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Natural Resources Committee  
January 22, 2016

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[LB714 CONFIRMATION]

The Committee on Natural Resources met at 1:30 p.m. on Friday, January 22, 2016, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on a gubernatorial appointment confirmation and LB714. Senators present: Ken Schilz, Chairperson; Curt Friesen, Vice Chairperson; Dan Hughes; Jerry Johnson; Rick Kolowski; Brett Lindstrom; John McCollister; and David Schnoor. Senators absent: None.

SENATOR SCHILZ: Good afternoon, everyone, and welcome to the Natural Resources Committee. I'm Ken Schilz, the Chairman of the committee from Ogallala. I'll let the rest of the committee introduce themselves starting with Senator Kolowski.

SENATOR KOLOWSKI: Rick Kolowski from District 31, southwest Omaha. Thank you.

SENATOR MCCOLLISTER: John McCollister, District 20, central Omaha.

SENATOR SCHNOOR: Dave Schnoor, District 15, Dodge County.

SENATOR LINDSTROM: Brett Lindstrom, District 18 northwest Omaha.

SENATOR FRIESEN: Curt Friesen, District 34, Hamilton, Merrick, Nance, and the doughnut around the city of Grand Island.

SENATOR JOHNSON: Jerry Johnson, District 23, Saunders, Butler, and most of Colfax Counties.

SENATOR SCHILZ: And then we have Senator Dan Hughes who either is introducing another bill or he found the opportunity to take off and go home a little early, which he's got quite a drive, so that's okay. And as we introduce bills today, we need to remember that some of us have quite a drive to go home. (Laughter) So we need to get (inaudible). You might have the longest. So welcome, everyone. We also have Barb Koehlmoos, she is our committee clerk; Laurie Lage is our legal counsel for the committee. We also have Jake Kawamoto here and usually we have Kellie Wasikowski. Kellie is a sophomore and Jake is a junior at UNL. So we're happy to have them. Today we have a confirmation hearing with Mr. Jeff Fassett, for the director of the Department of Natural Resources, and one bill, LB714, from Senator Stinner to provide for and change a provision relating to sufficient cause for nonuse of a water appropriation. So if you are planning to testify today, please pick up a green sign-in sheet that's on the table at the back of the room. And if you don't wish to testify, but would like to have your name entered into the official

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record as being present at the hearing, there's a form on the table that you can sign as well. And this will then be made part of the official record. Please fill out the sign-in sheet before you testify. Please print. And it's important to complete the form in its entirety. And when it's your turn to testify, please give the sign-in sheet to the committee clerk and that helps us make a better, more accurate public record. If you do not choose to testify, you may also submit comments in writing and have them read into the official record. If you have handouts for the committee, please make sure you have 12 copies for the pages to hand out. And when you come up to testify, please speak clearly into the microphone. Tell us your name and spell your first and last name, even if it's an easy one. Please turn off your cell phones at this time, pagers or anything else that would make any noise, and keep your conversations to a minimum or take them out into the hallway. And if you need to take a phone call, it would be better if you take that in the hallway as well. We don't allow any displays of support or opposition to a bill, vocal or otherwise. And we want to do that to make sure that the testifier gets the respect they deserve at the table up there. And then we always remember that the only person that is allowed to speak is the person at the testifiers' table. I don't think we'll use the light system today. But if it starts going long and we get in to a point where we need to, we can use the light system. And we usually do it for five minutes, but not today. So with that being said, we will move on to the confirmation hearing for Mr. Jeff Fassett, director of Department of Natural Resources. Mr. Fassett, welcome. Thanks for coming in today.

JEFF FASSETT: Mr. Chairman, thank you very much. [CONFIRMATION]

SENATOR SCHILZ: If you could just say and spell your name; give us a little bit of a history and what your goals are and what you intend to get done as the director. [CONFIRMATION]

JEFF FASSETT: (Exhibit 1) Very good. Thank you, Mr. Chairman. My name is actually Gordon Fassett, G-o-r-d-o-n F-a-s-s-e-t-t. But when I was a newborn, I acquired the nickname of Jeff and that is a shorthand for my initials, G and F. And that stuck for my entire life. And I would recommend you not ever doing that to your children. (Laughter) Because at this late point in my life, I'm still describing my name. I'm very pleased to be here. I've enjoyed the opportunity to meet with you all since I first arrived in Nebraska back in August, and certainly here to talk about myself and about water in Nebraska. Mr. Chairman, with your pleasure, I thought I would just touch on sort of a little educational background, a little work history. [CONFIRMATION]

SENATOR SCHILZ: Perfect. [CONFIRMATION]

JEFF FASSETT: And then I have a...to the extent your time is allowed or I can simply go to questions. I do have some sort of topical issues, since I've got a five-month lead on this hearing

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that I thought would be of interest to the committee; things that I've learned and things that worth certainly taking a lot of time. [CONFIRMATION]

SENATOR SCHILZ: I think that would be great. Thank you. [CONFIRMATION]

JEFF FASSETT: So, initially, I'm an engineer, I went to the University of Wyoming; graduated with a civil engineering degree. If I don't have to tell you what year, that would be great. It was a long time ago. I am also a registered professional engineer. Initially established in Colorado; one where it was my first job out of college. And then I've spent a big majority of my career in the state of Wyoming. I'm also licensed there. And I've applied for registration as a professional licensed engineer here in the state of Nebraska since I arrived. That is a bit of a cumbersome process. (Laugh) It was a great experience. I've not had to apply for registration since 1980. And when asked to come up with forms that could be signed by a supervisor testifying to the work that I accomplished 40 years ago, some of those gentlemen have passed. And so fully documenting my history has been a bit of a struggle. But I am pursuing registration through a reciprocity process that the states have for professional engineers. I've got over 40 years of experience in the water world, both in the private and public sector. And I'll quickly sort of run through some of my history, but...and it is all...while my degree is in civil engineering, back in the '70s when I first graduated, every single one of my fellow graduates went to work for an oil company back...it was soon after the oil embargo that you may remember in the '70s. They were scooping up any technical person they could find at that time. And they all went because they offered way more money. I said no and went to water. And it is amazing how a simple decision sort of set your life's course. But I have spent my entire professional career working on water rights and water resources, engineering over a whole breadth of stuff involving both surface and groundwater resources, extensive work in the areas of water law. I'm one of those engineers who really spends most of his time with lawyers, not engineers. And many of my colleagues in the engineering profession are a bit amazed that that...that's a good thing. But lots of different things. I started in Colorado, worked for the Denver water department, the major metropolitan water supply agency out of school. I then worked on river forecasting, reservoir operations, lots of interesting things. And as a very young person, was introduced to water law. In Colorado, the water laws of that state are completely driven and handled by a separate judicial system. They have an entire court system dedicated to nothing but water issues in the state of Colorado. And so very early on as an engineer I became knowledgeable in those processes and testified and worked closely with a lot of lawyers. I then worked for about five additional years in Colorado in the private engineering sector working for a whole variety of ranching, municipal clients, and the like. Again, dealing, primarily, with their water supply and securing the legal entitlements through the water right system in the state of Colorado at that time. I then went to the state of Wyoming. The state of Wyoming was actually a client of ours when I was in private engineering. I got to know the water resource officials in that state who then ultimately attracted me to leave Colorado and I went to Wyoming. And my first position there was in the state engineer's office

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as the deputy state engineer. And the state engineer's office of Wyoming is, basically, the agency that is equivalent to Department of Natural Resources here in the state of Nebraska. So I was first the deputy and then later became appointed and confirmed for two separate...almost three terms. The position in Wyoming is actually a six-year term, interestingly enough in that system. And so I stayed for a total of about 16 years in the agency, again, for the most part, as the leader of that agency. I, somewhat in a joking mood, one of the more significant issues we dealt with when I was in Wyoming was a litigation from the state of Nebraska over the North Platte River resources. And for a huge chunk of my career, I was actually on the other side of that case. And so we, though successfully, Nebraska and Wyoming successfully concluded that case. It never did go to court, thankfully. Actually achieved a settlement that ever since it was adopted by the United States Supreme Court, I'm hoping you gentlemen all agree that we've not heard much about the North Platte River since that settlement. So it actually was a real proud accomplishment of my tenure at that position. I then left, went back into the private sector for about 15 years. And then in both my own firm and then most recently I worked for HDR Engineering, a world renowned engineering firm based in Omaha, Nebraska. And I was the Wyoming office of HDR working on a wide variety of water resources issues around the west. So that's sort of the quick overview. I was actually recruited to apply for this position by a lot of wonderful people in this state that I'd gotten to know over the years. When you're in the water fraternity, if you will, no matter where you are, you develop relationships. The water crowd is fairly distinct, and over the years of my tenure I actually had testified to prior natural resources committees years ago. I was invited to talk about instream flows and things when I was still in my position in Wyoming but had been invited to come to Nebraska and talk to predecessors to this committee about those issues. And so as a result, I think of those long relationships in spite of the fact that it involved some litigation. Those were the folks that helped to promote me and to encourage me to apply for this position. And so...and I couldn't be more excited to be here and to take on the challenges of the water resources of this great state; the complexities, the different legal structure that you have here that is different than Wyoming. And for me personally, that's sort of an intellectual challenge, but there's lots to do and lots of interesting, fascinating issues to be involved with. And so from my chair, Mr. Chairman, this is a great opportunity. I'm glad to be here before the committee to talk about these things. So that's sort of the run down on the history. I can sort of pluck off some issues du jour or I'd be happy to take questions, Mr. Chairman, however you'd like to... [CONFIRMATION]

SENATOR SCHILZ: Why don't you go ahead and bring up the issues you're (inaudible).  
[CONFIRMATION]

JEFF FASSETT: Sure. Just as a matter of philosophy, again, as my quick resume suggests, I'm a states' rights kind of person. The water is the properties of the state. And the constitution of this state says so; the constitutions of the other states I've worked for says so. And the state laws are the mechanism to manage water resources. And so you immediately...I have been on that side of

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the formula, if you will, my entire career. To respect the constitutions, to respect the state laws, and you do end up spending a lot of time, as I'm sure this committee understands, sort of holding off, certainly, federal interests who would like to be involved with water decisions in states and use their own federal authorities to try to influence that. But the basic water quantity, allocations, administrations, management of water resources is a state function. And, certainly, the proper function under...and this state's laws are no different than any other states, really, west of the Mississippi. And so that is the philosophy and the background that I come to this position. Nebraska is clearly unique with the dual structure, dual management structure between the Department of Natural Resources and natural resource districts. The Legislature through LB962 sort of finally, sort of, recognized not only the physical connection, but the dual management structure that we now have. And that offers its own challenges, but I think a tremendous and unique set of benefits to this state. The aspects of local control, the aspects of local decision making through those districts, I think, are very important to the local producers and landowners. But at the same time, the surface water interests and the long standing prior appropriation doctrine that this state has adopted since statehood is the one that's managed by the Department of Natural Resources now. And so that dual management is sometimes slow, it takes more time, more people are involved. But I think it has worked and worked well, although, there's clearly some controversies about that, depending on the issue du jour, if you will. But I think it is a fascinating, unique approach that this state has taken beginning back in the early 1970s and I think it has worked well. And it fits, quite honestly, with the resources that this state has with the unique and fabulous, sort of, Ogallala High Plains Aquifer systems. I think allowed for that dual system to work pretty effectively. And that's really the charge that we have. I think as a result of that structure, since I arrived in August, while I feel secure in my knowledge about water resources in general, what I was not as secure about is figuring out all the players in the state of Nebraska that want to involve themselves in water resources. And so since I was appointed by Governor Ricketts, I've, I think, clocked over 5,000 miles traveling this state. I've been to 22 of the 23 natural resource districts. I've been to 40 or 50 surface water irrigation districts. I've met with the public power districts, municipalities; certainly our natural resource commission, environmental conservation groups, and the like. It's just an enormous amount of time figuring out who the players are and to listen and to learn from them what their concerns are. Not only about the water resources of the state, but, quite honestly, it was important for me, as a new director of the department, to hear about and hear from those about either their concerns, their praises, their complaints, or their litigation that they have with the Department of Natural Resources. So that was a huge effort that I've undertaken. It's, sort of, not quite over, but I've taken four or five months to sort of work my way around this state, listening and learning. I've done that on my own on purpose. I've gone to get people to sort of talk to me about what they like or what they don't like and where they see their own future going in the management of water resources. It is, as I've described to some people, like getting a masters degree in Nebraska water by...I would recommend you...any of you try that some day to take those amount of time and immerse yourselves in all of the people and the players and the interests and the conflicting

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interests that we have when you start talking about water. This committee knows in spades exactly the complexities and sort of the ricocheting effect, if you will, of trying to fix problem A and creating problems B, C, and D that aren't here today, but they'll show up eventually. And those are the things that I wanted to get a good feel about as I immersed myself into really learning about that side of the state of Nebraska's water resources. Real quickly, Mr. Chairman, I wanted to touch on the Legislature's fine decision to create the Water Sustainability Fund. That is, obviously, a more pleasant activity than some of the litigation I'm involved with. It is off to a roaring start. I really do give praise to the committee and the Legislature to even call it the Water Sustainability Fund. The use of the term "sustainability" and my personal philosophy is that was a good thing. That was a good message to send to all of the water interests across this state. We have lots of water. Some places more than others. Some were way beyond what we reliably have, and it's not sustainable; in other places we do. And so just the use of that term, I think, was a really good example of setting great policy by the Legislature to say it's important, but it is...has to be sustainable. We have to watch out for the next generations when we talk about water in this state. We can't keep acting like it is an infinite supply because, clearly, this state, like others, have our own examples of where we found out it was not infinite. And while the water resources of this state are fabulous, they are not endless. And so that's been a great fund. We're off to a roaring start. We had \$50 million of requests for the \$30 million we have, so there is strong interest in that fund. And we will be completing our tasks and passing on those successful, feasible projects to the Natural Resources Commission who will be undertaking the ranking and the criteria that the legislation set out in LB1098 that was started a couple of years ago. But it is of great interest and sort of exciting to be inside on the investment side, not just the regulatory side of water in this state. We certainly, as the department and the Natural Resource Commission, hope the commitment for future appropriations to that fund will be sustainable. Those are good investments to be made. And again, I compliment you on the use of the term. Unlike building things, I have to just share a bit about the breadth of water litigation that we are immersed in right now. Probably my biggest, sort of, personal disappointment that I had not gotten a good lay of the land of just how contentious some things were. It was probably a bit of naivety on my side. But there's a lot. And, unfortunately, right now it is almost a hundred percent focused in the Republican River Basin right now. We've had three or four new cases brought to the department or against the department in the state, even in the short time since I've been around. And they're not yet complaining about my behavior. Most of the facts and the issues of controversy that have been raised are really about things that happened in the past. And folks very upset about that; huge degree of frustration, which, again, I was hearing about during my visits through the basin. And, quite honestly, Mr. Chairman, I spent time meeting with the people that were suing us, as well as the ones that were not. I figure my job as the head of the department, assuming confirmation goes successful, is to reach out to everyone. It is the state's water. And as the head of this department, we need to be involved with all aspects of the water and to certainly work with our partners through the natural resource districts on the authorities that they have. But this is a basin where it...the litigation strategy is not clear, but I can just tell

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you how disruptive it is to working on finding solutions when you are completely tied up and absorbed with the litigation process. And they're a complicated case, they involve lots of people, lots of issues. I would, quite honestly, hate to be the judge, because it's a wild set of stuff that it gets presented and from the agency's perspective we're clearly affected by that from a staffing standpoint. But I think from my chair, it's actually most disappointing that that may get in the way of us trying to work on something a little more proactive to turn the ship, if you will, against some of the very difficult issues. And I'm not discounting that there aren't legitimate issues of concern and they need attention, they need attention by the department to see if solutions can be found. And the litigation just makes that harder. It was already hard, it's going to be harder. But I will not be deterred. We continue to try to maintain lines of communication, to look for opportunities to begin to change the dynamic and to create some greater certainty, some greater predictability for the water users that they felt had been lost as a result of other litigation and positions that have had to be taken as a result of the case from Kansas. Lastly, I think, Mr. Chairman, I'll just talk that Governor Ricketts, of course, has made a significant challenge to all of his department heads in his whole broad concept of sort of growing the state, growing Nebraska theme that I know you have heard and certainly the agency, the cabinet directors have heard at great length. Our piece of that puzzle, of course, is the water infrastructure investments. We make a tremendous amount of investments through the department, through the generosity of the appropriations process in water information. We have Web sites; we have rain-collecting data information that comes in from individual producers at 900 places across this state where people voluntarily send in and help us build a database of rainfall information and things of that nature. We're going to be asked, like the others, to look to...to tighten our belts, to streamline the processing, the permitting activities of ours are going to come under some scrutiny like all the rest of our fellow agencies. And for us, I think, we do want to ultimately...what is the most scary to the water user is uncertainty. They want to know what the rules of engagement are; they want to understand their rights, the rights of their neighbors; the obligations we have to other federal programs or other interstate obligations and to provide the greatest certainty and predictability that we can outside of Mother Nature's variability to the water supply situations. The agency that I inherited had started a gigantic commitment to better science-based decision making. And I have a room full of some very smart UNL masters and Ph.D students that are now working for the department, which we have to provide excellent care and feeding for because they are so good they will get swapped out and stolen from us. I've already lost a few, even in the short time I've been here, to the private sector. But we've really made some serious investments in the science and the engineering side of what the department does, particularly in all of the complicated work that we do and interact through the integrated water management planning with the natural resource districts. There's an awful lot of science that's involved with that. The districts themselves make investments. We work collaboratively to retain consultants. And those consultants are overseen by the technical staff that we have in-house. We're not relying on consultants to create the science. But before you can begin to have any sort of dialogue about how we manage cooperatively these interconnected sources of water, you got to get the facts

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straight and to get the major decision-making parties to understand those facts and then we can begin to move ahead about talking about how it can be managed. So that's a commitment that was started well before my time that I hope to be able to continue. And I think where we're going to spend some time is better as the agency, better in communicating, quite honestly what we do, both internally and externally. A lot goes on. We're sort of the quiet water crowd sometimes unless we're being sued, but I think we need to be better at that and be better with that with the water-using public in this state about the responsibilities that we all have. I think we also need to bring some legal and sort of statutory discipline to the agency. I've learned a lot studying our laws and I'm certainly a long ways from being one of the experts. And luckily the Attorney General's Office has got some great people assisting me. But our laws are very complicated; very interactive. You just can't push a button in one section and not have it pop out somewhere completely unrelated. They're complex, they've grown over time. Some things, it appears, when you're the new guys, it appears have been sort of shoe-horned in along the way to fix an important issue at the time. But when you come in and do a clean read of where we are today, it is a fascinating exercise to look at the body of water law in the state Nebraska and to make some disciplined, thoughtful review of that and the result in some really good decisions that the water users in this state need us to make. So we're going to try to be more disciplined in that regard and to bring to you, I suspect, in the future things that we think really do need some attention, things that are so complicated, so confusing it is no wonder people get frustrated. I think there will be some cleanup things and those will not be easy to present and to work through, but I think that may be necessary. But that's certainly not...that's not a goal, it's sort of a necessary obligation. So in addition to that, I think our own department needs to be consistent in our own decision-making and we need to be more timely. There's a number of things that are gathering a bit of dust that shouldn't be, that, again, to give that certainty to the water users. They're complicated; they're issues of first impression, if you will. So that's what kind of hangs things up. When you're tackling something for the first time, the water laws are not very...not very kind to doing something new. There's a hundred years of history on everything we touch. And that's why you do have to be very thoughtful and careful about that. But we can't let that sort of paralysis hang us up from making decisions that we need to make. And so I will be uncovering and advancing things that have been pending for a while and working closely with the natural resource districts, the irrigation districts, or other folks that need to be engaged in all of that process. Because many of these are cooperative activities. We do a lot of decision making at the department that really is in lockstep with the natural resources districts. Now always, if they're uncomfortable, they're happy to litigate against the department as well. Nobody is shy in the state of Nebraska last I checked...and so...in defending their interests. But that's the system we had. And, again, thank you for allowing me to appear before you and I'll be happy to take any questions the committee may have. [CONFIRMATION]

SENATOR SCHILZ: Thank you, Director Fassett. Any questions? Senator Kolowski.  
[CONFIRMATION]



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SENATOR KOLOWSKI: Thank you, Mr. Chairman. Mr. Fassett, thank you very much for the very complete set of statements and welcome to the state again. As you've examined and you mentioned the NRDs, a very different structure compared to any other state and that and the Water Sustainability Board, which many of us were very involved in, in the last couple of years. Did anything stand out as far as the water sustainability process? And to follow up and the continuation of that, from your own review of what you've seen of that whole process, is there anything that stood out that you want to make sure that we continue with or carry on with as you reflected on the reports on that area? [CONFIRMATION]

JEFF FASSETT: Senator, Mr. Chairman, Senator Kolowski, not at this point. I think we have to...like my early thinking is, we need to let the process play out. I mean, while the legislation was in 2014, it took nearly a year and a half to get through the rule-making process, both by the Natural Resources Commission and our department. That was finally completed in September. And we just had our first round of applications. And then consistent with the law, the department then does a technical review. And then, ultimately, the Natural Resources Commission...to be...my initial read and understanding of all that, it was curious to see that it's a 27-member body of people, which seems large in its first impression. But when you look at the makeup, the processes of appointments and nominations and things, again, now that I've completed my own tour and engagement in the state, I'm not surprised it's 27. I mean, lots of people want to be involved; are passionate about the issues. And so I think before I would sort of come back with some real process suggestions, I think we need to let this play out a little bit longer. So I think...I've been receiving lots of commentary from a variety of places since I arrived and that has been my message is to don't jump start, don't modify, let's try to see how LB1098 works the way it is right now. And with the continued appropriations commitment, we're going to be doing this every July. And if people aren't successful, they can reapply. And so we'll just see how it goes. And, hopefully, we'll get the state resources that have been provided to us deployed and working to put people to work and do the good water sustainability projects. We certainly have a breadth of stuff. I can tell you the first...there was like 30 applicants and they were across the board: water development, groundwater, levees, water quality, municipal water supplies. So a lot of interest from a broad set of applicants. [CONFIRMATION]

SENATOR KOLOWSKI: We're trying to improve upon that from the NRDs with some additional bonding authority. And that's coming up in the next couple of weeks. But we'll be working on that as a body as well. [CONFIRMATION]

JEFF FASSETT: Yeah, you and I talked when we first met about that, that concept, I know, certainly Papio Missouri NRD that has that authority now has certainly exercised this. And again, the Water Sustainability Fund is a cost-shared program. It's a 60/40 matching program. The applicants need to come up with their 40 and there's a variety of ways to do that. And the bonding suggestions may be just one more option, if the Legislature so chooses, for them to

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exercise that option and use it, potentially, for a water sustainability application.  
[CONFIRMATION]

SENATOR KOLOWSKI: Thank you for your leadership. [CONFIRMATION]

SENATOR SCHILZ: Thank you, Senator Kolowski. Senator Friesen. [CONFIRMATION]

SENATOR FRIESEN: Thank you, Chairman Schilz. Welcome, Director Fassett.  
[CONFIRMATION]

JEFF FASSETT: Thank you. [CONFIRMATION]

SENATOR FRIESEN: We've had a couple of good visits in the past when you came around, so I really appreciated being able to visit with you and I think you're going to do a great job. You talked a little bit about the waters of the state and how the state does own them and LB962 kind of set aside the integrated management of where they may intersect--the groundwater and the surface water. And so I guess your role in the surface water end of it is...would you say it's more of the defender of...or a promoter of the surface water issues taking a majority of your time?  
[CONFIRMATION]

JEFF FASSETT: Well, clearly it's the department that has the authorities over the allocation decisions of surface water rights. I think one of the things I learned in my travels was that I think some surface water users thought that the department would be their advocate in that integrated planning process. And the role of defending the system, defending our constitution, and defending the water laws of the state is different than defending a particular interest of a particular water user in that regard. But I think you're right. The general makeup of the integrated water management planning process, it's a process that has to be agreed to by the department and the local natural resource district. We have surface and groundwater authorities; but it was LB962 that said when those two intersect, it is the integrated management planning process that's going to resolve how that cooperative regulation is going to occur. And, clearly, I heard concerns from some surface water interests that there's a mix of opinion as to how that is working or not working. And so I listen very carefully to those concerns. And we'll see if some modifications...I don't know if modifications to law are necessary, or whether they will be just modifications to the processes that we're using and how we can better and more effectively engage all of the water users in that planning process. [CONFIRMATION]

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SENATOR FRIESEN: Would you say that you maybe feel that the surface water people do need a separate advocate that would...I don't know if there's an association that does that or do you think they need someone outside the department to do that? [CONFIRMATION]

JEFF FASSETT: I haven't...that's an excellent question, Senator. I don't know if they need an advocate on...I think they...they can advocate for themselves quite effectively. I mean, these are smart, understanding folks that know the laws, that know their systems. I think if I've learned anything, there's just a touch of frustration out there that...but, you know, a planning process by its nature is going to be some compromises. And so nobody is going to get everything they want. And so, again, hence, we now have some surface water districts suing the department over an integrated management plan. There is a remedy under law, it's not the one that anybody would advocate for, but I haven't thought about whether they need some other body to sort of be their more dedicated defender. The department, clearly, is in an interesting box of defending the laws which are primarily under our authority surface water laws. But the constitution says all of the water--surface and groundwater, is the property of the state and the State Department of Natural Resources is involved with that. Our legal structure has provided authorities to the natural resource districts to make certain decisions about that. But still is the state's resource. [CONFIRMATION]

SENATOR FRIESEN: Leads to the next question, I guess. [CONFIRMATION]

JEFF FASSETT: Sure. [CONFIRMATION]

SENATOR FRIESEN: What role do you see the department plays in groundwater regulations with the NRDs? What is your role there? [CONFIRMATION]

JEFF FASSETT: Well, the role is through the integrated water planning. I mean, we do not have direct authority over a permitting decision. We don't approve new wells being drilled in the state of Nebraska. Some people wished we did, but we do not. That's the dual system we have. Likewise, NRDs can't tell me whether to issue a surface water right or not. But it is through the planning and that's where, again, we spend a lot of time cooperatively bringing technical resources to the table. The Legislature has granted us great resources that we can help; resources we give to the natural resources districts; and resources that we keep for ourselves in working with the natural resources districts to get through that planning process. And that requires broad engagement by the water-using public in that area. [CONFIRMATION]

SENATOR FRIESEN: Are you familiar with the Cohyst Study that was done a few years back where the state and the surface water and groundwater people all came together and created a water model? [CONFIRMATION]

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JEFF FASSETT: Somewhat, yes I am, yeah. [CONFIRMATION]

SENATOR FRIESEN: When you talked about using the latest technology to, I guess, try and determine the size of an integrated management plan or those types of things, I mean, do you think we're using the latest technology everywhere or is it in selected areas...selected basins yet that we've done that? [CONFIRMATION]

JEFF FASSETT: Well, certainly Cohyst was a very early effort. And Cohyst itself has been updated and modified a number of times through the years. It was first started, probably, 20 years ago with some initial models and the technology is becoming more sophisticated all the time. But it is, perhaps not Cohyst, but there are sophisticated modeling efforts that are under way in almost every river basin in this state right now. So when we go through that integrated water planning process, that...one of the first tools that gets created is the way the technical modeling to look at both surface and groundwater in an integrated fashion using a tool like a computer model, so that you can then...you can sort of play the "what if" games. What if we do something new? What if we build a reservoir? What if we build more wells and you can then use the model to give you some sense of how that may play out going forward before you make any decisions. [CONFIRMATION]

SENATOR FRIESEN: So, previously, they sometimes just used the SDF method to determine that area. But now you're saying most of them are using some sort of groundwater model. [CONFIRMATION]

JEFF FASSETT: Yeah, oh yeah. Generally, a mod flow is sort of the platform; it's a USGS-developed tool that's been modified over the years. And there's those kinds of tools. I think what...one of the new things that the department has been investing in, along with a number of the natural resource districts, is when you get sort of Lincoln and east, it is not the High Plains Aquifer. The aquifer systems are very different in the eastern third, if you will, of the state. And there is different modeling; there's way different characteristics. The modeling isn't as secure. There's not as much data as there is with the western two-thirds of the state where there's been so much more attention to those technical issues. So as we move into new areas, there are some efforts to build some new tools so that the districts and our agency can, again, collaboratively try to bring the best science we can to the issue. [CONFIRMATION]

SENATOR FRIESEN: In the past, I know the Department of Natural Resources issued a lot of water permits, knowing that basins were fully appropriated. This happened years ago. Are there any basins left that have any appropriations available yet or are they pretty well committed? [CONFIRMATION]

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JEFF FASSETT: No, there are. They're not all closed off. Certainly not from a groundwater standpoint. It depends...it's like real estate, you know, location, location, location. It depends on where you are in a particular basin. But, certainly, we've got great examples of overappropriated, as well as fully appropriated. So the...most of the Platte system, certainly the Republican, even the Niobrara to a certain extent. But when you get to the wetter eastern parts of the state, the Loup River Basin, I know the natural resources district there is continuing to issue new permits for new irrigation of lands. And that continues on. Most of the things that we're seeing now in the department are more of a transfer nature. Some new reservoirs are being built. But you're not seeing big, huge, new surface water irrigation projects almost anywhere in the state. But you're seeing people want to move their water rights around and put it on better lands, things of that nature. [CONFIRMATION]

SENATOR FRIESEN: Thank you. [CONFIRMATION]

SENATOR SCHILZ: Thank you, Senator Friesen. Senator Hughes. [CONFIRMATION]

SENATOR HUGHES: Thank you, Chairman. Director Fassett, thank you,...could join us today. The question I have, you know, you mentioned sustainability several times. And of course, that's kind of the latest buzz word and sustainability means different things to different people. I guess the question I have is--we have excess water in certain areas of the state and certainly a deficit in my area. What is your philosophy as far as inter-basin transfers from an area of excess to an area of shortage? [CONFIRMATION]

JEFF FASSETT: Sure. Well, certainly the laws of the state provide for that. There is a separate permitting process to do just that. There are a couple of proposals that have sort of come to our knowledge. There aren't any sort of applications at this point. But certainly the results of having a couple of good years where people were under water, I think, in Senator Schilz's area, the past few years. And so there is some interest in looking at that. We've had more inquiries recently about what the process would look like. And again, we have a pretty clear statute that authorizes it; would be a permitting process through public notice and full opportunities for proponents and opponents to come forward. The issue becomes one of...some of it is...well, when you think about the Platte and the Republican, both, again, tightly regulated areas in the upper areas, you do have to think about do you make an investment in an trans...movement of water from one basin to the other if the water supply is not there very frequently. I mean, we've had some good years recently; the flooding in Colorado, and spring rains this past year, the reservoir system on the North Platte is quite full. And so we're expecting high waters again in 2016, quite honestly, already. But when you look at a longer period of time, does it make sense to build, potentially, expensive infrastructure to move water maybe only 2 out 10 or 3 out of 10. I mean, if the water was there on a routine basis, it would be much more different. Most of our water is in the eastern

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third of the state. People have told me--well, I don't know why you just don't tip the state a little bit and kind of get it to run back the other way and let the rainy areas help our drier areas. So I think it's out there. I think the laws provide for it. I think those are potential solutions that are worthy of some thought. But I would not let...I don't want you to leave with the thought that that would not be controversial, no matter where you do it. (Laughter) [CONFIRMATION]

SENATOR HUGHES: I'm well aware of that. [CONFIRMATION]

JEFF FASSETT: No matter what basin you're moving in, either going to or coming out of. There were some people that would suggest there was no excess in the Platte River this past year, even though it was up against the Holiday Inn parking lot. (Laughter) [CONFIRMATION]

SENATOR HUGHES: Thank you. [CONFIRMATION]

JEFF FASSETT: Thank you, sir. [CONFIRMATION]

SENATOR SCHILZ: Thank you, Senator Hughes. Any other questions? Director Fasset, you talked about...once again, you talked about the technology that's out there and getting that best technology. I know that there's been, as you said, you've had some turnover already. [CONFIRMATION]

JEFF FASSETT: Yeah. [CONFIRMATION]

SENATOR SCHILZ: And one of the programs that was out there that myself and others have been very interest in is the Insight program that has been working on. What is the status of that? And how do you...how are you moving forward with that given all the challenges that...in personnel? [CONFIRMATION]

JEFF FASSETT: Yeah, thank you, Senator. Yeah, Mr. Chairman. The...that aspect is going quite well. We're continuing to build on it each year; you're getting more data. One of the key elements of investing in that system was to feed that database into the revised determinations in the future that we'll be making on whether basins are fully appropriated or overappropriated or not. There's been a rule-making process that started years ago to modify the procedures that the department used in the past. When I arrived, I, basically, sort of put things on hold. It's such a complicated issue. We've already had a whole series of public hearings and lots of pro and con input over the years. But the science base really wasn't the question. It was more of a procedure and process. But we're going to expect during 2016 to go to a revised set of rules. We think it's using better information. We'll give people greater confidence in the ultimate decision that we issue about

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those basins where some of those determinations were challenged, you know, for good cause, quite honestly, that we weren't prepared for that. And I think now the agency, really, is much better prepared to make sure we're bringing the right science to those kind of determinations, because they're critical. What's interesting though is that so much of the early years' analysis of the fully appropriated/overappropriated concept was, of course, the ultimate effect of those determinations are simply to trigger integrated water management planning. That's what you do next when you make that determination. When the Legislature opened up, sort of, the forced integrated planning to allow for voluntary integrated planning, a great number of the districts have stepped forward. And so nearly 80 percent of this state now is in an integrated water management planning process, either voluntarily or sort of forced, if you will, as a result of those determinations. And so I think with time and effort that the natural resource districts, I think, and certainly we believe there's just benefits to having the integrated management plan that are being recognized by the key decision makers. And so, while there was some tentativeness about that process, each year we're just...we and the districts are gaining more and more experience with that process and are finding out that while it is slow and a bit cumbersome sometimes because there's so many parties involved, you, ultimately, get better decisions and you get better decisions that the public understands because they've had a chance to participate themselves in that process. And so I think that's where we're headed. And the voluntary, I think, was another great change and they've stepped forward. It's only in the most water-plentiful areas where we're not doing that. But almost everywhere else we're fully engaged in the integrated planning. That's really, probably, the majority of...a huge chunk of the staff of the department is involved with integrated water management planning. [CONFIRMATION]

SENATOR SCHILZ: Very good. Any other questions? Seeing none, thank you very much for coming in today. We appreciate all the information. [CONFIRMATION]

JEFF FASSETT: Very good. [CONFIRMATION]

SENATOR SCHILZ: Very thorough, thank you. [CONFIRMATION]

JEFF FASSETT: Thank you very much. [CONFIRMATION]

SENATOR SCHILZ: (Exhibit 2) Okay, at this point, we will take proponents for Director Fassett. Any proponents? We do have one letter of support from John Berge from the North Platte NRD. Do we have any opponents? Opponents? Seeing none, any neutral testimony? Seeing none, that will close our hearing for confirmation of Director Fassett today. Thank you for coming in and thank you for your time. We will move on now to LB714. I see Senator Stinner is here; he's been here the whole time. He's welcome to open up on his bill. Welcome, Senator Stinner. [CONFIRMATION]

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SENATOR STINNER: Thank you. I'll be quick because I know Senator Hughes has a long way to drive. (Laughter) [LB714]

SENATOR HUGHES: Thank you. [LB714]

SENATOR SCHILZ: About half as far as somebody else here, right? [LB714]

SENATOR STINNER: Good afternoon, Senator Schilz, and members of the Natural Resources Committee. For the record my name is spelled...is John, J-o-h-n, Stinner, S-t-i-n-n-e-r. I've introduced LB714 on behalf of the natural resources districts in Nebraska. This bill allows the natural resources districts to partner with surface water appropriator to find additional ways to increase stream flows. Under current law, surface water appropriations are granted by the Department of Natural Resources for the specific kind of use in a specific location, although appropriations can be transferred to other kinds of uses and locations if the department approves an application for such a transfer. Current law also provides that if a surface water appropriations is not put to beneficial use for more than five years, the department can cancel that appropriation after an investigation of the appropriation. Many surface water users are reluctant to enter into transfer or other agreements with NRDs because they fear that they will lose their surface water appropriation through non-use. LB714 is intended to clarify that if a surface water appropriator wants to enter into a temporary agreement with the NRD to transfer surface water from, for an example, an irrigation use to a stream augmentation use, then the surface water appropriation would not be subject to cancellation by the department for a period up to 15 years while that agreement is in effect. LB714 also adds that a surface water appropriator who wants to participate in a local NRD incentive program which may require that the surface water not be used while in the program will not be in danger of losing his or her water right as a consequence of participation. The proposed statutory changes will clarify for surface water appropriators that their water rights are protected from cancellation if they choose to partner with their local NRDs in meeting integrated management-planned goals to reduce depletion of streamflows. The proposed changes will also give NRDs greater flexibility in making agreements with surface water appropriators by extending the potential time window for an agreement out to 15 years. I would also ask the committee to consider and adopt AM1902 that strikes the language on page 4, line 4, after "transferred" to "in accordance with Section 46-290 through 46-294. Thank you. [LB714]

SENATOR SCHILZ: Thank you, Senator Stinner. Any questions? Seeing none, thank you for your opening. [LB714]

SENATOR STINNER: Thank you. [LB714]



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SENATOR SCHILZ: We will move on to proponents for LB714. Good afternoon. Welcome. [LB714]

DAVID WOLF: (Exhibits 1 and 2) Good afternoon. Thank you, Chairman Schilz and the members of the Natural Resources Committee for allowing me to testify today. My name is David Wolf, D-a-v-i-d W-o-l-f, and I'm here on behalf of the board of directors for the North Platte Natural Resources District, which is located in Scottsbluff. And also on behalf of the Nebraska Water Resources Association. The North Platte NRD continually seeks to partner with surface water users in the district to meet our integrated management obligations and return water back to the North Platte River to mitigate depletions. These partnerships use temporary leases of natural flow surface water appropriations, which the district transfers from irrigation use to stream flow augmentation use for short periods of time. Currently, the district is limited to that five-year lease that the senator talked about, a lease agreement with surface water users because of existing language in state statute 46-229.04; and this does not include the local NRD programs as a sufficient reason that a surface water appropriation may not be used longer than five years. As a result, the benefits of transferring surface water to stream augmentation uses are also limited. In addition, the NRD will also be required to find additional sources to offset water...sorry...to continue to meet our offset obligations. This bill will clarify that participation in a local program such that under a natural resources district would also count as a sufficient reason not to use a surface water appropriation for its original use for that period up to 15 years as with that transfer of an appropriation to stream augmentation for integrated management purposes. LB714 would give this district greater flexibility to negotiate long-term agreements with willing surface water partners without these partners being in danger of losing their surface water appropriation. And these long-term agreements would in turn allow the district to provide greater streamflow benefits toward meeting our depletion offset obligations under our integrated management plan. This extended period of streamflow benefits under these agreements will allow the NRD to direct its resources in a more efficient way towards meeting our statutory obligations. And the handout that I provided is a map of our district and all of the surface water--irrigation districts and canal companies. And if you notice, there are 27 within our five-county district. And I believe that's pretty close to half of the state. And some of those...we do have some willing people that would be interested in helping us meet our integrated management obligations. So thank you again for considering my testimony in favor of LB714, and I would be more than happy to answer any questions that you guys have. [LB714]

SENATOR SCHILZ: Thank you, David. Any questions? Senator Schnoor. [LB714]

SENATOR SCHNOOR: Yeah, on this map here, it shows all the registered wells. I guess, what wells do need to be registered? I mean, we go from stock wells to irrigation wells and then everything else in between? [LB714]

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DAVID WOLF: Just to be registered with us, surface...irrigation wells are the ones that are regulated. We do have some of our livestock wells for feedlots that have to be registered with us. But I'm sure that all the subdomestic wells will be registered too, but I'm not sure all of those. The ones that we're mainly concerned with, the ones that we regulate, are the irrigation wells and some of the livestock wells in our overappropriated portion. [LB714]

SENATOR SCHNOOR: Are there certain, I guess, parameters, you know, so many...it has to pump so many gallons per minute then it has to be registered? [LB714]

DAVID WOLF: Yeah, 50. [LB714]

SENATOR SCHNOOR: Okay. [LB714]

DAVID WOLF: Then it's considered irrigation. [LB714]

SENATOR SCHNOOR: Okay, thank you. [LB714]

SENATOR SCHILZ: Thank you, Senator Schnoor. Any other questions? Senator Johnson. [LB714]

SENATOR JOHNSON: Thank you. Thank you for coming in. You're talking about this in your district, is this something statewide that is an issue also? Or is this pretty much in your area? And would this cover the whole state or just your district? [LB714]

DAVID WOLF: It would cover the whole state. Any NRD with a surface water irrigation ditch or canal company would be able to use this. So it would just depend on whether there was a surface water district in that area. But we talked during our...the NWRA and we had a couple of other NRDs that were in full support of this too. [LB714]

SENATOR JOHNSON: Okay. So it...well, we might hear from other NRDs, you know, today. But wondering if this affects others in the same way or will they have issues with... [LB714]

DAVID WOLF: Yeah, no, I think...this would be statewide under my understanding of it. Again, the main reason we have it is 75 percent of our acres, roughly, 75 percent have surface water tied to them. So for...in order for us to meet our obligations, we can't just look at groundwater because there's just not that much available there. We're kind of a unique system to Nebraska. [LB714]

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SENATOR JOHNSON: And I asked the question does each NRD have their own rules and regulations and so you go from there. Okay, thank you. [LB714]

DAVID WOLF: Yeah, exactly. [LB714]

SENATOR SCHILZ: Thank you, Senator Johnson. Any other questions? Dave, I guess I want to ask just a couple of questions. When we read here 46-229.04, it talks about determination of non-use. And it says here: "if an interested person appears and contests the same, the department shall hear evidence, and if it appears that such water has not been put to a beneficial use or has ceased to be used for such purpose for more than five consecutive years," so as I look back here at the new language we have, we have: "appropriation is temporarily transferred to a natural resource district or other competent authority for the purpose of depletion offsets, aquifer recharge, stream augmentation, or maintenance of instream flows." And I just ask the question: do you consider any of those to be non-beneficial uses? [LB714]

DAVID WOLF: I don't. What we had...what we had been hearing from our constituents, when we go to...we're an elected board, and so when our board would hear...we go and talk to somebody about leasing their water...surface water. They were worried that if we were to enter into a ten-year agreement, that they would lose that water right. And that's why we wanted to put the local in where they did. And it's in other places in the bill, they just didn't put it in there. And where the same...it could be...if they entered into CREP or CRP or one of the federal or state programs. [LB714]

SENATOR SCHILZ: Sure. And then down here in the next paragraph under Section 2 here, it says: "Sufficient cause for nonuse shall be deemed to exist for up to 30 consecutive years if such nonuse was caused by the unavailability of water for that use." So if that water is now unavailable because it's in a contract that goes for...that goes to augment the stream, then wouldn't that be unavailable for the use as surface appropriation for irrigation, which then would fall under the 30-year contract which would then fit under everything that you're looking for? Is what you're trying to do to clarify that this is the case. [LB714]

DAVID WOLF: Right. Yeah we just want to...we want to clarify that that we're...doesn't have...excludes local, that we put local programs in there. We had talked about some of the other language that, you know, will cover it. But when a farmer reads that and they see federal, local...oh, excuse me, federal, state, and there's no local, they're just very hesitant. And if we can get, you know, you can get acres put in for 15 years, that benefits us a whole lot more than having to renegotiate five years. And especially if that negotiation is completely dependent upon that word "local" because they'll--well, I'll just keep farming it. And they might not want to go to a federal program because there's more strings attached to that where they...limitations on what

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they can do. Our real limitation is you don't irrigate it and you don't plant deep-rooted vegetation so that it can be sub-irrigated. Besides that, if they want to grow sugar cane and dryland sugar cane they can do all they want. But that's basically what our...what are required. I mean there might be some more specific with each individual, but kind of an overview, that's what it is. But they're really...we're kind of really worried about local was in there. [LB714]

SENATOR SCHILZ: So you're seeing pushback, because they're not seeing that local option in there. [LB714]

DAVID WOLF: Right. And it just limits our ability to do the state mandated obligations under IMP if we're not allowed to get some of those surface water...and this is all voluntary too. [LB714]

SENATOR SCHILZ: Sure. [LB714]

DAVID WOLF: But we're not forcing anybody, so. [LB714]

SENATOR SCHILZ: Okay. Thank you. Any other questions? Seeing none, thank you very much for your testimony. [LB714]

DAVID WOLF: Thank you. [LB714]

SENATOR SCHILZ: Next proponent. Mr. Wolf, good afternoon. [LB714]

RON WOLF: Thank you, Senator Schilz. It is a good afternoon. Chairman Schilz and members of the committee, my name is Ron Wolf, R-o-n W-o-l-f. I'm here today representing the Nebraska State Irrigation Association which is an organization of surface water people. I noticed a comment that I could follow up on Mr. Fassett's comment, we don't want to startle you, but actually some of us surface people may get along with a few NRDs better than some people think. So Dave and I decided to come in and see if we could convince you this is a good bill. I don't think it will take much convincing. Willing seller or leaser willingly see all voluntary, there's no state dollars involved, there's no mandates involved in any of this. It's totally voluntary. I, as a surface water appropriator, can tell Dave--I'm not interested, come talk to me next year. If it works better for me, this will give me an option, and Dave and I have talked on this, I think the local authority programs and stuff are mentioned elsewhere in the statute. But in that particular place, it was federal and state and we'd like to make the local available also. That's a big point in this bill. And if I could, I'd like to back up and possibly broaden the response on a couple of questions. The amendment, I believe that you looked at on page 4, from Senator...dealt with your

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question on the other competent authorities and stuff. Working with the others who were concerned about some of the definitions and stuff in this bill, I think that question may be partially or mainly answered by the amendment that Senator Stinner proposed where that, I believe, paragraph H on 4 would now state the appropriation is temporarily transferred in accordance with Statute 46-290 through 294. And that clarifies...it's already clarified in those statutes. Rather than create another overlayment, one of our concerns was other competent authorities would manage to create enough undefined terms in the statutes. I didn't think one more was needed, and neither did Senator Stinner. I wasn't sure what that was. So I think that will clarify a lot of your questions, Senator Schilz, regarding the beneficial use part. [LB714]

SENATOR SCHILZ: Sure. [LB714]

RON WOLF: Again, it adds some options. It doesn't...the NRD can obtain a transfer from surface water irrigation for surface water irrigation, it's whatever works for their IMP plan that the department finds is a beneficial use. This kind of layers that over, if you will. And it will be statewide, Senator Johnson. I think Twin Loops Irrigation District probably has the furthestmost east surface water turnout in the state. And that's about 400 feet from the city limits of Fullerton. So any major surface water development that an NRD can work with, when they're east, probably isn't there. If it is, it's not like the districts that Dave was talking about. I would ask that this committee support this bill. I think it's a good one. Again, no state money, no mandates, all voluntary. Gives the surface water people one more option to utilize local programs. And I'd sure try to answer any questions that you might have. [LB714]

SENATOR SCHILZ: Thank you, Mr. Wolf. Any questions? Seeing none, got off easy today. Thank you for your testimony. [LB714]

RON WOLF: Thank you, sir. And thanks. [LB714]

SENATOR SCHILZ: (Exhibit 3) Next proponent. Do we have any other proponents? We do have a letter here of LB714 support from John Berge of the North Platte NRD. Do we have any opposition? Any opposition to LB714? Seeing none, any neutral testimony? Director Fassett, come on up. [LB714]

SENATOR McCOLLISTER: Turn on the light. (Laughter) [LB714]

SENATOR SCHILZ: Turn on the light. (Laughter) Welcome. Don't mind my committee. (Laughter) [LB714]

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JEFF FASSETT: No, I do mind the committee. (Laughter) [LB714]

SENATOR SCHILZ: Yeah, for a few more minutes anyway. [LB714]

JEFF FASSETT: No, always. Mr. Chairman, thank you. I wanted to, obviously, I'm new to the process of getting engaged. I did have an opportunity to meet Senator Stinner as part of my meet-and-greet opportunities and he raised this issue to my attention. And since that time, I've had my own, somewhat, engagement with John Berge, the manager of the North Platte NRD, both separately and as part of my visit to that district. We certainly...the department certainly appreciates the concern of the landowner. I mean, that's what we're talking about. This is an issue that it is the landowner who is concerned about losing his right. And of course the statute that you...that is being amended here has a long list of exemptions for a variety of programs that provide the very assurance that the landowner is looking for, to the extent they participate in any one of these programs, they do not want to be at risk of losing their right. And that's completely understandable and sort of commendable. I think though the issue that has arisen is really one more of education. As I was just visiting with you, we believe that existing statutes really do cover the circumstance that's being involved. And I think it's just a matter of, perhaps, the various producers just need to understand what existing law provides already. The easy one, if you will, is the transfers. When you go through the water right transfer process from one use to any other purpose, then there is a wide variety of changes that are included, including the ones that the districts...many of the natural resources districts are involved with. In using surface water rights for groundwater recharge or other purposes, not irrigation, those transfers are just that. It's a transfer of the right, temporary transfer of the right itself. So there's no risk of losing the right, because the authorization has been given by the department to go from irrigation to the new use. And as such, the water is being beneficially used, it's just being beneficially used for something else. And again, existing law says when that temporary transfer is over, or if it's not being accomplished, the water right, sort of, automatically goes back to the original purpose for which it was established. And so any water right transfers, you don't...in my opinion, you shouldn't be thinking about that as a transfer meaning you're not using the water. You are exercising the water right. You're just exercising it for something different. It's not irrigation, now it's groundwater recharge or some other sort of offsetting program. And so we believe there's...the language in existing law really does sort of cover that type of transfer. And again, it's the complexities of the laws and perhaps just an educational process that certainly my dialogue with Mr. Berge, we...to the extent we can work together, if there is something the department can do to assist him in working with those landowners that had these concerns, we'd be happy to do that in any way that's appropriate. Then the issue of a local program, we really...I, perhaps as a matter of question, the local programs, if it's an IMP, that is the state. I mean, that...as we were just talking together, the IMP is the cooperative state law authorized process to resolve surface and groundwater management issues together. And so all of the IMPs are loaded up with groundwater and surface water controls and offsetting and activities that the districts or the

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department are implementing. But that is a state program. That's not a local program. It is done...it's carried out locally by the natural resources district, but it is a state program; the IMP is a state program. So when we first saw the language of local, we're like, well, what is it? What new thing are you doing that does have some effect on either a recovery program or the endangered species program and IMP, those are all things that the state has a role in. And we think really that they are...those are all things that are state programs. So we're just simply not aware of what sort of local program would be outside. What sort of voluntary drying up or groundwater management program would you be doing other than one that's through an IMP. And so that's why we think the existing language of federal and state really covered the examples that have been presented. And the other thing is that there really is a need, we think, for some state oversight. I mean I think that's why the word "state" was a part of that. The issues of depletions, of the accounting and the tracking that we do together with the districts, particularly in these...not only in the IMP, but in these larger basin-wide programs or something like on the Platte where many of the drivers that the districts are working so hard to work on are those commitments to the Platte River Endangered Species Recovery Program and the idea of trying to undo some of the historic depletions that we've had using these new management tools. And so there's a lot of this, kind of, leasing stuff going on. It isn't just at North Platte. I think what I've learned from Mr. Berge is that there were just...they ran into some stumbling block because those landowners were sort of nervous. And we appreciate that nervousness, but we don't think there's...we didn't really identify a clean gap in the law. But we do need to clearly do some better outreach that help these landowners understand that if they do a transfer, a temporary transfer from five years or ten years, that transfer itself really does protect their right and it can return to irrigation without any risk of cancellation. So wanted to at least offer that background for the committee. And we'll be happy to work with Senator Stinner and others if there's further questions. [LB714]

SENATOR SCHILZ: (Exhibit 4) Thank you, Director Fassett. Any questions for the Director? Seeing none, thank you for your testimony. Any other neutral testimony? Seeing none, Senator Stinner. He waives his close. That will close...oh we do have one neutral, excuse me, we do have one neutral letter on LB714 from Brian Barels from NPPD. And with that, that will close our hearing on LB714 and close our hearing for the day. Thank you very much for coming in today and thank you for your time. [LB714]