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Natural Resources Committee
February 08, 2012

[LB732 LB857]

The Committee on Natural Resources met at 1:30 p.m. on Wednesday, February 8, 2012, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB732, and LB857. Senators present: Chris Langemeier, Chairperson; Ken Schilz, Vice Chairperson; Tom Carlson; Mark Christensen; Annette Dubas; Ken Haar; and Beau McCoy. Senators absent: Jim Smith. [LB732]

SENATOR LANGEMEIER: Good afternoon and welcome to the Natural Resources Committee hearings. My name is Chris Langemeier, I'm the Chairman of the Natural Resources Committee. I'd like to introduce my committee members. We're going to be short a few today, there's a number of bills going on in other committees that they're going to be tied up in. And so I'm going to start off to my far left, or your far right, we have Senator Ken Haar from Malcolm is with us. We have Laurie Lage is the legal counsel for the Natural Resources Committee. And then moving to my immediate right, or your immediate left is Senator Annette Dubas from Fullerton. And then we're missing a chair there, but we have Senator Tom Carlson will be coming back, he's from Holdrege, Nebraska. And then we have Senator Beau McCoy from Elkhorn or west Omaha area. At the end of the table we see Barb Koehlmoos who is the committee clerk for the Natural Resources Committee. She will be where you turn in your testimony and your testifier sheet as you come forward. We have two pages that are helping us this year. We have Alex Wunrow from Los Angeles, California, who is a student at Southeast Community College. And then we have Brian Eulie from Omaha, and he is a student at the University of Nebraska-Lincoln, will be helping us if you have anything to pass out. If you want to testify today, in the corner of the room you'll see there's a green sheet. We ask that you fill that out in its entirety and then as you come forward we ask for you to give that to Barb, the clerk, and she will allow us to help us keep a more accurate record of today's hearings. If you're here and you want to be on the record of being here, but you don't care to testify, there's another like a spreadsheet form in the corner and we ask that you sign in on that and tell us whether you support or oppose a particular bill, then we'll have you down in that regard. You do not have to do both, just one or the other. As you come up to testify, the first thing we do is we ask you to state and spell your name. It helps us keep a more accurate record of today's hearings. You'll see there's a little light bar in the front there. We do use the light system in the Natural Resources Committee. You'll see the light will come on green when you start; you'll have five minutes. When the yellow light comes on that is your one-minute warning. And then when the red light comes on, we ask that you stop your testimony. In the past if you're stuck in the middle of something, a committee member will typically ask you a question to allow you to finish that. So that has not been a problem up to this point. Again, the microphone is just a recording device, it does not amplify in the rooms. We ask that you just don't touch it. It helps us keep a more clear record. If it gets "gargled" on the tape, I hear about it as they try and transcribe it and I can understand

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why. They made me listen to it once and I understood why very quickly. So we're going to take the two bills as they're posted outside on the door. We're going to start with LB732 and then we're going to move to LB857. But Senator Mello is here, and so we will open the hearing on LB732. And welcome to the Natural Resources Committee. [LB732]

SENATOR MELLO: (Exhibits 1, 2, and 3.) Good afternoon, Chairman Langemeier, members of the Natural Resources Committee. My name is Heath Mello, H-e-a-t-h M-e-l-l-o and I represent the Fifth Legislative District in south Omaha. In 2009, our former colleague, Senator Dave Pankonin, first brought to the attention of this committee and the Legislature a concern regarding recreational trails project in his legislative district. As the committee heard extensively over a two-year period, the Lower Platte South Natural Resources District had been seeking to utilize its eminent domain authority to establish a connector trail through Cass County. And both area landowners and the Cass County Board felt that their input on the location of the trail had been ignored. As is so often the case in the Nebraska Legislature, a compromise was reached in 2010 between the NRDs and those supporting Senator Pankonin's effort to strip the NRDs of their eminent domain authority for recreational trails. That compromise, which took the form of LB1010, provided a detailed public engagement process which had to be followed in the event that an NRD needed to use eminent domain for a recreational trail project. Given that most of the current committee was present for the debate on this issue, I won't take time to detail what the procedures you established in LB1010. Unfortunately, a trail project that is currently underway in south Omaha demonstrates a significant loophole...demonstrates that a significant loophole exists in the revisions that the Legislature put in place with the passage of LB1010. As the law currently stands, an NRD can completely avoid the public engagement process required for the use of eminent domain for trails by simply partnering with a municipality on the recreational trails project. The Keystone Connector Trail, a joint project between the Papio-Missouri NRD and the city of Omaha, has not followed the statutorily required procedures because it is the city, not the NRD, exercising eminent domain for the project. Simply put, LB732 would close the loophole by requiring municipalities to follow the same procedures as NRDs when utilizing eminent domain for a recreational trails project. The language in LB732 is virtually identical to the language that was passed in LB1010, except that it applies to municipalities instead of NRDs and that the definition of "trail" in the bill specifically excludes sidewalks which was a concern brought to my attention by the League of Municipalities. While the same result could have been accomplished by simply amending the existing trail statutes that begin at Section 2-3234.03, I felt that inserting identical language in the municipal statutes would be more effective. If this committee feels otherwise and would prefer to amend the existing statutes, I am completely amenable to that change. Unfortunately, representatives from the affected neighborhoods in south Omaha were unable to attend the hearing to testify in person today. The committee should have received, however, their letters, one from Duane Brooks of the Karen-Western neighborhood, as well as Clark Dietzschold of the

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Burlington Road neighborhood. And copies of those letters, along with a letter from the Nebraska Farm Bureau Federation, were handed out. I think as those letters point out, there's a significant loophole in the existing statutes which hopefully LB732 can help close. Thank you for your time and I'd be happy to answer any questions you may have. [LB732]

SENATOR LANGEMEIER: Very good. We do have those letters. Are there any questions for Senator Mello? Senator Haar. [LB732]

SENATOR HAAR: Yes, thank you. So the reason for this, Senator Mello, is because of a new trail that's going in. [LB732]

SENATOR MELLO: Yes, Senator Haar. And by all means, I would preface that I've worked well with the Papio NRD and the city of Omaha on multiple issues in my time in the Legislature and this issue has been one issue that constituents of mine have brought forward of expressing significant frustration both with the city and the NRD in regards to how they've gone about trying to build this connector trail. I spoke with Senator Pankonin about it when he was discussing his issue in front of the Natural Resources Committee and we felt at the time that the first phase of this trails project was ultimately handled in a way that was satisfactory to one of the neighborhoods where this trail was. And after this committee put forward LB1010 and we passed that legislation, the second phase of the trail ultimately was transferred from the NRD to the city of Omaha where they would...ultimately the city wouldn't have to follow the public engagement process that was laid out by this committee for using eminent domain for that trail, which would necessitate the need for LB732. [LB732]

SENATOR HAAR: Okay. Yeah, I played a big role in that with Senator Pankonin. Have you talked to the NRDs or are they going to be here to talk about that? [LB732]

SENATOR MELLO: I imagine that both the city of Omaha, the Papio-Missouri NRD, as well as the League of Municipalities will all probably testify in opposition today. In part, because they think they feel that they have an existing...the cities and municipalities have an existing process to use eminent domain for trails. But the underlying issue that I raise, and I think the way I interpret what this committee did, and the Legislature did, was we put forward one process for public engagement to use eminent domain for trails for one political entity, and we have separate eminent domain public engagement processes for municipalities. And essentially, my interpretation of moving forward with any kind of trail project whatsoever is, it's an...if an entity wants to use eminent domain, they just would transfer...NRDs for an example, would just transfer all their authority and all their funding to municipalities so they could follow a less strict, less public engagement process to use eminent domain. And I know that, for an example, there's a city in Sarpy County that over the last ten years they've done trails in their community and they've not once had to use eminent domain for their trails, which shows that a

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good public engagement process on behalf of local governments can avert the need to use eminent domain if it's done correctly and you bring the property owners to the table at an earlier point to ensure to try to find a win-win situation. [LB732]

SENATOR HAAR: Thank you. [LB732]

SENATOR LANGEMEIER: Very good. Are there any other questions? Senator Mello, I do have one. In reading one of the letters that is submitted, is this trail really the Keystone Trail? [LB732]

SENATOR MELLO: It's the Keystone Connector Trail. The Keystone Trail runs into Sarpy County and runs up into Douglas County and it stops, roughly, it has stopped roughly in the Karen-Western neighborhood, just actually west of 60th Street. It actually keeps going north of there, but the Connector Trail stops there right below the interstate or just south of the interstate at 60th Street and essentially cuts across my entire legislative district to connect to the Field Club Trail which is just west of 32nd Avenue, just north of the interstate. [LB732]

SENATOR LANGEMEIER: Okay. Senator Haar. [LB732]

SENATOR HAAR: Will there be a pipeline under this trail? (Laughter) Just thought I'd better ask. [LB732]

SENATOR MELLO: Senator Haar, no. And I would emphasize, you know, I don't bring...I don't bring this, I guess, this idea lightly in the sense that I use the Keystone Trail. I'm a cyclist and use their existing trail. I think the underlying issue to this legislation is more of the public engagement process that we, as a legislature, ultimately passed in the law that right now it's, in all likelihood, at least my interpretation is, it's really meaningless because NRDs simply know...just simply have to give the money and transfer the project to someone else so they don't have to follow the public engagement process that we laid out. And I'm not faulting them. Like I said, I started my testimony, I have a good working relationship with both the city of Omaha and the Papio NRD. I just felt that just to help other communities who may have to deal with a somewhat similar situation with their NRD and municipality, it would be wise for the Legislature to harmonize the eminent domain process or public engagement process for trails for all public entities to follow somewhat of a similar process. [LB732]

SENATOR LANGEMEIER: Senator Carlson. [LB732]

SENATOR CARLSON: Thank you, Senator Langemeier. Senator Mello, thanks for bringing this and it looks like you've got pretty good support for it. But I'll venture there is a pipeline under some kind of a trail that might come into being. [LB732]

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SENATOR MELLO: There may be, Senator Carlson. I would be remiss to say I don't have that answer off the top of my head. We're not building, I think, a new pipeline. Maybe I was interpreting Senator Haar's question, we're not building a new pipeline, so to speak, under this existing trail. But there are plenty of pipelines that fall within...under the south Omaha neighborhoods that I represent. [LB732]

SENATOR CARLSON: Thank you. [LB732]

SENATOR LANGEMEIER: Very good. Seeing no other questions, well done. [LB732]

SENATOR MELLO: Thank you. [LB732]

SENATOR LANGEMEIER: You have heard the opening on LB732. We will now take testimony in proponent. Seeing none, we do have a letter signed by Duane Brooks in support. We have a letter signed by Clark...Senator Mello said this... [LB732]

SENATOR MELLO: Dietzschold. [LB732]

SENATOR LANGEMEIER: ...Dietzschold, hopefully I didn't butcher that too bad. And then one from Jessica Kolterman with the Nebraska Farm Bureau in support of LB732. We will now move to those that would like to testify as an opponent against LB732. Come on up. Welcome. [LB732]

WILLIAM BLAKE: (Exhibits 4 and 5.) Thank you. Mr. Chairman, members of the committee, I filled out the green sheet indicating I'm appearing as an opponent. My name is William G. Blake, Bill Blake, B-l-a-k-e. I am appearing today on behalf of the Nebraska State Bar Association. The NSBA opposes LB732 as drafted. This does not go to the merits of the proposed legislation. The bar does not take a position on whether recreational trails should be the subject of eminent domain or whether legislation in this area is needed. The NSBA is interested in the administration of justice. I have provided the committee with copies of my bio from my firm's Web site. That's the Baylor Evnen law firm here in Lincoln. The purpose of giving you the bio is to indicate my background and my qualifications to speak with some knowledge regarding eminent domain. I have practiced in this area extensively for over 35 years. I am the editor of the recently completed "Compendium of the Law of Eminent Domain in the 50 States" for the litigation section of the American Bar Association. I'm active in several national organizations devoted to this practice area. We have a system for eminent domain or condemnation proceedings in this state that is somewhat rare. It is a fairly uniform system for all types of public projects, for all types of uses, and for all condemning authorities. Condemnation is dealt with primarily in two articles of the Nebraska Revised Statutes. The process for public notifications and hearings for proposed projects under the threat of condemnation is set forth at Chapter 25, Article 25. The statutes governing the condemnation proceeding itself are at Chapter 76, Article 7. In many states, each

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type of project has its own requirements, and each type of public agency may have its own set of condemnation procedures. It sometimes ends up in a confusing mess requiring costly and time-consuming litigation to determine what law applies and how conflicting laws should be interpreted. Our eminent domain system in this state is not perfect and as problems are encountered or new areas of public need arise, this system needs to be amended. However, we do not have the difficulties faced in states that have answered the problems with piecemeal special legislation. LB732 provides a special procedure for hearings prior to a city deciding to acquire property for a trail by eminent domain. It carries more requirements than for other public projects and for other classes of public agency. This has already been done as to trail projects by natural resources district. This type of fragmentation should be decreased rather than increased. If trails are deserving of special treatment prior to eminent domain, then such treatment should apply regardless of the public agency that wishes to develop the trail, and the procedure should dovetail with the existing eminent domain procedures. If the committee determines that LB732 should be sent to General File for consideration by the Unicameral, then we ask that it first be amended to fit within the existing statutory framework. Thank you. If there are any questions, I'll be happy to try and answer them. [LB732]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Haar. [LB732]

SENATOR HAAR: Thanks for being here. You're saying in your testimony if trails are deserving of special attention, such treatment should apply regardless of the type. And I guess I was hearing that's what this bill will do. It will also apply it to cities and so on. [LB732]

WILLIAM BLAKE: Well, it would apply...this bill would make it apply to cities, as well as natural resources districts. What about counties? There are countless other agencies. What if a city or a county wishes to join with another entity and create a joint public agency? There are...if the idea is to close a loophole, there are still many potential loopholes. And there are procedures set forth in the bill that do not dovetail very well at all with the existing statutes. And that's the point of what the State Bar Association is looking at. Let's try to make it consistent. And if we don't make it consistent, we end up with litigation to determine what does this statute really mean? How does it really apply? That's very costly and typically property owners, as well as the governing agencies, cannot afford that extra cost. [LB732]

SENATOR HAAR: So I hear you saying, basically, that if we're going to go in this direction, let's include everybody who might be in this situation. [LB732]

WILLIAM BLAKE: Yes. And let's work within the existing framework. [LB732]

SENATOR HAAR: So to work within the existing framework, would that require going

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back and changing the law that we established with the NRDs for trails? [LB732]

WILLIAM BLAKE: In my opinion, to do it correctly, yes. [LB732]

SENATOR HAAR: All right, thank you. [LB732]

SENATOR LANGEMEIER: Senator Carlson. [LB732]

SENATOR CARLSON: Thank you, Senator Langemeier. And, Mr. Blake, as you went through your testimony here, I thought you were just entirely against this bill until the last paragraph. So we ask that it first be amended to fit the existing statutory framework and then following up Senator Haar's question, so the current law that we have that applies to the NRD, you would suggest that one be reworked. [LB732]

WILLIAM BLAKE: I think it could be reworked rather easily to fit within the framework for eminent domain. It is the type of legislation that we see in other states where they close a loophole or they fix a problem and in the process create a bunch more problems. And if you see that proliferate then, then...as I said, it ends up just kind of a mess. We want to avoid that. And the first one...well, the first time you see it happen it doesn't get much attention, but then you see it continue, then you really feel like you should address the issue and try to keep it a fairly uniform system. [LB732]

SENATOR CARLSON: So really your suggestion would be rather than just include the city, that the entire approach be revisited so that every possible entity that this could apply to would be included? [LB732]

WILLIAM BLAKE: Well, I do need to keep it very clear that the Bar Association, that I am here on behalf of, has not taken any position on whether anybody should be included in this legislation. The Bar Association does not take a position on whether this legislation is a good idea or a bad idea. It simply...how it's drafted to make it work as smoothly as possible and to not create more litigation. [LB732]

SENATOR CARLSON: Okay, thank you. [LB732]

SENATOR LANGEMEIER: Senator Christensen. [LB732]

SENATOR CHRISTENSEN: Thank you, Mr. Chairman. Thank you, Mr. Blake. So you're really more concerned that every entity that could be doing this is...has the same set of rules and not concerned about if it's a two-thirds vote of the board or majority vote of the board and things that direction, correct? [LB732]

WILLIAM BLAKE: Correct. [LB732]

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SENATOR CHRISTENSEN: Okay. Thank you. [LB732]

SENATOR LANGEMEIER: Senator Haar. [LB732]

SENATOR HAAR: Okay, well I was just going to say I'd be more than happy to sit down and talk about that with the Bar Association, but it was a difficult compromise worked out because trying to...a win-win situation for the people, you know, and their emotions and...so I'd be interested to see what you would suggest. If we're just tweaking to make it work better, you know, maybe there's some possibilities there. [LB732]

WILLIAM BLAKE: Well, I'm well aware...use of eminent domain is one of those areas that anytime you try to tweak it, then lots of people love the idea and lots of people hate the idea. [LB732]

SENATOR LANGEMEIER: More so on the hate side. (Laughter) Seeing no other questions, thank you very much, well done. [LB732]

WILLIAM BLAKE: Thank you. [LB732]

SENATOR LANGEMEIER: Further testimony in opposition to LB732. Come on down. Welcome. [LB732]

BERNARD IN DEN BOSCH: Good afternoon, Mr. Chairman, members of the committee. My name is Bernard in den Bosch. The last name is spelled...three words, first word is lower case "in"; second word is lower case d--as in David, e-n; third word is capital B--as in boy, o-s-c-h. I'm employed by the city of Omaha and I'm here on behalf of the city of Omaha appearing in opposition to LB732. I, obviously, wasn't involved in the process when the previous bill involving the NRDs was invoked, so I'll try to adjust my comments around those and I appreciate...answer any questions...try to answer any questions you may have. The concern that the city of Omaha has, quite frankly, is that this bill establishes an intricate and lengthy process for acquisitions of a very specialized and particular nature. Now I appreciate, as Mr. Blake certainly has more experience with eminent domain than I do, I've been doing eminent domain for the city of Omaha for approximately 16 years. I've had occasion to speak on the subject at various conferences several times. I'm aware of the nitty-gritty work, so to speak, that goes about with doing it. The city of Omaha, I would guess, has acquired more property of any entity other than the state of Nebraska over the past 16 years, though I do want to point out that the times that the city exercises its right of eminent domain is approximately 1 percent of the property that is acquired. For the most part, the process that exists currently which involves...and I'll talk about it briefly, in order for the city of Omaha to exercise eminent domain and, frankly, it's quite similar in other governmental entities, the first action that needs to occur is the governmental entity, the city council, needs to declare a necessity for the property. After public hearing, that necessity is then

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declared. As far as the actual project, and in most instances, and I think the issue that brings this bill to the front, and I'll address the specifics towards the end of my presentation, in most instances there's also public hearings. And Mr. Blake described some of the processes that exist and I don't want to duplicate his testimony as far as those processes. But after the decision has been made that property is necessary, the city of Omaha, as a requirement of Nebraska statutes, as well as any other governmental entity, is required to negotiate in good faith. That typically entails hiring an appraiser to determine the fair market value of the property that's being acquired, entering through a negotiation period with the property owner which includes not only compensation for a taking, but quite frankly, also includes what kind of changes and tweaking and other things can be done to plans in order to make the project more palatable. And it's only after that process fails that you would go to the process of filing a petition for eminent domain. And as I indicated previously, in the case of the city of Omaha, that instance happens approximately 1 percent of the time, and a number of those aren't even disputes as to value. We have issues with clearing title. And it's the last option and not used. And I want to address some of the specifics in this particular bill and I understand it's modeled after a bill with the NRD. I don't know if there's really been any experience as to the process, but it occurs to me that there are some problems with the process that put in...the process contemplates that you will need to get written consent and an agreement before eminent is allowed, presumably you'll need to get appraisals and go through that whole process. If that doesn't occur, then you have to go to the city council or whatever body that is making a decision and get consent to try to use eminent domain. Their council acts in this quasi-judicial capacity with a clear and convincing evidence. I might question the ability of councils to do it, but that's...I understand that's...that was a probably born of compromise. And then there is a process to appeal that determination through a petition in error. My experience with petitions in errors, at minimum it's a six-month process, maximum it's two, two and a half years. So then you have a process where this trail which has been discussed and you might have acquired property interests from some people, but maybe there's 1 out of 20 or 1 out of 10 that's a holdover, now you have to go back and assuming that the petition in error is denied, you've got to go back and start the process, again, requiring you to update appraisals and go through the process. So it appears to me that there are some fundamental issues with this particular legislation which could be addressed and I would like to discuss with you more. I understand my light is red, so if you... [LB732]

SENATOR LANGEMEIER: Are you close? [LB732]

BERNARD IN DEN BOSCH: I am, I just wanted to point out some of the issues in the specific situation here. [LB732]

SENATOR LANGEMEIER: Do that quick. [LB732]

BERNARD IN DEN BOSCH: Okay. Senator Mello raised...and I've spoken with the

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people in our parks department to try to get a flavor for what occurred here. I know there's a...and maybe the facts seem to indicate that the agreement between the city and the NRD was amended to bypass these particular rules. I think, frankly, if one explores that particular issue, that is not the case. The project was originally started in 2009, late 2009-2010 and it was contemplated the NRD would be the lead agency but the property would be owned by the city of Omaha. At some point in time it was determined that the city of Omaha couldn't hold title if the NRD bought it. At least that was the information provided by the NRD. And so the agreement was modified to allow for that. But more importantly, as soon as the concerns were raised by the neighborhood association, in this case, the city delayed the project from the summer of 2010 to the summer of 2011 to re-explore everything; where the appropriate paths should be, were there alternatives, what other things could be done, and attempted to address the concerns of the neighborhood. They didn't get everything they want so, and I appreciate people would like to get everything they want, but one of the things that happened, for example, is Mr. Dietzschold, who is the author of the letter, originally we were going to acquire some property from him. The plans were reworked so that the trail would actually exist in the existing right-of-way. So there was not actually going to be an exercise of an acquisition of property or ultimately eminent domain. So I appreciate the time...the sequence may not look particularly good, but...and one of the other things is, we've decided we've indicated that we will build a privacy fence to provide some protection to his particular property. I'd like to conclude, at least my presentation by saying what we're doing is establishing a very unique, time consuming, delaying process for trails which is one of any number of processes the city may use to acquire property. And quite frankly, we do work with the NRD to acquire trails on occasion, but the great majority of the recreational trails that the city has built do not involve the natural resource districts. I'd be happy to answer any questions. I know my light has been red for a few minutes. [LB732]

SENATOR LANGEMEIER: You're okay. Senator Haar. [LB732]

SENATOR HAAR: Well, I think...well as we worked out the trail bill a couple of years ago, we're well aware that we produced an intricate and lengthy process. The tradeoff was whether we could develop trails or not. And so I think we're aware that...and the fact also aware that eminent domain is a really big hammer. So I guess I'm just saying that the fact that it's intricate and lengthy, I'm sorry about that, but I think that's the tradeoff for being able to build trails and again, I was on a city council. [LB732]

BERNARD IN DEN BOSCH: Sure. [LB732]

SENATOR HAAR: I'm sorry to see those things happen, but yeah. [LB732]

BERNARD IN DEN BOSCH: And appreciate...I wasn't...the city wasn't involved in it, so we didn't have a hen in the fight, so to speak. We're part of the negotiations. So as we

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look at it, you know, we're, of course, responding to...you know... [LB732]

SENATOR HAAR: Sure. [LB732]

BERNARD IN DEN BOSCH: ...to the response. So that's what I... [LB732]

SENATOR HAAR: So your interest, I understand that, sure. [LB732]

SENATOR LANGEMEIER: Mr. Blake, I have a question, seeing no others, excuse me; Mr. Blake earlier talked a little bit about, through eminent domain for trails you have to show the public need or the benefit or he had a specific term that you had to prove before you could use eminent domain. [LB732]

BERNARD IN DEN BOSCH: Before you can acquire any property, there has to be a public use. And not only do you have to demonstrate a public use in your ordinance of necessity, there is an ability to challenge the legitimacy of the public use through the mechanism 76. 701-726; and there's certainly case law where entities have said, we don't believe this is an appropriate public use and have challenged it through injunctive relief and others as opposed...and I appreciate that's an alternative to the process that was adopted in this bill. [LB732]

SENATOR LANGEMEIER: You used the word for me, thank you. Public necessity, public use and public necessity, we talk about this being a different process than putting a road in and some other things out there. I would argue that a trail is a nice thing, but I don't see a necessity in having a trail. So the fact that it's harder, it's more incumbering, doesn't bother me. A road I see as a necessity. You've got to get people from their homes to their jobs, that's what makes the economy go. I understand that. But a trail is a nice thing, it's a good thing. I like trails and all that. I don't see the necessity to use a trail to get from Senator Carlson's backyard to Senator Haar's backyard. [LB732]

BERNARD IN DEN BOSCH: And I understand what...your concern. Now appreciate 14-366 is the act, the legislative section that it deals with public necessity for cities of the metropolitan class. But the question may not be...we all understand roads are necessary. I would argue there are some other amenities that we all think are necessary in our community, whether they be community centers, whether they be sewers. Now on every individual road, on every individual sewer, on every individual police station, community center, fire station, all of which we might agree, generally, are needed, there's always a question of whether this is the particular best location, or this is where it should go. And so we certainly get challenges for public necessity on those. Most of the challenges, quite frankly, have to do with Nebraska's community development law, at least the ones that I've been involved in, where they're challenging the public necessity or the need. And the statutes are frankly written, the case law is written to give some deference to local government to decide what things are necessary for their particular

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entity. And I appreciate...in some people's mind, certain things are necessities and certain things aren't. I guess I would argue the idea of eminent...the idea is government provides facilities for its people. I could argue that no community center is ever a necessity, but as a practical matter, almost every community has one because it's an amenity the people want and expect. And I appreciate...you could share the same thing about trails, or at least larger communities. [LB732]

SENATOR LANGEMEIER: Has anybody used eminent domain to build a community center? [LB732]

BERNARD IN DEN BOSCH: There are certainly been times where the city would have acquired or needed to use eminent domain to clear title. Appreciate... [LB732]

SENATOR LANGEMEIER: That's a whole different ball of wax, we don't want to go there. [LB732]

BERNARD IN DEN BOSCH: I know it, but appreciate when we say eminent domain, every acquisition that a governmental entity does for a project, where there's been a declaration of necessity, the council determines whether eminent domain is something that's going to be considered or not. In most cases they do, if you're able...if you're not able to acquire it through negotiations. And as I indicated to...at least in the case of the city of Omaha, most things are acquired through negotiations, but you might have an entity where you have 20 pieces of property you need for something; 19 of the 20 agree to it, 1 of the 20 does not. You might have to use eminent domain to acquire that property interest, otherwise the project doesn't happen. [LB732]

SENATOR LANGEMEIER: Sure. Are there any other questions? Seeing none, thank you very much, well done, well done. [LB732]

BERNARD IN DEN BOSCH: Thank you, appreciate your time. [LB732]

SENATOR LANGEMEIER: Further testimony in opposition to LB732. Lynn, welcome. [LB732]

LYNN REX: Thank you. Senator Langemeier, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. And we are in opposition to this bill, but we also understand the sensitivities that, I think, resulted in the passage of LB1010 a few years ago. With that, I would just like to underscore a couple of points that have already been mentioned, but I think they're worth emphasizing. And that is that under LB269 which passed several years ago, one political subdivision is able to partner with another political subdivision to basically do joint projects. And so we have cities across the state that are involved in a number of joint projects. And I could foresee clearly...I'm sure there already have been, projects

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between and among municipalities, NRDs and counties with respect to trails. So if you have different sets of statutes for different political subdivisions, it is really hard to interface all those. And perhaps a better approach, if you feel you have to move forward with something, would be to have one uniform set of eminent domain statutes when you're looking at trails. With that being said, I really appreciate the fact that Senator Mello and his staff were willing to make an accommodation on page 2, and that was on lines 10 and 11, making it clear that a trail does not constitute a sidewalk, or a trail is not a sidewalk. When we reviewed this legislation with all cities of the first class, Lincoln and Omaha, in our legislative committee process internally, as well as with second class cities and villages across the state of Nebraska, and we have about 40 of them that come in and meet with us on this type of legislation and all these types of proposals, one of the things that they pointed out too is just their partnering, and especially partnering with the federal government. And that gets to the timing issue that the previous testifier just mentioned. And that is that, for example, I'm talking about Scottsbluff and the monument, there's a trail...the city of Scottsbluff...I believe Gering is involved, but I may stand corrected on that, but they've been very involved with the federal government in doing all this partnering to finally put this trail system together out there. And what the city officials in Scottsbluff have told us is, their concern is--it's timing. When you get the federal government finally in a position to move on something, you got to go. And so we...and I don't know that they were using eminent domain at all out there, I don't know that they need to, but in the event that they have to, we want to make sure that they're in a position to do that without a two or three year delay process or an appeal process. Because if that happens, that project stops. But again, we're in opposition to the measure, but we do understand why Senator Mello brought this forward. We understand why there are sensitivities when you're dealing with issues. And I agree with you, Senator, there is a difference between a trail, which is something that is great, it's really an amenity that people really enjoy for people that use them; and also when you're dealing with something like a road. There is a distinction. With that being said, if you have to do something, please do it so that you can have cities partnering, and municipalities partnering with counties, partnering with NRDs. It's a uniform system, in addition, one that's going to work for everybody without an appeal process that will take from now until the cows come home so that you simply can't do it. Because at the end of the day, you won't have trails. It will literally stop...not stop, but it will inhibit the ability of localities to have trails. And I think the people that enjoy those would like to continue seeing that happening. And I know Senator Mello would too. With that, I would be happy to respond to any question you might have. [LB732]

SENATOR LANGEMEIER: Very good. Are there any questions for Ms. Rex? Senator Haar? No. Senator Carlson. [LB732]

SENATOR CARLSON: Thank you, Senator Langemeier. I'd just say the cows come home every day. (Laughter) [LB732]

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LYNN REX: Yes, sir, they do for me too. I should have said that before the Agriculture Committee. [LB732]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much. [LB732]

LYNN REX: Thank you very much. [LB732]

SENATOR LANGEMEIER: Further testimony in opposition to LB732. Welcome. [LB732]

STEVE GRASZ: (Exhibits 6 and 7) Thank you, Chairman Langemeier, and members of the committee. My name is Steve Grasz, S-t-e-v-e G-r-a-s-z. I'm an attorney with Husch Blackwell and our firm serves as government affairs counsel to the Papio-Missouri River Natural Resources District. I have a letter here with me today from...for the committee from Papio NRD general manager, John Winkler, who is not able to be here with us today. I'm sure, though, that if there are questions that come up that cannot be answered today, that John will be happy to answer those for the committee. This letter from John sets forth the district's opposition to LB732 and also responds to some accusations leveled against the NRD which are related to the alleged need for this bill. First of all, it has not been the practice of the Papio NRD to undermine the operation of LB1010 which has been discussed here earlier today and was a compromise a couple of years ago. NRDs do enter into partnerships and cost-sharing arrangements with cities and villages to fund and construct trails. However, more trail projects are done without NRD involvement than with. LB732 would place onerous and expensive restrictions and requirements on cities and villages which are not necessary given the detailed procedures already in place. And those have already been discussed today. For example, the bill imposes a 67 percent supermajority voting requirement on city councils. This would require 4 out of 5 votes on a five-member council. More importantly, the bill effectively turns the public hearing on acquisition of trail property into a quasi-judicial evidentiary proceeding. And that was also mentioned earlier today. Under that provision, the city council would have to apply a clear and convincing standard to eight categories of evidence. That is the same high standard required, for example, to commit a mentally disorder sex offender to a regional center. Any affected property owner who disagrees with the council's view of the evidence under that standard may then appeal the council's decision to the state district court and no project may go forward until a final order has been issued by the court. This provision could effectively tie up any proposed recreational trail project in litigation for one to two years and could result in a large legal expense for the city or village, even if the council unanimously supported the project. The Papio NRD is committed to protecting property owners and to providing a reasonable and workable process for recreational trails when they are considered. However, LB732 is not such a process. I'd be happy to answer any questions from the committee. [LB732]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Haar. [LB732]

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SENATOR HAAR: Has there been an occasion yet where the Papio NRD used the process that we put into law? [LB732]

STEVE GRASZ: No there has not. I did talk with John and I asked him that question this morning. Frankly, I'm not sure the process is workable. I'm not sure it will ever be used. [LB732]

SENATOR HAAR: Well, it is being used right now in Cass County is my understanding. [LB732]

STEVE GRASZ: Okay. He did also tell me that it was his understanding that with regard to the Keystone Trail, that neither the east nor the west sections of that trail involved the use of eminent domain. You'll see from his letter that I have for the committee, that he...as Mr. in de Bosch indicated that the need for this bill as alleged in the statement of intent is false. That this was a city of Omaha project, it was not an NRD project and that there was no transfer of this project from the city to the NRD in order to evade the statute. That's simply not factually correct. [LB732]

SENATOR HAAR: Thank you. [LB732]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much, well done. Further testimony in opposition. Good afternoon. [LB732]

GLENN JOHNSON: (Exhibit 8) Good afternoon. Senator Langemeier, members of the Natural Resources Committee, my name is Glenn Johnson, G-l-e-n-n J-o-h-n-s-o-n. I'm general manager of the Lower Platte South Natural Resources District. I'm appearing on behalf of the natural resource district and also on behalf of the Nebraska Association of Resources Districts in opposition to LB732. The opposition rises because the bill provides a set of procedures for cities and villages to follow, similar to that that was set in place for NRDs to follow, which we now are learning and having experience with that's unnecessarily cumbersome, time consuming, and potentially expensive. The current statutory requirements have proven to be effective and fair in our opinion. Districts and municipalities work together on numerous types of projects including trails, and we worked with a number of smaller communities and the city of Lincoln. This bill relates only to municipalities, but, obviously, would affect any of those joint projects that we're working on. We begin to understand the challenges that the previous bill that applies to natural resource districts as we continue to look at a project in Cass County. And I'll point out a few of the issues that are of concern and maybe there's nothing that can be done for the NRD process, but at least it could be recognized and maybe amended into this process. The way this is set up, there's...normally when you begin to look at trail alternatives, look at different alignments, and you go in the process selecting, there is a very extensive public process. And we've used that; and a lot of

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property owner input during that review and selection. This bill, the way it is set up, would in Section 3, really requires you to do all of that up front before you ever go to a public hearing. You make a selection, you identify the corridor, you identify the route, you identify the property owners, the property interest needed, and you actually need to get appraisals to get an estimate of the cost all before you have...you're required to have a public hearing. So you bypass that public process up front and put it in later. Section 4, which refers to that negotiation under a written consent of the landowner, it reads as if you can't pursue any negotiations...any negotiating process, unless they've agreed to a written consent. There is really no incentive for them to enter into a written consent, frankly. The normal process that we use today, all affected landowners are entered in negotiations with, you have an appraisal, you provided the actual property interest that's needed. You provide an offer of damages based upon an appraisal and you enter into negotiations. This precludes doing that unless they've signed a written agreement which they don't know...they don't have enough information to really enter into the agreement is what it basically boils down to. Finally, I guess in Section 4 there have been references to this quasi-judicial process that the natural resource district and now a city and municipality would need to follow. Within those eight, there are a number of those criteria that are very subjective. The...the... "whether all other trail alternatives have been considered" there's never going to be an "all", there's always another alternative. It's a very absolute "all." You have to speculate as to how many of the properties...to what extent you were going to need to use eminent domain. But in many cases you won't even have had any opportunity to negotiate with the landowners to have...to give you any indication as to whether they're willing or not to enter into nego...I mean, whether you're going to be successful in negotiations. So it's very speculative in that manner. Each of those offers an invitation for challenges, we think, in the lawsuit, and again, prolongs the process. We think...we've discovered that there's some really difficult challenges to using the statutes for the NRDs. They're still built into this particular process that would be there for the municipalities. And on behalf of the district and the association, we'd urge the committee to indefinitely postpone LB732. I'd be happy to answer any questions. [LB732]

SENATOR LANGEMEIER: Very good. Senator Christensen. [LB732]

SENATOR CHRISTENSEN: Thank you. Have you guys used the process set up for the NRDs yet? [LB732]

GLENN JOHNSON: We haven't because we're still going through that first...all those preliminaries that you have to do. You have to go through, and again, we're back going through the process of looking at alternative routes. We've been exploring one with the Department of Roads. We were rejected by the Department of Roads as not being allowed to occupy any of the existing road right-of-way with the trail. So we're back again working with the county to look at the other alternatives. And all that has to be done before you can identify a corridor, before you can identify what right-of-way is

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going to be needed before you ever enter into a public hearing process. [LB732]

SENATOR CHRISTENSEN: Okay. [LB732]

GLENN JOHNSON: So we're working towards getting there, but there's a lot of steps that are involved before you ever get to a public process. [LB732]

SENATOR CHRISTENSEN: Okay. Thank you. [LB732]

SENATOR LANGEMEIER: Any other questions? Seeing none, thank you very much, well done. [LB732]

GLENN JOHNSON: Thank you. [LB732]

SENATOR LANGEMEIER: Further testimony in opposition. Seeing none, we did receive a letter from the Pappio-Missouri River Natural Resource District signed by John Winkler, general manager, in opposition. Is there anyone that would like to testify in a neutral capacity? Seeing none, Senator Mello, would you like to close? [LB732]

SENATOR MELLO: Briefly, briefly. Thank you, Chairman Langemeier and members of the committee. I respect those who testified in opposition today in regard to the points of contention they brought up. However, I think it is worthwhile to mention that some of the testifiers who described to you the overburden challenges that they see facing these new proposals that cities would have to face in LB732 were similar entities that came in support of your committee's original proposal, LB1010, which makes me believe or question, one, whether or not they really supported LB1010 when this was passed out of this committee and by the Legislature, or they just don't want to, maybe, reopen up this issue which is understandable. But I think the reality is, the concerns that happened in my specific legislative district with this specific trail, I think, warrants a conversation and a discussion, at least among this committee, whether it's over an interim study, whether it's this committee decides to move or advance LB732 forward, because the reality is, hearing those who testified in opposition, and I lean maybe more on the opposition testimony from the State Bar Association and the League of Municipalities, is that we have a disjointed eminent domain process now when used for trails, whether you're a natural resource district, whether you're a city, whether you're a county. And I think the underlying issue that some of you have brought up in your questioning was, is the underlying issue that we need to have uniformity. Which I think we do, because the concern that I've seen with the passage of LB1010 in my specific instance, in my legislative district, is that you just have to provide or move a trail project, or a trail just has to go through a city instead of an NRD, where essentially this would mean NRDs would never want to do a trail again, or never have to do a trail under their name because they simply have to provide the funding to the municipality to do it since their regulatory process to use eminent domain is much less stringent in regard to engaging

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the property owners from whose land they're going to use eminent domain with. So, and I think part of the issue...and I understand that the city of Omaha and the Papio NRD both describing that they purposely did not try to use a loophole as we've identified in LB1010, that that was not their intention to do that. They simply saw other factors that were at play for them to be able to move forward with the Keystone Connector Trail. And to that extent I'll take them at their word. However, one of the supporters of this legislation, who are unable to be here physically today, in his letter to the committee specifically stated that he was given, he felt, the runaround by both the city of Omaha and the Papio NRD in regard to whose ultimate trail was this? When he approached the Papio NRD, they said they were only funding it, it was the city of Omaha trail. When he approached the city, the city said it was the Papio NRD's trail, they were only assisting with planning. My underlying issue is that property owners and taxpayers shouldn't be given that runaround by local governmental entities. And we have an obligation as state senators to try to mitigate that for all property owners. Not just in regard to this specific case in south Omaha, but it may be a trail in a community that currently is in your district. That we should try to ensure that public engagement of property owners in this specific instance and these particular cases are as transparent as possible, and that property owners are given more latitude in regard to seeking their involvement when it comes to eminent domain instead of less involvement so that government has the ability simply to move forward or taking property because it's, in their view, a necessity. Ultimately I think, if you read the letters of those who provided supportive testimony today, the city of Omaha and the Papio NRD did come to a solution with the issue in my district. They were able to provide the trail, or a path, so to speak, the last connector that would use city right-of-way in regard to sidewalks, so they are not tentatively planning on using eminent domain to finish the completion of this trail. The underlying issue is, what happens with the next trail and the next city. It may not be in Omaha, it could be in McCook, Imperial, Lincoln, Schuyler, Waterloo, possibly, possibly even Holdrege. (Laughter) And I think the underlying question is, though, is how can we try to ensure that this kind of situation affecting property owners won't happen again. That they're given the same rights that they're afforded if they deal with the NRDs as they deal with the city governments. And I would even open up the latitude as other testifiers mentioned, other local political subdivisions, as well, if so need be. Thank you. [LB732]

SENATOR LANGEMEIER: Very good. Trails in Schuyler are called streets. Senator Christensen. [LB732]

SENATOR CHRISTENSEN: Thank you, Chairman. Senator, did you compare our eminent domain rules to any other state? I guess the reason I'm asking, in having two different standards here, are we too tough on the NRD standard or are we too easy on the city standards? Is there something in between that would be better? [LB732]

SENATOR MELLO: That's a great question, Senator Christensen. And no, I did not evaluate what other states...there are other states' statutes are in regards to their use of

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eminent domain, in regards to...relation directly to municipalities. The perspective that I took with this legislation was, this committee, I know, worked over a two-year process to find a compromise in regard to the issue that Senator Pankonin brought forth that happened in Cass County. This committee ultimately worked together, worked with the interested parties to find what you felt, as a committee, and those who ultimately testified in support of that compromise felt, was an appropriate public engagement process to be used if an NRD wanted to use eminent domain for the purpose of a trail. I guess hearing the testimony today from those same entities that came in support of your original legislation expressing concerns knowing that LB732 is virtually identical to the language in LB1010, I think it raises the question, essentially, that they feel that components of LB1010 now may be too strict or may delay a project a lot longer than maybe they originally anticipated when LB1010 was passed. That's probably a conversation that needs to be had with some of the opposition testimony today, probably out of committee, obviously, or off the mike, so to speak. My hope is that just that when we passed that bill it was our intent, I believe my intent when I voted for it, and putting my trust in the committee process as you as the Natural Resources Committee to put forward that compromise is that we would ultimately have solved a problem that we identified as the need for public engagement from property owners when it involves eminent domain useage for trails. That maybe will always be up for debate, Senator. There's nothing...I cannot provide you a simple silver bullet answer yes or no. NRDs have made...they have provided some persuasive and possibly convincing arguments today of maybe why some of that component may need to be relooked at in regard to the ultimately delaying possibly through the judicial process of a potential project. That's up, I guess, for us as a legislative branch to decide ultimately whether or not we want to revisit that. But I think the underlying issue that I try to bring forward is that cities are held to a different standard. That ultimately we want to foster, and this is a priority at least, I believe, of most of the senators in the Legislature, is we want to foster intergovernmental cooperation any chance we can because we know it will save money and save resources when it involves taxpayers. We want to see NRDs partner with cities and counties on projects because we know ultimately it saves all three of those entities funding when they can all come together behind a single vision or goal. I don't want to stop that intergovernmental cooperation among cities and NRDs when it comes to trails. I think you heard that from the League of Municipalities, that's something that I would like to foster more of. The concern I have, though, is who ultimately is in charge of this? If someone is going to be funding it, that's one thing. But if we have two separate standards for different levels of government, one government who has the less standards, I'm convinced the one with the less standards will always be the entity in charge or the project will go through them purely because it's less public engagement that's needed for that project to move forward. And so I prefer that not to see happen. I prefer to see some uniformity amongst the various political subdivisions that is reasonable, it's responsible. I think it takes into consideration property owners and property rights. But ultimately that's a decision that's going to be left up to you in this committee. [LB732]

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SENATOR CHRISTENSEN: Thank you. [LB732]

SENATOR LANGEMEIER: I'm not sure if I'm going to let them ask any more questions. Senator Haar. [LB732]

SENATOR HAAR: Well, this isn't a question, so much as a statement. I don't remember many smiles from the proponents of LB1010 when it finally got worked out. It seems to me like almost we're still on a test drive of LB1010. So I can certainly hear the NRDs or the league of cities saying, well, let's make this consistent, but I'm not so sure that...if it's been solved in Omaha for right now whether we don't have a model, we wait to see what happens and maybe then go back and fix some things before we apply it generally. [LB732]

SENATOR MELLO: And that's a...I think it's a very fair statement, Senator Haar. You heard from the city of Omaha, they did not use eminent domain for this project as of right now. And I mentioned in my opening testimony, I think a question someone asked is, cities in Sarpy County have not used eminent domain over ten years of doing trails projects. So it can be done to do trail projects without using eminent domain. There are proven examples of how cities operate and be able to do that. And maybe this is an issue that we consider as we move forward dealing with these issues in the future. That's left up to this committee ideally. I would like to see, though, some kind of uniformity established somewhere down the road. [LB732]

SENATOR LANGEMEIER: Very good. Seeing no other questions, thank you very much. [LB732]

SENATOR MELLO: Thank you. [LB732]

SENATOR LANGEMEIER: Well done. That will conclude the hearing for LB732. Senator Larson is here. Senator Larson, welcome to the Natural Resources Committee. [LB732]

SENATOR LARSON: (Exhibit 9) That's a handout, a letter of support from the Nebraska Farm Bureau for LB857 today. I am Senator Tyson Larson, representing District 40, which is in northeast, north central Nebraska, and today I'm introducing LB857. LB857 adds a requirement that any person receiving a grant from the Nebraska Environmental Trust Fund, who buys real estate with grant money, has to repay the original principal if they sell or otherwise transfer that property at any time. The money repaid under this provision would be transferred to the Water Resources Cash Fund. The intent of this bill is to curb certain activities that are not in the best interest of the state of Nebraska. The vast majority of the Environmental Trust grant recipients do not purchase real estate, but there are a handful of projects each year in which these funds are used to buy real

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property. In certain instances, that land is later given to the federal government to manage as a wildlife area. One consequence of this practice is that land is taken off the property tax rolls in the county of which it sits. Many Nebraskans do not care for a practice that involves using state money to buy land that is given to the federal government, especially because it results in less taxpayer dollars for local governments who rely on those dollars. In other cases land is purchased with NET funds, Nebraska Environmental Trust, and later sold with the proceeds being placed in a revolving fund. These funds can be used to purchase other lands without any oversight of the Nebraska Environmental Trust. There is the perception that this allows groups to make money off the Nebraska Environmental Trust grant process and buy additional land with it. By requiring grant recipients to pay back money they use for real estate if that property is later sold or transferred, there is more accountability for the state funds they are using. As the committee members are aware, the state water resources...the state's water resources needs are immense. In LB857 the money is returned to the Water Resources Cash Fund to help the state meet its needs. The Water Resources Cash Fund must report fund, excuse me. The Water Resources Cash Fund report submitted to the Legislature on October 1, 2011, estimates the expected remediation projects through fiscal year 2017-2018 will cost \$70 million. The report also stated that the available funds could potentially double due to LB229 passing last year. However, even with the increased state allocation and the Environmental Trust...and the Environmental Trust grant, the fund will be short of its needs. While LB857 would only apply to a few projects, the additional funds in the Water Resources Cash Fund could contribute. Some people may say that even if repayment is required, the repayment should not go to a different fund because of the constitutional provision that requires lottery funds to be used for purposes of the Environmental Trust Act. Under this bill, the lottery funds would still be directed to the Trust before use as prescribed by their purposes and grant process. LB857 does not frustrate these purposes. The bill does not in any way limit how the lottery funds are initially used by the Environmental Trust. This only affects how the money is returned and eliminates revolving funds for grant applicants to use to fund additional projects in the future. Instead of a revolving fund, the applicant would have to apply for a new grant to receive Environmental Trust funds for their project. The effect of LB857 will likely be that different groups are applying for grants and/or that these grants are structurally different. I have been working with many of the interested parties to identify some possible amendments to this bill. There are a couple of alternatives to this approach that would also address the concerns I have raised, and we are putting together some language to that effect. I look forward to working with the committee on passing the legislation that addresses these concerns. I would happily answer any questions. [LB857]

SENATOR LANGEMEIER: Very good. Are there any questions for Senator Larson?
Senator Carlson. [LB857]

SENATOR CARLSON: Thank you, Senator Langemeier. Senator Larson, you just

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mentioned in the last few lines that you've been working with many interested parties. Who are some of these? [LB857]

SENATOR LARSON: The main interested party that I've worked with has been Ducks Unlimited. And we're working out, as I would call, a compromise to this process of revolving funds and adding oversight to ensure that the Nebraska Environmental Trust does have oversight if they were to use those revolving funds again and then possibly working with the grant process to ensure that if land is eventually given or these dollars are used to buy land that is eventually given to the federal government, that we create possibly an endowment to ensure that these property tax dollars, essentially through the endowment, property taxes could be paid through the endowment so counties wouldn't be losing any money to the feds essentially. [LB857]

SENATOR CARLSON: Okay. And so you've just worked with Ducks Unlimited? [LB857]

SENATOR LARSON: Ducks Unlimited has been the main group, that's the main group that contacted me with an issue concerning my bill. [LB857]

SENATOR CARLSON: Okay. All right, thank you. [LB857]

SENATOR LANGEMEIER: Very good. Senator Haar. [LB857]

SENATOR HAAR: Senator Larson, what you just got done describing in response to Senator Carlson's question sounds like a significant change in what the...the bill you...that we see here or... [LB857]

SENATOR LARSON: It, I think the changes that we've worked with tackles my concerns of the perception of these revolving fund dollars having no oversight. Because as it stands now, yes, they can have these revolving fund dollars, but the Environmental Trust has absolutely no oversight of how Ducks Unlimited spends those dollars. And with possible amendments that I hope to continue to work with these groups on, the Environmental Trust would now have oversight of those revolving fund dollars, which I think is very important that we have that type of oversight. And then, obviously, addressing the property tax dollar situation is very important, too, so we can ensure that these counties are getting the money, because obviously once it goes to the federal government they aren't paying any taxes. And that hurts our local taxpayers. So it changes the bill, obviously, in a significant way, but at the same time, I think addresses or starts to address the concerns that I have and that LB857 tried to address as well. [LB857]

SENATOR LANGEMEIER: Senator Dubas. [LB857]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Senator Larson. Do

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you have any idea how many...how much land or how many dollars worth of value have been taken off of the tax rolls in recent history? [LB857]

SENATOR LARSON: No, I have I think...there were, in 2009 I think there were four Environmental Trust grants that actually purchased land; 2010 looks like four as well. So there's only a handful a year that, as I said, there's only three or four grants a year, from my understanding, and I might be wrong, that go to actually purchasing real estate. I don't know how many of those actually in turn go to the federal government. I think that would be a better question for DU as they come up and testify, because... [LB857]

SENATOR DUBAS: Okay. [LB857]

SENATOR LARSON: ...I know that they transfer them into the Fish and Wildlife Service every once in awhile. [LB857]

SENATOR DUBAS: All right, thank you. [LB857]

SENATOR LANGEMEIER: Senator Haar. [LB857]

SENATOR HAAR: Well, the Natural Resources Committee has got quite an extensive process going on right now to look at the whole issue of funding the Water Cash Fund. So is your primary concern money going into the Water Cash Fund or is it how that revolving money gets spent. [LB857]

SENATOR LARSON: It was a combination of both. You know, as I said, as we began to compromise and look at this bill together, I would like to find additional ways to fund the Water Resources Cash Fund, because I think it's extremely important. But in every negotiation there's give and take on both sides. And I felt that, or I feel that if we are able to compromise on these things, I am accomplishing one of those goals and focusing on the revolving funds and making sure local property taxes are paid. And I think that's a very important first step. So I'm not concerned with one more than the other. This is what I feel is a good compromise. [LB857]

SENATOR HAAR: Okay. [LB857]

SENATOR LANGEMEIER: Senator Christensen. [LB857]

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you, Senator Larson. You talk about these compromise. So would I be understanding if you would get this compromise where Environmental Trust would have some oversight over the principal funds on land that is either transferred to the feds or resold, then there would be no money to go to the Water Resources Fund? [LB857]

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SENATOR LARSON: LB857 would lose that. We wouldn't have the...that component of LB857 we would lose. The fiscal note estimated, I just saw it, maybe, just shy of \$1 million I think in the last two years,... [LB857]

SENATOR CHRISTENSEN: Yeah. [LB857]

SENATOR LARSON: ...which obviously is very significant when we're looking to fund at \$70 million. And I would love to work with you and a number of other senators to find ways to fund the Water Resources Cash Fund because I believe it's very important. But as I would hope to amend LB857, it would lose its funding of the Water Resources Cash Fund component. [LB857]

SENATOR CHRISTENSEN: Well, I can say, I've said it on record before, I am offended when any land is turned to the federal government. That is...couldn't do anything more wrong in my book than that one. And then, you know, the accountability on the other side, so. [LB857]

SENATOR LARSON: I don't, I don't like the fact that it's turned over to the federal government by any means. I had these conversations. But at the same time, if...I want to make sure that if we can get to the point where it's paying the local property taxes, if we can create an endowment, I think that's a very big step to ensure that these property taxes could possibly get paid. And if I can work out that language where everybody would be happy, I think that would be a first step. And maybe we can work farther after that. [LB857]

SENATOR CHRISTENSEN: I don't know if I can get happy until the feds get zero. But thank you. [LB857]

SENATOR LANGEMEIER: Senator Haar. [LB857]

SENATOR HAAR: The question, following up on Senator Dubas' question, is the data there for how much land has gone off the tax rolls and how that's affected things? We just need to collect that or that data really isn't there? [LB857]

SENATOR LARSON: I would say that we would have to, in terms of Environmental Trust grants, how many of those grants have gone off the tax rolls,... [LB857]

SENATOR HAAR: Um-hum. [LB857]

SENATOR LARSON: ...because I'm sure, I mean, if we went through and went through all the Environmental Trust grants we could probably go back and find all the Environmental Trust grants that went from private to being bought and given to the feds. So I'm sure the data would be there. I'm sorry, I didn't provide that for the committee.

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[LB857]

SENATOR HAAR: Well, I think that's something important that we need to look at, to see the severity of the issue. [LB857]

SENATOR LARSON: Yeah, and I'd ask...and I'm sure Ducks Unlimited will be following me. And I think they'd be a...ask them how often they've done it. You know, out of...I forget how old the Environmental Trust is, it's not overly...it's not a real old organization, but I know it has happened. [LB857]

SENATOR LANGEMEIER: Very good. Any other questions? Seeing none, very good. [LB857]

SENATOR LARSON: Thank you. [LB857]

SENATOR LANGEMEIER: Thank you, Senator Larson. You have heard the opening on LB857. We will now move to those that would like to testify as a proponent, in support. Welcome. [LB857]

MICHAEL KELSEY: Thank you. Good afternoon, Senator Langemeier, members of the Natural Resources Committee. My name is Michael Kelsey, M-i-c-h-a-e-l K-e-l-s-e-y. I'm executive vice president of the Nebraska Cattlemen, here to testify in support of LB857 on behalf of our members. It's an election year, and as so there's been many comparisons made of late to the 1930s. While most of these discussions center around the economy, it's perhaps proper in the context of this bill for us to consider the environment for a moment. If we contemplate the drought of the southern plains, what is different now than in the 1930s? Why don't we see a massive dust bowl today as we did back then? While there are several factors at play, the most predominant would be the difference in management of natural resources. The conservation practices we utilize today are responsible for good maintenance of land despite extreme drought. The fact is that private land ownership is the model for this example of proper stewardship in conservation practices. This is important considering LB857. While nonprivate ownership has played a role in conservation, there can be no dispute that the overwhelming majority of positive conservation practices have been employed by private landowners to the benefit of the entire environment. This being said, Nebraska Cattlemen members feel strongly that private land ownership is the best model for conservation stewardship. We believe that private land stewardship by Nebraska's farmers and ranchers has provided a generational land ethic that has resulted in successful conservation of agriculturally and environmentally productive land for many generations. Our members are cattle producers who value and understand the proper stewardship of land, water and air, as well as the cattle that turn forages undesirable to humans into great tasting and nutritious beef. To this end, our members support polities that would return all productive agricultural land acquired by a nonprofit or government

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agency with funds obtained from the Nebraska Environmental Trust to be resold into private ownership in a timely manner. Further, we support all funds generated from the sale of or any revenues received from the use of any productive agricultural property purchased in whole or in part with funds obtained from NET to be returned to the Environmental Trust. In conclusion, we understand that LB857 would designate funds from land sales to be remitted to the Water Resources Cash Fund. We have no opinion in that matter. Our support of this bill does not hinge on whether the funds should be returned...where the funds should be returned, excuse me. In fact, we would be supportive of the funds being returned to the NET. I thank the committee for the opportunity to share our members' policy and respectfully request the committee to forward LB857 to the legislative body. Be happy to answer any questions. [LB857]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Kelsey? Senator Carlson. [LB857]

SENATOR CARLSON: Thank you, Senator Langemeier. Michael, I don't dispute anything you've said in your report. But I think that you have members who have implemented easements and accepted money for those easements with an understanding that that land would continue as ranchland and never be developed in any other manner. That money went to the private landowner and stays there. And that's a different step than we're talking about here with an outside group getting a, for the moment I'm going to call it a grant from the Environmental Trust, purchasing land. And then if that land changes hands they get money for that transaction and it goes back into their revolving fund where they can purchase more land. I don't see much difference in those two circumstances. So I'm kind of putting you on the spot because you've got some members that are willing to accept money. And what does the public get in return for that? I don't think a whole lot. [LB857]

MICHAEL KELSEY: Is that a question or a statement? [LB857]

SENATOR CARLSON: You can respond to it,... [LB857]

MICHAEL KELSEY: (Laugh) Well, I think you... [LB857]

SENATOR CARLSON: ...because I'm agreeing with what you're saying here in the rest of your testimony. [LB857]

MICHAEL KELSEY: And I appreciate that, Senator. I think you have...you struck on, though, there is a fundamental difference between an easement and the actual land purchase, especially considering private or nonprivate ownership. And there would appear and perhaps there is a bit of a conflict in policy that we may have. I would indicate that we are associated, as an example, we are associated with an organization, the Sandhills Task Force, that has used not only NET money, but some other monies as

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well to purchase either easements or land. Should they, and we've had this policy with them that should they use NET money in that sense and then sell the land or the easement, that should be refunded to the Environmental Trust. Now it's our understanding that has not happened to this point. So you get into the revolving, as you mentioned. We tread very lightly here. Obviously, there's a willing seller, willing buyer concept that we have to be very aware of also. Anytime you talk about private land ownership we have to be respectful of that. But in this context and in the narrow confines of the bill as we understand it relating strictly to the NET funds, that's where our testimony would stand in this case. I don't know that I've made anything clearer and maybe I muddied it up a touch. But I do appreciate what you're saying. [LB857]

SENATOR CARLSON: Okay, thank you. [LB857]

SENATOR LANGEMEIER: Senator Christensen. [LB857]

SENATOR CHRISTENSEN: Thank you, Chairman. I guess I would weigh in on Senator Carlson's statement saying I think there's a huge difference between doing an easement with somebody to do conservation work and someone that does an easement and sells it and gets some money back. [LB857]

MICHAEL KELSEY: Um-hum. [LB857]

SENATOR CHRISTENSEN: Two different scenarios. Yes, you can say the easement tied to it and went on, but there was...first player is now different. [LB857]

MICHAEL KELSEY: Um-hum. [LB857]

SENATOR CHRISTENSEN: But in saying that I guess as I think through more I guess once that easement is put on there and the farmer sells the land, you've got a resale too. So I guess I got to think through some more on that. But what is the in...you know, one is a purchase for...to make sure you're preserving something for a lifetime, which land can transfer on, it goes on. The other one is preserve that land but the money has now changed again. There is a difference. I don't know how to state it, but I do think there is a huge difference there. [LB857]

MICHAEL KELSEY: I would agree with you. [LB857]

SENATOR CHRISTENSEN: Thank you. [LB857]

SENATOR LANGEMEIER: Seeing no other questions, well done. [LB857]

MICHAEL KELSEY: Thank you. [LB857]

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SENATOR LANGEMEIER: Further testimony in support of LB857. Seeing none, is there anyone that would like to testify as an opponent, in opposition. Welcome. [LB857]

MARK BROHMAN: (Exhibits 10 and 11) Mr. Chairman, members of the Natural Resources Committee, my name is Mark Brohman, it's M-a-r-k B-r-o-h-m-a-n. I am the executive director of the Nebraska Environmental Trust. And I was going to read a statement today, but I figured that I would get right into just a couple points and then get on to some questions, because I know there have been a lot of things thrown out there. So I'm passing around a sheet of testimony that I was going to read today, but I'll just hit on some high points. And then also I'm passing around NET's policy on proceeds from sale or transfer of property, which I'll read that statement when I get done. My board opposes LB857. We met last week and the full board discussed it and took a position. There was a lot of talk about LB229 so far today. I think all of you around the table here were involved in LB229 last year. We saw that as a compromise bill where the Trust gave 50 bonus points to the Department of Natural Resources, which resulted in a grant of \$3.3 million for the next three years, with the opportunity to renew it for another three, so a total of almost \$20 million could be transferred from the Trust to the Water Resources Cash Fund over the next six years. And by the way, the board last week moved forward the proposed rank order list. And that project was ranked the highest, of course, it had the 50 bonus points. But had it not had the 50 bonus points it would have been the second highest ranking. So I think that shows that the ranking, the criteria that we use to evaluate grants, and the Department of Natural Resources' grant was a very good grant that came in with great purposes that served the Trust mission. And so it would have been the second highest ranking project, even without the 50 bonus points. So I did want to pass that along to the committee. Now they may not have gotten the full \$3.3 million, because that's a lot of money, but it would have been the second highest ranking project. I'm going to give you two examples, and they are stated in my handout there, of where we've done a grant to a party and then they return funds. In 1999, the Trust funded 92.9 percent of the Nature Conservancy's purchase of the Horse Creek FEN, a large wetland complex within a ranch in the Sandhills. You may have seen the big article in the World-Herald, they had a big, three-page spread on this back in December about the young family that came out there. Our agreement was that they would buy the ranch, restore the wetlands and the FENS, place a conservation easement on the ranch and then resell it to a beginning ranch family with conservation goals in mind and return the funds to the Trust. The Trust put \$640,000 into that project in 1999, and we got back \$651,768. Now some people would say that's a pretty good return on your money, we got more than we put in and we also got an easement on the property and a lot of work done. But land did appreciate in that time. And we were able to get some of that appreciation back in proportion to what we put into it. So that's why we ended up with more money. Under LB857, that \$651,768 would have gone to the Water Resources Cash Fund. It would have went right back out of our coffers back there. And that money was put back in and "regranted" in the Trust grants last year. Another example was south of Scottsbluff. In 2010, we returned \$300,000 or were

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returned \$300,000 from the proceeds of a sale of land. And that would have also gone to the Water Resources Cash Fund. So you can see in the last two years that million dollar figure that Senator Larson mentioned, that's where that million dollars came up from. Looking back in history, there have been years when we had no money returned. And I think if LB857 would be passed in its current form or similar form people would find different ways so that money wouldn't be returned to the Trust. And so I don't think that the Water Resources Cash Fund is going to get much revenue from this in the future. That's just my thoughts, but I did want to mention that. The biggest problem I see under LB857 and that is under granting and gifts if an organization like Ducks Unlimited or the Nature Conservancy buys a piece of property, we give them, say, \$200,000, they go, they restore the wetlands, and then they want to give it to the Nebraska Game and Parks Commission to use as a hunting, a wildlife management area, they would have to pay back the \$200,000 to the Trust as the bill is written. It doesn't say even if they gift it, it just says if it is sold or an interest is transferred, they must pay back the proceeds. So in that case Ducks Unlimited would lose money. They would never ask for money from the Trust, and they'd never give away a property. I know Senator Christensen was worried about the Fish and Wildlife Service, and there have been two or maybe three properties that were transferred to the Service. And the reason they were, were they were surrounded by Fish and Wildlife Services properties on the edges, and it was the last piece of a puzzle or the second or the third piece of a puzzle. And I know that you dislike land going to the Service, but that was the reason those cases...and many of my board members feel the same way you do. They do not want us buying land and transferring it to the Service because of the tax issue, because they do pay an in lieu of tax. Senator Larson at one time said no taxes were paid, but there is in lieu of tax. But I will admit it is much smaller than the actual tax. And then the last thing that I want to point out is we've got a policy in place on sale of proceeds. And that's the other sheet I handed out. And I'll just read it real quick. It says, when Trust funds are used to purchase real estate, that the real estate is subsequently sold, unless provisions are in the original grant application, proceeds from such sale will be immediately return to the Trust by the same percentage as the Trust provided in the original grant. Grants can allow use of proceeds for specific uses, such as establishing revolving funds, carrying out specific conservation measures, etcetera by the Trust approval when the grant is awarded. So when someone applies for the grant, they tell us what they would be doing with those proceeds. And then that is part of the contract. And with that, I see my time is up, but I will be glad to answer any questions. [LB857]

SENATOR LANGEMEIER: Senator Christensen. [LB857]

SENATOR CHRISTENSEN: Thank you, Chairman. I read that statement twice, and then when you read it, it kind of finally rang a bell. Unless provisions in the original grant application, so you could, the way this is written, give them permission to be able to sell and keep the money. [LB857]

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MARK BROHMAN: Right, but keeping money in a revolving fund means taking the money and putting it into the next project or in the case of what was mentioned by Mr. Kelsey, the Sandhills Task Force, which was established from money from an original sale of property that we were involved in. We have the Nature Conservancy money, they bought a FEN, like that Horse Creek FEN. When that was sold, part of the original grant said we want to setup this new group called the Sandhills Task Force. In order to set that up we want to take the proceeds, when we eventually sell this property, and use that to set up the Sandhills Task Force. So that was part of the original contract with them. And so we knew that money was going to go to set up the Sandhills Task Force, to set up an endowment fund for them. In other cases it goes into a revolving fund. Sometimes it goes into a fund that says we will do land practices with it. But in no case is anyone pocketing the money. You know, I've heard that by...several people asked me about this bill, and they said, who's getting rich off this? And nobody is getting rich. This money is being put back on the ground. And the contract that we sign with that grantee spells out where that money goes. [LB857]

SENATOR CHRISTENSEN: And I appreciate all the conversations we've had in the last two years, because I have learned a lot about the process. And I appreciate you up fronting this. And you know the two things that have upset me. You could probably name them. One is the federal government, (laugh) which we've talked about, and the second is if we get greater than 1 percent in any one county. [LB857]

MARK BROHMAN: Right. [LB857]

SENATOR CHRISTENSEN: And that's always been my concern, getting too much in one area and anything going to the feds. So I don't know if you guys are going to address them two things or not, but that's been my concern. And you've always listened to me, and I appreciate that. [LB857]

MARK BROHMAN: And we do have board members, Senator, that are very aware of those and have those exact same concerns, especially on the federal government, and that we not buy too much land or allow our money to be used to buy too much land in any one county or area. And so we have looked at statistics. And some of the Rainwater Basin counties, there's been more land put into production than taken out in the last ten years. So we've looked at the numbers. So we may be putting conservation easements in and we may be putting some land transferring from corn to wetlands with some buffers around them. But there is still more land being put into corn and soybeans in the Rainwater Basin than has been taken out for conservation purposes. [LB857]

SENATOR CHRISTENSEN: Yes, thank you. [LB857]

SENATOR LANGEMEIER: Senator Haar. [LB857]

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SENATOR HAAR: Thank you for being here. So if we took out the...it goes into the Water Resources Cash Fund. If that comes out of the bill, then what's your understanding of what is left? [LB857]

MARK BROHMAN: Well, it would still say whenever we funded a real estate transaction, if that real estate is ever transferred, and someone may be mentioning this later, but a lot of times we'll work with the city of Lincoln or the NRD and then later it will be transferred from one party to the other. Then that party that receives the gift...or I mean the party that's giving the land, they have to pay back the Trust. So they're going to have to come up with funds, even if they gift it. This doesn't address gifting. It just says if it's transferred you got to... [LB857]

SENATOR HAAR: If it's transferred. [LB857]

MARK BROHMAN: ...pay back the Trust. So I think that issue is still there. And it doesn't apply just in the Rainwater Basin, we've got it happening in eastern Nebraska. And it's happened just north of Lincoln on several projects we've worked with in the Saline Wetlands. One entity will buy the land, whether it's Game and Parks, the Nature Conservancy, city of Lincoln or the NRD, and then later they'll transfer it to another body because it makes more sense to manage the property to put it together with another piece of property. [LB857]

SENATOR HAAR: Okay. So even in that case then, even if it was going to another conservation purpose, not going to the federal government (laugh), they would still have to pay that money back. [LB857]

MARK BROHMAN: Right. I mean, we'd get the money back, that would be great. But that entity is going to have to come up with money. And they'd say, why do we want to take a grant if we're going to have to repay it back, especially if we're gifting the land and we're putting our, you know, money into it to restore it. So that would be one significant problem. [LB857]

SENATOR HAAR: Um-hum. And we...it's a...today is a little like Groundhog Day, (laughter) because we had the trails coming back and now we have NET coming back. [LB857]

MARK BROHMAN: Yeah, now LB229. (Laugh) [LB857]

SENATOR HAAR: But that's okay. I mean, we have to keep looking at things. Let's see my...I'm having a Rick Perry moment here. (Laugh) [LB857]

MARK BROHMAN: Well, you mentioned Groundhog Day, one thing that my board has made it evidently or very evident to grantees and that is that we're probably not going to

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be funding revolving funds in the future or if we do we'll have severe limitations on it because, like was mentioned earlier, there isn't as much oversight when an organization gets money. What typically happens is they get money, they buy a piece of property. It will have some crop ground on it, it will have some wetland on it. They'll restore the wetland, put a buffer in, then they'll resell it, usually to a private individual, once in awhile it will be gifted to Game and Parks or in two or three cases it's gone to Fish and Wildlife Service. But in most cases recently it's been sold to a private individual who continues to farm the ag portion, and then he usually uses the wetlands area to hunt or for whatever. But he pays taxes on the property. And so then Ducks Unlimited or the Nature Conservancy takes that money and then they go buy another property and do the same thing. Well, my board is saying, well, we would kind of like to know what that next project is. And we're always sent the paperwork, we get to see it, but it's staff and it doesn't go in front of my board and they don't actually vote on it. But that money each time it goes out it gets a little more diluted and a little more diluted. [LB857]

SENATOR HAAR: Um-hum. [LB857]

MARK BROHMAN: And pretty soon, you know, you've caught up to yourself and you don't have any money left. You know, those funds are dwindling down. And we've only had two revolving fund grants to Ducks Unlimited over the years, I believe. And there was only one other one with any other group. So revolving funds are very limited anyway. But my board has said to Ducks Unlimited and others, we're probably going to move away from revolving funds. We like to see the project come in and know what tract of land you're buying ahead of time. And so they've put the word out. And I think I've talked to Ducks Unlimited, and they understand that revolving fund grants are probably not going to be funded in the future or they'll rank very low. And we did see a project this year that did rank low because the land was not defined in the grant, so. [LB857]

SENATOR HAAR: What was the first thing you mentioned that came in second? What was that project again? I was taking some other notes here. [LB857]

MARK BROHMAN: The Scottsbluff project, where there was \$300,000 that came back to the Trust? [LB857]

SENATOR HAAR: Yeah, okay. [LB857]

MARK BROHMAN: That was out on a Platte River environs project, where they bought a large ranch and there was a piece that was across the road. And they really didn't need it, but the landowner wanted to sell it all, he didn't want to carve it up. So they bought the entire thing. And when they took the grant they knew that in the future they would probably sell off a piece. So they came back to us and they said, we'd like to cut this off and we would like to take that proceeds and buy another piece of land. And we

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said, no, your contract and your original grant said that it was for this ranch only. So you have to turn that money back in under our policy and then apply again,... [LB857]

SENATOR HAAR: Okay. [LB857]

MARK BROHMAN: ...which they did. And they applied for another grant on another tract of property and they were funded this year for that tract. But that \$300,000 from that piece that was subrogated came back to the Trust. [LB857]

SENATOR HAAR: Okay. And the thing I was going to ask you is we've heard now and again about how much land goes in and out of production. And are the statistics available on that? [LB857]

MARK BROHMAN: I got my statistics from USDA. I asked for it by county and by the Rainwater Basin. And I asked...and also by the tax records. There's more land taxed in cultivation in those counties. [LB857]

SENATOR HAAR: Could we actually see the numbers on that? [LB857]

MARK BROHMAN: Yeah. [LB857]

SENATOR HAAR: Okay, I'd appreciate that, because that issue has come up a number of times. And I'd just like to see some numbers so we can say one way or the other. [LB857]

MARK BROHMAN: Sure. [LB857]

SENATOR HAAR: Okay, thank you very much. [LB857]

SENATOR LANGEMEIER: Senator Carlson. [LB857]

SENATOR CARLSON: Okay, thank you, Senator Langemeier. And, Mark, before I start asking you questions, I generally say and I'll say it again that over the past three years the Environmental Trust has been very good to me and the projects of removing vegetation from the two rivers, and so I appreciate that. Now you made the statement the Rainwater Basin, in the last ten years there's been more land returned to crops than there was when you started. Is that true in Clay County? [LB857]

MARK BROHMAN: I believe, when I looked at Clay County specifically on the tax rolls it showed more production crop ground being taxed today than there was four years ago. I don't know about ten years ago, but four years ago in Clay County, the document that I saw recently showed there is more land taxed at ag value than there was four years ago. [LB857]

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SENATOR CARLSON: If I could be shown that, that would sure help me. [LB857]

MARK BROHMAN: Okay. [LB857]

SENATOR CARLSON: Appreciate that. The other thing, you made a statement about why would groups want to apply for a grant if they have to pay it back. Well, it's an interest-free loan. That's a pretty good deal, even though interest rates aren't very high today. [LB857]

MARK BROHMAN: Yeah. [LB857]

SENATOR CARLSON: But that's what it would be, it's an interest-free loan. They pay it back, they get another one. I was also...appreciated hearing that you're getting away from grants that then stay in a revolving fund, because obviously that's a pyramid, can be a pyramid. And you're trying to get away from that; I appreciate that. [LB857]

MARK BROHMAN: Yeah. [LB857]

SENATOR CARLSON: And you also made the statement that you're kind of following a procedure now where grants are given out and if that property is sold, as long as it's sold at a profit, the grant that you gave comes back to the Trust. [LB857]

MARK BROHMAN: Right. Even if it's not sold and there's a profit, whatever percentage we put in, say, they only get half as much, but we paid for half of it, we would get half of whatever they get back. [LB857]

SENATOR CARLSON: Yeah, okay. And if it was sold as a profit, you would get a profit? You gave an example of that. [LB857]

MARK BROHMAN: Right, unless they did improvements with their own money that increased the value and we could subrogate that out, then we would allow them to keep that profit. [LB857]

SENATOR CARLSON: But you have some circumstances where the money does not come back. Could you review that again, I think I heard you say that. [LB857]

MARK BROHMAN: Sure. One of them was setting up the Sandhills Task Force, which was, you know, a number of years ago the Nature Conservancy applied to buy a jumbo Pullman FEN up in the Sandhills, much like this Horse Creek FEN that I have in my example that I handed out. They bought that land, restored it, and they knew they were going to sell it. But they said, when we sell it, we want to setup this endowment fund to support the Sandhills Task Force group, which is made up of mostly Sandhills ranchers,

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but it also has state and federal officials on it, but there are more Sandhills ranchers, landowners on that board. And they work with landowners and do everything from easements, to restoring wetlands, to cross fencing, to watering, things like that. So that money from the sale of that property went into that endowment fund to be established with them. And recently we looked at their books, and they probably only have about \$18,000 of our original money in. But originally there was, you know, \$600,000, \$700,000 was put into that fund. But now they can show on their books where our money has been whittled down and they've got other grants that have come in, where our original endowment now probably is only about \$18,000 of what we put into that fund. So even though people say, well, gee, it's probably perpetual, it's really not, it's about over. But we did help them set up. Now they've got other funds. And they do have a bank account that they can use to, you know, go out and do projects with. So that's one example. [LB857]

SENATOR CARLSON: Okay. Would it be safe to say that over the last couple of years some of the procedures you're now following are a little bit different than they were two years ago? [LB857]

MARK BROHMAN: Definitely our written policies have been better defined in the last couple of years. And before I, you know, was the director, which has been five and a half years ago now, I can't tell you exactly what the procedures were. There were written and unwritten policies. But we have written policies on many of these items now. And the board has also publicly stated, you know, there have been members on the record said that they were opposed to purchasing land that was then given to the Fish and Wildlife Service, that was going to the federal government. So, you know, I think there's been a change or an education process with the Nebraska Environmental Trust that we see that these properties that are going to the hands of the Fish and Wildlife Service are causing a lot of distrust in the...out in the "hitherlands", that people are upset with that. Even though, like I explained to Senator Christensen, in the cases that I'm aware of, in the last couple of years, those properties were surrounded by service land. And it only made sense that they would own the entire basin, because if you gave the middle to Game and Parks and the Service owns all the way around it, and then you go to manage it, you're going to come to loggerheads at some point. And I guess I see federal ground as being owned by all of us. But the tax issue is the problem that comes up because of that. [LB857]

SENATOR CARLSON: Well, I'm concluding that some of the sessions that we've had over the last couple of years, even though they've been kind of uncomfortable for me as well as you perhaps, has brought about some good accountability and procedures that I think are beneficial. Is that a fair statement? [LB857]

MARK BROHMAN: I think it is. [LB857]

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SENATOR CARLSON: Okay, thank you. [LB857]

SENATOR LANGEMEIER: Go ahead, Senator Christensen. [LB857]

SENATOR CHRISTENSEN: Thank you, Chairman. Back on the statement Senator Carlson I think hit on it, too, there about there's more acres tilled now. And that's strictly due to the high commodity prices. [LB857]

MARK BROHMAN: Sure. [LB857]

SENATOR CHRISTENSEN: A lot of people tearing out grass and you guys are converting just a small percent of them back. [LB857]

MARK BROHMAN: Right. [LB857]

SENATOR CHRISTENSEN: But we all know it cycles, so there's been times when the CREP program come in and CRP and stuff came in, that it goes the other direction in a fast way, too, again, driven by commodity prices. And that would be the reason for that, correct? [LB857]

MARK BROHMAN: Sure. And I think we heard testimony, you know, last year from one of the groups that the conservation groups hold no easements, I don't think, in Clay County. You know, there's been land that has been purchased, but there haven't been easements held by those conservation groups that have, you know, been catching a lot of grief. But the actual nonprofit conservation groups, like the Nature Conservancy and groups like that, do not hold any easements in Clay County. And several of the Rainwater Basin's, I think they said there were only 38 counties that they held easements in. And so sometimes perception and reality are a lot different too. [LB857]

SENATOR CHRISTENSEN: Thank you. [LB857]

SENATOR LANGEMEIER: Senator Haar. [LB857]

SENATOR HAAR: This may be a stupid question, but I'm going to ask it anyway. Usually, when your grants go to restoring a wetland, is there ever the situation where that would be sold and then put back into cropland or are you... I would assume that wetland is usually... [LB857]

MARK BROHMAN: Well, most of the grants that we're currently doing in the Rainwater Basin are in these revolving funds, these two grants I was talking about with Ducks Unlimited. They buy a tract of land and because a farmer does not want to sell just the wet area or part of his field, he wants to sell the whole 80 or the 160 or maybe the 360. So then they go in with our money and other monies from federal dollars and some of

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their private money donations, and they restore the wetlands. And then they put some buffer in so that you don't have corn growing right down to the edge of the water, they put some buffer in. And they sell that whole tract on the open market and usually it's back to a private land buyer. Then he or she purchases the entire tract and then that's under a conservation easement, so the wetland is protected with the buffer strips. And then they continue to farm the rest of the property. [LB857]

SENATOR HAAR: I guess my...I'm trying to put words to this. Now are there instances where you actually create wetlands, where there weren't wetlands before you create them and maybe they go back? [LB857]

MARK BROHMAN: I don't think you would say you created, you're restoring wetlands that have been farmed through and over for years. I know there is properties that are purchased with our money that may have had corn grown on, you know, two out of ten years. And the other years it's too wet. But historically, you know, it has hydrated soils. To have wetlands you have to have the soil, the moisture and the plants. And, of course, you can take the plants off by farming through or using herbicides, but the soils and the water, the moisture is probably always there unless you tile it or drain it. But as soon as you break those tiles or dam up the water, then you can restore the wetlands. So I don't think they're creating wetlands, but they're restoring wetlands where one day you might drive by it and it looks like a cornfield. And the next year you go by and it's cattails and Reed Canary Grass. It's because, you know, that historically had been a wetland. But you can usually tell by soils maps, that's the best indicator, especially in the Rainwater Basin, you can see those wetland footprints very easily. [LB857]

SENATOR HAAR: So actually, if you would take a wetland that's been restored and it was transferred and there was some kind of requirement that it be put back on the market for sale, I suppose you could convert it back to cropland. But then you'd still have basically a wetland environment, is that correct? [LB857]

MARK BROHMAN: Yeah. And, of course, the conservation easement that they place on it protects the wetland. [LB857]

SENATOR HAAR: Okay, yeah, gotcha. [LB857]

MARK BROHMAN: And that's the part that they can't break. Usually there's a perpetual, you know, we've had that discussion with Senator Carlson's bill, LB529 last year. You know, some people do not like perpetual, but some people say if you're going to make that kind of investment you want long-term guarantee that your money is, you know, protected and you're not just every ten years renewing and paying again. [LB857]

SENATOR HAAR: Thank you. [LB857]

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SENATOR LANGEMEIER: I'm going to ask a question that my better judgment says don't ask, but...(laughter) In your testimony you talk about buying the Horse Creek FEN. [LB857]

MARK BROHMAN: Yes. [LB857]

SENATOR LANGEMEIER: Okay? And it's a project to restore wetlands and FENs. [LB857]

MARK BROHMAN: A FEN is a type of wetland. [LB857]

SENATOR LANGEMEIER: That was going to be my question. What's the difference between a wetland and a FEN? How do you get a different name? [LB857]

MARK BROHMAN: FENs are usually the type of wetland, and what's very interesting is I was wetlands biologist for three years at the Department of Roads before working at Game and Parks. And FENs are a very unique type of wetland found in the Sandhills of Nebraska and in places like Scotland and places like that, bogs they're sometimes called. But there are places in the Sandhills where you can walk or drive a tractor and the soil feels like a waterbed almost. But it's the subsurface, it's the moisture that's there, it's the plants that are present. But it's a type of a wetland. So when I say wetlands and FENs, it's really saying wetlands and a specific type of wetland, FENs. So FENs are very unique and that's the only place you'll find them in Nebraska, is in the Sandhills. [LB857]

SENATOR LANGEMEIER: Okay. Hopefully, I wasn't the only one trying to figure that out. [LB857]

MARK BROHMAN: No, I'm sure some people probably were wondering what a FEN was. [LB857]

SENATOR LANGEMEIER: Very good. Seeing no other questions, thank you very much for your testimony. [LB857]

MARK BROHMAN: Thank you. [LB857]

SENATOR LANGEMEIER: Further testimony in opposition of LB857. Welcome. [LB857]

GLENN JOHNSON: (Exhibits 12 and 13) Thank you, Senator Langemeier, members of the Natural Resources Committee. My name is Glenn Johnson, G-l-e-n-n J-o-h-n-s-o-n. I'm the general manager of the Lower Platte South Natural Resource District and I'm appearing here on behalf of that natural resource district, the Nebraska Association of Resources Districts, the Nebraska Water Resources Association, and the Nebraska

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State Irrigation Association. And I suppose my time is up now because I said so many, (laughter) but in opposition. Our opposition rises very narrowly from the standpoint that the proposed amendment is...the wording is absolute and applies to any and all sales or transfers without exception. We think there probably are exceptions where it makes sense not to require a repayment. We're involved in some of those. And Mark referred to, you know, north of Lincoln and the saline wetlands. The natural resource district, Lancaster County, the city of Lincoln, Game and Parks Commission, and the Nature Conservancy have formed the Saline Wetland Partnership. And that's been in operation for about ten years now. And through that process they've been looking at these very unique saline wetlands in the complex north of Lincoln and up around Ceresco. And through a program of voluntary acquisition of fee title, acquisition of easements, permanent conservation easements, they began to assemble some of these critical habitat areas in some of these very unique saline wetlands. And they're under a variety of ownerships. Some the city owns, some the NRD has owned, but generally we've gone together as a partnership and made these acquisitions. But we also have in some of those have used Environmental Trust funds for those acquisitions as part of the funds to pay for those acquisitions. But again, in each case it may be one entity that purchases it, but it may be another one of the partners that is best suited to actually manage the property for the long-term or to do the restoration on the property. So, you know, the property is being continued in the same use for protection of that resource for which the grant was approved, but it may be transferred from one party to another. And we think it's appropriate to recognize that and consider providing some kind of an exception in that case. And so unless the bill is amended, you know, we would have trouble supporting the bill because it puts us in that kind of a situation. The current round of applications, the Saline Wetland Partnership is the number two ranked application, if I recall, and it's for three years. And part of those funds are acquisition, part of those funds would be used for restoration, part of those funds, a small portion of them, are used for administration with the designation of a coordinator for the Trust funds, so, or for the partnership. With that, I would answer any questions. [LB857]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, I just have one. So you're testifying only to the fact that it includes everybody. [LB857]

GLENN JOHNSON: Right. [LB857]

SENATOR LANGEMEIER: You're not weighing in to the...where the money is going when it comes back and all that? [LB857]

GLENN JOHNSON: No, no. [LB857]

SENATOR LANGEMEIER: Okay. Thank you. [LB857]

GLENN JOHNSON: We couldn't agree on that one, so... [LB857]

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SENATOR LANGEMEIER: Okay. [LB857]

SENATOR HAAR: Somebody pulled the fire alarm. [LB857]

SENATOR LANGEMEIER: Until I smell smoke, we're going to keep rolling. (Laughter)
Go ahead. Although it's kind of a blinding flash from this side of the table. [LB857]

STEVE DONOVAN: Senator Langemeier, members of the Natural Resources Committee, my name is Steve Donovan, S-t-e-v-e Donovan, D-o-n-o-v-a-n. I'm here today representing Ducks Unlimited. I want to give to you a few examples, just a couple of examples of why we believe this proposed legislation would have some very significant and probably unintended negative consequences on our ability and the ability of others to put conservation on the ground in Nebraska. One example is a property in Hamilton County that...it's a large well and it's partially drained and it's mostly owned by the U.S. Fish and Wildlife Service. But because they do not own or control all of it, they cannot effectively restore or manage the wetland. We applied for a Nebraska Environmental Trust grant that we got. And we used that to leverage a federal grant that then gave us enough money to buy the property. With all due respect to Senator Christensen's concern about the federal government owning more land, in this case the Fish and Wildlife Service already owned a significant portion of the wetland. And like you just heard from Mr. Brohman, when an entity owns most of the wetland, it just makes sense, if you want to restore and manage it correctly, that they own all of it. And so we still own that property, we haven't transferred it to the U.S. Fish and Wildlife Service yet. That is our intent. And we're also working with a couple of other owners of the balance of that well and to try to achieve the end game, which is the ability to restore and manage it. Now with respect to the federal government owning it, I guess I can assure Senator Christensen and the other senators that we certainly, Ducks Unlimited, have a lot of supporters in that Aurora community who were thrilled that we were able to achieve that project because they rely on public land for places to hunt and bird watch. And now they have an additional 80 acres of land that they will be able to go out and recreate on, plus they recognize that once the end game is achieved, that that entire wetland will be better habitat. It will better serve the needs of ducks and other wildlife, and they will be able to have enhanced hunting opportunities on the entire wetland. In that case, if LB857 was the law, the day that we transfer that property to the Fish and Wildlife Service we would have to pay back, excuse me one second, \$179,000 of the net money that we used to help buy it. But we are simply transferring the property, not selling it, to the Fish and Wildlife Service in this case. And so we don't have \$179,000 to give back to the Water Resources Cash Fund. And thus that kind of project would be stopped in its tracks in the future if LB857 as currently written were the...was in fact law. The other example is in Kearney County, where we bought a piece of property with Environmental Trust dollars. We granted an easement to the local NRD because they are in an overappropriated basin and they need to reduce their water use.

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And so we gave them an easement which effectively retired 100-and-some-odd acres of certified irrigated land. The NRD was thrilled to have this project happen. We helped them in many ways achieve their water objectives, which indirectly, of course, benefits the other farmers within the NRD. We eventually sold that property to a Kearney County rancher and he is now using that for grazing purposes. When we bought it, it was over 300,000 of net dollars involved. And when we sold it, it was \$179,000. LB857 as written would require us to give back the entire \$307,000, which again, we only realized \$167,000 when we sold it. And so obviously we can't afford to write a check and lose \$130,000 and change that we don't have. And consequently, that kind of project would be stopped in its tracks, too, in the future. And with respect to what the Nebraska Cattlemen person said, I would suggest that the goal of our revolving habitat program is ultimately to have that land back in private ownership, which is something he said. And in this case, it's owned by a Nebraska cattleman. I don't know if he's a member of Nebraska Cattlemen or not. But in this case that project resulted in land back in private ownership, obviously still on the tax rolls, being used for grazing purposes, and it's the type of project that we simply could not do in the future if LB857 was the law. Those are the two examples I wanted to give out. As Senator Larson said, we have started the dialogue with him. I do believe it's going in a positive direction. I really think there are a couple of very legitimate issues that caused him to propose this legislation. And we agree those are legitimate issues. We would like the opportunity to continue that dialogue with Senator Larson and other members of the committee to try to get to some common ground and help address some of those issues. I'd be happy to answer any questions that you might have. [LB857]

SENATOR LANGEMEIER: Senator Christensen. [LB857]

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you, Steve. Is there any way to trade out the federal government? I just, you know my stance. I just hate to have anything go there. But they own land, we own land, is there a way of trading instead of giving them more in a situation that they're surrounding it? [LB857]

STEVE DONOVAN: There is, in fact. A couple of ideas come to mind. One is they actually own some land right now that they really don't want. It was...they were Farmers Home Administration-type transactions that they drew the short stick and had to get that land. And they actually would love to trade that land. They can't simply sell it; it requires an act of Congress. But they can execute land trades. And so we've talked about scenarios in which we might trade with them to get that other land that they don't really want, that then would ultimately allow us to put that back into private ownership. The other scenario that is relevant, there's always the Nebraska Game and Parks Commission. And we work very closely with the Nebraska Game and Parks Commission. But, like other agencies, they are strapped for cash and it is difficult for them to manage and pay the taxes on what they have. I would love a situation where the Game and Parks Commission was more able to take some of these high, very

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important properties, like the one at Troester WPA. There's no reason why that could not work from a restoration and management standpoint. It would achieve the same end game as far as being in public ownership and open to the public. But with their current financial situation they simply struggle with that kind of concept. [LB857]

SENATOR CHRISTENSEN: Thank you. [LB857]

SENATOR LANGEMEIER: Senator Carlson. [LB857]

SENATOR CARLSON: Thank you, Senator Langemeier. Steve, on this land used as an example where you are in the process of turning it over to U.S. Fish and Wildlife, while you own it what kind of taxes are you paying? [LB857]

STEVE DONOVAN: It's still in cropland. We're still paying...we're paying cropland taxes, whatever the Hamilton County Assessor assigns the taxes. [LB857]

SENATOR CARLSON: So since you purchased it, the kind of taxes being paid have not changed from what they were before. [LB857]

STEVE DONOVAN: They've gone up every year, yeah. [LB857]

SENATOR CARLSON: Well, they've gone up, but it's (laughter) it's not a different classification? [LB857]

STEVE DONOVAN: Correct, it is the same classification. [LB857]

SENATOR CARLSON: Okay, all right. Now that's not always the case, but that's the case in this example. When that gets turned over to U.S. Fish and Wildlife, what kind of taxes are they going to pay? [LB857]

STEVE DONOVAN: Well, Senator, as you know, the federal government does not pay property taxes I think anywhere in the nation I think, at least where I have worked. They do make an in lieu of tax payment to counties where they own land. But unfortunately, the formula that they use and the amount of money that they have available for that generally results in a significantly less payment to the counties than what would have been paid if it was still privately owned and property taxes being paid. And that is one of the concerns that we do share as an organization. We see the impact. We understand the concern. We do believe there is public good when a public agency owns land and there are things like public access. But there's also the downside, and that is particularly when the federal government owns it, and that is the impact on property taxes. And that's one of the things that I think caused Senator Larson to propose this legislation. It's one of the issues that we would like to work with him on and try to come up with some, hopefully, some satisfactory solutions to that problem. [LB857]

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SENATOR CARLSON: Well, that's one of the reasons that I came up with a bill like LB529, even though that had to do with easements. It has to do with these kind of circumstances. And what's disappointing is that you enter into agreements with U.S. Fish and Wildlife knowing that that's going to happen because an in lieu of tax means they'll pay whatever they want, which is...and you even just about said it, it may be about next to nothing. So first of all, it's good that you pay the regular taxes while you're owning that land. But it's not good after that transaction is made or transfer is made and then they just pay whatever they want to pay. So that creates a lot of bad feelings. And nobody cares for that. In Kearney County you'd mentioned that you purchased the land for \$307,000. And I think this had to do with...was this in cooperation with Tri-Basin because it... [LB857]

STEVE DONOVAN: Yes. Well, they were a partner and they now hold the easement on that property. [LB857]

SENATOR CARLSON: Okay. But it was in cooperation with Tri-Basin, so it helped them out as far as some...accounting for some water that they needed to conserve based on the Cooperative Agreement, so I don't have a qualm, any qualms with that. And...but this whole thing about taxes is a sore spot. And so, hopefully, as we go on Ducks Unlimited can really take that into effect. You know, I can be held responsible, I brought up a bill that caused a lot of discomfort. But you're the start of it. (Laughter) And so we both bear some responsibility there. But we need to be able to work these things out. And so that's...with that, thank you. [LB857]

SENATOR LANGEMEIER: Any other questions? Seeing none, thank you very much. [LB857]

STEVE DONOVAN: Thank you. [LB857]

SENATOR LANGEMEIER: Further testimony in opposition to LB857. [LB857]

SCOTT SMATHERS: Good afternoon, Chairman Langemeier, members of the committee. My name is Scott Smathers, S-c-o-t-t S-m-a-t-h-e-r-s. I'm the executive director of the Nebraska Sportsmen's Foundation. I will not create redundancy, I will just simply state a few points as to why we oppose LB857. As I sat here today, some things became clear as to what the genesis was for Senator Larson to produce LB857. And it only goes to point out from our point of view at the Nebraska Sportsmen's Foundation, the concerns he has are already being addressed by other issues that we've already started on, two and three, in fact some of those six years ago. As Senator Carlson said, there's been some meetings, some interim studies, some conversations amongst a lot of different groups that have not always been pleasant for all involved, but I do think the bottom line that has occurred and I think the greatest example is LB229 last year. It was

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a very long, laborious process to come to an agreement to solve a problem that we all agree is a substantial issue for the state, is the water. We already have the Water Cash Fund. We have already committed X amount of dollars from the NET. We're continuing that process with LR314, which myself and everybody else who has testified before me has been heavily active and involved in and will continue to do so to find solutions for those fundings. The other issue that occurs is that when issues arise, anything that's of value has to change and evolve in order to remain and contain its value for the good of the people. So any easements, any NET money, any grant money that is used to purchase land is always going to have issues that arise that we need to address, review, readdress and change. And I think that the people that testified prior to us and our group all agree that we're a part of that. We can't simply sit in the corner and say we're not going to be involved in it. We have to be and we have been. I believe LB857 is a redundancy of issues that have already been addressed and will continue to be addressed. The other issue that I have is that if the true concern is supplying a cash flow to the Water Cash Fund, which I'm all in favor of, but I'd be careful with the fact of calling it...putting it back to the Water Cash Fund as a justification of oversight of revolving funds, because is not the Water Cash Fund a revolving fund or it's similar in nature. We're going to use that money for different projects at the direction of the DNR, and it's going to be in and out money. It can be considered both. Again, I would urge this committee to reject or hold LB857. Allow the process that has already been put in place over the last three to six years, LB229, LR314, LR332, LB529, to continue the process of putting and finding solutions as opposed to putting additional, redundant legislation on the books. I'll answer any questions. Thank you. [LB857]

SENATOR LANGEMEIER: Are there any questions? Just for the record, the Water Cash Fund is only an out fund, unless the Legislature puts money in. [LB857]

SCOTT SMATHERS: Which you would be doing if you're taking the money. [LB857]

SENATOR LANGEMEIER: We'd like to see it revolve, but... [LB857]

SCOTT SMATHERS: Well, but if you... [LB857]

SENATOR LANGEMEIER: We have another bill on that regard, so we might get there. (Laughter) [LB857]

SCOTT SMATHERS: I understand. [LB857]

SENATOR LANGEMEIER: Senator Carlson. [LB857]

SENATOR CARLSON: Yeah, thank you, Senator Langemeier. And, Scott, this is just a statement, because I've seen you in that position before on a different topic. And I don't think your attitude has changed, as threat may come from the outside, outside of

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Nebraska on what sportsmen do and what people in agriculture do and we sound the alarm, you're ready to go. [LB857]

SCOTT SMATHERS: One hundred and twenty percent, Senator. [LB857]

SENATOR CARLSON: Good, thank you. [LB857]

SENATOR LANGEMEIER: Senator Schilz. [LB857]

SENATOR SCHILZ: Thank you. Mr. Smathers, thanks for coming in today. I was just, you know, as we've been talking here about this bill it's come up a number of times the issue of the federal government receiving land. And I was just wondering where your constituents are on that? [LB857]

SCOTT SMATHERS: They have the same feelings that many of you have expressed. However, we'd take it maybe in a little different light, is that those federal lands do provide public access to hunters and anglers, which in turn spend money. And wherever those public lands reside those communities benefit from that money being spent. If those lands were closed, that money would be spent in different counties in different directions. So I understand the concerns in regards to federal government, believe me. I no more want them in my back pocket anymore than they already are, as you don't. But the bottom line is they do provide a valuable service for public access for hunters and anglers to go to, to spend revenue in all formats to benefit our state. Now it may not benefit that particular landowner. It may be considered small in amounts for that county, but it does provide a tax base to come back in a different avenue, in a different direction. Now I would urge...I would encourage our groups and any group to be conscience, as they have been in the last two years, of what does go on with the federal government in that regard. And I think we have been. [LB857]

SENATOR SCHILZ: Thank you. [LB857]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much. Well done. Further testimony as opponent. Welcome. [LB857]

ROB SCHUPBACH: (Exhibits 14 and 15) Senator Langemeier, members of the committee, my name is Rob Schupbach, R-o-b S-c-h-u-p-b-a-c-h. I'm speaking today as supporter of the Environmental Trust and a very grateful user of Nebraska's public recreation facilities. A letter is being distributed to you now and I'd like to read it into the record. When I voted for LR24CA in 1992, it was with the understanding that the voters of Nebraska were tolerating a limited amount of gambling provided with the proceeds going to the higher purposes of educational and environmental improvement and other purposes as directed by the Legislature. When I voted for LR209CA in 2004, it was with the understanding that a limited amount of gambling would be tolerated provided that

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the proceeds go to educational improvement as the Legislature may direct. However, control of the gambling proceeds to benefit the State Fair, the Gamblers Assistance Fund, and the Nebraska Environmental Trust were elevated from the Legislature to the Nebraska Constitution as directed by the Legislature. Last year, LB229 created a bonus for the Nebraska Department of Natural Resources to aid their funding activities in the Nebraska Environmental Trust grant process and it's working. LR314 is an interim study on water need funding that is ongoing right now and is due to report in December of 2012. Legislative efforts are being made to study water funding. LB857 will not accomplish these goals, and no abuses have been identified by LB857. I'd like to ask you to please not advance LB857 out of committee. In support of my statement, I have also submitted a cover letter and an executive summary of the most recent audit of the Nebraska Environmental Trust. In the interest of time, I'd like to refer you to the cover letter. If you'd like to review the entire report, the Web address on the cover letter is the Web address of the entire report. And then I'd like to flip to the second...it's the last page, the top sentence. Our review disclosed no findings that are required to be reported under the groundwater auditing standards...under the governmental auditing standards. As I sat here, I heard Senator Larson bring forth some opinions that he tried to couch as facts. And he tried to...I heard him say that he felt that if he looked into the affairs of the Nebraska Environmental Trust he would find some abuses of funding. This report did not find any abuses of funding. With that, I'd like to close. Any questions? [LB857]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Schupbach? Seeing none, thank you very much for your testimony. [LB857]

ROB SCHUPBACH: Thank you for your time. [LB857]

SENATOR LANGEMEIER: Well done. Further testimony in opposition. Seeing none, is there anyone who would like to testify in a neutral capacity? Seeing none, Senator Larson, you're recognized to close on LB857. [LB857]

SENATOR LARSON: Thank you, Senator Langemeier and members of the Natural Resources Committee. As I stated in my opening, I brought this bill for a number of reasons to address concerns. And I also in my opening brought forth some changes that I've been in conversation of working with. And the bill will obviously change in a substantial way to where groups won't have to repay the money they receive back, but add a little more oversight to make sure that these Trust dollars are being used in the proper way. The Nebraska Environmental Trust testified that the whole type of revolving grants they're moving away from. I still think it should go in statute to ensure oversight in the future. This board may be moving away from putting in revolving grants, but we don't know what the next board is going to do or the board after that. And I think it's our responsibility to set good policy for future generations to follow by. I would welcome any members that want to be involved in these conversations with me and any other

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interested group to please be involved. I think this is important to ensure that we can address these concerns, whether it's land being taken off the tax rolls because it's the federal government, possibly addressing that situation to a certain extent or making sure that the Environmental Trust does have oversight over possible revolving funds and things of that nature. And I'd entertain any questions to end the hearing. [LB857]

SENATOR LANGEMEIER: Are there any questions? Seeing none, thank you very much. [LB857]

SENATOR LARSON: Thank you. [LB857]

SENATOR LANGEMEIER: You have heard the closing on LB857. That concludes our hearings for the day. Thank you all for your participation. (See also Exhibit 16) [LB857]