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Natural Resources Committee
February 20, 2014

[LB985 LB1111 CONFIRMATION]

The Committee on Natural Resources met at 1:30 p.m. on Thursday, February 20, 2014, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on a gubernatorial appointment, LB985, and LB1111. Senators present: Tom Carlson, Chairperson; Lydia Brasch, Vice Chairperson; Annette Dubas; Ken Haar; Jerry Johnson; Ken Schilz; and Jim Smith. Senators absent: Rick Kolowski.

SENATOR CARLSON: (Recorder malfunction) ...to my left...we don't have...Rick Kolowski is not here from Omaha today; he's not feeling well. Next, but then we have Senator Ken Haar from Malcolm, from District 21; Senator Jim Smith from Papillion, District 14. Next to him will be Senator Ken Schilz from Ogallala, District 47. And then to my immediate left is Laurie Lage, the legal counsel for the Natural Resources Committee. To my far right is Barb Koehlmoos, the committee clerk. And then Senator Lydia Brasch from Bancroft, District 16, and she's also Vice Chair of the committee. Then Senator Jerry Johnson from Wahoo, District 23; and Senator Annette Dubas from Fullerton, District 34. Our page today is Steven Schubert who is a senior at UNL. And if you need some help, he'll be glad to help you. When we get into the other bills today, those of you that are going to testify, make sure you picked up a green sheet back in either corner and have that filled out when you come to the front to testify and put that in the box there by Barb. If you have material to hand out, then hopefully you have 12 copies; and if you don't, Steve, our page, can help you with that. If you don't want to testify, you can submit comments in writing and those will be passed out and then they become a permanent part of the record. When you take the chair there, you don't need to adjust the microphone, just speak clearly into it. And give your first and last name and spell it so that we have the transcript accurate before you start your testimony. If you don't do that, I'll have to stop you and ask you to do that. We don't use mechanical...or electronic devices on the committee, so if you have cell phones please turn them off or put them on silence or vibrate so they don't disturb anything during the committee. We don't have any displays of opposition or support to a bill and we've never had a problem with that so I don't think we'll have one today. How many people are intending to testify on the bills today? Okay. We'll probably use the lights which will be five minutes and so when you start and after you've given your name the green light will come on and that gives you four minutes. And then the yellow light comes on and that gives you a minute. And then the red light comes on and we ask you to wrap up your testimony when the red light comes on. If I don't think you're looking at it, I'll ask you to look at it. So that's the way we'll proceed with the hearing. Our first hearing today is a confirmation hearing. And we have Mark Spurgin; this is for the Game and Parks. And, Mark, you want to come up and take the chair. And I've indicated that you can tell us whatever you think would be good for us to hear on your appointment for Game and Parks, so welcome.

[CONFIRMATION]

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MARK SPURGIN: (Exhibit 1) Thank you. Mark Spurgin, M-a-r-k S-p-u-r-g-i-n; my home address is 55 Makochmni, Ogallala, Nebraska. My work address is 790 Road East R South, Paxton, Nebraska. And I was born in North Platte, Nebraska. I'll start out with my educational background and civilian and military. I graduated from Paxton Consolidated School in 1965 and the University of Nebraska at Lincoln in 1969 with a BS in business where I was a member of Delta Tau Delta Fraternity. I also graduated from the Colorado School of Banking, University of Colorado in Boulder. Some of my military schools that I attended was the Nebraska Military Academy, state OCS program in Ashland, Nebraska, in 1974. And in 1976, I graduated from a field artillery officer basic course at Fort Sill, Oklahoma. And in 1986, I graduated from the field artillery officer advance course at Fort Sill, Oklahoma. And in 1991, I graduated from the command and general staff college at Fort Leavenworth, Kansas. My military service was a total of 28 years, with 23 years commissioned. During that time I spent...I had three tours overseas, two in Germany and one in Italy. When I was in the one in Germany, just by chance I happened to talk to a Forstmeister over there; those are the guys that are in charge of the forest, the wildlife, and also the trees. They're the individuals who tell individuals where to cut trees and when to plant trees and also to harvest animals like deer. Over there, they go with you when you're hunting, that you have a...kind of like a tree stand and that individual is with you and he says--shoot that one. So it's kind of...that was unique. And at that time, I never realized I was going to be on the Game Commission here in Nebraska, but it was just one of those deals. And on our tour to Italy, I was in a situation where it was just like NORAD, the North American Aerospace Defense Command at Colorado Springs. It's a...I don't know if you know about that, it's a base within a mountain protected against all kinds of activities. You could have a nuclear explosion and that would be the headquarters for the Aerospace Command. The place that I was at was north of Naples. It was called Proto because it was a prototype of what we have here in the United States. That was a very interesting tour. I was in the unconventional military operations section. Some of the awards I received...I received the National Defense Medal all the way up to the Meritorious Service Medal. And as far as my officer appointments, a chronological list, I was a Second Lieutenant in 1974, First Lieutenant in 1977, a Captain in 1979, Major in 1986, and a Lieutenant Colonel in 1995. Some of my duty assignments after my enlisted tour which ended in June of '74, I was a forward observer for Battery A, 1-168th Field Artillery. Moved up to the assistant executive officer; was battery commander from '77 until '83 for Battery A, 1-168th Field Artillery. Then I went into the staff, I was a battalion S-1, which was a personnel officer for one year. Then I went in...was a battalion fire direction officer for one year and then I moved up to brigade fire support officer for a year. And then after that, I moved into battalion S-3, which is the operations and training officer. Actually, those are the guys that run the battalion, so I was quite honored to have that position. In 1990, I became the battalion executive officer. And then in '96 I became the staff leader for the 12th Battalion 6th Brigade 95th Division of the United States Army Reserve School. That's where I instructed other officers. I found out right then I was a better field troop than I was a trainer. Some of the civilian affiliations that I've been associated with: I was a

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charter member of the National Cattlemen's Beef Association; member of the Nebraska Cattlemen; Nebraska Farm Bureau; life member of Ducks Unlimited, Pheasants Forever, National Wild Turkey Federation; and the National Rifle Association. I'm also a member of Delta Waterfowl; charter member and past president of the Paxton Optimist Club; life member of the University of Nebraska Alumni Association; and member and past commander of the American Legion Post 303. Some of the elected and appointed boards I've been on as a past board member of the National Cattlemen's Beef Association, executive committee; past president and member of Ogallala Affiliate of the Nebraska Cattlemen; past board member and secretary of Midwest Electric Cooperative Corporation; past member of the Nebraska Cattlemen Region VI director; member and president of the Paxton Rural Fire District; member of the Keith County Planning and Zoning Board; member and president of the Farmers Cooperative Elevator Association; board member and initial investor in Wheatland Industries, presently Mid America Agri Products, which is an ethanol plant in Madrid; past board member of the Nebraska Beef Council; past member of Tom Osborne's ag advisory committee; and a member of the University of Nebraska-Lincoln West Central District and Keith County Farm Advisory Committee. Some of my other activities, I've traveled with the U.S. Meat Export Federation on trade missions to Japan, China, and Mexico. Also traveled with the Governor and Lieutenant Governor on trade missions to Cuba. My employment after graduation from college: I worked for Keith County Bank and Trust, which is now Adams Bank and Trust, from January 1970 to December 1975. From January of 1976 to the present, I've been self employed with Spurgin Incorporated and Spurgin Farms. Today Spurgin Farms is a dryland, diversified, irrigated farm with a small feedlot. The farming operation consists of over 7,000 acres located in Keith, Lincoln, and Perkins Counties in southwest Nebraska. All of our irrigation is done by center pivots irrigating the following crops: corn, wheat, edible beans, soybeans, popcorn, and feed crops. Dryland crops are wheat and ecofallow corn. We feed over 8,000 head of cattle with most of the feedstuffs coming from the farm. We also lease a ranch northeast of Sarben in Lincoln County, north of the North Platte River where we run yearlings along with hunting ducks and turkeys. Farming has changed in my lifetime. It is not only a way of life, but it is a business. When I first came back to the farm in 1976, the first thing I started doing was looking at our fence rows because in the old days everybody ran hogs and cattle out there and they had hog wire and two strands of barbed wire. By 1976, this was starting to deteriorate so they were either out in the middle of the field or you took them out. So that's what we did, we started taking out all the fence rows, not realizing that was some of the good habitat for upland game birds. And also at that time, they had a CRP program coming in and the grasses that they had us plant weren't conducive to hosting the insects that the birds need. So when they had the reevaluation of that and the new CRP programs, they included grasses that host the insects that upland game birds can utilize. Also, economics plays an important part in farming. We use chemical instead of tillage. And when you use chemical, you start killing the weeds at an early stage so that they don't grow up and that also kills plants that host the insects that these young birds need to survive. I think we'll always have a pheasant population in western Nebraska,

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but it's not going to be like it used to be. I am married, wife, Pam, who is retired from banking; have one daughter, MaKenzi, who owns a photography and gift shop in Ogallala, Nebraska. Areas of interest: With my understanding of agriculture and the natural resources in western Nebraska, along with being an upland game, waterfowl, deer, and turkey hunter, I think I've helped complement the makeup of the Nebraska Game and Parks Commission. I have attended every public hearing that was held in my district, District 7, which involved Nebraska Game and Parks. I also participated in the big game management and wildlife meetings that were held in my district, along with the meetings held in Districts 5 and 6. As a result of these meetings, the Nebraska Game and Parks Commission has changed the waterfowl seasons, increased the number of doe/fawn permits for pronghorn to help control crop damage, monitor the deer and elk populations, and helped to strengthen the relationship between hunters and property owners. My goals during the first appointment were increase the number of youth hunters; improve hunting access on private lands; enhance the relationship between rural and urban; and emphasize the important part that sportsmen play on rural economics. Some of these are being accomplished through various programs being carried out by the Nebraska Game and Parks Commission. Examples of these are the Open Fields and Waters Program where farmers and ranchers are paid to have public access on their land, and the youth hunts that take place the weekend before opening season dates and the family fishing nights. My upcoming goals are: increase the number of young hunters; enhance the relationship between rural and urban; and emphasize the important part that sportsmen and park goers have on Nebraska's economy. Our youth could be classified as a renewable resource. We need them to take over our farms, ranches, businesses, and be our future hunters, fishermen, and park goers. The more things that they can do in Nebraska, the chance of them staying in Nebraska will be greater. The best hunting experience I had this year was when I took a young hunter deer hunting for the first time. Seeing the look on her face after I told her she had just harvested a deer was worth a thousand words. I'm hoping that experience will keep her enthusiasm for hunting and the outdoors for a long time. By enhancing the relationship between rural and urban, I'm saying that we need more door knocking to get permission to hunt and fish. So much land is leased that people are afraid to ask permission because they are afraid to get turned down. Not all land is leased so there is still a lot of opportunity out there. Also, landowners need to let people know that they have places available for hunting and fishing. An ongoing relationship is generally the result of once you get permission to hunt, you can hunt. Many times this relationship is passed on to the next generation. The more dollars that we can keep in Nebraska, the results benefit everyone. We have an outstanding park system and many hunting and fishing opportunities that can be compared to the best. We have a lot of hidden paradises all over the state. With modern technology through tweets, blogs, etcetera, we should be able to tell our story. We are doing a lot of these things, but we can't let up. We need to partner when we can with local communities and other agencies. We need to get the biggest bang for our buck. The more dollars that stay in Nebraska helps the economy of Nebraska, both rural and urban. Thank you.

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[CONFIRMATION]

SENATOR CARLSON: All right. Thank you for your testimony. Thank you for your service. Questions of Mr. Spurgin. Yes, Senator Haar. [CONFIRMATION]

SENATOR HAAR: Not just a question, a comment; I was out at Fort Robinson this past weekend and the whole maintenance issue that's going on, I brought back a piece of old sewer pipe from one the old officer's barracks and Senator Avery put it up on his Facebook, so anybody who thinks I go out and see this...with a little history of, you know, the history of that piece of pipe. So, thanks for what you do and hopefully we can provide more money for the maintenance. [CONFIRMATION]

MARK SPURGIN: Thank you. [CONFIRMATION]

SENATOR CARLSON: Okay. Senator Brasch. [CONFIRMATION]

SENATOR BRASCH: Thank you, Chairman. And I did want to thank you, as well, for your willingness to serve again, to be reappointed. I can hear you have great passion for hunting, fishing, for our youth, agriculture, and serving our country, so thank you for your service. And I look forward to hearing your many accomplishments for your next reappointment. So thank you. [CONFIRMATION]

MARK SPURGIN: Thank you. [CONFIRMATION]

SENATOR CARLSON: Okay. Senator Johnson. [CONFIRMATION]

SENATOR JOHNSON: Thank you, Chairman Carlson. Thank you, Mr. Spurgin, again; thank you for your service not only in this committee, but to the country. Earlier this year, this committee struggled with a number of mountain lions in the state. And Game and Parks came up with a number, up to 22. Testimony to us would indicate, in areas, there's a lot more than that. Can you tell me, not necessarily the process of how you try and determine that or...is there a better way to analyze that...that number, or where are we at on...because I think...I believe there's more than 22. [CONFIRMATION]

MARK SPURGIN: Yes, Senator. What we did, we took scat samples. We had dogs that we took out and went through the hills. And that's what we came up with for this area. And because of that area, we took it as far as the whole area and thought this would be a justifiable amount. We all know there's more than 22. Mountain lions, they don't know where the state of Nebraska border ends and Wyoming and South Dakota, so they travel in an area. I'll give an example, South Dakota came up with a certain number of lions, and the number of lions that have been harvested and the ones that have been killed in the road and other death, they shouldn't have any lions anymore, but they still have lions. So it's just kind of like the bobcat situation in Nebraska. At first we said there

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were very few bobcat, and now there's over 1,500 or so trapped every year. So it's just the same situation that...the lion population is out there, as far as getting a perfect count, I don't think we ever will. But I know...or the feeling is there's more than 22.
[CONFIRMATION]

SENATOR JOHNSON: Okay, thank you. [CONFIRMATION]

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

SENATOR SCHILZ: Thank you, Senator Carlson. Mark, good afternoon and welcome. And once again, as everybody else has said, thank you for your service. I think that's maybe about the first time I've heard of your whole resume and it's...you've done a lot. As Senator Johnson was talking about the mountain lion issue, it's a tough job for Game and Parks, but it is Game and Parks' job to come up with those numbers and to manage the wildlife out there. And I think over time they've done an excellent job and you can respond to that if you'd like and then I'll have another question for you.
[CONFIRMATION]

MARK SPURGIN: Well, I think that's right. I mean, they are a game animal and the way to manage a game animal is through hunting. And after the surveys we took, we thought it was the proper time to have a season to keep them under check. [CONFIRMATION]

SENATOR SCHILZ: Sure. And then on another side when we talk about the park system, and I'd just like to commend you and the commission itself and the Game and Parks employees for your willingness to look at new avenues of revenue, new ways to do things. And one the biggest opportunities that we've seen in our area, Lake McConaughy, is the ATV jamboree that just got started last year and looks only to grow this year. And I'm hoping that as a commission, you guys are watching that with your eyes peeled to see how that works and whether or not we can expand upon those opportunities that are out there. And you can comment on that. [CONFIRMATION]

MARK SPURGIN: Yes, and that's true; and also, we are looking at a possible ATV park on the west side of Ash Hollow, because on the west side of the highway, Highway 26, we have about 400 and some acres over there, so I've been pushing for that and we're actually going to do a study, feasibility study this year. [CONFIRMATION]

SENATOR SCHILZ: I tell you what, that would be a huge opportunity for Garden County. [CONFIRMATION]

MARK SPURGIN: Yes, Lewellen will really appreciate that. [CONFIRMATION]

SENATOR SCHILZ: I'll tell you what, thank you very much, sir. [CONFIRMATION]

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MARK SPURGIN: Thank you. [CONFIRMATION]

SENATOR CARLSON: Okay, thank you. Any other questions? I have a question on the ranch that you lease, you run yearlings and then along with hunting duck and turkeys; tell a little bit about the ducks and turkeys. [CONFIRMATION]

MARK SPURGIN: Well, that's...you know how I've said that most of the land is leased in the area for hunting and stuff, so I figured that would be my cheapest way to get into a place to hunt ducks and turkeys was to lease this ranch. But the turkeys are bountiful there and it is probably one of the best duck hunting places out there in western Lincoln County. It's right on the North River and behind us we have a place that's...we call the bluffs because it's kind of an open slough seepage area and it's always open so the ducks when they fly in the mornings or the evenings they go from a feeding area to that loafing spot and then there we're sitting with our decoys out and they say, well, that looks like a good place to go. During our hunting, it lasts probably about...anywhere from 30 minutes to an hour and a half. [CONFIRMATION]

SENATOR CARLSON: Okay. So you lease that for hunting purposes, you're not raising ducks and turkeys there. [CONFIRMATION]

MARK SPURGIN: Oh, no, no. [CONFIRMATION]

SENATOR CARLSON: You're harvesting them. [CONFIRMATION]

MARK SPURGIN: We're harvesting them. Sorry about that. [CONFIRMATION]

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

MARK SPURGIN: Okay, thank you. [CONFIRMATION]

SENATOR CARLSON: Uh-huh. Do we have anybody that would testify as a proponent? Welcome, Joe. [CONFIRMATION]

JOE HERROD: Good afternoon, Governor...no, not yet, Senator Carlson (laughter) and committee. It is a great pleasure for me to come here to speak about Mark. And by the way, the ranch that he leases happens to be mine. And I've known Mark for probably over 50 years. I remember bumping into him...I think I was maybe a college student and he was a high school student and I think we were pursuing the same group of antelope up on Harvey Applegate's and Ted...anyway, up in that area. He was a good ol'...they were good ol' guys that let us hunt up there. I had a...one of the reasons that I'm high on Mark is I've known him for a long time, but I had, my ranch out there, I had my ranch manager drop dead at age 46 of a brain aneurism. And a lot of people said--well, if

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there's anything we can do to help, let us know. And Mark never said anything. He was just over there moving the cattle, taking care of the hay, fixing the windmills and everything. And he's just a great person. And when he talks about going to all these meetings, he does; he covers that whole area out there. But to give you an example of his dedication to meetings, there was a Game Commission meeting on a Thursday. The Sunday before, Mark broke his neck in a motorcycle accident and had them haul him down there in a body cast so he wouldn't miss the meeting. So that's dedication. He talked about youth, not only does he help youth, but some of them can't afford the right clothes or the right equipment, he has bought clothes, bought shotguns for people. The other thing, as far as mentoring, this year we're entering into a program on my ranch of starting to mentor a young farmer/rancher so that we can have a natural...get him up and going and have somebody else to go. So I'm testifying on behalf of the Nebraska Council of Sportsmen's Club. We strongly promoted Mark originally for this. We worked with the Cattlemen and the Farm Bureau and different things. And even Tom Osborne sent a letter in recommending Mark. And I know that everybody that was for him is definitely very happy that he's doing the great job that he is. [CONFIRMATION]

SENATOR CARLSON: Okay, thank you. Any questions of Joe? [CONFIRMATION]

JOE HERROD: Nothing about mountain lions? I have one. [CONFIRMATION]

SENATOR JOHNSON: You have an answer? [CONFIRMATION]

SENATOR CARLSON: Well, we'll save that one. [CONFIRMATION]

JOE HERROD: I have a verified spotting of a mountain lion on my place, yeah. [CONFIRMATION]

SENATOR CARLSON: Okay. [CONFIRMATION]

JOE HERROD: And we can't take that tool out of the bag of hunting. I mean, we need to be able...they're going to be a problem someday and we really need to leave that tool in the bag to take care of them. Thank you. [CONFIRMATION]

SENATOR CARLSON: Okay, thank you. Any other proponents? Welcome. [CONFIRMATION]

LAURA FIELD: Thank you, Mr. Chairman, members of the committee. My name is Laura Field, L-a-u-r-a F-i-e-l-d, I'm the director of legislative affairs for Nebraska Cattlemen. Don't want to take much of your time, just wanted to let you know that Mark is a longtime member of ours and we definitely support his nomination today. And we just wanted to be on the record saying that. [CONFIRMATION]

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SENATOR CARLSON: Okay, thank you. Any questions? Any other proponents? Do we have any opponents? Or anyone testifying in a neutral position? Seeing none, then that will end the confirmation hearing on Mark Spurgin. Thank you for coming. And Senator Davis, we're ready to open the hearing on LB985. Senator Davis, you're recognized to open. [CONFIRMATION]

SENATOR DAVIS: Good afternoon, Chairman Carlson and members of the Natural Resources Committee. I am Al Davis, A-I D-a-v-i-s and I represent the 43rd Legislative District. I'm here today to introduce LB985. This bill would allow natural resource districts to provide limited information and evidence to the Department of Natural Resources in certain applications to appropriate water, request a hearing, and appeal. LB985 is being offered in response to a decision by the Nebraska Supreme Court last October. In that case, the Nebraska Public Power District, NPPD, had applied for an appropriation of Niobrara River water and two NRDs wanted the opportunity to present objections. The court decided the NRDs did not have standing which meant they did not have a right under the law to participate in the hearing. LB985 would give NRDs the right to participate in these water appropriation cases. The court decision precluded NRDs from objecting to new applications for surface water and prevented them from introducing evidence as to whether the appropriation would be harmful to local interests. LB985 is designed to simply create an opportunity for NRDs to provide information that is limited to public interest to the department. The bill does not require the department to reach a particular conclusion. However, if the department did not agree with the findings of the NRD, the NRD could request a hearing to introduce evidence and then appeal any final decision of a limited basis. NRDs are particularly well suited to provide a perspective on whether an appropriation is in the public interest because NRD board members are locally-elected officials whose job it is to manage the district's water resources. I would be happy to answer any questions if I can, however, the individuals who brought the issue to my attention are here today and will explain more fully the need for the changes proposed in LB985. Thank you. [LB985]

SENATOR CARLSON: Okay, thank you, Senator Davis. Any questions of the committee? Senator Johnson. [LB985]

SENATOR JOHNSON: Thank you. Thank you, Senator Davis, you...I know you sat on the Water Sustainability Commission this summer. How important is this particular bill or activity to fulfilling the interests, the needs of sustainability of water in the state? [LB985]

SENATOR DAVIS: I'm not sure that this bill is particularly pertinent to that. This bill is important because NRDs need to have some right to participate in decisions that are made by DNR because they affect the local economy, the local tax base, and how you manage the property. [LB985]

SENATOR JOHNSON: Okay. I know NRDs locally control their own rules and regs, so

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this is more of a factor for the local NRD than it is for a statewide program? [LB985]

SENATOR DAVIS: Yes. [LB985]

SENATOR JOHNSON: Thank you. [LB985]

SENATOR CARLSON: Okay, any other questions? Seeing none, thank you. And are you going to be here to close? [LB985]

SENATOR DAVIS: I probably will be, yep, thank you. [LB985]

SENATOR CARLSON: Okay. All right, we're ready for proponents. Welcome, Don. [LB985]

DON BLANKENAU: (Exhibits 2 and 3) Thank you. Good afternoon, Mr. Chairman and members of the committee. My name is Don Blankenau, my name is spelled D-o-n B-l-a-n-k-e-n-a-u and I am an attorney here in Lincoln, practicing in water law, and I'm appearing here today on behalf of the Nebraska Association of Resource Districts in support of LB985. As Senator Davis indicated, the genesis of this bill really began in October of last year when the Nebraska Supreme Court made a ruling concerning the ability of NRDs to participate before the Department of Natural Resources. This case goes back, really, several years when NPPD made an application to appropriate 425 cubic feet per second of water from the Niobrara River. That's a quantity of water about the equivalent used to irrigate about 30,000 acres of land. So it's a pretty substantial quantity of water. Prior to DNR acting on that application, they had, pursuant to state law, advertised notice and invited objectors which the NRDs did, fearing that the basin might be overappropriated or fully appropriated at that point. So they filed their objections. DNR, though, surprised my clients by finding that they didn't have standing. And standing is just a basic constitutional principle that says participants of litigation have to have some right title or interest in the subject matter of the litigation. So where decades NRDs have been allowed to participate in these proceedings to offer any one of a variety of evidence bearing on that issue, this time DNR selected to dismiss them. They then appealed to the Nebraska Supreme Court which found in favor of the department in a 4-3 decision. And that's a copy of that decision I have had handed out to you. That includes a dissenting Opinion, actually two dissenting Opinions. Justice Connolly, in particular, wrote a position...a dissenting Opinion which was very complimentary to our position. But as always, the majority of the Supreme Court makes the law and we respect that. So LB985 is an effort to try to create a limited avenue for NRDs to participate before DNR if they choose. They're not obligated to participate in this fashion. But if they feel a particular application could be harmful to local interests, this would allow them an opportunity to present that evidence to DNR with the right of an appeal then if DNR chose not to accept that evidence or find it persuasive and grant the appropriation over their objection. It doesn't take anything away from DNR. They still

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have the ability to make the determination. This is just an opportunity for NRDs to put forth to DNR what the interests of the local entities would be. Absent that ability, you only have the applicant themselves and DNR looking at what the public interest is. And that's an important aspect because the state constitution itself, Article XV, Section 6 states, and I'll quote: The right to divert unappropriated waters of every natural stream for beneficial use shall never be denied except when such denial is demanded by the public interest, end of quote. The constitution doesn't define what the public interest is and I think for good reason, because what's in the public interest today may not be 50 years from now. It's typically, though, what is...issues that bear on health and safety, economics, taxation, those issues that have a broad appeal to a number of citizens. So that's really the whole purpose of this bill to allow NRDs to participate. NARD does not object to other parties having a similar ability to participate and we look forward to working with irrigation districts and public power and irrigation districts to give them similar authorities if that's what they desire. And we hope that you will advance LB985. I'd be happy to answer any questions. [LB985]

SENATOR BRASCH: Thank you, Mr. Blankenau. Are there any questions from the committee? Yes, Senator Haar. [LB985]

SENATOR HAAR: Yes, thank you. "And appeal any final decision" so what kind of time delays and everything are we talking about, let's say if an NRD appeals a decision? [LB985]

DON BLANKENAU: Well, I should back up a little bit. They would be allowed to offer evidence as to the public interest. And if that was rejected by DNR and they granted the appropriation, they were inclined to, then the NRD would be given an opportunity to request a hearing. Again, the NRD may not request a hearing even if... [LB985]

SENATOR HAAR: Sure. [LB985]

DON BLANKENAU: ...DNR rejected. Then if a hearing were granted, it really depends on the parties themselves and how quickly they decide to move it. It could be upwards to a two-year delay though before the final acting on a particular application. [LB985]

SENATOR HAAR: And the final decision is still up to DNR, right? [LB985]

DON BLANKENAU: That's correct. This doesn't dictate any particular result. It really just is an opportunity for NRDs to say why granting or not granting a particular application is of significance in that local area. [LB985]

SENATOR HAAR: Could there be a situation where somebody is using water and then this would delay making a decision about the water being used for a couple of years, or is this just granting an application to use it in the first place? [LB985]

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DON BLANKENAU: Just an application in the first place. If they're already using it, presumably if they already have an appropriation issue by DNR, or they're technically violating criminal laws. [LB985]

SENATOR HAAR: Okay, thanks. [LB985]

SENATOR BRASCH: Are there any other questions? Yes, Senator Schilz. [LB985]

SENATOR SCHILZ: Thank you. Don, good afternoon, thanks for coming in. [LB985]

DON BLANKENAU: Good afternoon, Senator. [LB985]

SENATOR SCHILZ: As I look here, you know, and we find that, you know, the resources district lacked standing because they couldn't prove any injury, correct, from what I understand here. That doesn't necessarily go forward...then every case would have to be looked at case by case as to whether they have standing to the point of whether they can prove injury or not. Isn't that what the law is for anyway when they talk about it? If you really had a stake in it, then you should have standing, right? [LB985]

DON BLANKENAU: Yeah, that's really a fundamental bedrock constitutional principle which makes a lot of sense. In this instance, and I think it's stated in Justice Connolly's dissent, the NRDs wanted the ability to say, if this water right is granted, number one, there would probably not be water available for any other use in the basin, and could, number two, propel this to a fully appropriated designation and create a whole new raft of regulation that was going to have a significant financial impact on locals. And whether you agree with that or not, we believe that that was something that should be put forth to DNR to consider. The way the Supreme Court has now interpreted standing, whether you are an NRD or whether you have an appropriation or whether you don't have an appropriation, we see virtually no ability for anyone to participate in one of these proceedings. And I think Justice Connolly in his dissent again really spelled it out pretty clearly and said that you really don't have any public participation in these kinds of proceedings. So that's what this bill is designed to open up a little bit. [LB985]

SENATOR SCHILZ: Okay. Understand. Yeah, and I understand why people would want to be able to have input and things like that. We had a bill here that we heard a couple weeks ago, or a week ago or whatever, where others were looking for opportunities to have input in processes that are out there as well. And I...it's just interesting how we seem to find ourselves with the shoe on the different foot here today. [LB985]

DON BLANKENAU: Yeah. You know, and in... [LB985]

SENATOR SCHILZ: And I understand they're two sort of different issues, but it is all

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about the same thing, is are we all working collaboratively together to get done what we need to get done. [LB985]

DON BLANKENAU: Yeah, you know, and the Supreme Court made similar rulings with respect to irrigation districts some years ago which I think were disconcerting to their eyes as well. [LB985]

SENATOR SCHILZ: In that instance, did the state change the laws to accommodate those irrigation districts? [LB985]

DON BLANKENAU: They haven't yet. And again, it's kind of a tricky situation; you can't, as a Legislature, just confer standing on a party. Standing is a bedrock constitutional principle. So what we tried to do here was to create an affirmative obligation on the part of the state to consult with natural resources districts to get specific evidence. And we think that opens the door then to proper standing. [LB985]

SENATOR SCHILZ: So, basically, what you're looking at here is you want to set up a process, a lot like some of these other processes, through maybe public power has to go through to get something permitted. They have to go through the checklist and look to the other agencies out there to make sure that everybody is in agreement on their portion of the pie. Is that what we're talking about here? [LB985]

DON BLANKENAU: Somewhat similar to that. We want to create an affirmative obligation on the part of DNR to consult with the NRD. And we think then that if the NRDs wish to participate and provide that input, that that step creates the standing. [LB985]

SENATOR SCHILZ: Okay. [LB985]

DON BLANKENAU: And, of course, whether it does or not, I'm sure somebody will eventually challenge, but we think that satisfies that essential principle. [LB985]

SENATOR SCHILZ: Okay. We see it in other areas where...like in the permitting process, which this would be, that there are checklists of, say, Game and Parks looking at endangered species or other game...or other animals that could be impacted, the environment or whatever. Okay. Thank you. [LB985]

DON BLANKENAU: Yeah, and I think NARD is very supportive of, again, public power and irrigation districts, those sorts of entities also having a similar opportunity to provide what, in their view, the public interest is. [LB985]

SENATOR SCHILZ: Okay, thank you. [LB985]

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SENATOR BRASCH: Any other questions? Thank you, Senator Schilz. I do have one question. Is the DNR...okay, would they have resources, engineers, data collection, anything in-house or part of their...is there only one place that they can collect information? How do they gather this information that the NRDs would like to...they want to be a part of the data, I'm thinking, or testimony, or...but are there other places? The university? I mean, who can all... [LB985]

DON BLANKENAU: Well, there are lots of sources of this information. Public interest, again, can be economic, it can be related to taxation, it can be related to health, recreation, fish and wildlife, a whole variety of issues which we think are appropriate for DNR to consider. The problem for us is that if you have just an applicant, all of the public interest aspects, I think, are going to be on the positive side. No applicant is going to apply for a water right and say it's not in the public interest. DNR then is in a situation where they certainly have the resources and expertise to collect that. There's just no guarantee that they'll look at it from the local level. Or even if they did, they might not find in favor and the local parties, those who have to live in a basin, then are kind of stuck with that decision and no ability to appeal. And for instance in this case that kind of led to the introduction of this bill, had the NRDs been allowed to participate, they would, at least, have an opportunity to voice a view to the courts. Now that case has come and gone, and if this bill should pass, that can't be redressed, that particular situation, but similar ones could. [LB985]

SENATOR BRASCH: So are others being allowed to be resources and the NRDs are an exclusion? Or at this point...is the DNR is the ultimate...the final answer? [LB985]

DON BLANKENAU: They are the final answer. I think they've treated everyone very fairly. [LB985]

SENATOR BRASCH: Okay. [LB985]

DON BLANKENAU: They haven't singled out NRDs. I know the federal government filed similar objections, the U.S. Park Service. A whole host of landowners, they were all similarly dismissed. So there is certainly no favoritism or anything here. [LB985]

SENATOR BRASCH: Okay. All right. Very good. I have no other questions from the committee. Thank you very much for your testimony, appreciate it. [LB985]

DON BLANKENAU: Thank you very much. I appreciate it. [LB985]

SENATOR BRASCH: Are there any other proponents? Please come forward. If you plan on testifying, if you'd move towards the front, that would help us here. Good afternoon and welcome. Can you please... [LB985]

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MIKE MURPHY: (Exhibit 4) Good afternoon, Senators. My name is Mike Murphy, M-i-k-e M-u-r-p-h-y. I'm the general manager of the Middle Niobrara Natural Resource District, one of the entities that were involved in the litigation that Don spoke about. We were the district that asked Senator Davis to introduce this bill and we support this bill for those reasons that have been discussed. The district feels that it is our duty and responsibility being a political subdivision and having the ability of such entities to participate as parties in legal actions, which are established by statutes. Recent case law, as pointed out, indicates an explicit statutory amendment is necessary, at least as to natural resources districts, to enable political subdivisions to participate as parties before the Department of Natural Resources and the appellate courts. Currently, nonapplicants are only able to offer comments to DNR as to the public interest. Such comments are not evidence, and do not provide any right of review for a political subdivision whose duties and responsibility are triggered by NDNR's actions. NRDs are wide open to include other political subdivisions because we feel NRDs, irrigation districts, public power and irrigation districts, and other political subdivisions are comprised of those locally elected officials whose job is to manage water. And we believe they are best suited to offer evidence on what is in the public interest. We all know that that definition of public interest at many times isn't clear. The district does not want to dictate any particular result as to whether an application will be granted by the department, but does want just an open avenue to presentation of evidence and the right to appeal. Just an opportunity to, you know, sit and try to work together. Without it, only the applicant and the department will be able to provide evidence and only the applicant can appeal. Now that DNR's ruled and the Supreme Court agreed with it, that if NRD or anyone else has a water right, they have no standing to object to that application to appropriate water before the Department of Natural Resources. The court concluded that if you have that water right already, you can't be harmed by a new one. But in a true Catch-22 type situation, they also ruled that if you don't have a water right, you can't object to an application to appropriate because you don't have any rights to the water. So NRDs now have no standing to object to new appropriations before the department under any circumstances, kind of leaving us, you know, standing out there in rural Nebraska without much of a voice. So therefore in the interest of all our taxpayers and constituents, we support LB985 and the ability to allow NRDs to have the ability to have standing with the department. Thank you for your time this afternoon. [LB985]

SENATOR BRASCH: Thank you, Mr. Murphy. Are there any questions from the committee? Seeing there are none... [LB985]

MIKE MURPHY: Thank you. [LB985]

SENATOR BRASCH: (Exhibits 5 and 6) Thank you for your testimony. Are there any other proponents testifying? We do have a letter in support, two of them, one from John Berge, North Platte NRD, and Steven Smith from the North Platte Valley Water

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Association. Are there any opponents? Please come forward. Welcome and please say and spell your name. [LB985]

MICHAEL DRAIN: Thank you, Senator. My name is Michael Drain, M-i-c-h-a-e-l D-r-a-i-n. I'm here to testify today in opposition to LB985 on behalf of the Central Nebraska Public Power and Irrigation District. Though we're in opposition, you will hear that our general tenor is similar to that of the proponents. We understand and concur with the concern that current law limits a number of entities, actually, we think, who probably should be involved and have some form of standing or similar involvement in these processes. Our concerns, though, with the specific legislation, we believe in some cases it, perhaps, steps too far and in other cases it steps not far enough. In terms of going too far, at least the legislation as written right now looks like it's creating almost an equal opportunity on the NRDs with that of what DNR has right now. Under law DNR is supposed to determine the public good and the legislation says that the NRDs make a finding of the public good. And that may be, perhaps, going a bit too far. At the same time, the legislation does not go far enough in that it addresses just the most recent case where a party who probably should have some form of standing has been put out by the Supreme Court. But we know that a few years before this, public power and irrigation districts found out for the first time that they apparently didn't have standing to represent the interests of their customers. Perhaps we should have seen this coming from many years before. If my recollection is correct, I think in the mid '90s the Supreme Court told a county that they didn't have standing to look out for interests in streamflow flowing through them when a municipality downstream was seeking an appropriation. So Central thinks that we probably need to not move this legislation, but take time for all of the parties who probably should have some sort of form of participation beyond the one that exists right now. Today what you can do is you...anybody can, Central can, NRDs can, provide comments to the department when they're considering an application. But you are not a participant; you don't have standing. Probably need something more, but probably not as much as what is proposed here. I'd take any questions. [LB985]

SENATOR BRASCH: Very good, thank you. Yes, Senator Haar. [LB985]

SENATOR HAAR: Thank you. We heard earlier, though, that DNR makes the final determination. And you are suggesting that the NRDs are in an almost equal position. Could you explain that? [LB985]

MICHAEL DRAIN: It...certainly you don't know until it will be tested in court, but the way the wording is, it says that the NRDs make a finding of the...I don't remember the exact words, the public good or public interest or something like that. Right now that is a job for the department. They are supposed to address the public interest. And if you have some information that may influence the public interest, even though you don't have a right, even though you don't have standing, there is a process to give that information to

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the department, the department can decide whether it's not...we don't know what is meant...what the consequences and the...the specific wording of the legislation would be where an NRD decides. I don't remember the exact word, but they make a "finding," I think is the terminology. And then the department is...you can't grant the appropriation unless it holds a hearing and almost has like a counter finding to another political subdivision. [LB985]

SENATOR HAAR: Okay. [LB985]

SENATOR BRASCH: Very good. Yes, Senator Johnson. [LB985]

SENATOR JOHNSON: Thank you. Some cases over under, you know, going too far and not far enough, are you willing to work with the agency and the introducer to try and work through this? Or do you think it needs to be scrapped and maybe an interim study or look for a better solution? [LB985]

MICHAEL DRAIN: We are absolutely interested in working on this with the NRDs and others. As a public power and irrigation district, as I said, we found out sometime in the past that we had not had the standing we thought. We would like to see some sort of legislation that gives all those political subdivisions, perhaps, more involvement than they have right now. I think our concern is that we don't believe it can be done within the time frame that this Legislature has. We have heard that there may be an unofficial effort over the next year to, perhaps, see if parties can reach some sort of consensus on legislation that can be brought along later. [LB985]

SENATOR JOHNSON: So this isn't new to you? [LB985]

MICHAEL DRAIN: No, no, we got stung on this kind of thing before too. I remember one of the proponents from earlier in this testimony at a conference before we lost standing saying, well, Central is being challenged on standing and something, but I'll be amazed if the Supreme Court would actually throw them out for that. And now he's been surprised twice. [LB985]

SENATOR JOHNSON: Okay, thank you. [LB985]

SENATOR BRASCH: Very good. Thank you, Mr. Drain. [LB985]

MICHAEL DRAIN: Thank you, Senator. [LB985]

SENATOR BRASH: (Exhibit 7) Thank you. Are there any other opponents? Please come forward. And I have a letter of opposition here from Dennis Strauch from North Platte Valley Irrigators Association. Anyone in the neutral? Welcome. [LB985]

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BRIAN BARELS: I'm sorry, Senator, I'm in opposition. [LB985]

SENATOR BRASCH: Oh, you're in opposition. Okay, that's fine. Anyone else in opposition? Please move forward. Welcome. [LB985]

BRIAN BARELS: (Exhibit 8) Thank you. Members of the Natural Resources Committee, my name is Brian Barels, B-r-i-a-n B-a-r-e-l-s. I am here today to testify in opposition to LB985 as it is drafted. However, I also want to let the committee know, as previously asked by Senator Johnson, we are committed to working with other interested parties during the interim to find the solution to issues regarding who has standing. As has been explained to the committee, a number of decisions by the Nebraska Supreme Court and the Department of Natural Resources has clouded this issue. We are concerned, however, as the previous testifier mentioned, as some of the language within the proposed legislation could create some uncertainties with regard who is to make the determination and how that might be found within the court system in a subsequent decision. I believe that the interested parties can find potential agreement to standing if, number one, we understand what the issues and concerns are of all the parties. If we understand fully and completely, recent decisions by the department and the Nebraska Supreme Court regarding standing and that we take into consideration the existing conditions and provisions within the statutes and DNR's rules and regulations. You've heard it mentioned previously, and I've actually provided a copy attached to my testimony, there are mechanisms by which all persons within the state of Nebraska can provide input into the public interest test and determination by the Department of Natural Resources. You'll see attached that there...this is from the DNR's Web site on opportunities for participation and permitting processes. You'll see that Option 1 allows any person to provide input for the department to consider when they make the determination of public interest for the state of Nebraska. You'll see Option 2 has some additional requirements including facts that you would be impacted...that your interests would be impacted to request a hearing. So we have some rules and regulations already in place. As Mr. Blankenau testified originally, should the department make a finding for an appropriation, that also can be challenged through the department and request a hearing at that point in time. So there are mechanisms in place, so it's...the opportunity to work together for all these interested folks and find out how we can make this work and what changes really might be needed within the existing system. Again, we're willing to participate with interested parties to find a solution to this. I'd be glad to answer any questions you might have. [LB985]

SENATOR BRASCH: Thank you, Mr. Barels. Are there any questions from the committee? I have one question. From earlier testimony, I understand that the Supreme Court believes, even from your rules and regs, that the NRDs have no standing. Did you understand that as well from Mr. Blankenau's...? [LB985]

BRIAN BARELS: Yes, and my understanding of the Supreme Court decision was that in

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requesting the hearing, the NRDs have not demonstrated how their interests would be harmed to the level necessary to create the harm to the interests that would allow the granting of the hearing. [LB985]

SENATOR BRASCH: And you are believing that the current rules and regs, as you brought forward here, do provide that avenue for input prior...but can they appeal the decision or is it...? [LB985]

BRIAN BARELS: Yes, I think it does. And I think that there are many extenuating circumstances. And if I might, I might answer that to some degree to a question you asked, Senator Haar, regarding to how long it takes. As Mr. Blankenau indicated, we have an application for our hydro on the Niobrara River since 2007. It still has not been acted on by the department. So the requesting of a hearing, the holding of the hearing, the appeal of the hearing to the court, the appeal to the Supreme Court can delay issuance of a surface water appropriation and putting it to beneficial use in the state for many, many, many years. And so while we want and need to have everyone be able to provide their input into the process, we also need processes, rules, regulations, and statutes that allow these things to occur in a timely manner. [LB985]

SENATOR BRASCH: And about how many cases a year...or requests do you have annually from the state of Nebraska, that you're saying that if it goes to the Supreme Court, it takes years, multiple years, a request or an objection...you don't have that happen? [LB985]

BRIAN BARELS: How many did that happen to? [LB985]

SENATOR BRASCH: Um-hum. [LB985]

BRIAN BARELS: Probably you get one every few years. [LB985]

SENATOR BRASCH: One every year... [LB985]

BRIAN BARELS: And it depends, as we have more and more river basins in the state of Nebraska that have questions related to fully or overappropriated, the likelihood that that will occur probably increases. [LB985]

SENATOR BRASCH: Okay. Very good. I have no other questions? Thank you for your testimony. [LB985]

BRIAN BARELS: Thank you. [LB985]

SENATOR BRASCH: Are there any other opponents? Welcome. Please say and spell your name. [LB985]

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RON WOLF: My name is Ron Wolf, Senator and members of the committee. I'm here in opposition to this bill as written. We've had some discussions with most of the people that are testifying today. I do wish to make an offer from the Nebraska Water Coalition to a group...put together with the Nebraska Water Resources Association and the Nebraska State Irrigation Association. We represent surface water appropriators. Our members are NRDs, municipalities, legal, industry, recreation, wildlife, public power and we do oppose this bill as written, but we would like to make an offer to help pull people together during the interim to work on a bill that can provide the necessary standings to participate in these matters without creating a bunch of unintended detrimental consequences. This bill as written, I can see would cause problems. It also delegates the ability or the capability of defining the state's public interest to a local entity. I think that's a step too far. I think there is some standing changes needed. And as you've heard these others, we're sure willing to help try to pull everyone together and see if we can't work on something to help correct the problem. I'd sure try to answer any questions if I can. [LB985]

SENATOR BRASCH: Thank you. Are there any questions from the committee? Seeing there are none, thank you very much. [LB985]

RON WOLF: Thank you. [LB985]

SENATOR BRASCH: (Exhibit 9) Any other opponents? And is there anyone in the neutral? No one in the neutral? We have one letter in the neutral from David Ford from the Nebraska State Irrigation Association. Seeing there is no one else to testify, that concludes the hearing on...oh, Senator Davis, would you like to close? [LB985]

SENATOR DAVIS: Thank you, Senator Brasch. I don't have a lot to say. I would say that we prepared the bill in somewhat of a hurry. We did learn the irrigation districts might have some issues with it and we reached out to those entities to try to include them. We drafted an amendment. The amendment was...there were some concerns that they had with the amendment, so we presented the bill as it is, but we have no objection at all to working with other people to move forward on this issue. I would say it is an important issue. Our local entities do need to have a little bit of say and standing when decisions are going to be made that are going to affect those areas for the...well, forever. Whatever decision is made by DNR, in particular in the Niobrara system, would have jeopardized a lot of potential growth for irrigation and development in that area. So it's a concern of mine. I would hope we could work through the summer on it. And I welcome any participation with that. [LB985]

SENATOR BRASCH: Any questions for Senator Davis? Yes, Senator Johnson. [LB985]

SENATOR JOHNSON: I think you said through the summer. [LB985]

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SENATOR DAVIS: Um-hum. [LB985]

SENATOR JOHNSON: Yeah, I mean, so you're just kind of saying you're presenting it now, I didn't hear any total opposition to the concern, just the opposition to how it fits together and...okay. [LB985]

SENATOR DAVIS: Yes, so I think...I think everyone here has said let's work on this and come up with something that we can present. [LB985]

SENATOR JOHNSON: We've got a starting place now. Thank you. [LB985]

SENATOR BRASCH: Very good. [LB985]

SENATOR DAVIS: Thank you. [LB985]

SENATOR BRASCH: Thank you. And that concludes the hearing for LB985. With that we'll start...we'll open on LB1111. Oh, he's not here yet. Okay. We will stand by until Senator Christensen arrives. [LB985]

BREAK

SENATOR BRASCH: I think we're ready to begin the hearing on LB1111. And welcome, Senator Christensen, and you are recognized to open. [LB1111]

SENATOR CHRISTENSEN: (Exhibit 10) Thank you, Madam Chair and Natural Resources Committee. My name is Mark Christensen, C-h-r-i-s-t-e-n-s-e-n. I'm here to introduce LB1111. LB1111 adds a new section to the Nebraska Ground Water Management and Protection Act. The bill would require the natural resource districts have an integrated management plan that pursuant to 46-715 that explicitly states that their plan...their board's intent to qualify projects listed in 2-3226.04 shall amend the IMP by January 1, 2015, to implement procedures to achieve the district-wide and basin-wide sustainability by January 1, 2025. LB1111 seeks to provide a reasonable 10-year plan to reach sustainability with the NRDs and river basins that use the occupation tax on the activity of irrigation for streamflow enhancement projects. As you go back and you look at a series of bills I've introduced, I come back to one thing--LB522. I sit here and I hope that this committee sits here and asks the people coming up in opposition today two questions: Why they opposed LB522, the state compensating surface when they lose their right? That was a bill that helped the NRDs out drastically, that allowed them to stay in compliance that their IMPs require them to, and yet surface guys not be totally have the legs cut out from under them. The first question is, why? I hope you hear the answer that they said a year ago because there was a lawsuit in place. Ask them this next question, is the lawsuit in place? Have they

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asked any one of you guys to put a committee priority or anything on LB522 so surface guys aren't singled out, penalized, given nothing so they could have full allocation and more? I've been in here multiple times asking for some equality. First time I was here I said I'd be very pleased if you would just say we're going to be a groundwater state, surface water instead, I'm fine with that. I'm still in the same spot. If we want to be a groundwater state only, I'm fine with that. Let's do it. But let's not hide behind statutes that set it up so you can just slowly kill them and give them nothing. Let's buy them out, lease them out, or legislate them out. Let's be up front, let's be honest about it. The NRDs know I'm very disappointed in them. I'm extremely disappointed in their leader. The NARD convention told them to come in in neutral on LB522 and they did. And then they lobbied in the Rotunda, said until the lawsuit ends this bill should not go forward. I don't know, one, how a leader can go against what the convention told them to do. I'm extremely disappointed. And this is probably the most angry you've seen me come in here at. I haven't seen an offer put on the table by any of them to try and take care of the injustice. It grieves me that we can't work together and come to a compromise, that we can have one group want it all and even fight compensation. And if they believed what they said a year ago, maybe one of you can answer to me, have they asked you to prioritize, reintroduce or anything compensation from the state? Are they going to compensate them? That's why this bill was wrote. If there isn't any other solution they have to have some equality, then maybe we better share the water. That's also one of the reasons, I think, you seen LB1074 last week because we don't have equality out here. I've told a number of you, every one of these bills, I'm fine with not one of them going forward. Let's just make the declaration we're a groundwater state only or let's compensate them and get going. Just get some type of equality in here. I see it as a simple fact, either we share water, we compensate surface if we're going to take it, or you support a bill to get to sustainability. That's all I've been about this whole year is how are we going to work together? I remember from year one being down here, I was told this day would never come that we have to take the surface away from them. It came; I tried to get a bill to compensate and it didn't meet the needs of certain people. I just hope you guys, as they come up will think about asking them those two questions. Get them on the record, what they want to do, how they're going to do it so that we have some type of equality, because right now 2013, my district, my particular irrigation district I've had 13 inches. I got 3; started out with 2 and it worked up to 3. This year, I'm projected to get 2. Yet I still pay \$10 an acre occupation tax. And yet my wells where I've got 10 inches, I pay \$10 an acre. And I reckon when you hear my bill next week that tries to get it split up, there will be opposition again. I don't understand it; I had a bill yesterday in Revenue. I've tried to work this several directions, just asking that we take sales comparables for surface water to surface water, groundwater to groundwater, and even limited groundwater to limited groundwater, taking the sales comparable and one of the water organizations opposed it which the NRDs belong to. I do not understand. I wrote them an e-mail today. They should be getting it through the organization that sent it asking them...if it's personal, let's talk about it. If it's about them having everything, let's talk about it. All I'm asking one more time, every time I come in here, each bill I'm

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going to ask, where is the equality? Where are we going to get to where we're willing to work together? Thank you. [LB1111]

SENATOR BRASCH: Thank you for your opening. Will you be staying to close? [LB1111]

SENATOR CHRISTENSEN: Yes. [LB1111]

SENATOR BRASCH: All right. [LB1111]

SENATOR CARLSON: Are there questions of Senator Christensen? Senator Schilz. [LB1111]

SENATOR SCHILZ: Thank you. Mark, go ahead, whatever you want to say there first. [LB1111]

SENATOR CHRISTENSEN: This sheet here, if you will...I talked about this one of the first weeks. You take the second page on the back, part of what was handed out to you on the first bill by someone else, but I talked about it in my opening then, you go to subsection 4, but actually just jump towards the top of the second page, see there where in Section 46-715(3)(c) says: Identify means to utilize so that new wells will not have more than a de minimis effect upon existing surface water users and groundwater. Right there says it all. It's only for the new uses. So the old uses can utilize surface water and it doesn't matter by statute. That sentence says it, but go on down to the next part that's highlighted: Nothing in these subsections shall require revisions or amendments of an integrated management plan approved on or before August 30, 2009. We haven't had any new wells since what, 2004, whenever the moratorium went in. So, basically, if we want to, if you don't do LB1074, you seen, you don't do this bill, we...they...state statutes allow the death of surface water and never have to have any corrections in groundwater. You think about this, the statutes are stacked. That's why I have said from day one, if we want to be a groundwater state, let's just announce it. Let's get it done. Because I can tell you the surface water in my area dropped \$35...\$3,600 an acre while the price was going up on all the other ground. I'll try and put them comparables together. I said I would do it for Revenue Committee; I'll try to get it here too. The next section just goes through the groundwater and surface water controls proposed for adoption and integrated management plans pursuant subsection (1) of this section shall, when considered together with any other applicable incentive program,...keep on going down and I highlighted: and the surface water appropriators on each river or stream from streamflow depletion caused by surface water uses or groundwater uses begun, in the case of a river basin, subbasin, or reach designated overappropriated or preliminarily determined to be fully appropriated in accordance with this section after the date of such designation or preliminary...if you just go through and read that, put that all together in that section, you'll see surface water has no way to

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come back. Statute has eliminated them. But we haven't been honest about it as Nebraskans and said we want surface water dead. And if that is our intent, I just want us to announce it from this committee and let people know it, because that's what's happening. And I was fine with this until...you guys know, LB522 got killed. The "reason" was because of a lawsuit. I believe you can ask them. I don't think surface water guys have any lawsuits against them right now, but I haven't seen any of them asking for it revived. I even challenged them at some of their meetings. I said, it can be revived yet; it takes a priority. They ended at noon today. So I really got to ask the question: Do they really care that they get compensated or have water? That's been my whole driving point in every bill. They haven't made good-faith effort. I don't think they lived up to what they said a year ago, LB522. Thank you. [LB1111]

SENATOR CARLSON: Senator Schilz. [LB1111]

SENATOR SCHILZ: Yes, thank you. Senator Christensen, thank you for your comments there. I mean, as we sit here, you do understand that the state law has a process that's in place that works to retire surface rights if that water is no longer available, right, the adjudication process that's out there? [LB1111]

SENATOR CHRISTENSEN: They use that if you're not using it to eliminate it, yeah. [LB1111]

SENATOR SCHILZ: Even...because I understand it, even if it's not available in a certain amount of time, then that subjects that district to adjudication as well whether...the problem...you're right, whether they use it or not. [LB1111]

SENATOR CHRISTENSEN: It ends. [LB1111]

SENATOR SCHILZ: In 1990, on Western Irrigation Canal, we had the same thing happen to us through nonuse and we got adjudicated out of about, you know, ADCFS (phonetic), it's not a huge ditch, of the 200 that we had. And there was no way to go back and ask for any compensation (inaudible). So I just want to say, you know, you said, hey, if we're...if that...if we don't want surface water, well, it's not up to us to choose one way or another like that because it's already put out in statute in my mind. The other question that I have is can you tell me how much of the percentage of those surface water acres have wells? And then if this compensation would come into place, would those folks have to give up those wells because of the compensation or would they still be able to use those wells moving forward? [LB1111]

SENATOR CHRISTENSEN: If you...the final amendment we had, it went to surface water only acres. [LB1111]

SENATOR SCHILZ: It would be...only the acres with surface and it would be a one-time

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payment? [LB1111]

SENATOR CHRISTENSEN: The way that one was structured was \$150 over two years originally. [LB1111]

SENATOR SCHILZ: What did you say, a hundred... [LB1111]

SENATOR CHRISTENSEN: Fifty dollars an acre over two years. [LB1111]

SENATOR SCHILZ: Okay. [LB1111]

SENATOR CHRISTENSEN: It was trying to compensate for the one year. Think about the economic loss when you had \$7 corn and you don't get to irrigate it. [LB1111]

SENATOR SCHILZ: And do you know how many dollars we would have been talking about? [LB1111]

SENATOR CHRISTENSEN: Ten million dollars was the fiscal note of it. [LB1111]

SENATOR SCHILZ: And the state...the state would have been required... [LB1111]

SENATOR CHRISTENSEN: The state was covered on that one, yes. [LB1111]

SENATOR SCHILZ: But when... [LB1111]

SENATOR CHRISTENSEN: It went...passed round one. It was \$10 million. [LB1111]

SENATOR SCHILZ: Yeah, but when you say the state was covered on that one...the state had the money. [LB1111]

SENATOR CHRISTENSEN: The state was paying for it. [LB1111]

SENATOR SCHILZ: That would have been...it would have come from the state. [LB1111]

SENATOR CHRISTENSEN: The final amendment that we didn't go on and put on that we talked about at the close of General File was that we were going to take it back away from the fund that I had put it on. [LB1111]

SENATOR SCHILZ: Right. [LB1111]

SENATOR CHRISTENSEN: Which...Cash Resources Fund they were using on the Platte, I believe. [LB1111]

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SENATOR SCHILZ: Right. [LB1111]

SENATOR CHRISTENSEN: And we was going back to the General Fund. [LB1111]

SENATOR SCHILZ: Right. [LB1111]

SENATOR CHRISTENSEN: And then that's when all these water meetings started. And it was because of the killing...holding off on LB522, or whatever you want to say, killing it, it started the water meetings which started LB1074 to come. [LB1111]

SENATOR SCHILZ: Right. Now one other question that I have for you then is that as we move forward and with everything that's in the mix right now, as we've looked at the occupation tax on the Platte and what that has been used for that when...in some cases, just not the occupation tax, but actual property taxes from the NRD's levy has been used to pay out on surface water users going forward. So as I look at this, moving forward, so there is a way to do that through the IMPs and things like that. As we move forward, if there would be money available from the state then there could be buyouts on the Republican as well, is that not true? [LB1111]

SENATOR CHRISTENSEN: You mean with the new funding that we're talking? [LB1111]

SENATOR SCHILZ: Well, if we had it. [LB1111]

SENATOR CHRISTENSEN: Yeah, there could be. [LB1111]

SENATOR SCHILZ: Okay. So that would be a way to get there as well. [LB1111]

SENATOR CHRISTENSEN: Correct. If you...can you get the... [LB1111]

SENATOR SCHILZ: Okay. And you would have that being worked through with the NRDs in conjunction with those irrigation districts and the state of Nebraska sitting there over oversight to make sure that it moved forward in the manner that it needs to. And I know the folks from Central Platte and Twin Platte that worked on all that stuff...and I watched how that happened and I was just wondering if that...if you could see a path that that would work as well? [LB1111]

SENATOR CHRISTENSEN: Well, I can see the path can work. But it can also work on retirement of groundwater wells too. [LB1111]

SENATOR SCHILZ: Um-hum. I don't disagree. And so I just wanted to point out that there's always more than one way to skin a cat and sometimes it just takes people

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enough time to understand they really are on the same page. [LB1111]

SENATOR CHRISTENSEN: I agree it takes them awhile, but sometimes they just don't want to get there either. [LB1111]

SENATOR SCHILZ: Trust me, I've noticed. Thank you very much. [LB1111]

SENATOR CARLSON: Okay, any other questions? Okay, thank you, Senator Christensen. Now we're ready for proponents. If there are no proponents, we're ready to hear opponents of LB1111. How many of you are testifying as opponents? Okay. Let's move up and get the on-deck chairs here filled up so that we can move forward. We will use the light, so after you state your name and spell it, you'll have five minutes to speak. Welcome. [LB1111]

TERRY MARTIN: (Exhibit 11) Thank you, Senators. My name is Terry Martin, spelled T-e-r-r-y M-a-r-t-i-n and I am here to testify in opposition to LB1111 on behalf of the Nebraska Association of Resource Districts and my home NRD, the Upper Republican NRD. A little bit about myself. I live in Benkelman, Nebraska, and have been a farmer and rancher in Dundey County, Nebraska, for 21 years. Before returning back to my farm and ranching area where I grew up, I worked for approximately 20 years as a water resources engineer in Nebraska, Kansas, and Missouri. I was licensed to practice engineering in all three of those states. I believe strongly in the NRD system of water management and as such have been active in the NARD resources district and I currently serve as vice president of that association. I'm also chairman of the board of the Upper Republican NRD and I serve as chairman of the board of the N-CORPE augmentation project and that's the project up there south of North Platte that is set up to put water in either the Platte or the Republican Basin to comply with interstate water agreements. Just a note about why...how I got interested in water. As a little boy about seven years old I stood on the prairie of western Nebraska and watched my father drill his first irrigation well and that was in the spring of 1956 and the bug bit me then. Over the years I've watched the citizens in our...what is now the Upper Republican NRD become arguably some of the founders of what is now the NRD system here in Nebraska. Those people very early on recognized how precious our water resources are and why managing those resources was an absolute necessity. That kind of forward thinking by local citizens in the 1960s went a long way towards developing a system where local control by local citizens using local resources became a phenomenal success...the phenomenal success we call the NRD system. I'm privileged to follow in the footsteps of those pioneers and I'm humbled to be charged with the responsibility of fulfilling their promise of protecting and preserving that monumental water resource that has become the life blood of the entire state of Nebraska. For the last 50 years, our citizens and our NRD have been successful in reducing the consumption of water, and at the same time optimizing the use of that water. Our system of controls have evolved into a very successful program that has served us well and has acted as a model for

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other NRDs. That system has not only increased the life of our water supply, but also continued a strong local economy. The 40 percent reduction in allocation over the past 35 years, along with our rules and regulations, including a new rule this past year that limits the amount of carryforward you can use, have helped and will continue to help slow aquifer declines significantly. The core of our success is the broad-based approach we adopted a long time ago. It recognizes that sudden change is seldom good and often catastrophic. We have developed a continually evolving plan that gently and consistently reduces consumption of our water supply in order to allow our regional economy to adjust to the change. I feel that when a person knows what the future will look like, he or she can prepare their own plan of adjustment accordingly. After all, just one natural resource is not a stand-alone issue, but rather a small piece of a much larger puzzle. And it is my firm belief that our system will take us to a point where the water table decline will be a thing of the past and we will be able to sustain our regional economy through that transition. I am testifying in opposition to the bill for four reasons. First, the bill is completely silent on the subject of preserving our economies. Our agriculture society has evolved to the point where water and our economy cannot be separated. Both must survive as we move toward stabilizing and a lasting water supply. One cannot regulate one with...and not consider the other. My second reason, the time line in the bill is rigid and arbitrary. Our NRD has specific and unique problems to solve. Each NRD needs maximum flexibility to manage our unique challenges. I believe the NRD system, as it now exists, gives us the flexibility to be far more successful than rigid legislation. We, the NRDs and the NARD are willing to work...do the work and have demonstrated our ability to be successful. I would ask the Legislature to take the supportive role and leave the regulatory roles to the NRDs. There will be times when we need you, but let us continue our role as the local leader. Third, the bill assumes one size... [LB1111]

SENATOR CARLSON: Terry, I'm going to stop you here. We're at the end of five minutes. We have a way of coming back to this... [LB1111]

TERRY MARTIN: Okay. [LB1111]

SENATOR CARLSON: ...I think for you, with some questions. [LB1111]

TERRY MARTIN: Okay. I have two more rules...two more reasons I can get back to those, thank you. [LB1111]

SENATOR CARLSON: Okay. All right. Yeah, thank you. Questions? No, no, we're going to ask you some questions here. [LB1111]

TERRY MARTIN: Oh, okay, thank you. [LB1111]

SENATOR CARLSON: Questions of Terry. All right, Terry, I'm going to ask you...

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[LB1111]

TERRY MARTIN: Yes. [LB1111]

SENATOR CARLSON: ...if surface water doesn't get any water, why should they pay the \$10 occupation tax? [LB1111]

TERRY MARTIN: There's two...if you're talking just surface water and not surface water, groundwater combined. [LB1111]

SENATOR CARLSON: Well, I think if somebody has commingled, that they've got water available. [LB1111]

TERRY MARTIN: Yeah. [LB1111]

SENATOR CARLSON: So if they're strictly surface water, why should they pay the \$10 occupation tax when they don't get it? [LB1111]

TERRY MARTIN: Well, because the money the occupation taxes use to stay in compliance with the Kansas-Nebraska Compact and although...the reason they don't have the water is not associated with the compact, there are other reasons why their water is missing. Does that make sense to you? [LB1111]

SENATOR CARLSON: Okay. Now see if you can kind of summarize this, because you had two other reasons that you opposed the bill, the third and the fourth, do you want to summarize those? [LB1111]

TERRY MARTIN: Sure. I'll just read the headline and if you want me to go on I can. The bill assumes one size fits all when it comes to using and preserving a water source. I'd have to say that civil law...it's very difficult for civil law to supersede the laws of Mother Nature. The bill addresses both base allocations and sustainability. In our integrated management plans have addressed those two issues for as long as we've had integrated management plans. And I would remind you that each integrated management plan was written specifically to...for each NRD's variability and while keeping in mind the basin's needs as well. We do need flexibility in both...in all three areas which include the allocations, banked water, and sustainability. Sustainability will always be a variable and I'd like to think that we can stabilize the water supply and still accept the fact that the water supply can fluctuate according to Mother Nature's law while still being a stable water source. That was my third point. My fourth point is, in the bill as it's written, the quantitative definition of sustainability seems vague and narrow and may be even missing completely. And that's because the bill gives the United States Geological Service the responsibility of determining what a sustainable use might be. Sustainability has been discussed, defined, and redefined by many over the recent

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years, including yourself, Senator. And as a board member, I do not know how the USGS will define that term. But no matter how that point in the bill is resolved, I fear the vague and exclusive definition of sustainability that is suggested by the bill is the monster flaw that will literally destroy a large portion of the irrigated agriculture in Nebraska. My board's ability to manage and even micromanage both the water resource and the regional economy will be gone. And if this is the way the Legislature wants to go, then who among us is willing to accept the responsibility for the upcoming catastrophe we will be facing? I would ask this committee, then, to please withdraw this bill from further consideration. [LB1111]

SENATOR CARLSON: Okay. Thank you, Terry. Any other questions? I'm going to ask one more, if there aren't any other questions. [LB1111]

TERRY MARTIN: Sure. [LB1111]

SENATOR CARLSON: If I have surface water and I don't have groundwater and I don't get surface water, what do I care about compliance? [LB1111]

TERRY MARTIN: You probably don't. It's all about the financing and the money that you can make. And, you know, if you can't get water, that's the key to our whole society out there. [LB1111]

SENATOR CARLSON: And I'm not blaming you, and I'm not blaming anybody, but it...there's no other way of putting it, but it's a terribly unfair situation. And I wish I had a simple answer. [LB1111]

TERRY MARTIN: You...can I speak to that? [LB1111]

SENATOR CARLSON: Yes. [LB1111]

TERRY MARTIN: Nobody feels good about what happened to the surface water irrigators in the Republican Basin or any of the other basins. Their water supply is different than the groundwater irrigators' supply. Their supply has always been predominantly runoff, water that...that raindrop that hits the ground and runs downhill and gets into the creek and makes its way to the river. Groundwater irrigators, our supply is the Ogallala Aquifer. And the vast majority of the water that surface water irrigators have had in the past is no longer available to them. The runoff is pretty much been hijacked by those of us who are good stewards of the soil and do good management of our dryland and our pasture lands by conservation land treatment practices and conservation farming. I'm as guilty as anybody. I've terraced two or three quarters of dryland ground in the last few years. I rotate my pasture now; I rotate my grazing. I don't till hardly any soils. I leave trash on the soil. And every drop of water that used to hit the ground and run into the creek now stays on my farm and I use it there.

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And the surface water irrigators have no legal process for coming to me and saying, Terry, that's our water, we want it back. So, in my mind, there's about...my calculations, 65 percent to 70 percent of the water they had available to them was runoff. The other 30 percent was water that seeped out of the Ogallala Aquifer. So that means a large...the lion's share of their water is gone and there's no replacement source for it. The water that seeped out of the Ogallala Aquifer, yes, we have reduced that to a certain extent. Again, my calculations show that approximately, if we restored the water seeping out of the Ogallala Aquifer, we would have to shut off all the wells in the basin, wait 50 years for the water table to come back up and that would give them approximately 14 percent of the water supply they had in 1940. That rest...and remember, there's still about 25 percent of the supply they had that still seeps out of the Ogallala Aquifer that they do get from us. [LB1111]

SENATOR CARLSON: Okay. [LB1111]

TERRY MARTIN: Terribly unfair is that you don't recognize the largest problem in this situation and that's the runoff is gone. [LB1111]

SENATOR CARLSON: Okay. Thank you, Terry, that's all I'm going to ask you. I liked the...one of your statements at the very bottom of the first page and maybe when this is over I can visit with you about that, but I won't take any time now. Thank you for your testimony. [LB1111]

TERRY MARTIN: Okay. Thank you. Ladies and gentlemen, we do appreciate what you do for the state of Nebraska. [LB1111]

SENATOR CARLSON: Thank you. Next opponent. Welcome, Mike. [LB1111]

MICHAEL DRAIN: Thank you, Senator Carlson, members of the committee. My name is Michael Drain, M-i-c-h-a-e-l D-r-a-i-n. I'm here today to testify on behalf of Central Nebraska Public Power and Irrigation District in opposition to LB1111. It is with a little bit of heavy heart that we testify in opposition because we do share the frustrations; we do share the feelings of the introducing senator. We share the frustrations of our brothers and sisters down in the Republican Valley. We know that whenever we look at our diminished supply and our irrigators being given half of their regular allotment, we can always look to the south and realize how much worse things can be. We don't think that the impacts to surface water users is intentional or with malice, it is just a consequence of the system that we have, the hydrology we have, and the management that we have. And it's frustrating when you see your water supply go away and there's no compensation. But notwithstanding that frustration and the sharing of the feelings with Senator Christensen, our concern with LB1111 is with regard to the specific language and the things that it looks to legislate. It is legislation that looks like it's written for the Republican, which is understandable given the conditions down there. But it's got rules

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that we fear would not work, do not make sense for Nebraska at large. I would just throw out is what we think the most significant example is the legislation's proposal to have surface water and groundwater allocations be matched. It may sound fair on its face that if, for example, there is only 12 inches being allocated to a groundwater user, that perhaps the surface water user should be limited to 12 inches as well. Maybe that would work in the Republican. I can tell you that that would not work in the Platte River. If you think about, for example, the western canal on the South Platte River, which is just east of the South Platte, excuse me, the Colorado state line, where all the canals on the North Platte River and the Panhandle, those are canals that draw their water from entire other states. Their canal systems bring water from west of Nebraska into Nebraska and those surface water projects then provide return flows for other downstream natural flow appropriators. It also provides recharge for groundwater users within the state. To limit those canals to the same amount of water that may be appropriately being limited to the wells because of concern...because of integrated management, would actually shut off additional water supplies for the state of Nebraska and other water users. So it is the language specific to the legislation that we fear. Sorry, Senator, for opposing your legislation otherwise. But it looks like it is too specific of a fix to too narrow of a problem and that's why we oppose it. And I'd be glad to take any questions. [LB1111]

SENATOR CARLSON: Okay, thank you. Any questions of Mike? Seeing none, thank you. [LB1111]

MICHAEL DRAIN: Thank you. [LB1111]

SENATOR CARLSON: Next opponent. Welcome, Tom. [LB1111]

TOM TERRYBERRY: (Exhibit 12) Good afternoon. My name is Tom Terryberry, T-o-m T-e-r-r-y-b-e-r-r-y. I'm an irrigator from Imperial located in the Upper Republican NRD. I am a director of the Upper Republican NRD and for two years from 2010 to 2012 I was the chairman of the Republican River Basin Water Sustainability Task Force. I'm here to testify in opposition to LB1111. The task force with which I was a member was initiated by Senator Carlson; was comprised of 22 stakeholders within the basin, including ground and surface water users, local and state policymakers, administrative officials, and residents of the basin. The task force met 12 or more times and a lot of the time was spent gathering information from experts and developing a definition for water sustainability in the Republican River Basin. The definition we decided on was as follows: Management for water sustainability allows for the beneficial use of water, in an effective and efficient manner, to satisfy our socioeconomic needs and obligations while minimizing the risk that water resources will be insufficient for future generations to meet their socioeconomic needs and obligations. This bill, LB1111, ignores the conclusions of the task force and is in opposition to them. It totally ignores the economic and social impacts it would have on the basin. It would have a devastating effect on the

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current local economy which would carry on to future generations. This bill also lacks technical analysis needed to form any long-term plan. During the two years the task force met, experts explained and discussions by the task force concluded that a one-size-fits-all solution, which this bill unfortunately is, would not work. Saturated thicknesses, impacts to streamflow, and levels of decline, both short-term declines and long-term declines, vary from NRD to NRD, from township to township, and even from irrigation well to irrigation well. We all remember that 2012 was an extremely hot and dry year. It was also a lot...there was a lot of demand for irrigation water. It was also the end of our five-year allocation period. In the spring of 2013, we set our new allocation and made changes to our rules and regulations. At that time we left our five-year allocation unchanged at 13 inches per year, which left people outside our district wondering how we would honor the long-term pumping targets of our IMP and our long-term goal of sustaining irrigation for future generations. The changes we did make to our rules and regulations, however, will do more to reduce water use than a reduction of our allocation and we feel will keep us on the right track. The first change that we made was to require no borrowing of allocation from subsequent allocations. In the past, if an irrigator had a positive allocation to start the last year of an allocation period, he could pump the entire year and the amount that he used in excess would be "borrowed" from his next allocation. Now, an irrigator will be penalized if he ends the allocation period with a negative balance. This change is estimated to save 60,000 to 70,000 acre feet over the next five years. We also put a limitation on the use of carryforward or banked allocation of 7.5 inches total over five years. Since irrigators with carryforward are conservative in nature, that's the reason they have unused allocation, we feel that this rule change will save an additional 20,000 acre feet or more. Our board felt that it was very important to focus the reductions in pumping needed on the small percentage of irrigators that had used the most water to force them to conserve more water. More advancements will allow continued changes in regulations so that at some point in the future, water table declines could cease. The amount of water within the aquifer underlying the Upper Republican NRD is more than adequate to allow this goal to be achieved over the long term, for example 50 years, instead of the 10 years this bill proposes. The Upper Republican NRD has always been tasked with addressing the existing groundwater decline in the district. The district adopted its first allocation in 1979 which became districtwide in 1981. And on that it shows that even if we took 40 or 50 years to achieve this stable water table, that the impacts would be much less than it would be on the local economy. The effects of local control provided by the NRD system in Nebraska is quite positive. For proof, one only needs to look to the amount of declines in neighboring Colorado and Kansas which are much greater than those in our district. Our system is not perfect, there is always more work to be done, but I believe the NRD system that we have in place provides the best opportunity to sustain the economy and the water supplies in our basin to accomplish both near- and long-term goals. This bill would cause unnecessary economic hardship to our basin and the state and not accomplish the goals it intends to accomplish. Thanks. [LB1111]

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SENATOR CARLSON: Okay, thank you, Tom. Questions of the committee? All right, Tom, I'll ask you the...little bit the same thing I asked Terry. If I'm surface water and I don't get any and I don't have any groundwater, why should I have to pay the \$10 occupation tax? [LB1111]

TOM TERRYBERRY: Well, I think if that becomes...not just a once-in-a-great-while situation that we certainly looked, in our district, at, for instance, the EQIP or acres that were put into...they're idle for 15 years. And during the time that they were idle and did not receive water, we did not charge them the occupation tax. So I think something like that, although it's not as much in our district, I don't know that that could not be looked at by...and see if that's a...fits a once and never happens again maybe it's...there are, you know, augmentation projects that are...have been funded and needed for the long term that need to be paid for. So to exclude a large group of people every time you turn around may be hard to get those projects completed but...I mean, we have looked as a district and said someone who didn't receive water over a time frame was...we waived their...in our district, their requirement to pay that occupation tax for that time. [LB1111]

SENATOR CARLSON: Okay. All right. Thank you. Any other questions? Okay, thank you, Tom, for your testimony. [LB1111]

TOM TERRYBERRY: Thank you. [LB1111]

SENATOR CARLSON: Welcome, Dean. [LB1111]

DEAN LARGE: (Exhibit 13) Thank you, Senators. Senator Carlson, members of the Natural Resources Committee, my name is Dean Large, that's D-e-a-n L-a-r-g-e. I live in Wauneta, Nebraska. I'm here to speak in opposition to LB1111. I won't get into much of my background because I'm just going to get right to the point. LB1111 would have the NRDs adopt a plan for sustainability and to have the goals met for sustainability within 10 years by the year 2025. This bill only looks at the water without looking at other social and economic impacts. I've been a director of the Upper Republican NRD for some 23 years; also sat on Senator Carlson's Water Sustainability Task Force a couple of years ago, along with Tom. And that task force was charged in to defining the sustainability as we're looking at today. That task force tried to look at water sustainability only. But at the end of the day, the socioeconomic impacts had to be considered and balanced against the goal of sustainability. The master plan...or the Upper Republican NRD has updated its master plan to reflect what the task force concluded. This master plan now states that the NRD will develop management programs to extend groundwater reservoir life to the greatest extent practicable, allowing for beneficial use of water in the effective and efficient manner to satisfy the district's socioeconomic need and obligations while minimizing the risk of water resources...will be minimizing the risk that water resources will be insufficient for future generations to meet their socioeconomic needs and obligations. That pretty much is the

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same definition that the task force come up and we adopted that here in the last month in our master plan at the NRD. To meet the goals of this master plan, it states, in our master plan, it states that we will develop, promulgate and enforce rules and regulations to provide for appropriate protection of the aquifer as to slow and eventually stop the water table declines in order that beneficially usable quantity...or yeah, in order that beneficial usable quantities of water remain in the aquifer. This NRD and producers have gone a long way in the last 10 years to become better stewards of the resource. The state of Nebraska has a good system in place to manage its resources. We should trust it and let it work. In trying to understand the impacts of LB1111, using some of today's numbers, just what I know, I generated some quick numbers on the impacts of the Upper Republican NRD. Presently, we irrigate around 440,000 acres with the usage goal of about 11.4 inches. This bill would require reductions in allocations or reduction of acres irrigated to about 50 percent over a short period of time. If we take the looks at those 220,000 acres affected on today's note, anywhere from \$3,000 to \$6,000 an acre lost in asset value to producers which "equivolates" back to anywhere from \$600 million to over a billion dollars lost in taxing assets in the state...just in the Upper Republican alone. We need to start...and that's before we start adding in the lost values, revenues, inputs, and everything associated. Those numbers are hard even to calculate. These numbers over 10 years would be very hard to come up with. Not only will the local economy lose, but what about the state and all the school lands that they have in western Nebraska? Those acres would be also affected so there would be direct impact loss to the state by trying to implement this bill. Schools, grocery stores, drug stores, I can go right on down the list, churches; not only the fertilizer, chemical, insurance, transportation, fuel, and energy suppliers would also be affected. And this goes right up the chain right to the tax collections to the state of Nebraska that they need in order to live on. And I'll just kind of skip over the rest because I see my red light is on and you can read the rest. [LB1111]

SENATOR CARLSON: Okay, all right. [LB1111]

DEAN LARGE: Appreciate your time. Thank you. [LB1111]

SENATOR CARLSON: Yeah, thank you, Dean. Questions of Dean? Now, Dean, I appreciate you put in here in your first paragraph and going through the definition of sustainability we kind of grappled with and ended up on...you did include in here that...and I'm just going to read the words I want to read. [LB1111]

DEAN LARGE: Go ahead. [LB1111]

SENATOR CARLSON: "Stop water table declines" and I remember that was specifically in the final report which was a consensus-type report around the table. Do you agree with that? [LB1111]

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DEAN LARGE: We had a lot of discussion about that. And everybody's definition how we're going to get there or everybody's opinion was different definitely that day. [LB1111]

SENATOR CARLSON: Yeah. And that's the... [LB1111]

DEAN LARGE: And I think that's the ultimate goal everybody's got and we come up with that. [LB1111]

SENATOR CARLSON: And the nervous part of that is, in my view, it can't be in 50 years or 30 years, it needs to be prior to that. But I appreciate...you got that in there, you didn't lose that and leave that out. [LB1111]

DEAN LARGE: Well, one of the things that, you know, we're battling with is...and this is a quick...I'll keep it short, but a quick history lesson was when the NRD systems were formed back in the early '70s, the Upper Republican had a substantial decline issue at that time. So if you look at it, we started in a pretty good hole. And so we've had to struggle to turn around and try to get that under control. And, you know, we talk about overappropriated or underappropriated or fully appropriated, well, when we finally got the authority to do something, we were probably overappropriated at that time. So we've had to fight an uphill battle from the word go and to turn around and try to keep up a financial and economic base there. It's been a struggle. But we're moving forward. We're making...we're better stewards today than we was yesterday. We're making progress, but we just need more time. [LB1111]

SENATOR CARLSON: Yeah, I understand that. And I appreciate this conversation, because I don't think we could have talked like this at the beginning of that Water Sustainability Task Force. And we did come a long way during that period of time. [LB1111]

DEAN LARGE: Yeah. [LB1111]

SENATOR CARLSON: It's still frustrating that people can end up on surface water without any water and you get to pump your full allocation and they got no compensation. It's just flat unfair and I don't have a good answer to it either. [LB1111]

DEAN LARGE: Well, you know, and I...we got two different systems in the state of Nebraska and that might be part of the problem. They have theirs and we have ours and we're clashing. [LB1111]

SENATOR CARLSON: Yeah. Okay, any other questions of Dean? Thank you for your testimony. [LB1111]

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DEAN LARGE: Thank you. [LB1111]

SENATOR CARLSON: Next. Welcome. [LB1111]

JASON KUNKEL: (Exhibits 14 and 15) Thank you. My name is Jason Kunkel, K-u-n-k-e-l. I'm from Lamar, Nebraska. Good afternoon and thank you for the opportunity to testify in opposition to LB1111. I'm a fifth generation farmer and rancher. For three of these generations, my family has used groundwater; the first two we used surface water. And quite frankly, there's a reason we switched. It's a lot more efficient, a lot fewer headaches; we don't lose half of it every time we divert it from one ditch to another. Also, I graduated from the University of Nebraska and I don't know as if I would have returned had we not had access to usable groundwater. I don't think the opportunity would have been there. And there is a lot of people that came back that are about my age, maybe a little bit younger. Even if they're not farming and ranching, I don't know as if the opportunity would have been there for them either. It could be said that even our cows are irrigated in southwest Nebraska. And I think that holds for most of the state. We graze irrigated cornstalks almost six months out of the year. And, actually, that's where they're at right now and we're calving. And I can assure you that on more than one occasion on the trip down here, it was about a five-hour drive, I thought about turning around. But testifying in opposition to this bill today is also important. So, sometimes you have to have priorities. It really is unfortunate, even unpleasant, to testify against a bill brought forth by your own senator. But this legislation is, in a word, almost exceptional. It's ambiguous, it has the potential to really negatively impact us over the course of not only the next 10 years, but generations to come. I feel that we've done a pretty good job. I mean, we've...advances in technology, improved conservation, tillage practices, crop rotation, they've all allowed us to live within an ever-decreasing allocation. And these are restrictions that by and large we've imposed on ourselves. And there are probably going to be further restrictions down the road, as much as we might hate to admit it sometimes. I hope this doesn't put me over, but maybe I can respond to one of Mark Christensen's questions in the comments... [LB1111]

SENATOR CARLSON: You just watch your light there. [LB1111]

JASON KUNKEL: Okay, I'll do my best. I might have to scratch out some of this. To my knowledge, I don't know as if we've ever received an offer from an irrigation district, a reasonable offer, in that sense, to buy or lease water in the long term. What we have seen are, you know, quite frankly, a lot of finger pointing; and it's understandable, if I was in their shoes. But we've also seen a lot of lawsuits, lawsuits that, quite frankly, are impeding Nebraska's ability to try to comply with Kansas and the Republican Basin Compact. Sorry, I got myself a little out of order here. You know, groundwater, we really are fortunate. We don't have surface water reservoirs that are subject to a lot of evaporation. The recharge supply is not intercepted by good tillage practices. And we

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can apply that water efficiently and timely. You know, we don't, for instance, have a run of water and then, you know, and then stop it because we get a rain. Groundwater you can go out and push a button and shut it off and wait for it to become dry again; save it in an area where you do need it. There's roughly 1.2 million acres irrigated by groundwater in the Republican Basin. And this bill seems to have it in its cross hairs. Of a total of 100,000 irrigated acres are irrigated by surface water; 60,000 of those are supplemented by groundwater wells. That leaves, roughly, 3 percent, or 40,000 acres, that are irrigated exclusively by surface water. And maybe it's just that this bill is attempting to shield those at the expense of all the other acres in the basin, and I would say unfairly. One of the roles of representative government, as I understand it, local or otherwise, is to help prioritize the efficient, beneficial use of limited common resources, in this case, water. And when necessary, find a sustainable balance between conservation and economic good. This bill appears to do neither. I would say the bill attempts to impose an arbitrary definition of sustainable, unfairly targeting the Republican Basin, but it also not only does that, it fails to define the term "sustainable," referencing only an abstract language that could be easily abused. That the bill fails to define its main objective, yet imposes a strict short window, 10 years in order to achieve it is another drawback, probably more damaging than the first. You know, perhaps this bill was introduced to foster a good debate and good discussion, but I'm not sure it's done that. I think it's probably contributed quite a bit to animosity, uncertainty, and, ultimately, impeded the ability of parties to work together. Thank you. [LB1111]

SENATOR CARLSON: Okay, thank you for your testimony. Questions of Jason? You didn't say this, Jason, but...and I'm looking back to see what's printed, what do you think has been the average actual use of water in the Upper Republican in the last several years? [LB1111]

JASON KUNKEL: I believe in the last 30 years we've averaged 12 inches of groundwater per acre is been applied. [LB1111]

SENATOR CARLSON: That's what you've pumped, but I don't think that's what...that's what you've been able to. I thought it was less than that in terms of the last several years and what the actual use has been. [LB1111]

JASON KUNKEL: Well, Senator, we had this discussion the last go round, we were trying to talk about reducing allocations and limiting carryforward. And I'm almost positive it's 12 inches per acre has been our average use over the last 30 years. [LB1111]

SENATOR CARLSON: Okay. I don't want to ask anymore. I think you're too high, but we'll let it go. We'll let it go. I think you're using less than that, but we'll let it go. [LB1111]

JASON KUNKEL: I hope we are. [LB1111]

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SENATOR CARLSON: Okay, all right. Any other questions? Yes, Senator Dubas. [LB1111]

SENATOR DUBAS: Thank you, Senator Carlson. And thank you so much, Jason, for coming today. [LB1111]

JASON KUNKEL: Thank you. [LB1111]

SENATOR DUBAS: Probably more of a comment than anything, understanding as a farmer and getting into calving season ourselves, I know how hard it is to leave home when your income is at stake. But I just want you to know how much we appreciate you coming forward. The discussion we're having, whether it's on this bill or any other water bills that we're going to talk about this session, are so very important and to have input from people such as yourself is so critical to us being able to hopefully, ultimately, at the end of the day putting a policy out there that is going to give us responsible water policy, water planning for the future. You know, the fact that you said you didn't know if you would be able to come back and farm if, you know, you didn't...weren't able to have that irrigation available to, you know...we have a son that farms with us as well. So I think you're just really underscoring the importance of these kinds of discussions. And again, I just want to thank you personally for taking the time away from your job and your income to come and share your experience with us. [LB1111]

JASON KUNKEL: Thank, you, Senator. [LB1111]

SENATOR CARLSON: Okay. Any other questions? Okay, Jason, thank you for coming. [LB1111]

JASON KUNKEL: Thank you. [LB1111]

SENATOR CARLSON: Next. Welcome. [LB1111]

KURT BERNHARDT: (Exhibit 16) Senator Carlson and members of the Natural Resources Committee, I want to thank you for the opportunity to provide testimony...to hear testimony on LB1111. My name is Kurt, K-u-r-t, Bernhardt, B-e-r-n-h-a-r-d-t. I'm here to oppose LB1111. I reside 18 miles west of Imperial, Nebraska, in Chase County. My family and my brother and I farm land in northern Dundy County and western Chase County. Our operation consists of irrigated corn, popcorn, soybeans, dry beans, and wheat, along with dryland corn, millet and wheat. We farm a total of 3,872 acres with 3,395 acres being irrigated and 477 being dryland. My farming career started out as a sole operator with my brother in 1983 and we each farmed one...rented one quarter of irrigated land. Over that 31-year time frame, we have abided by the Upper Republican NRD's rules and regulations because they were enforced at that time starting in 1979,

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35 years ago. The initial allocation I started with was 22 inches; now it's down to 13. We've been able to do this and increase our yields because we've become more careful managers included new farming practices, went away from conventional tilling and went to strip till and no till, as well as lowering our gallonage on our wells and reducing our pressures through efficiently irrigate more and better crops. By doing these conversions, we had to pull wells and change balls to achieve lower gallons and lower pressures which is very costly. We've also rotated crops, which I've mentioned above, and sometimes we rotated crops which were not the most profitable to my operation, but which also conserved the most water so that we could abide by our rules and regulations. Our NRD, the Upper Republican, has always been a leader in trying to reduce water. Many of their forward-thinking strategies, other than the reduced water allocation, have been well spacing requirements because we could not have a moratorium back in...when Nebraska water laws were different, a well drilling moratorium, which we implemented in 1997, and a continuing measuring of the wells to manage our groundwater. I'd like to say that because of the moratorium on our well spacing requirements, there are people that do not have the chance to irrigate because they didn't have the opportunity to drill a well. To me, they're in the same boat as people that don't have surface water. They've never had that opportunity to have water and they will never have again unless they buy their land, which I did. With this approach, the Upper Republican has steadily decreased the water use without damaging our local economies. This approach has also given our producers time to adapt and implement new practices and technologies to keep our operations profitable and viable. This has also sustained the economies in our local communities and our local counties which have been able to flourish over this...now over a 40-year period since the NRD has been in effect. As I read through LB1111, I could not help but think that this is an irrational and hurried attempt to drastically curb water use in all river basins. Careful thought needs to be implemented when families, schools, communities, and business economic viability is going to be at risk. Farms, ranches, communities, and businesses have all flourished because of the beneficial economic impact irrigation has provided in river basins all across the state. Let me say that irrigation development since the Republican River Compact in 1943 was approved by the state of Nebraska. We have broken no laws; we have just followed what the state of Nebraska allowed us to do. For an elected official to introduce legislation such as this and sign into law would cause widespread economic damage. In summary, I would like to say that I feel both LB1111 and LB1074 are extreme bills that have their own views on defining sustainability. Sustainability has to consist of three things: social, economic, and environmental. And they are only considering one. The only winners on both sides if either one of these two bills are signed into law, would be our surrounding states, Colorado and Kansas, which would export their food and feed needs into our state where our feedlots, our potato industry, our popcorn industry, would have to import their needs because we wouldn't be able to produce it for them and it would be a windfall for those states and a loss for us. The only thing these bills accomplish is fighting among us which plays right into the hands of Kansas. Thank you. [LB1111]

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SENATOR CARLSON: Okay, Kurt, thank you for your testimony. Questions of Kurt? I appreciate your testimony. Now, I'm hearing about the same thing from everyone in one way or another, and I don't blame you. [LB1111]

KURT BERNHARDT: We all farm together. (Laughter) I mean, we all think the same. [LB1111]

SENATOR CARLSON: Well, okay, and I don't argue the fact that if you had...if you went from 12 inches to 6 next year, maybe you'd only be able to irrigate half the acres and you would have a tremendous economic impact on that area. [LB1111]

KURT BERNHARDT: Correct. [LB1111]

SENATOR CARLSON: What if 15 years from now you don't have any water? [LB1111]

KURT BERNHARDT: Well, I'm hoping that with newer seed technological advances and better farming practices, you know, my goal is to continually reduce our water use because I have kids that want to farm and I want them to come back to the farm and keep my farming operation...I got to tell you, I was just able to buy land in the mid-'90s, and we've slowly grown that. And I don't want to see that ever go away. I want my kids to have the opportunity that I had to work hard for to get. And if I have to implement new technologies to try to stay in business, I'm going to. [LB1111]

SENATOR CARLSON: And I appreciate that answer. In terms of water use, on a personal basis, what...do you have a goal, because you've said you want to continue to be more and more efficient so that it can be there for your children and I'd say grandchildren and generations into the future. Do you have a personal goal on water use? [LB1111]

KURT BERNHARDT: I'll tell you long term, to be honest with you, my goal is to see the aquifer be able to sustain itself with no depletion. And to give you an exact number, I can't tell you what that is. I don't know if you know that answer. I sure don't. [LB1111]

SENATOR CARLSON: Well, I wish I did. [LB1111]

KURT BERNHARDT: Yeah. [LB1111]

SENATOR CARLSON: That's a good answer, because you have a desire to get to a point where you're not depleting the aquifer anymore. And that's what I was hoping you'd say, not just so that I'd think that was good. [LB1111]

KURT BERNHARDT: No, I truly believe that because I want my kids to be able to make

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a living the way I have. I think it's a good life and we need farmers everywhere, not just in this state. And, you know, agriculture is important to the state of Nebraska. [LB1111]

SENATOR CARLSON: I agree with you. And this...I don't know if this was in yours or one of the other people talked about how that if we get in a bind, we get in a bind in your area, then other states are going to be able to grow the things then and take us out of the market. [LB1111]

KURT BERNHARDT: And they will, too, because we only farm...we only live...our town of Imperial is only 20 miles from the Colorado state line. [LB1111]

SENATOR CARLSON: I was going to ask you, how close you were to the Colorado border. [LB1111]

KURT BERNHARDT: I farm five miles from the Colorado state line. [LB1111]

SENATOR CARLSON: Okay. This is part of the reason that, maybe, to you we seem like we're sticklers and we're not being very cooperative when we're not being very nice because we don't want that to happen. We want Nebraska to be in the best position of any state in the union and I'll say any state in the union, when it comes to water and how we manage it so that in the future when Kansas is crying because they're out of water and Oklahoma and Texas are out of water, we're not. [LB1111]

KURT BERNHARDT: I know it, and I don't want end up like Texas. I don't. [LB1111]

SENATOR CARLSON: That's your goal too. [LB1111]

KURT BERNHARDT: That's my goal. I don't want to end up like Texas. I know what it's like down there. [LB1111]

SENATOR CARLSON: Okay. Yeah. And it makes it uncomfortable along the way because what's really the right answer? But I just appreciate...you said your goal is that you get to a point where you're not depleting the aquifer and that's what...now tell me when that's going to be. [LB1111]

KURT BERNHARDT: Oh, probably when you're out of office. (Laughter) [LB1111]

SENATOR CARLSON: Okay. All right. Any other questions? All right, thank you. Welcome. [LB1111]

WAYNE HAARBERG: (Exhibit 17) Thank you. My name is Wayne Haarberg, W-a-y-n-e H-a-a-r-b-e-r-g. Chairman Carlson and members of the Natural Resources Committee, my name is Wayne Haarberg from Imperial, Nebraska. I reside and farm dryland and

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irrigated crops in the Upper Republican NRD district. I would like to go on the record as opposing LB1111. The bill is another legislative attempt to take power of the water regulation away from the local NRDs and giving it to state and federal appointed departments and entities. Water sustainability is a moving target, depending on weather and market prices which influence the type of water-consuming crops grown. This bill provides little flexibility for the NRDs and farmers to implement new ideas for water management and I feel the Republican River Basin could endure harsh economic consequences due to the rigidity of this bill. Paragraphs (d) and (e) on page 3 would severely curtail water banking. We in the Upper Republican NRD started the bank water rule or what I call the water savings account over 20 years ago to give farmers that earned this right an incentive for saving water in one year and being able to dip into that savings account on a rainfall short year. We do recognize that what is perceived as too much banked water does draw a lot of attention. The Upper Republican and other districts have started the process to address this issue within existing rules and regulations. Section (2) on page 3 essentially eliminates local NRD authority and hands it to the United States Geological Survey or the State Department of Natural Resources to come to some conclusion on what the proper level of water sustainability is. To conclude my testimony, the Upper Republican NRD was the first to implement groundwater pumping restrictions 35 years ago. Our NRD seen the need to implement water sustainability long before anybody was thinking about it in the state of Nebraska. We have moved forward at great cost to implement rules, recommendations, court decrees, our own ideas and update infrastructure to promote the most efficient use of a gallon of water and to maintain the economic viability of the Republican River Basin. Thank you. Respectfully, Wayne Haarberg. [LB1111]

SENATOR CARLSON: Okay. Thank you, Wayne. Any questions of the committee? How long have you lived out in Imperial? [LB1111]

WAYNE HAARBERG: I was born and raised out there. I lived there for 51... [LB1111]

SENATOR CARLSON: Do you have relatives in Arapahoe? [LB1111]

WAYNE HAARBERG: Yes, I do, yep. That's cousins down the line a bit, but they're all related, yep. [LB1111]

SENATOR CARLSON: Oh, okay. All right. Okay. Any questions? We appreciate your testimony. Thank you. [LB1111]

WAYNE HAARBERG: Okay, thank you. [LB1111]

SENATOR CARLSON: Next opponent. Welcome, Brian. [LB1111]

BRIAN BARELS: (Exhibit 18) Good afternoon, Senator Carlson and members of the

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committee. My name is Brian Barels. I'm the water resources manager for the Nebraska Public Power District. We have a number of operations across the state: power plants, transmission, different things like that, but all of them...or many of the generating facilities use water in some manner, both surface water and many of our facilities are also, ultimately, dependent on groundwater to be able to make them operate. NPPD, either myself or a member of my staff has participated as a stakeholder in the development of the basin-wide plan and the integrated management plans in the Platte River Basin. And I'm here today to testify in opposition to LB1111 as drafted because I believe it would have a negative consequence on the IMPs in the Platte River Basin. While there are many intriguing aspects to this proposed legislation, there are potential downsides to the recharge within the Platte River Basin which has resulted in my opposition. Based on my understanding of the bill, it would apply to any NRD intending to use bonds in accordance with 2-3226.04 as described in Section 2, line 12 of the proposed legislation. To my knowledge, this means the legislation would apply to the Twin Platte Natural Resources District where we have a number of facilities. Certain provisions of the proposed legislation would be problematic to the Twin Platte NRD's integrated management plan which has different goals and objectives than those in other river basins of the state, specifically the Republican River Basin. For example, Section 2(1)(f) of the proposed legislation would require DNR director to ensure surface water allocations do not exceed groundwater allocations. However, the integrated management plan for the Twin Platte NRD does not contain allocations for either groundwater or surface water. Additionally, Section 2(2) of the proposed legislation would be detrimental to the Platte Basin IMPs. For the Platte Basin water supplies, it is important that the maximum amount of surface water possible be applied to irrigated acres in order to maintain groundwater recharge and return flows in the North Platte and Platte River Basins. To put that into perspective, in the nonirrigation season, studies have shown that 75 percent of the inflow to Lake McConaughy is the return from surface water irrigation in western Nebraska. So the integration of surface water and groundwater is very important in many river basins of this state. In summary, the bill appears it would have unintended and detrimental consequences to the Platte River Basin. I would urge the committee not to move the bill forward without addressing those issues. Thank you, and I would be glad to answer any questions. [LB1111]

SENATOR CARLSON: Okay, thank you, Brian. Questions of the committee? Seeing none, thank you. Welcome, Ron. [LB1111]

RON WOLF: Thank you, Senator. Chairman Carlson and members of the committee, my name is Ron Wolf, R-o-n W-o-l-f. I'm here in opposition to this bill on behalf of the Nebraska Water Coalition. I've been here, I think, all week so I'm already on record who we support, I'll not recite that litany again. Two specific pieces in this bill, page 2, lines 23-25, effectively legislate groundwater out of business for 10 years. It's happening already, this will be the second year down there. I think that's a bad move, a bad proposal. Page 3, lines 14-17, I'd probably support that if it was--do not allow surface

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allocations to exceed...or groundwater allocations to exceed surface water. You'd have had zero for two years in the basin now, but the way this is written, it's not proper and it's not going to work. So those are the reasons the coalition opposes this bill. I'd like to address some comments. I'm going to switch hats now. I'm speaking to you now as Ron Wolf, a guy that runs a surface water operation, a district, and is a farmer that uses well water, surface water from two different districts and some creek pumping. And I'd like to go back over some...just pick up some cleanup points. As Senator Schilz mentioned, more than one way to skin a cat. I think you're looking at the wrong animal. (Laughter) When you're mining, you take a canary down with you. When the canary dies, it's because the conditions are untenable. You don't legislate a new canary. That doesn't solve your problem. Folks, your Republic River canary is dead. There needs to be some real action taken. Mr. Bernhardt mentioned guys with no wells are in the same boat as surface water users without water. Not true. Surface water users have 40-year contracts they've been paying on. They have made substantial investments. A guy without a well doesn't have his money buried in a hole in the ground. That's a incorrect statement, incorrect impression. There was a statement here that surface water is inefficient. Where do you think your recharge comes for those quick reaction wells down there? It's from water seepage losses and gravity irrigation from those surface projects. Every time you dump that water down the river to Kansas, you've lost another year's opportunity to provide some recharge for those quick reaction wells. Five years use it and lose it, Senator Schilz, that's...if water is available and good husbandry would have indicated it should have been used, that won't apply when water is not available. That doesn't trip the clock. [LB1111]

SENATOR SCHILZ: Fifteen years. [LB1111]

RON WOLF: I noticed a statement by Mr. Large that said when the NRDs were founded in the '70s that the Upper Republican was overappropriated then. I didn't want you to miss that statement. And I do think the flag of shutting down all the wells, I keep hearing this, if we shut down all the wells...I have yet to see a legislative proposal that proposes that. That's not where surface water wants to go; that's not where groundwater wants to go. There may be some...need to be some curtailment on some irrigation. I don't hear the phrase--shut down all the wells in any of these legislative proposals. And we talk around the 500 pound gorilla in the living room, the Kansas...well, if we take action, Kansas will use it against us. If you take appropriate action, I think it's the best thing you can do to avoid problems with Kansas. Sustainability includes flows in your streams. I'll sure try to answer any questions that you may have. [LB1111]

SENATOR CARLSON: Okay. Thank you, Ron. Questions? Senator Schilz. [LB1111]

SENATOR SCHILZ: Ron, thank you. And you're exactly right on the adjudication stuff. In LB962, when we changed all that with the understanding that, you know, if you don't have the water and you could use it, then we've got to extend that out. And even after

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the 15 years that's in there now, if you still don't have that water and you still want to use it, there's ways to...there's ways to expand. So I appreciate the clarification.
[LB1111]

RON WOLF: Thank you, Senator. [LB1111]

SENATOR SCHILZ: No, just a comment though, thanks. [LB1111]

SENATOR CARLSON: Okay. Any other questions? Okay, Ron, thank you for your testimony. [LB1111]

RON WOLF: Thank you. [LB1111]

SENATOR CARLSON: Next. [LB1111]

JASPER FANNING: Thank you, Senator Carlson. I really wasn't planning on testifying today, but I just felt that the committee needed some clarification and correct information you had numerous times asked. My name is Jasper Fanning, J-a-s-p-e-r F-a-n-n-i-n-g, and general manager of the Upper Republican. You had asked a couple of board members of mine if surface water should have to pay the occupation tax when they don't receive water? And first, I want to point out that they don't have to because they have the ability to come in and certify nonirrigation status. So they receive the notice that it's a compact call year. If they don't think they're going to have water, in fact, our office sent out letters to all the surface water users within our district telling them that they had until March 1 to send back a form that we sent them if they don't think they're going to have water. Now I'm not going to say that that process is necessarily perfect or was well thought out at the time the legislation was introduced because what happens if it rains and all of a sudden they get to use water? And in last year, certainly, as Senator Christensen indicated, there were canals that used two or three inches of water and so there could be improvements made in that, but the fact of the matter is that there are bonds outstanding that are required to be paid with the occupation tax. Part of the reason for the occupation tax statutes not allowing large fluctuations in income, you had to have some notice provided that people were going to no longer irrigate. Now if a groundwater user doesn't want to irrigate, they become what's called a dryland farmer. They can come in and they can decertify their groundwater acres. It's at their risk that they wouldn't be able to recertify those in the future. If you decertified your groundwater acres in our district, I would give you a chance of zero of being able to come back in in the future and be able to irrigate again. But there is a process there. And the other thing we have to keep in mind is there is a lot of programs that have been made available to water users in the basin and the NRDs have been big supporters of those. We've talked with our local canal company, the Haigler Canal, about a buyout. Those opportunities, as Senator Schilz mentioned earlier, still exist. We utilize federal programs and we cost share on those programs. AWEPP uses federal money in ours;

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pays people roughly \$2,400 to \$2,700 an acre to retire that to dryland. There are some temporary programs that are available. Within the Bureau of Reclamation, they have aid to irrigation. The Republican Basin projects have had \$118 million of their contracts written off when they didn't have water since those projects were built. The example that I'm most familiar with was back in the late '90s, early 2000s. H&RW Irrigation District, which didn't have a very good supply of water out of Enders Reservoir anymore, the bureau wrote their contract off and made it so it's a water-use contract. They only pay based on the volume of water that they get to use. But for the 11,000 acres, roughly, that that project serves, they wrote off \$52 million to aid to irrigation at a time that an irrigated acre was worth about a third of that amount that they wrote off. So there are a lot of programs out there. It's not perfect. I'm not saying that it is, but there are a lot of programs out there that try and financially...or are available to mitigate some of the financial harm from not having water, including the preventive plant insurance payments and there are years that that pays better than actually farming. So it's not how you want to make a living as a farmer, but there's a lot of programs that the committee needs to be aware of that are out there to help mitigate these financial impacts. But with respect to the occupation tax, there's a process where they don't have to pay. There's a chance that maybe we could improve that, but it would take some thought as to how to do that so that it didn't upset our ability to repay the bonds that we've issued. And that's all that I really had. Thank you. [LB1111]

SENATOR CARLSON: Okay, Jasper, thank you. Questions? I have one, because I think you made the statement people can come in and decertify acres, but they don't dare do it? [LB1111]

JASPER FANNING: Well, for groundwater irrigation. [LB1111]

SENATOR CARLSON: Yeah. So, if for whatever reason they weren't going to groundwater irrigate in a year and they came in and decertified, they wouldn't dare do that. [LB1111]

JASPER FANNING: Not if.. [LB1111]

SENATOR CARLSON: That would just be to get out of paying the occupation tax. [LB1111]

JASPER FANNING: Exactly. And the way I look at that is if they have a groundwater well, they have the ability to irrigate. And so if they're wanting...I don't know why they would not want to irrigate, but if they wanted to come in just to get out of the occupation tax, but wanted to keep the right to irrigate in the future, they don't have the ability to do that. [LB1111]

SENATOR CARLSON: Okay. All right, any other questions? Okay, thank you. [LB1111]

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JASPER FANNING: Thank you. [LB1111]

SENATOR CARLSON: (Exhibit 19) Any other testifiers as opponents? We have a letter of opposition from John Berge of North Platte NRD. Anyone testifying in a neutral position? Okay, seeing none, Senator Christensen. [LB1111]

SENATOR CHRISTENSEN: I hope you're not in a hurry to go home. I could write a book on this one. Thank you, I appreciate the opportunity. You know, I finally think I introduced the perfect bill. I got everybody upset, both sides, surface water, groundwater; that's not easy to do. I think I accomplished that. You know, we heard a number of things about local control, long-term sustainability, and the Upper Republican has done a lot of great things. We've heard that in a lot of testimony and I agree a hundred percent. They were very proactive, they have been, and they have done a great job. But I want to go on down through a little bit of some of the things that were said just to illustrate a point, same thing just rang over and over. It was mentioned that we can have...share...we should be able to share and not have one pay it all, but yet I didn't see a solution brought. You know, that's when Terry was speaking. I'm not picking on Terry, he's a friend of mine. You know, talked about pay occupation tax with or without a small amount of money, it's needed. I understand the bonding side of it. But when you think somebody should get little or no water and still pay that occupation tax, it's pretty narrow thinking, because these guys are the ones that sacrifice. You heard the discussion that most of it is due to no till farm, trash farming, conservation. That's never been what any of my bills have been about. My whole discussion has been about the water that runs into the dams that DNR closed the storage permits to force it through. My particular operation would have got 10 inches if that hadn't have been bypassed, got to 7. There's no equality in that. I don't care that 25...75 percent of the water has been held back on the land--good stewardship. It is changing the way we do business. But that's not what any of these bills have been about. That's not what the lawsuits have been about. It's been about getting a voice and getting their share of the water. And I can tell you, the next lawsuit is coming. If something doesn't change...it's not going to change until a court finds sympathy or the two groups decide to work together. I know none of these testifiers have seen the e-mail that went out. I know Senator Carlson, Senator Schilz, I know I put them two on it, I should have put the whole committee. I can do that tomorrow. But there's opportunities out here to work together. You know, I jump down...I heard over and over it's a local economy and what it's going to do if a bill like this was passed. I turned that around a little bit. What about the local economy of the surface water guys that got shut off in one year? Some people went from 6 inches to zero; some people went from 10 to 3. What about that economy? What about that social benefit? That's been my whole point ever since LB522 got killed or held on a...without a priority to go on this year. When we try to match the economic and water sustainability for groundwater, I just got to, again, turn around, first two or three people. What about the socioeconomic benefits of surface water? Do them people

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not count? That's why it is so important that something gets done and compensation is the easiest way to do it. Long-term leases, that's what I wrote in the e-mail I sent out today. I talked to Nate about it; Jasper about it. I talked to Frenchman-Cambridge about it. And I'll try and get it to the rest of the committee tomorrow. I did send it to Senator Carlson and Senator Schilz today. But, you know, we heard about the impacts of what would happen about 404,000 acres reduced by 50 percent, I don't think it would take that 50 percent reduction, because farmers do adapt. You heard them say they've adapted from 23 inches down to 13 or 12 that they're using. I guarantee you they could adapt to a little bit less. I'm not saying 7 that is the USGS number, if I got it correctly a year ago. But I think, as I've told several of them that testified behind me, I wanted a platform. And, unfortunately, you guys right here are getting the worst blunt (sic) of it because you've heard it and heard it and heard it. I apologize for that, but I'm trying to make a real point. You know, I've come down, you know, we had mentioned...one of my good friends, Jason, about, you know, you used to lose half of your surface water. I know Brian Barels talked about it. That's through recharge. I'll take that a little bit further. If we continue to dry up the streams so they don't run, and you get down into that defined, unique aquifer that's got the shale around it on both sides in the Republican River and it doesn't have a stream running across, every one of them rapid response wells will dry up. They are 35 to 50 foot deep. And since they got the shale curvature that the experts talk about in the Republican on the main stem only, if you don't have that running, them wells are history. They're fed by the streams coming in. And that's why it is something that is very critical that we got to look at in here. And that's why I said in my opening, I'll say again, we either got to compensate, we got to share, or choose the system because I think it's really important that we look at what is actually happening. Because even in the Republican, changing from the Upper Republican to the Middle makes some change and another big change till you get to the Lower Republican, not only in rainfall change with the Lower getting the most and the Upper the least, but that's where you get that shallow aquifer down there. There's some wells in the Lower Republican that aren't 35 foot deep. They'll pump over 2,000 gallons a minute. But I guarantee you if them streams dry up, so will them wells. And that's why I say, there's a very delicate balance that's got to be done here. And I think we've got a lot of work to do, continue working together to get there. Again, when Kurt was speaking he talked about the socioeconomic environmental benefits for groundwater and what's going to happen if we take a major hit, a major reduction. I agree with him. But I ask, what is a socioeconomic and environmental impact to the surface water guys that went from 10 inches one years to 3 in one year, 70 percent reduction in one year; and this year it goes to 2 inches, uncompensated. I guarantee you, I can tell you the socioeconomic environmental impacts on my operation has been drastic. I'm thankful I have only 44 acres of those. The rest of mine is groundwater so I get 9 inches or 10 inches. If I was one of them guys that's 100 percent surface water...I have some neighbors in the Oxford area that are 100 percent surface water farmers. Took a 70 percent hit last year, 80 percent hit projected for 2014, zero compensation. There's one of these guys retired a year ago thinking he had enough ground to rent on...to live on

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the rent. Think about taking a 70 percent hit one year and an 80 percent the following year because you have no groundwater wells. Think about that socioeconomic environmental impact. Yeah, there's only probably one, two guys that I can think of that are 100 percent surface irrigated. But what are they going to do? I feel sorry for that guy that retired and had his income cut like that. You know, I think about the surface water and the ability to opt out of the occupation tax. I brought what I thought was a simple, noncontroversial bill to change that date to June 1. It had opposition. I don't think valid opposition. But it had opposition; it's not made it out of this committee yet. So we're going to put our surface water guys in the same position we did last year. You opt out by March 1. If you don't want to pay it, if you're not getting any, or if you don't think getting 2 inches is enough...you'll force them out by March 1. And then we could get a big rain and fill these lakes and they're out. I'm not sure why that bill hasn't come out of committee. I'm not sure why there are some people back here opposed this. I think I know why. I think it's more personal. But, you know, for every socioeconomic impact example that was used on groundwater, there's one for surface. And I'll bet none of my friends here...a lot of...I'll say all these guys are my friends that testified in opposition to me. I know some of them even said they were disappointed to have their senator do this. But you know, it gives me a platform, for one thing. And I asked a couple of them sitting behind me, have you heard that the compensation bill from the state was opposed or wasn't supported by NARD; then was suggested that it has to end because of a lawsuit? They won, because it didn't get reprioritized. Surface guys lost. I wanted them to hear partly what NARD is doing. I'm being hard on them. I'll agree. But they didn't think about their opposition a year ago or their neutral which become opposition in talking to several of us that are here today. And now we didn't have that compensation last year which, you know what, any of them back here that are nervous about this bill or any other, you can IPP this one before I get out of here, that's fine with me. It's not going anywhere. But the ones back here that are scared about LB1074, they need to know that bill would have never been wrote, if NARD would have supported LB522. Go ask the senator how he learned about that. It's because Senator Adams, a year ago, after LB522 passed the first round and the opposition come in saying till the lawsuit is in, this got to quit. We started them water meetings. I'll give Senator Lathrop a lot of credit. He come out, toured the water...surface water systems in the district, because I went with him. He asked to see them and I took him through my district. I went out and showed him different irrigation...groundwater systems. I took him out there because he asked. If any of the other senators want to come out and see it, the augmentation systems we got running, do you want to see the surface water systems, you're invited, I'll take you. I'll be glad to. Just like he did. But it was the opposition, the NARD neutral, then in the Rotunda opposition that led to it. That's why I'm glad my farmer friends are here to understand what really has caused what they're scared about. Don't have to worry about my bills that have been wrote, because I told them at the meeting, I'm telling you guys, you can IPP them. I'd like to see the date change on the occupation opt out. I don't think that would give anybody heartburn. I know there was a little bit of minor opposition that I come against in my closing and clearly showed they were wrong

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because it wouldn't allow irrigation to go on until June 1, that was the real opposition. I read the statute, it says on the activity of irrigation during a calendar year to you. That's the main one I'd like to see done. If it doesn't get done, surface guys will survive. But I'm glad to have this platform today to explain where LB1074 come from, because as I said a year ago, I thought they had a narrow view. I still think they got a narrow view. And now they got to fight the consequences of it. I'm glad to have my farmer friends here so they can hear it. I put it on the record because I think I've told the truth all the way through this. And if I haven't, please correct me because I want to apologize. Thank you. [LB1111]

SENATOR CARLSON: Okay. Thank you, Senator Christensen. Any questions of the committee? Seeing none, thank you. [LB1111]

SENATOR CHRISTENSEN: Thank you. [LB1111]

SENATOR CARLSON: And with that we close the hearing on LB1111. Thank you for coming. (See also Exhibit 20) [LB1111]