRDC policy and so forth and objectives, would it be accurate to say that NRDC is against pipelines? [LB4]

ANTHONY SWIFT: No. That would not be accurate. We...NRDC is against this particular pipeline. NRDC doesn't have a position on pipelines in general. There are many pipelines that have been proposed and built in the U.S. that NRDC has had no position on one way or another. [LB4]

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SENATOR CARLSON: Is NRDC against drilling for oil in the United States? [LB4]

ANTHONY SWIFT: The NRDC does not have a unilateral opposition to drilling for oil in the United States, no. [LB4]

SENATOR CARLSON: So in answer to that question you can't just answer yes or no? [LB4]

ANTHONY SWIFT: Well, I think that the NRDC opposes drilling in some sensitive areas, but it does not oppose...for instance, it doesn't oppose drilling in, say, west Texas. I can't give a blanket that NRDC supports drilling everywhere. The institution opposes development in sensitive regions, and it does support policies and technologies that would begin to free the U.S. from the dependence on oil, yes. [LB4]

SENATOR CARLSON: Excuse me, say that again. [LB4]

ANTHONY SWIFT: It does support policies and technologies that would begin to lead the United States toward a freedom from dependence on oil. [LB4]

SENATOR CARLSON: Does it support further development of fossil fuels in the United States? [LB4]

ANTHONY SWIFT: I don't know that I can personally speak to the NRDC's position on that point. [LB4]

SENATOR CARLSON: So it's safe to say that it's interested in the United States becoming more energy independent through wind and solar. [LB4]

ANTHONY SWIFT: Yes. The NRDC believes that there are a wide variety of technologies out there, including wind and solar, that can lead to energy independence. [LB4]

SENATOR CARLSON: Does NRDC oppose coal-fired generation for electricity? [LB4]

ANTHONY SWIFT: I don't know that I can speak to the institution's position on coal-fired generation. [LB4]

SENATOR CARLSON: Does it oppose nuclear power? [LB4]

ANTHONY SWIFT: And again, it's a...I can't speak to the organization's position on nuclear either. [LB4]

SENATOR CARLSON: Well, you're having some difficulty telling me what their position

is and yet you were contacted to come out here and really testify against this project. [LB4]

ANTHONY SWIFT: Well, I don't want to give you an incorrect position, but I can provide those positions to all of you very shortly. And I will if that would be of use. [LB4]

SENATOR CARLSON: All right. Thank you. [LB4]

SENATOR SCHILZ: Any other questions? Senator Smith. [LB4]

SENATOR SMITH: Thank you, Senator Schilz. Mr. Swift, define for me when you say the NRDC has a sustainable energy policy. That's...define that for me, particularly in context of just your exchange with Senator Carlson. What is a sustainable energy policy? [LB4]

ANTHONY SWIFT: Well, I think that a sustain...we support sustainable energy. I think that what we mean by that is energies which (a) have impacts that are sustainable to the environment so that they don't cause, you know...for instance, we wouldn't support a policy that would produce energy but destroy our fresh water resources. That would be a nonsustainable energy policy. We support energy policies that can essentially power the U.S. for the long term and not have an impact on the environment that would later be a detriment to the country. [LB4]

SENATOR SMITH: Is the production of fossil reserves part of a sustainable energy policy? [LB4]

ANTHONY SWIFT: We believe that some of the unconventional reserves in Canada, because of their, you know, their impacts on water and their emissions are not part of a sustainable energy policy, yes. [LB4]

SENATOR SMITH: Okay. That's interesting. You pointed out Canada in that particular one. I was not targeting, trying to target any specific. Fossil... [LB4]

ANTHONY SWIFT: Well, I would say that there are conventional fuels that we do use today, and the NRDC recognizes that and is working to minimize our use of some of the more...some of the dirtier types. And the reason that I mentioned Canada, essentially Canada has one of the largest reserves of unconventional tar sands crude which we don't believe is part of a sustainable future for the country. [LB4]

SENATOR SMITH: It sounds like you...antidevelopment of those types of reserves. All right. Let me ask you, tell me your credentials again. Tell me your background, your education, and your experiences that lead up to your testifying here. [LB4]

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ANTHONY SWIFT: Well, okay, so I'm an attorney who prior to becoming an attorney I worked for the Department of Transportation for three years. And, you know, over the last about a year and a half I've been working on pipeline safety oversight and I've been in close contact with federal pipeline regulators on a wide number of pipeline safety issues. I've testified before Congress on matters of federal pipeline safety oversight and have written significantly on those issues. And I've been involved in the environmental review for the Keystone XL project itself and am very familiar with that process. [LB4]

SENATOR SMITH: I see. And your length of time with Natural Resources Defense Council? [LB4]

ANTHONY SWIFT: It's been about a year and a half. [LB4]

SENATOR SMITH: Okay. So about the year and a half you've been working with pipelines has been while you've been with the NRDC. [LB4]

ANTHONY SWIFT: It has...right, my time...that is correct. [LB4]

SENATOR SMITH: All right. Thank you. [LB4]

SENATOR SCHILZ: Any other questions for Mr. Swift? Senator Haar. [LB4]

SENATOR HAAR: Just briefly because we're getting so much alphabet soup. I think I know what FERC is. Talk a little bit about NEPA since we've had that talked about today. [LB4]

ANTHONY SWIFT: Right. So NEPA is the National Environmental Policy Act. And essentially it is a process that requires federal governance to review the environmental impacts of their decisions. It's not a...I mean, all federal agencies have to do it when they're going to make a decision with significant environmental impacts. The reason why NEPA has to...was triggered by the permitting decision for Keystone XL is because the State Department's decision to permit Keystone XL would trigger a large federally initiated environmental impact with Keystone XL. If Keystone XL had not crossed the Canadian border, the State Department would not have had to permit it, and it would have been left to states to determine how and where to route it and through their permitting process. So, for example, if it had just started in, you know, northern Montana and gone to Houston, the only analysis of its impacts in Nebraska would be through a Nebraska permitting process. Other than that, the pipeline safety, I mean the federal pipeline safety regulators would focus to ensure that the pipeline was constructed and operated according to their pipeline safety standards. But their pipeline safety standards only concern the construction and operation of pipelines, not the...once you deal with where a pipeline is and how you want to minimize its impact through its location, federal regulators have no control. [LB4]

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SENATOR HAAR: So does, I'm sorry, does FERC then...how is FERC involved with this pipeline? [LB4]

ANTHONY SWIFT: FERC has little involvement with this pipeline. FERC is very involved with the or can be very involved with the siting of natural gas pipelines. When it comes to crude oil pipelines, their only involvement is in setting the tariffs for, you know, what goes in the pipelines. But they don't have any control over the routing of them the way they do with natural gas pipelines. [LB4]

SENATOR HAAR: Okay. Thank you very much. [LB4]

SENATOR SCHILZ: Senator McCoy. [LB4]

SENATOR McCOY: Thank you, Chairman Schilz. Mr. Swift, earlier when I questioned you about your position on LB4, you said that the Natural Resources Defense Council had not taken a particular position on LB4. Is that correct? [LB4]

ANTHONY SWIFT: That is correct. [LB4]

SENATOR McCOY: Then why would you be here today to testify in a neutral capacity on LB4? [LB4]

ANTHONY SWIFT: Well, because of the issues surrounding the route for Keystone XL. I wanted to testify in order to provide various pipeline safety expertise and expertise relating to Keystone XL. [LB4]

SENATOR McCOY: But why did you choose this particular bill to testify in your capacity on? Have you read LB4? [LB4]

ANTHONY SWIFT: I have read it, yes. Yes. But part of it is, we...there's an institutional process for putting a position on a bill and we haven't had the time to do that. And I would have liked to have testified yesterday. I just couldn't make it down here in time. [LB4]

SENATOR McCOY: So I'm trying to understand, you had said you had been contacted by Bold Nebraska. So you clearly, I assume, flew here to testify tonight on LB4, but yet your institution has a methodology by which you determine what position you take on a bill, and yet you still took the time to come all the way to Lincoln, Nebraska, to testify on this bill. I still am having a hard time understanding why exactly you were here. Did Bold Nebraska ask you to come testify? [LB4]

ANTHONY SWIFT: Well, I'm hoping... again that question would suggest I'm doing a

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very bad job of testifying. But essentially I'm hoping to address various questions of fact and science that may help the Senate in its deliberation of this bill. [LB4]

SENATOR McCOY: Will you be testifying in a similar capacity on the two remaining bills that we will have before our committee tomorrow? [LB4]

ANTHONY SWIFT: I believe so. Yes, I plan to. [LB4]

SENATOR McCOY: Thank you. [LB4]

SENATOR SCHILZ: Any other questions for Mr. Swift? Thank you, sir, for your testimony. I would like to take this opportunity and remind everyone that we are in the neutral phase of the testimony. Thank you, sir. [LB4]

ANTHONY SWIFT: Okay. [LB4]

SENATOR SCHILZ: That we are in the neutral phase of the testimony and we do have a bill in front of us, LB4. Senator Langemeier has been kind enough to introduce that bill. These senators have sat around this table all night, and a lot of the night yesterday on another bill, and I would appreciate it if the people that come to the desk to testify would give...in the neutral capacity, would testify according to LB4. Thank you very much. Next neutral testifier, please. Thank you for coming in. [LB4]

CINDY MYERS: You're welcome. I'm testifying in the neutral position but I support any siting legislation that can come out of committee. [LB4]

SENATOR SCHILZ: Can you please say and spell your name, please? [LB4]

CINDY MYERS: (Exhibit 24) My name is Cindy Myers, C-i-n-d-y M-y-e-r-s. I grew up on a ranch in the Sandhills and I continue to live in southwest Holt County. I've worked as an R.N. for 31 years. In March of 2009, this has been quite some time ago, I started writing letters and writing editorials, and speaking out about the pipeline because of my concern for the groundwater. So I am simply a Nebraska citizen wanting to protect the water that I drink. Jim Goeke...I went to the hearing last December 1 and during his testimony he showed a picture of the pipeline route crossing a large area of southwest Holt County. He said the area has a "high potential for contamination because of sandy soil and aquifers that extend above the surface. The 48-inch pipeline would totally sit in the aquifer in many areas of the Sandhills." Goeke also said any leaks would cause only local contamination, perhaps an area of a mile or two. That doesn't seem very local to me when I drink from a private home well two miles east of the planned route. The fact is, we have varied thoughts by the experts. When it comes to our drinking water, the science must be 100 percent accurate. Any spillage will go directly from the pipe to our water supply in Holt County. The pipeline will not be crossing the Ogallala aquifer in Holt

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County, it will be gushing through the aquifer. I talked with Brad Vann, EPA Region 7, and he told me he would also be concerned if he were...if he lived where I did, just to the east of the pipeline route. And he said because benzene only takes 5 parts per billion to make water undrinkable, you can't taste, see, or smell it, and you can drink it unknowingly. I visited with Dennis Schueth, the director of the NRD in Holt County just last week. He told me a pipeline spill would be considered a point source of contamination, and people with private wells would be accountable for their own water. Brian McManus, at DEQ, I visited with him last Friday and he also stated there's no statewide structure responsible for private wells. Brian told me the DEQ only has authority once the spill occurs. I asked, well, how will they know if a spill occurs and if our water is affected? These are his exact words. He said: "TransCanada will let us know if it gets into our groundwater." That was not very reassuring to me. The numerous rural wells are not monitored by any public utilities entity, and so we are on our own. And I would estimate at least 99 rural wells for every municipal well in Nebraska. So how will I feel safe drinking my water when TransCanada acknowledges that a spill leak could go undetected for up to 90 days? A decision of this magnitude should not be based on the Department of State's highly controversial, environmental study. I learned yesterday that the inspector general will be doing a formal investigation of the Department of State related to the Keystone XL. I also was in D.C. last March. Assistant Deputy Secretary Daniel Clune was asked, will this oil be committed to the United States. And he replied, no, it will be an international commodity. I read a... [LB4]

SENATOR SCHILZ: Excuse me, ma'am. You have a red light. Can you finish up? And if you would, within that...can you tell me your neutral position on LB4 in the language in the bill? [LB4]

CINDY MYERS: My primary concern is siting regulation and I support any of the siting bills. And I... [LB4]

SENATOR SCHILZ: Okay. So support, okay. Thank you, ma'am. Go ahead and finish up, please. [LB4]

CINDY MYERS: So regardless of the decisions by the State Department, I strongly believe Nebraska needs pipeline legislation in place to deal with all future pipelines. Daniel Clune did say this was an international commodity and I read an article in the National Geographic, a well-respected magazine, about the oil being shipped out to foreign companies that are invested in the tar sands. [LB4]

SENATOR SCHILZ: Thank you very much. Senator Haar. [LB4]

SENATOR HAAR: Well, we seem to be in a mode of asking for credentials. What are your credentials, Cindy? [LB4]

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CINDY MYERS: As far as specifically? [LB4]

SENATOR HAAR: Being here to talk. [LB4]

CINDY MYERS: I've lived in Holt County my whole life and I feel like I know the groundwater there. I know how you dig down and the groundwater is right below the surface. And I guess as a Nebraska citizen, I feel like it's for humanitarian reasons. I don't believe in putting a pipeline full of toxins directly, completely immersed in our groundwater that we use for drinking and livestock and irrigation. [LB4]

SENATOR HAAR: Are you a water engineer or any...? [LB4]

CINDY MYERS: I'm an R.N. and I know how toxins can potentially cause certain types of cancers. [LB4]

SENATOR HAAR: So, I don't know, do you think that the only people who can have opinions on this matter need to be experts and experts from Nebraska or...? [LB4]

CINDY MYERS: I really truly believe the people in Holt County, the ranchers, the people that have lived there their whole lives know the value of that water and understand the nature of the water the best of anybody. And I think it's hard for a foreign company, or even people that have not lived in that area, to truly understand. [LB4]

SENATOR HAAR: Understand what? [LB4]

CINDY MYERS: The nature of the water there and how valuable it is to us. [LB4]

SENATOR HAAR: Then, so, where does the fear come in? I mean... [LB4]

CINDY MYERS: As far as the water? [LB4]

SENATOR HAAR: Maybe fear isn't the right word for it. What's your emotion around... [LB4]

CINDY MYERS: Well, it's my drinking water. And right now I drink the water untreated, unfiltered, untested. It comes straight from the aquifer. And if this pipeline goes in just to the west of my well, we know the groundwater flows eastward, I won't feel safe drinking that water. [LB4]

SENATOR HAAR: And as an R.N. that concerns you? [LB4]

CINDY MYERS: I've done a lot of research in the last three years and I know our groundwater moves. The tar sands south might not move but in talking with Brad Vann

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and reading quotes from John Stansbury, benzene, in particular, because it's carcinogenic, is water soluble, and it will float in the water. So maybe the tar sands oil won't but I believe the chemicals that come out, become water soluble, will. [LB4]

SENATOR HAAR: Okay. And, you know, hopefully, I'm not being disrespectful. I'm just wondering why average citizens would have anything to say about this. [LB4]

CINDY MYERS: It's our water. And at the hearing in Atkinson, there were 1,000 people there. And all of them, the primary concern was our water. So to me that hearing was very telling. [LB4]

SENATOR HAAR: Okay. Thank you. [LB4]

SENATOR SCHILZ: Any other questions? Senator Dubas. [LB4]

SENATOR DUBAS: Thank you, Senator Schilz. Thank you, Cindy, for coming today. And I know our process can be intimidating to people that don't do it on a regular basis. So, you know, I know we're in the neutral capacity and I know you have said you support siting. Is there a reason why you chose to testify in the neutral rather than coming forward during the supportive? [LB4]

CINDY MYERS: Well, for one thing, I haven't done this before and I really didn't know what I was doing whether, you know, what check mark to put so I thought, well, I'll put neutral and I'd be safe. So that's basically how that came about. (Laughter) [LB4]

SENATOR DUBAS: That's normally how it works. If you're neutral, you're kind of...no, I really do appreciate you coming forward... [LB4]

CINDY MYERS: Thank you. [LB4]

SENATOR DUBAS: ...and you've sat here with all of us through the whole day, so I appreciate you coming forward. [LB4]

SENATOR SCHILZ: Any other questions for Ms. Myers? Ms. Myers, thank you very much for your testimony. [LB4]

CINDY MYERS: You're welcome. [LB4]

SENATOR SCHILZ: Any other neutral testimony on LB4? [LB4]

ROBERT BERNT: (Exhibit 25) Senators, thank you for taking the time and being here this evening. My name is Robert Bernt. I live in Wheeler County, Nebraska. The Cedar River flows through my land which will be affected by...it crosses approximately four

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miles to the west of me. My concern... [LB4]

SENATOR SCHILZ: Excuse me, sir. Can you say and spell your name again, please, for the record? [LB4]

ROBERT BERNT: Yes, sir. I'm sorry about that. My name is Robert Bernt, B-e-r-n-t. I am a certified organic grass-fed producer. I produce and market Clear Creek Organic Farms cheese in currently three different states. This will affect me. It will affect my family, but I am here on the siting issues with some...I want to shed some light on some things that haven't been spoke about. Number one, in Wheeler County, Holt County, and the Sandhills of Nebraska we have developed a thing or a thing has been developed called the EQIP Program. This program was designed to run water lines in those Sandhills so we could divert the livestock grazing methods to improve them. In Wheeler County alone in the years that this has been in progress there's been 398,000 feet of those water lines in place. There is no record of anywhere where these pipelines go. This thing would devastate that region if it would come down across there. And this is just in Wheeler County. And just recently, one landowner received a \$54,000 underground pipeline water system put on his ranch and he also sold out the right of way to the TransCanada Transport to an oil line through it. The only way that this can be accountable is the actual individual that places this water line in and he's been told from the NRCS, go from point A to point B at the least resistance. There is no record, no flags, no way to know where it's at. And this is mainly in the Sandhills of Nebraska. I don't want to see this money thrown away. Wheeler County itself has put out in the neighborhood of \$600,000 on this program since it existed in the last ten years. I'm concerned about that. If you look on my next chart, I'm very concerned about the routing considering the active fault line that exists. If you see that map, it runs from Stuart south. That fault line is in the black. There was a 4.2 last fall at Stuart, and there was a 3.2 at Greeley, Nebraska, and it runs parallel to and crosses over the proposed line. It concerns me with the kind of soils that exist there. The next map that I have for you is a map of the rivers. Now as the Natural Resources Committee, it ought to concern you the number of streams and rivers that this thing is taking on the current route. All right. The number of...I also put across the top of the map the distance in miles from one site to the next. It's not clear across the state of Nebraska because it's less than 100 miles to the existing line. Eight streams, major rivers, versus four. All right. This was a Natural Resources issue. My son runs an outfitting thing on the river, on the Cedar River along with two other outfitters. Last year it was \$150,000 income for those three outfitters. The Governor's agri-tourism and team claims that's a \$5 return. Before it leaves the community that's \$500,000-plus. And if this river is contaminated, and it will be, that will be a lost revenue for the state of Nebraska and for that region. Thank you. [LB4]

SENATOR SCHILZ: Thank you, Mr. Bernt. Any questions? Senator McCoy. [LB4]

SENATOR McCOY: Thank you, Chairman Schilz and thank you for your testimony, Mr.

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Bernt. Perhaps I missed it, I neglected to hear you talk about your neutral testimony on LB4 which we have before us. Could you perhaps... [LB4]

ROBERT BERNT: I am testifying on the fact that I have....I'm testifying on the neutral position of this bill based on the fact that I've only had one time to come today. That was today. I couldn't come tomorrow and I'm just similar as Cindy, I wasn't aware of where I needed to put my check on that page when I came. I did study the bill. I think that you ought to realize an individual with my lower intelligence, I'm unaware to go through that bill and understand it completely, so a neutral position is a good and accurate position to take. [LB4]

SENATOR McCOY: I appreciate your comments there. I assume this John Bernt that you mentioned in your testimony, is that a brother or a cousin, or...? [LB4]

ROBERT BERNT: No, sir, that is a cousin that has not lived in this area since 1966. [LB4]

SENATOR McCOY: I appreciate that you've studied LB4. What can...elaborate a little more what would be...when you testify in a neutral capacity, what would you be neutral about the bill on? [LB4]

ROBERT BERNT: Well, I'm neutral on the first portion of the bill concerning eminent domain. I don't want to get into that. As far as the siting issues with Senator Langemeier's bill, I'm just frustrated. I'm confused. I just came here to approach you with a different source of information, and accurate information, in hopes that you would take the time to listen to me. [LB4]

SENATOR McCOY: You mean this information that you handed us, is that what you're talking about in a neutral...? [LB4]

ROBERT BERNT: Yes, sir. [LB4]

SENATOR McCOY: What, if you might, you've gone over a little bit in your maps here, what...can you share with me a little bit more what pertains in your information here on LB4 in the neutral aspect of this? You said this is new information. Can you tell us what would be...am I missing something here that I need to be looking at that pertains to this particular bill? [LB4]

ROBERT BERNT: Well, this bill also concerns siting, does it not? [LB4]

SENATOR McCOY: Well, you had said you didn't want to talk about part of the bill. What part of it does this information have to do with? [LB4]

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ROBERT BERNT: Siting. [LB4]

SENATOR McCOY: Okay. And how...in what capacity would you be talking about being neutral in that? You're neutral because you're okay with the route or you're not okay with the route? [LB4]

ROBERT BERNT: I'm neutral on the eminent domain. [LB4]

SENATOR McCOY: But you're not neutral on the siting? [LB4]

ROBERT BERNT: I am not neutral on the siting issue because I do not want this thing to run through the current pattern that it shows. [LB4]

SENATOR McCOY: So, you're an opponent of the currently proposed route of the pipeline? [LB4]

ROBERT BERNT: Yes. [LB4]

SENATOR McCOY: Thank you. [LB4]

SENATOR SCHILZ: Thank you, Senator McCoy. Senator Dubas. [LB4]

SENATOR DUBAS: Thank you, Senator Schilz. Help me understand this. I know we have some neighbors in our area who have done a lot of this underground water lines, and if I'm understanding what you just said, and what I'm reading, when those water lines are put in, there's no...the NRCS isn't tracking them or marking them, or...you know, what if you have to go in at a later date and there's repairs or something? I guess I'm just...I'm not quite tracking with, we're putting these underground water lines in, how do we know where they're at for future reference? [LB4]

ROBERT BERNT: It's up to the landowner to know and I have utilized this program. And it did frustrate me because they said point A, point B, get there at the least possible resistance. So it means going up this valley rather than across the hill to get to that point, then that was the point they would take. There is no mapping in place to show anyone where this is at. It's up to that landowner to know that. [LB4]

SENATOR DUBAS: So have you put any kind of markers out or anything like that? Again, what if you had...I suppose if there is a leak you're going to have a muddy spot in the pasture, I imagine. But otherwise, there's just...you know that's where it is and you're the only one that knows where it is. [LB4]

ROBERT BERNT: I know that's where it is. Yes, ma'am. And that's... [LB4]

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SENATOR DUBAS: So the people that put it in, there's no records of this. [LB4]

ROBERT BERNT: No. There's a plan that has been drawn up by the NRCS office and like I say, they helped us design it so we could regulate and monitor the rotational systems in our pasture to improve the quality and environment of those Sandhills. And it's a well-drawn-out plan. It's a plan that may take and run several years. All right. And they know where they want the water systems to draw the cattle to, but it's up entirely to that contractor to get it there at his discretion. [LB4]

SENATOR DUBAS: So these landowners that have signed their easements, they're going to probably want to make sure that they're very involved when... [LB4]

ROBERT BERNT: Oh, I would say absolutely or they'll go to the pasture next spring or whatever with cattle and there will be no water for their livestock. Most of them have actually removed their windmills and other sources. [LB4]

SENATOR DUBAS: Thanks for helping...I didn't realize this. Thank you very much. [LB4]

ROBERT BERNT: Thank you. [LB4]

SENATOR SCHILZ: Any other questions for Mr. Bernt? Senator Haar. [LB4]

SENATOR HAAR: Yes, I'm very sorry that you believe that you don't have the intelligence to be here. That's sort of what I took...none of us took an IQ test for being on the Legislature. That would be an interesting thing to have on the ballot, but we don't have that. (Laughter) I want you to be welcome here and we know that average citizens...not average, but citizens...you know, this is the second house. We consider citizens to be the second house. We want you to feel welcome and I understand you're feeling somewhat uncomfortable because I did that the first time I testified as well. But we value you being here and thank you for driving this way. [LB4]

ROBERT BERNT: Yes. [LB4]

SENATOR HAAR: And thank you. [LB4]

SENATOR SCHILZ: Anything else? Thank you, sir, very much for your testimony. [LB4]

ROBERT BERNT: Thank you. [LB4]

SENATOR SCHILZ: Any other neutral testimony on LB4? Going once. Seeing none, thank you very much. Senator Langemeier. Senator Langemeier waives closing. Thank you so much for being here for the hearing on LB4. We'll probably be back here again

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tomorrow. (See also Exhibits 26, 27) [LB4]