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Natural Resources Committee
December 05, 2013

[LR214]

The Committee on Natural Resources met at 4:00 p.m. on Thursday, December 5, 2013, in Kearney, Nebraska, for the purpose of conducting a public hearing on LR214. Senators present: Tom Carlson, Chairperson; Lydia Brasch, Vice Chairperson; Ken Haar; Jerry Johnson; Rick Kolowski; and Ken Schilz. Senators absent: Annette Dubas; and Jim Smith. Also present: Mark Christensen; Al Davis; and Dan Watermeier.

SENATOR CARLSON: I am Tom Carlson, Chair of the committee, senator from District 38. And we have a good group of committee members present today. To my far left is Senator Mark Christensen from Imperial, District 44. And then next to him is Senator Rick Kolowski, District 31, from Omaha; Senator Ken Schilz, District 47, from Ogallala. I'll introduce Laurie in a minute. To my far right is Barb Koehlmoos, our committee clerk. And then next to her is Senator Al Davis, District 43, from Hyannis; Senator Dan Watermeier, District 1, Syracuse; Senator Jerry Johnson, District 23, from Wahoo; and Senator Lydia Brasch, Vice Chair of the Natural Resources Committee, District 16 from Bancroft. And Nanette Hesse is also here today and she works out of my office. So it's good to have...they thought they better come and check on me today. So that was good. But welcome to our hearing. Now, today we have LR214. And as you came in, if you are planning on testifying, and first of all, we want everybody to relax. How many of you have testified before in front of a committee? Well, a few of you have. How many are going to testify today and you've never done this before? Okay. All right. Well, that's good because I want you to relax and enjoy the time here and not be nervous about your testimony in front of the committee. But if you're going to testify, you need to grab a green sheet from back there and fill that out, have that filled out before you come up front to testify. You'll sit there where Laurie is. And I'll give you the sign when to go. And you can give your testimony and then we'll open it up if there are any questions that the committee has. And we're not here to put you on trial. We're here to listen to you and see what your concerns are. So that's the way we're going to proceed today. If you don't intend to testify but you'd like your name on the list to show that you were here and you

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

Natural Resources Committee
December 05, 2013

have an interest in what's going on here, there's a white sheet over there on the table that you can sign and that will be a permanent part of the record. When you come forward to testify, give your green sheet over here to Barb, and that will take care of that. Now hopefully, this microphone picks up what you're going to say because we need that for the permanent record. You shouldn't have to adjust it or anything. It's there on the table in front of you, and I don't intend to touch this. But that's so that we can get the complete accuracy on the testimony that's given. This is for the committee. Turn off your electronic devices or cell phones if you have them. And they all know that. That's part of the deal that we go through in Lincoln because we want to listen to you today. But if you've got cell phones, either turn them off or put them on vibrate so that they don't come on in the middle of our hearing here. I don't think we're going to have a problem in terms of a lot of people wanting to speak. So we're not putting a time limit on, but we usually go about five minutes. And if I think you've gone quite a bit over five minutes I'll give you a warning and ask you to kind of wrap things together. And the five minutes doesn't count on the questions that we might ask, so keep that in mind as you come forward. Well, again, we're glad that you're here today. And Laurie Lage is the committee counsel for the Natural Resources Committee, and she'll open the hearing today.

LAURIE LAGE: (Exhibit 1) Okay. Thank you, Senator Carlson, members of the committee. My name is Laurie Lage. I'm legal counsel for the Natural Resources Committee. I'm here to introduce LR214. The purpose of this study is to study Nebraska's statutes, rules, and regs relating to the permitting process for small surface water storage reservoirs. We introduced this study due to a letter that was sent out to several Nebraska residents at the end of December of 2012. The letter stated that the laws of the state of Nebraska require that the owner of a reservoir capable of storing 15 acre-feet or more of water at the lowest open outlet or overflow file an application for a permit with the Department of Natural Resources in order to be able to store water. The letter went on to state that you are prohibited from storing or using surface water until further notice from the department. And it said the department is taking action at this

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

Natural Resources Committee
December 05, 2013

time due to the Republican River Compact and drought conditions. As you might imagine, the letter raised a lot of concerns. It was perceived as a sudden change to the status quo, that these small dams already met the state's regulatory requirements. In response to the concerns, the department has sent additional information out to landowners. They've held workshops to help landowners with the permitting process to come into compliance. But there are still concerns and there's a concern of the cost of getting the permit process done. We introduced this study, Senator Carlson introduced this study to address landowners' concerns and to provide a forum for them to tell the committee about how this policy change has affected them. And John Thorburn is here to testify after me from the NRD perspective and will have more detailed information on what's happened here. So I'll close with that. [LR214]

SENATOR CARLSON: Okay. Thank you, Laurie. Any questions of the committee for Laurie? Okay. Seeing none, thank you, Laurie. And John Thorburn now, who is the manager of Tri-Basin NRD, we'll ask John to go next. Welcome, John, and the time is yours. [LR214]

JOHN THORBURN: (Exhibit 2) Thank you, Mr. Chairman, members of the committee. My name is John Thorburn, J-o-h-n T-h-o-r-b-u-r-n. I am manager of Tri-Basin Natural Resources District in Holdrege. Tri-Basin NRD encompasses Gosper, Phelps, and Kearney Counties, and, as our name implies, portions of the Platte, Republican, and Little Blue River Basins. Last January, I was contacted by dozens of my constituents who received notices from the Nebraska Department of Natural Resources informing them in no uncertain terms that small dams that they owned were not properly permitted. The letters, a sample copy is attached to my testimony, went on to state in red type that the owners are prohibited from using surface water until further notice, and that they may be subject to civil and criminal penalties if they continue to store water. These letters were understandably upsetting to my constituents. Most of these dams have been in place for at least 50 years. When they were built, typically with federal government assistance, landowners were motivated to construct these reservoirs

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

Natural Resources Committee
December 05, 2013

because they wanted to be good stewards of the land. They constructed and have maintained these reservoirs because they know that their purpose is to protect the land and their downstream neighbors from soil erosion, sedimentation, and flash flooding. These enduring improvements to the land have served the purpose for which they were intended. Evidence of that benefit can be found not just on the land where the dams are located but far downstream. Harlan County Reservoir is silting in at a much slower rate than was anticipated by its designers thanks to the efforts of upstream landowners to reduce erosion. In most cases, these small reservoirs also provide water for cattle. Having a supplemental water supply improves grazing distribution in pastures and adds to the value of pasture land. The department's position, as I understand it, is that these small reservoirs need to be either properly permitted, altered, or removed. Permitting would seem at first to be the preferable alternative for landowners, and the department has urged landowners to fill out the necessary paperwork to enable them to get a permit. The problem with that option is that the landowners, if granted a permit at all by the department, will receive a water right with a 2013 priority date. With such a late priority date, dam owners will only be allowed to store water in very wet years. They would, in fact, be required to pump out any water that accumulates behind their dam when it isn't in priority. That just isn't practical. Alternatively, landowners can modify their dams so that they store less than the statutory minimum of 15 acre-feet. That can be done, but it will likely cost landowners many thousands of dollars. Disturbing settled vegetated emergency spillways to reduce storage capacity also increases the likelihood that a dam will fail catastrophically in a heavy rain event. The final option for landowners is to remove their dams. This is, in most cases, cheaper than modifying a dam but it eliminates all the erosion protection and flood control benefits that these reservoirs provide. This is the difficult position in which the department has placed landowners. These small dams don't comply with the department's rules because, when they were constructed back in the 1950s and '60s, either the landowner or the federal Soil Conservation Service apparently assumed that since these dams weren't constructed to provide irrigation water, they didn't need to be approved by the old Department of Water Resources. It is also possible that the department's own recordkeeping is inadequate.

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

Natural Resources Committee
December 05, 2013

Neither of these possibilities were apparently considered before the department launched its recent enforcement effort. In fact, the department has placed the burden of proof on landowners to find records and plans for these dams that were built by their ancestors or prior unrelated landowners 50 years or more ago. It would be easier for my constituents to accept this situation if these enforcement actions were being taken in a timely manner or as a result of new information. The fact is, however, that the department has been aware of the existence of these dams for many years. The department's own records will show that their personnel have regularly inspected many of these dams over the past several decades and that the old DWR did a comprehensive inventory of small dams in 1973. Yet now the department expects landowners to comply with their rules without delay and without regard for the impact that their tardy enforcement has on these good people. I submit to you that in this case, if the Department of Natural Resources' approach to permitting these structures is allowed to stand, law-abiding, upstanding citizens will be forced to spend their hard-earned money to undo good conservation practices. For this reason, I propose what I consider a better and fairer solution to this newfound problem of unpermitted dams. I urge the Unicameral to enact legislation that would exempt small reservoirs constructed before a certain date. And I would suggest perhaps 1973 could be a reasonable date for that, to exempt them from permitting requirements as long as those dams are maintained in accordance with dam safety guidelines, they are not altered to increase their storage capacity, and as long as they are not used for irrigation. I urge you on behalf of my constituents to rein in the Department of Natural Resources and allow these dams to continue to exist and to provide conservation benefits for the good of all of us. Thank you for your consideration of my testimony. [LR214]

SENATOR CARLSON: Okay. Thank you, John. Any questions of the committee?
Senator Christensen. [LR214]

SENATOR CHRISTENSEN: Thank you, John. Did you call the department? I called on a couple cases. They told me that certified letters had been mailed out. Did you hear

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

Natural Resources Committee
December 05, 2013

that, that people had opportunity to certify these one other time? [LR214]

JOHN THORBURN: I'm not aware of that, Senator. What was done in the past and from my discussion with my constituents, most of them had never heard anything from the department before the end of last year. [LR214]

SENATOR CHRISTENSEN: Okay. Did they mention to you that anything over 15 acre-feet would have to be counted in evaporation in compliance with Kansas? [LR214]

JOHN THORBURN: I'm not sure how this plays into compact compliance, Senator. I know that the states, as part of the settlement of the last lawsuit, did a study of the impact of small reservoirs. And, yeah, understandably there is some accounting for the evaporation of water from these reservoirs. But I was also told by Mr. Dunnigan that this was not intended to be just a Republican Basin policy, that they were starting in the Republican Basin but they intended to apply this policy statewide. [LR214]

SENATOR CHRISTENSEN: I was just asking the questions to make sure other people were hearing what I was hearing... [LR214]

JOHN THORBURN: Okay. [LR214]

SENATOR CHRISTENSEN: ...because I had my staff do the correspondence. That's why I was asking, to verify what I had been receiving. [LR214]

JOHN THORBURN: I see. [LR214]

SENATOR CHRISTENSEN: Thank you. [LR214]

SENATOR CARLSON: Okay. Any other questions of the committee? Yeah, Jerry, Senator Johnson. [LR214]

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

Natural Resources Committee
December 05, 2013

SENATOR JOHNSON: Thank you. I'm assuming the rest of the state has the same issues. Is it more prevalent do you think in your area, or how big a can of worms are we going to open up here? [LR214]

JOHN THORBURN: I think it would be a jumbo size carton of worms, Senator. But there does happen to be a large concentration of these small reservoirs in the vicinity of Harlan County Dam. That was an area that was specifically targeted for the reason that I mentioned, to protect the large reservoir. Most of these were built with federal assistance, there were plans drawn up for these things. And at this late date it's hard to say what happened back there in the '40s and '50s and '60s, but it is curious to me why hundreds of dams that were built with federal money, federal designs and state, I presume, knowledge, somehow didn't get the plans communicated to the state in the proper manner. But I can only assume if that was the case in the Republican Basin, that that was the case statewide. The other unfortunate aspect to this is all the records of the old federal Soil Conservation Service according to whatever rules the federal government uses were apparently destroyed or disposed of years ago as well. [LR214]

SENATOR JOHNSON: Thank you. [LR214]

SENATOR CARLSON: Okay. Senator Davis. [LR214]

SENATOR DAVIS: You've...just like to maybe if this is possible, 1973 date, and can you just justify why you made that selection? [LR214]

JOHN THORBURN: I believe it was 1972, there was a failure of a large earthen dam in Wyoming. And that caused a lot of concern nationwide about the safety of small dams. And so the federal government provided money to the state of Nebraska to do this inventory of small dams. And as I understand it, it was a pretty comprehensive effort. So there is a good set of data showing what dams were in existence at that time. And of

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

Natural Resources Committee
December 05, 2013

course, you know, in more recent years because in the Republican Basin of the compact and because of that heightened concern about small dams, I think the department has taken a more proactive approach to making sure that newly built reservoirs are following the rules that they prescribe now. [LR214]

SENATOR DAVIS: I just wondered how many might have been built since then that wouldn't... [LR214]

JOHN THORBURN: Oh, I think it'd be a relatively small number, Senator. At least, in my area the vast majority of these were built in the '50s and '60s. [LR214]

SENATOR CARLSON: Okay. Thank you. Senator Watermeier. Any other questions? Senator Christensen. [LR214]

SENATOR CHRISTENSEN: John,...and thank you, Senator Carlson. Seventy-three, I know you said most of them you thought were built in fifties and sixties. Seventy-three was the inventory date. Is that why you chose that date? [LR214]

JOHN THORBURN: Yes. Yes, sir. [LR214]

SENATOR CHRISTENSEN: And if anybody had built one since, would they have had the requirements to have it registered? I guess I don't want to set a new date and then still have additional problems. I just check and see how well you've studied that date. [LR214]

JOHN THORBURN: I see. Well, yeah, I base that just on that inventory. The laws, as I understand it, were changed first in the '60s and then later in the 1990s. There was some considerable changes, and then more recently, maybe '05 or '06, there was a safety of dams kind of overhaul of the statutes. [LR214]

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

Natural Resources Committee
December 05, 2013

SENATOR CHRISTENSEN: So I guess you don't know then if we chose the 1973 date if there would be additional problems? That's my chair. (Laugh) [LR214]

_____: Nice job. (Laugh) [LR214]

JOHN THORBURN: Thanks for coming down to my level, Senator. (Laughter) Nineteen seventy-three is kind of an arbitrary date. And so yeah, maybe there's a more appropriate date based on changes in statute. That's just one suggestion. [LR214]

SENATOR CHRISTENSEN: Okay. Thank you. [LR214]

SENATOR CARLSON: Okay. Any other questions? John, your statement in here: "Harlan County Reservoir is silting in at a much slower rate than was estimated by its designers thanks to the efforts of upstream landowners to reduce erosion." Well, that seems to be a significant value, doesn't it? [LR214]

JOHN THORBURN: Oh, absolutely. I think we'd all agree on that, Senator. [LR214]

SENATOR CARLSON: And I wonder, did your letter go to the department? [LR214]

JOHN THORBURN: I'm quite sure the department is aware of that fact. And let me say, I guess, just to be clear for the whole committee. I don't have an axe to grind with the Department of Natural Resources. And generally, especially with their current director, Mr. Dunnigan, we've had good relations with them. I think they've taken a very narrow interpretation of their rules and of state law in this instance without regard to the broader implications of their actions on conservation and on these conservation benefits that these reservoirs provide. And so, Senator, I would think the department would agree that, yeah, a reduced sediment load impacting Harlan County Reservoir is good for the state of Nebraska overall. [LR214]

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

Natural Resources Committee
December 05, 2013

SENATOR CARLSON: So it gets down to two alternatives, either get it permitted or remove it, right? [LR214]

JOHN THORBURN: It is possible for people to modify their dams to, you know, reduce the storage capacity. If I were a landowner though, I don't know that I'd be especially inclined to take that step because you have to hire an engineer. You have to hire a surveyor. It will cost you just as much if not considerably more money to do that alteration than it would be to simply take a bulldozer right through the dam and be done with it. [LR214]

SENATOR CARLSON: What are the negative aspects of doing that? [LR214]

JOHN THORBURN: Of removing the dam? [LR214]

SENATOR CARLSON: Yeah. [LR214]

JOHN THORBURN: Well, for the landowners themselves, to the extent they utilize their pasture, of course they've eliminated a supplementary water source for their cattle. And quite honestly, the impacts on the watershed as a whole are of greater concern to Tri-Basin NRD. You are eliminating that detention and that slowing-down of water in the case of a heavy rain in a flash flood. You are freeing up a bunch of sediment that's already accumulated behind these dams that is going to start washing out with the first heavy rain. And you will sooner or later start to see new gully erosion and increased erosion as a result of the loss of that structure. [LR214]

SENATOR CARLSON: Okay. All right. Good. Any other questions? Okay. Thank you, John, for your testimony. [LR214]

JOHN THORBURN: Thank you, Senator. [LR214]

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

Natural Resources Committee
December 05, 2013

SENATOR CARLSON: Now, this is a little different than some of the hearings we have because normally we would go from this point to listening to proponents of the bill and then opponents. And that's not really what...we're here to listen to you today. So those of you that want to testify, be ready to step forward. And Bill, you came in late, but you're in the front row. You can go first. [LR214]

BILL ERICKSON: Oh, I get to go. I got one of these letters and I was extremely... [LR214]

SENATOR CARLSON: Oh, wait a minute. I got to...start by saying your name and spelling it for the record. [LR214]

BILL ERICKSON: Bill Erickson, E-r-i-c-k-s-o-n. And I live south of Holdrege. To start with, I was extremely disenchanted with this letter I received from the Nebraska Department of Natural Resources in bold red print. It said you are instructed--as I remember it, I couldn't find my letter since my wife is gone--to quit storing water immediately. As far as I'm concerned, they're putting up fences to solving these problems when they start turning you off like that. That's totally wrong. If they want to get along with people, they don't send out that type of letter. It's wrong. Secondly, they said that I was storing close to 25 acre-feet of water in my dam. So I hired a professional engineer to come out and do my dam. They had overestimated the water in that dam at 35 percent. And I was within compliance of the 15 acre-feet. Now, I've got a substantial amount of expense in doing this just to respond to this letter. And if we're going to get this thing solved, we better work together. We don't need to be building these fences. A mile south of me is a county road with a culvert so high they'd store more water than I. Any water I release couldn't get to the Harlan County Reservoir if it had to. I was instructed at a meeting that if you were over nine miles away from the Harlan County Reservoir and you don't have a continual flow going through your property, there is no way in the world that water would ever get to help out at the Harlan County Reservoir. So I'm supposed to give up my dam I've had since 1963 for no good.

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

Natural Resources Committee
December 05, 2013

There's nobody going to benefit by knocking that dam out. I'm within compliance. Now, how can they miss it 36 percent? Where'd they come up with this figure? So I sat down and looked at Google, Google Earth. You're all familiar with it. You take your little pointer and you put it below the dam in the back and that's the bottom of the canyon. And then you put it on the other side...or then you put it up to the spillway. And lo and behold, you come up with a pretty close figure to what they were trying to claim. The only trouble is there's 50 years of siltation in that dam. There's no way it holds that. And I had to prove it by hiring a professional engineer. This thing is a little bit haywire. Somebody is trying to say, we did this to help out the compact with the...I mean, it's up there on the wall. And it's wrong the way they're handling this thing. I'm disenchanted. I'm sure you're well aware of that. (Laughter) But we had better get together and get a comprehensive plan of how we're going to solve this compact thing. And nobody has got it. They're coming out. And this is another one of those Band-Aids. And Band-Aids don't work. They stay on for three days. And that's what this deal is. They wanted to be able to say, we did something. But I don't think anybody in Kansas got a letter, and they're dammed up. They've got terraces. They've put in a reservoir down there at Norton. And that's not even considered in this equation to the best of my knowledge. And I hate to complain. No, I don't. (Laughter) But you know, you've got to have a solution. I hate to complain unless I got a solution, you know. And I don't know. Why don't we go and take some water out of the Little Blue, shove it over to the Republican Basin, and fulfill that? That Blue water is going into Kansas anyway. Why don't we put it someplace where we get credit for it? I just...there's got to be a solution to this. I don't know where it's at, and I don't know what the flow of the little Republican is...or the Little Blue is, but I know it's 20 miles across there and half of that is downhill crossing that basin. So you got to pump it up the hill. You got to run it down the hill, and you can put a turbine in the tube going down the hill, get enough electricity to pump the water up the hill on the other side. [LR214]

SENATOR CARLSON: Okay. [LR214]

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

Natural Resources Committee
December 05, 2013

BILL ERICKSON: I'm sorry. [LR214]

SENATOR CARLSON: That's...wait a minute. Wait minute. Wait a minute. Thank you, Bill. And you've told us how you really feel, so we appreciate that. I know Bill pretty well. Any questions of the committee because that's what we're here for is to listen to what the frustrations are and it's pretty obvious. Any questions? [LR214]

SENATOR BRASCH: I'm just... [LR214]

SENATOR CARLSON: Okay, Senator Brasch. [LR214]

SENATOR BRASCH: Thank you, Chairman, and thank you, Bill, for your testimony. [LR214]

BILL ERICKSON: Are you sure? (Laughter) [LR214]

SENATOR BRASCH: I am sure. I do thank you. We're here to study this. And I received a packet today, and I've worked my way through it and made some highlights and some questions. Now, did you fill out a permit? Now, you followed the law for this from day one, from you said 1963 or what year? [LR214]

BILL ERICKSON: No. I don't know specifically how that dam...I know it was a government cost share when we put it in. And I was fortunately a little shaver at the time. So I don't remember that. But I do know it was a cost-share deal. That farm has been in the family for a very long time. I just know that if I knock that dam out, it's not going anywhere because that county road a mile away is going to stop it. There's no benefit in it to anybody. [LR214]

SENATOR BRASCH: Okay. [LR214]

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

Natural Resources Committee
December 05, 2013

BILL ERICKSON: My neighbor told me, he says, I'll sue you if you silt in my grass. I said, oh, well, good. [LR214]

SENATOR BRASCH: All right. And my question basically is, so for your records, your family nobody had a permit. [LR214]

BILL ERICKSON: I don't have any...I'm like John. [LR214]

SENATOR BRASCH: There isn't a paper trail on that. [LR214]

BILL ERICKSON: You know, I can't find any records. I did go to the NRD. I went...there was no written records so I went back to aerial photos. [LR214]

SENATOR BRASCH: Okay. [LR214]

BILL ERICKSON: And it pinpointed it down to 1963 when that dam went in. So it's been there for a very long time. It's been beneficial to my cow herd. It does catch some runoff from some irrigation which has been a godsend for the cattle. I don't have trees in my grass. So it provides a place for the cattle to cool off, not just to get water. [LR214]

SENATOR BRASCH: So your only notification was basically, you're in trouble, not, do you have a permit or we have a copy, nothing about the process, no dialogue or information other than from the NRD about... [LR214]

BILL ERICKSON: Well, I'll tell you what. I contacted a professional engineer. And he said, you got to do something to get within the 15 acre compliance if you are over. And I said, how come? He said, I'll tell you exactly what's going to happen. He said, if you get that permit, you're going to have people showing on your property on a continuous basis to inspect that dam. First thing they're going to do is say, you don't...you are a licensed permittee to store water on that, your property. And your dam isn't adequate. And

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

Natural Resources Committee
December 05, 2013

they're going to force you to put in riprap and start building up that dam so you can comply with the regulations that are sitting out there. A year later, they're going to come out and say, you got cattle paths going across that dam that's going to cause erosion on that dam, and you're going to have to fence that dam off. And he says, you're going to get buried in continual regulation until you are going to have to tear that dam out because you can't afford to maintain those regulations. He says, you got to get below that 15 acre-feet. Well, when we got in there and measured it, we were within compliance. So I'm not worried about that now. But he can see that and...that coming down the road. [LR214]

SENATOR BRASCH: And...right, and that's what I'm wondering because from the information we received that this law has been in place since 1919, but we really didn't do any study or inventory until 1973 and because it's a water short year that that's where...now we're counting the inventory and how much water we have. That's my understanding just from all the information we were giving. But I do regret that you were not given any information and then advised not to comply, basically. [LR214]

BILL ERICKSON: Well, they did a poor job of advertising in 1919. [LR214]

SENATOR BRASCH: Okay. Well, on some things I suppose. That could be. [LR214]

BILL ERICKSON: (Laugh). [LR214]

SENATOR BRASCH: No, I appreciate it, and I'm just trying to...I understand, what, 153...155 petitions were filed. Only 32 have been approved, and 6 are processed. And seeing that you didn't even try to apply for a permit, I don't know the impact. [LR214]

BILL ERICKSON: I was told not to apply for a permit because you're going to get hammered with regulations and inspections. And he says, eventually, you're going to end up tearing it out. If they want them out, they're going to force you to take them out.

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

Natural Resources Committee
December 05, 2013

That's what he said. And I kind of go along with that. I'm sorry but... [LR214]

SENATOR BRASCH: Well, I...no, I appreciate your stepping forward and... [LR214]

BILL ERICKSON: Well, and they're admitting that my water couldn't get to the Republican Basin to help you out if it had to. It just doesn't have a constant flow. It's a farm dam. It has no chance of getting there. If you're over nine miles away, it hasn't got a chance of getting there. And I'm 18. [LR214]

SENATOR BRASCH: Very good. [LR214]

BILL ERICKSON: I've done a little bit of work on this. I suppose I could do more and I will but... [LR214]

SENATOR BRASCH: Thank you. Thank you so much. [LR214]

BILL ERICKSON: I'm sorry. [LR214]

SENATOR CARLSON: Okay. [LR214]

SENATOR BRASCH: You're great. [LR214]

BILL ERICKSON: Anybody else? [LR214]

SENATOR CARLSON: Thank you, Bill. [LR214]

BILL ERICKSON: Thank you. [LR214]

SENATOR CARLSON: Okay. Who's next? Step right up. Sure. And whoever wants to go next be right ready. Welcome. And then I'll start by asking your name and then

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

Natural Resources Committee
December 05, 2013

spelling it for us. [LR214]

LUCETTA ANDREWS: (Exhibit 3) Okay. I'm Lucetta Andrews, L-u-c-e-t-t-a A-n-d-r-e-w-s, from Arapahoe. As a landowner, I have three surface water storage reservoirs. And I'd like to share with you first what they mean to the farmers in regard to livestock, and second what they've done for conservation and erosion of the land. My farm is ten miles north of the Republican River. It was dryland and in the '70s. We've put in some irrigation wells. We don't have enough water. We only supplement our normal rainfall. So we don't consider enough irrigation water to raise a complete crop, but our farm consists of wheat, corn, soybeans, sometimes milo, and then we have cattle herd. On your handout, I have a letter to Senator Carlson dated May of 2013. And just a little bit of a background, my husband's great-grandfather Thomas Andrews, Sr., homesteaded southeast of Cambridge in 1873. And he imported Clydesdale horses and Shorthorn cattle and in 1917 was...and there's a correction there. In 1917, he was one of three men taken into the Nebraska Hall of Achievement. And his picture hangs in the C.Y. Thompson Library on East Campus. And as a small boy, my husband watched his father wade into waist-deep water in the 1935 flood and cut the fences to let the horses out. And then in 1947, his entire family was forced to remain in Cambridge because of a heavy rain. And in the morning, the sirens blew and they had to evacuate. And there were people in Cambridge who had to go into their attics and their houses floated down the street. And lives were lost in both of these floods. So not only flooding but conservation has been very important to his family. Also, in 1984, my husband was one of the recipients of the Master Conservationist Award. And I describe him as being a steward of the land. He wanted to preserve the land for future generations. And my son still farms now. Included in your packet is a letter of recommendation that Roland Cooksley wrote for his nomination to the Master Conservationist Award. The first dam that I'll speak on is NID number--and that's a number that has been given this dam by the Natural Resources District. And I tried to find out if there was a sequence number as to the way that they were built or something. And they told me no. It's located in Gosper County, section 7-5-24. And your second copy of that is a copy that I obtained from the

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Transcriber's Office
Rough Draft

Natural Resources Committee
December 05, 2013

Cambridge office of the examination of the dam. And on that it states that it is not fed by any stream. It was completed in 1957. It's designed by the SCS. And listed on that form, it's marked that it's of low hazard. It was dry in 2002. And if you note on that form, it was inspected December 5, 1973, by W. H. Birkel. And at time, it was owned by George and Elizabeth (phonetic) Scott. And in the left-hand corner at the bottom, it also states that this dam was inspected and surveyed in 2002. It was built to control erosion and conserve the water for the livestock. Without this dam, the cattle must go about a mile to get their water. The second dam is the Bergstresser Reservoir. And it's located on section 17-5-24 in Gosper County. That number is 731. The year it was completed...and attached to that is also a form from the Cambridge office where it was inspected December 5, 1973, by W. H. Birkel. It's not fed by any stream or tributary. It was completed in 1959. It's of the SCS design, low hazard, and there's an emergency spillway. Any overflow would empty into Deer Creek which is several miles south, and there are no residents between this dam and the tributary. The above information was taken from a 2002 survey, and they had highlighted in red what their results of the finding was. This property was owned by Otto and Ada (phonetic) Bergstresser when the dam was built in 1959. It was homesteaded by her parents by the name of Benjamin (phonetic). We rented the ground and later purchased it sometime in the '80s. This quarter section does not have any well. We could not even find a stock well on it, so we have depended on that pasture dam for the source of water for our cattle. It's been dry most of the time for the past several years, and there is a tube under the road between section 8 and section 17 that allows the cattle to go under the tube and get water from our domestic well at the house. When we don't have water there for them, that changes the management of the herd if we wanted to keep heifers or cattle separate. This dam has proven since 1959 to do as it was designed: to conserve water, prevent erosion, and provide for the livestock. If we cannot keep that pasture dam and have water for the cattle, then I'm very limited as to who could ever use it or rent it because it would have to have water from an adjoining pasture where we couldn't find a pasture well. And the last one then is the Andrews Reservoir. It's located in 8-5-24. The NID number is 4054. I do not have the original records for this reservoir. It was owned by Donald C. Andrews

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

Natural Resources Committee
December 05, 2013

who is deceased. And we moved there in 1951 and in the late '80s purchased the farm. I have a picture attached with your group that shows a new driveway put in. And in the upper left-hand corner of that picture it shows the dam. My son told me that he didn't ever get on the school bus at the old driveway which was like directly out in the front of the house, halfway down the hill. So that's how I've come back to prove the 1957 date that it would have been built. He said he always got on the school bus at the new driveway. There's an existing home and domestic well on the southwest quarter of the southeast quarter of 8-5-24. The pasture extends a full mile to the north section line. And when we moved there in 1951, the gully up the middle of the canyon was so deep, the cattle could not cross it. With the conservation practices and the dam, this gully has silted in and the cattle can cross almost anywhere. There were terraces, grassed waterways, and other improvements to control erosion. This reservoir is not fed by a stream, has no one living between the property and Deer Creek, and in comparison to the other dams I own, it would be of low hazard. I've tried to get from the NRD office, from the FSA office, from the Soil Conservation, and from the contractor that put the dam in, and all their records were destroyed. So at this point, the picture and my memory from living there since 1951 was the only thing I had to go on. If the dam is altered, the cattle must go one mile to the south end of the pasture to use a tank with water from the domestic well. This is additional stress on the cattle. Livestock when the...likewise, when the cornstalks are utilized for winter grazing, they have to go that same distance to get their water. Conservation practices have changed immensely over the years. With the terraces, check dams for controlling irrigation water, no till, CRP, and the drought, there's not nearly the amount of water or runoff to go into these reservoirs. We have adjoining landowners that have taken out dams, dozed out terraces, trees, and banks, and that's not good for our conservation. That will cause more damage with a large rain than these existing reservoirs that have been in existence for more than 50 years. I visited with Owen Brainard from Elwood, Nebraska. He was an employee of the Soil Conservation office when they built these dams and came out and inspected them. And he said they were designed to conserve water, stop erosion, and provide water for the cattle herds. At that time, there were few electric

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

Natural Resources Committee
December 05, 2013

pumps. Almost all the water pumped was from a windmill. After explaining the current status of the land and the dam, he felt they had provided exactly what they were designed to do. At the time that the reservoirs were built, I didn't own the land that they were on. So if there was a permit to be acquired, it seems strange that three different owners would have all ignored it--perhaps one, but not all three of them. And if we had been notified that we needed a permit, I'm sure it would have been taken care of. We had no way of knowing. I've been told that the SCS office was supposed to get the permit issued, but we didn't know that it wasn't. So we've tried to follow all the laws and keep them currently improved as needed. Taking the dams out might be fixing it for the present time, but I guess I question what's it doing for the land in future generations. These surface water reservoirs built more than 50 years ago are still providing for the livestock. They help to replenish the groundwater, provide water for wildlife, and have proven the great need for controlling erosion and conservation practices. In my estimation, we need to keep them. [LR214]

SENATOR CARLSON: Okay. Thank you. And, you know, we certainly sense frustration. And you've gone in good detail on what you've experienced there. Did you get the same kind of letter with the red print? [LR214]

LUCETTA ANDREWS: Yes, I did. [LR214]

SENATOR CARLSON: Okay. [LR214]

LUCETTA ANDREWS: Three of them. [LR214]

SENATOR CARLSON: Three of them. Okay. All right. Any questions of the committee? Senator Davis. [LR214]

SENATOR DAVIS: You moved to this particular farm in '51. [LR214]

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

Natural Resources Committee
December 05, 2013

LUCETTA ANDREWS: In 1951. [LR214]

SENATOR DAVIS: And the dam was already there at that time. [LR214]

LUCETTA ANDREWS: No, I'm...the picture that you have... [LR214]

SENATOR DAVIS: Is '57. [LR214]

LUCETTA ANDREWS: ...is '57. And if you can see that new driveway and the dam, I'm sure they were put in at the same time... [LR214]

SENATOR DAVIS: Okay. [LR214]

LUCETTA ANDREWS: ...because that looks like new...if you look in the upper left-hand corner of that picture...yes, see that looks new along with that driveway. [LR214]

SENATOR DAVIS: Right. [LR214]

LUCETTA ANDREWS: That was the closest that I could come as proof of a time. [LR214]

SENATOR DAVIS: And then the new driveway, is that what you're talking about? [LR214]

LUCETTA ANDREWS: Yes, yes. And you can see, you know, that it's been graded. [LR214]

SENATOR DAVIS: Yeah. [LR214]

SENATOR CARLSON: Okay. Senator Johnson. [LR214]

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

Natural Resources Committee
December 05, 2013

SENATOR JOHNSON: Thank you. Thank you for your testimony. The dams that you have cited here appear all to be larger than the 15 acre-feet. [LR214]

LUCETTA ANDREWS: Yes. [LR214]

SENATOR JOHNSON: I believe I know what your answer is going to be, but I would assume you have done a pretty good job of maintaining these. Are they dredged out so the sediment is out and so these are the capacities? Or do you know what the situation would be? [LR214]

LUCETTA ANDREWS: No. My son farms, and we visited on the way over today. And he said, you know, they're silted in. And so like right at the base of the dam where you would ordinarily have the water, that's silted in so that it's backed up a little ways before the water starts storing there. But we've not had water in them for the...you know, just maybe a foot of water at a time because we haven't had the rains. [LR214]

SENATOR JOHNSON: Right, okay. [LR214]

LUCETTA ANDREWS: And another thing, we have some pivots in order to better conserve the irrigation water. We used to flood irrigate. The dams held more water then because of the runoff. And with the pivots and conserving water there, there's not near the runoff that goes into these dams. [LR214]

SENATOR JOHNSON: So would your dams now be, because of siltation or whatever, closer...or I mean, how close would they maybe be to 15 acre? [LR214]

LUCETTA ANDREWS: I don't know. [LR214]

SENATOR JOHNSON: No problem. [LR214]

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Transcriber's Office
Rough Draft

Natural Resources Committee
December 05, 2013

LUCETTA ANDREWS: I think they would...I think they probably would be more yet, but I'm not sure that, like if we...there's a spillway. So that if it filled it would go over. If we had to pump it out, I think it would just go to the next dam a half-mile south and so on down. And they are not under this same law. [LR214]

SENATOR JOHNSON: Part of the reason for my questions would be, you know, the bigger dams, that we're going to have to address the size of the dams also, plus the permitting. Thank you. [LR214]

SENATOR CARLSON: Senator Brasch. [LR214]

SENATOR BRASCH: Thank you, Chairman, and thank you, Mrs. Andrews of Arapahoe, for your testimony and quite detailed documentation here. Thank you for bringing this. I see that you received your letters in January of...January 23, 2013. And then did you receive a letter April 30, 2013, that invites you to...they had a series of small reservoir permitting workshops. And there was one held there in Arapahoe at the Ella Missing Community Center May 14, a month...a few weeks later. Did you attend that? [LR214]

LUCETTA ANDREWS: Yes, I did. I believe the meeting there was in August. And we went in. I'm not sure. I won't say for sure on that date. But yes, we went in, and I had the young man that was there look at the papers that I had filled out to apply for a permit. And he made a couple of corrections on it. And I had checks made out dated in February, but I've been advised to hold off because if I file for that permit, then I go back to the 2013 laws. And we're hoping that these dams that have worked for 50 years might be allowed to be permitted and remain as they are. [LR214]

SENATOR BRASCH: I'm curious. Are the same people advising you not to get a permit the same ones that perhaps advised Mr. Erickson not to get a permit? Is it... [LR214]

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

Natural Resources Committee
December 05, 2013

LUCETTA ANDREWS: It's been other farmers, other people that were involved. And so we're just...I'm on a... [LR214]

SENATOR BRASCH: In an effort to not...to be regulated. [LR214]

LUCETTA ANDREWS: That's our hope. [LR214]

SENATOR BRASCH: Your hope, okay. [LR214]

LUCETTA ANDREWS: And if required, you know, I have the applications filled out ready to send if that's the last thing available to us. [LR214]

SENATOR BRASCH: And after you attended their workshop, did you think it was reasonable? Was there anything there that alarmed you? [LR214]

LUCETTA ANDREWS: I didn't really think it was reasonable because they didn't give us a real alternative. They told us that we could not do the work ourselves. We had to hire a surveyor. And they estimated that to cost between \$1,000 and \$1,500, and that would be for each dam. They...I did ask if we had received a certified letter, and they said there were no letters that had been sent out of their office because if we had a certified letter, we would have signed. And I'm sure it would have been a big alert to everybody to get this taken care of. [LR214]

SENATOR BRASCH: Okay. Very good. Thank you. And I do...they gave out packets of information at this meeting. We did receive some information here that has frequently asked questions and answers. And they do ask. One of the questions is, do I have to hire a surveyor? Or do I have to hire an engineer and what other...and in there, the department explains that the department will help you. Was that made clear that it's...? [LR214]

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

Natural Resources Committee
December 05, 2013

LUCETTA ANDREWS: They said they had done a survey in 2002. And they would share it with us but we could not use it. [LR214]

SENATOR BRASCH: Yeah. It says, "the Department will be able to supply all the required data to applicants, thus minimizing the cost to come into compliance." And so if it was not the cost of a surveyor, if this was not additional cost to you and the department can do this, would that make you more comfortable? [LR214]

LUCETTA ANDREWS: I guess, I'm holding out and hoping that these that have been in for so many years unknown to us that they needed a permit be allowed to stay as they are. [LR214]

SENATOR BRASCH: Okay. And that was my question. And I do believe that the response to trying to enforce these laws that were written, that we have not had to put into action, at this point, seeing the impact the drought had that perhaps we need to look closer at an inventory of how much water is being used. And that is... [LR214]

LUCETTA ANDREWS: And without hiring somebody to come and do an estimate or a survey for us, I can only take what they say in their letter that the dams will hold. I don't think they hold that much, but I have no proof of that. [LR214]

SENATOR BRASCH: And here, you know, it does outline. It says that if you are required to have a person certify it, that the department staff will work with you. And so I'm thinking that they are trying to make this as... [LR214]

LUCETTA ANDREWS: Well, the young man said we would have to have hire...even though they had done the survey, he estimated that it would be \$1,000 to \$1,500 per dam to have this. [LR214]

SENATOR BRASCH: And that was what the person from the department said? [LR214]

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

Natural Resources Committee
December 05, 2013

LUCETTA ANDREWS: Yes. [LR214]

SENATOR BRASCH: Okay. Very good. I have no other questions. I'm just trying to understand how this is affecting everyone, so I do appreciate your testimony. [LR214]

SENATOR CARLSON: Okay. Any other questions? Seeing none, thank you for your testimony. [LR214]

LUCETTA ANDREWS: Thank you. [LR214]

SENATOR CARLSON: Okay. Next testifier step right up. [LR214]

IVAN SCHOONE: My name is Ivan Schoone, I-v-a-n S-c-h-o-o-n-e. First of all, I'd like to thank Senator Carlson for putting this committee together. It's a very timely thing you did. And I thank you, Senators, for being here today. I have land in the Lower Republican NRD towards the northern part of the county in Franklin County. And I'm about 15 miles from the Republican River. However, I am a little less than one mile from Thompson Creek which feeds the Republican River when it goes into Riverton. I, too, got a letter like...and I fully agree with...of the speakers here before. I got the little red letter letter too. And when I read it over, I thought it was totally ridiculous. And I sent them a letter right back. I talked to them on the phone and I said, you know, this is stupid, I think is the word I used, because our dam...we've got five ponds on our farm. If we eliminated any of them, our cattle probably wouldn't have any water in some of these pastures. So then we'd have to go and drill some--windmills, put some windmills in or something, okay, because there's no electricity there either. So it'd have to be a windmill. And of these five dams, four of them probably hold less than one acre-feet. So that wasn't a problem to them. But I have one that was built a little bit bigger back in 1958, and I determined the '58 figure using NRCS maps that they still had on hand from those years. Everything else in the Franklin County office was destroyed about ten

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

Natural Resources Committee
December 05, 2013

years ago thinking they'd never need it again. And my dad, I know, had papers on it. But he's been dead since '73, and God only knows what happened to those papers. So we have determined for sure that our dam was built in '58 because we look at the '57 aerial photos and there's no dam on this particular location. And in '58 they penciled it in. So I know that's when it was planned. And I was a sophomore in high school and I distinctly remember going out there with my dad and the contractors and the SCS at the time, the Soil Conservation Service, who put that in and then my dad asking, well, how much water will this dam hold? And I remember so distinctly, we cannot build this over 15 acre-feet. That's the law. That's what we were told. So we didn't build it over 15 acre-feet, of course, because that's the law. And now, in January, I got a letter saying this particular pond holds 21.7 acre-feet. So that's when I got on the phone and I sent them a letter. And about a week later I got another letter. Oh, the pond grew now to 47.6 acre-feet. Well, I'll admit it's got five or six acres of surface area showing water when it's full. But it's built in a small canyon, ravine, whatever you want to call it. Since 1958...well, you can imagine what dirt does when water laps against it. It all caves in. Plus farm ground has put silt in there. I don't know how much...how deep it is. I ain't going to wade out there and measure it for them. And the DNR has been out there, and they put a survey post with their name on it. And I asked them what that was for. Well, we want to be able to measure from that post to the water's edge. And it's the same thing as Mr. Erickson said. They measured from the original elevation in the ditch to what they think the dam...the bottom of the dam is still at the same elevation as that ditch. Well, that's totally ridiculous, you know. It's totally ridiculous and it's just so absurd that it just really makes a person upset. And this, taking the dam out, if we take that dam out and perhaps hundreds of others come out, can you imagine the silt that's going to be washed downstream into Thompson Creek in my particular situation. And then it's going to go in the Republican River. And then it's going to go down to Kansas. What are they going to do next, sue us for silt? You know, I mean, and that's another sore subject is this Kansas-Nebraska lawsuit, which we probably don't need to go there. But this business with taking the dams out in my humble, commonsense opinion is nothing more than an effort to show on paper that the DNR of Nebraska has now allowed X amount of

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

Natural Resources Committee
December 05, 2013

acre-feet of water to run into Kansas that didn't run in there before. I think that's all that is. I don't know what else it could be. There's no other commonsense answer to it. So here we sit, and I was getting frustrated after I received the 47 acres or whatever it was that I said, 42.7 acres or something that it held. And then I communicated with Senator Carlson, and I said, man, you got to put a stop to this. And he said, don't do anything. We're going to address it this summer. So I thank you for that. [LR214]

SENATOR CARLSON: We're a little past summer but... [LR214]

IVAN SCHOONE: Yeah, a little past summer, but, yeah. [LR214]

SENATOR CARLSON: Okay. [LR214]

IVAN SCHOONE: But at least it's being addressed. My opinion would be to go to DNR and just put the brakes on the whole thing because it's totally ridiculous, especially these ponds built in the '50s and the '40s. Our other four ponds are all silted in. They hold some water for a while after it rains. They no longer hold irrigation water because there is none coming in. I just am totally frustrated with this because it's to the point of...it was getting to the point of harassment by the DNR--threaten this and threaten that. And if you don't do this, if you don't spend on this...and another thing, they have right in there some surveyors from Columbus, Nebraska. Now, I wonder how much those surveyors contributed to the DNR to get their name on there for us to hire. I mean, we got to pay them people if it comes to that. Why an outfit from Columbus? Are they the only ones in the state to do this? No. He got somebody else a bid. [LR214]

BILL ERICKSON: Why were our names released to this engineering firm? [LR214]

IVAN SCHOONE: Yeah, that's what I'm wondering. [LR214]

BILL ERICKSON: We all got letters from some outfit in Columbus saying, we'll come

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

Natural Resources Committee
December 05, 2013

and take care of your legal fees. [LR214]

IVAN SCHOONE: Yeah, from all the same engineering firm. [LR214]

SENATOR CARLSON: Okay. Bill, we got to keep... [LR214]

BILL ERICKSON: I'm sorry, Tom. [LR214]

SENATOR CARLSON: Okay. Sorry. We got to keep it here. [LR214]

_____: Thank you. [LR214]

SENATOR CARLSON: Ivan, I'm going to ask if there's any...you're frustrated, and we're hearing that loud and clear. So do we have questions for Ivan? Senator Brasch. [LR214]

SENATOR BRASCH: Thank you, Mr. Chairman, and thank you, Mr. Schoone. [LR214]

IVAN SCHOONE: Schoone, um-hum. [LR214]

SENATOR BRASCH: I'm just curious. When they discovered the small pond that grew and you said they came out to measure, did they discover it grew after they measured it, or did they tell you how...? [LR214]

IVAN SCHOONE: They based it off of Google Maps. [LR214]

SENATOR BRASCH: Okay, so... [LR214]

IVAN SCHOONE: And then that's not a measurement because all Google Maps does is measure the outer perimeter. [LR214]

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

Natural Resources Committee
December 05, 2013

SENATOR BRASCH: Okay. [LR214]

IVAN SCHOONE: They don't know the depth. They still don't know the depth they tell me. They don't know how deep it is. [LR214]

SENATOR BRASCH: So through Google mapping, the department is now researching the surface water. And then they ask for permission to come out and measure the depth. [LR214]

IVAN SCHOONE: They didn't ask permission. They just showed up. [LR214]

SENATOR BRASCH: They just... [LR214]

IVAN SCHOONE: I didn't even know they were out there. [LR214]

SENATOR BRASCH: They just...did they give you a notice? You did not know they were there, without notice? [LR214]

IVAN SCHOONE: No, no. [LR214]

SENATOR BRASCH: Okay. And then did you attend one of the public hearings they had? [LR214]

IVAN SCHOONE: Yes, I did, the Franklin Fairgrounds meeting. [LR214]

SENATOR BRASCH: In Franklin. And what was your view of that meeting? [LR214]

IVAN SCHOONE: Well, the same frustration that I got yet probably. There was absolutely nothing promoted there but, get your permits, and do this and do that. And you got to get into...comply with all the regulations. Well, it was a dictatorship. I mean, it

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

Natural Resources Committee
December 05, 2013

was a taste of socialism. [LR214]

SENATOR BRASCH: Did they tell you that you were going to have to take the dam out?
[LR214]

IVAN SCHOONE: No, no. That's the same as Mr. Erickson said (inaudible)... [LR214]

SENATOR BRASCH: No. They did not say that. [LR214]

IVAN SCHOONE: They got these options, you know. But they really didn't say that I interpreted that you had to do this or had to do that. But you got to do one or the other.
[LR214]

SENATOR BRASCH: And basically, the meetings are initiated for permitting. It's a permitting workshop... [LR214]

IVAN SCHOONE: That's what they were for. [LR214]

SENATOR BRASCH: ...so they did not tell you that you're going to have to take it out.
[LR214]

IVAN SCHOONE: No. [LR214]

SENATOR BRASCH: They were giving you instructions. Are you aware that people with a well have wells registered and... [LR214]

IVAN SCHOONE: Yeah. I got a well. [LR214]

SENATOR BRASCH: ...you know, controlled? And so is it any different than asking people with surface water that we keep record and track of surface water in its...we've

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

Natural Resources Committee
December 05, 2013

done it, but we just haven't enforced it. [LR214]

IVAN SCHOONE: Well, I have an irrigation well, and I got a well at the farm, you know, in the farmstead, same as anybody else. They're both registered. I have no problem with that. But now, I guess I have a problem with water in general since we lost the lawsuit, which is another story. For years and years, we all thought that was our water. Now all of a sudden, all of the water on the surface and underneath, it all belongs to the state. Well, if the water belongs to the state, let them spend the money and take care of it then. It's not our water. It's their water. [LR214]

SENATOR BRASCH: You've made some really good points. My husband and I, we farm as well. I'm just trying to bring information to record and light... [LR214]

IVAN SCHOONE: Wonderful. I'm glad you're asking. [LR214]

SENATOR BRASCH: ...and see if there's no...something that you would have encouraged the department to do. [LR214]

IVAN SCHOONE: I'm sorry. [LR214]

SENATOR BRASCH: Is there something they should have done differently? [LR214]

IVAN SCHOONE: Well, perhaps they should have had some meetings, some information meetings on it prior to just going out and dictating to everybody, here's what you got to do. And the red print really threw some flags in the air for me. [LR214]

SENATOR BRASCH: Before the letter in January, perhaps they should have had the workshops. [LR214]

IVAN SCHOONE: Yeah. [LR214]

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

Natural Resources Committee
December 05, 2013

SENATOR BRASCH: And then work on compliance. [LR214]

IVAN SCHOONE: Yeah. Right. [LR214]

SENATOR BRASCH: That's a very good suggestion. [LR214]

IVAN SCHOONE: That would have maybe worked a little better to kind of ease the people into it instead of all of a sudden you receive a letter in the mail, that if you don't do this and you don't do that, you're going to be disobeying the laws of the state... [LR214]

SENATOR BRASCH: Very good. [LR214]

IVAN SCHOONE: ...which we didn't even, most of us, I'm one of them. I didn't even know they were there. I had a pond out there. The cattle drank out of it, never has caused a problem. Now, all of a sudden it's a problem. It holds 40-some acre-feet of water. Well, that's news to me. [LR214]

SENATOR BRASCH: Thank you so much. [LR214]

SENATOR CARLSON: Okay. All right. Any other...Senator Davis. [LR214]

SENATOR DAVIS: I just want to make a comment because all these things, it boils down to...it sounds very straightforward and very easy and it turns out to be more than it is. And I'm from...I represent the 43rd District, which is on the north end of the state. And so the Niobrara River runs through most of that. Part of it is in Senator Schilz's district, Sioux County, and then I have everything east of there. So I have constituents whose complaint is this: The creek used to run down to our place and we were able to water out of it. But these people have built all these dams up above it and now we're not

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Natural Resources Committee
December 05, 2013

getting the water. So you know, I really, completely share your frustration and I understand why and I think that you need some justice, absolutely. [LR214]

IVAN SCHOONE: We need some justice. [LR214]

SENATOR DAVIS: But you know, my constituents also need some justice in their area because they're having the same costs and we're going to have to put wells in in order to deal with their lack of water now. So I just wanted to put that on the record a little bit. [LR214]

IVAN SCHOONE: I think the DNR must have ran out of something to do, you know. That's the way it looks. [LR214]

SENATOR CARLSON: All right. Any other questions? All right. Thank you, Ivan, for your testimony. [LR214]

IVAN SCHOONE: Thank you, Senator. Thank you, committee. [LR214]

SENATOR CARLSON: Welcome. [LR214]

MIKE WICKERSHAM: Hi. Mike Wickersham, W-i-c-k-e-r-s-h-a-m. So I'm going to switch concerns here a little bit. I'm from Harrison, Nebraska, in the Hat Creek drainage area. And my concerns are these 15 acre-foot dams are being put in without a permit and then affecting irrigators, more to what Senator Davis just said. And you talk to the DNR and they say, well, they put them in. They're supposed to be for livestock use. They're putting them in for fishing purposes. And I know of one guy that's put in four of them within a mile and a half. And if these 15 acre-foot ponds were intended for livestock use, I don't see why you would need 4 of them in a mile and half. And another abuse they can make with these exemptions is I see coming down the road is a rancher figuring out he can put in a 15 acre-foot dam here and a 15 acre-foot dam here. And he's got 30

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Transcriber's Office
Rough Draft

Natural Resources Committee
December 05, 2013

acre-feet of storage and then he will irrigate out of it into his other diversion or something. Well, the DNR will tell you that they can't do that. But my experiences with DNR, well, how are they going to stop them? And evidently, in the northwest corner of Nebraska, we live under different rules than like the North Platte Valley. If there's a violation in the North Platte Valley in the water district, they go padlock your head gate. In Hat Creek drainage area, it takes them three to four weeks to padlock somebody's head gate. The water is gone by then. So I don't want to take anything away from anybody else was saying, but we just got different concerns in the Hat Creek drainage area. And I think the way to solve it in our area is just to make them be permitted. Any pond being built has to be permitted. And then they can say, you know, you don't need it for livestock. If you're building a pond on a live stream, why would need it for livestock water? [LR214]

SENATOR CARLSON: Okay. I'm going to jump in with the first question here. So before you had those, how did you get water for your livestock? It was a flowing stream? [LR214]

MIKE WICKERSHAM: In the past ten years, in my experience in Hat Creek drainage, there's been about seven of these ponds built. And under the rules, they tell the DNR that...well, they don't even have to tell the DNR. They just go build them. So you don't know if they're built to specs or not. So if they're built on a flowing stream, why would you need a dam for livestock water? [LR214]

SENATOR CARLSON: Except it's affecting water getting to your livestock, that's what... [LR214]

MIKE WICKERSHAM: No. It's affecting water getting to our irrigation rights. [LR214]

SENATOR CARLSON: Okay. So here we got the other end of the spectrum here. And that's what we deal with. [LR214]

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Transcriber's Office
Rough Draft

Natural Resources Committee
December 05, 2013

MIKE WICKERSHAM: So in these...in one, the historic ranch that I'm most familiar with, this guy came in and bought the ground. He put in four of these ponds. And these numbers won't be exact, but this rancher has 150 acre-feet storage here, and he's got 4 ponds up above him holding water. So that's 40...say that's 10 acre-feet per pond, that's 40 acre-feet. Well, you just took a third of his rights away. And the DNR says, well, you can't do anything about it. [LR214]

SENATOR CARLSON: Okay. All right. Questions? Senator Davis. [LR214]

SENATOR DAVIS: I didn't realize you were going to be here today. And I'm glad you are. Does it...it's also happening in Dawes County, to a point, you know. [LR214]

MIKE WICKERSHAM: I'm sure it is. [LR214]

SENATOR DAVIS: And that was what I was referring to. So what's happening is you've got four 15-acre ponds stored on Hat Creek above another 150-acre diversion. [LR214]

MIKE WICKERSHAM: Well, not on Hat Creek. This is a different creek. [LR214]

SENATOR DAVIS: Different creek. But it's above another 150-foot diversion that's below that. So is water released out of those ponds and then retained at the 150? [LR214]

MIKE WICKERSHAM: Well, it should be, but he doesn't have to release it. [LR214]

SENATOR DAVIS: But is he releasing it and then holding it downstream? [LR214]

MIKE WICKERSHAM: No. It's different landowners. [LR214]

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Transcriber's Office
Rough Draft

Natural Resources Committee
December 05, 2013

SENATOR DAVIS: Okay. So he's just holding it in his four ponds. And then how does...? [LR214]

MIKE WICKERSHAM: Then the irrigator, he doesn't get any water. And he's got an 1880 or a 1890 irrigation right. [LR214]

SENATOR DAVIS: So is it depleting the stream completely? [LR214]

MIKE WICKERSHAM: Sure. [LR214]

SENATOR DAVIS: Okay. Thank you. [LR214]

SENATOR CARLSON: Okay. Anything else? Senator Schilz. [LR214]

SENATOR SCHILZ: Thank you. And Mr. Wickersham, thanks for coming in. I know we've talked on the phone and traded e-mails back and forth. Thanks for making the long trip down here. I know it's a cold day, and I'm sure you had plenty of things to do at home. And you mentioned you've got an 1890, I'm guessing it's a natural flow right on Hat Creek. Is that correct? [LR214]

MIKE WICKERSHAM: Well, I confused you. We're in the Hat Creek drainage. I was speaking more in not my personal deal. [LR214]

SENATOR SCHILZ: Okay. Right. [LR214]

MIKE WICKERSHAM: I'm on Monroe Creek, and I have...it's a 1915 storage right. [LR214]

SENATOR SCHILZ: Okay. And when you talk about these dams that have been put in, has that all been recently or has it been over time? [LR214]

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Transcriber's Office
Rough Draft

Natural Resources Committee
December 05, 2013

MIKE WICKERSHAM: No, it has been fairly recent, the last 10, 15 years. [LR214]

SENATOR SCHILZ: Okay. And so when you do talk to DNR, they're saying that there's nothing that they can do because these dams are supposed to be below 15 acre-feet, right? [LR214]

MIKE WICKERSHAM: That is correct. [LR214]

SENATOR SCHILZ: That's interesting, isn't it? Okay. Gosh, maybe you all just need to trade, right? (Laughter) But this is a huge issue because if it's affecting your irrigation rights, or the other thing there, let's say you don't have any irrigation rights but you need to water your cattle with that because I'm pretty sure that up there groundwater is not exactly very good for watering anything. [LR214]

MIKE WICKERSHAM: Well, we fought no water for as long...most of the ranchers have that solved. [LR214]

SENATOR SCHILZ: Right. [LR214]

MIKE WICKERSHAM: So they're not relying out of the deal. But there is issues. I don't know if you're aware of the riparian lawsuit. There's a riparian issue up there that all us irrigators have to turn loose in the fall to satisfy the water, to water livestock in the winter time further down. [LR214]

SENATOR SCHILZ: Okay. I appreciate your time. And we'll be in touch. Thank you. [LR214]

SENATOR CARLSON: Okay. Any other questions? Okay. Mike, thank you for your testimony. Anyone else to testify? Welcome. [LR214]

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

Natural Resources Committee
December 05, 2013

MICHAEL SNYDER: I'm Mike Snyder, S-n-y-d-e-r, and I'm representing Gosper County Highway Department. And back in December of 2012, I received a letter stating that we had a dam that was out of compliance because it was holding 15 acre-feet of water. I thought, how in the heck could Gosper County have a dam that's holding back water...or that was...we owned the dam. And when I found out where the dam was and I contacted the office in Cambridge and asked them why all of sudden are we getting...did I get this letter about it being out of compliance or not having a permit? And he said, well, they are inspecting these dams. And I said but, yeah. But you've been inspecting these dams since 2002. I've gotten letters from you stating that we need to remove trees, we need to do something to the face of the dam so it doesn't wash out. And I said, you knew then that this...I said, how did you know about this dam then if you're claiming that we didn't have a permit for this? He said, I don't know. He said, all these dams are registered. So I think that back when these dams were constructed in the '50s--and my dad had a construction outfit and built a lot of these dams and then I worked for Don Adams Construction and we built a few of these dams--that every one of these dams that were built were probably constructed or designed by the SCS. And I believe that the SCS, they would have to have knowledge of this law back in 1919, that they probably either filed the proper permits or that they had records of them. But when you go to the SCS office, like everybody else says, the records have been destroyed and they've been lost. And so when I talked to the people down in Lincoln, they said, well, you need to fill out a permit. And I said, well, what it was all going to require, this permit. And he stated what I had to do, and then he also said, well, if you could prove that this dam was in before 1996, that it shouldn't be affected by it. And I thought, well, how in the heck am I going to prove that it was 1996? And like everybody else did, I went back to aerial photos and looked. And it was in the map before 1996. And I guess the one dam that it has a drawdown structure in it. And so it's...and again, it's on the landowner. We just have the road over across the dam. And it would be probably an easy fix if they would let us go out and do it. Whoever would do it would lower the drawdown structure, and then it wouldn't hold as much water. But if...and I don't know if

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Transcriber's Office
Rough Draft

Natural Resources Committee
December 05, 2013

any of you are familiar with when these dams were built, they, like I said, they were...had plans. You'd have to go in and you'd have to dig out a keyway in the bottom of a channel, the opposite way your dam went across the road. And then...or went across the channel. And then basically, most of the dirt was taken out in front of the face of the dam. They'd dig, get the dirt from the...in front of the dam and built their dam. And then they built their spillways. And if you wanted to see how much these dams have conserved the...keeping some silt from going down, just look on the backside of the dam because that shows you right there is how deep that creek channel was because they didn't...very seldom did they ever mess with the backside of the dam, getting dirt in front of them. So I guess I just find it ironic that they have records that they can tell us that this dam needs to be...trees need to be removed but yet they say they have no record of this dam. I can't...working in government, I can't believe that that's the case because there's got to be a paper trail somewhere for them to know about this dam because they just don't go out there and you look on the Google Maps and it says Bailey Dam. I mean, how did it ever get the name Bailey Dam? I mean, that's, I guess, what really frustrates me. And then my father-in-law, we have another dam. It's on a minimum maintenance road, and it affects him. And again, the dam is on the road and the landowner is on the face side of the dam. And several years ago, we had a big rain that came in that area. And it washed out...it just dang near washed out the road. So the county went in and we designed a spillway on both sides of the road so that the water wouldn't go over the face of the dam. It would go over and out around the spillways. And when I look at that and try to figure out what we can do as far as they said. You can lower the spillway or you can, you know, take out the dam. And then you look at the downhill or the downstream side of it and you see the creek channel that is there now. And then you can envision what that's going to be like going through your road. I mean, we're either going to have to put in a bridge or put in some type of low water crossing. But then that affects his ground upstream. And I just don't think you can...the benefits of these dams that have been put in, they've silted in the old creek channels. The landowners are getting more benefit out of the land that he's paying taxes on because that creek channel is filled in. He's getting more grassland to feed his cattle. And yet

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

Natural Resources Committee
December 05, 2013

most of these dams are...what they're designed to do was to hold back the silt. And someone asked about, do you go in and you clean out the silt? Well, you don't go in and clean out the silt because that's...you're defeating the whole purpose of the dam because you want it to silt in, to silt in that creek channel. And if you look at all these places where they want, you know, these dams come out and you look at what it's going to be like, I mean, it just, I guess, boggles your mind that they would even think about doing something like this. And then I got to thinking, well, you know, if they take out these...you know, if the farmer says, well, I'm just going to take out the dam, the heck with it. Let the water go downstream. Well, is our government going to come back and say, well, you're violating the Clean Water Act? Then what do we do? I just think that someone has dropped the ball on these permits. I think when they were designed and built that there was some kind of record that they were built because the SCS wouldn't...they're the ones who designed them. I mean, a landowner couldn't go out there and design his own dam and, you know, he wouldn't get payment for it. [LR214]

SENATOR CARLSON: Okay. Thank you, Mike. Any questions of the committee? I guess, hearing none, thank you for coming. Thank you for your testimony. Anyone else to testify? Welcome, Mary Kay. [LR214]

MARY KAY LYON: Thank you. Thank you for being here today. My name is Mary Kay Lyon; it's M-a-r-y K-a-y L-y-o-n. I own a section of pasture in Gosper County south of Smithfield. I bought my pasture in 1986. It had an existing dam at the time. It's located on the east branch of Turkey Creek. It obviously had been there for several years when I purchased my pasture. And as with everyone else, I've been doing some research. And the oldest aerial photograph I could come up with was 1968 that showed that my dam was in existence then. So it was sometime prior to '68 it was put in. Like everyone else, I received the letters from DNR. I had had no contact whatsoever with DNR before that letter that was dated last December. I knew nothing of any permitting requirements or anything. You know, that dam is used strictly for water for the livestock. I mean, it's a major source of water for the livestock in my pasture. And it also serves a distinct

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

Natural Resources Committee
December 05, 2013

purpose for erosion control and flood control downstream because every once in a while we get a big rain. And it does slow up a tremendous amount of water. According to the letters that I did get from DNR, they estimated that it held 22.2 acre-feet. I question that because, like everyone else's, it has silted in some over time. I called DNR. I talked to someone down there two or three different times, got a couple more letters. I did eventually fill out the petition I think it's called. That was in April I sent that. And I got a call back that they had received my petition form and that they'd also been out there. Someone, I think, from the Cambridge office or from Safety of Dams Division, somebody had been out there and inspected my dam. And since it didn't have a tube in it, why it would be quite easy to take care of everything. And I said, but it does have a tube in it. And they said, oh. And that was the last that I've heard of anyone. So anyway, I just...really serves a major purpose for water for my livestock. And I just...I understand these other issues or concerns with newer dams being put in and taking away water. But I think we have two different issues here. You know, newer dams restricting water as opposed to these older dams that were put in 50 years ago that are serving a good purpose for conservation and for providing water for the livestock. And so I just really...and I have done some...I looked into...I contacted a surveyor to see what they thought it would cost to survey my dam. And the estimate he gave me was about \$2,000 to actually survey it. And I just don't see what good that's going to do to spend that money or to spend money to remove it or to modify it in such a fashion that it really serves no purpose. So I think it's serving the purpose it was intended for. [LR214]

SENATOR CARLSON: Thank you, Mary Kay. So after you indicated there was a tube there, then you've not heard any more? [LR214]

MARY KAY LYON: Haven't heard anything since. [LR214]

SENATOR CARLSON: Okay. Thank you. Senator Davis. [LR214]

SENATOR DAVIS: I'm always asking lots of questions, but one thing that's puzzled me

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Transcriber's Office
Rough Draft

Natural Resources Committee
December 05, 2013

in all...did you ask your NRCS office or FSA if they had any records of this dam?
[LR214]

MARY KAY LYON: Oh, yes. I went there. [LR214]

SENATOR DAVIS: And they said they didn't. [LR214]

MARY KAY LYON: They said they did not. They said that all of the older records had been sent to the office in Lincoln. That was the answer I got. [LR214]

SENATOR DAVIS: And so, and I should have asked this of everybody, has everybody tried to follow that chain as far as they can? [LR214]

MARY KAY LYON: No, I did not try and contact anyone in Lincoln. [LR214]

SENATOR DAVIS: It's really hard for me to imagine that all these records would have been destroyed somewhere. You know, there should be microfilm of them or something somewhere. And maybe we need to pursue that and see if we can locate those and that would tell you how many acre-feet it was originally planned to be rather than having to go through the process of a survey. Thank you. [LR214]

MARY KAY LYON: Right. But of course they all have silted in, so the capacity now is less than what it was originally. [LR214]

SENATOR CARLSON: Okay. Senator Brasch. [LR214]

SENATOR BRASCH: Thank you, Chairman Carlson, and thank you as well, Ms. Lyon. How long ago was that call about the tube? [LR214]

MARY KAY LYON: Well, I sent that petition form in in April, and so it was shortly after

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

Natural Resources Committee
December 05, 2013

that. It would have been the end of April, the first of May. [LR214]

SENATOR BRASCH: And I'm reading. They sent out information on this, and it says, "To date, no one has been denied a permit." Did they give you any indication you'd be denied that permit... [LR214]

MARY KAY LYON: No. [LR214]

SENATOR BRASCH: ...in your conversation or that you'd have to hire a surveyor? [LR214]

MARY KAY LYON: No. [LR214]

SENATOR BRASCH: No. [LR214]

MARY KAY LYON: I just sent in that petition. It's kind of a permit to get a permit type of thing, and I have not heard anything from them since. [LR214]

SENATOR BRASCH: Yeah. Our records show that they have approved 32 petitions. No one has been denied. Questions were asked earlier about why, out of the clear blue sky, people are doing this? And it says that there was a law written on the safety of dams by the 2005 Legislature that started giving this a priority. And so they're looking at the safety of dams, exempting anyone that's 15 water feet or less, asking for permits above. And your concern today is that you haven't heard since April because you went ahead and did the permit. [LR214]

MARY KAY LYON: I did send it in, yes. I mean, I would like them to just be...to see them exempt all of these 50-plus-year-old dams. [LR214]

SENATOR BRASCH: And did anyone advise you not to comply or not to get a permit?

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

Natural Resources Committee
December 05, 2013

No? You didn't get the phone call? (Laugh) So you're fine with complying at this point.
[LR214]

MARY KAY LYON: Well, no. I would prefer that they... [LR214]

SENATOR BRASCH: No. Prefer not to. [LR214]

MARY KAY LYON: ...eliminate the permit requirement completely... [LR214]

SENATOR BRASCH: Provision altogether. [LR214]

MARY KAY LYON: ...for an older dam like that. [LR214]

SENATOR BRASCH: Okay, okay. I just am curious on the directions. You know, we've had some proponents in here, people who are supportive saying that it will protect water flow. And then you're saying that you went ahead with the procedure but had not heard anything in quite a long time actually. So yeah, I appreciate your testimony. That's very good information. Thank you for coming forward. [LR214]

SENATOR CARLSON: Okay. Thank you. Any other...Mary Kay, let me ask you. So you sent it in in April, and I think you said you maybe got a call in May. You got a call.
[LR214]

MARY KAY LYON: Well, I got a call shortly after I sent it in. [LR214]

SENATOR CARLSON: Well, why...they called you to tell you you needed a tube.
[LR214]

MARY KAY LYON: That I...well, just that I sent it in and that they had been out because in an earlier conversation they had said something about that someone would need to

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

Natural Resources Committee
December 05, 2013

come out and actually inspect it. And so when she called me back after I had sent in my petition, she said...thanked me for sending that in and that someone had been out there and inspected it. And because my dam does not have a tube, it should be fairly simple or something. [LR214]

SENATOR CARLSON: And then you said it does have a tube. [LR214]

MARY KAY LYON: And I said, but it does have a tube. [LR214]

SENATOR CARLSON: And that ended it. [LR214]

MARY KAY LYON: And they just said, oh. And that was the end of it. [LR214]

SENATOR CARLSON: Okay. You're kind of hoping you don't hear, aren't you? [LR214]

MARY KAY LYON: Yeah, it doesn't bother me at all. (Laughter) [LR214]

SENATOR CARLSON: All right. Any other questions? Okay. Thank you. Anyone else to testify? How many more do we have that want to testify? [LR214]

GENE GLANZER: I don't want to be the last one. [LR214]

SENATOR CARLSON: I think you're going to be the last one maybe. [LR214]

GENE GLANZER: Okay. [LR214]

SENATOR CARLSON: Welcome. [LR214]

GENE GLANZER: My name is Gene Glanzer, G-l-a-n-z-e-r. Mark Christensen is my representative. I have one dam. I purchased this, where the dam is, I purchased about

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

Natural Resources Committee
December 05, 2013

five years ago. It was estimated 44 acre-feet. And here again, it's not. It's probably a 1960s dam. And I went to all the meetings. And the thing I got...I got the red letter too. And the thing that probably upset us, me the most was very little was in my mind in these meetings that I went to. The permit was very, very secondary. You will do this. I mean, this or jail--life without parole, something, you know. But anyway, I followed through except finally, I didn't send the paperwork in. There's one alternative I thought I might do is that the dam is old and it's silted and buildup. I dug out up front and cut the spillway down to whatever elevation they wanted. I thought that might be a solution to my problem, do a...you know, do something like that if that would meet their criteria. And I think that would probably...a lot of people might be interested in something like that. A dugout don't hold a lot of water, but it sustains the water in a dry summer. I got a couple of them and it stayed all summer long. There was water in it for the cattle where my other dams were all dry for the whole summer. [LR214]

SENATOR CARLSON: Okay. All right. [LR214]

GENE GLANZER: So I thought I might just put in that two cents' worth. [LR214]

SENATOR CARLSON: No, that was...that's okay. I appreciate your testimony. [LR214]

GENE GLANZER: Another question I might have is basically the reason why they do this is to show they want less...the Tri-Basin wants less evaporation to show. Good for them for the whole Republican Valley project. Is that right? [LR214]

SENATOR CARLSON: Well, you're asking questions. And we can't really... [LR214]

GENE GLANZER: Oh, you can't...oh. [LR214]

SENATOR CARLSON: ...we can't really answer that. We're here to listen to you...
[LR214]

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

Natural Resources Committee
December 05, 2013

GENE GLANZER: I see. Oh, okay. [LR214]

SENATOR CARLSON: ...and what your concerns are. But that's a question so we'll look into that. [LR214]

GENE GLANZER: Yeah. Okay. And another reason why that letter was probably upsetting to me was on account of the Republican Valley. And I had just found out two weeks before that that we weren't going to have any irrigation water for the summer. [LR214]

SENATOR CARLSON: Okay. Yeah. Yeah, that's a big irritant. [LR214]

GENE GLANZER: Anybody have any questions for me? [LR214]

SENATOR CARLSON: Yeah. Any questions? Senator Brasch. [LR214]

SENATOR BRASCH: Thank you, Chairman. When you got the letter, did the letter say something was wrong, that you were not in compliance? Or was the letter just...? [LR214]

GENE GLANZER: Yeah, yeah. [LR214]

SENATOR BRASCH: So there was a problem. [LR214]

GENE GLANZER: It was not permitted. It was not permitted. [LR214]

SENATOR BRASCH: But...just you needed a permit, not that you needed to hire people and you needed to put in tubes or... [LR214]

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

Natural Resources Committee
December 05, 2013

GENE GLANZER: Yeah. That come...and when I went to the informational meeting in Arapahoe and I went to one in McCook and I heard about a little bit in one of the meeting in Holdrege is that the impression I got is, we want that dam down to 15 acre-feet. Do it. You know, that was... [LR214]

SENATOR BRASCH: Or a permit. If you get it less, then you won't have to have a permit. [LR214]

GENE GLANZER: Yeah. The permit actually was secondary. [LR214]

SENATOR BRASCH: Okay. [LR214]

GENE GLANZER: If you got the permit, didn't make any difference. You was going to do it anyway. [LR214]

SENATOR BRASCH: Because what the law wants anyone with larger than 15 feet to get a permit and a certain year. But they were not mandating any type of action for you other than getting a permit because of the size, correct? [LR214]

GENE GLANZER: Yeah, yeah. That wasn't the impression I was under because that's all they talked about... [LR214]

SENATOR BRASCH: No. At the public meetings? [LR214]

GENE GLANZER: ...yes, was getting...the permit was never stressed like that in my opinion. [LR214]

SENATOR BRASCH: But the letter did not give you anything that you had to spend or do specifically. It was that same red standard letter that everyone else got. [LR214]

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

Natural Resources Committee
December 05, 2013

GENE GLANZER: Yeah, yeah. [LR214]

SENATOR BRASCH: And they have not been out yet and given you any... [LR214]

GENE GLANZER: No, ma'am. [LR214]

SENATOR BRASCH: Okay. I just wanted some clarity. [LR214]

GENE GLANZER: Yeah. [LR214]

SENATOR BRASCH: So I don't think you have to think about jail for a while yet.
[LR214]

GENE GLANZER: Okay. [LR214]

SENATOR BRASCH: Okay. All right. Thank you. [LR214]

SENATOR CARLSON: Okay. Thank you. Any other questions? Okay. Thank you for your testimony, Gene. Any other individual to testify? If not, we appreciate you coming this afternoon. And with that, we close the hearing on LR214. Committee, thank you for coming. (See also Exhibit 4) [LR214]