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Natural Resources Committee
February 07, 2014

[LB856 CONFIRMATION]

The Committee on Natural Resources met at 1:30 p.m. on Friday, February 7, 2014, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB856 and a gubernatorial appointment. Senators present: Tom Carlson, Chairperson; Lydia Brasch, Vice Chairperson; Annette Dubas; Ken Haar; Jerry Johnson; Rick Kolowski; Ken Schilz; and Jim Smith. Senators absent: None.

SENATOR CARLSON: Okay, welcome to the Natural Resources Committee. I'm Tom Carlson, state senator from District 38, Chair of the committee. Committee members here: to my far left, Senator Rick Kolowski from Omaha, District 31; and sprinting in is Senator Ken Haar from Malcolm, District 21; then Senator Jim Smith from Papillion, District 14; and Senator Ken Schilz from Ogallala, District 47. To my immediate left is Laurie Lage, our legal counsel for the committee. To my far right is Barb Koehlmoos, our committee clerk. Next to her is Senator Lydia Brasch from Bancroft, District 16; Senator Jerry Johnson from Wahoo, District 23; and Senator Annette Dubas, I think will be here shortly, from Fullerton, District 34. Our page...

SENATOR BRASCH: Just...will be right back.

SENATOR CARLSON: Is he the tall one?

SENATOR BRASCH: Yes.

SENATOR CARLSON: Okay, our page today is Steven Schubert from Lincoln who is a senior at UNL. And I...we have...first of all, we have an appointment hearing for Dennis Grennan. And, Dennis, if you'd come up and take the chair here and I'll give you some final instructions and then turn you loose. And of course this is for the Nebraska Power Review Board. This is a new appointment for Dennis and so we'd like to ask you, first of all, when I turn you loose, say your name and spell it so that we've got accuracy in our transcript. [CONFIRMATION]

DENNIS GRENNAN: Okay. [CONFIRMATION]

SENATOR CARLSON: And then just tell us about yourself and your interest in the Power Review Board and whatever else you think we'd like to hear, so welcome. [CONFIRMATION]

DENNIS GRENNAN: (Exhibit 1) Thank you, Mr. Chairman and members of the committee. It's good to be here. My name is Dennis Grennan, and that's spelled D-e-n-n-i-s, last name is Grennan, G-r-e-n-n-a-n. And I live in Columbus, Nebraska, and my wife, Coni, and I have lived there about 20 years. Prior to that we lived in North Platte for about 15 years and then Columbus and then here in Lincoln. So we have

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three grown children; two of which are still living here in Nebraska. One decided to move to Minnesota where it was warmer, I guess, but anyway she's there. And I have nine grandchildren and all of them but one still live here in Nebraska. I'm a mechanical engineer by degree. I've also had courses over the years. A couple I'd just mention, business course back at the University of Michigan, utility executive business course; it was a five-week course. And then also a five-week course at MIT in, basically, nuclear engineering, nuclear plant operation. I currently work at HDR Engineering; it's a consulting firm in Omaha with offices across the country, including one here in Lincoln. I've been there about 10 years. I primarily work in the power part of our business with HDR across about 10 states here in the central part of the United States. And prior to that, I was with the Nebraska Public Power District for a little over 30 years; started in the generation part of the business in power plants, actually in the Sheldon plant just south of Lincoln. And was plant manager out at the Gerald Gentleman plant for eight years. And then after about 20 years in generation, I moved into the transmission-distribution-customer service side of the business; worked there for about 12 years with NPPD. Retired, like I said, 10 years ago; decided I wasn't ready to retire, so I started a part-time job with HDR and it has grown, I'm still there and loving it, so that's the way things go. I might mention a couple of other regional organizations I was associated with and still am to some degree. I was on the executive board for the Mid-Continent Area Power Pool which was MAPP back in those days, which is what Nebraska Public Power participated in on a regional basis; so served in that capacity for several years there and other regional organizations too. I guess...just my interest in the Power Review Board really comes from my overall interest, first off, into the power industry since I've been associated with it over 40 years. I've grown up in it, if you will. And I really firmly believe, you know, in the importance of electricity in all of our lives. It sounds pretty simple, but it's a huge deal as you look at it across our country, across our state, within our communities, and the fact it needs to be reliable, it needs to be affordable, it needs to be there when we need it because we all depend on it so much and there's a lot that goes into it. So that's kind of my passion, if you will. And I think my background will be of service on the Power Review Board and to the citizens of Nebraska. So I hope to be able to serve in that capacity. Also, just mention, I think it's really important that the Power Review Board and the utilities across the state of Nebraska stay highly engaged at a regional basis, now through the Southwest Power Pool which is eight to nine states, soon to be more. And a lot of things happen there at a regional basis that definitely comes backs and affects us here in Nebraska. So hope to be involved in that in some aspect or another through the Power Review Board. I guess with that, Mr. Chairman, I would stop and see if there is any other questions or anything else I could add. [CONFIRMATION]

SENATOR CARLSON: Okay, thank you for your testimony. Questions of the committee? Senator Smith. [CONFIRMATION]

SENATOR SMITH: Thank you, Mr. Chair. And Mr. Grennan, thank you for being here

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today and I've actually heard good things about you and appreciate your willingness to serve on the Power Review Board, especially with your extensive background in the utility industry. [CONFIRMATION]

DENNIS GRENNAN: Thank you. [CONFIRMATION]

SENATOR SMITH: Just in general, tell us a little bit about what you see as some of the primary challenges and issues facing power systems like generation and transmission in Nebraska and any particular thoughts you have on that, how we go forward. [CONFIRMATION]

DENNIS GRENNAN: Well, there's quite a number. I guess as you look at the generation side of the business and, you know, there's always the question of what's the proper mix of generation, the diversity of generation, particularly as we maybe move away from fossil fuels such as coal, what are we going to replace that with that serves, kind of, that base load type generation? What's the right mix of renewables that goes along with that? Are we going to be able to run nuclear plants? So on the generation side, there's just a number of those kinds of issues, you know, what's that right mix? It's got to be there when you need it and it has to be reliable and affordable. On the delivery side, the transmission side, we're continuing to build out that system. I think there's a lot more to be invested because if that generation is not connected, then you don't have the flexibility or the reliability to move that power. So I think from a Power Review Board standpoint, that's a key issue to make sure we always have that option, that path, if you will, to go utilize the generation here in the state, as well as if we need to go outside the state because there are times where we don't have enough or whatever, we need that flexibility and those options. So it's really that overall mix of issues around generation and transmission I would say. [CONFIRMATION]

SENATOR SMITH: All right, thank you. [CONFIRMATION]

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

SENATOR KOLOWSKI: Thank you, Mr. Chair. Mr. Grennan, thank you again for your service and excellent background you have. Would you tell us your thoughts on the combination of both solar and wind with the current structures that we have and how you see that play out in 5, 10, 15, 20 years as you look at this. [CONFIRMATION]

DENNIS GRENNAN: Well, I do think it is part of the mix, if you will, of generation and there needs...it does play a part. I think the question is always how much and certainly the cost that goes in as you look at your alternatives for generation, you know, where does it stack up? I think, like I said, it needs to be a part like any generation form, and it's not just limited to renewables, there are challenges associated with it. Any fuel source has limitations. And probably one of the things that we really need to develop in

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the long term, the technology, is if we could figure out how to store electricity, renewables would be just wonderful; so it's available when you need it, because that's the aspect of electricity that you have to have. Unfortunately, we don't know how to store it in and of itself; we have to store it in other forms and then generate it exactly when it's needed. So I do get involved in some of our technical...with some of our technical folks on the storage capability and are we...what are we developing and so forth. If that moves along, then I could see renewables, particularly wind and solar, playing an even bigger part in the future. [CONFIRMATION]

SENATOR KOLOWSKI: And nuclear, where do you stand on that? [CONFIRMATION]

DENNIS GRENNAN: Pardon me. [CONFIRMATION]

SENATOR KOLOWSKI: Additional atomic power plants, nuclear plants?
[CONFIRMATION]

DENNIS GRENNAN: Nuclear plants? [CONFIRMATION]

SENATOR KOLOWSKI: Yeah. [CONFIRMATION]

DENNIS GRENNAN: Where do I stand on nuclear? [CONFIRMATION]

SENATOR KOLOWSKI: Yeah, how do you feel about those and the possibility of that playing a bigger role in the future? [CONFIRMATION]

DENNIS GRENNAN: We need more nuclear plants. I guess I would start there. I feel from a technology standpoint and, you know, as far as operating plants and doing it in a safe manner and particularly handling nuclear fuel and so forth, we know how to do that. The...no doubt the...there are some challenges associated with nuclear, particularly on the regulatory side and that ultimately impacts costs that utilities sit there and go, well, if that's the world I got to work in, if I can't afford to build it, I'm not going to do it. If I can't afford to continue to operate it, I'm not going to do it. So that's a major issue. But when I think that the plants that are capable are running 365 days a year, very environmentally friendly, we know the technology, I go my heart says we should be doing more of it.
[CONFIRMATION]

SENATOR KOLOWSKI: Thank you. [CONFIRMATION]

SENATOR CARLSON: Okay, thank you. Any other questions? Senator Johnson.
[CONFIRMATION]

SENATOR JOHNSON: Thank you, Chairman Carlson. Can you tell me a little bit more about the Mid America Area Power board? Are you still on that? [CONFIRMATION]

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DENNIS GRENNAN: I am not. [CONFIRMATION]

SENATOR JOHNSON: Okay. [CONFIRMATION]

DENNIS GRENNAN: The MAPP, I'll use the acronym if I can, is pretty much dissolved and has gone into different other...other regional transmission organizations. [CONFIRMATION]

SENATOR JOHNSON: Okay. I wasn't familiar with it now. Okay. [CONFIRMATION]

DENNIS GRENNAN: Yeah, yeah. [CONFIRMATION]

SENATOR JOHNSON: Thank you. [CONFIRMATION]

SENATOR CARLSON: Okay. Any other questions? You touched a little bit on the storing of power, particularly wind power, and you've got quite a background that I think we can ask you this, do you have any...well, first of all, do you think we will have the technology to store wind in something like a battery? [CONFIRMATION]

DENNIS GRENNAN: I would have to say I do not see that technology anytime in the next 10 to 15 years for sure. Beyond that I don't know. There's research and there's work that's being done that...you know, that needs to be done because storage of electricity, if we could break that barrier, would be a huge thing to happen in the industry. But I do not see any near-term solutions for storage. [CONFIRMATION]

SENATOR CARLSON: Are you aware of or do you think that there is a lot of effort in various places trying to figure this out? It would seem to me whoever could figure it out could retire and play golf every day. [CONFIRMATION]

DENNIS GRENNAN: Yeah, yeah. Yes, there are efforts. I mean various firms are putting research money into it. There has been some progress to build batteries on a larger scale than probably what we had 10 years ago, but the capital expenditure is huge. It's limited in its capacity or the size. So, you know, when you're trying to run systems that are several thousands of megawatts and maybe you've got a storage battery over here that's two or three, that doesn't make much of a dent in your capacity needs. So that's kind of the scale where things are at right now. [CONFIRMATION]

SENATOR CARLSON: Okay, thank you. And one other question, with your background within NPPD, I know that on average we produce more electricity in the state of Nebraska than what we use. So generally speaking, we have electricity to export. But you did say that sometimes we need to buy. [CONFIRMATION]

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DENNIS GRENNAN: Um-hum. [CONFIRMATION]

SENATOR CARLSON: How often does that happen and when...what kind of circumstances bring that about? [CONFIRMATION]

DENNIS GRENNAN: Well, I probably cannot give you a really good answer on that first part. I mean I, quite honestly, have been away from the operations here about 10 years, so..but the circumstances are such that either generation is not available here in Nebraska. I mean power plants do shut down unexpectedly. And so...so that can be one cause where you have to go out to the market to replace that. Or you may have transmission restrictions during certain parts of the operation of the system that says I'd like to generate here, but I have restrictions on my line so I have to go purchase from another source and feed it a different way. Those are typical situations where you may have to go out and buy in the market. I would say most of the time it's not necessarily a price-driven decision, I mean, we have very good resources here in Nebraska, very competitive, it's usually availability. [CONFIRMATION]

SENATOR CARLSON: Okay, all right. Thank you. Any other questions? [CONFIRMATION]

SENATOR JOHNSON: Just a little bit...can we borrow...do other states have that so we can do a borrow instead of having to price it and...? [CONFIRMATION]

DENNIS GRENNAN: No. (Laughter) [CONFIRMATION]

SENATOR JOHNSON: No. Sell our cheap stuff to them and then they charge us high price when we...I don't know. Okay. [CONFIRMATION]

SENATOR CARLSON: Okay. All right. Seeing no other questions, thank you for coming, appreciate your testimony. [CONFIRMATION]

DENNIS GRENNAN: Okay. Thank you very much. [CONFIRMATION]

SENATOR CARLSON: And are there individuals...anyone that would like to testify as a proponent? Anyone as an opponent? Or anyone in the neutral position? Seeing none, we'll close the hearing on Dennis Grennan. Thank you...thank you for coming. [CONFIRMATION]

DENNIS GRENNAN: Thank you very much. [CONFIRMATION]

SENATOR CARLSON: And before we open the hearing on LB856, I'll simply...Senator Wallman, you can come forward if you'd like. I'm going to go over a few instructions before we head into that. We will be opening on Senator Wallman's bill, LB856; how

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many people do we have here to testify on that, on Senator Wallman's bill? Okay. All right. And certainly Ken Winston knows well enough to fill out a green sheet if he's going to testify, so want to make sure that's done. And then as you start speaking, speak clearly into the microphone. Give us your name and spell it. And then you can proceed and we won't turn on any lights today. So, Senator Wallman, welcome and you're recognized to open on LB856. [CONFIRMATION]

SENATOR WALLMAN: Good afternoon, members of the Natural Resources Committee. For the record my name is Norm Wallman, W-a-l-l-m-a-n and I'm here today to introduce LB856. This is a very simple, straightforward bill. LB856 will require any person who withdraws groundwater for hydraulic fracturing stimulation to install a water meter to measure the amount of water used for the stimulation and the amount of fracturing fluid recovered. Annually, they must report the measurements to the Department of Natural Resources. Water, as we all know in here, is one of our greatest resources that Nebraska has. And I think it's very, very important to know how much is being used. And so that's what I brought this forth. [LB856]

SENATOR CARLSON: Okay. Thank you. Any questions of Senator Wallman? Yes, Senator Johnson. [LB856]

SENATOR JOHNSON: Thank you. Okay. We're going to meter the amount of water that they're using to give that in relationship as to how much product they facture. Are we going to be able to do that so we know that for every ton, gallon, whatever they're taking out that we can measure the amount of water so we've got a balance or a barometer to... [LB856]

SENATOR WALLMAN: Well, that probably would be pretty hard to do exactly. But I think you're transferring water from one aquifer to another so it's not running down a riverbed or anything. And so we know we're transfer...we're just using that water and nobody else can use it probably. [LB856]

SENATOR CARLSON: Okay. [LB856]

SENATOR JOHNSON: Yeah, I guess I was just trying to figure out...I mean we're transferring it, not really taking it out of the system. I just wondered if there was another way to quantify how much we're using in order to do this other... [LB856]

SENATOR WALLMAN: Well, we'd know if they metered it how many gallons we actually pulled out of that aquifer. I have friends in Colorado and some of those ranchers actually ran out of water because they were using too much water from one aquifer transferring it to another. That's basically what it's doing. [LB856]

SENATOR JOHNSON: Okay. [LB856]

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SENATOR CARLSON: Okay. Any other questions? Senator Kolowski. [LB856]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Senator Wallman, if I'm understanding fracturing process, they're usually quite deeper than where the water is being pumped from, significantly deeper, and there's all sorts of questions we might have of that as to where the water would go and how it would be settled. And they do pump a lot of that out after it's been used also, do they not, even though it's at that great depth? [LB856]

SENATOR WALLMAN: Well, they can, but... [LB856]

SENATOR KOLOWSKI: The holding ponds and all the rest? [LB856]

SENATOR WALLMAN: But you probably can't use that water. Maybe for something, but not for drinking water. [LB856]

SENATOR KOLOWSKI: Correct. I understand that aspect, but taking it from a shallow level and forcing it deeply into the ground as they do to break up all the rock and all the rest in order to release the things they're after: natural gas, oil, whatever it might be. Would you want to do this for better charging per gallon used, processed as well, in order to meter for their usage? [LB856]

SENATOR WALLMAN: Well, that's not in here for...that's up to you the committee or whoever. But you realize that if you pump water down deep, there's some water at different aquifers. And in this area it is pretty salty. You can't use it for drinking water. And where I live as well because there are deep holes. But it's not fit for drinking. But this clean water they pump down there to fracture things is a different...you're moving it from one aquifer, literally, to another. [LB856]

SENATOR KOLOWSKI: Okay, thank you. [LB856]

SENATOR CARLSON: Okay. Any other questions? Seeing none, thank you. And you'll stay for closing? [LB856]

SENATOR WALLMAN: Yes. [LB856]

SENATOR CARLSON: Okay, all right. [LB856]

SENATOR WALLMAN: Thank you. [LB856]

SENATOR CARLSON: All right, proponents, we're ready for the first testifier. Welcome, Ken. [LB856]

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KEN WINSTON: (Exhibit 2) Thank you. Good afternoon, Chairman Carlson and members of the Natural Resources Committee. For the record, my name is Ken Winston, K-e-n W-i-n-s-t-o-n appearing on behalf of the Nebraska Sierra Club. Where I'm appearing in support of LB856. And LB856 represents what we think is a very sensible, minimal, commonsense approach to dealing with an issue that a lot of people care a lot about. And given the importance of water and I know I don't have to lecture this committee about the importance of water, I know that many of you have spent many hours in the last year engaging in hearings and studies about water. And so I think I'd be...you'd probably lecture me about water and how important it is. But I certainly...the Sierra Club certainly supports the importance of water for all of the reasons that it's...that it's been studied over the last year. It's very important to agriculture; it's very important to our...for domestic uses, for society in general. And also the fact that we're looking at ways...trying to find ways of sustaining our water so that we have a sustainable water supply going forward. And I know that's a very important issue we're trying to deal with in the Legislature this session. So we think tracking the amount of water that's being used in a process like this just makes sense. And that we should be enacting policies to keep track of that and so we know what's happening, how much water is being used, how much is being recovered, and what the disposition of that is. So it just seems like a really commonsense and minimal requirement. And I just...every once in a while my lawyer training comes out, I just decided to go and look at what the constitution says about water and the first priority for...that our constitution names for water is...water use is domestic use. And the second one is agricultural use. And then manufacturing comes third. And I don't see mining or hydraulic fracking or anything like that listed anywhere in our constitutional hierarchy of uses. So if we had a situation where water was being used in...in...in a situation where the water was being used and there was a reason for...for...and then someone had another use and they were being, as Senator Wallman indicated, if an agricultural use was needing the water, then this would be a way of saying...stepping in and saying that this higher priority needs to be met. So for those reasons we believe that LB856 should be advanced. [LB856]

SENATOR CARLSON: Okay. Thank you. Questions? Senator Haar. [LB856]

SENATOR HAAR: I'm sorry, didn't mean to distract you, but I have a second copy of this letter and I just wanted your response. This is from Black Hills Energy and they say they already do this so there's no need to put it in the law. And so I'll be asking Senator Wallman the same question, but I would ask you that question. Do you see any necessities since they're doing it to put it in the law? [LB856]

KEN WINSTON: Well, it seems to me that if they're already doing it, then I don't see what the problem would be. [LB856]

SENATOR HAAR: Well, it doesn't seem to be any opposition here. [LB856]

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KEN WINSTON: I mean it's...I mean it's kind of like saying, well, I already drive 65, you don't have to tell me to drive 65. Well, we have laws that require us to drive a certain speed limit. And if it's something that they can do...I mean, to me a good reason to oppose it would be if there was some practical reason why they couldn't do it. And to me this seems like if you are already doing it, then I can't see any reason why you wouldn't say, well, let's just make sure that it continues to be done. I guess the question that I would say is, okay, this has kind of a blanket statement, the natural gas industry already meters the volume of water. I would be very interested in seeing documentation of that and does everybody do that? So those are the kinds of things...and I guess there are other industries that also are engaged in hydraulic fracturing as well as the natural gas industry. So I think any time that you're involved in something like this, if it's feasible and it's not a problem, I see no reason why it shouldn't be made part of the statutes. [LB856]

SENATOR HAAR: Do you know, because this letter has raised some questions in my mind. I really don't know this, do you know if Black Hills Energy has some kind of exclusive contract to do fracking in Nebraska? I mean, they may do it, but others may not do it. [LB856]

KEN WINSTON: I have no idea. [LB856]

SENATOR HAAR: Maybe I'll ask Senator Wallman that question. [LB856]

KEN WINSTON: Yeah, I don't know. I don't know what they do in relation to natural gas extraction in the state of Nebraska. [LB856]

SENATOR HAAR: I mean, I'm glad they do it, but...okay, thank you. [LB856]

SENATOR CARLSON: Senator Kolowski. [LB856]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Senator Haar's comment, I think, is on target. If Black Hills does that, you know, we can praise them for that and say that's wonderful, but all of a sudden if we hit an oil field in Nebraska and six or ten more companies come in... [LB856]

SENATOR HAAR: I wish we would. [LB856]

SENATOR KOLOWSKI: And they...we'd look like North Dakota then. They'd have that opportunity to also put wells in. They may not have the same attitude about keeping track of their water usage and we have no protection as far as asking for that to happen with no law. [LB856]

KEN WINSTON: Yes, I would agree with that point of view. And as a matter of fact,

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there is more oil development that's happening in the southwest corner of the state as a result of hydraulic fracturing. [LB856]

SENATOR KOLOWSKI: That's correct. Thank you. [LB856]

KEN WINSTON: So I think there would be a basis to enact an...even if one industry is doing it, we don't know what the other industries do. And I...having just seen this, I don't know what documentation there is that supports this. [LB856]

SENATOR KOLOWSKI: Thank you. [LB856]

SENATOR CARLSON: Okay, any other questions? Senator Schilz. [LB856]

SENATOR SCHILZ: Mr. Winston, thank you. Do you know, is this a...in the current structure, the way it is set up now to get the permits to be able to extract water for fracking or anything like that, do you know is that under the Department of Natural Resources for the permit or does that fall under DEQ or...where does it fall under, because that makes a difference as to where we would put this in statute possibly. [LB856]

KEN WINSTON: I think...I'm going to have to say I don't know where it would fall. And I was just trying to think of how it might fit within the...I mean, normally groundwater issues are natural resource districts issues. And normally surface water is a Department of Natural Resources issue. But sometimes if there is something related to...like a NPDES permit, they may have to get an NPDES permit or something like that from DEQ or some other permit if there is an issue about a discharge into some other body of water. [LB856]

SENATOR SCHILZ: And I'm foggy on this too, but for some reason there may be co-permitting going on there. I'm not sure though, but... [LB856]

KEN WINSTON: Yeah. [LB856]

SENATOR SCHILZ: ...probably something we need to check into. [LB856]

KEN WINSTON: Yes. And I know there are some provisions related to some of this, related...in the DEQ statutes, but I don't know that they would specifically apply to this. [LB856]

SENATOR SCHILZ: Okay, thank you very much. [LB856]

KEN WINSTON: So I wish I had a better answer, but... [LB856]

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SENATOR SCHILZ: We've got some folks that can figure that out. [LB856]

KEN WINSTON: I'm sure. Yes. [LB856]

SENATOR SCHILZ: Thank you. [LB856]

KEN WINSTON: Certainly, thank you. [LB856]

SENATOR SCHILZ: Thank you. [LB856]

SENATOR CARLSON: Senator Kolowski. [LB856]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Mr. Winston, do you know...in each of these well locations there's always a holding pond of the liquids that come back out, and as Senator Wallman said, it's probably not drinkable, those kind of things. Is there a way that...do you know enough about the fracking process that they could use that water again, sending it back down into the well hole rather than using fresh water and recycle a lot of that pool? [LB856]

KEN WINSTON: Well, it's my understanding that generally the water that does come up is recycled in that manner. But there is...I don't know the percentage of water that's lost. [LB856]

SENATOR KOLOWSKI: Sure. [LB856]

KEN WINSTON: Some...and I guess it depends upon the process. I mean there's different kinds of processes whether it's a mining process, whether it's dealing with natural gas, whether it's dealing with oil recovery or what have you. So there's different kinds of processes. But the conservation in an environmental community generally treats that...considers that water to be lost because of the fact that it can't be used for other purposes after it's been injected into a lower aquifer or a lower level because it often...sometimes because of the fluids that are combined with it and sometimes because of the fact that once it gets to that level, there's substances that contaminate it in the process. So I guess...would agree with Senator Wallman's statement that usually once it gets...it becomes part of this process it's not usable for other purposes. [LB856]

SENATOR KOLOWSKI: And I know the...I think I mentioned this in here before, the North Dakota oil fields are burning off natural gas at the tune of about a million dollars a day in the Bakken Field up there in western North Dakota and into Montana. They have, simply, no place to put it; no containers, no pipelines to put it into; it's just in the way as they're hitting the oil. That's unconscionable when you think of... [LB856]

KEN WINSTON: Well, I would agree. I mean, it seems like a waste of a resource that

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could be put to better use. [LB856]

SENATOR KOLOWSKI: As propane prices are going through the ceiling lately. [LB856]

KEN WINSTON: And we hear of people that are concerned about natural gas prices, so...so yeah. [LB856]

SENATOR KOLOWSKI: Yes, sir. Thank you very much. [LB856]

KEN WINSTON: Thank you. [LB856]

SENATOR CARLSON: Senator Smith. [LB856]

SENATOR SMITH: Thank you, Mr. Chair. Mr. Winston, so getting at the outcome for this legislation, so this is in...let's say this goes into law, how is that information going to be used? What is the purpose of that information? [LB856]

KEN WINSTON: Well, some of it would depend upon the...the agency that would be involved. But the way that we would perceive it being involved would be similar to what I described here which is, for one thing, it's just...we...good to know what water is being used for, because of the fact that it is such a vital resource. We ought to know where water is going, how it's being used, and in particular if it's being lost or one of the preferential uses that are set out in our laws. So...but one of the other things that could happen, as I said, say there's someone who is engaged in...who has some irrigation wells and they're not able to pump as much as they need. They could go and say, we have a higher priority under Nebraska Constitution and Nebraska law for the use of water. So we're going to claim our right to this water use because it is a preferential use under the Nebraska law. [LB856]

SENATOR SMITH: Could you not determine that priority without the level of detail that you're looking for in the measurements here? [LB856]

KEN WINSTON: Well, I think the question would be, how much is being used and...I mean, I just think it's a good thing to know. I mean, having more knowledge, more information about the usage of our natural resources is usually a good thing. And in this kind of a situation, if I'm a farmer and I'm saying, okay, I...my water usage...my wells went dry last summer. [LB856]

SENATOR SMITH: Okay. [LB856]

KEN WINSTON: And how can I determine what the availability of water is in the area? [LB856]

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SENATOR SMITH: I think if we can get at a strong purpose for the measurements, I'm not so much worried about that if there needs to be some prioritization set up, I understand that. What I want to be careful of, and I know your position on fracking, but what I want to be careful of is setting up a series of regulatory points in statute that has the outcome of harassing or intimidating a particular industry to where it puts them at a disadvantage or at least it puts them on their heels. I hope that's not what we're attempting to do with this legislation, but rather using the outcome from the information to be worthwhile. [LB856]

KEN WINSTON: Certainly. And I guess my sense is that the industry is not on their heels, that they're...that it's fairly...that there is a lot of activity going on and that there's very little interference...very little regulation by the state so...and this would...it doesn't say that they have to stop, it just says this is how much water is being used. And as I said, it would enable somebody to come in and say, I see that this much water is being used for this purpose, my purpose trumps that purpose. [LB856]

SENATOR SMITH: I understand. Would you prefer not to see any fracking at all? [LB856]

KEN WINSTON: I wouldn't go that far. I mean, I think it's one of these things where there...it's one of these things where there's kind of a hierarchy of benefits. And the concern is that the...that we want to make sure that anything we do, the benefits outweigh the harm that it does. And so I guess I would want to have a conversation about, well, what are we getting out of this and what is the cost? [LB856]

SENATOR SMITH: Okay. [LB856]

KEN WINSTON: And who is being impacted. [LB856]

SENATOR SMITH: I appreciate that. I'm just trying to understand the intent. Thank you. [LB856]

KEN WINSTON: Okay, thank you. [LB856]

SENATOR CARLSON: Okay. Senator Haar. [LB856]

SENATOR HAAR: Mr. Winston, you bring up an interesting point about measuring the amount of water so that we know where our resources are used. And one of the issues that didn't come up this year, but I think some of us would favor, would be the metering of irrigation wells so we know how much water is being used there. Does Sierra Club have any kind of position on that that you're aware of. [LB856]

KEN WINSTON: Not that I'm aware of. So, I'll try not to wade into something where I get

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into more trouble here. Not that aware of. [LB856]

SENATOR HAAR: But I'm just curious about that and that might be...because I also agree that as we look at our overall use of water, I personally favor metering of irrigation wells because I think in the end you need to know how much water is going into all the uses including fracking and irrigation and how much water the city of Lincoln is pulling out of the Platte and all those kinds of things. [LB856]

KEN WINSTON: Well, more knowledge is a good thing. [LB856]

SENATOR HAAR: Thank you. [LB856]

SENATOR CARLSON: Senator Johnson. [LB856]

SENATOR JOHNSON: Thank you. Kind of a little follow up on that and Senator Brasch, just off the mike, was commenting that we do have some...the NRDs might be doing some measurements, metering, whatever. By putting this in statute, does this open up the door for other industries to be challenged that are higher priority even...pretty soon we're going to have to...manufacturing is going have to be...the oil industry might say, well, why aren't you metering some of these others. Does it open up the door that pretty soon we start metering everything? Is there a fear in your mind of that happening and is that good or bad? [LB856]

KEN WINSTON: Well, it's one of these things where...I don't know all the areas where NRDs are metering. I know that they are metering in some areas already... [LB856]

SENATOR JOHNSON: Um-hum. [LB856]

KEN WINSTON: ...just because of the fact that there's water shortages and they have to meter to keep track of the amount of water that's being used. And in some areas, I mean, it's possible that an NRD may already be doing this in some of these areas. I don't know. But to me it doesn't seem...I don't see that there's a harm in having a state statute that would say keep track of the amount of water that's being used in this area. And it seems to me that the more...because of the fact that I...that there's going to be more and more demands on water and the need to find ways to sustain it and conserve it and protect it become more apparent, I think there's...there's going to be more areas where we're looking at making sure that the water that is used is used appropriate. [LB856]

SENATOR JOHNSON: Okay. Thank you. [LB856]

SENATOR CARLSON: Senator Haar. [LB856]

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SENATOR HAAR: Well, this is just...I feel it strange that we're having to ask you questions that I think we should be able to ask of the industry, but there's...they're not here, so that's more of a statement than a question. [LB856]

KEN WINSTON: Thank you, Senator Haar. [LB856]

SENATOR CARLSON: Any other questions? I do have one. [LB856]

KEN WINSTON: Yes. [LB856]

SENATOR CARLSON: And there is a section in statute that says: for purposes of this section, industrial purposes include manufacturing, commercial, and power generation. Would you consider fracking a part of power generation? [LB856]

KEN WINSTON: Actually I wouldn't because of the fact that...I think it's one of these situations where I would presume that the statute...the people who wrote...who wanted that language put in there had a specific intent and purpose and at that time weren't thinking about hydraulic fracturing as a purpose at that time. And so I think this is a different idea that power generation would be specifically related to generating electric power. That would be my understanding of that, that I believe is the...well, that would be what I would understand would have been the purpose for having that in the statute. [LB856]

SENATOR CARLSON: All right. And if in your view it's not power generation, would fracking fall under industrial purpose? [LB856]

KEN WINSTON: It might, but it's one of these things where...once again, if it wasn't considered at the time that it was being...that that provision was put in the statute, and I don't know how long that's been there, I would be concerned about having something that...where they could come in and argue if there was...if someone were to challenge it and say, well, at that time this practice wasn't even...didn't even exist and so therefore, we can't...we're not covered. So that would be the concern related to that. [LB856]

SENATOR CARLSON: Okay. Because the section before talks about using...withdrawing groundwater for industrial purposes, but then if fracking isn't an industrial purpose, it doesn't fit in this section. That's why I asked you the question. And I think your answer is, you really don't know. [LB856]

KEN WINSTON: That's one way of...yeah, sure...(laughter) no, I don't know the exact answer, but by the same token, one of the things that if something isn't specifically defined and wouldn't be considered to be an industry which...industry usually, in my mind, is involved with manufacturing. And so...and in this situation, it's something different from that. [LB856]

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SENATOR CARLSON: Okay. [LB856]

KEN WINSTON: It's more like extraction as opposed to manufacturing. [LB856]

SENATOR CARLSON: Okay. Senator Smith. [LB856]

SENATOR SMITH: Thank you, Mr. Chair. And, Mr. Winston, I just want to kind of circle back around to the line of questioning I had with you and then you followed up with an exchange with Senator Haar on whether you had an interest or had been tracking some of the use of water and metering of water for irrigation and then had another exchange with Senator Johnson about, you know, what implications this would have beyond. I want to loop back around and suggest that...if I understand what you're saying, you're supporting this because you want to seek a greater understanding of the use of water as a natural resource for potential management and stewardship. But yet, this statute singles out one specific use without looking at things more comprehensively, which I would suggest is a totally different thing that we need to deal with about metering, other uses and implications for prioritization. Short of that, this is singling out one specific use which appears to me to be a bit biased against this use. So I'm going to leave my comment as that. [LB856]

KEN WINSTON: Okay. [LB856]

SENATOR SMITH: And if you want to respond to that, go ahead. [LB856]

KEN WINSTON: Well, I like the way that you paraphrase what I said, I mean, I think you said it better than I did earlier. But what I would say in terms of...I wouldn't call it biased against this. What I would say is that if you have a situation where you have water that's going from a use where it could be used by...for any purpose, and then you take it out of circulation and contaminate it, then I think you ought to keep track of that. And that would be a concern of ours. [LB856]

SENATOR SMITH: As with any use. [LB856]

KEN WINSTON: Yeah, that that kind of use we ought to definitely track that kind of use; any time that water is being contaminated, because water is such a precious resource. Let's make sure that...if we're going to take it from a purpose where we can...where it could be used for any purpose, where we could drink it, where we could pour it on the land for agriculture, where we use it to bathe with, and then we convert it to a purpose where it can't be used for any of those things, let's keep track of it. [LB856]

SENATOR SMITH: All right. Only a component of the legislation here talks about the fracturing fluid. The other part talks about measuring the amount that's used and

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consumed for that purpose. It's not making reference to any type of contamination. So the amount of consumption is what you're going to measure through this which would apply to other uses. [LB856]

KEN WINSTON: Well I...and if you want to address those, we're certainly interested in that. [LB856]

SENATOR SMITH: Okay. I just want to make it clear. [LB856]

KEN WINSTON: But anytime, as I said, once you take that out of circulation and you put it beneath the earth and if it is pumped back out, it's contaminated. And all of that is being lost for all those uses that I described at the opening of my statement. [LB856]

SENATOR SMITH: Thank you. [LB856]

SENATOR CARLSON: Okay, any other questions? Well, Ken, I have been on this committee...this is the eighth year. You've come and testified many, many times, usually I'm the one that might ask you a question or two or none at all; you set a record today. (Laughter) Thank you for your testimony. [LB856]

KEN WINSTON: Well, thank you. And one of these days ask me questions about something that I know more about. (Laughter) Thank you. [LB856]

SENATOR CARLSON: (Exhibits 3, 4, and 5) Okay. Next testifier as a proponent. All right, we have letters of support for LB856 from John Hansen of Nebraska Farmers Union; and from Jane Wilson in Omaha. All right, next...are there any opponents testifying as an opponent? All right, anyone...and we do have a letter from Black Hills Energy, Jill Becker has a letter of opposition to LB856. Anyone testifying in a neutral position? Okay, seeing none, Senator Wallman, you're recognized to close. [LB856]

SENATOR WALLMAN: Thank you, Chairman Carlson. We just got this letter as well. They knew this bill was out there quite a while. But, you know, it already falls under industrial groundwater regulations. So in last year's bill we asked for amount of water, so why haven't they told us this before? I think we need to know where it's going. Nothing new, industry must already do this; it's in statute. So I think knowledge is the key. Don't you want to know where your water is going? And so it's already being monitored. So I think it's a good thing to put in the statute. And thank you. [LB856]

SENATOR CARLSON: All right. Questions? Senator Haar. [LB856]

SENATOR HAAR: Yeah, Senator Wallman, didn't you find this a little bit of a strange hearing without any opposition showing up? [LB856]

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SENATOR WALLMAN: Absolutely. That's unusual for me. (Laughter) [LB856]

SENATOR HAAR: Do you...again, I want to go back to that letter. They're saying...Black Hills Energy says they're already metering. Now that's good. [LB856]

SENATOR WALLMAN: Sure. Absolutely. [LB856]

SENATOR HAAR: But do they...do you know of any kind of exclusive contract of Black Hills Energy? I mean, they're doing it. But do we know that every other...I mean, this is sort of a matter of faith that is saying the industry...do they say everybody or...let's see, "as well as water recovered measuring...has been part of the drilling process for over 60 years." So I guess would you agree that since they don't have an exclusive contract to drilling in Nebraska that even though they're doing it, we shouldn't have it there for those who might come...actually we hope will come in... [LB856]

SENATOR WALLMAN: Black Hills Energy, you know, is energy in my area. So I've never had complaints about what they do. So I found it a little bit confusing why they was against this if they're doing it. [LB856]

SENATOR HAAR: Okay. Well, just once again, a very strange hearing and it sort of...not sure what the term is in psychology, but when instead of answering a question, you just walk away. And I...I sort of feel that we had Ken Winston answering the questions that we...that I would have liked to have asked of Black Hills in the opposition. [LB856]

SENATOR WALLMAN: Sure. I want to thank you for listening. [LB856]

SENATOR CARLSON: Okay, any other questions? Just something here, Senator Wallman, in Section 46-677 is where you put this section. Section (a) says that: any person who desires to withdraw and transfer water from the aquifers must obtain from the director a permit. And then Section (b): any person who has withdrawn from the state of Nebraska for industrial purposes...and it's industrial purposes in the preceding section as well, shall file for an application for a permit. So they do get permits, but what you've added today is that they need to measure what they're taking. [LB856]

SENATOR WALLMAN: Yes. [LB856]

SENATOR CARLSON: That's pure and simple the bill, isn't it? [LB856]

SENATOR WALLMAN: Yep. [LB856]

SENATOR CARLSON: Okay. All right. Senator Haar. [LB856]

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SENATOR HAAR: Again, just for the record, going back to the letter that they sent, it says that they...it says that it's been a part of their practice; do we see a pledge for the future? I mean, I would assume that, but...we really have to be careful about language here, because they're not here to answer this for themselves. Do you see in that letter...do you have the letter in front of you? [LB856]

SENATOR WALLMAN: Yes, I do. [LB856]

SENATOR HAAR: Okay, measuring has been part of the drilling for over 60 years. Do you see where they say: and it will always be part of the process? [LB856]

SENATOR WALLMAN: No, I don't. [LB856]

SENATOR HAAR: And you see in that letter where it says that everybody else will be doing fracking...will be doing that process. [LB856]

SENATOR WALLMAN: No. And I would think they would want that in there because if they do it, why wouldn't somebody else do it? [LB856]

SENATOR HAAR: It could put them at a disadvantage... [LB856]

SENATOR WALLMAN: Disadvantage, I think. [LB856]

SENATOR HAAR: ...in the future. Interesting... [LB856]

SENATOR WALLMAN: Because I know if I dig an irrigation well, I have to have a permit. [LB856]

SENATOR HAAR: Yeah. [LB856]

SENATOR WALLMAN: They can deny me a permit if I'm in a water-short area. [LB856]

SENATOR HAAR: Yeah, very curious, very curious. Thank you. [LB856]

SENATOR WALLMAN: Yeah. [LB856]

SENATOR CARLSON: Okay. Senator Brasch. [LB856]

SENATOR BRASCH: Thank you, Chairman. And thank you, Senator Wallman. I'm just very curious, did you bring the bill here on anyone's behalf? Who brought this to you? [LB856]

SENATOR WALLMAN: Just myself. I had concerns. [LB856]

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SENATOR BRASCH: And your concerns...I thought I heard you say earlier you don't know of any problems, you're just wondering. [LB856]

SENATOR WALLMAN: Here, in Nebraska? [LB856]

SENATOR BRASCH: Yes. [LB856]

SENATOR WALLMAN: No, I don't know of any problems. [LB856]

SENATOR BRASCH: And has your office... [LB856]

SENATOR WALLMAN: But other states... [LB856]

SENATOR BRASCH: ...or anything done research on this saying...? [LB856]

SENATOR WALLMAN: I have myself, other states, yes. [LB856]

SENATOR BRASCH: And in other states you are concerned that things have happened? [LB856]

SENATOR WALLMAN: Yeah. [LB856]

SENATOR BRASCH: Because I know last year we had a bill specifically on fracking. [LB856]

SENATOR WALLMAN: It took a while, but finally they got something in place, you know, kind of followed Texas. [LB856]

SENATOR BRASCH: Okay. And just so we have on record that we are a business-friendly state. We're not...and we're trusting that Black Hills has been a good business in Nebraska; we welcome natural... [LB856]

SENATOR WALLMAN: Sure, I'm not implicating Black Hills or nothing, no. [LB856]

SENATOR BRASCH: Because we'd sure like natural gas coming, you know, our way from our constituents...the calls that we're not being... [LB856]

SENATOR WALLMAN: Yeah, I hate to see it burned in the air though. [LB856]

SENATOR BRASCH: Just proactive...well, I think everyone would...including Black Hills wouldn't see that. And I don't know if that's part of their best practices when they are doing their work that maybe that's a procedure and why it's being done that they can't

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do it without...there's just questions I would have, as others had mentioned, of the industry that research maybe will show us is that when you do your fracking, (a) first you run a water test, (b) then you do the other. And so I do thank you for bringing the bill forward. And... [LB856]

SENATOR WALLMAN: Sure. But this wasn't brought to me by anybody, but... [LB856]

SENATOR BRASCH: No, just your thoughts. [LB856]

SENATOR WALLMAN: Yeah. [LB856]

SENATOR BRASCH: You're being proactive. And I do want to thank you. [LB856]

SENATOR WALLMAN: I try to stay ahead of the game. [LB856]

SENATOR BRASCH: And you do. [LB856]

SENATOR WALLMAN: And so we don't get behind on some issues and... [LB856]

SENATOR BRASCH: Yep, yep. I appreciate it and I'll read a little more about this and visit with you out of committee. [LB856]

SENATOR WALLMAN: Thank you. [LB856]

SENATOR BRASCH: Thank you. [LB856]

SENATOR WALLMAN: Thank you all for listening. [LB856]

SENATOR CARLSON: Senator Haar. [LB856]

SENATOR HAAR: I'm waiting. [LB856]

SENATOR CARLSON: Okay, all right. Senator Smith. [LB856]

SENATOR SMITH: Thank you, Mr. Chair. [LB856]

SENATOR WALLMAN: Senator Smith, how are you? [LB856]

SENATOR SMITH: Senator Wallman, just great, good afternoon. (Laughter) Looking forward to a weekend coming up. And I appreciate the exchange you just had with Senator Brasch. And you said that you're a customer of Black Hills and...as am I, and I just kind of want to know your experience in working with them. Have they always been forthcoming with information that you need? [LB856]

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SENATOR WALLMAN: Sure. That's why this was confusing to me, yes. [LB856]

SENATOR SMITH: And as far as you working here in the Legislature with them, have you seen representatives of Black Hills around in the Rotunda and around the halls; have you ever seen anyone from Black Hills here? [LB856]

SENATOR WALLMAN: No. [LB856]

SENATOR SMITH: Okay. Well for the record, I have, and they have been in front of our committee before. And for those that may be seeing us by camera, I know there is some things that have been raised here, some questions... [LB856]

SENATOR WALLMAN: Oh, you mean the lobbyists? The lobbyists, you mean? [LB856]

SENATOR SMITH: Yes. [LB856]

SENATOR WALLMAN: Yes, I've seen the...yes. [LB856]

SENATOR SMITH: I just want to make certain that those that may be watching us on TV, they understand that Black Hills representatives frequently are before the Natural Resources Committee and other committees that impact their industry. And their not being here is not...is not an indication of them lacking...not wanting to provide information, but they did send a letter in opposition to this bill. And my understanding, that's because it impacts their industry. And the letter is written in such a way that they're speaking for their corporation, their business, not for the industry because that's...they're not representing the industry, they're representing their company in this letter. Is that correct? [LB856]

SENATOR WALLMAN: That's what it seems, yes. And they said they're already doing it. [LB856]

SENATOR SMITH: Yes. [LB856]

SENATOR WALLMAN: So then it seems a little confusing why they would be against it, I guess, to me. [LB856]

SENATOR SMITH: And I know in a lot of our communities they've been good partners in our communities, good members of our communities, so we don't want to do anything that would suggest that they've...are anything less than good partners in our communities. Thank you. [LB856]

SENATOR WALLMAN: Thank you. [LB856]

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SENATOR CARLSON: Okay. Thank you, Senator Wallman. And with that we close the hearing on LB856. Thank you for coming. And committee, we will go into Executive Session. (See also exhibits 6 and 7.) [LB856]