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Natural Resources Committee
January 30, 2014

[LB686 LB710 CONFIRMATION]

The Committee on Natural Resources met at 1:30 p.m. on Wednesday, January 30, 2014, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB686 and LB710 and gubernatorial appointments. Senators present: Tom Carlson, Chairperson; Lydia Brasch, Vice Chairperson; Annette Dubas; Jerry Johnson; Rick Kolowski; Ken Schilz; and Jim Smith. Senators absent: Ken Haar.

SENATOR CARLSON: It is 1:30; welcome to the Natural Resources Committee. I am Tom Carlson, state senator from District 38, Chair of the committee. And committee members here: to my far left is Senator Rick Kolowski from Omaha, District 31. Eventually next to him will be Senator Ken Haar from Malcolm, District 21; then Senator Jim Smith from Papillion, District 14. And then the empty chair over here is for Senator Ken Schilz from Ogallala, District 47. Our legal counsel is Laurie Lage to my immediate left. And to my far right is Barb Koehlmoos, the committee clerk. Then Senator Lydia Brasch from Bancroft, District 16, and she is the Vice Chair of the Natural Resources Committee. Then Senator Jerry Johnson from Wahoo, District 23; Senator Annette Dubas from Fullerton, District 34. Our page today is Steven Schubert from Lincoln who is a senior at UNL. Do we have J.T. here today?

STEVEN SCHUBERT: No. [CONFIRMATION]

SENATOR CARLSON: No, okay. So if you have questions or need something done for you, Steven can take care of it. Those of you that are going to testify, make sure you picked up a green sheet in the back and fill it out and have it filled out before you testify; hand it in to the box next to Barb before you take your seat there. If you don't choose to testify, you may submit comments in writing and have them read into the official record. When you come up to the microphone, simply take the chair; it's not necessary to move the microphone; but committee members, I've been told that we don't come across quite as well, so I guess I'm asking you, as you're going to speak and ask questions lean forward a little bit and so that the microphone can pick you up better. If you want to register that you're here, there's a white sheet back there that you can sign and then that will go down in the official record that you are attending the hearing and you're welcome to do that. If you have handouts, try and make sure you have 12 of those to be handed out. And if you don't, Steven can help you with that. The committee doesn't use electronics during the hearing, and so if you have cell phones, either turn them off or put them on vibrate if you would so it doesn't disturb the testimony of the hearing. We don't allow any public displays of support or opposition to a bill and in that way we keep everything orderly. I've never had a problem yet, and I don't think we're going to have a problem today. Are there any questions? Now, we have some special people here, participants of the Fourth Water Leaders Academy are in attendance and it's this group over here. The Water Leaders Academy is a one-year program that provides an

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opportunity for Nebraskans who demonstrate an interest in water to broaden their natural resources knowledge and strengthen their leadership skills. Those who participate in the academy are encouraged to become future leaders in water policy in Nebraska. And so we welcome that group to our hearing today and appreciate the time that you've taken to be here. In fact, let's give them a hand. (Applause) We do have a confirmation hearing on two individuals today. And so with that, Galen, we'll ask you to come forward and take the chair. These are confirmation hearings for the Nebraska Ethanol Board. And as you are there, Galen, once I give you the go ahead here, state your name and spell it for us. You are a reappointee to the Ethanol Board, so you can tell us about yourself or about your experience on the Ethanol Board, whatever you think would be appropriate for the committee and we'll look forward to hearing from you. So go ahead and begin. [CONFIRMATION]

GALEN FRENZEN: (Exhibit 1) Okay. My name is Galen Frenzen, Galen is G-a-l-e-n, Frenzen is F-r-e-n-z-e-n. I'm from Fullerton, Nebraska. And I'll apologize in advance to...I'll probably call a couple of people by first name other than senators because I've known them a lot longer than what they've been senators. But I am currently chairman of the Nebraska Ethanol Board. And I don't have a whole lot to say about...other than...I might just point out one thing that I found very interesting. A week ago today I was in Des Moines, Iowa, where Governor Branstad had a hearing in regards to the RFS that was coming up and EPA did not come. So it was, in all honesty, sort of preaching to the choir, but there was a gentleman that had a totally different perspective. And as I told the people that if you don't remember anything, just remember what this individual is. His name was Dr. Tim Gibbons. He was originally a farm kid from northern Iowa; he went to vet school. During that time the farm crisis was on, so he decided he'd switch things around and he went to med school. He's an orthopedic surgeon right now. And when his student loans came due, he did like, unfortunately, a lot of them have to do, he joined the Army Reserves. So he spent some time in the Middle East as a doctor. And he came with a lot of facts and figures, not only in the loss of life, but in the amount of people that were maimed, injured physically and mentally both. And then he stated some...the cost of dollars...what it has cost to keep the pipelines open in the Middle East. And you could have heard a pin drop when he was making his presentation; totally different than anything else that ever came. And this RFS that's up for renewal, point blank it's the oil industry. And it's really difficult for the ethanol industry to have to use their biggest competitor, being oil industry, to market our product. And that's basically where we're at. They like ethanol just enough to get their 84 octane up to 87, and after that they really don't care much more about us. And his big point was just what it's cost to keep the pipelines open in the Middle East where we could...we have a sustainable product right here in Nebraska. If you'd like a copy of that, I sent the copy...I asked him for a copy of that. He e-mailed it to me and I e-mailed it then to the Nebraska Ethanol Board office. So if anybody is interested in a copy of his comments, get ahold of the Nebraska Ethanol Board, they would have it. Very interesting perspective. [CONFIRMATION]

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SENATOR CARLSON: All right. Thank you for your testimony and for your service thus far. We have questions from the committee? Senator Dubas. [CONFIRMATION]

SENATOR DUBAS: Thank you, Senator Carlson. Thank you very much, Galen, for being here and for your service on the Ethanol Board. Just picking up on that RFS issue. I mean, it's pretty easy for us to talk to our citizens about ethanol. They, for the most part, I think, understand it, they're surrounded by it and a lot of our Midwestern states, Iowa, so we can make our case here. Are we a minority making that case or is there pretty good widespread understanding of what ethanol means, not only just for cleaner energy and all those other things, but to our economy, is that across the nation or do we really have a big, big chore on our hands to convince the EPA that they're going the wrong way? [CONFIRMATION]

GALEN FRENZEN: I think we have a big problem on our hands, or a big job on our hands. Oil, which is highly subsidized, has a tremendous amount of power and they're leaning hard. And it's the people that...the oil industry has brought in against them. And I figured Senator Schilz was going to be here so I knew what he was going to ask me, that he's going to ask me if we're a member of the Nebraska Cattlemen or member of the National Cattlemen's Beef Association that are opposed to it. Well, they're opposed to it because 2012 was a wreck. Corn got super high; 2012, as I've told most of them, was an anomaly and I hope they never see it again. But that's what shot the price of corn up. And so the oil industry was able to bring them in, they got the grocers association in, and they have a lot of political power in Washington, unfortunately. And then the people don't understand the...well, there's a lot of negative press on what ethanol will do to your engines. And the oil industry has got the auto industry convinced that, you know, don't burn ethanol and particularly the small engines. And, you know, I had that old 1964 red truck that you've probably seen driving around, Senator Dubas, and I went straight to ethanol with it and it kept running; bleed the gas tank out, but kept running. [CONFIRMATION]

SENATOR DUBAS: I should know this, but I've either forgotten or I didn't know it. When will...do you know when we'll hear the ruling from the EPA? [CONFIRMATION]

GALEN FRENZEN: I have no idea, probably the same time as the pipeline will be decided. (Laugh) [CONFIRMATION]

SENATOR DUBAS: Well, I appreciate you... [CONFIRMATION]

GALEN FRENZEN: You didn't hear that. [CONFIRMATION]

SENATOR DUBAS: I appreciate you continuing to work to support ethanol. And I think the fact that you understand the cattle industry gives you that additional ability to convey

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the message about the importance of ethanol. [CONFIRMATION]

GALEN FRENZEN: Well that's why...when I went to Des Moines, that was going to be my comments, which they were somewhat, was the feed aspect, because I feed a tremendous amount of distillers. I feed a lot of distillers. And in 2012, that's what kept us...enabled us to keep our cow herds around. And you can relate to that. I mean, it cost a lot of money just to find junk hay, junk feed. And we was able to, and, you know, utilized the distillers, the by-products, used to be called by-products, now it's coproduct to increase the nutrition, the nutrient aspect of the junk roughage that we were feeding. [CONFIRMATION]

SENATOR DUBAS: Thank you. [CONFIRMATION]

SENATOR CARLSON: Okay, thank you. Senator Johnson. [CONFIRMATION]

SENATOR JOHNSON: Thank you, Senator Carlson. Thank you, Galen, for coming in. The RFS is a stumbling block, I realize, right now. Serving on an ethanol board, we're getting inquiries about how to best market the blender pumps and getting more people used to the blends and that. Is that the right time to be working on that, or do we need...other things that we need to fix before we put a lot of money into blender pumps? [CONFIRMATION]

GALEN FRENZEN: That's a hard one to answer. I don't know if I can effectively answer that. There's probably more people behind me that could, but I think it's...there's a lot of people driving flex-fuel vehicles out there that don't realize that it's not so much the miles per gallon that you get, but it's the cost per mile that you get. And it's a known fact that for the most part, not always, but for the most part the higher the ethanol content, the lower the mileage is going to be. But in the same instance, it sometimes cost you a buck a gallon less. So, but I can't answer that. I think there's a lot of promotion on the blender pumps. If it's not offered, you're not going to be able to use it, but yet they're not cheap to put in either. [CONFIRMATION]

SENATOR JOHNSON: Thank you. [CONFIRMATION]

SENATOR CARLSON: Okay. Any other questions of the committee? What's been your primary responsibility with the Ethanol Board and is that going to continue, or how do you see your responsibility there? [CONFIRMATION]

GALEN FRENZEN: I don't know if I have a primary responsibility. We meet about five times a year and I try to go to meetings prepared and direct traffic at the meetings. That's not probably a good way to put it, but I sort of...you know, a chairman, sometimes you direct traffic. And I make sure that everybody has an option to present their views. And I don't go out a whole lot as chairman of the Ethanol Board to make speeches,

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which is fine with me; I'm busy. So, I've been reelected for another year now. If you want to decline my confirmation, that's all right. I have a good VP behind me, but...
[CONFIRMATION]

SENATOR CARLSON: It would give you some freedom then, but we don't intend to do that. Let's go back to the distillers grain that you've fed. And are your records such that had you been feeding straight corn versus distillers, how does the rate of gain compare? [CONFIRMATION]

GALEN FRENZEN: I use...I'm in the bull business and I use the distillers on my bulls. And I don't like to feed corn to bulls. It gets them corn fat is the term. And I was probably using...feeding a higher rate of distillers in my ration than anybody in the state of Nebraska because whenever I would visit with Galen Erickson or Terry Klopfenstein and I'd ask them about, well, how much can I really feed, what percent of the ration can it be? And they both looked at me and they said, well, you're feeding more than anybody we know. So I can't really tell you the gains on my bull deal. I don't go for big gains. I want them to grow and I want to keep them sound and I don't want to get them fat. And that's what I like about the distillers feed is that they grow structurally; it keeps them hard muscled and they don't get fat. The big thing, I guess, also with the distillers, it's a great source of protein. And so we've totally eliminated any protein source. And in fact, a lot of the energy comes from surplus protein. So I can't really give you accurate gains. I have a ration, the design for, you know, X pounds of gain and that's what I feed for. [CONFIRMATION]

SENATOR CARLSON: Okay. All right, thank you. Any other questions? Seeing none, thank you for coming and for your testimony. [CONFIRMATION]

GALEN FRENZEN: Thank you. Thank you. [CONFIRMATION]

SENATOR CARLSON: Okay. Anyone testifying as a proponent? Or anyone as an opponent? Anyone in the neutral position? Seeing none, then we close the appointment hearing on Galen Frenzen. And let's go to Paul, Paul Kenney. Welcome.
[CONFIRMATION]

PAUL KENNEY: (Exhibit 2) Thank you, Senator. Paul Kenney, P-a-u-l K-e-n-n-e-y.
[CONFIRMATION]

SENATOR CARLSON: Yeah, go ahead and tell us about yourself. [CONFIRMATION]

PAUL KENNEY: Senator, I'm the vice chairman of the Ethanol Board. I farm and ranch near Amherst, Nebraska, which is a small town northwest of Kearney. I'm also chairman of KAAPA Ethanol. It started as a farmer-based ethanol plant in central Nebraska, one of the few farmer-only plants in the United States still left operational, 60-million-gallon

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plant right south of Kearney at Minden, Nebraska. It is now a small part of an operation. The operation...we're just under 190 million gallons of ethanol with plants at North Dakota, Minnesota, and Ohio. We also own a grain elevator at Elm Creek, Nebraska; and also part of a marketing group called Renewable Fuels Marketing Group and it's the third largest marketer of ethanol in the world. We're proud of what we've done in the ethanol industry; appreciate all the support we have gotten. And, you know, we've worked hard recently on the renewable fuel standard which would affect the amount of fuel that is blended in the nation's fuel supply. I'd also like to thank Senators Carlson and Dubas for the different individual stands you guys have taken in support of ethanol. It's been huge. We've found it very hard in Nebraska to get people to stand on a line and say, yes, I enjoy and support ethanol. And if you have any questions, Senator, that...I'd appreciate the opportunity to answer them. [CONFIRMATION]

SENATOR CARLSON: Okay. Thank you. Questions of the committee? Senator Johnson. [CONFIRMATION]

SENATOR JOHNSON: I'll start it off. Thank you, Paul, for your service and appreciate it from the standpoint of your leadership that you've not only provided KAAPA, but the state. I'm assuming the RFS is the biggest challenge. What other challenges do you see maybe for Nebraska ethanol or the ethanol industry that's facing the board or facing the industry? [CONFIRMATION]

PAUL KENNEY: Senator, it's been kind of a scary deal. You know, five, six years ago we were the darling of the world and, you know, we had clean air and good jobs and all that, and somewhere between now and then that's changed. Someone told me that we're battling a group of big oil that has more money than God. And how you can take an industry that was such a darling of everyone that's had clean air, helped the rural economies and now we're not good and oil is good. I'd like a lot of help in explaining that one. [CONFIRMATION]

SENATOR JOHNSON: Okay, thank you. [CONFIRMATION]

SENATOR CARLSON: Okay. Any other questions? I want to ask you a little bit about...you may have said it, and if you did, I missed it. What kind of feeding operation do you have? [CONFIRMATION]

PAUL KENNEY: Cow-calf operation. [CONFIRMATION]

SENATOR CARLSON: Okay. [CONFIRMATION]

PAUL KENNEY: Senator, we background our calves until the first of March, until we start calving again. [CONFIRMATION]

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SENATOR CARLSON: So, do you use distillers grain? [CONFIRMATION]

PAUL KENNEY: Have since the inception of our plant. You know, we've...what that has allowed us to do is use more residues, crop residues from day one, blend those in and raise the quality of that type of roughage into, you know, what we used to do is a lot more alfalfa and some supplemental grains. We do not feed grains anymore. [CONFIRMATION]

SENATOR CARLSON: And you're, obviously, you're satisfied with the results of distillers. [CONFIRMATION]

PAUL KENNEY: Very much so. [CONFIRMATION]

SENATOR CARLSON: Or they wouldn't let you on the board. [CONFIRMATION]

PAUL KENNEY: Very much so. It's been a fundamental change, Senator, where we've also added more value to our farmers, to our plants, to the state of Nebraska by selling roughly, you know, 6, 8 percent oil off the product. It's probably...if you're feeding like Galen is where you're feeding an awful lot of distillers grains, it's probably in excess and probably didn't need it. And it's been, you know, in the last four or five years there's been a big addition to the bottom line to the operation of plants in Nebraska. [CONFIRMATION]

SENATOR CARLSON: Would call fossil fuels a renewable fuel? [CONFIRMATION]

PAUL KENNEY: I would not. [CONFIRMATION]

SENATOR CARLSON: So we've got a limited supply, don't we? [CONFIRMATION]

PAUL KENNEY: Yes, we do. [CONFIRMATION]

SENATOR CARLSON: But we don't want in the renewable fuel that's not a limited supply and who is responsible for that? [CONFIRMATION]

PAUL KENNEY: That's a good question. And where do we go, you know, one that I talk about, Senator, is that, you know, what happens in the day and ten years from now when we're producing more corn than we can use like we did ten years ago and we're still limited to the 15 billion gallons of corn-produced ethanol. That doesn't make a lot of sense to me. [CONFIRMATION]

SENATOR CARLSON: And in your opinion, this has come about, really, because of the big money of big oil. [CONFIRMATION]

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PAUL KENNEY: Food versus fuel, you know, the whole nine yards that you...there's hundreds of comments that come out like that; those have kind of led the way. And even ag groups, and I've been ashamed that there's been ag groups in Nebraska attack other ag groups because of it. But, you know, that's something that should never happen. I'm a beef producer myself and it was disheartening when that happened.
[CONFIRMATION]

SENATOR CARLSON: Okay. All right. Thank you. Yes, Senator Kolowski.
[CONFIRMATION]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Paul, thank you for your service and just a question here. Your plant is down by...south of Kearney, down by Axtell?
[CONFIRMATION]

PAUL KENNEY: It is. [CONFIRMATION]

SENATOR KOLOWSKI: One daughter-in-law came from Axtell so I know the area very well and have been by it many, many times. We have a water class here today and we've had a little study of water this last year to say the least, but you use a lot of water. Are you having...are you getting enough supply for your needs in the plants all over Nebraska? [CONFIRMATION]

PAUL KENNEY: Senator, yes to all the above. And one of the things that we try to do is, obviously, to recycle as much water as we can. We do not dry any of our product coming out of our plant, is one of the few plants in the country that way, but one of the unique things we do, we're some 20 miles from the Platte River and the Environmental Protection Agency says you have to do something with that water. So what we did...eventually we started and we irrigated with that. And as we expanded the plant, we absolutely had too much water, so we built a pipeline from KAAPA Ethanol to the Platte River and we add water back into the Platte. [CONFIRMATION]

SENATOR KOLOWSKI: Thank you, sir. Good luck. [CONFIRMATION]

PAUL KENNEY: Um-hum. Thank you. [CONFIRMATION]

SENATOR CARLSON: Now I'm going to have you refine...because you said we have too much water, but how many gallons of water does it take for a gallon of ethanol at the plant? [CONFIRMATION]

PAUL KENNEY: Oh, that...you're going to put me on the spot and I'm not going to be able to answer that question. But it's actually came down a lot because of...the technology changes and some of that; we recycle it back to our pit and none of our water ever that touches corn ever leaves the plant, so we're pretty proud of that.

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[CONFIRMATION]

SENATOR CARLSON: Yeah, and I realize technology has gotten to the point that it's less and less water per gallon of ethanol as we go along and there will probably be some more improvements in that as time goes along. [CONFIRMATION]

PAUL KENNEY: Right. [CONFIRMATION]

SENATOR CARLSON: What does the state of Nebraska need to do to...more than what we are, to try and help ethanol? [CONFIRMATION]

PAUL KENNEY: Well, you know, and I ask myself that question as being on the Nebraska Ethanol Board and being chairman of KAAPA Ethanol is how do we rally our friends and neighbors and different states and the big city that we are good, we are healthy and we help the country. That would be a monumental task to get back to where we were, I think. We just have so many battles that it's almost impossible to fight every...try to put every little forest fire out that starts a story about ethanol. [CONFIRMATION]

SENATOR CARLSON: Okay. One other question, you bought some shares in KAAPA when it first started, didn't you? [CONFIRMATION]

PAUL KENNEY: I did. I was one of the... [CONFIRMATION]

SENATOR CARLSON: I know what you paid, and I'd be glad to pay you that for some more shares right now. (Laughter) But I don't think you'll take me up on it. [CONFIRMATION]

PAUL KENNEY: You know, there's a lot of people that said that. But you know at the time, Senator, you know there's a lot of people that have gone broke in the ethanol industry and it was kind of a scary deal. And that stage in my life I borrowed every penny of the shares that I bought, so it was probably a good thing that they turned around. [CONFIRMATION]

SENATOR CARLSON: Sometimes risk makes some sense. [CONFIRMATION]

PAUL KENNEY: Yes. [CONFIRMATION]

SENATOR CARLSON: Senator Kolowski, are you going to try to buy some shares too? [CONFIRMATION]

SENATOR KOLOWSKI: No, sir. I wanted to ask from the perspective of the power of the states, you've got quite a few states growing a lot of corn. Do you have a good

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relationship and are you doing the political things you need to do internally or is it kind of a discombobulated front at times... [CONFIRMATION]

PAUL KENNEY: Senator,... [CONFIRMATION]

SENATOR KOLOWSKI: ...all from Ohio to Nebraska plus? [CONFIRMATION]

PAUL KENNEY: ...we have a big relationship. Our renewable fuels group is in Minneapolis and we have a lot of partners that...the company is called Guardian Energy. And, you know, they're very politically entrenched in the Minnesota areas of government. We're probably not so much in Ohio, but we just bought the plant in North Dakota, so it's tough to say that we're every place that we need to be and generally we've tried to focus on being the most efficient company in the country and produce as many gallons as we can. So we have probably not done what we've should on the selling side of our industry. [CONFIRMATION]

SENATOR KOLOWSKI: Well, we certainly understand the power of big oil and what they're doing and that's got to be a very difficult challenge at times. [CONFIRMATION]

PAUL KENNEY: It has been. [CONFIRMATION]

SENATOR KOLOWSKI: Thank you. [CONFIRMATION]

SENATOR CARLSON: Any other questions? Senator Johnson. [CONFIRMATION]

SENATOR JOHNSON: This is my second line right? From 40 years, I was involved in a farmer-owned elevator business and managed co-ops and when ethanol plants first came, that's where we dumped our bad grain and we got over that. Chief was very instrumental in starting that process. But my...following up a little bit on the relationship with corn, do you feel...well, it's...corn is usually considered corn for food, not for energy. Do you see politically that we could, should, and I don't even know what it would cost the plants to retrofit, to spend more time trying to look at alternative feed source for ethanol? I know we've tried switchgrass and everything else to garbage. [CONFIRMATION]

PAUL KENNEY: Senator, I've done an awful lot of work on the (inaudible) any type of cellulose. You know, some of the plants we've looked at we call them a one point five where the distillers grains comes out and there's fiber in that and that could be broke down as part of the cellulosic, but, you know, at the price of today's numbers, cellulosic isn't there. When we start running out of oil or those type of things, and drive up the price of energy, then some of those will, obviously, come into more importance because it's just a lot more expensive to build a cellulosic plant than it is a dry-mill corn plant. [CONFIRMATION]

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SENATOR JOHNSON: Thank you. That's what I've been hearing as a member of an ethanol board. Now it's on the record. Thank you. [CONFIRMATION]

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

PAUL KENNEY: Thank you, Senator. [CONFIRMATION]

SENATOR CARLSON: And are there any...does anybody want to testify as a proponent? Welcome, Loran. [CONFIRMATION]

LORAN SCHMIT: Thank you, Senator Carlson. Chairman, members of the committee, my name is Loran Schmit. L-o-r-a-n S-c-h-m-i-t. I want to appear today on behalf of both Mr. Frenzen and Mr. Kenney and speak on their behalf. And I would just like to call attention to the fact that both of these gentlemen are leaders in their community and many other areas other than in the production of ethanol and their support for ethanol. The committee members have asked a lot of good questions and it's very satisfying to myself personally that we have the support of as many members of this body, and particularly this committee, as we do have. I'd just like to say a couple of things in kind of a historical manner. It's been 43 years ago since the Nebraska Legislature created the Nebraska Ethanol Board. Most of that time it's been under the direction of Administrator Todd Sneller. And Todd has been the leader in that area. And when the Legislature first passed the bill, it was their responsibility to determine if ethanol would ever be a feasible product made from corn in Nebraska. I have a file of derogatory remarks that have been collected over the last 40 years by various politicians and Congress and other folks who have said ethanol would never be a factor. And you've asked some good questions. One of my friends in the oil business said, Loran, we totally underestimated you farmers when you got interested in ethanol. And we never expected you rascals to get 10 percent of our market, and from now on we're going to pull out all the stops and we're going to go after you. Well, we know that politics is like a war. If you stop fighting, the other side wins. And although times are not good today, Todd can tell you that there were times when it was even more bare knuckled than it is today. And so we're not unaccustomed to fighting, but we recognize that those of us who benefit mostly from the ethanol industry need to be the most vigilant in its defense. And I don't want to say what my friend actually said because it's so derogatory, but he said point blank, we buy everybody we need who support us, and he listed all the groups that they buy. And today when you see some of the folks who oppose the ethanol industry, you have to sit back and wonder why they came on as late opponents of ethanol when, as Paul pointed out, and again six or seven years ago we were the saviors of the petroleum industry. So today we've had a long list of men, women like Galen and Paul who have gone through the tough times and they all recognize, as you do, that those times are going to continue to be tough because we are in the unenviable

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position that their competition must market our product. That's not a very good place to be in. But you asked the question: What can be done? The Nebraska ethanol industry needs elected people to stand up and defend the industry, point out where we are, how we got here, and what it's done for Nebraska. We in Nebraska did not know there was a recession the last four or five years because of the recent price of commodities. And we can turn Nebraska into another Detroit if we listen to the oil industry. And we only need to look at what happened last week to the price of propane. I have a little hundred-year-old-house in Bellwood, Nebraska, it's kind of like heating a corn crib, but the price of propane went from \$1.79 to \$4.99; kind of gets your attention. And so when you think, well, the oil industry has got lots of supply, they're flaring off 1,500 wells in North Dakota now every day that could heat a million homes every day. And we wonder about how the industry can get away with that at the same time talk about the shortages. We know that they have the...with the exception of Nebraska, we've been treated well by our Nebraska press, but outstate, out of the state of Nebraska we've taken a lot of abuse, particularly the eastern press. So the elected people in Nebraska need to stand up for ethanol. Thirty years ago, we suggested that we put the state fleet on E-10. Charlie Thone said, sure, let's try it. We did it; and it worked. We need to put the state fleet on E-15 now, Senator. Again, I want to thank you members of the committee and the Legislature as a whole. And I can't thank the urban members too much, because urban members were always good supporters of ethanol and continue to be and we appreciate that. Thank you very much, Senator. [CONFIRMATION]

SENATOR CARLSON: Okay. All right. Thank you. Any questions? Senator Kolowski. [CONFIRMATION]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Senator, thank you for coming today and for your comments. Just to back up your one comment about North Dakota, I think I heard it yesterday or today on the station I was listening to, they're burning a million dollars a day of natural gas right into the air because they don't have anywhere to put it and it's in the way of the oil they're pumping. That's ridiculous. [CONFIRMATION]

LORAN SCHMIT: Now we have to...when we go to tank car, we have to have a vapor recovery system so we don't expose any of that vapor to the atmosphere. How in the name of heaven can you allow an industry to, as you say, flare off that volume of gas? Why doesn't the federal government do something about that sort of...just process? They could. They control everything else, the amount of water in the toilets, the amount of light bulb you use. Why can't they take a look at that? All of us want limited...limits on regulation, but there comes a time when there's a place for regulation. And I think that as Senator Kolowski indicated, that is one place to start. [CONFIRMATION]

SENATOR CARLSON: Okay. Thank you. [CONFIRMATION]

LORAN SCHMIT: I wish some more people would ask me questions, Senators. I'd like

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to talk some more, but thank you very much. (Laughter) [CONFIRMATION]

SENATOR CARLSON: All right. Thank you for your testimony. Any other proponents? Any opponents? Anyone in the neutral position? And seeing none, that will close the hearing on Paul Kenney. Thank you both for being here. And now we will open the hearing on LB686. Senator Christensen, welcome. [CONFIRMATION]

SENATOR CHRISTENSEN: Thank you, Chairman Carlson and members of the Natural Resources Committee. I'm Senator Mark Christensen, C-h-r-i-s-t-e-n-s-e-n, represent the 44th Legislative District. LB686 would amend Section 2-3226.05, subdivision (2)(a). This section allows eligible resources districts to levy an occupation tax on the activity of irrigation, and subdivision (2)(a) allows producers to opt out of such occupation tax if not irrigating that season. This bill changes the March 1 deadline for opting out of the occupation tax when not irrigating to June 1. The current March 1 date restricts the producers' flexibility when it comes to managing their options by locking them into irrigating or not irrigating at a time when circumstances, such as precipitation, may change drastically after that date. Moreover, during 2013, which was the first year the Department of Natural Resources announced a compact call on the Republican River Basin, they waited until after March 1 before sending surface water down to Kansas. This didn't allow producers to change their plans and opt out of the occupation tax, which was confirmed that they would not be letting or getting any water or too much to irrigate. Want to thank you for considering LB686 and I'd encourage its advancement to General File for debate. [LB686]

SENATOR CARLSON: Okay. Thank you. Any questions of the committee? I'm just going to clarify something with you. You've got the green copy in front of you? [LB686]

SENATOR CHRISTENSEN: Yep. [LB686]

SENATOR CARLSON: So if we go to page 2, it's the changing of the date from March to June? [LB686]

SENATOR CHRISTENSEN: Yes. [LB686]

SENATOR CARLSON: And then briefly, what's the stricken language refer to? [LB686]

SENATOR CHRISTENSEN: Just obsolete language that the drafters drafting wanted to remove. [LB686]

SENATOR CARLSON: Okay. So it's kind of a cleanup portion of it, not... [LB686]

SENATOR CHRISTENSEN: It's a cleanup because... [LB686]

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SENATOR CARLSON: ...not really related to what your bill is. [LB686]

SENATOR CHRISTENSEN: Right. [LB686]

SENATOR CARLSON: Okay. All right. Thank you. Any other questions? Okay, thank you. We're ready for testimony of proponents of LB686. Seeing none, opponents? Welcome. [LB686]

JAMES MEISMER: Thank you. [LB686]

SENATOR CARLSON: Go ahead. [LB686]

JAMES MEISMER: Go ahead and start? [LB686]

SENATOR CARLSON: Sure. [LB686]

JAMES MEISMER: (Exhibit 3) Senator Carlson and members of the Natural Resources Committee, my name is James Meismer, J-a-m-e-s M-e-i-s-m-e-r. I am a Twin Platte Natural Resources District board member and a board member of the Nebraska Association of Resources Districts. I am here today on behalf of the Nebraska Association of Resources Districts and the Twin Platte NRD to testify in opposition to LB686. The Twin Platte NRD has an integrated management plan, as provided by Nebraska law. The Twin Platte NRD is a partner with the Nebraska resources districts or the natural resources districts in the Republican River Basin and the Nebraska Cooperative Republican Platte Enhancement Project, known as N-CORPE. The N-CORPE project is for long-term compliance with interstate water agreements and the required natural resources districts' integrated management plans. Nebraska law allows the Twin Platte Natural Resources Districts to levy an occupation tax upon the activities of irrigation of agricultural lands within the Twin Platte NRD on an annual basis, and not to exceed \$10 per irrigated acre. The proceeds of the occupation tax may be used for repaying principal and interest on any bonds, repayment of financial assistance received by the Twin Platte NRD, and payment of all or any part of the cost and expenses of a qualified project. Beginning this fiscal year, the Twin Platte NRD is levying an occupation tax of \$10 per irrigated acre to fully fund the Twin Platte NRD share of the N-CORPE Project. Nebraska law provides that acres classified by the county assessor as irrigated shall be subject to such NRD occupation tax unless on or before March 1 in each year the recorded owner certifies to the NRD the nonirrigated status of such acres. LB686, if enacted, would change the date to certify acres to a nonirrigated status from March 1 to June 1 for land subject to the occupation tax. If this change were to occur, the acres would be irrigated prior to June 1 and then the owner of the land could certify to the NRD that there would be a nonirrigation status of acres and would not be subject to the NRD occupation tax. I want to give you an example of what I'm talking about. If a producer could plant a crop of oats in March and irrigate the

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crop though April and May, they could then cease irrigation prior to June 1 and they would have a crop that they could harvest. The producers could then request nonirrigation status by June 1 and avoid the occupation tax for that year. That producer would then have the remainder of the year to grow a dryland crop. The proposal to change the date from March 1 to June 1 would allow this practice to occur and avoid paying the occupation tax. Thank you for your time in considering our concerns. And I urge you to indefinitely postpone this bill. [LB686]

SENATOR CARLSON: Okay. Thank you, James. Questions? Senator Johnson. [LB686]

SENATOR JOHNSON: Thank you, Senator, James, for coming in. I know this...probably the target on this is talking about the occupation tax and when it's levied. And the example you use here is basically double-cropping early in the year with irrigated oats and another crop later. In general, what effect does this have if we change the date to June 1 on the actual water flow, talking just about the amount of water that flows on down and helps with compacts or whatever? [LB686]

JAMES MEISMER: Well, I'm with the Twin Platte NRD and we have elected not to put meters on wells, and we have an obligation to the river through our integrated management plan and cooperative agreement. The actual consumptive use of the crops in our district is predetermined and we were determined to be overappropriated. So we have to back up and start putting water in the river to become fully...first, to get back to '97 and then become fully appropriated. The issue here isn't necessarily flows to the stream. The issue here is that the way this is set up now, with the March 1 date, everybody is going to be on the same page. If we move the date back and allow people an option to double-crop, then those people who follow the rules and pay the tax are going to wonder why other people are able to double-crop, get one irrigated crop and one dryland crop, and still not have to pay the occupation tax. So to me, it's a matter of fairness... [LB686]

SENATOR JOHNSON: Okay. Thank you. [LB686]

JAMES MEISMER: ...and compliance. [LB686]

SENATOR JOHNSON: Okay. [LB686]

SENATOR CARLSON: Any other questions? James, tell the committee a little about what your operation is, would you? [LB686]

JAMES MEISMER: I have a cow/calf operation and we have irrigated alfalfa that we use to feed our cattle. [LB686]

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SENATOR CARLSON: And where are you located from the Platte River? [LB686]

JAMES MEISMER: I am on the Platte River. I'm located six miles below Lake McConaughy, on the south side of the river in between the NPPD irrigation canal and the North Platte River. [LB686]

SENATOR CARLSON: Okay. And do you currently have an allocation on irrigation? [LB686]

JAMES MEISMER: No, we do not. [LB686]

SENATOR CARLSON: Okay. All right. Any other questions? Okay, thank you for your testimony. [LB686]

JAMES MEISMER: You're welcome. [LB686]

SENATOR CARLSON: Next testifier? In opposition? Anyone testifying in a neutral position? Then seeing none, Senator Christensen, you're welcome to close on LB686. [LB686]

SENATOR CHRISTENSEN: Thank you. I'd like to have you turn to the bill, if you have it; otherwise, I think I can quote it to you. Page 2, line 5, what does the words "activity of irrigation mean"? Does it mean you can irrigate till the date that you can opt out? No, never was the intent of it. If you want to go look at the history of law, if they irrigate anytime in that calendar year, they have to pay occupation tax. I don't believe it was a legitimate argument trying to use double-cropping because that's not what the law says. It says clearly, right there...oops, I'm on the wrong page, no wonder. You know, you may levy an occupation tax upon the activity of irrigation of agricultural land within the district on an annual basis. So I don't think that argument is legitimate. I'm not sure why they're opposing this. I think Senator Carlson could remember for sure, probably Senator Dubas, when we had the original discussion on LB701 that put this in place was in Room 1126. And everyone argued the date of March 1 was sufficient for everyone, because farmers plan ahead of time and that would give them sufficient time to opt out. Everybody was looking at it from the farmers' end of it. But what happened was a scenario that this last year or January 1 DNR put a closing on storage in the surface water reservoirs in the district. So all water had to be passed through for compliance. And...but they didn't deliver the water through the system until the 1st of April. And what happened then was people knew for sure that they weren't getting irrigation water. No one wanted to opt out and then not get to irrigate or see if the NRDs would allow them to opt back in. And they, I believe, can do that because I had a landlord certify some acres out that they allowed me to opt back in. That was in August and I was very appreciative of that NRD. I thought they treated me very well and I think they would...they want to everybody. So I think the scenario here is do we want to give

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farmers the maximum amount of time to see how DNR is going to regulate the water? There's a couple reasons for it. One, we have to be in compliance with the compact. And DNR is doing a great job of waiting as long as they can to allow the water to be stored and used by the surface people if we could get the rains to bring the virgin water supply up so the pie is larger so it's easier to make compliance and not have to take it out of these reservoirs. We want them to continue to manage the way they are. DNR done a nice job. So what we want to do is give farmers some maximum flexibility now to make that last-minute decision before they plant. And if we go before June 1, then there could be people that plant corn in May. I plant a lot of corn in May, especially during the long sessions like last year because I plant weekends. And so that flexibility really needs to be in here. So I'm hoping that you'll look favorable on this bill and put it out so it could be on consent calendar or that you could amend it on to another bill and give farmers the flexibility that which allows DNR to keep the flexibility and the great job of...and it's impossible to regulate it to that perfect acre-foot. We wished we could do that. But not knowing what it is, they done a nice job and they waited as long as they could to send that water through and still have wet streams and things so they had good delivery rates. And so I hope you'll look at changing this date so that we can take care of the farmers that are actually getting zero water and not getting to grow that irrigated crop. This is surface water guys. And last year the NRDs all got full allocation plus in my district, while groundwater guys got from zero...or sorry, surface water got from zero to three. Projections this year are zero to two because they allowed us to store a little, keep...they didn't deliver all the water through the reservoirs because they stored it back. That's how DNR done a nice job and left some in the reservoirs because they didn't need it for compliance. So now they, January 1, they released that to farmers this year, even though they're passing through what's flowing now, natural flow, or they've closed to storage permit. It's not flowing through yet. They done a very nice job of maximizing the best use of that water. And so I'm asking this committee to give the farmers the best opportunity, if they have to forfeit their water, not to have to pay the extra \$10. Gets real tough when you end up having to pay irrigated property tax, irrigated occupation tax, and farm it dryland. So I'm just asking for flexibility. Thank you. [LB686]

SENATOR CARLSON: Okay. Any questions of Senator Christensen? Do you know if...will DNR support your bill? [LB686]

SENATOR CHRISTENSEN: I never asked them. [LB686]

SENATOR CARLSON: Okay. [LB686]

SENATOR CHRISTENSEN: But I'd be glad to find out and let the committee know. [LB686]

SENATOR CARLSON: Yeah, I would. I was kind of hoping there would be somebody

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here, so appreciate that. Any other questions? Anyone to testify in a neutral...oh, I've already been there. (Laughter) I got to get out of neutral. Okay. With that, we close the hearing on LB686 and we're ready to open the hearing on LB710. And so you're welcome to open. [LB686]

SENATOR CHRISTENSEN: Thank you, Chairman Carlson and members of the Natural Resources Committee. I'm Senator Mark Christensen, C-h-r-i-s-t-e-n-s-e-n, represent the 44th Legislative District. LB710 would require the board of natural resource districts who enter into groundwater augmentation projects without their district...outside of their district boundaries, that they have a public hearing to allow public testimony on the project. In addition, the bill would also require two-thirds vote by the board to enter into such a groundwater augmentation project. I believe this provides a level of taxpayer protection like we have with a required vote of the people with school boards...but school boards when they...school boards, but bonding questions before the public are on a ballot. LB710 seeks to provide better public notice and input in regards to groundwater augmentation projects that can obligate millions of dollars in local taxes for many years. Unfortunately, there's some miscommunications in my office which led to LB710 being drafted narrowly...more narrowly than I intended. The bill narrows the requirement of public hearings to groundwater augmentation project outside the boundaries of the NRD. I had intended it to be for all groundwater augmentation projects because I believe that if we're going to obligate millions, and the Lincoln County project with the land purchase and the burying the pipeline stuff, I believe, was expected to be in the \$120 million range. And I'm sure they'll correct me if I'm wrong. And where we don't require a vote, we have a elected board, just like you do elected school boards, but they still require a vote. I was asked by the people in my district to require a vote. But the reason I didn't go that direction is just like the Lincoln County project, come up on a for sale. If we would have had to go for a vote, the sale would have been over and they couldn't have done it. I don't want to tie their hands so they can't utilize the tools the Legislature has given them to manage compliance and, hopefully, with these projects going, surface water will start getting their water. That is the ultimate goal and I commend them for it and I'm happy that they're doing it. But I think it's good policy for us to look at having a public hearing. They can do that in a very short time, once they identify a farm they want to buy. And, typically, auctions are...auctions are just a bid process on this one, are more than a week's notice so they can get in a hearing. And that's why I'm asking for that. I think it's good to let the public have an opportunity to voice their opinion. The two-thirds vote in there, I know you're going to have some people ask why it's got to be there. They might even ask why they have to have the hearing. But I think you guys understand, if we're going to spend this amount of money, we need to make sure it's not just a simple majority. And that was my intent in that. I'd be glad to work with the committee and be glad to answer any questions that you have. [LB710]

SENATOR CARLSON: Okay. Thank you, Senator Christensen. Questions of the

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committee? Thank you. We'll have another opportunity. So with that we'll open the testimony for proponents of LB710. Welcome, Mike. [LB710]

MIKE DELKA: (Exhibit 4) Good afternoon. Good afternoon, Senator Carlson and members of the Natural Resources Committee. My name is Mike Delka, M-i-k-e D-e-l-k-a and I'm the manager of the Bostwick Irrigation District in Nebraska. I would support this bill for several reasons. First, it is supportive of the transparency of government. Second, it encourages local solutions to local problems. Third, it offers in local knowledge before significant indebtedness. Fourth, it makes a major decision require more than a simple majority. Fifth, it is the potential of local augmentation projects benefitting local groundwater and surface water users beyond a simple gauge reading. Sixth, it offers potential of a positive environmental impacts. Seventh, it should help avoid local user conflicts. Eighth, it should be...it could benefit the local contractors. It could also help support local economies. And it encourages the sustainability of local water supplies. And I would like to thank Senator Christensen and the members of the Natural Resources Committee for their hard work. And I would be happy to answer any questions. [LB710]

SENATOR CARLSON: Okay. Thank you. Any question of Mike? I have a question here, and I really...I'll wait and ask Senator Christensen because you didn't write this. You didn't write the bill, you're just supporting it. [LB710]

MIKE DELKA: I don't think so. [LB710]

SENATOR CARLSON: Okay. All right. Thank you. Next proponent. All right, opponents. Welcome, Nate. [LB710]

NATE JENKINS: (Exhibit 5) Thank you, Senator. Good to see you. Chairman Carlson and members of the Natural Resources Committee, my name is Nate Jenkins and I'm assistant manager of the Upper Republican NRD in Imperial, Nebraska. For those of you who don't know, that includes Perkins, Chase, and Dundy County, not in extreme southwest Nebraska, but in the corner of the state, what we prefer. I'm here to testify in opposition to LB710 on behalf of the Nebraska Association of Resources Districts and the Upper Republican NRD. Our NRD has a long, proud history of inviting and using public testimony to create policies that are designed to preserve water resources. In the late 1970s, upon the initiative of our board and our constituents, we became what is believed to be the first entity in the country to regulate the use of groundwater for agriculture. Since that time, our board, after seeking input from residents of our NRD, has reduced water use allocations by more than 40 percent. As a result, groundwater level changes in our NRD have been approximately 80 percent less than what the USGS anticipated they would be. I might point out that is illustrated when you look at groundwater level changes in Nebraska, and in particular our district compared to other states. I think you'll see that Nebraska has done a very good job of managing

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groundwater levels. I mention this to point out that for nearly four decades public input has driven every major policy decision in our NRD regarding groundwater management. Augmentation projects are no different. While we respect Senator Christensen's intentions with regards to this bill, we believe it disregards efforts our NRD and other NRDs made to gather public input on the N-CORPE augmentation project. Just as importantly, we believe the proposed requirement that a super majority vote of NRD boards interested in pursuing augmentation projects be required discounts public discussions that have occurred over a period of years about the value of augmentation projects not only for our NRD, but for the state of Nebraska. The possibility of using augmentation projects to help the state maintain compliance with the Republican River Compact is expressed in our integrated management plan that was jointly approved and developed by our NRD and the Nebraska Department of Natural Resources more than three years ago. This document has been heavily scrutinized by the public and was crafted with the public's input. Regarding N-CORPE specifically, multiple public meetings intended to gather public input on the proposed project were held. In fact, the meetings were designed in a way to gather more public input than a typical public hearing. Stations were set up in the meeting rooms so that people uncomfortable with public speaking could talk one on one with people involved with the project. Over a hundred people attended an event in Ogallala and more than 200 in North Platte. Twin Platte NRD held two special board meetings at the beginning of the project with high attendance. Also, because the project is funded with bonds, 30-day public notice of the intent to issue bonds was publicly advertised on two different occasions. We had no secrets and had no need or desire to implement a project that didn't have widespread public support. The proposed requirement that an NRD express super majority support for an augmentation project before being able to pursue an augmentation project suggests that these projects are somehow odd and insidious, therefore needing more approval than what is normally needed to proceed with an NRD project that benefits the public, be it a flood control structure that protects lives and property or a recreation area for constituents to enjoy. In fact, in our line of work, it's pretty tough to draw more direct link between a project and public benefit than what's provided by N-CORPE and possibly other future augmentation projects. This isn't the first time you've heard this comment, but noncompliance with the Republican River Compact is simply not an option. If you've been following the legal actions regarding the compact when Kansas sued us, they were seeking \$80 million. The judgment from the special master was for \$5.5 million, in large part because he was satisfied with our plans to maintain compliance with the compact. The potential liability of the state for noncompliance then is very, very significant. Streamflow augmentation projects like N-CORPE provide a high level of assurance that Nebraska will continue to comply with the compact because they guarantee needed volumes and timing of water releases to maintain compliance. The projects also prevent unnecessary regulatory measures that could literally cripple the regional economy. This year, for example, the N-CORPE and Rock Creek project, and for those who aren't familiar with the Rock Creek project, it's a...conceptually, it's the same as the N-CORPE project, just smaller and it's located in our district in Dundy

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County. Combined, the projects will prevent a shutdown and up to 300,000 irrigated acres in the Republican Basin. There is a common misperception that if groundwater irrigation was prohibited in dry years, surface water irrigators would have more water to use. This would not be the case. Surface water generated by such a shutdown would still need to be administered to ensure compact compliance. If augmentation projects were not in place, it is very likely that regulations imposed upon surface water users would actually be more severe because the volume of water generated by augmentation projects would likely exceed the amount of water generated by a groundwater irrigation shutdown. Any amount of water needed for compliance, not generated by regulations then, would have to come from more administration of surface water. We urge you not to apply a different standard to augmentation projects that have a clean and substantial benefit to people in our NRD and the state of Nebraska as a whole. Thank you and I'd be happy to try to answer any questions you may have. [LB710]

SENATOR CARLSON: Okay. Thank you, Nate. Questions of the committee. Senator Johnson. [LB710]

SENATOR JOHNSON: Always got a question...always have one, I guess. It appears to me that you have, in a different way, gone beyond what is maybe needed for a public hearing because of every...the meetings, the types you've had, information meetings as they might be, not publicly record and stuff like that. I guess part of the question would be, is it possible that other districts in the state don't have that policy and you might be a victim of whatever everybody else doesn't do, you have to do? [LB710]

NATE JENKINS: I don't think so. And I should be clear; the meetings I mentioned, many of those occurred after we closed on the property, okay. But before the time, for example, that we approved the issuance of bonds to proceed with the project. Okay? So that...a lot of that public input...the project, then technically, I guess, could have been stopped had we, you know, since the groundswell of support against it. But, yeah, as far as other districts and the amount of input that they would require, just the dollar amounts that are needed for projects like this really require the NRDs to gather a lot of public input or they risk being heavily criticized by their constituents. [LB710]

SENATOR JOHNSON: So are you...go ahead. [LB710]

NATE JENKINS: I might also mention, as far as timing, these augmentation projects what you really need are large blocks of ground that you can retire from irrigation so you can pump water that otherwise would have been used for irrigation in the stream. Piecing these projects together using condemnation is not something we would like to do. So realistically, the only way that these projects can come together in a timely fashion is if you identify property that's on the market and you move very quickly to purchase it. So that would be another concern with more notice requirements, is you

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wouldn't be able to purchase property that see it to pursue projects like this. [LB710]

SENATOR JOHNSON: Well, it raises the question of condemnation, and as mayor, I've lived through some of those situations, not with water, but I know that's not always popular, but it sounds to me like you...your process then...instead of informing of what you're going to do, you're telling them what you did do and how it's going to work. [LB710]

NATE JENKINS: Well, not necessarily, because when we went through with the Department of Natural Resources to develop our integrated management plan, which is, basically, a document that outlines how we're going to stay in compliance with the compact, augmentation was always discussed as an option. There was a lot of public input that was provided during that process of developing integrated management plans. So the idea that we were going to pursue augmentation projects in our district was very well known. [LB710]

SENATOR JOHNSON: Okay. Thanks for the information. [LB710]

NATE JENKINS: Thank you. [LB710]

SENATOR CARLSON: Okay. Thank you. Any other questions of the committee? Now, Nate, I'm going to ask a couple of questions. And I've used several occasions in the last couple of years to compliment the Upper Republican in terms of what's been done historically because I would say to anyone that to say that you haven't made a real effort to cut back on the water you're using is untrue. I know that. Now, in here you say that after seeking input, you reduced the water on allocations by more than 40 percent. [LB710]

NATE JENKINS: Yeah. [LB710]

SENATOR CARLSON: But it used to be unlimited, so how do you get 40 percent of unlimited? [LB710]

NATE JENKINS: Well, our first allocation...good question, was actually imposed in 1979 and it was 22 inches. [LB710]

SENATOR CARLSON: Okay. [LB710]

NATE JENKINS: And now it's 13 inches. So that's the...that's the reduction that I'm referring to, Senator. [LB710]

SENATOR CARLSON: Okay. And then the next...in that same line: as a result, the groundwater level changes in our NRD have been approximately 80 percent less than

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what USGS anticipated they would be. And that's commendable, but this fact is, there's still been some depletions over that time, haven't there? [LB710]

NATE JENKINS: There has been. That's a challenge we've had in the district for a long, long time. And what I can tell you, the thing I'm most proud of about working for our district is once you see what's done in other states, or isn't done in other states to preserve groundwater, you learn pretty quickly that even though our district has substantial challenges, we've accomplished more than I think any area of the country that's heavily developed in terms of preserving groundwater. Where I live just west of Champion, Nebraska, the Colorado border is 20 miles away. And you can pump in the range of 30 to 32 inches. Northwest Kansas where I'm from, 30 miles away from where I live, you can pump 18 to 24 inches. And yes, we've got significant groundwater declines in our district. They're half as much as the worse declines in Oklahoma, Texas, Colorado, and Kansas, basically every other state above the Ogallala aquifer. So we've got challenges and we've been addressing them. And I can tell you with our board and management, we're going to continue to do that. [LB710]

SENATOR CARLSON: And I don't argue with you at all when you mention Texas, Oklahoma, Colorado, and Kansas, and we look at those maps, then we're not nearly in the trouble that we could be. And I really...I understand that. Have you reached your goal and are you through trying to go further? [LB710]

NATE JENKINS: No, no. [LB710]

SENATOR CARLSON: Okay. [LB710]

NATE JENKINS: We're not. [LB710]

SENATOR CARLSON: All right. Okay. [LB710]

NATE JENKINS: We're not. Our board is intent on continuing to tackle that issue and, frankly, I think once we can get more assurance that we have the tools necessary through N-CORPE and Rock Creek, for example, to annually comply with the compact, that will allow us to focus even more on the issues you're talking about. I might mention it, just on a statewide level, and nobody is going to disagree that Nebraska has enormous water challenges. But it's good to put it in a little bit of perspective. The USGS did a report that was released in 2012 that looked at groundwater level changes in all the states above...the eight states above the Ogallala aquifer. Texas has 160 million acre feet less than it did before groundwater irrigation development began. Kansas has about 60 million acre feet less than when groundwater development began. To put that into perspective, that's like covering the entire state of Nebraska and then some with a foot of water. Nebraska has actually gained 1.2 million acre feet of water since before irrigation development began. Now I'm not going to attribute all that to what the NRDs

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have been doing and what we've been trying to do in our district, but I can guarantee you that's definitely a part of it. [LB710]

SENATOR CARLSON: Good. I appreciate that. And the 1.2 million acre feet gained just is not all in the area we would want it to be in. So we've got some more work to do there. [LB710]

NATE JENKINS: That's right. [LB710]

SENATOR CARLSON: Okay, all right, thank you, Nate. Oh, excuse me, Senator Dubas. [LB710]

SENATOR DUBAS: Thank you, Senator Carlson. Thank you very much, Nate. There's definitely a difference between a public hearing and a public meeting. And I think you did a great...it's obvious you did a great job with the public meetings, giving people information and opportunities to come in. The purpose of public hearings, similar to what we're doing right now, is for elected officials to gather information and then to make decisions. [LB710]

NATE JENKINS: Right. [LB710]

SENATOR DUBAS: And I know we elect people to make decisions for us, so sometimes we walk a fine line between when do we say, you make the decisions for us, and when do we allow people to come in to possibly influence those decisions. So I guess my question is, for a project like what you're looking at here, is there an opportunity for the public to come in early in the process to, perhaps, influence the decision the board will make in any other kind of public hearing process. [LB710]

NATE JENKINS: Yeah, for example in this project when, you know, we found out that the property was on the market; we started to have some initial discussions with the owner and so forth. When we actually made the decision to go ahead and move forward to purchase the property, we needed to have authorization from our board to do so. So it was an agenda item. It was an action agenda item. Different, I know, than what you're saying, Senator, from a public hearing. [LB710]

SENATOR DUBAS: So I mean it was advertised in an agenda, so if someone was looking at the agenda they could have come in and participated. [LB710]

NATE JENKINS: Correct. [LB710]

SENATOR DUBAS: But as far as any actual public hearing type of gathering information about the project, there really is not an opportunity for it. [LB710]

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NATE JENKINS: Yea, before the property closed, you know, not necessarily, but there was...there was quite a bit of discussion before the actual...and at the time of the actual property purchase. [LB710]

SENATOR DUBAS: All right. [LB710]

NATE JENKINS: And again, I don't know if I explained myself well enough before. We're not opposed to public hearings. I mean, in our districts and the other districts, if you put this up for a vote, I think it would pass overwhelmingly with public support. It's just a timing issue. Like on this project, for example, once we made our offer and that offer was accepted, almost immediately, I believe, there was two other offers that were a little bit higher than our offer. So, when you're trying to move...it might hinder our ability to move quickly to purchase property is what I'm saying. [LB710]

SENATOR DUBAS: What recourse would you have...let's say, okay, you make the purchase, you have all these public meetings and all of a sudden there's just this groundswell and for whatever reason the public has said, we can't... [LB710]

NATE JENKINS: Don't want it. [LB710]

SENATOR DUBAS: ...we just think this is terrible. We don't want you to go forward, but yet you've already entered into a purchase for property. Do you have the ability to backtrack or rescind your offer? [LB710]

NATE JENKINS: Well, what we do there is hope that corn goes back up to \$7 a bushel and we try and sell the property. (Laughter) I'm not being...I'm being facetious, but I'm not. [LB710]

SENATOR DUBAS: I understand where you're coming from, but you would have the opportunity... [LB710]

NATE JENKINS: Sure. [LB710]

SENATOR DUBAS: ...should you need to...to... [LB710]

NATE JENKINS: Sure. [LB710]

SENATOR DUBAS: Okay, that's what I was looking for. Thank you. [LB710]

SENATOR CARLSON: Okay. Thank you. Any other questions? Seeing none, thank you. [LB710]

NATE JENKINS: Thank you. [LB710]

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SENATOR CARLSON: Okay. Welcome, Kent. [LB710]

KENT MILLER: Thank you. Nice to see you again. I haven't been at this table for a couple years. It hasn't gotten any less...easier. Anyway, Senator Carlson, members of the committee, my name is Kent Miller, M-i-l-l-e-r. I'm general manager of the Twin Platte Natural Resource District. Our offices are in North Platte, Nebraska, and I'm here to testify in opposition to LB710. Before I get to my main concern, I wanted to reference in regard the N-CORPE project and the information, that process, and we're in the Platte Basin, we're not in the Republican; we're not dealing with that compact. But in 2004, this Legislature passed LB962. Immediately following the passage of that, moratoriums were put in place in the Upper Platte, including our NRD, on developing new irrigated acres because we were in the overappropriated section of the river as designated by LB962. NRDs in the overappropriated section were immediately required to start development of an integrated management plan. So that began in 2004. Throughout the development of that integrated management plan, we worked with stakeholders. Our stakeholders met for four years. They met on a monthly basis. And so there was a huge amount of public information over that four-year period in regard to the fact that in the Twin Platte NRD, we were going to have to do augmentation plans or we were going to be into regulations. And so it was the number one priority advised from our stakeholders and carried out by our NRD working with the state and improving our integrated management plan was to work forward toward augmentation plans. So although the N-CORPE project, Lincoln Farms as some title it, although there was not a lot of time between when it became...our knowledge that the land was for sale until we closed, it was not a surprise in the Platte Basin that the Twin Platte NRD was working on augmentation plans. Now, albeit that said, at our October 11 board meeting was when our board first discussed it. A week later we had a special board meeting. And on November 8 we had our regular board meeting. Now these were not public hearings, but word got out fast and there was a lot of misinformation on the streets in our district in regard to this project and they found us quickly. We had 75-plus people comment at our public comment period at those two board meetings. The second one on November 8, there was so many people there they were standing in the hallway, we accommodated all those who wanted to talk; and then our staff, Dean Edson from the NARD was there, and as our board meeting continued they spent another couple of hours talking to folks out in the common areas. So, although there wasn't "public hearings" prior to the action occurring, there was a long history of knowledge that was going to happen and there was immediate dissemination of information. But as Nate stated, and he stated very clearly, this opportunity for a block of land was not going to be repeated and it had to be acted upon very quickly. So I just wanted to point that out. But the main reason that I wanted to testify before you today on this one is in regard to the requirement for public hearings and the impact it would have had on the Twin Platte Natural Resource District this recent fall in the October time frame. All of you were aware of the flooding in the South Platte River; the huge rain events that occurred in

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Colorado, the flooding that came down on the South Platte River. They were forecasting in, it happened 20,000 CFS at the city of North Platte. I'm old enough to remember the floods that came through in '65. I was in high school so I didn't really care as an NRD manager, but I'm very aware of what occurred then. And the cities did not know if the river channel would hold the water. And we're talking about the city of North Platte, the city of Ogallala, and many villages all the way from Brule, Nebraska, to Brady, Nebraska. And so there were...we were all looking for ways to take that top edge off that flood flow and we were also looking for ways...how can we take some of that water, store it as intentional groundwater recharge so that it applies to our integrated management plan. Fortunately, we had agreements in place, and these agreements were in place following the high water in 2011 on the North Platte River, we had agreements in place with five irrigation districts in our NRD and with the Department of Natural Resources that when flood events occurred or opportunities for offset water, primarily the agreements were for the opportunity for offset water, we were able to act immediately. And we began immediately working with Western Irrigation District. The way this bill is written, we were working with Western Irrigation District which is in two NRDs. It's in the Twin Platte NRD, but it's also in the South Platte NRD. So as this bill was written, if we would have had to have public hearings prior to entering into an agreement to capture those flows, we wouldn't have been able to take that top edge off, we wouldn't have been able to benefit with intentional groundwater recharge from three of the irrigation districts in our NRD. Now I mentioned Western Irrigation District, that's on the South Platte. We were able to work with two irrigation districts on the North Platte. Those were totally within our NRD, so I initially thought the way this bill was written that wouldn't have intentionally been impacted. But with the amendment offered, now those would have been impacted. Now before you think about now why were you working with irrigation districts on the North Platte River? Because this was a South Platte River flood, we were to take the edge off of return flows that were happening in the North Platte River below Lake McConaughy, because Lake McConaughy was shut off, but flows start returning to the North Platte River, we were able to take some edge off of those flows so that benefitted folks below the city of North Platte. So we are, you know, we are extremely concerned that if this would have been in place, we wouldn't have had the opportunity to do what we were able to do with the South Platte flooding. [LB710]

SENATOR CARLSON: Okay. Thank you. Any questions of Kent? Are you in the Twin Platte at the \$10 occupation tax level? [LB710]

KENT MILLER: Yes. [LB710]

SENATOR CARLSON: And how much of that would go to N-CORPE to pay off the debt? [LB710]

KENT MILLER: All of it. [LB710]

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SENATOR CARLSON: All of it. [LB710]

KENT MILLER: When our board of directors agreed to participate in the N-CORPE project, their desire was to fund it 100 percent from the occupation tax. Now there's two reasons for that, one is they wanted the N-CORPE project to be funded by the tax from the irrigators. Now in that regard, you talk about public hearings, we had to hold a public hearing on January 3 to amend our integrated management plan so we could levy the occupation tax. But the other thing it does is it still frees up money from our general fund dollars, which we're continuing to accumulate, we're the second highest levied NRD in the state, you know, six years ago we were the lowest levied NRD in the state, those monies are being accumulated because N-CORPE gets the Twin Platte NRD to 1997. That's the first required increment in LB962. That does not get us to overappropriated. So that's...we're able to maintain our general fund money which we're accumulating to use for other opportunities for offset water. [LB710]

SENATOR CARLSON: So the next question then, if there are other things that come along that you have to spend money on, you got to find money, it will be out of your accumulated general funds because you can't go any further on the occupation tax. [LB710]

KENT MILLER: That is correct. [LB710]

SENATOR CARLSON: Okay. [LB710]

KENT MILLER: So we're looking forward to the opportunity to use some of your water funding or Sustainability Task Force dollars. [LB710]

SENATOR CARLSON: Okay, all right. Thank you. [LB710]

KENT MILLER: Thank you for bringing that forward. [LB710]

SENATOR CARLSON: Any other questions? Okay, thank you for your testimony. Any others in opposition? Any testifying in a neutral position? Okay, seeing none, Senator Christensen. [LB710]

SENATOR CHRISTENSEN: Thank you, everyone. Quickly lets correct the record on affecting the South Platte flows. If you go to second page, line 7, half way across, says: groundwater augmentation. Very specific. So that example he gave is irrelevant. So it would not have affected that. And I will echo, they done a fabulous job of managing it. I think I said that the other day when I testified. I've never seen the state of Nebraska, DNR, the NRDs, whatever, manage water better. During that time, I drove clear out to Sterling and watched the flood waters before it even hit the state of Nebraska. So I

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drove both sides of the river all the way out there. So, I paid attention. That was a large event. And fabulous job of management and I hope we can manage that well in the future. So I just wanted to quickly correct that one because no one would want to affect that. So anyway, I think this is just a policy discussion that you've got to decide on. Thank you, Senator Dubas, your questions was right on: Do we want discussion meetings or do we want public hearings? And I will not argue with what Nate said about the great job they've done in reductions. You know, Senator Carlson hit on that with him, that they've done a great job of making difficult decisions even before the Legislature told them to. They were working on well spacings, well...way before moratoriums was allowed by the Legislature. There has been some great things done. But we've got to concentrate if we think there should be more public notice or public hearing on this. That's the whole thing about this bill. It's a policy decision. If we're going to spend that kind of money, if we're going to do projects this large, like I said, I do not want to hinder them from doing it. They've done a great job. And I'm banking on the fact, because I get some surface water out of the reservoir they're sending it through, I'm banking on the fact they're going to have enough water there that I can get my surface water. I'm a supporter of it. So, if you want to...a couple of NRD board members to talk to, I think there's four of them. I know I can give you two names already; rather not put it on the record, but I can give you phone numbers of people on boards that voted for this that said they wished they'd had a public hearing, even the board members. They're not sure they would have voted for it. I would have hated to see the project not go through, to be very honest with you, but at the same time, I think it's important to have the input of the people when we're spending this kind of money. I think it's a policy discussion that needs to be done. And that's why I said before, I didn't want to vote on the bonds, I didn't want to vote on the purchase of the land, things that way that would...that would be an attempt to kill something like this. I'm trying to put bare minimum public notice or hearings...a hearing to give public information. And if the two-thirds is too high, I think if you're going to spend this kind of money it isn't. You know, go simple majority. I think there should be some public hearing. But I don't think it has to have long notice and I agree, the word gets out well. But I appreciate the honesty of Nate, he said they were after the purchase, because I was going to bring that up. I had it wrote down before he said it. I do appreciate the honesty. And, you know, I just...I write too many things down and then I don't know what all I want to share. But it's...you know, I hear how there's no way they're going to be in compliance if they don't take surface water. And it's true on a...as I said the other day, one-, two-, three-year basis, unless you're going to reduce acres or you're going to reduce allocation to get the consumptive use down. And there's some direct management that can be done yet. That's why the last bill talked about integrated management plans that both people are represented. And I don't think Nebraska wants to operate where we're taking one side. And that's why I like the augmentation project. I'd been through Rock Creek a couple of different times. And drove through it; I've watched it. I have been driving up through where they're burying the lines, I can draw the map how this runs because I've been up there several times and seen it. I support what they're doing because I know they're

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helping surface water at the same time they're helping groundwater irrigators. But that question I just come back to again: Do we need a public hearing or not? That's what I'm asking you guys to decide. And I think that's the important part of this is just that public policy, do we need additional input? I do know different places people come in. And they continue to have people come in after the fact; some like it, some don't. That's not the discussion...policy is the discussion. Thank you. [LB710]

SENATOR CARLSON: Okay. Thank you, Senator Christensen. Questions of the committee? I said I thought I had one, I figured it out, so. [LB710]

SENATOR CHRISTENSEN: Okay. [LB710]

SENATOR CARLSON: I didn't...okay, thank you for your testimony. [LB710]

SENATOR CHRISTENSEN: Thank you. [LB710]

SENATOR CARLSON: And with that we close the hearing on LB710. Committee, I'd like to have a short Executive Session. Thank you for coming today. [LB710]