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Natural Resources Committee
January 20, 2012

[LB760 LB931]

The Committee on Natural Resources met at 1:30 p.m. on Friday, January 20, 2012, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB760 and LB931. Senators present: Chris Langemeier, Chairperson; Ken Schilz, Vice Chairperson; Tom Carlson; Mark Christensen; Annette Dubas; Beau McCoy; and Jim Smith. Senators absent: Ken Haar.

SENATOR LANGEMEIER: Good afternoon. My name is Chris Langemeier. I'm the Chairman of the Natural Resources Committee. I'd like to introduce my committee members that are with us here today. To my far left, or your far right, is Senator Jim Smith from Papillion; then we have Senator Mark Christensen from Imperial; then we have Senator Schilz from Ogallala, who is with us here today; we have Laurie Lage, who is the legal counsel for the committee; to my immediate right, or your immediate left, we have Senator Carlson from Holdrege; then we have Senator Beau McCoy from Elkhorn, western Omaha area; then we have Barb Koehlmoos, who is the committee clerk, with us today. And we do have one page with us right now. We have Alex Wunrow, who is from Los Angeles, California, and is a student at Southeast Community College, will be helping us here today. If you're here to testify, in the corners of the room you'll see a green sheet on the table. We ask that you get one of those and fill it out and fill it out in its entirety so when you come up to testify, if you give that to Barb, the committee clerk, it helps us keep a more accurate record of today's events. Also in the corner of the room there's a...on those little tables, there's kind of a spreadsheet looking form and if you'd like to have a record that you're here but you don't plan to testify, you can sign up on there and tell us whether you're support or opposition, but you don't have to do both. With that, we in the Natural Resources Committee use the light system. You'll see it there where you get five minutes of testimony. You'll see the green light will come on when you start, the yellow light when it comes on that means you have one minute left and it will remain on for that one minute, and then it will go red when your five minutes are up. We ask at that point you conclude your testimony. And we can kind of see if you're amidst of a discussion item, there's a good chance one of the committee members will ask you a question that will allow you to finish that at that time. If you have handouts, we ask that you have 12 copies. If you know right now you're short some copies, raise your hand and Brian, who is our other page, will help you with that...maybe. We'll get that taken care of for you. The other thing we ask about handouts is if you do give us something to look at for the record, we are going to keep it. So if you have something you want to show us that you'd like to have back, don't give it to us. Just show it to us from the table and then allow yourself available for the committee members to look at whatever it is, a family photo or whatever it is, at a later date after the hearing. But again, if you do give it to us we are going to keep it for the official record. At this time I'd ask you to look at your cell phones and make sure those are turned off so we don't disrupt the individual that has the time to testify here today before us. With that, when you come forward the microphone is there only for recording

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

Natural Resources Committee
January 20, 2012

purposes. It does not amplify it so we'd ask that you don't touch it. It's in the proper spot so we get the best recording so we can keep the most accurate record of today's events. With that, we ask when you start, the first thing we need you to do is say and spell your name for us. That also helps us get it in the computer and helps with transcription and an accurate record. Today we're going to take the two bills as they were posted outside. We'll do LB760 introduced by Senator Schilz, and then we'll do LB931 by Senator Karpisek to follow. So with that, Senator Schilz is with us and we'll recognize him to open on LB760. And as he's preparing that, Senator Annette Dubas from Fullerton has now joined the committee and welcome. Good afternoon.

SENATOR SCHILZ: Good afternoon, Senator Langemeier and members of the Natural Resources Committee. My name is Ken Schilz, spelled K-e-n S-c-h-i-l-z, and I represent Legislative District 47. And I'm here today to introduce LB760 which was brought to me on behalf of the Department of Environmental Quality. Currently, the Environmental Quality Council is required to meet four times each quarter. However, DEQ claims that the amount of business the council conducts does not justify quarterly meetings. LB760 would reduce the number of meetings the council is required to hold to two per year from four now. The Environmental Quality Council is a 17-member public body appointed by the Governor to represent specific interests and adopt regulations to be administered by the DEQ. Members are appointed to serve staggered four-year terms and the Environmental Quality Council is established through the Nebraska Environmental Protection Act as the body that adopts rules and regulations which set air, water, and land quality standards in order to protect the public health and welfare of the state. The DEQ believes they are expending resources on the quarterly meetings that could be saved if we would move them to two meetings required per year. It should be noted that even though they're only required to have two meetings, they could call more meetings if they so deem. LB760 will save the council members time and the department resources. And the bill also makes a technical change in recognizing that there are other statutes the department must follow when distributing grants to political subdivisions that may not be consistent with the council's priorities, and Mike Linder is here and he will address that as well. And with that, I ask for your support of LB760 and thank you. And I'd be happy to try to answer any questions you might have. [LB760]

SENATOR LANGEMEIER: Are there any questions for Senator Schilz? Senator Schilz, I do have one question. [LB760]

SENATOR SCHILZ: Yeah. [LB760]

SENATOR LANGEMEIER: I'm being a little facetious with my question. In the bill, and that's why I opened it up, you talk...in statute it says they have to meet four meetings once a year quarterly, so they're forced to space those in that. And this legislation takes it to two regular meetings each year. [LB760]

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

Natural Resources Committee
January 20, 2012

SENATOR SCHILZ: Right. [LB760]

SENATOR LANGEMEIER: So could you have a meeting on Monday, all stay overnight and have a meeting on Tuesday and be done? [LB760]

SENATOR SCHILZ: You know, that's a good point, and I suppose you could. [LB760]

SENATOR LANGEMEIER: I mean, should that be spaced semiannually, I guess. [LB760]

SENATOR SCHILZ: It might be a good idea and we can talk to Mr. Linder about that, but I could see where that might be an issue. [LB760]

SENATOR LANGEMEIER: I figured he might answer it if I brought it up now, so. [LB760]

SENATOR SCHILZ: Yeah. [LB760]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much. [LB760]

SENATOR SCHILZ: Thank you. [LB760]

SENATOR LANGEMEIER: You have heard the opening on LB760. We'll now take testimony in support or proponents. Mr. Linder, welcome. [LB760]

MIKE LINDER: Thank you. Good afternoon, Senator Langemeier and members of the Natural Resources Committee. My name is Mike Linder, that's M-i-k-e L-i-n-d-e-r. I'm director of Nebraska Department of Environmental Quality and I'm here today to testify in support of LB760. I would like to thank Senator Schilz for introducing the bill on behalf of DEQ. As Senator Schilz mentioned, the Environmental Quality Council is a 17-member body which presently is statutorily required to meet four times a year, once each calendar quarter. The council adopts environmental rules and regulations for air, water, and land quality standards in Nebraska. The regulations that are adopted guide the policy, activities, and responsibilities of DEQ. LB760 reduces the meeting requirement from four quarterly meetings to two meetings annually, but more importantly to us is moving the requirement for a quarterly meeting. There have been occasions over the last several years where the EQC has been required to meet, but with little or no business to conduct each quarter. As an example, in 2011 the EQC had only two meetings where there was business to conduct. So we don't think this is either efficient use of time for the EQC members who must travel to attend the meetings, nor is it efficient use of state resources. This statutory change to at least two required meetings will give more flexibility to schedule the meetings when they're needed rather

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

Natural Resources Committee
January 20, 2012

than be restrained by the calendar quarter schedule. It is the DEQ's intent to schedule, of course, as many meetings as is necessary for the EQC to conduct its business in a timely, efficient manner. As I mentioned, a quarterly requirement is what we like to see amended because it makes it really difficult to schedule the logistics each quarter. And, in fact, often...in the last few years, oftentimes we've tried to straddle like a June 30 to July 1 and hold a meeting on both days to meet the requirement. The other item LB760 addresses is a housekeeping change. Paragraph seven describes grants made to political subdivisions by the director. The language currently states that all grants made to political subdivisions shall be in accordance with priorities established by the council. Since that original language was passed in this section, there have been other statutory processes for grants that conflict with this direction. Amending the language as proposed will eliminate statutory conflicts. And a good example you'd be familiar with is the provision for grants to political subdivisions for implementation of stormwater management plan. The funding to political subdivisions there is a statutory formula that the council really doesn't get involved with at all. I do understand that there's some concern that two meetings may not be enough and that there would be more comfort with three rather than two meetings, and that's really fine with me. There are a number of ways we could have proposed this change but our most significant thing is to get away from the quarterly meeting requirements, so. I might give a couple of statistics just so you get a sense of the need for this. I mentioned 2011, there were two meetings where we had business to conduct so sometimes what we have to do is bring the council members in and just have like informational reports and things that aren't regulatory hearings. The year before in 2010 we had three meetings; four meetings in 2009. So it's kind of been scattered, but as the regulation adoption process in Nebraska has gotten more complicated, so has the planning for these quarterly meetings. So that's the intent of the bill and I'd be happy to answer any questions. [LB760]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Carlson. [LB760]

SENATOR CARLSON: Thank you, Senator Langemeier. By this section of statute, it doesn't spell out really what the council does. Just review that briefly for us, would you? [LB760]

MIKE LINDER: Sure. Sure. The...and really the expert, I think, is going to testify later. But the Environmental Quality Council in Nebraska, its function as originally set up has worked very well over the last 40...almost 40 years. When our agency would like to have regulations adopted, like any state agency we have a public hearing requirement. And before we can adopt a regulation we have to go through a public hearing, accept public testimony, make changes if needed, and then submit them to the Attorney General, and then Governor for approval. With our agency there was the Environmental Quality Council established that is the public hearing body. And so any regulations that we propose or amend we take to the Environmental Quality Council, they hear

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

Natural Resources Committee
January 20, 2012

testimony, and either accept it or suggest modifications, or deny it. It's a cross section of not only industry, but conservation groups and biology, minority population representation. I think that is in the bill, the representation. But their function is not to, like in some states, to be involved in enforcement. They're not...they don't have that function in Nebraska. They don't have the function of administration. The other significant role they have besides rule making is in the event of a vacancy in the director's office, they submit a list to the Governor to choose from for my position. So those are really the two main functions. [LB760]

SENATOR CARLSON: Okay. All right. Thank you. [LB760]

SENATOR LANGEMEIER: Seeing no other questions, well done. [LB760]

MIKE LINDER: Thank you. [LB760]

SENATOR LANGEMEIER: Very good. Further testimony as a proponent to LB760. Senator, welcome. [LB760]

LORAN SCHMIT: (Exhibits 1 and 2) Thank you, Senator. Senator Langemeier, I have some comments here which you might want to distribute. Members of the committee, my name is Loran Schmit, and I represent the Association of Nebraska Ethanol Producers. I appear here today in support of LB760 with an amendment which I will also provide. We are the association and the organization which propose the hearings be limited or reduced from four to three, rather than from four to two. We're not quite as optimistic as Mr. Linder is that the load is going to decrease to the extent that it does and we feel that, perhaps, cutting the hearings in half would be too drastic a first-step move. We believe that if, perhaps, we try this for another year and if there is justification for further reduction, it can be taken care of at a later date. But we think that the proposal that the...the pages he has made to reduce it to is a little drastic. And we frequently testify at Environmental Quality hearings. And as Mr. Linder has indicated, those hearings require a lot of advanced preparation and although it may appear to be merely a simple rule change, you may have to read hundreds and hundreds of pages that goes through that proposed rule change. So it requires a lot of interaction between the agency and the sources. And we have generally had a good relationship working with the agency and we appreciate their willingness to consider an amendment from two to three. We have discussed that with Director Linder and Deputy Director Jay Ringenberg and we think that three is a reasonable compromise. Senator Carlson, in 40 years from now you may come back and attend hearings common on bills which you introduced in your prior life, and it's kind of a welcome experience to see that an agency which we founded during my early tenure has functioned as well and as efficiency as it has. And I believe it has become kind of a model for many other states. We were advised by so-called old hands at the time we introduced this legislation that it would never work, that the government either had to have a commission which ran an

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

Natural Resources Committee
January 20, 2012

organization like the Highway Commission does, or the Game and Parks, or it had to be an advisory council, which we all know really does nothing because it doesn't very frequently take very much advice. And so the idea of a council made up of 17...at the original time it was 16, there's 17 members, was very foreign. And it was not predicted to have much of a success ratio but it has worked very well. I've been real pleased that we have had a large number of people serve on the council over the years and some from, we might call it a left, and some from the right. But they seem to kind of get together and I described it one time, Senator Langemeier, like a load of cattle going down the road in a truck. You got to...the first ten or fifteen miles, they kind of settle down and learn to work together and find their spot and has worked very well. I commend Director Linder for his leadership skills in that area and his staff, and from time to time we have disagreements, but we are usually able to work those out. So I would hope that the committee would consider this amendment, and I would be glad to answer any questions. [LB760]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Carlson. [LB760]

SENATOR CARLSON: Thank you, Senator Langemeier. Senator Schmit, I'm...I like your optimism that I might come back in 40 years to a hearing. I think in 40 years I'll be playing golf in the heavenly realms. (Laughter) But... [LB760]

LORAN SCHMIT: That's optimism too. [LB760]

SENATOR CARLSON: You know there is a provision in here, as it reads, there's two regular meetings that's been requested and then they have special meetings, so what's the difference between two regular meetings and a third special meeting, if needed, as compared to your amendment? [LB760]

LORAN SCHMIT: I guess that the only difference is the pride of authorship, Senator. I don't like to give up the four meetings that we originally planned. They worked that way for 40 years. And I think, and I appreciate the fact there may be some unnecessary cost this way, but the convenience of the public, I think, is very important. And there have been times when it's important, I think, that the commission...that the agency meets and I hope that if we did work this way for 40 years, a reduction from four to three is sufficient at this time. And I know you can call the extra meetings, but I prefer to have it in statute. [LB760]

SENATOR CARLSON: Okay. Thank you. [LB760]

SENATOR LANGEMEIER: Any other questions? Senator, I do have a question. [LB760]

LORAN SCHMIT: Yes. [LB760]

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

Natural Resources Committee
January 20, 2012

SENATOR LANGEMEIER: If the department thinks that two meetings is adequate, and they're basically dummifying up two other meetings in the year with filler stuff, and I don't use that in the best language, but filler stuff in the other two meetings, and you think we should go to three instead of two, what are they not doing, or what do you think they're not doing that they should do in a third meeting that they're not covering, or what should they do in a third meeting other than play golf? [LB760]

LORAN SCHMIT: Well, of course, I do not know that they have a specific problem there with it. It always seems to me like they're busy. We get a lot of material that comes across our desk from the agency and I would be very happy if we could get by with two meetings a year and not have new rules and regulations, etcetera, etcetera. I do not share the (inaudible) optimism that the amount of work for the agency is going to decrease. We know that today...all of us...we hear every day people complain about the excess of regulatory activities from the federal government. And we find out that coal is a bad word, it's going to be regulated more and more. We're going to have all of those things. I just think that we need to be cautious about giving that amount of discretion to the agency. As I said earlier, I'm not critical, but...I guess I am. Had the Environmental Quality Council said we could get by with two, I'd have felt more comfortable about going to a lesser number. But the staff from the agency said two was sufficient. I would prefer that we stick with the lesser amount than four, but not go down to two. And I'm not encouraging them to make work. We know we have plenty of problems without them making work for us. I don't think they try to do that. But I can tell you from experience that when we have a rule change or we have something to be considered by the agency, it isn't a simple matter for them nor for us, and the complications are increasing. The ethanol industry must hire consultants, attorneys, and it's quite an expense. So if we could get by with two, I here...that would be fine. But if there's a problem and for example I've been here long enough to know that as we know, the Attorney General has to approve these rules if there's a rule change. And this Attorney General has chosen to be very...interprets those rule changes very narrowly. And sometimes if he finds something that he doesn't like and he says we can't approve it that way, he sends it back. So they have to have another meeting then and approve that as he has written. Give a little example. A year ago in December, as you might remember, the EPA was very insistent that the agency adopt what they call the Tailoring Rule to govern greenhouse gases. We took them at their word, although we were concerned that the federal agency would back down and we might have ourselves in a position where we were, and adopted language which was not necessary. But we took them at their word because we felt they were billed the boss, so to speak. So we adopted the Tailoring Rule. Then in July of this year the federal government delayed for three years the regulatory action on greenhouse gases. So now this agency must go back and rescind that language that we adopted a year ago. It's better for us if we can do that rapidly rather than to wait for another hearing because it's my understanding, and Mike might want to correct me or someone else from the agency, but it's my understanding that if a

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

Natural Resources Committee
January 20, 2012

permit is drafted at the present time, we must draft it under the rule that we adopted back in December of 2010, which included regulatory action on greenhouse gases. So we would have to...we have to rescind that or else we have to live with it. [LB760]

SENATOR LANGEMEIER: So with all that said, is it your belief that if the agency only had to do two meetings that they can do anytime they want, that they could delay making decisions on rule changes and other things because they don't have to have a meeting until a later date? [LB760]

LORAN SCHMIT: You mean that they would deliberately delay? [LB760]

SENATOR LANGEMEIER: I mean, is that what you're saying, they could deliberately delay making rule changes because they don't have to have a meeting this quarter, so we're going to push it off until November? [LB760]

LORAN SCHMIT: I'm saying that they would probably take the easy way out and just delay it. There is no real pressure on the agency to have that meeting to rescind that rule and so, therefore, they would just wait until their normal time for the meeting which would be the semiannual meeting. [LB760]

SENATOR LANGEMEIER: So do you think there's some opportunity if you know that quarterly meeting is going to come up, you could then go and press them to put that issue on that agenda... [LB760]

LORAN SCHMIT: We might do that. [LB760]

SENATOR LANGEMEIER: ...versus making them have another meeting. [LB760]

LORAN SCHMIT: We might do that, but I think they would do it themselves. [LB760]

SENATOR LANGEMEIER: Okay. [LB760]

LORAN SCHMIT: But I think this...I guess, I prefer the order myself, Senator. [LB760]

SENATOR LANGEMEIER: Okay. Are there any other questions? Seeing none, thank you, Senator Schmit, very much. [LB760]

LORAN SCHMIT: Thank you very much, Senator. [LB760]

SENATOR LANGEMEIER: Further testimony as a proponent to LB760? Seeing none. Is there anyone that would like to testify as an opponent? Seeing none...no letters. Is there anyone that would like to testify in a neutral capacity? Seeing none, Senator Schilz, you're recognized to close. [LB760]

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

Natural Resources Committee
January 20, 2012

SENATOR SCHILZ: Thank you, Senator Langemeier and members of the Natural Resources Committee. Obviously, we have a couple of different thoughts on how this should work. I would be more than willing to talk amongst, you know, the folks at DEQ, the council, and Senator Schmit to see if we can't come up with something that works and to address your question that you had before us. So we would be happy to engage in conversation. So with that I would still ask for your support for LB760. Thank you.
[LB760]

SENATOR LANGEMEIER: Very good. Thank you very much. You have heard the closing on LB760. And with that, that concludes the hearing. Now we will move to our next bill, which is LB931, Senator Karpisek. And we'll wait a few minutes until he's here, until they pull him out of his committee to come over. Senator Karpisek, welcome to the Natural Resources Committee. We'll open the hearing on LB931. Good afternoon.
[LB760]

SENATOR KARPISEK: (Exhibit 3) Thank you, Chairman Langemeier and members of the Natural Resources Committee. For the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k, and I represent the 32nd Legislative District. I am the principal introducer of LB931. In 2009 the Legislature adopted LB160, a bill that generally allows the Papio-Missouri Natural Resources District to issue flood protection and water quality enhancement bonds. It was the first time the Legislature allowed a natural resource district to have bonding authority. As all of you except Senator Smith remember, that floor debate on LB160 was passionate. I guess you could call ten amendments, two floor amendments, and a motion to IPP passionate. LB160 was not perfect. Specifically, the counties in the Papio-Missouri NRD, Douglas, Sarpy, Burt, Thurston, Dakota, and Washington, are greatly disadvantaged because of a single word "exclusive." Before the NRD can issue bonds or expend funds the statute says that a county board may pass a resolution if they oppose an NRD reservoir or water quality basin that is greater than 20 acres. However, the reservoir or water quality basin must be within its exclusive zoning jurisdiction. The problem is, particularly in Douglas County, the city of Omaha has a three-mile zoning jurisdiction and Valley, Waterloo, Bennington, and Washington each have a one-mile zoning authority. The map that I gave you shows there is hardly any exclusive zoning jurisdiction. Douglas County has virtually no authority to question the validity of a project in their zoning jurisdiction as you see by the pink areas. LB931 simply removes the word "exclusive" from statute. Last year I introduced LB487. That bill removed the exclusive zoning jurisdiction language for counties and includes cities. The bill would also limit the use of flood protection and water quality enhancement bonds to flood protection and water quality, not recreation. While I still believe that LB487 is a good bill, I understand that it may be too big of a bite. LB160 set a precedent and LB931 makes a reasonable correction, in my opinion, to ensure fairness to counties within the Papio-Missouri NRD. LB160 is the template under which bonding authority will be sought by other natural resource districts. There are testifiers behind me that can

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

Natural Resources Committee
January 20, 2012

answer specific questions regarding LB931 and LB160, but I'll be glad to try to answer any questions that you may have. Thank you. [LB931]

SENATOR LANGEMEIER: Very good. Are there any questions for Senator Karpisek? Seeing none, going to let you off the hook. Are you going to stick around for closing? [LB931]

SENATOR KARPISEK: I will, Chairman, thank you. [LB931]

SENATOR LANGEMEIER: Good. You've heard the opening on LB931. We will now go to proponents or supporters of LB931. Welcome. [LB931]

MICK MINES: Thank you, Senator Langemeier, members of the committee. For the record my name is Mick Mines, M-i-c-k M-i-n-e-s, and I am a registered lobbyist, today representing the Papio Valley Preservation Association. My role today is to relive all those awful moments during LB160 in 2009. No, actually my role is to give you basis and perhaps some constitutional...or some legislative history on what was said and what was intended based on the transcripts from a hearing like this as well as transcripts from floor debate. You'll remember that LB160 was introduced by Senator Gay in 2009, and this committee did hear it, and it was advanced to General File with a committee amendment. That committee amendment did not include the word "exclusive." That position hadn't yet been introduced into this process. And Senator Langemeier, I'd like to read what you said in opening on your statement...or excuse me, on the committee amendment, and I quote that it says, and the last thing we added to this amendment, which was in addition to the bill, it would allow county boards to block projects over 20 acres, surface acres. For the NRD to do a bond for a project larger than 20 surface acres they would require the county board have the ability to pass a resolution saying they're in support. Obviously, that got reversed later but originally it was in support of a project. So if they don't get the support, they would not be able to bond on any project larger than 20 acres, essentially giving the county veto power over any reservoirs over 20 surface feet. That was in the introduction to the committee amendment. And then, senators, the general consensus was, in reading through the transcripts, for instance, Senator Loudon said, if they take their bonding money and go out--they, meaning the NRD--go out and build a 400 acre dam right off the bat where they can get permission; if they can't get permission through the county board, then all is lost. Again, his understanding was the county board could override or could veto any proposed project. Senator Fischer, who sat on this committee at the same time mirrored that and said it also allows the county board to block the use of bond proceeds for projects that are greater than 20 surface feet. The board if they pass a resolution stating that they do not approve, that ends the project. I think we all need to be aware this is a big issue. There was dialogue on...and that was on April 15 of 2009. And then there were amendments introduced, withdrawn. As you heard there were, I think, ten amendments introduced. And then debate later in the session in April, April 27, there

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

Natural Resources Committee
January 20, 2012

was a dialogue between Senator Price and Senator Gay. Essentially, Senator...not essentially, literally Senator Price asked Senator Gay a quick question for you in one area where we're talking about a vote of the county board to go or no go on a project. Um-hum. Senator Gay, said un-huh. Isn't it strange how we sound un-huh on the microphone when you read it? Senator Price then said, okay, we're going to build a dam that's going to cost, I don't know, a project of \$15 million in Douglas County. Who is going to be...which county is going to have the authority to say yes or no, again understanding that a county board could reject a project. Senator Gay said Douglas County. It goes on and on and on and on and I'll skip through much of it to where Senator Gay on...now we've moved to May 11, the final reading day and it was fast and furious. In fact, they were waiting for an amendment to come down from Bill Drafters and debate was kept open and as Senator Gay was talking about the bill, never did he mention the exclusive provision. That was added in an amendment that was drafted on the 18th of May but then was brought down. No one in the body saw that amendment until you approved it because it was in Bill Drafters. You've all been there before. It's fast and furious. You want to get it done. And I won't read all of Senator Gay's testimony but in it he reaffirms that this clarifies before the NRD can issue bonds for a project greater than 20 surface feet, it must notify the impacted county of its intent, the county board would hold a public hearing, have the option to pass the resolution within 90 days that it rejects such a project. So they would have an opt out if they want this project in their county. This is the key to the whole program. And I'm not reading out anything. That is the...that was the intent, that was the understanding. And my role here today is to again remind the committee that there was great debate...there was not great debate on the exclusive nature that we're talking about today. I might also mention there's obviously off the record debate between the lobbyist from Husch Blackwell and my committee or my clients. And that's a he said, she said. I won't get into that. I'm just giving you the testimony. The intent at the time was there was no exclusive language discussed. Thank you, Mr. Chairman and I would answer any questions. [LB931]

SENATOR LANGEMEIER: Thank you. Are there any questions for Senator Mines? Senator Dubas. [LB931]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Mr. Mines. You've given us some good historical perspective and that's good for those of us who have short-term memory so I appreciate that. But do you remember how the word "exclusive," what's the history behind that being put in? [LB931]

MICK MINES: To my recollection, and I was not in the body at the time, so my recollection, Senator White was engaged by Senator Gay and others to...along with Husch Blackwell to draft language that would allow the counties...to pacify the counties. Counties had some concerns. They came back with an amendment, I think it was AM1361 on May 8. That was the first time that "exclusive" was written in and their role was to write something that might pass. That was not discussed on floor debate and

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

Natural Resources Committee
January 20, 2012

indeed when it was brought up on the 11th, you're on Final...you're just about to go to Final Reading and everyone is tired. You know how that goes. And Senator Langemeier was even involved in stalling out, as we often do, stalling so the Bill Drafters can get an amendment down to the floor. That amendment was brought down...it was introduced. Senator Gay introduced it, if you will. There was no discussion about the content necessarily. It was a wrap-up of, this, we think is good with everybody, let's move on and vote, move it to Final Reading. So that's historically kind of what happened. But I think you got some senators involved in crafting. My client was not. My client was not present during that and didn't agree and argued that they did and you'll hear from them as well. But there was little conversation...in fact, no conversation on the floor about an exclusive provision. [LB931]

SENATOR DUBAS: Thank you. [LB931]

MICK MINES: Thank you. [LB931]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much. Well done. [LB931]

MICK MINES: Thank you. [LB931]

SENATOR LANGEMEIER: Further testimony in support of LB931. Good afternoon. [LB931]

SHAWN MELOTZ: (Exhibit 4) Good afternoon. My name is Shawn Melotz, S-h-a-w-n M-e-l-o-t-z. Good afternoon, Chairman Langemeier and members of the Natural Resources Committee. We're together again this afternoon. As you know, I am the current president of the Papio Valley Preservation Association, known as the PVPA. We're a grass-roots organization with over 600 members whose primary mission is protecting the natural resources of the Papio Valley located in Sarpy, Douglas and Washington Counties. I am honored to come before you to testify in support of LB931 and respectfully request this committee to advance this bill to the floor. Thank you to Senator Karpisek for recognizing the need to introduce this bill. LB931 is not about dams; it's not about flood control; and it's not about retribution. LB931, as an amendment to LB160, does not prohibit the construction of dams nor does it prohibit the use of bonds for such construction. We feel LB931 restores the safeguards that I believe the senators intended when they approved the original language of LB160. I refer specifically to the section granting county boards the option to pass a resolution restricting the use of bonds for the construction of dams within their zoning jurisdictions. This safeguard is important when considering that multimillion dollars of bonds are being issued currently by the vote of eight individuals, bonds that will be used to eliminate approximately 10,000 acres from the county's tax rolls. During the debate surrounding LB160, I had the privilege of representing the PVPA. Throughout the

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Natural Resources Committee
January 20, 2012

discussions toward the end of the bill we learned of the exclusive language, or I should say, the intent to include the word "exclusive." Our organization expressed our concerns to the senators, senators' aides, and the lobbyists that the word "exclusive" would diminish the final say afforded to the county boards. In fact, myself and three members of the PVPA met with Hal Daub, the registered lobbyist for the Papio-Missouri River NRD at the time. We discussed the impact of the phrase "exclusive zoning jurisdiction," and we were assured by him that the word "exclusive" would not hinder the county board's right to pass a resolution for any reservoir or water quality project within any county's boundaries. In the end with these assurances, the term "exclusive" was in the final language. To understand the effect of the word "exclusive," I've included a few exhibits. First, I'd like to refer to Exhibit A. Exhibit A is the area encompassing Washington County. In the pink shaded area we've attempted to acknowledge that that is the area that Washington County has exclusive zonings. As you can see, the two large structures that go through the middle of that map are the two large dams proposed for Washington County. Neither of these dams are in Washington County's exclusive zoning. Washington County dams are currently not on the project list, so I'm going to ask you to look to Exhibit B so we can see what's happening today. Exhibit B, I believe is similar to the map you received earlier. That shows the exclusive zoning for Douglas County. I'd like to point your attention to the circled area that I have on the map, on the left-hand corner of the county. That is the only structure that is within, of the 29 structures that have been proposed, that is the only structure that is in Douglas County's exclusive zoning. Now I'd like to point to you Exhibit C. Exhibit C is the time line for the proposed 29 dams. This was prepared by HDR. And on this exhibit it lists the time order of all these 29 dams, the last line is the structure that is BP RB1. That structure is scheduled to be built in the year 2041, which is 30 years from now. And as a side note, these dates are well beyond December 31, 2019, which is the sunset provision of LB160. The other two exhibits that I've included are correspondences between Douglas County Board and the general manager of the Papio NRD, and it essentially shows that in August, 2010, there was correspondence regarding Dam Site 15. Dam Site 15A is partially in Douglas County zoning jurisdiction, but it is not in their exclusive zoning jurisdiction. They considered passing a resolution. However, they were informed by the general manager of the Papio NRD that it is not in Douglas County's "exclusive" zoning jurisdiction, therefore, Douglas County does not have a say. This is why we believe LB931 is so important. It restores the safeguards that were intended. On behalf of the Papio Valley Preservation Association and its membership, landowners, and taxpayers, I respectfully ask this committee to advance LB931 to the floor. Thank you. [LB931]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, well done, well done. [LB931]

SHAWN MELOTZ: Thank you. [LB931]

SENATOR LANGEMEIER: Further testimony in support of LB931. Welcome. [LB931]

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Transcriber's Office

Natural Resources Committee
January 20, 2012

SANDRA FOURNIER: (Exhibit 5) Thank you. My name is Sandra Fournier, that's spelled S-a-n-d-r-a F-o-u-r-n-i-e-r. I live at 5747 North 167th Circle in Omaha, Nebraska, 68116. Good afternoon, Chairman Langemeier and the members of the Natural Resources Committee. I come before you to testify in support of LB931. I am a citizen of Douglas County but I also am testifying on behalf of fellow citizens in Douglas County. I had testified for LB487 last year and had also presented some letters of support from neighbors and other citizens in Douglas County and Sarpy County. I would also like to thank Senator Karpisek for supporting this bill and bringing it before the committee. As I mentioned, I am a citizen of Douglas County. I'm a business owner and a property owner in Douglas County as well. I support LB931 because it introduces a simple but important amendment to the current statutes so that local representation can be given back to the people. The current statute prohibits county government from passing a resolution until the flood protection or water quality project is in its "exclusive" jurisdiction. Therefore, I, as a citizen who is located in both Douglas County and in the city of Omaha's three-mile Extraterritorial Zoning Jurisdiction, lack adequate representation in matters of public policy regarding flood protection, water quality projects, and the issuance of bonds for projects. Fortunately, but unfortunately, I was not involved in the heated discussions over LB160 in 2009, and I did get involved in mid-2010. The history of this debate is important to highlight that there are disagreements in how this money is used and also what type of projects. But I think the focus should be on the legitimacy of what the statutes say and what the spirit of the arguments and what the bill, LB160, was supposed to put into our statutes. In 2010, I went before the Douglas County Board to ask help on behalf of the citizens and the landowners of my area. I was told that the board, by the board that its hands were tied because of Dam Site 15A does not reside in the "exclusive" jurisdiction of Douglas County. The inclusion of "exclusive" in the statute leaves the Douglas County Board without authority to represent its people. Since these water projects will be funded by general obligation bonds and the tax levy is applied to all taxpayers in the Papio NRD area, the voters of Douglas County have a right to representation and proper voting privileges. As a citizen and active voter in the state of Nebraska, I was quite surprised to see any language that further distances the citizens from the rights afforded to us by our Nebraska Constitution as well as our United States Constitution. But I would even be more surprised and disappointed that such a language is allowed to remain in the laws of our land especially without honest consideration and proper debate. The passing of LB931 would remedy a deficiency in the state statute that is misaligned with our state's constitution. I thank you for the opportunity to hear my testimony on behalf of my fellow citizens and respectfully request this committee to advance this LB931 to the floor. I would be happy to answer any questions. [LB931]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Carlson.
[LB931]

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Transcriber's Office

Natural Resources Committee
January 20, 2012

SENATOR CARLSON: Thank you, Senator Langemeier. You don't have these maps in front of you, do you? [LB931]

SANDRA FOURNIER: I don't, but I'm familiar with them. [LB931]

SENATOR CARLSON: Okay. Well, you can see this one. It's got the two areas here that Shawn referred to. Now if there was a...so you see in Washington County the two areas that aren't exclusive. Okay, we on the same one? [LB931]

SANDRA FOURNIER: I think so. [LB931]

SENATOR CARLSON: Okay. You see the two circles in Washington County that are not exclusive Washington County. [LB931]

SANDRA FOURNIER: Correct. [LB931]

SENATOR CARLSON: Well, if there was a desire to have a dam in the pink area, how would the existing law affect that in terms of the decision coming from Washington County? [LB931]

SANDRA FOURNIER: To have one of the dam sites in the pink area? [LB931]

SENATOR CARLSON: Yes. [LB931]

SANDRA FOURNIER: Um. [LB931]

SENATOR CARLSON: I'm not leading you in anything, I'm just...I'm asking that question because it helps me think back and get into a position of what our discussion really was. So anywhere in this pink area, if the NRD wants to put a structure and it's over 20 acres, what authority does Washington County have based on the current law as it reads? [LB931]

SANDRA FOURNIER: If it's not an exclusive zoning jurisdiction, they don't have any power to make any changes. [LB931]

SENATOR CARLSON: Okay. But I think, I think Washington County has jurisdiction in the pink area. So if there was...if there was a dam desired in any of that pink area, it would be Washington County that could oppose that, the board. [LB931]

SANDRA FOURNIER: If it's in our exclusive zoning jurisdiction, absolutely. Right. [LB931]

SENATOR CARLSON: Well, that's what the pink area...as my understanding, that's

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Transcriber's Office

Natural Resources Committee
January 20, 2012

what the pink area is. [LB931]

SANDRA FOURNIER: Right. Right. [LB931]

SENATOR CARLSON: But if it's this other area, that's different. The board could oppose it but it wouldn't necessarily make the decision to stop it. [LB931]

SANDRA FOURNIER: Right. [LB931]

SENATOR CARLSON: Okay. [LB931]

SANDRA FOURNIER: There are other alternatives. That's one of the things that we've brought up many times to the Papio NRD is there seems to be a spectrum that they look at one side to the other, but there are all types of different alternatives in the middle that would meet the needs of flood water protection, stormwater management, and also be more cost effective. We have looked at even other states and other areas that have done this more effectively, costwise and for flood control. However, when we have gone to the Papio NRD and asked them why they chose to make recreational lakes, they said that's because the board voted on that. So it is not looking at other alternatives. [LB931]

SENATOR CARLSON: Okay, and I don't want to make you uncomfortable, but in these two gray circles, if there's a plan to put a structure in either of those two circles in Washington County, Washington County Board could vote to oppose that project, right? [LB931]

SANDRA FOURNIER: Yes. [LB931]

SENATOR CARLSON: Now I'm not putting you on the spot, I'm asking this because I'm not sure. [LB931]

SANDRA FOURNIER: No. [LB931]

SENATOR CARLSON: Who else votes on that? [LB931]

SANDRA FOURNIER: The board has...Washington County and Douglas County has pulled out of the partnership. [LB931]

SENATOR CARLSON: Okay. [LB931]

SANDRA FOURNIER: And so they don't have a vote in making any changes to this because of the word "exclusive." [LB931]

SENATOR CARLSON: Okay. All right, thank you. [LB931]

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Transcriber's Office

Natural Resources Committee
January 20, 2012

SANDRA FOURNIER: And just for the record, I am in Douglas County where Dam Site 15A, farther down, is that on the left side of that map? [LB931]

SHAWN MELOTZ: On B, map B. [LB931]

SANDRA FOURNIER: On map B in the second one, Dam Site 15A just slightly below the pink area of Douglas County, I am in that three-mile zoning jurisdiction... [LB931]

SENATOR CARLSON: Okay, I see that. [LB931]

SANDRA FOURNIER: ...between Omaha and Douglas County, and that is why I don't have any representation for the next dam site that's planned. [LB931]

SENATOR CARLSON: Okay. All right. Thank you. [LB931]

SANDRA FOURNIER: Thank you. [LB931]

SENATOR LANGEMEIER: Are there any other questions? I do have one question. I want to get to the philosophy of this. At the end of the day, NRDs are supposed to handle flooding in Nebraska. [LB931]

SANDRA FOURNIER: They're supposed to handle a lot of things based on what the origination of NRDs were, yes. [LB931]

SENATOR LANGEMEIER: Even some things I don't agree with. [LB931]

SANDRA FOURNIER: Sure. [LB931]

SENATOR LANGEMEIER: But that's okay, that's a different day's discussion. So if it's their obligation, they have an elected board so when you say you're not represented, you are represented by someone, maybe you don't like your representative but you're represented by somebody that is ultimately responsible for flooding. Would you agree? [LB931]

SANDRA FOURNIER: I...that's the intention, yes. [LB931]

SENATOR LANGEMEIER: Okay. But yet there must be some conflict out there that you don't like that representation so you're seeking a different board, whether it's Douglas County or Washington County to supersede into an issue that probably isn't theirs to make a decision, because you don't like the decision the NRD is making. Would that be true? [LB931]

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

Natural Resources Committee
January 20, 2012

SANDRA FOURNIER: No, that's not necessarily true. I believe that I have made many efforts, including myself and other people have gone to the board and they have not listened to what the members in that Papio NRD district has asked their...our representative. And I believe that also because I am in Douglas County that I should also be represented by my board. And the money that is bonded and taken from me as a taxpayer, I should have representation for every dollar that I pay towards the county. [LB931]

SENATOR LANGEMEIER: Okay. Let's expand that out a little farther. You want...you talk about the Douglas County making a decision into an area that's not their jurisdiction, which is flooding, because you pay taxes to them, that's fine. So should the Papio NRD...and I'm trying to get a grasp on this, should the Papio board then make decisions on Douglas County's hiring of law enforcement because they cover the same area? [LB931]

SANDRA FOURNIER: If the dam sites were 100 percent for flooding and the bond money was going directly just for flooding structural items, then I would say they probably...the Papio NRD would have more jurisdiction over that. However, since the money is going to recreational areas that are being paid by the county, I don't believe that they have 100 percent jurisdiction in those type of decisions. [LB931]

SENATOR LANGEMEIER: There I think you hit it right there. Are there any questions? Seeing none, thank you very much. Well done. [LB931]

SANDRA FOURNIER: Thank you. [LB931]

SENATOR LANGEMEIER: Further testimony in support of LB931. Welcome. [LB931]

JEFF QUIST: Good afternoon. Chairman Langemeier, members of the committee, my name is Jeff Quist, spelled J-e-f-f Q-u-i-s-t. I'm here in support of LB931. I am a member of the Washington County Board of Supervisors, but not speaking on their behalf at this time. The hearing was scheduled...kind of a short notice, we didn't realize it was coming up quite so quick and so we did not have time to discuss it as a board, so I'm here as an individual at this present time. I would say that next week we will have a board meeting. I would anticipate that there will be a letter to the committee in support of LB931. As in last year, and I believe it was LB487, they were in support of that legislation, so I think they're all going to be on board with this also. Don't really have a whole lot more input to it at this current time other than the fact that we're here in support of the legislation. And I'll be here to answer any questions if anybody has anything. [LB931]

SENATOR LANGEMEIER: Well done. Are there any questions? Senator Carlson. [LB931]

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Transcriber's Office

Natural Resources Committee
January 20, 2012

SENATOR CARLSON: Yeah, Senator Langemeier, thank you. If LB931 became law so "exclusive" is stricken, tell me how you think that would work in a structure proposed in Washington County. [LB931]

JEFF QUIST: If it was in Washington County's jurisdiction only... [LB931]

SENATOR CARLSON: No. [LB931]

JEFF QUIST: ...where we don't have overlapping jurisdictions, is that what you're saying? [LB931]

SENATOR CARLSON: Well, the bill is simply to strike "exclusive." So that's done. Now we've got a law and we don't have "exclusive" in there. What would happen with a structure proposed in Washington County, in your mind, with that stricken from the law? [LB931]

JEFF QUIST: Well, it would give us input on the structure. One of the things that has not been discussed here is the cost back to the county, back a couple of years ago when we were discussing this earlier. And there's been numerous committee meetings and steering committee meetings and so on and so forth, and I've got volumes of things back home. But one of the things that is not mentioned in some of these discussions and maybe some of you were part of the discussions--maybe you're not aware of them--but it's the cost that comes back to the counties also. When you start talking about increased traffic to these lakes, if they're going to be recreation structures, you know, if you have a tremendous amount of traffic, then you're into hard surfacing roads and those costs have not been discussed and we're fearful that they will fall back on the county. And so this will give us a check and balance to say, okay, you guys want to go ahead with this, but here's the costs that are coming back to us. How are we going to remedy this? Because we could be big losers if we have to, as far as Washington County goes, if we have to stand the cost of those infrastructure improvements. [LB931]

SENATOR CARLSON: So if we had a case then where a structure is proposed in Washington County, the people in Douglas County are in favor of it, the people in Omaha are in favor of it, but Washington County Board of Supervisors could stop the project. [LB931]

JEFF QUIST: In theory they could, yeah. [LB931]

SENATOR CARLSON: Okay. Could anybody else? Could the city of Omaha or Douglas County stop the project, in your mind? [LB931]

JEFF QUIST: Without reading the legislation thoroughly, I don't think they could because it's not in their jurisdiction. [LB931]

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

Natural Resources Committee
January 20, 2012

SENATOR CARLSON: Okay. So one other situation then, we've got a structure we've got it down here, 15A, that structure in Douglas County and Douglas County is in favor of it, the NRD has proposed it, the city of Omaha is not opposed to it but Washington County is. Can Washington County stop that? [LB931]

JEFF QUIST: I'm not familiar with that reservoir. Does that... [LB931]

SENATOR CARLSON: Well, it's in Douglas County. It's not in Washington County. [LB931]

JEFF QUIST: Well, I don't think we have jurisdiction on it, so I don't think it affects us. [LB931]

SENATOR CARLSON: Okay. Okay. Thank you. [LB931]

JEFF QUIST: I mean, that's the way I understand it. There again, I don't have the map in front of me, but it's the overlapping jurisdictions is what becomes problematic. Say for instance that the reservoir is put just in Douglas County but the vast majority of it is in Washington County, you have two different jurisdictions there and nobody has power on it, the way I understand it. [LB931]

SENATOR CARLSON: Okay. Thank you. [LB931]

JEFF QUIST: Thanks. [LB931]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much. Thanks for coming down. [LB931]

JEFF QUIST: Thanks. [LB931]

SENATOR LANGEMEIER: Further testimony in support of LB931. Seeing no other testifiers, now those in opposition, or proponents...opponents, excuse me. Welcome. [LB931]

JOHN WINKLER: (Exhibit 6) Thank you. Chairman Langemeier and members of the committee, my name is John Winkler, J-o-h-n W-i-n-k-l-e-r. I'm the general manager of the Papio-Missouri River Natural Resources District and I'm testifying in opposition to LB931 on behalf of the Papio NRD as well as the Nebraska Association of Resources Districts. You've all heard in 2009, LB160 was passed by the Legislature and signed into law by the Governor. LB160 did authorize limited bonding authority within existing levy limits for vital flood protection and water quality enhancement projects in the Papio-Missouri River Natural Resources District. LB160 was the result of many years of

Natural Resources Committee
January 20, 2012

hearings, debate, and consideration of alternative legislative language. The final bill contained numerous concessions designed to address the concerns of opponents. These concessions included but not limited to limitation on the use of bonds with regard to flood control reservoir size, public access to projects, restrictions on the use of eminent domain, and even a requirement for approval by county boards over projects within the counties' "exclusive" zoning jurisdiction. Testifiers behind me will be able to also testify to the accuracy of the historical debate as well as I can answer questions to that as being a part of that debate for several years. Despite all this, LB931 is yet another attempt by flood control opponents to amend the bonding authority granted and to make the process unusable. We view this legislation as effectively undermining the compromises made in good faith by the Papio NRD during consideration of LB160. The provisions of LB931, although harmless and minor in appearance, would likely result in a situation where any proposed project utilizing flood control and water quality enhancement bonds would be delayed or made the subject of political pressure or vetoed through a county board. The bill inappropriately makes county boards duplicate decision makers as to flood control and water quality projects. For example, if an upstream community or county vetoes a flood control project, it is the downstream community that suffers. All jurisdictions within a watershed contribute to the problem of increased volume and velocity of stormwater due to development, but it is the downstream communities that are at increased risk of flooding as a result. It is inappropriate and unnecessary to allow one political entity to veto the projects and programs of another political entity. Veto authority of a county would circumvent the authority of a city or village to regulate development and protect the safety of its citizens within its own jurisdiction contrary to state law. There's no criteria proposed for why a county should veto a project outside of its exclusive zoning jurisdiction, making any decision to do so arbitrary. Finally, with the elimination of state aid to NRD's, it is all the more important to retain flexibility in the Papio to address serious flood control issues facing our district as well as the challenges posed by federal clean water regulations and levee certification requirements. This summer's flooding along the Missouri River taught us some very valuable lessons about the social and economic devastation of flooding and that flexibility and the ability to respond are paramount. LB931 would undermine and diminish that ability. On behalf of the Papio NRD and the Nebraska Association of Resources Districts, I respectfully ask the committee to indefinitely postpone LB931, and I would be happy to answer any questions that you may have regarding the history or the maps that you have received or any of the ideas of exclusive zoning jurisdiction. Thank you for your time. [LB931]

SENATOR LANGEMEIER: Well done. Are there any questions? Senator Carlson. [LB931]

SENATOR CARLSON: Thank you, Senator Langemeier. Now, John, your NRD has jurisdiction over this area. [LB931]

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Transcriber's Office

Natural Resources Committee
January 20, 2012

JOHN WINKLER: That's correct. [LB931]

SENATOR CARLSON: So if it's desired to put a structure in in the southern portion of Douglas County, who pays for it? [LB931]

JOHN WINKLER: The NRD. [LB931]

SENATOR CARLSON: Well, everybody in the NRD. [LB931]

JOHN WINKLER: Correct, the taxpayers of the district. [LB931]

SENATOR CARLSON: Citizens up here as well as citizens down here. [LB931]

JOHN WINKLER: That's correct. [LB931]

SENATOR CARLSON: And if you want a structure up here, who pays for it? [LB931]

JOHN WINKLER: The citizens throughout the district. [LB931]

SENATOR CARLSON: Everybody. [LB931]

JOHN WINKLER: Correct. [LB931]

SENATOR CARLSON: Washington County as well. So I'm understanding, I think I understand the concerns that Washington County people have, but the NRD is designed as an area for a reason and you have, you have a board and you have jurisdiction over that area and you have to look out for what you think is in the best interest of everybody in the NRD. [LB931]

JOHN WINKLER: That's correct. [LB931]

SENATOR CARLSON: And it does make sense, the water flows downhill. [LB931]

JOHN WINKLER: Correct. [LB931]

SENATOR CARLSON: So if there's going to be a meaningful structure, in all likelihood, some of it has got to be in Washington County, and I understand why they don't want it. So tell us again why this word "exclusive" is so important. [LB931]

JOHN WINKLER: The word "exclusive," I think it was always the intent when we talked about zoning jurisdiction, and again, testifiers behind me will explain this, but the idea was we did not want one political subdivision to have veto authority over another. So "exclusive" was very important in the debate on this language to this legislation. As you

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

Natural Resources Committee
January 20, 2012

said, water runs down hill. We did not want a county board or another political entity to veto a project that absolutely has effect on a downstream community. We also, in light of Washington County and the reservoirs that were proposed there, there was an additional safeguard, if you remember, in the legislation. No bond money could be utilized for a project over 400 surface acres, which...so the county board in Washington County has two safeguards. One, those that are proposed within their zoning jurisdiction so they could veto that by the language. In addition, those reservoirs that are over 400 surface acres and no bond funds could be used, which is effectively financially eliminates those from consideration. So this, as you remember, this compromise in legislation evolved over time. So we took those, that criticism and we took that Washington County did not want those reservoirs and we built those safeguards into the bill. And so this bill wasn't formed within a five or ten minute delay in the legislative process. This legislation was formed over several years. I remember when I testified in front of the Revenue Committee when it went there originally, so that's...you know, this has been four or five years or even longer, seven years going forward. So this bill had a lot of input and many safeguards were put into place. [LB931]

SENATOR CARLSON: Okay. Now I'm going to ask one other question and we're looking at this map. So up here in the pink area of Washington County there's a structure that the NRD has planned and wants to build, so the Washington County Board of Supervisors can oppose that. They can vote to oppose that. What other political subdivisions in Washington County could oppose it? [LB931]

JOHN WINKLER: None. [LB931]

SENATOR CARLSON: Are there any other? Okay. Now down here in the gray area, there's a structure planned and this would be Douglas County Board of Supervisors that could oppose that? [LB931]

JOHN WINKLER: Are you speaking of 15A? [LB931]

SENATOR CARLSON: That would be okay, 15A. [LB931]

JOHN WINKLER: Okay, if you look at...Dam Site 15A is in Omaha's exclusive zoning jurisdiction. So the city of Omaha would have...that's what...so the county board could not veto that project. [LB931]

SENATOR CARLSON: So Douglas County would have no say in that one, that is a city owned. [LB931]

JOHN WINKLER: Exactly. Now if there's another project outside of the city of Omaha's exclusive zoning jurisdiction, you know, and it's in Douglas County's, then they could go ahead and they could, obviously, basically veto that project. [LB931]

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

Natural Resources Committee
January 20, 2012

SENATOR CARLSON: Say that again. [LB931]

JOHN WINKLER: If there's a project within the Douglas County's exclusive zoning jurisdiction, then they would have the ability to veto that project... [LB931]

SENATOR CARLSON: Okay. [LB931]

JOHN WINKLER: ...as well as Sarpy County or any county within the district as the statute reads. [LB931]

SENATOR CARLSON: Okay. Thank you. [LB931]

SENATOR LANGEMEIER: Senator Christensen. [LB931]

SENATOR CHRISTENSEN: Thank you, Chairman. Explain what happens if a dam is on dual jurisdictions. It's in two counties. Explain it how this...if anybody can object to it if they're both in "exclusive" or if one's in "exclusive" how does that work? [LB931]

JOHN WINKLER: The...I currently think we do not have any projects that straddle that. In theory, if a project straddled a zoning jurisdiction, as long as a piece of that's in, for example, whichever county, Douglas or Washington's exclusive zoning jurisdiction, say it straddled the Douglas-Washington County line, both of those would have a say in it. [LB931]

SENATOR CHRISTENSEN: Because it appears to me that Dam Site 8 maybe gets up into a little bit of Washington where most of it's in... [LB931]

JOHN WINKLER: Right. If it crosses that boundary, if it's...as long as it's in the county zoning...exclusive zoning jurisdiction, then each county would have a say. If it's in just Douglas' or just Washington's, then it's up to that individual board, whichever county it resides in, the project. [LB931]

SENATOR CHRISTENSEN: Okay. The recreational part was brought up again and I know we dealt with that. Explain to me how you guys are handling the areas around these dams, the construction of homes around these dams, how that's being handled. [LB931]

JOHN WINKLER: We have no ability as far as the construction of homes around...we acquire the project area and then, obviously, we, you know, construct the reservoir and then any recreational facilities around it. Now if homes pop up around there, then I mean that's up to the developers of those lands that are in, congruent to that particular piece of property. Our board has always had the philosophy of multipurpose projects.

Natural Resources Committee
January 20, 2012

Obviously, it's an amenity to the community. If you look at, go out to the reservoirs that are currently constructed, say, Wehrspahn Lake or Lake Zorinsky which was done by the Corps, but there's typically trails and picnic facilities and fishing and all of those type of recreational amenities there. The idea is that to...I mean, the idea is not to build a structure that you throw a fence around and no one can access it. One, it's no benefit to the public besides the flood control part of it, but also, that would violate the 100 percent public access that we agreed to in the bill, that everything we build over 20 surface acres has a 100 percent public access. And I think that was in deference to the criticism that, you know, we're building these structures so developers could put houses around the banks, which is not the case. So, yeah, recreation is a key amenity of those facilities. I mean, you see some states that build flood control structures and they put a fence around it and it collects garbage and they have to clean out the trash and it's not a use to anyone. You can't utilize it for hiking, biking, fishing. Our facilities get a tremendous amount of use from the public and they're a great amenity to the public. And our board has taken that philosophy that you should, if you're going to build these, build a multipurpose facility. [LB931]

SENATOR CHRISTENSEN: How did we change the recreational deal? Because I believe we altered how you were handling that, didn't we? I was trying to recall back how we... [LB931]

JOHN WINKLER: Yeah, I think the only...the debate on recreation, I think the biggest issue was that it was 100 percent public access, that there was no part of that structure that was cut off from the public. That's the shore line and a certain amount of space around it as well. And so that was...and it's something that we do. I mean, it wasn't a compliment, that's the way we want to build structures, but we wanted to assure the senators and the public that these are public...you know, public facilities. [LB931]

SENATOR CHRISTENSEN: Okay, because if I remember right, there was an issue with one of the lakes that was there when we toured it that the homes had control all the way to the water and it wasn't open to the public... [LB931]

JOHN WINKLER: Uh-huh. Right. [LB931]

SENATOR CHRISTENSEN: ...and so we altered that. [LB931]

JOHN WINKLER: And that's why we put that 100 percent public access so we make sure that that never occurred again. [LB931]

SENATOR CHRISTENSEN: All right. [LB931]

JOHN WINKLER: Or will never occur again. [LB931]

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Transcriber's Office

Natural Resources Committee
January 20, 2012

SENATOR CHRISTENSEN: Now, if you removed the word "exclusive" and the dam projects in Washington County, no other county could object to it, could they? It's still only be Washington County. [LB931]

JOHN WINKLER: Um-hum. [LB931]

SENATOR CHRISTENSEN: Same way if it's in Douglas County, Washington couldn't object to it. [LB931]

JOHN WINKLER: Correct. The term "exclusive," I don't think, is between counties, it's more between other zoning jurisdiction. For example, if a reservoir is built in the city of Omaha and you remove "exclusive," then in the city of Omaha's jurisdiction, not "exclusive," the county also has jurisdiction there. Without that word "exclusive," then say the city of Omaha wants this project but the county board doesn't, then the county board effectively vetoes that project, contrary to what the city of Omaha wants because of how the statute is written. So if you remove "exclusive" it's a big deal. [LB931]

SENATOR CHRISTENSEN: But shouldn't you be able to sell the merits of that to both? It's going to benefit both. I guess I don't understand if it's being built in the city limits of Omaha, why the county wouldn't see a benefit in that. [LB931]

JOHN WINKLER: I don't know that answer either, Senator. All I know is that that's the...was very important to the cities within the partnership within the district to make that own determination. That we need to make our own development plans and we need to make our flood protection needs, you know, within our...I think that's why we have zoning jurisdictions. The city of Omaha and Douglas County or any city-county necessarily don't agree, or agree 100 percent on development. I don't know if there's any other state law that allows another jurisdiction to veto the development decisions of another jurisdiction. So this was significant. [LB931]

SENATOR CHRISTENSEN: I remember the pause in putting that in, that's why...one last question. Is your board of directors...does Washington County get some, does Douglas get some, are they split up into districts? Is everybody at-large, how is your...? [LB931]

JOHN WINKLER: We have districts. [LB931]

SENATOR CHRISTENSEN: So is there a district in Washington County so they absolutely do have someone on the board? [LB931]

JOHN WINKLER: They're represented by District 1. I believe that's the district number. [LB931]

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Transcriber's Office

Natural Resources Committee
January 20, 2012

SENATOR CHRISTENSEN: Okay. [LB931]

JOHN WINKLER: As well as...they go up to Dakota and Burt and Thurston and a little bit of northern Douglas now after redistricting. [LB931]

SENATOR CHRISTENSEN: But so literally you could end up with them being elected out of Douglas County and they wouldn't have representation. [LB931]

JOHN WINKLER: Well, everyone would have representation. [LB931]

SENATOR CHRISTENSEN: Well... [LB931]

JOHN WINKLER: You mean if their member didn't reside... [LB931]

SENATOR CHRISTENSEN: They would vote on somebody but where they reside... [LB931]

JOHN WINKLER: They could reside in northern Douglas County where that district dips down now. [LB931]

SENATOR CHRISTENSEN: I understand that happens all over because rural areas don't get near as well represented as urban areas because of the volume of people, so thank you. [LB931]

JOHN WINKLER: Uh-huh. [LB931]

SENATOR LANGEMEIER: Senator Schilz. [LB931]

SENATOR SCHILZ: Thank you, Senator Langemeier. Mr. Winkler, thank you for coming in. As I'm listening to the questions and the answers, I'm looking now at this map that we have here and I see this project here, Dam Site 3C, which, I mean it's the big one. And, obviously, the dam site is in Douglas County. [LB931]

JOHN WINKLER: It's in Washington. [LB931]

SENATOR SCHILZ: That's all in Washington County? [LB931]

JOHN WINKLER: Yeah, a little bit might go down into Douglas, but the majority of it is in... [LB931]

SENATOR SCHILZ: Okay. So then let's ask the question. You said before that if...I want to make sure that I understood your answer right, that if that would be the case... [LB931]

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

Natural Resources Committee
January 20, 2012

JOHN WINKLER: Uh-huh. [LB931]

SENATOR SCHILZ: ...then both counties would have the ability to veto that project? [LB931]

JOHN WINKLER: Well, if a piece of that project, in my understanding of the statute, and I think, and I don't know if I'm accurate or not but... [LB931]

SENATOR SCHILZ: Okay. [LB931]

JOHN WINKLER: ...because we never had that situation to vote on that yet, but it's my understanding as long as it resides...a piece of that project resides in a county, then they each would have a decision on, do they approve of it or disapprove of it. [LB931]

SENATOR SCHILZ: But the whole project does not rely exclusively in that county. That's, I think, where the... [LB931]

JOHN WINKLER: Well, exclusive...not in their exclusive zoning jurisdiction, right. [LB931]

SENATOR SCHILZ: Right. Okay, right. Yeah. And so the question is, since it's not in either one of their exclusive zoning, then could it be argued that no county would have a say? [LB931]

JOHN WINKLER: No, I think they both would have a say, but the other protection, I think that I talked about, that was put in there for that specific project due to that circumstance and the opposition to reservoirs in Washington County was anything over 400 surface acres, bonding funds could not be used to construct, which eliminates that project pretty much from consideration. [LB931]

SENATOR SCHILZ: Right. Okay. [LB931]

JOHN WINKLER: So, I mean we handled it in more than one way. [LB931]

SENATOR SCHILZ: Than one. [LB931]

JOHN WINKLER: I mean, you're going to have to get an interpretation on the statutory language of, if who would have that. That's my interpretation of it. [LB931]

SENATOR SCHILZ: Right. I understand. Thank you. And then...but you could...it seems to me that this...if it's not looked into and interpreted properly, it would seem to me that those questions are out there because all of a sudden now with all the different, you

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

Natural Resources Committee
January 20, 2012

have something that's in Washington County but would happen to go into Blair's, you know, zoning? [LB931]

JOHN WINKLER: Well, since the city of Blair does not have...or cities do not have that veto authority, then obviously they'd have to defer to Washington County. [LB931]

SENATOR SCHILZ: But it's not... [LB931]

JOHN WINKLER: And again, there's no... [LB931]

SENATOR SCHILZ: It's not within Washington County's exclusive zoning jurisdiction. [LB931]

JOHN WINKLER: A part of that is, yes. A part of the reservoir would... [LB931]

SENATOR SCHILZ: Okay. That's what you're saying. [LB931]

JOHN WINKLER: There's no projects there, so I mean, that's theoretical. [LB931]

SENATOR SCHILZ: I'm just...theoretically speaking, yeah. Because what I'm trying to understand is when it says exclusive zoning authority, all of a sudden now you've got cities that enter into that that have zoning authority, other counties. [LB931]

JOHN WINKLER: My understanding of the issue is not between counties, it's between what the city of Omaha would like to do and what maybe another county would not like to do. And I think that's where you're getting the debate on the word "exclusive." [LB931]

SENATOR SCHILZ: Right. But I do think it opens up some of those questions. But thank you. I appreciate it. I wanted to clear that up. Thanks. [LB931]

SENATOR LANGEMEIER: Senator Christensen. [LB931]

SENATOR CHRISTENSEN: Thank you. I'm going to follow Senator Schilz a little bit here because, you know, this is on transcript so they'll have record of it. So you're telling me with Dam Site 3A that is in Douglas County and Washington County, according to the map... [LB931]

JOHN WINKLER: Uh-huh. [LB931]

SENATOR CHRISTENSEN: ...that both could veto that project or... [LB931]

JOHN WINKLER: Yes. My interpretation is, yes, they could. [LB931]

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

Natural Resources Committee
January 20, 2012

SENATOR CHRISTENSEN: If it was small. [LB931]

JOHN WINKLER: Yeah, because it's in their zoning jurisdictions. Correct. [LB931]

SENATOR CHRISTENSEN: And, I guess that answers what I wanted. Thank you. [LB931]

JOHN WINKLER: Okay. [LB931]

SENATOR LANGEMEIER: Senator Carlson. [LB931]

SENATOR CARLSON: Okay, thanks Senator Langemeier. Now, one more, because I'm going to extend that question. We have a structure that's proposed that's got 200 acres in Washington County and 100 acres in Douglas County. And Washington County opposes it. The County Board of Supervisors in Douglas County approves it, supports it. What happens? [LB931]

JOHN WINKLER: We couldn't build the project because you couldn't build half of a project in Washington County or a third, or two-thirds of a project in one county and build the other third in the one that approves it, so. [LB931]

SENATOR CARLSON: Okay. I think you answered it. But in that case, I said that the one that had 200 acres approved it. Now let's move it the other way, and so now, doesn't that make any difference that a larger portion of it is in one county or the other? Your interpretation is of the present law, if either one opposes it, it's no project. [LB931]

JOHN WINKLER: Right. In practicality, we could not...when you design a project, you can't build a part of it. You either build the project or you don't build the project. [LB931]

SENATOR CARLSON: No, I understand that. You either build it or you don't. [LB931]

JOHN WINKLER: So theoretically, if that was the case, then no, you would not build the project. [LB931]

SENATOR CARLSON: You just have to go about trying to persuade the one that was against it to change. [LB931]

JOHN WINKLER: Right. Or you go to your next project that you know you could build and get that taken care of, so. [LB931]

SENATOR CARLSON: All right. Thank you. [LB931]

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

Natural Resources Committee
January 20, 2012

SENATOR LANGEMEIER: I want to clarify that comment. If you take Senator Carlson...let's talk about the way the law is today. If you built that project where 200 acres was in Washington and 100 was in Douglas, and Washington County said no way, we're not doing this, that doesn't stop your project because it's not exclusively to Washington County because 100 acres is within Douglas. So that project goes ahead because neither one have "exclusive" because the dam goes into two counties, neither one has "exclusive." So if one votes no and the other one votes yes, this project goes forward. That's the way the law sits today. [LB931]

JOHN WINKLER: I don't interpret it that way. I think in practical terms we would not...if one county...if we had a project like that, if one county vetoed that project, I don't see that project going forward. I mean, you can't build a portion of a project, although maybe, legal. [LB931]

SENATOR LANGEMEIER: Then we could get rid of "exclusive," it doesn't affect you. [LB931]

JOHN WINKLER: Well, it does affect...it might not affect a county to county, but it does affect when you talk about a project within a city's exclusive zoning jurisdiction, and the county. The two county boards have veto authority, but the city would be powerless to prevent them...without "exclusive," to prevent the county from vetoing their project. That's the issue of "exclusive." Not between two counties, but between another political subdivision that doesn't have that authority and the county that does, that's the rub. That's where "exclusive" comes in extremely important to cities because they have a project within their exclusive zoning jurisdiction that they've approved that will give them protection and then the county board vetoes it. That's where the protection comes in with the word "exclusive." [LB931]

SENATOR LANGEMEIER: Okay. Now we're going to move to the next topic I have. As I look at this map and you know all these lakes and I'm, unfortunately, I'm getting to know them really well too, but you got Dam Site 1, Dam Site 3A, you've got 16, 3A, 8A, 15A, and I don't know what the A stands for in all of these and I don't want to know, but Dam Site 13, and as I go through Dam Site 21, 27, and I've skipped some, Dam Site 18, I don't see any one of these as currently drawn on this map, absolutely none of them are in an "exclusive" area. [LB931]

JOHN WINKLER: Dam Site 15A is. [LB931]

SENATOR LANGEMEIER: Not on my map, it's not. [LB931]

JOHN WINKLER: In the city's exclusive zoning jurisdiction. [LB931]

SENATOR LANGEMEIER: No, Douglas County covers all of Douglas County. [LB931]

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

Natural Resources Committee
January 20, 2012

JOHN WINKLER: The city has a three-mile ETJ, Extraterritorial Jurisdiction... [LB931]

SENATOR LANGEMEIER: Right. [LB931]

JOHN WINKLER: ...which that project would fall. [LB931]

SENATOR LANGEMEIER: Exclusively... [LB931]

JOHN WINKLER: To the city of Omaha. [LB931]

SENATOR LANGEMEIER: ...even though it's within Douglas County, Douglas County has no say. [LB931]

JOHN WINKLER: That's the...that's the importance of "exclusive." [LB931]

SENATOR LANGEMEIER: Okay. Any other questions? Seeing no other questions, thank you very much. Well done. [LB931]

JOHN WINKLER: Yep. [LB931]

SENATOR LANGEMEIER: Further testimony in opposition to LB931. [LB931]

DAVID KLUG: (Exhibit 7) Chairman Langemeier and members of the committee, thank you for your time and the opportunity to speak today. My name is David Klug, that's D-a-v-i-d K-l-u-g. I'm the vice chairman of the Papio-Missouri River NRD and I'm testifying on behalf of myself in opposition of LB931. In 2009, compromises between the Papio-Missouri River NRD and opposition groups helped form a well-rounded and fair piece of legislation. The compromises outlined in LB160 are reasonable and appropriate including the requirement for approval by county boards over projects within the counties' "exclusive" zoning jurisdiction. The attempt to modify this language to essentially give counties veto authority over villages, towns, cities, and the Papio-Missouri River NRD is at best ill-placed. The passage of LB931 would not be to the benefit of the vast majority of the constituency, and in some cases may have negative affects through the obstruction of vital flood protection and water quality enhancement projects within the district. While I may not agree with all of the instances in which the board of directors have approved the issuance of bonds, the projects that are moving forward through the use of this funding mechanism are and will continue to have positive impacts on communities from Dakota through Sarpy County. The benefits include flood prevention and FEMA levee accreditation requirements. The efforts to undermine the compromises formed over years of debate and discussion through LB931 are narrow in scope but may have profound negative impacts on the most highly populated areas of the watershed. Keeping the best interest of the vast majority of the

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Transcriber's Office

Natural Resources Committee
January 20, 2012

Papio-Missouri River NRD citizens in mind, I respectfully ask that the committee indefinitely postpone LB931. I thank you for your time and consideration and would be happy to take any questions at this time. [LB931]

SENATOR LANGEMEIER: Mr. Klug, well done. Are there any questions? Senator Schilz. [LB931]

SENATOR SCHILZ: Thank you. Thank you for coming in, sir. You mentioned that you'd like to see the bill IPPed and as I look here, and with the questions that have been brought up before and the answers that Mr. Winkler was giving us, do you think there's a better way that we could have defined that to make it more understandable for everybody? Because it looks to me like this cuts both ways and what I read in here, although not being an attorney, boy, I see a wide open door to argue that if it's not exclusively in somebody's zoning jurisdiction, then it would be really...you could argue that nobody has a second...or nobody has veto power. [LB931]

DAVID KLUG: Right. I guess I wouldn't...I couldn't recommend any change to the verbiage at the moment. Legally speaking, I think there have been some very good questions that have been brought up here today and it probably would be wise to get a little better legal interpretation, especially when the instances we've been discussing as far as dams or projects that could cross county lines. But personally, I could not make a recommendation for the change in the language of the bill. I would probably want to talk to legal counsel before doing that. [LB931]

SENATOR SCHILZ: Thank you, sir. [LB931]

SENATOR LANGEMEIER: Are there any questions? Senator Carlson. [LB931]

SENATOR CARLSON: Thank you, Senator Langemeier. You don't have to answer this, what's your vocation? [LB931]

DAVID KLUG: What's my district? [LB931]

SENATOR CARLSON: Your vocation. [LB931]

DAVID KLUG: My vocation? [LB931]

SENATOR CARLSON: What do you do for a living? [LB931]

DAVID KLUG: Oh, I work at Blue Cross Blue Shield. [LB931]

SENATOR CARLSON: Okay. Okay. I still don't understand...are you familiar with this map? [LB931]

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Transcriber's Office

Natural Resources Committee
January 20, 2012

DAVID KLUG: Yes, sir. [LB931]

SENATOR CARLSON: How did we get the gray circles up there in Washington County? [LB931]

DAVID KLUG: I'm assuming those are jurisdictions of towns and cities. [LB931]

SENATOR CARLSON: Okay. That's what that...okay, one is Blair. What's the one down here? That's not Washington County, is it? [LB931]

SENATOR LANGEMEIER: It's the little town of Washington. [LB931]

SENATOR CARLSON: Okay. All right, that helps, because it's the same gray as Douglas County and I'm thinking, how did Douglas County get jurisdiction up there? (Laughter) Okay, thank you. [LB931]

DAVID KLUG: Thank you. [LB931]

SENATOR LANGEMEIER: Seeing no other questions, well done. [LB931]

DAVID KLUG: Thank you. [LB931]

SENATOR LANGEMEIER: Further testimony in opposition to LB931. Welcome. [LB931]

JIM THOMPSON: Good afternoon, Senator Langemeier and ladies and gentlemen. My name is Jim Thompson, J-i-m T-h-o-m-p-s-o-n. I, too, am on the Papio NRD Board. It feels like deja vu all over again during the discussions on LB160 and so on. I was chairman of the board for four years during that process. The six years it took, perhaps seven, to obtain bonding authority was a lot of give and take, it was a lot of discussion, a lot of sensitivity, a lot of innuendoes, a few of which I heard again today. And it's...yeah, the opposition to dams is...it's too prevalent in too many minds that cause this sort of bill to come forward to you today. I've been accused sometimes of just telling it like it is. Bottom line, Douglas County Board does not like to build dams. They've said that more than once in their board meetings. Their solution is rain barrels and rain gardens. That was prevalent throughout the discussions. Fortunately, common sense prevailed in the state and then the Governor signed the bill that we can do something to protect the citizens of what Papio NRD has jurisdiction over. The bonding mechanism is to protect the lives and property of those in danger of being flooding. If you can imagine lining the Papio Creek with rain barrels, how quickly they could have gotten filled with a particular rain. I don't have to draw a picture of what would happen on the Missouri River if it, in fact, had been covered with rain barrels all over that particular area. It just wouldn't work. That's why we build dams. That's why we build flood control structures.

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Transcriber's Office

Natural Resources Committee
January 20, 2012

We also have water quality structures that we're required to build because of the Clean Water Act, so there's a combination of both. This legislative authority...or bill in front of you does nothing to protect the lives and property of the citizens of whatever county these structures are in. As we've been discussing I and 3C, those are really off the drawing board. Not figuratively, of course, but theoretically. We won't be able to build those because as the state law, we don't have \$300 million to build them. The LB160 says in essence now you can't have that much money to build that structure, although theoretically, it's definitely needed to protect the citizens of Washington, Douglas and Sarpy County. But it's not going to there. The success of the bonding authority, this little report covered it quickly. It's been wonderful. I had read a letter to the Governor saying, our board will not raise taxes when we get this bonding authority. In fact, we were within our...still within our limits anyway. We did not raise property taxes, have not raised property taxes for five years and we have bonding authority. We have issued some bonds at a very favorable interest rate. We're going to build two structures and we're going to keep going down the list as time goes on to continue to help protect the citizens of those...that would reside in our jurisdiction. Now because bonding authority works so well for us, this little word can be thrown in and the monkey wrench would bring everything to a halt. I think as alternative bonding authority should be--it's my personal opinion--opened up statewide. We found that we can do it successfully. Other entities with projects lined up without the money they have, perhaps bonding would be a permissive legislation in their efforts as well. So I certainly urge you to reject this. Let's get back to the business of protecting citizens of Nebraska. I'd be happy to answer any questions. [LB931]

SENATOR LANGEMEIER: Very good. Senator Christensen. [LB931]

SENATOR CHRISTENSEN: Thank you, Senator Langemeier. If I understood John correctly, if we would split this language and put exclusive jurisdiction for city of metropolitan class and county relationships, somehow if them two were abutting one another, the city would have exclusive. And the balance of it would be under just zoning, how's that going to affect you? [LB931]

JIM THOMPSON: Well, we currently don't have any zoning authority as an NRD. We revert back to the city and county. [LB931]

SENATOR CHRISTENSEN: But the county does. [LB931]

JIM THOMPSON: Well, the city does as well, yeah. [LB931]

SENATOR CHRISTENSEN: Right. But see what I'm saying if there was a city involved, then it's going to be exclusive zoning so the county can't affect them. And then if it's between counties, or it is in the balance of a county outside of a metropolitan city, then it just stays with the county zoning. How would that work? That's splitting hairs on you.

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Transcriber's Office

Natural Resources Committee
January 20, 2012

[LB931]

JIM THOMPSON: Well and you're the theory of, and the map does apparently go down into Douglas County. That's kind of where you're going with this, the big one? [LB931]

SENATOR CHRISTENSEN: All I'm saying that I heard John say, we have to have exclusive jurisdiction for cities, so the county can't overrule it. [LB931]

JIM THOMPSON: Right. [LB931]

SENATOR CHRISTENSEN: So I'm saying leave exclusive jurisdiction in for the city part of it, but anytime a city's not involved, it goes under regular county zoning. [LB931]

JIM THOMPSON: Well, that's currently how it is. That's why the one... [LB931]

SENATOR CHRISTENSEN: You wouldn't have your...then you wouldn't have these maps that are drawn that only have exclusive zoning here, the county would have the rest. Or are you telling me that the city has all the balance of this? [LB931]

JIM THOMPSON: Yeah, the city has at last 80 percent of the county. [LB931]

SENATOR CHRISTENSEN: Okay. The city has all of this then. [LB931]

JIM THOMPSON: Right. City of Waterloo, for example, as well. [LB931]

SENATOR CHRISENSEN: I couldn't tell for sure when you come over here with Valley and Waterloo, if there was areas there was literally no zoning. [LB931]

JIM THOMPSON: That is county, yeah. [LB931]

SENATOR CHRISTENSEN: So everybody is falling under one or the other. [LB931]

JIM THOMPSON: That's my understanding, is yeah. [LB931]

SENATOR CHRISTENSEN: County zoning, so there can't be a dam project put in where there's not a...either city jurisdiction or county. [LB931]

JIM THOMPSON: It's my understanding, yes. [LB931]

SENATOR CHRISTENSEN: Okay. I was misunderstanding the map. Thank you. [LB931]

SENATOR LANGEMEIER: Senator Schliz. [LB931]

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Transcriber's Office

Natural Resources Committee
January 20, 2012

SENATOR SCHILZ: Thank you. Thank you, sir, for coming in today. Did I hear you correctly that you serve on the board, the Papio Missouri Board? [LB931]

JIM THOMPSON: I still serve, yes. I mean... [LB931]

SENATOR SCHILZ: And how many years have you been on that board? [LB931]

JIM THOMPSON: Started in '97 and took a four-year break, something called elections didn't run in my favor, but I've been on since 2002. [LB931]

SENATOR SCHILZ: Wow, that's a lot of work. Now does the board...I mean, has the board talked about this bill in particular or do they have any official position on what's going on? [LB931]

JIM THOMPSON: Yes, we did. We voted to oppose it. [LB931]

SENATOR SCHILZ: To oppose this bill. [LB931]

JIM THOMPSON: Yeah. [LB931]

SENATOR SCHILZ: Okay. Thank you very much. [LB931]

JIM THOMPSON: So we certainly discussed it in principle over the years. We've...it took us a long time to get where we are now and throughout that time we've always been voting for the, for the protection of lives and property. [LB931]

SENATOR SCHILZ: Thank you, sir. [LB931]

SENATOR LANGEMEIER: Any other questions? Seeing none, thank you very much. Well done. [LB931]

JIM THOMPSON: Okay. Thank you. [LB931]

SENATOR LANGEMEIER: Further testimony in opposition to LB931. Senator Gay, welcome. [LB931]

TIM GAY: Thank you, Senator Langemeier. My name is Tim Gay, T-i-m G-a-y. I'm a registered lobbyist speaking on behalf of the Papio NRD. I want to start out, Senator, and address what Senator Dubas said. My recollection isn't so great either and it was something that was done three years ago. I wasn't prepared to speak today in front of you because we have other people. I don't want to waste your time but I did want to clarify what my recollection was of something three years ago, and many of you were,

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Transcriber's Office

Natural Resources Committee
January 20, 2012

of course, involved in that. But Senator Mines brought up the point that he took a snippet and he showed how bad...I don't articulate myself, so I'll do better. But he pulled out a snippet of something that was, as you know, long and drawn out and that... and I don't know if he was meaning that there was something behind this that we were trying to hide the ball or do whatever. You know, many times in a heated debate or things that are changing, there's a lot of times we take a break and the amendments being drawn up. And probably some of you were talking as we went along and the amendment was being drawn up. It will probably happen, I would guess again in this session, many times as you're trying to work out a difficult bill. So that's what was happening. My recollection of what happened at that point, a former colleague, Senator Tom White and I were arguing very much too. I bet as you go through the record, and why this was put in, it was a compromise because Senator Carlson alluded to it. It's...if you're up here in the watershed, and I represented the south side and cosponsor on this was Senator Cornett, and now Senator Smith represents this area, yeah, it makes a big difference of what's up north of what's coming south. So we had to have all sorts of compromises. But my recollection on this compromise was with Douglas County, the city and the county were arguing. Douglas County and the city of Omaha and Omaha will be testifying behind me, but that was an agreement that was done in full sight of everything. So it was kind of like this was all done with no one involved in the debate or whatever, so the amendment came. I don't know what the original bill if it had 11 different amendments changed every single time then, so I don't know how this all got in the context. But that "exclusive" was...is there for a reason because not everyone is always ever going to agree. And that's why it took seven years or longer to put this thing together. Why I got involved in it, is when I was on the Sarpy County Board, we are at the bottom of flood plain. So when the flood waters come down, it gets about this far from many of our bridges and it floods the south. So that's kind of why the interest in where we got. So over all these years we put this bill together, to take one word and go back and forth, and it is very confusing and not to waste your time today, and I haven't seen those maps, but to take one word and try to change what was done over many years I think would be an injustice to what we all worked very hard to do and how you get any law. When you're all gone and somebody comes back and wants to change one word, what if they change "shall" to "may"? I mean, one word means a lot so in the context of what we're doing here, it was a big change in what we were doing. On another matter though, on who gets a right or who has a say in what happens in this, well, of course, can the minority then take over the majority's rights by vetoing something and flooding people south? Everyone has a vote. These are public votes if you go out and do some of this bonding. That was in there too and that was a big part of the debate. So a lot of these things as they're moving, I don't want it to look like there was something and I didn't want to speak up, but I want to clarify the best I can how this all worked. But there's a reason there were 11 different amendments and all these things. I thought in the spirit of compromising, and many times the Papio Valley was in that. Now they may not have got what they wanted or what they liked, but Senator Langemeier, I think, hit the nail on the head. Sometimes that body is there to represent

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

Natural Resources Committee
January 20, 2012

you and if you don't agree with everything they're doing or saying, is that really tough? That's the way it is. I don't mean to put it that way but we can't control everything. They're charged with flood control and in many ways they're doing a great job of it...in all ways, I think. But flood control, that's what they're elected to do, both of these directors that spoke to you today. So I'd hate to get caught in the weeds here and have one word or whatever try to derail the whole bill that was done and the compromise that it was done. Thank you, Mr. Chairman. [LB931]

SENATOR LANGEMEIER: Very good. Are there any questions? We'll start with Christensen or Christensen. [LB931]

SENATOR CHRISTENSEN: Thank you, Chairman. Probably beating a horse to death here, but if you took the word "exclusive" out and the projects up in Washington County, Douglas County would still have no say in it, Omaha would have no say in it. Correct? [LB931]

TIM GAY: If you took the word "exclusive" out, you're talking up north. If you took the word "exclusive" out... [LB931]

SENATOR CHRISTENSEN: Right. [LB931]

TIM GAY: ...they would have a say in it, and they could then veto what's going on, in my estimation. I mean, I'd want to see these maps. [LB931]

SENATOR CHRISTENSEN: They have no zoning jurisdictions up there. So if "exclusive" come out, the zoning would still be only on Washington County. [LB931]

TIM GAY: "Exclusive," I think, was put in there for the argument between Douglas County and the city of Omaha. However, in Sarpy County, where I'm at, we have five communities in that, so would it be exclusively to each community could veto anything as well. So I think, and again, I don't know exactly where that compromise through all of this debate that was going on, exactly what was being said. If you and Senator Dubas and Senator Carlson were all...I don't know what was going on the sides. All I know it was put in there for a reason and the reason was so one person cannot veto projects down the watershed. [LB931]

SENATOR CHRISTENSEN: See I understand why "exclusive" is there. So you use the Omaha-Douglas County argument, you go down where you have three counties connect together, or go down farther where you got them others, it's...I understand why that's got to be there. But if it wasn't there, if the project was all in Washington County, I don't see how Douglas, or Omaha, or go on down into Sarpy, could stop a project. [LB931]

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

Natural Resources Committee
January 20, 2012

TIM GAY: They could stop the project up here, which gives them... [LB931]

SENATOR CHRISTENSEN: Washington could stop it up there. [LB931]

TIM GAY: Which would defeat the whole idea of the flood control because the waters go north to south. [LB931]

SENATOR CHRISTENSEN: But they can now, they can stop the bonding of it in their area which can stop the project. We give them that. Or take a different example, say it's not in Omaha, but it's in Douglas County. All right. If that dam is going there and it doesn't touch Omaha, and it doesn't touch Washington, only Douglas could stop it if "exclusive" was not there. [LB931]

TIM GAY: Senator, I'll be honest with you, where we're putting these speculations of what's going to happen, I think when we were doing it, these are all engineered, they're all done. I mean, there's plenty out there to get this done. Where they're going to be and how they're going to be done, I don't know. To answer that question, can this one "exclusive"...we don't want somebody up north exclusively to have that exclusive power and stop projects. It's there for a reason. That was there for a reason. [LB931]

SENATOR CHRISTENSEN: And I agree with you. I don't want Washington County to be able to stop everything in Omaha, Douglas, and Sarpy, or Sarpy to stop any of them up there. But I just think we're so far off understanding what the "exclusive" means. I think it needs to be there to protect the city, dual relationships, but I don't think if it wasn't there it would ever affect--if the project is all in one jurisdiction--ever affect...be affected by somebody elsewhere because they have no zoning jurisdiction. So I don't think this bill is going to benefit a thing if it's cut out other than make fights when you're doing dual jurisdictions. I don't think Washington County gains a thing out of striking that word because they're above where the city and the other fights are. I guess I'm not understanding their argument no more if I understand what's this reading. [LB931]

TIM GAY: Well, I'm getting confused as long as we go too, to be honest with you, Senator. I think the main thing is if you're saying they don't benefit, I think we keep "exclusive" in. I can't remember every detail again of why it was there, but here we are on the third time to come back and it's always...and I don't question. They have every right to question laws, of course, and, but there's a certain point. I don't remember in what context it was. The main thing I do remember it was between some other players. They were fully aware of what was going on. Now they may have not liked it, as they say, but it was in full...what I wanted to say, is in full disclosure of everybody voting on this thing. And I don't know, he didn't say what the vote was on it or whatever on that amendment, but it just made it seem like as something was happening behind the scenes and there was a lot going on behind the scenes as there is on all the bills, so. I probably didn't answer your question. I'm sorry, Senator. [LB931]

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

Natural Resources Committee
January 20, 2012

SENATOR CHRISTENSEN: Thank you. [LB931]

SENATOR LANGEMEIER: Senator Schilz. [LB931]

SENATOR SCHILZ: Thank you, Senator Langemeier. Senator Gay, thanks for coming in. We heard Mr. Winkler speak before of his interpretation of what he thought that if there was a project that straddled two county zoning jurisdictions, that then each county would have a right to veto that. Was that...? [LB931]

TIM GAY: And I think he made a misstatement on that particular thing. [LB931]

SENATOR SCHILZ: Okay. I want to make sure...yeah, I want to know what you were thinking about that. [LB931]

TIM GAY: Neither one would. On that one, it must be "exclusive." Senator Langemier was right. It has to be "exclusive" so in that case and again, I don't know where all these...I think what...and I talked to the director briefly before. I think in reality, you probably wouldn't go ahead with that project because it just be a hassle, so in practicality, I think, is what he said. Legally, though, you have to have it exclusively to... [LB931]

SENATOR SCHILZ: Within one or the other. [LB931]

TIM GAY: There is a reason for that, and again, hell, you'd probably spend all afternoon, which you probably don't want to do. And I'm not trying to evade the question, it's just very complex. So, he misspoke. [LB931]

SENATOR SCHILZ: Sure. That's...that's what...thank you very much. Appreciate it. [LB931]

SENATOR LANGEMEIER: Seeing no other questions, Senator, thank you. [LB931]

TIM GAY: Thank you. [LB931]

SENATOR LANGEMEIER: Further testimony in opposition to LB931. [LB931]

MARTY GRATE: (Exhibit 8) Good afternoon. My name is Marty Grate. That's M-a-r-t-y G-r-a-t-e. I'm the environmental services manager for the city of Omaha. My testimony is very consistent with what you've heard from the other opponents, I won't read it to you; you can read it yourself. But I do want take my shot at maybe clarifying some of the history here and what the intent was. The concern, practically, not theoretically, but practically the concern was that we all as a watershed we're trying to work together,

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

Natural Resources Committee
January 20, 2012

come up with a common plan. At some point in time, it became apparent there were differing perspectives on how this problem should be solved. What the intent of this was, and the exclusive clause in there was, that within cities' zoning jurisdictions, we would go with the plan that was produced by the partnership which includes the NRD. Outside of our areas, in the areas that are under the control of the county, we'd let them handle it. So the plan that was approved, ultimately, didn't show any reservoirs in Washington County because they don't want them there. Even though you see it on a piece of paper there, the final plan that prevails right now doesn't have those reservoirs. It's not in our jurisdiction. They can do what they want up there. Same thing, by Douglas County outside of our zoning jurisdiction. The plan that was approved said, we'll take care of the things within our zoning jurisdiction, you take care of things outside. So practically, that's what we were trying to protect was that everybody took care of their own stuff. That's all I have for you. [LB931]

SENATOR LANGEMEIER: Very simple and to the point. Any questions? Seeing none, well done. Thank you, Marty. [LB931]

MARTY GRATE: Thank you. [LB931]

SENATOR LANGEMEIER: Further testimony in opposition to LB931. [LB931]

MARK STURSMA: (Exhibit 9) Chairman Langemeier, members of the committee, my name is Mark Stursma. And that's spelled M-a-r-k, last name is spelled S-t-u-r-s-m-a, and I'm the planning director and designated flood plain manager for the city of Papillion, and I'm also one of the city's representatives on the Papillion Creek Watershed Partnership. And I, too, am going to go a little off script. I have a letter prepared that's being distributed. It has many of the same points regarding the city of Papillion's opposition to this bill as have already been discussed. Given the nature of the discussion so far, I thought I'd use my time to discuss a real world example regarding reservoir WP5. That reservoir has gone through the...the majority of it is already in process. The reservoir is in Papillion but a piece of it flows into Sarpy County's zoning jurisdiction. So this is an example of a reservoir that's part of the plan, has been designed, that does straddle two jurisdictions. And I drew a very crude drawing. I apologize for that. The vertical line is a jurisdictional boundary of our zoning. So we got Sarpy County on the west and Papillion on the east. The reservoir dam, as you can see here, creates the reservoir. That's the dam that creates the lake. These are streams that flow into what will be the reservoir. When the lake fills up, especially at a...during a flood stage, it would back up into Sarpy County's jurisdiction. So when we went through the approval process for this project, Sarpy County had to approve of their portion, Papillion had to approve of our portion. Without that word "exclusive," Sarpy County could have vetoed the entire project because a portion of the project was in their zoning jurisdiction. As it was, they could have--as I understand it--vetoed the portion that's in their zoning jurisdiction, but not the entire thing. As it happens, they support the

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

Natural Resources Committee
January 20, 2012

project. If they didn't, and they vetoed it, we would have redesigned it, made it smaller so that it wouldn't extend into their jurisdiction. So that's how I interpret the importance of that word "exclusive" that you can't, because the water may back up into your zoning jurisdiction, veto an the entire project that is predominantly in another jurisdiction. [LB931]

SENATOR LANGEMEIER: Very good. Are there any questions? I'm going to ask one. Can't let you off the hook without asking one. [LB931]

MARK STURSMA: Happy to answer. [LB931]

SENATOR LANGEMEIER: Okay, in your drawing, anywhere...and I guess I'd have to go back and look at LB160, but in your knowledge, what is the definition of the project? As you show on your map there, as you show it impounds water back a little ways, but that water technically, if you know anything about water, even though it's impounded back a mile, that's still impounding water miles and miles and miles and miles upstream. Everything puts restriction on it. How far back...how far do you go, I mean...? [LB931]

MARK STURSMA: Yeah. Having sat through several years of design meetings, and I'm not an engineer, but we refer to them as the dam meetings because that's literally what we're designing. The...they design it so that you know exactly where that water is going to go. They have very detailed topography maps. They use data on weather and rain accumulation; they look at all of the data that's available, and engineer where the water will end up being. And that's obviously very important in the construction of one of these reservoirs for safety. So if there is going to be any backup of water up to and including a 100-year rain event or even a 500-year rain event, it will be part of the design and part of the plan. And so if the creation of the reservoir is going to be extended into another jurisdiction, you'll know it ahead of time. There's no secret to it. And as I understand the law, that jurisdiction, if it's a county, can veto it. And so they would have to redesign the reservoir or scrap the whole project as a result of that veto. [LB931]

SENATOR LANGEMEIER: Okay. Senator Schilz. [LB931]

SENATOR SCHILZ: Thank you, Senator Langemeier. I guess I want to piggyback off of what Senator Langemeier said. Would then the streams that are flowing in be considered part of that project? Or would it just be an area containing the reservoir, or would a project just be an area containing the dam site? How does that work? [LB931]

MARK STURSMA: Well, the...you know, obviously, the statute doesn't go into that kind of detail. [LB931]

SENATOR SCHILZ: Right. But the definition of what a project is can make a huge difference on how this is interpreted. [LB931]

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Transcriber's Office

Natural Resources Committee
January 20, 2012

MARK STURSMA: Yeah. You know the drawings that I've been reviewing, you know, talk about the levels of water what we can expect, including during a 100-year flood stage. And at some point there would be, you know, this is the maximum capacity of the reservoir, anything beyond that is a flood. And so in terms of deciding where the jurisdictional boundary is and where that reservoir falls within it, it would be the entirety of the reservoir as defined. Anything that then becomes a flood, that would not be included in the discussion. [LB931]

SENATOR SCHILZ: Okay. Thank you. [LB931]

SENATOR LANGEMEIER: Very good. Seeing no other questions, thank you very much. Well done. [LB931]

MARK STURSMA: Thank you. [LB931]

SENATOR LANGEMEIER: (Exhibit 10) Further testimony in opposition of LB931. Seeing none...oh, I do have a letter of opposition from the Sarpy County Board of Commissioners signed by Mark Wayne, Sarpy County Administrator. Is there anyone who would like to testify in a neutral capacity? Seeing none, Senator Karpisek, would you like to close [LB931]

SENATOR KARPISEK: I would. I didn't think I was going to but after sitting there, why not, right? I think one thing that we have to think about in this is there's nothing that says that the county can stop these projects; they can stop the bonding. Now, I know in theory, that stops the project, but how did we build dams prior when we didn't have bonding? They still got built. So, in a little bit of the misinformation today, I think that's part of it. "Exclusive" was not in the bill until Final Reading when it came down. You can look it up, you can see that it was not in it until then. I am not saying that it was a trick. I am not saying that anyone did anything they shouldn't have, but that's when it got in there. It came in on Final Reading. That's why I think there's some of the little bit of question on it. Again, I think we had a lot of misinformation, a lot of confusion. Now I will say, I don't know if that was on purpose or not, but Senator Schilz, I think, hit it on the head when he asked of 3C. It's in two counties. To me, the way I interpret it is neither county would have any way of stopping that. So if it's one foot in another county, neither county could do anything. If it's "exclusive" in one county, then they could. Now we want to talk about what happens downstream, then I think that no one should be able to stop a dam from going in. If that's what we're talking about, that it's all about safety and flooding, then why would any of these boards be able to stop it? If it's 99 percent in their county, they cannot stop it. If it's 100 percent, they can. That is the rub. Senator Christensen asked about that. Now, the way I understand it again is if both counties--if it's in two counties--they both would have input. I don't know if you caught that, but input. They have input but they don't have veto power. Okay? Two different things. The

Natural Resources Committee
January 20, 2012

time spent on a bill does not have any bearing on the bill being good or bad, and if any committee knows it, it's you. (Laughter) I've also not been made aware, in my five years, of any rules not allowing changes to be made to a statute. If that is the case, we'd better pack up and go home today. It is one little word. It's that way on purpose. I also think that we got mixed up with my bill this year and my bill last year. Last year talked about cities, villages, and those things. This bill is not intended to. If that is not how it comes across, I apologize, but that is what we're talking about. It's counties today, not cities, villages, etcetera. Again, I said in my opening, I think that would be more fair but I realize that might go a little bit too far. Why should one small town be able to stop a whole project? Why should one county be able to stop a whole project if it goes in a foot? That's something to weigh. But getting it over there and it goes through on purpose, I don't know with no one being able to do it. We also heard that there's no one that can supersede another like that. States supersedes counties. Counties supersedes cities. I don't think that that was a true statement. Now, if we can draft any language that talks about counties and only counties and make it clear that we're talking about counties, I'd be more than happy to work with that, if that would help. If the project is "exclusive," obviously, I mean, I think in my own mind anyway, it's no one else's ability to stop it. If it's 100 percent in Douglas County, how could any other county come in and stop it? If that is a point in the bill that we have a question, again, we can clarify that. My point is, how can you...again, the map showed how much is "exclusive" in the whole project. Three little slices. How can you keep these things from being just "exclusive?" I don't know. County commissioners take care of things in their county whether they're 100 percent in their county or not. I don't think that that is such a hard thing to say that they should be able to have some say on it. Now I know, again, the NRD board is elected. I think that we have some people who are a little bit upset with how it went. I don't think they're out of line to come and ask for a change. With that I would be glad to take any questions. [LB931]

SENATOR LANGEMEIER: Very good. Are there questions? (Laughter) Don't see no questions, no. (Laughter) Senator Carlson. [LB931]

SENATOR CARLSON: Thank you, Senator Langemeier. Now you said something that I think I agree with you on, but let's make sure. [LB931]

SENATOR KARPSEK: Yeah, we'd better make sure, Senator. (Laughter) [LB931]

SENATOR CARLSON: You made the statement that if we're talking about advantages downstream, nobody upstream should be able to stop a project if it's to...I agree with that. Doesn't make it good for the people upstream. They don't like it, but I agree if it's in the best interest of protection of people downstream, you have to do something about it. Are we...did I hear you right? Okay. Now the law the way it is, and I think you've seen these maps that we've been looking at, and because it was gray, I was trying to put it altogether, but we got Blair, Blair has some jurisdiction. Washington, the town, has

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Transcriber's Office

Natural Resources Committee
January 20, 2012

some jurisdiction, they're in Washington County. Now under the law the way it reads right now, if a structure was to be built somehow in the jurisdiction of Blair, Blair only would have the authority to stop that project. Is that your understanding? [LB931]

SENATOR KARPISEK: If it was...no, no, I don't think so. I think, because it's also in the county would be my understanding, Senator. And my intent on this, Senator Carlson, is not the city. My intent is the county. [LB931]

SENATOR CARLSON: I know that. I'll get there. We'll get there. [LB931]

SENATOR KARPISEK: Okay. All right. [LB931]

SENATOR CARLSON: Because what we're looking at here and have a difference of opinion on is just the area around Blair and then the area around Washington. Now we've got the whole rest of Washington County and there's a structure planned up there and Washington County doesn't want it, under current law they can veto it. Would you agree? Because they have "exclusive." [LB931]

SENATOR KARPISEK: If it's "exclusive," yes. [LB931]

SENATOR CARLSON: They can veto it. That's not good for the people downstream. [LB931]

SENATOR KARPISEK: Probably not. [LB931]

SENATOR CARLSON: Okay. But you're agreeing that's the way the current law reads. If "exclusive" was taken out of there, now there's a structure planned in Washington County in the pink part of the map, not in Blair, and not in the town of Washington, Washington County Board of Supervisors doesn't like it, but they can't stop it. That...would that...? [LB931]

SENATOR KARPISEK: Correct. [LB931]

SENATOR CARLSON: Okay. We're okay then, I had to check that out. Thank you. [LB931]

SENATOR KARPISEK: Thank you. [LB931]

SENATOR LANGEMEIER: Senator Christensen has a question. [LB931]

SENATOR CHRISTENSEN: I'm going to pass. (Laughter) [LB931]

SENATOR LANGEMEIER: Seeing no other questions, thank you. [LB931]

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

Natural Resources Committee
January 20, 2012

SENATOR KARPISEK: No more dam questions? (Laughter) [LB931]

SENATOR LANGEMEIER: You've heard the closing on LB931, and that also concludes the hearings for the day. Thank you and have a great night. Thank you to everyone that participated. (See also Exhibits 11 and 12.) [LB931]