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Natural Resources Committee
January 25, 2008

[LB880 LB945 CONFIRMATION]

The Committee on Natural Resources met at 1:30 on Friday, January 25, 2008, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB945 and LB880 and gubernatorial appointments. Senators present: LeRoy Louden, Chairperson, Carol Hudkins, Vice Chairperson; Tom Carlson; Mark Christensen; Annette Dubas; Gail Kopplin; and Norman Wallman. Senators absent: Deb Fischer. []

SENATOR LOUDEN: Thank you for attending today. My name is Senator LeRoy Louden. I represent the 49th District. I'm Chairman of the Natural Resources Committee. I'll introduce the senators that are here at this time. To my left is Senator Carol Hudkins, from Malcolm, is the Vice Chairman of the Natural Resources Committee; seated next to her is Senator Mark Christensen from Imperial; to my right is Senator Gail Kopplin from Gretna; and to his right is Senator Tom Carlson from Holdrege. On my right is Jody Gittins, committee counsel; and on the end at the table down there is the committee clerk, Barb Koehlmoos. With that I would ask that, let's see...oh, we've got pages here, page Kristen Earthum from Ainsworth and she's a sophomore in Doane College and the more I get acquainted with her, the more she's acquainted with the folks. She just told me today that her dad went to school with a couple of my kids so you see how that ages you in about five minutes. (laughter) Anyway, and joining us now is Senator Annette Dubas from Fullerton. With that, turn off or shut down your cell phones or put them on silence so that they don't interrupt in the hearing today and those wishing to testify on a bill should come to the front of the room when that bill is to be heard. If someone finishes testifying the next person should move immediately into the chair at the table. If you do not wish to testify but would like your name entered into the official record as being present at the hearing, there is a form by each door that you can sign. This will be part of the official record at the hearing. This year we're using computerized transcription program and it is very important to complete the green sign-in sheets for testifiers prior to testifying. They are on the tables by the doors and need to be completed by all people wishing to testify including senators and staff introducing bills and people being confirmed. If you're testifying on more than one bill, you need to submit a form for each bill. When you come up to testify, place the form in the box by the committee clerk. Do not turn in the form before you actually testify. Please print and it is important to complete the form in its entirety. If our transcribers have questions about your testimony, they use the information to contact you. As you begin your testimony, state your name and spell it for the record even if it is an easy name. Please keep your testimony concise and try not to repeat what someone else has covered. If there are large numbers of people to testify, it may be necessary to place time limits on testimony. If you have a hand-out material, give it to the page and she will circulate it to the committee and if you do not chose to testify, you may submit comments in writing and have them read into the official record. No displays of support or opposition to a bill, vocal or otherwise, will be tolerated and if you need a drink of

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water during your testimony, please ask the page. With that we will start the first one. It will be a confirmation of Dr. Kent Forney to the Game and Parks Commission. Dr. Forney, welcome. [CONFIRMATION]

KENT FORNEY: Thank you. [CONFIRMATION]

SENATOR LOUDEN: Would you tell us a little bit about yourself? [CONFIRMATION]

KENT FORNEY: (Exhibit 1) Grew up in western Nebraska, north of Ellsworth, south of Rushville. Grew up hunting, fishing, trapping in western Nebraska. I went to school and graduated from Rushville, Nebraska. Came down to the University of Nebraska. I would have my degree in ecology, didn't take the Spanish and so I transferred to agriculture. Got a degree in general ag. Went on to vet school. Graduated from Ames, Iowa, and practiced one year in Las Vegas, Nevada for the experience and came back to western Nebraska. (laugh) And found myself to Lincoln, Nebraska. Still have a huge interest in hunting and fishing. Love the great outdoors and Nebraska. I have served five years for the Curtis Technician School out there. I served seven years on the Nebraska Veterinary Medical Association. I have served nine years on the Board of Health and I'm looking forward to serving on the Game and Parks. I'm also on the advisory board for the dean of the vet school. I think as a veterinarian I can bring a lot to the Game and Parks. With the diseases out there, I think that I can understand that and bring something to the table for the Game and Parks. Questions? [CONFIRMATION]

SENATOR LOUDEN: Questions for Kent? [CONFIRMATION]

SENATOR HUDKINS: Dr. Forney, thank you for being here. Game and Parks has a veterinarian on staff? Yes, or do they? [CONFIRMATION]

KENT FORNEY: Not that I'm aware of. [CONFIRMATION]

SENATOR HUDKINS: Okay. Now, all right, then I had some misinformation but thank you for being here and since you were raised in western Nebraska you do have an appreciation for the wide-open spaces, and the animals and all the critters out there. What do you hope to bring to the Game Commission that you feel perhaps isn't there or should be there? [CONFIRMATION]

KENT FORNEY: I don't have an agenda. I'm not coming to the Game Commission with an agenda like I want to bring this or that. There's a lot of things that I'm very interested in. I'm very interested in the pheasants. I think it's very important that we have a pheasant population that people want to hunt and that it will help with our economy in western Nebraska by filling the restaurants and the...buying licenses and the motels out there. I think that's imperative...you know, tourism is the third business part of Nebraska economy. I think that that's big. Obviously, the deer hunting is very alive and well, as is

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the turkey hunting. So I guess I've got a lot of areas out there I'm interested in. You know, I'm watching the chronic wasting disease, the Bluetongue, and seeing how that would affect it. I'm interested in how the blackhead disease could possibly affect the turkeys. But as far as just saying I have one agenda or something like that, I don't have any hidden agendas. I'm actually trying to learn as much as I can. I'm on a big learning curve right now and as you know, whenever you come to a new board the first year there is a lot of you're learning and so far, they've really taught me a lot.
[CONFIRMATION]

SENATOR HUDKINS: You're aware of the whitetail deer population in Nebraska and especially in the eastern part of the state where you have so many cars, and so many deer, I have heard people say, well, they're doing a lot of property damage, eating the corn, eating the crops, hitting the cars whatever. I ran over one myself, \$3,000 damage plus. But I have heard people say, well, what they ought to do is everybody wants that trophy buck with all the antlers. Should there be a change in the rules and regs to say you have to get a doe first before you can get your buck? (Laughter) [CONFIRMATION]

KENT FORNEY: I don't know if I want to...(laughter) I always joke with my dad because he'll say, what you ought to do, and so when somebody starts out with an ought to do, we have an ought to do contest. There's a lot of things that we're going to have to look at on the Game and Parks. Whether it's bonus tags or whether you have to, have to shoot a whitetail doe first, I understand that and appreciate that. You also have to watch the mule deer population because if you shoot too many of those you could...not...you're actually managing two different herds. The mule deer and whitetail, which is completely different. The main thing we got to focus on is getting kids involved. How can we bring kids to the outdoors? And that's what we've got to bring to the table. We've got an aging population of hunters and so anything that we can do to get a kid involved, we should. I shoot a lot of skeet. I'm always dragging kids with me and it's been very fun to watch the number of leagues that have started up. You know, people have started their own league. I'm not trying to pat myself on my own back but if you just take a kid hunting or whatever, so maybe we need to offer bonus tags if they take their son hunting, they get an extra doe tag or whatever. There's a lot of ways to skin that cat but I think that we need, definitely need to look at it. But I don't know that I have all the answers right now.
[CONFIRMATION]

SENATOR HUDKINS: Thank you. [CONFIRMATION]

SENATOR LOUDEN: Other questions for Kent? Senator Carlson. [CONFIRMATION]

SENATOR CARLSON: Senator Louden and Dr. Forney. I'm not trying to put you on the spot with this question but I'm interested. Is the business that you own primarily small animal? [CONFIRMATION]

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KENT FORNEY: Yes, it is. [CONFIRMATION]

SENATOR CARLSON: Okay. But having an idea where you grew up, you've got an appreciation for ranching, for agriculture? [CONFIRMATION]

KENT FORNEY: I've preg checked many a cow. [CONFIRMATION]

SENATOR CARLSON: And how do you feel about the total idea of farming and irrigation and the water situation, you can talk for two hours, but are there any...you have any struggles with that in terms of responsibilities with Game and Parks? [CONFIRMATION]

KENT FORNEY: Farming is our number one industry and we have to watch that very closely. I don't know the answers, to answer your question. I don't know the answers. We have six pivots on our place. I'm not just going to tell Dad to shut them down tomorrow. But I also understand that water is important and that the sportsmens want McConaughy full. So we walk a fine line and I don't have the answers. I think that I'm going to have to learn a lot and there again, I'm on my learning curve to do that. But I don't know all the answers to the Republican River Valley issues. I don't know them all for etcetera. I know I'm not interested in someone building a pipeline and piping our water to the Colorado River, I'll tell you that. But I don't find myself in a conflict there. [CONFIRMATION]

SENATOR CARLSON: Well, thanks for your response. I've heard enough. I think you've got an open mind. [CONFIRMATION]

KENT FORNEY: Thank you. [CONFIRMATION]

SENATOR LOUDEN: Other questions? I'll have a question, Kent, or two here. For the record, I'll say that I've known this kid since he was a little kid. I've known the family for I think, what, you'll be the fourth generation I think... [CONFIRMATION]

KENT FORNEY: Right. [CONFIRMATION]

SENATOR LOUDEN: ...that would be right...that I've known so, the family is quite well respected and your dad was on the commission, Nebraska Game and Park Commission, oh, when back in there in the late '70s or early '80s, sometime like that? [CONFIRMATION]

KENT FORNEY: That's correct. [CONFIRMATION]

SENATOR LOUDEN: Yeah, he was back there when they did antelope introduction back in after 1978 and 1979? Something like that? [CONFIRMATION]

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KENT FORNEY: Right. Correct. [CONFIRMATION]

SENATOR LOUDEN: So I know him quite well. What...I ask most people that are going on the commission, what do you feel like, like I said, the commission now, you know, they bought what over 5,000 acres of Dawes County since I've been in this job here, and how do you feel that the Game and Parks Commission should be about owning land? Should they be at zero, in other words, if they add land, they have to sell some someplace else or should they keep on acquiring land, especially productive land? [CONFIRMATION]

KENT FORNEY: I don't know if there should be a thing that they've got to sell something to buy something. I don't know about that. I think I'm more interested, you know, in...I think the Game and Parks needs to allow access for hunters. Sometimes...and I didn't realize this, but you know, coming down here to...growing up in western Nebraska I could always go out after school and go out and find some farmer that would let me hunt and I could shoot a limit of pheasants before dark. You come down here and start asking to hunt around here, and you can pound on a lot of doors before you get any place to hunt. So and there is a difference in between eastern and western Nebraska and part of it maybe is because of the people I knew in western Nebraska but you have to allow hunters access somewhere. I don't know whether it's buying the land or whether it is...I think the main thing, and this is partly the landowner issue, is you have to work with landowners and the hunters have to respect the landowners and they've got to work hand-in-hand with them to create the habitat and to allow the hunting. You know, as far as going out and buying the best piece of farm ground and buying that for the Game and Parks and running a wheat farm, I don't think that's where the Game and Parks want to go. If they have a canyon that they want to buy that you can't even walk and there's great hunting and fishing there, then LeRoy, I don't see a problem with that, especially if it will allow some kids a place to go. [CONFIRMATION]

SENATOR LOUDEN: Well, I agree if they want to buy that land, as they say, in Dawes County that's straight up and down, I have no problem with that. But I do have a problem with taking productive ground and making some kind of a game... [CONFIRMATION]

KENT FORNEY: I understand that. Not only that, I don't think that you get your bang for your dollar doing that either. [CONFIRMATION]

SENATOR LOUDEN: Okay. Thank you. Any other questions for Kent? Oh, Senator Christensen. [CONFIRMATION]

SENATOR CHRISTENSEN: Thank you, Chairman Louden. Have you ever thought

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about, you know, my area at Arapahoe there's a lot of leased hunting?
[CONFIRMATION]

KENT FORNEY: A lot of what? [CONFIRMATION]

SENATOR CHRISTENSEN: Leased hunting. The ground is tied up so you can't get on it. We're one of the few properties you can get on. What would you think the Game and Parks instead of buying ground, like leasing my ground or somebody else's ground for the rights to let people go on? [CONFIRMATION]

KENT FORNEY: I think it's a wonderful idea. The Montana Game and Parks has worked very well with the business owners, the chamber of commerce, the state chamber of commerce. And what they've done is, they've gone into these towns, I'm going to use Rushville as an example. You go into Rushville, Hay Springs, McCook, wherever you want to go, and the chamber of commerce goes and says, okay, we'll go lease this ground and then hunters can come in and if they stay in their motel, eat at their restaurants, etcetera, then they get a map of where to go where they can hunt, etcetera. And I think that...I've just been looking at that a little bit on-line. I don't know a lot about it. It was actually brought to me about a month ago and they said go to Montana and look at how they did that. And I think it's definitely something we need to do because if you got out and buy 40 acres its...and you plant it to milo and let it go, all the pheasants go there and they get shot or eaten by predators. Whereas, if you can go buy big sections of land..we can't buy sections of ground, but if you could lease sections of ground, work with the farmer, it's still productive, and there could be a win-win situation there. So I think it's a wonderful idea. [CONFIRMATION]

SENATOR CHRISTENSEN: Because I guess in my area, there's a lot of people lease to these other hunting outfits. What that would do, is then turn it open to everybody.
[CONFIRMATION]

KENT FORNEY: Sure. [CONFIRMATION]

SENATOR CHRISTENSEN: You'd have both people happy. The landowner that's...if he remains open, he's getting denied funds and if he gets it, does take the funds, and then all of a sudden now we're getting deer populations like..in my area, it's terrible. I mean it's not safe to drive. [CONFIRMATION]

KENT FORNEY: Yeah, right. I think you absolutely have to work with the landowners.
[CONFIRMATION]

SENATOR CHRISTENSEN: So, thank you. [CONFIRMATION]

SENATOR LOUDEN: Seeing no more questions, Kent, why, I guess that's it. Thank you

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for your testimony. [CONFIRMATION]

KENT FORNEY: Thank you, very much. [CONFIRMATION]

SENATOR LOUDEN: And now we'll ask if there's anyone wishing to testify in favor of Dr. Forney's confirmation to the Game and Parks? [CONFIRMATION]

JOE HERROD: My name is Joe Herrod, H-e-r-r-o-d, and I'm here representing the Nebraska Council of Sportsmens Clubs. We are enthusiastically supporting Kent Forney's membership on the Game Commission. I have personally known Kent since he started practice, I think, because I think one of the first dogs I took to him has been dead for 20 years. It wasn't Kent's fault. (laughter) And Kent is a very intelligent person, he is a very good listener, and he's got a kind of a legacy on the Game Commission because of his dad, and I know he's going to try to do all the wonderful things his dad did, so we're very enthusiastic about his appointment. [CONFIRMATION]

SENATOR LOUDEN: Questions for Joe? Anybody want to go there? (Laughter) [CONFIRMATION]

JOE HERROD: Well we could get a real laugh out of them if we told them about that time we treated that one dog of mine with the sore ear and you throw the pin at Ron. Yeah, we've had some fun. (Laughter) [CONFIRMATION]

SENATOR LOUDEN: Thanks, Joe. [CONFIRMATION]

JOE HERROD: Thank you. [CONFIRMATION]

SENATOR LOUDEN: Anyone else wishing to testify in favor of the confirmation of Dr. Forney? Anyone wishing to testify against the confirmation of Dr. Forney? And I guess, the neutral? Anyone neutral? If not, seeing none, I guess that ends the confirmation hearing on Dr. Kent Forney for the Game and Parks Commission. The next hearing...the next confirmation hearing will be on Don Williams to the Environmental Quality Council. Proceed Don. [CONFIRMATION]

DONALD WILLIAMS: (Exhibit 2) Well, I grew up in western Nebraska. That's kind of ironic I think. It must be western Nebraska day. I grew up in Garden County and graduated from Garden County High School and... [CONFIRMATION]

SENATOR LOUDEN: Will you spell your name for the clerk... [CONFIRMATION]

DONALD WILLIAMS: Yes. D-o-n-a-l-d E. W-i-l-l-i-a-m-s. [CONFIRMATION]

SENATOR LOUDEN: Good enough. Thank you. [CONFIRMATION]

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DONALD WILLIAMS: Okay. I assume you want to know some...follow the same format we did before. [CONFIRMATION]

SENATOR LOUDEN: Yeah, tell us a little bit about yourself. [CONFIRMATION]

DONALD WILLIAMS: Okay. All right. Had advanced schooling in Colorado then and went into the Army, served three years. Served in the White House communications agency while in the Army. Came back out and have been in the fertilizer and ag chemical business on a retail basis, since that time. And in 1997 my wife and I bought our own business in Orchard, Nebraska, and that's where we reside. I have three children, all grown, two of them in the business with us. [CONFIRMATION]

SENATOR LOUDEN: Okay. Questions for Mr. Williams? Senator Christensen. [CONFIRMATION]

SENATOR CHRISTENSEN: Thank you, Chairman Louden. Thank you, Mr. Williams. What do you see as the biggest challenge with Department of Environmental Quality? [CONFIRMATION]

DONALD WILLIAMS: I could answer that in one word, I believe, and just say water. I think that's our single biggest challenge is the water in the state of Nebraska, how we protect it and how we manage through that. [CONFIRMATION]

SENATOR CHRISTENSEN: Ideas on that? [CONFIRMATION]

DONALD WILLIAMS: Many and varied, but each situation is different. I guess, no, I have no... [CONFIRMATION]

SENATOR CHRISTENSEN: Okay, thank you. [CONFIRMATION]

SENATOR LOUDEN: Other questions? Senator Dubas. [CONFIRMATION]

SENATOR DUBAS: Thank you, Senator Louden. Thank you, Mr. Williams, for being here today. Have you had previous experience with the council? [CONFIRMATION]

DONALD WILLIAMS: This is my second appointment to the council. I just finished a three year term. [CONFIRMATION]

SENATOR DUBAS: Okay. All right. What has been...well I think you probably said water has been the biggest challenge that the council is dealing with to date. Is that what you meant by... [CONFIRMATION]

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DONALD WILLIAMS: Well, that's the biggest challenge I see us having in the future. There's many challenges. There's air quality, there's...I mean there's numerous challenges for us but I just feel like water is one of our most precious resources and that's going to be at the forefront in the future. [CONFIRMATION]

SENATOR DUBAS: Thank you very much. [CONFIRMATION]

SENATOR LOUDEN: Other questions? I have some, Don. As I was looking over your, whatever this piece of paper that you fill out, you worked at Alliance for the coop, Western Coop there for a while. What...when you talk about water, do you have an opinion on how they went about putting wells down in Box Butte County and around that area there, where, you know, we have such a drop in surface water? [CONFIRMATION]

DONALD WILLIAMS: Well, I...it's like many things in the past that we really didn't maybe see into the future what it was going to be, and I think they've been put in haphazardly, and you know in the area I'm in now, a couple of years ago they said there was going to be a moratorium on wells and...I mean the drillers just can't...there's not enough drillers to put the wells down. You know, everybody is going to put in a well before there's a moratorium. And I think that's been done in a lot of areas, you know, in southwest Nebraska and in Frenchman Valley, I think the same thing has occurred there. [CONFIRMATION]

SENATOR LOUDEN: When you were working there in Alliance, and that was what around 1997 or sometime like that? [CONFIRMATION]

DONALD WILLIAMS: 1981 to 1997. [CONFIRMATION]

SENATOR LOUDEN: Yeah, that was when there was a big push to put down a lot of irrigation wasn't it? [CONFIRMATION]

DONALD WILLIAMS: A lot of irrigation went in. [CONFIRMATION]

SENATOR LOUDEN: In there. And at that time what I guess nobody ever stopped to say that there was going to be a shortage of water, did they? [CONFIRMATION]

DONALD WILLIAMS: We never thought there would ever be a shortage of water I don't think. And it's still hard to imagine but I think it's coming. [CONFIRMATION]

SENATOR LOUDEN: Yeah. Do you think there should be a moratorium and probably perhaps should be metering on the irrigation wells and some moratoriums and some of that put in place now? [CONFIRMATION]

DONALD WILLIAMS: I think those are quite controversial subjects but I think we're

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going to be facing those kinds of decisions whether it's metering the water, I don't know if we want to put a moratorium on and stop real productive land from going under production. There may be some moratorium on the quality of land that we put in production. In the past we put some pivots in places that the antelope ought to roam on, is all that ought to happen there. But I think there needs to be some controls and some sight into the future about how we manage this situation. [CONFIRMATION]

SENATOR LOUDEN: Okay. Other questions for Don? Seeing none, thank you for testifying today. [CONFIRMATION]

DONALD WILLIAMS: Thank you. [CONFIRMATION]

SENATOR LOUDEN: Is there anyone that wishes to testify for the appointment of Donald Williams to the, what do you call it, Environmental Quality Council? Anyone wishing to testify against Donald Peterson being appointed the Environmental Quality Council? [CONFIRMATION]

JODY GITTINS: You said Peterson. [CONFIRMATION]

SENATOR LOUDEN: What did I say? [CONFIRMATION]

JODY GITTINS: Peterson, instead of Williams. [CONFIRMATION]

SENATOR LOUDEN: Williams. Sorry about that. Anybody wishing to testify against Donald Williams. Okay, then anybody in the neutral? If not, that closes the confirmation hearing on Donald Williams to the Environmental Quality Council. Now the next thing, we will start with LB945 and Senator Pedersen is here to give his presentation. [LB945]

SENATOR PEDERSEN: A little tickle I'm trying to get rid of there first. Good afternoon, Senator Louden and members of the Natural Resources Committee. For the record, I am Dwite Pedersen, representing the 39th Legislative District. I am here today to introduce to you LB945, a bill brought to me by my constituents who have grown increasingly concerned about the natural resources district in our area that has threatened to take land from private landowners for the purpose of constructing dams and lakes by utilizing their powers of eminent domain, and then turned around and transferred that land to private developers who then subdivide the land and sell it as residential lakefront property. The intent of this bill is to end the process once and for all. I do not believe that a governmental subdivision such as a natural resources district should be allowed to partner with a private developer to take land from private property owners who do not want to sell their land, and then turn around and sell it to other private landowners. Let me make it perfectly clear that there is no intent in this legislation to prohibit natural resource districts or private developers from purchasing land for the purpose of residential development. It simply prohibits this from happening

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when the land in question has been taken against the property owner's will by invoking the eminent domain powers. Many of our constituents, many of my constituents have taken time to come to Lincoln today and are here to voice their support for this bill. And I do not want to take away from their testimony by giving you all of the reasons why this bill is necessary in my introduction. I hope that you will listen carefully, and I know you will, to what has happened to landowners in this area and that you will give every consideration to closing this loophole in our statutes by forwarding LB945 to the full Legislature for passage in this session. If you have any questions, I would try and answer them for you. [LB945]

SENATOR LOUDEN: Senator Christensen. [LB945]

SENATOR CHRISTENSEN: Thank you, Chairman Louden. Senator Pedersen, if the NRD seen a dam project necessary, and there was a chunk of land needed to finish the dam, if that was restricted to only what could go under water, would that be a problem? [LB945]

SENATOR PEDERSEN: I don't think so. No, that sounds, sounds doable to me. [LB945]

SENATOR CHRISTENSEN: So I guess what I'm saying is I can see eminent domain, if you need a flood control project and somebody doesn't want to sell, you may need that one piece of property but if only the property bought was in...stayed in the control of the NRD and was something that could go under water within the flood structure that, would that solve? [LB945]

SENATOR PEDERSEN: You are right. You're right. That's using the eminent domain as eminent domain was set up to do. It was not set up for somebody to be able to use to make money on in the end. [LB945]

SENATOR CHRISTENSEN: Correct. I guess that's the...in reading this I figured as intent and might be a neutral area. [LB945]

SENATOR PEDERSEN: You bet. [LB945]

SENATOR CHRISTENSEN: Okay. Thank you. [LB945]

SENATOR LOUDEN: Okay. Senator Hudkins. [LB945]

SENATOR HUDKINS: Thank you. Senator Pedersen, I, over the last few days, I've had several different groups visit with me about today's bills and I was told, or at least it was my impression, that the NRDs are currently not allowed to do what we are trying to prohibit them from doing. Did I misunderstand that? [LB945]

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SENATOR PEDERSEN: I wish I understood it better but I think the testimony that you'll hear today will answer that question for you. I wish I could but I'm not going to take a stab at that and then mess it up. [LB945]

SENATOR HUDKINS: All right. Thank you. [LB945]

SENATOR LOUDEN: Thank you, Senator Pedersen. Do you wish to close? [LB945]

SENATOR PEDERSEN: I will not be closing. I'm in Judiciary and we're loaded probably until about 7:00 or 8:00 (laugh) tonight the way it looks so far. Gun bills. (Laughter) [LB945]

SENATOR LOUDEN: Okay. Thank you for the presentation. [LB945]

SENATOR PEDERSEN: Thank you. [LB945]

SENATOR LOUDEN: First testifier...well how many wish to testify in favor of this bill? What have you got, three, four, five, six, seven. How many? Seven. And how many wish to testify against this bill? One. Just one. Okay. What will we do, about five minutes apiece then because we've got another bill after this. Okay. First testifier then for LB945. [LB945]

MIKE RYAN: My name is Mike Ryan, M-i-k-e R-y-a-n. I'm from Omaha and I'd like to say good afternoon, Senators, and thank you for the opportunity to testify. I'm here to testify in favor of LB945. The pictures that are going around, they're actually pictures from film. You know, that's the stuff we used to use before digital cameras and they're the only copies I have so I want to get those back some time before I leave today. Back in the '60s, when I was a young man and didn't have to shave the hair growing out of my ears, and before I fell off the turnip truck, I thought eminent domain was this concept where government was able to take land from private individuals for something that was so pressing in need for the public benefit that it was the last resort necessary. Back in the early '90s, I think it was about 1991, 1992, a friend of mine got elected to the Legislature, Don Preister. And another gal and myself were asked to serve as his legislative aides, each working half-time because we were friends of his and had worked on a rather significant environmental project in south Omaha. We were trying to stop the storage of hazardous waste in a residential neighborhood. And shortly after he got elected, there was a...the start of a project in south Omaha by a very wealthy and powerful man to revive an old packing plant that's now called Nebraska Beef. And they decided that they needed to expand their parking lot, their employee parking lot. Now they had, of course, four sides to the building and the front, I don't remember what was in the front but the front was around L Street and if my memory serves me properly, I think it was old stockyard property across the street. To the north was an old warehouse. To the west was, I believe a radiator shop. But to the east was a

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neighborhood, a residential neighborhood, houses, mainly occupied by older folks. They weren't wealthy folks. It was kind of a poor neighborhood but the houses were immaculately kept. It was probably for the most part, older folks that maybe worked at the packing house back when the packing houses paid a living wage but they were by no means rich. Well, the Nebraska Beef folks decided that they wanted to expand their parking lot to the east. They wanted to take all these homes. I think they ended up taking, oh, about a block, a block and a half of homes and they had the homes that fronted the parking lot, were across the street from the parking lot, and the homes behind those. And so you had, I don't know, it seems like it was, you know, maybe 20 homes. And what they wanted to happen was the city to use it's eminent domain to take these homes and then turn them over to Nebraska Beef for their employee parking lot. Now remember, they had options. They could have gone to the north, the old warehouse, to the west, the radiator shop. For some reason they picked on the weakest and least powerful people and that's what happened. The city used its eminent domain. The people were kicked out of their houses and after that, I, you know, I don't know where they went, what happened to them. I lost contact with them. We were involved because we were, you know, asked by Don to get involved and of course other pressing things came up as the Legislature went along and like I said, lost track of the folks. The pictures that I passed around are from August of 1999, August 7, 1999, and this is right down at the bottom of the hill where I live. It shows a flood and August is, of course, not the wettest month that we experience here in Nebraska. But it rained for a number of days and the Papio Creek here did flood. As I recollect, it flooded here for maybe six block area. One picture showed a couple cars sitting under water and to the best of my recollection, that was the extent of damage in my neighborhood. Downstream, probably two or three blocks as the crows flies, there was some small businesses that butted up against the creek and my understanding was some of their storage area was flooded. Now this, for those of you that aren't real familiar with Omaha, if you know where the Westroads is, this is about six blocks as the crow flies to the southwest of the Westroads; that's where the big Papio Creek runs. My wife and I have lived in our home since April of 1975, so about 33 years. This is the worst flood I've seen on the Papio Creek in that period of time. I've lived in Omaha all my life since 1946. This is the worst flood I guess I experienced on the Papio Creek during that period of time. I guess what I'm trying to say, you know, it's flooded in other portions of Omaha. In fact, this same flood event on Cole Creek, which is across on the other side of town... [LB945]

SENATOR LOUDEN: One minute. You've got one minute. [LB945]

MIKE RYAN: Okay. A gentleman lost his life in the same flood. The foundation of his house washed out. Since this period of time, the NRD has gone in and they've widened the creek, they've widened and deepened the creek. This last May we had the second wettest May we've ever had in Omaha. This last August we've had the wettest August we've ever had in Omaha. I walked down along the stream after we had high water down there. The work that the NRD did, you know, did it's job. The high water level was

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probably about one-third up the bank during those extremely wet months. The bottom line is, the flood threat in the Papio watershed doesn't really exist to the extent I think that the NRD is claiming. I think it's kind of a WMD thing, a weapons of mass destruction. It's a scare tactic. It doesn't really exist. I think what's behind this push for the dams is developers want the land. They want the NRD to use condemnation powers to take the land, build these dams that I don't think are necessary. They're not necessary for flooding, they're not necessary for the Clean Water Act. There's other methods we can use. Build the dams, build the lakes, sell the land to the developers. It becomes very lucrative to have lakefront property and they'll make a killing off of this. So I'm asking you to pass this bill out on to the floor. I think NRD can be used by the...or the eminent domain can be used by the NRD right now and I think they'll use it unwisely. Thank you very much. You got any questions? [LB945]

SENATOR LOUDEN: Okay. Questions for Mr. Ryan? Senator Christensen. [LB945]

SENATOR CHRISTENSEN: Thank you, Chairman Louden. I guess I ask you the same question I asked Senator Pedersen. If it was restricted to the land that's under the water, would there be...if it's seen as a necessary project would it be seen as an issue? [LB945]

MIKE RYAN: In my opinion, this bill would not allow the use of eminent domain for that. In my opinion, these dams and lakes are not necessary for flood control and they're not necessary for clean water under the Clean Water Act. It's an expense to the taxpayer that just flat...isn't warranted anymore. [LB945]

SENATOR CHRISTENSEN: Because I guess as I'm reading it, prohibiting them from going into a joint project... [LB945]

MIKE RYAN: Right. [LB945]

SENATOR CHRISTENSEN: ...and I've seen some of them projects, and asked a lot of questions of a lot of people, and I understand how they can pull money and go farther but I would hate to ever see eminent domain used on anything that wasn't going to be under water. I guess I'm just trying to see if there is neutral ground, if we're on the same page. I guess that's my questioning. [LB945]

MIKE RYAN: Well, I think, I think, you know, what will happen is the NRD will come in and they'll use eminent domain to take all the property. They'll use the eminent domain to take the part that's going to be under the lake and they'll use eminent domain to take, you know, surrounding property. And what I'm saying is, you know, the lakes can't be justified for flood control. There just is not the kind of flood threat that they're talking about. [LB945]

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SENATOR CHRISTENSEN: But I guess I was turning it a little further. If there was no eminent domain allowed... [LB945]

MIKE RYAN: Right. [LB945]

SENATOR CHRISTENSEN: ...for anything that wasn't put under a dam if it was seen as necessary... [LB945]

MIKE RYAN: Right. [LB945]

SENATOR CHRISTENSEN: ...would you be in favor of that? [LB945]

MIKE RYAN: If there was no eminent domain allowed for... [LB945]

SENATOR CHRISTENSEN: Except for ground that would be under water. [LB945]

MIKE RYAN: Would I be for that? [LB945]

SENATOR CHRISTENSEN: In other words, you're not helping a developer get ground away from somebody to build on. [LB945]

MIKE RYAN: So the eminent domain could be used then for just the ground under the water. [LB945]

SENATOR CHRISTENSEN: If it was seen as necessary, yes. [LB945]

MIKE RYAN: I would be opposed to that because I don't see it as necessary. [LB945]

SENATOR CHRISTENSEN: Okay. Thank you. [LB945]

MIKE RYAN: Thank you. [LB945]

SENATOR LOUDEN: Other questions? Seeing none, thank you, Mr. Ryan. [LB945]

MIKE RYAN: Thank you. [LB945]

SENATOR LOUDEN: Next testifier. Oh, at this time, I might make for the record that Senator Wallman has joined the committee as a member of the committee from Cortland. Go ahead then. [LB945]

ANDY POLLOCK: Chairman Loudon, members of the Natural Resources Committee. Thank you for the opportunity to be here today. My name is Andy Pollock, that's A-n-d-y, Pollock is P-o-l-l-o-c-k, and I'm here as a registered lobbyist on behalf of the Papio

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Valley Preservation Association. I was planning to testify on LB880 first so I'll kind of ad lib here a little bit at the beginning. The association that I represent consists of approximately 500 landowners who are very concerned about the NRD's efforts and plans to construct 29 or more dams in the Papillion Creek Watershed area and we're here to support LB945. As will be discussed more on LB880, the group that I represent has been fighting bond proposals by this NRD for several years running now and you'll hear more about that with respect to LB880. The group this summer concluded, or this winter concluded, that it was time to respond with legislation of its own to try to resolve this matter which the NRD just won't let go of. It's tried twice now for general bonding authority. It's been declined by this Legislature twice and despite that fact, they have persisted and they have introduced LB880 this year. The proposed legislation LB945 would seek to really resolve that dispute and protect the private property of the landowners that I represent. Before getting into the bulk of my testimony, I would first like to thank Senator Pedersen for introducing this bill on behalf of many of his constituents in this group as well as Senator Hudkins, Lautenbaugh, and Preister for cosponsoring the bill. Senator Pedersen explained well what the bill does and I would just point out also that it allows, LB945 allows use of eminent domain. It allows use...or employment of public private partnerships, it allows those. It just says, don't couple the two together. And I think that's a very important distinction. At this point I would address Senator Christensen's question that he has asked the two previous testifiers and I would say that the answer to that is, if it's land that's underground that is not in fact being transferred to a developer, this bill, at least the way that we look at it, was not intended to forbid that. And if it needs to be cleaned up to address that issue, we'd be glad to work with you, members of the committee, to address that issue. This bill, LB945 basically says, don't take land by eminent domain for the purposes of partnering with a private developer to develop that land. And I would point out that it only focuses on private real estate developers. It doesn't forbid partnership with businesses, homeowners or farmers with respect to land taken by eminent domain, only private developers. To understand this bill, I just want to briefly go through a brief legal history of how we got here, if you will, looking at one U.S. Supreme Court decision, and I promise not to get to get into depth about that, as well as a Nebraska Supreme Court decision and then also LB924 which was introduced by Senator Fischer two years ago and enacted by this Legislature. First the U.S. Supreme Court decision. It's a case that I'm sure you're all aware of. It was decided in 2005 and it's the Kelo decision which really set the stage for all of that. In that case, just briefly, the Supreme Court of this country decided that government could take land from private landowners for "economic development" purposes. And that set off, as you'll all recall, a storm of reaction around this country, including here in Nebraska. I just want to read two sentences from that decision in which the court really predicted the reaction by state legislatures, like this one. And it said, and I think it's relevant to this bill too, we emphasize that nothing in our opinion precludes any state from placing further restrictions on its exercise of the takings power. The necessity and wisdom of using eminent domain to promote economic development are certainly matters of legitimate public debate. Meaning there

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are certainly matters for legislatures like this one, like you, to take up. The court invited legislation. In 2006, Senator Fischer, like I said, introduced LB924 and I won't go into detail about that but I would simply point out the crux of that, the crux of that law which was enacted and signed by the Governor. And it says that it prohibited use of eminent domain to take property primarily for an economic development purpose. Again I'd emphasize, primarily for an economic development purpose. People have asked me and this really addresses a question that Senator Hudkins asked Senator Pedersen. Doesn't LB924 take care of your concern about the NRD in the Papio Missouri area taking land by eminent domain and using it to construct dams? And I would say, first of all, that that is an excellent question. I think it's a question that is well put and needs to be answered as well. Certainly we don't want to pass law that is not needed. I would say two things. First of all, I do not believe, and there will be testimony later today about this, that the NRD thinks that it is...the NRD believes that it has this power. That it has this power to do what this bill would prohibit. It wouldn't be making some of the statements to the clients that I represent if it didn't believe that it had...in fact have...it does in fact have the power right now to take land by eminent domain and partner with private developers. If it doesn't believe that it has that power, it wouldn't be saying the things that it is to the clients that I represent who will be here to testify. The second thing is more of a legal issue and that is that LB924, like I said, only says that the government can't take land primarily for economic development purposes. It doesn't address the issue of when land is taken for a legitimate purpose like flood control. So the law now allows the taking of land by eminent domain for a legitimate purpose like flood control. It just doesn't say what you can do afterwards and we submit that that's what may happen here if the threats that we've heard are actually carried out. Finally, I would just say that the Jap v. Papio-Missouri River NRD decision of the summer addressed a question similar to this and basically the court said, the law as it now stands permits partnerships between NRDs and private developers for purposes such as this. And it says that the decision is for the Legislature. The court said the law is the law, we're going to respect the law. It's a legislative decision. In that case a group of individuals had sued the NRD, challenging the construction of two dams and two lakes in this area that are a part of this same project and the court basically said, we can't stop that. But it is a decision for the Legislature to make. In closing I would just say, we're not opposed to private development. We are not opposed to public-private partnerships. We are not opposed to eminent domain. We just don't think the two should be coupled together. The U.S. Supreme Court has said this is a legislative matter. So has the Nebraska Supreme Court and we're asking your committee to respond to those invitations. And I'd simply just finally conclude by saying, I really think that this passage of this law will end the dispute that you've seen for three years running now. Since 2005, there's been efforts by the NRD to get general obligation bonding authority. You said, no. This will take an intent element out of all of this. We say that it's for private development. The NRD says that it's for flood control. We don't agree. If this law is passed that issue of what the real purpose is is taken out of the equation. It just says regardless of whether it's a legitimate purpose like flood control, do not allow the transfer to private developers for

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development of that land. [LB945]

SENATOR LOUDEN: Questions for Andy? Senator Christensen. [LB945]

SENATOR CHRISTENSEN: Thank you, Chairman Louden. Mr. Pollock, you've heard my question and addressed it but there's advantage in tax dollars in cooperating together in looking at some of these projects. And I guess my question is, if somebody is holding out in some land that would be under water for a flood control project, if they don't use eminent domain, they may not get that. So that would stop the project, at the same time would not allow them to leverage money with a private developer. I know you said you don't oppose to working with them as long as eminent domain is not used and there is a difficulty different times someone just isn't going to let go of that property. So if the language was changed more to my language than yours, it just said they could use eminent domain only for what's under...what can go under water, would that fully address the issue? [LB945]

ANDY POLLOCK: With respect to LB945, it is intended to apply to land that's actually being transferred. So if there's land under water, it's not our intention to preclude the taking of that by eminent domain. And that goes to an issue that will come up in LB880 as to whether these dams are actually necessary and I won't get into that. I understand your question and the intent in assisting with the drafting on this was to solely forbid the taking of land by eminent domain and transferring it to a private developer, not the land that would be underneath the water. [LB945]

SENATOR CHRISTENSEN: I think we're saying the same thing, two different ways. [LB945]

ANDY POLLOCK: I hope so. [LB945]

SENATOR CHRISTENSEN: But I'm just trying to clarify because I think there's some very neutral ground here. My point in this questioning is the fact that you could have a partnership in my language with eminent domain used underneath what can go under water where I don't think in your language you could. [LB945]

ANDY POLLOCK: I understand. And if there's some...if we need to sit down and look at the drafting of what's now before you, we would be glad to. I'd have to work with the group that I represent, get their okay on that. But I understand your point and we'd be glad to try and clarify that. [LB945]

SENATOR CHRISTENSEN: Okay. I'll probably quit hammering it. Thank you. [LB945]

SENATOR LOUDEN: Questions? Senator Kopplin. [LB945]

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SENATOR KOPPLIN: Thanks, Senator Louden. Andy do you have an instance where eminent domain land was actually transferred to developers? [LB945]

ANDY POLLOCK: If I may, Senator Kopplin. I think that's a good question. I think it's a question that should be answered. There are a couple of people here who are part of the Papio Valley Preservation Association who have had conversations with the NRD, and have more experience in that regard. And if I could defer to them, they will be here to testify and they do plan already on addressing that issue. [LB945]

SENATOR KOPPLIN: Okay. But you're not aware of any actual transfer being made? [LB945]

ANDY POLLOCK: I am and I would prefer that they testify on that issue. Yes. [LB945]

SENATOR LOUDEN: Senator Dubas. [LB945]

SENATOR DUBAS: Thank you, Senator Louden. Thank you, Mr. Pollock for being here. So just to clarify in my mind, we're okay with eminent domain being taken for flood control or whatever it is the NRD needs to do the job that they have to do. The question seems to be, after their project is done if there's land that is outside of what they've needed for their project, what they can or cannot do with that remaining land? [LB945]

ANDY POLLOCK: That's...I think that's exactly the issue that we attempt to address with LB945. I think LB924 from two years ago says clearly that the government cannot take land for economic development purposes and it clearly allows the taking by eminent domain for a legitimate purpose like flood control. There are a number of powers, as I am sure you all know, under the natural resource district law that they have, that the districts have, and flood control is one of them. I think it's number three. And this...the bill that was passed two years ago permits taking of land for flood control purposes. So does this one. It just says, if you take it for that legitimate purpose, you then can't in the next breath, a month from now, a year from now, turn around and sell it or transfer it somehow through a partnership arrangement to a private developer. [LB945]

SENATOR DUBAS: So you feel that there is too much vagueness in the current statute that we aren't addressing that particular issue? [LB945]

ANDY POLLOCK: I don't know that I'd say vagueness but I would say that there's...it's easy to get around that. It's fairly simple to get around that by just taking it for a legitimate purpose and then later transferring it through another vehicle, yes. [LB945]

SENATOR DUBAS: Thank you. [LB945]

ANDY POLLOCK: Thank you. [LB945]

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SENATOR LOUDEN: Seeing no more...seeing no more questions, thank you too, Andy. (laughter) We've spent twenty some minutes, twenty some minutes on two people already. [LB945]

ANDY POLLOCK: You'll let me off the hook. All right. Thank you. [LB945]

TYLER MOHR: My name is Tyler Mohr, T-y-l-e-r M-o-h-r, and I want to thank Chairman Louden and this committee for listening to my concerns today. My family and myself are farmers and we're property owners in Douglas and Washington County. As property owners we feel that stewardship is also an important part of ownership and we've worked with the Papio NRD for a number of years on several conservation projects. In April of 2004 there was a map was floating around out in the public that I was shown and it showed our property within an NRD project and I was concerned. So I inquired to NRD management in April, 2004, and the first thing I was told by NRD management was a main priority of the NRD is building dams for developers and that if I did not take a developer's offer for my property I would be condemned. I replied that you cannot take property from one person and give it to another using eminent domain. It was repeated that I would be condemned. Having been one of the biggest supporters of the NRD as far as conservation projects went, we were shocked. Since that time, the NRD has endorsed policies that include the use of eminent domain within these private property...private public partnerships. I don't believe that when the NRD's were formed some 30 years ago that anyone ever intended for eminent domain to be used in this way. Therefore, I would ask this committee's support LB945 and advance it to the floor to more clearly define the authority that the Legislature has granted the NRDs. And I'm open for any questions. [LB945]

SENATOR LOUDEN: Questions for Mr. Mohr? (laughter) Seeing none, thank you for your testimony. [LB945]

TYLER MOHR: And if I could, I'd like to comment a little more on what Senator Christensen was asking. You asking...you know whether, you know, the ground under the water should be taken. Well the thing with that is, that they really don't need that water behind the dam for flood control, they only need the dam itself for flood control. You know...you know that could remain in private hands if it had to. They could also use a dry dam and there's so many more options that they could use that would, you know, help with flood control if it was needed. You know, such as protecting the flood plain, including not mitigating wetlands, you know, to develop them. [LB945]

SENATOR LOUDEN: Okay. Thank you for your testimony, Mr. Mohr. [LB945]

TYLER MOHR: Thank you for the opportunity. [LB945]

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SENATOR LOUDEN: Next testifier. [LB945]

TIM DREESSEN: (Exhibit 3) My name is Tim Dreesen, T-i-m D-r-e-e-s-s-e-n. I reside in Bennington, but in Washington County. I am here to tell you that eminent domain is a very real issue and it has happened to our family farm. We have an 80 acre piece that we found out, by not being asked or anything, that a PL566 which I would guess I call a little silt pond, as you can see on the picture, was, we found out we were in talks of being condemned, eminent domain, whatever you want to call it back in 1997. We first off, shocked us. You don't know anything about what's going on until it's too late. They more or less vote on your ground and then you find out what the price is going to be when you're done. We decided to fight our own taxpayer dollars with our own money so we're fighting our money with their...with our money again. We took them to court. We won three times. They still ended up winning. As you can see, the dam was built, was put on our property. (laugh) I don't understand how they can come in and do that stuff. They just take your ground and if you can look at the picture, it's hard to see to the north of it, there's 160 acres to the north of it which is, as I say it's very hard to see, it's cut off there, that's 160 acres of grass. I don't know what is going to erode off of that because I have not seen that yet. It's a pond now is what it is. To the east of it, you can see there's terraces that would handle a four and a half to five inch rain. These are big terraces. There's no silt coming in there either. We asked, we went to the meetings, talked to the natural resource board at the time and I cannot tell you the board members that were on there at the time. I can sure find out and get it to you if you wish. And we had a couple of them...yeah, we want to come up and look at it. We want to see if this is something that's necessary. Never heard another word from any one of them. Went to more meetings. Nobody ever decided to come up. Done deal. There's a dam on our property there that I have no idea what value it has. But I can tell you this, I tried contacting our attorney and get a picture from him because I could not find it. The natural resource district was so kind to make us a plot that we could plot out this property for houses. And I will get that piece of paper for you next week. I promise you so you can see that. Because I can guarantee you they did it. (laugh) I couldn't find it. I apologize, but I don't think that's right. And where you're asking what the water, you know the ground under the water, we farm that ground. There's water problems out west. We don't need irrigation to grow anything on that ground. It grows. Why would you put water over perfectly great soil that produces without any irrigation. I..you know, not trying to be rude, I'm just saying, I see no reason to do it. We've got major water problems in this state. There's no doubt. I'm going to throw some hard numbers out of...the county court in Washington County is where this was fought and they awarded us \$62,000 plus for that 11.724 acres. The NRD appraiser said we should get \$34,650. That's a \$5,200 an acre from the courts. A \$2,800 an acre amount from the NRD. Well, we were finally tired of fighting and losing our money right back to the tax money that we've already given them so we decided on \$48,500. That meets the medium. We're right in halfway point, that's fine. Obviously we're not going to make it. They're going to condemn it, it's a gone deal no matter what. The wildlife in that piece of ground it's only 80 acres but I can

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promise you every time you went down there (laugh) there was a good dozen pheasants, there was deer, there's coyote, there's fox, you name it, it was there. Now, I'm not saying they don't come in there and drink out of the water sometimes now, but I can promise you, it's nothing like it was. I will guarantee that. Oh, let me see, I had something else I believe. No, maybe that's it. I'm not sure. [LB945]

SENATOR LOUDEN: Okay. You ready for questions? [LB945]

TIM DREESSEN: Yeah, if you have any questions, shoot away. [LB945]

SENATOR LOUDEN: Questions for Tim? Senator Carlson. [LB945]

SENATOR CARLSON: Senator Louden. Tim, when you, you indicated that the NRD after constructing the dam, offered that you could sell the land around it as lots, right? [LB945]

TIM DREESSEN: They said that prior to it being done because we were fighting it and they said, when they brought it to the table, here's this nice little picture of your ten acre plots all around it and that's not what we're about. [LB945]

SENATOR CARLSON: How were you to share that with them? [LB945]

TIM DREESSEN: (Laugh) No, it was them showing us, this is what you can do with your ground. They weren't going to take the ground that was around it. I'm sorry I didn't state that but I promise you, you don't bring a picture to the table and show us what we can do with our ground when we farm it to live. (laugh) I don't farm it to sell it for housing. [LB945]

SENATOR CARLSON: I just wanted to clarify that whether there was a... [LB945]

TIM DREESSEN: Yeah, that's fine. Yeah. [LB945]

SENATOR CARLSON: ...here's what you can do if we get so much. [LB945]

TIM DREESSEN: Exactly. [LB945]

SENATOR CARLSON: And that was not in there. [LB945]

TIM DREESSEN: No, that was not it. No, that was not it. But I don't think it's right that they bring a picture to the table and say here's what you can do with it. I can do whatever I want to with the ground that we own. [LB945]

SENATOR LOUDEN: Other questions? Senator Dubas. [LB945]

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SENATOR DUBAS: Senator Louden, thank you very much. Thank you very much, Tim. How did this change the natural flow of water? [LB945]

TIM DREESSEN: There's a natural spring right there in that creek. Right to the north of it, is...it actually, it starts right on our property the natural flow does right on that north line fence. There's still very good water there. To say it's full, no, I mean, it's dry a lot of times. You know, there's not a lot in there. There's still water in it at all times but there's a natural flow there. It was a beautiful stream before, well now it's a silt pond. I don't know what else to tell you, it's still flowing. Just not of major amounts of course. [LB945]

SENATOR DUBAS: So this dam, how full is it? It's... [LB945]

TIM DREESSEN: Oh, I don't know. Maybe not even three-fourths, I suppose. [LB945]

SENATOR DUBAS: Okay. So there's not... [LB945]

TIM DREESSEN: It's never gone around it at all. It can't. There's nothing coming from the north. It's like I say, it was grass at the time. It could have been in CRP. I don't know. We don't own the property to the north and I'm not going to say what they had for sure. But it's alfalfa now. There is a couple houses up on top of the hill, so, you know, that's fine. But you still have huge terraces to the east of it that will not let water come into that thing. [LB945]

SENATOR DUBAS: So there isn't a lot of opportunities for the runoff to catch... [LB945]

TIM DREESSEN: No, and we just put new terraces on it this year, this fall and we don't want it to fill in. I mean, it's a pond itself. We never wanted the thing to be there in the first place. [LB945]

SENATOR DUBAS: Thank you. [LB945]

TIM DREESSEN: Yep. [LB945]

SENATOR LOUDEN: More questions? Senator Hudkins. [LB945]

SENATOR HUDKINS: Thank you. Mr. Dreessen, on the map, is this your homestead? [LB945]

TIM DREESSEN: No, we just own the 80 acres. I live a mile south of it and a quarter to the west. [LB945]

SENATOR HUDKINS: Okay. And then on the map there are some red dots and then it's

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outlined in yellow. The red is restricted use. What is that? [LB945]

TIM DREESSEN: I don't know. I have no idea. I just noticed that on the map this morning. I didn't know what it was either, I seen that. [LB945]

SENATOR HUDKINS: So you don't know the... [LB945]

TIM DREESSEN: It's wetlands maybe, I don't know. [LB945]

SENATOR HUDKINS: All right. Thank you. [LB945]

TIM DREESSEN: Yep. [LB945]

SENATOR LOUDEN: Okay. Senator Wallman. [LB945]

SENATOR WALLMAN: Thank you Chairman Louden. So you own that dam or not? [LB945]

TIM DREESSEN: Our family does. Yes, we got the dam back, you know the ground back. They just condemn it to put the silt pond on it. [LB945]

SENATOR WALLMAN: Okay. Thank you. [LB945]

SENATOR LOUDEN: I have a question then. Are you paying real estate taxes then on the ground around that dam or under the dam or who... [LB945]

TIM DREESSEN: Around the dam, of course for...I couldn't tell you if you're, what do you call it? [LB945]

SENATOR LOUDEN: You don't know if that 11.74 acres has been taken off your tax roles? [LB945]

TIM DREESSEN: Yeah, I don't know. I can't say that. Yeah, I can't say that. [LB945]

SENATOR LOUDEN: When you say they showed you how you could develop housing around there, and they do tend to benefit by it because... [LB945]

TIM DREESSEN: Definitely. [LB945]

SENATOR LOUDEN: ...NRD's receive property taxes and if they raise...if they put that in there, the valuations are higher so they do, do have a dog in the fight when it comes to developing. [LB945]

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TIM DREESSEN: Absolutely. To the north of that, which I hadn't thought of until you just said that, to the north of that and to the west there's housing on it. To the north to the west there's subdivided plots out and there is no water to be found around there. We have very good water on that farm. I can promise you that there is water there. There is a well there and everything and you have no idea how many of them people have wanted to buy rights to put wells on there to pump to their house. They have no water. So... [LB945]

SENATOR LOUDEN: Is this, does this pond stay full year round? [LB945]

TIM DREESSEN: Yeah, yeah, whatever the rainfall goes into it. We don't touch it nothing. It drops dramatically when it's dry out I can promise you that. [LB945]

SENATOR LOUDEN: But it doesn't go clear to a mud flat? [LB945]

TIM DREESSEN: No, No. [LB945]

SENATOR LOUDEN: Okay. Other questions for Tim? Senator Christensen. [LB945]

SENATOR CHRISTENSEN: Below the dam here where they got the wetland designation in the red dot, does it run there at all now? [LB945]

TIM DREESSEN: There's a trickle coming out of the culvert. I mean if it would get plumb full I'm sure it would, you know, run out very dramatically but there's just a trickle that comes out. [LB945]

SENATOR CHRISTENSEN: Was there springs there previously or it all fed from above the, where the dam was? [LB945]

TIM DREESSEN: That's where the spring was, was right up by the line fence is where that spring was. And now don't quote me on this, but I'm pretty sure that I've heard from sources that the county road right south of that was a dam at one time. I, of course, wasn't around when that happened so I don't know that. But they more or less let it silt in and must have decided we needed another one right above it. I don't know that for fact but I pretty sure there was a dam on the road itself and that is wetlands there. That's very wet there. [LB945]

SENATOR LOUDEN: Okay. Other questions? Seeing none, thank you, Tim, for your testimony. [LB945]

TIM DREESSEN: Thank you. [LB945]

SHAWN MELOTZ: (Exhibit 4) Good afternoon. My name is Shawn Melotz, S-h-a-w-n

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M-e-l-o-t-z, and my address is Omaha. I'd like to begin to thank Chairman Loudon and the members of this committee for allowing me to express my support for LB945. I urge this committee to advance this bill to the floor. I see this bill as a tale of two issues. One is the eminent domain issue which is very, very powerful. But the other side of it which I'd like to address is the financial gains by developers on these projects. Since November of 2004, I followed the financial transactions related to the NRD. I'm a CPA practicing in the area of tax by trade. And I'd like to discuss dam site 13 which is on 192nd and Dodge. I believe the importance of LB945 becomes apparent, protecting taxpayer dollars by controlling the financial relationships between all Nebraska NRDs and developers. In November, 2004, dam site 13 project was unanimously approved by the Papio-Missouri River NRD. It was told at that time that the budget for this project would be \$3.5 million. And I think it's important to note on this dam, that it controls .5 percent flooding according to HDR studies. That's a half of one percent and don't ask me what that means, that's what their studies say. Today, I received a E-mail from staff. The project cost, I believe, is in excess of \$7 million so there's been a 33 percent budget overrun on this project. In March of 2005, the NRD bought the land, actually exercised the option that the developer held on this piece of property that was under the structure and around the structure. The price was \$3.5 million at \$53,000 an acre. According to the signed agreement, the terms of it expressed that the developer that was partnering on this project was to contribute back to the NRD \$1 million. And it was expressed that it needed to occur in the latter of three events, the latest of which was December 15th, and if it wasn't paid, there was interest due on that note. In December of 2005, the contribution was not received. At the January 2006 board meeting the issue was not addressed. I even went back last night to check the minutes. At the same meeting, at the end of the meeting I questioned the board, who referred to the general manager to answer the question regarding the default on the \$1 million. The general manager stated that the NRD was renegotiating the contract with the developer. Now that bothered me to some extent because what's the purpose of a signed agreement if you renegotiate it when the other party defaults? In February 2006 a new contract was presented to the board for approval and it was approved. The vote, by the way, was eight to one on that. The new contract transferred the responsibility for payment of that \$1 million from the developer to the newly formed SID that was around that lake. Included in the terms, there was no stated interest on that money except that \$35,000 was added to the contract. So in November 2006 \$1,035,000 was paid to the NRD which was almost one year later than what the original contract stated. Another issue on this project, the NRD sold some land to the developer. A corner of the land, I don't remember the number of acres, but it was for \$604,000. The terms of that payback was \$24,000 down, \$580 on a five year note so the note is not due until 2011. Interest is only charged on \$120,000 of that note, so almost a third of the note, or a third of whatever the stated interest is what the developer will be paying back to us taxpayers for carrying that note. In addition to these type of transactions there's other elements that occurred on dam site 13 between the Papio-Missouri River NRD and the developer. According to the contract, the developer was responsible to pay for the construction of

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the dam. The engineer estimate was about \$1.2 million for the structure. Under the terms, the developers, if the costs were less than the \$1.2 million, the developer received a premium of 20 percent of the savings. But if they were over the \$1.2 million, he was reimbursed dollar for dollar. Now to understand the implications of this, it's important to note there was no competitive bidding on this job. And in April 2005 this board changed their policies to state that they no longer required competitive bidding for projects when they are cost-shared with developers and in my testimony I've included the quote from that particular policy. With all of these issues in mind, I believe LB945 will provide greater controls when NRDs partner with developers and therefore I think this committee needs to advance this bill to the floor. Thank you. [LB945]

SENATOR LOUDEN: Okay. Questions for Shawn? Seeing none, thank you for your testimony. [LB945]

JULIE THACKER: (Exhibit 5) Good afternoon, Senator Louden, members of the committee. My name is Julie Thacker, J-u-l-i-e T-h-a-c-k-e-r. I'm a taxpayer and a landowner on proposed dam site 3C in Washington County. I thank you for the opportunity to speak to you today. I'm here to voice my support for LB945 and I have a handout here which is a map. It's a map from a study conducted by HDR for the Papio-Missouri River Natural Resources District. It was an initial handout that we received as a group of citizens at a land use tax force work group. And I have to ask you, how would you feel if you saw a map and there was an area on there labeled new town where your home currently sits? To me it's pretty scary and it's very upsetting, especially when the agency that this map was created for has the powers of eminent domain and have used those powers in the past, as you've heard here today. So when I first heard about the proposed dam site that would take my home from me, I began attending the NRD meetings and for three years now, I've been attending on a fairly regular basis. I also was asked by HDR to serve on the steering committee for the feasibility study that was performed for dam sites 1 and 3C in Washington County. Those are the two large dams and I readily agreed to join that because I have a very vested interest in that. Over these past three years, I've invested a lot of time in becoming educated on this issue and about the NRD in general. I do not believe the proposed dams are solely for flood control and I don't believe the NRD has an intent to find alternatives to these two large water-based recreational lakes. I believe it's an opportunity for developers to have a water feature in their new subdivision so that they can earn bigger profits. And I ask you, at what cost to the average Joe, the landowner, myself and my neighbors? I believe the NRD, if they would put their efforts into enforcing, enacting and encouraging low impact development, maybe there would be no need for large dams and property taken against a taxpayer's will. Now there are less intrusive ways to control runoff. Douglas and Washington County have adopted some great storm water policies. I have studied the Papio Creek Watershed Partnership policies which commit them to building 29 dams. I've gone to meetings that Douglas and Washington County have held to, I guess, put out there and address the public what

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their storm water policies are. And I see that they are a much better plan to help the entire watershed. As I served on this steering committee and attended public meetings where there were, according to meetings minutes, 320 attendees to the first meeting and 260 attendees to the second meeting, I couldn't help but look at some of their frequently asked questions. And a couple things that stuck out in my mind is the talk about increased opportunities for economic growth. Well, I have to ask, don't farmers contribute to economic growth? I mean, have you seen the price of a combine lately? It's pretty, pretty up there. Also, we've heard about public access to these proposed large dam sites and we've talked about what would remain under water, and what's taken and what would not be taken. But in many of the documents that I've received as a steering committee member, it's referenced in a frequently asked question if these lakes would have public access, and they say that there is anticipated public access of a 200 foot buffer around the lake. Now there is a recreational plan. In fact they want to put a dog run where my house is and, heck, my dogs run in there right now. But I believe in an ideal situation there would be no doubt in taxpayers' minds that some flood control practices are necessary and should be implemented for the good of all citizens in the area, but not to benefit developers at our expense. In an ideal situation, there would be a willing buyer and a willing seller and in an ideal situation the NRD would be stripped of their powers of eminent domain when these said powers will benefit private developers. I thank you for your time today. [LB945]

SENATOR LOUDEN: Okay. Questions for Julie? Senator Wallman. [LB945]

SENATOR WALLMAN: Thank you, Chairman Louden. Thank you for testifying, Julie. [LB945]

JULIE THACKER: Thank you. [LB945]

SENATOR WALLMAN: You're going to have an uphill battle. But my uncle was one of the first NRD boards in my District 30, a little, a Big Blue. So they went about it with small watershed projects, you know. They worked for easements and you still make people mad but they didn't take any homesteads or nothing and Tuttle Creek, as you well...you know, some people in Kansas, my relatives, and they...it was a tough deal and eminent domain leaves a bad taste in my mouth also, so thank you for testifying. [LB945]

JULIE THACKER: Thank you. [LB945]

SENATOR LOUDEN: Other questions? On this map here, do you know the size of that lake that you got printed in blue there? [LB945]

JULIE THACKER: Oh boy, I would have to go back...I bet Shawn knows. How much? Twenty six hundred acres. [LB945]

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SENATOR LOUDEN: 2,600? [LB945]

JULIE THACKER: Just for the water pool. That doesn't involve the buffer, any land around there. [LB945]

SENATOR LOUDEN: And that's going to be how deep will that lake probably be? [LB945]

JULIE THACKER: Thirty? I don't know, it varies. [LB945]

SENATOR LOUDEN: Ten to fifteen feet? [LB945]

JULIE THACKER: Yeah. [LB945]

SENATOR LOUDEN: Because I was going to say that 2600 acres, you're talking about four sections, four square miles, and the amount of acre feet of water stored behind that thing. How about the people down below that thing? Are they, they going to sleep at nights when they know they've got (laughter) 400,000 acre feet of water up above them that could... [LB945]

JULIE THACKER: With all due respect, Chairman Louden, I quit cutting out newspaper articles talking about dam failures because I have a stack this big of newspaper articles that I've been collecting over the last three years that I've been living under the threat of eminent domain, and it seems like anytime you go on to the internet to MSN headlines, there's always articles. There was a dam that broke in Hawaii and look at New Orleans. We've got dam site 6 Newport Landing just directly west of the brand new high school in Bennington. I sure hope my kids are safe if anything ever fails there. It's a big concern and I guess the only other thing I'd note on that is they can build these two big structures. You have the role of the dice of 50-50 chance if we have a 100-year or a 500-year storm event, that's south of these, what good do they do, except provide recreation and some nice lakefront lots for people that have a lot more money than myself. [LB945]

SENATOR LOUDEN: Okay. Thank you. [LB945]

JULIE THACKER: Thank you. [LB945]

SENATOR LOUDEN: That was my question about...I have a problem of building storage water dams above metropolitan areas, where urban people are so... [LB945]

JULIE THACKER: Yes. [LB945]

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SENATOR LOUDEN: ...that's what my question. Any other questions for Julie? Seeing none, thank you for testifying. [LB945]

JULIE THACKER: Thank you. [LB945]

DUANE GANGWISH: Afternoon, Chairman Louden, members of the committee. My name is Duane Gangwish. I'm a registered lobbyist representing Nebraska Cattlemen. Although this bill was conceived as a result of activities in the Pappio-Missouri River NRD, Nebraska Cattlemen has a very strong policy regarding the use of eminent domain. [LB945]

SENATOR LOUDEN: Can you spell your name, Duane? Nobody else can. (Laughter) [LB945]

DUANE GANGWISH: You would think the professional would remember. (laughter) D-u-a-n-e G-a-n-g-w-i-s-h. [LB945]

SENATOR LOUDEN: Thank you. [LB945]

DUANE GANGWISH: Sorry about that. Specifically our policy opposes the taking of private working lands with eminent domain for the benefit of other private uses. We support the bill and we ask you to advance it because it more clearly defines the use of eminent domain and how it can be exercised is a very valuable tool. I'd be happy to answer any questions. Thank you. [LB945]

SENATOR LOUDEN: Any questions for Duane? I do, just a minute. (laughter) You're telling me that Nebraska...you're testifying for Nebraska Cattlemen? [LB945]

DUANE GANGWISH: Yes sir. [LB945]

SENATOR LOUDEN: And they're not so much against whether you're going to build dams or not, they're against eminent domain of taking land and using it for...giving it to developers or something like that? [LB945]

DUANE GANGWISH: Taking private working lands, Senator, for the use...from one private use to another private use and we feel this bill more clearly defines how eminent domain can be used in Nebraska and therefore we promote it. [LB945]

SENATOR LOUDEN: Okay. Thank you. [LB945]

KEN WINSTON: (Exhibit 6) Good afternoon, Senator Louden and members of the Natural Resources Committee. My name is Ken Winston, last name is spelled W-i-n-s-t-o-n, and I'm appearing on behalf of the Nebraska Chapter of the Sierra Club

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and I always enjoy having an opportunity to testify on the same side as the Nebraska Cattlemen on an issue. (laughter) So today I'm testifying in support of LB945. And the Sierra Club wants to indicate that we recognize there are legitimate purposes for the use of eminent domain, including flood control. However, eminent domain should not be used as a means of supporting private development, particularly if we're talking about publicly funded dam construction. And there was a study that was done by UNO, and I don't have a copy of it handy but recall reading it last year. That study indicated that lots near Lake Zorinsky, which is in suburban west Omaha, were valued at \$19,000 per lot higher than comparable lots which were not closer to the lake. So if there's this much private benefit that's generated from building a lake, and the private developers are benefiting, then it's our contention that they should pay for that. We are also concerned, as Mr. Gangwish indicated, we're concerned about loss of farmland, we're concerned about loss of habitat, and we're concerned about promotion of urban sprawl by building...by having private developments around lakes that are in rural areas. We believe that LB945 promotes good public policy by appropriately limiting the use of eminent domain. Would be glad to answer questions, if I can. [LB945]

SENATOR LOUDEN: Questions for Ken? Senator Kopplin. [LB945]

SENATOR KOPPLIN: Thank you, Senator Louden. Ken, you mentioned Lake Zorinsky and I just want to clear up something in my mind. The development that is around Lake Zorinsky was never taken by eminent domain, is that correct? [LB945]

KEN WINSTON: That's, I'm not arguing about that. [LB945]

SENATOR KOPPLIN: You're just saying how much those lots are worth? [LB945]

KEN WINSTON: Right. That's correct. [LB945]

SENATOR KOPPLIN: But nobody lost land to give it to somebody else to get that? [LB945]

KEN WINSTON: I don't know that. I don't how it was funded. I mean, it's been there for quite a while. [LB945]

SENATOR KOPPLIN: Seller to buyer type thing. I know it was, so that's okay. [LB945]

KEN WINSTON: You probably have more information about that than I do but I'm just using that as an example of how much a lake can create, can increase the value of individual lots. [LB945]

SENATOR LOUDEN: Okay. Senator Carlson. [LB945]

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SENATOR CARLSON: Senator Louden. Ken, yesterday I made a mistake with you because I accused you of playing a saxophone. [LB945]

KEN WINSTON: Well, I do but only at home. [LB945]

SENATOR CARLSON: But you play the guitar out in public? [LB945]

KEN WINSTON: That's true. [LB945]

SENATOR CARLSON: And, you know, I was talking about wind yesterday and so I'm sorry but are you stringing us along today? (Laughter) [LB945]

KEN WINSTON: Well, I was hoping to get into a good rhythm today but I don't know about that. (laughter) Thank you. [LB945]

SENATOR CARLSON: Thank you. [LB945]

SENATOR LOUDEN: Senator Wallman, I hope you don't have a bad joke. (Laughter) [LB945]

SENATOR WALLMAN: No, no, no. (laughter) Thank you, Chairman Louden. Ken, always glad to have you here. [LB945]

KEN WINSTON: Thank you. [LB945]

SENATOR WALLMAN: In your esteemed opinion, do you think we have enough structures now, for flood control in our state? [LB945]

KEN WINSTON: Well, I think there's more...there's obviously more that needs to be done with regard to flood control and storm water management because...and part of the problem is the fact that we've got urban development that continues particularly around our urban areas where there's sprawl that's just going out at amazing rates and a big, a major by-product of that is more runoff. There's a lot more runoff obviously off a structure that's asphalt or concrete than there is off a farm field. And so there needs to be better planning to deal with those kinds of things but I don't know that dams are necessarily the best way to go about that. I guess the example that you used when you were describing the NRD that you are familiar with, sounds like a better way of dealing with it. [LB945]

SENATOR WALLMAN: Thank you. [LB945]

KEN WINSTON: Thank you. [LB945]

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SENATOR LOUDEN: Other questions? Mark left on us, huh? Okay. Thank you, Ken, for your testimony. [LB945]

KEN WINSTON: Mr. Chairman, could I...rather than getting up and testifying again, could I just leave my written testimony on the next bill with the committee? [LB945]

SENATOR LOUDEN: Yeah, that will be fine. We appreciate it. [LB945]

KEN WINSTON: Okay. Thank you. [LB945]

SENATOR LOUDEN: Okay, is that the last testifier on LB945, proponent? Now we'll take testimony any opponents of LB945? [LB945]

JOHN WINKLER: (Exhibit 7) Good afternoon, Senator Louden and members of the Natural Resources Committee. My name is John Winkler, J-o-h-n W-i-n-k-l-e-r. I'm general manager of the Papio-Missouri River Natural Resources District. I want to thank you for the opportunity to testify in opposition to LB945. I spoke with many of you previously. It's very frustrating to see bills brought before this body to attempt to restrict the ability of the NRD to partner with new development in establishing responsible and appropriate flood control measures that through partnership, can save taxpayer dollars by sharing the costs of these measures. Even more perplexing is the support of these bills to funding mechanisms whereby the NRD must shoulder the cost burden of these flood control measures with taxpayer money alone. The Papio NRD does not have the luxury to simply look the other way and do nothing to solve the crisis of flood control and water quality in our district. We believe it is irresponsible toward fellow citizens and failing to follow the statutory stated purpose of the natural resource districts not to act. We feel LB945 is unnecessary because it appears to ban what the NRDs can already not do while placing confusing and litigious language in state statute that would impair the NRD's ability to fulfill its statutory obligation to our citizens while costing them more taxpayer dollars at the same time. Our legal counsel agrees that LB924 which was passed by the Legislature in 2006 places appropriate restrictions on the use of eminent domain and transfer property from subsequent use by commercial for-profit enterprise. In addition, the 1977 Krauter case holds that no more property may be taken by eminent domain than is actually needed for the NRD's presently planned, public purposes. The Papio NRD has not taken, and is not empowered to take by eminent domain, any interest in land other than as absolutely necessary for a Papio NRD project, nor has the Papio NRD ever attempted to sell to private developers or other private parties any land taken by the Papio NRD by eminent domain. In fact, the NRD has not, since the construction of dam site 21 in 1995 without developer assistance, used eminent domain to acquire any of the land for any of the additional Papio Creek flood control dams or lakes it has built. Our board goes to great lengths and great...through great debate to find other options besides the use of eminent domain on any project. We believe LB945 is a lose-lose proposal and one we urge you not to advance. I want to thank Senator

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Louden and members of the Natural Resources Committee for your commitment to urban water issues this year. And I'd be glad to take any questions. [LB945]

SENATOR LOUDEN: Okay. Questions for John? Seeing none, John, thank you for your testimony. [LB945]

JOHN WINKLER: Could I clarify a couple of items that came up during the previous testimony? [LB945]

SENATOR LOUDEN: Go ahead. [LB945]

JOHN WINKLER: Mr. Dreessen brought up a structure, it's a PL56, 566 structure, and those were a joint project between the NRD and the USDA's NRCS Service as well as the Soil Conservation Service. Those were built primarily for erosion control. Those are not flood control structures. [LB945]

SENATOR LOUDEN: Which ones are you talking about now? The one... [LB945]

JOHN WINKLER: The picture that you got, the W15. It was the small structure on that plot there. [LB945]

SENATOR LOUDEN: That one there. [LB945]

JOHN WINKLER: During this process, no developer was utilized and it was mentioned that a plot was presented. This was a requirement of the appraisal when they were doing the appraisal process as part of the eminent domain proceedings that the highest and best use was discussed. And so that was generated as part of that, that it could be development. But there was no agreement between a private developer to build those. And actually, the NRD contemned for an easement only. It was not the taking of the land. Also on the Shadow Lake project that Miss Melotz discussed, the project was delayed for one year and that payment that was discussed, we didn't complete our work on time. And so we didn't feel it was appropriate that the developer had to pay their share when we were behind schedule. So that payment was not forwarded until our work was completed. And the land that was transferred to the developer was bought by the NRD and was sold to the developer for the exact amount that we purchased it for. It was not taken by eminent domain. There were several other partners in that project as well. It was a City of Omaha, Metropolitan Community College and the NRD, was all partnered in that project. So we go to great lengths to partner with cities and developers and communities and other entities to stretch the public dollar as much as possible. [LB945]

SENATOR LOUDEN: Okay. Thank you. Thank you for your testimony. [LB945]

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DEAN EDSON: Chairman Louden and members of the Natural Resources Committee, my name is Dean Edson, D-e-a-n E-d-s-o-n and I'm the executive director for the Nebraska Association of Resource Districts presenting comments in opposition to LB945. This whole eminent domain issue is a very, very emotional issue. We don't push...none of the NRDs push this any more than absolutely have to. Don't want to have to use it, would much rather use a willing buyer, willing seller approach. And it's unfortunate that there's some projects being proposed up in Washington County that bring all this issue to light again, and again and again. The fact of the matter is, we can't use eminent domain for public...or for private purposes. We can't...what they're asking us, they're asking you to put into law is something we're already prohibited from doing anyway. But what I want to caution you about is when we start down this path, okay, we're not going to allow NRDs to partner with this class of people. The question becomes, who's next? And not necessarily talking about eminent domain but what, who's the next class of people, next business class, next sector in the private sector whether it be producers, that's going to get singled out, says you can't, as NRDs, participate with this group of people and that's what you're trying to do here is narrow this down, single out a class said you can't, NRDs can't participate with them anymore. Another thing I want to bring up, the eminent domain issue itself. Let's just talk about that for a little bit. The eminent domain issue essentially puts a ceiling on a price. The courts will not allow us to pay way more than what the going market rate is or way less. It's a process and procedure to follow through to make sure that the private landowner is entitled to a certain compensation number for their piece of property. John Winkler mentioned that they hadn't used that since 1995. I'm only aware of one other district that's used it since I became involved with the NRDs over 11 years ago now. And that happened up at Lewis and Clark NRD. They had to use eminent domain for this sole reason and this reason only. The landowner wanted to sell his land to the NRD for the project and he was willing to do that but he figured out that if we took it through eminent domain, he could get some tax credits for it. So he said, I'm not going to sell it to you. I'm going to make you take it by eminent domain. That way I get some federal tax credits out of the issue. So he forced us to do it that way. So there was an IRS rule that benefited him and that was the only time since I've been here in 11 years that it's been used by the NRD and it was only because of that. With that, I'll close. Try to answer any of your questions, but again the issue has been covered. [LB945]

SENATOR LOUDEN: Questions for Dean? Mr. Carlson. [LB945]

SENATOR CARLSON: Senator Louden. Dean, I have a couple of comments and questions. It seems...I think it's not come out, maybe it comes out on the next bill but some of the frustration in the Papio district is all these proposed dams and so I understand how that's a scary thing. You hear all the way from possibly zero to 29 or whatever. Well, I told somebody I won't support zero but I wouldn't support 29 either and I think somehow that fear needs to be massaged somehow. The second thing is, you talk about eminent domain to take a piece of property and we talked about that

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being under water, and it doesn't involve the adjacent property. But whether it's lucky or unlucky, the person that owns that adjacent property is going to benefit more financially than the person that gave up the property by eminent domain. And who really ends up paying for that, I guess it's justified because you've got a willing buyer then that's going to pay that extra \$19,000, \$20,000 or whatever it is, for a lot that's on the lake but the people that had the property taken by eminent domain, they don't really take part in that. And not that you can do anything about it but I see that's another source of frustration, I believe, and opposition to these projects. [LB945]

DEAN EDSON: Let me answer your twofold question there. First of all, on the 29 zero or 29 dams, whatever that is, I think the Papio NRD and the partners who are involved including Omaha and Sarpy County, Douglas County, are trying to work those out through a series of public information meetings. They've tried to develop some partnerships with the political subdivisions and the public to make sure that everybody knows what's going on, what they have to do, here's the issue at hand, help us try to figure it out. Help us to try to figure out what we need. And so I don't know what to do other than to create an open public process like we have now with a series of public meetings to invite people to come in and express their concerns or their support or ideas for changes. Your second question I think dealt with, you know, just the water under the land, is that right? [LB945]

SENATOR CARLSON: Well, people who get their property taken by eminent domain are supposed to receive something close to market value maybe a little less, maybe a little more. But the owners that are adjacent that aren't in that, in a sense they probably have a windfall but they're the ones that get the windfall, not the people whose property was taken. And I can see how in a way it's justified because you've just found a willing buyer that's willing to pay that extra money but the only one that benefits is the person sold the property and then the NRD to a certain extent, whatever cut that's involved. [LB945]

DEAN EDSON: Right, And I think that's what, you know, maybe some comments have been taken way out of context here in some testimony in support of this bill. Probably when the NRD talked to that individual about maybe selling their land to the developers, was trying to encourage them to do that so that landowner could capture that economic development opportunity that may be there, rather than the NRD undertaking this and we do it in a partnership. Again we can't take any more land than is presently planned for the public purpose. Now, when we do that, and we get in another little problem when we try to get too narrow and we've got another project up by Bennington where we tried to do just that, is just...and we didn't use eminent domain. We just tried to partner and then put the flood control structure in and then only have an easement for the flood control amount and left the land adjoining to it to the private landowner. That landowner sold it to the developer. They started putting up houses around it. The problem you start running into now is the private landowner has all that land right up to the water so they

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restrict public access. So now we get into a whole another issue on public access. And that's why we're trying to work with the developers and work with the landowners in the county to make sure that everybody benefits out of this, and everybody is kept whole, and that nobody gets harmed in any particular way and we still get some public benefits. [LB945]

SENATOR LOUDEN: Senator Wallman. [LB945]

SENATOR WALLMAN: Thank you, Dean. Have you ever had land taken by eminent domain? [LB945]

DEAN EDSON: Yes. I've got some land that's been in my family a long time, our family farm out in Gothenburg. [LB945]

SENATOR WALLMAN: Did you get a fair price? [LB945]

DEAN EDSON: At that time, I think so. It was about 1965, I believe. I was pretty young. Dad said that he got a fair price for it, but... [LB945]

SENATOR WALLMAN: Did he? Well nowadays you probably can't get a fair price but you never know what it's going to bring. So and that leaves a bad taste in people's mouth too so. Thanks. [LB945]

DEAN EDSON: I agree with you, Senator Wallman, and that's kind of why in the eminent domain procedures when you go through that, is you try to make sure...the courts try to make sure that that landowner gets a fair price for that land and that's all we're trying to do if we have to use this, is make sure that landowner gets a fair price. We'd prefer to negotiate that willing buyer, willing seller, and try to set a price for that but if it gets too high and out of the market, then your only resort is to go back to try to lower it to what the market says through eminent domain and thus saves some taxpayer dollars. [LB945]

SENATOR LOUDEN: Other questions for Dean? Seeing none, thank you for testifying, Dean. [LB945]

DEAN EDSON: Thanks. [LB945]

SENATOR LOUDEN: Is that the last testifier against LB945? Anyone wishing to testify in the neutral of LB945? Seeing none, then I guess we close the hearing on LB945. Next we will take up LB880. Okay, and Senator Kopplin will introduce that bill. [LB880]

SENATOR LOUDEN: (Exhibit 8) While Senator Kopplin is getting ready, I'll mention that there are two letters of support for LB880, one from a Selma Kessler of Olson &

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Associates and a Pam Daly of Fort Calhoun. Oh, hers is against, okay. Go ahead, Senator. [LB880]

SENATOR KOPPLIN: Thank you, Senator Louden, fellow members of the Natural Resources Committee. I'm Senator Gail, G-a-i-l, Kopplin, K-o-p-p-l-i-n, representing Legislative District 3. I'm before you today to introduce LB880. Very simply, what this bill proposes to do is to give a natural resources district which includes a city of the metropolitan class within its boundaries, the ability to issue watershed enhancement bonds. I, along with fellow Sarpy County Senator, Tim Gay, decided to sponsor this legislation because the watershed we live in is at a critical point in its development and the need for this legislation is urgent. Most of the committee members were in attendance this fall for a tour of the Papillion Creek Watershed and you got to see firsthand the rapid urbanization of this area. Since our tour, the Federal Emergency Management Administration has released new flood plain maps that have shown that the growth in our watershed has increased our flood vulnerability by 25 percent since 1970. Those of us living downstream in the watershed need protection from floods and water quality impairments. LB880 would provide to the Papio-Missouri Natural Resources District the ability to issue general obligation bonds to pay for essential flood control and water quality infrastructure that would protect the health and safety of my constituents and those throughout the watershed. The Papio NRD would be restricted to only issuing bonds within their existing levy authority and in Section 2 of the bill they would be allowed to use the proceeds from the bonds for projects that include low impact development strategies, storm water quality control and flood prevention structures. As a member of this committee I, along with you, have wrestled with rural water policy issues after a number of years of inaction. To deal with those issues, we have allowed for substantial property tax increases and even occupation taxes to correct the problems that for too long were ignored. I do not want to face similar problems in the metro area. We are fortunate that in our watershed for the past six years all our communities have been engaged in serious collaboration of developing a regional response to our watershed's challenges. I commend the Papio Creek Watershed Partnership for all the work they have done to upgrade their zoning regulations to prevent flood plain building and I am introducing this legislation to give them a regional tool to invest in the necessary infrastructure to save lives, property, and improve the quality of our water. Infrastructure is expensive. There is no denying that. But waiting and hoping the problem goes away will be more expensive. We need to start now. If we do it with this legislation we can avoid property tax increases of the future. Thank you for your attention and consideration of this matter. I'd be happy to try to answer any questions you might have but we do have a number of capable and expert testifiers coming behind me that might have better answers. Thank you. [LB880]

SENATOR LOUDEN: Okay. Any questions for Senator Kopplin? Senator Dubas. [LB880]

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SENATOR DUBAS: Thank you, Senator Louden. Thank you, Senator Kopplin. There's been similar bills introduced over the past several years. Were you involved in either one of those bills? [LB880]

SENATOR KOPPLIN: I introduced one last year. The difference, the difference being that in last year's bill, we allowed a tax increase. This does not. This has to fit within their already allowed tax amounts. [LB880]

SENATOR DUBAS: Do you remember the first bill, it looks like it was...oh, that was in Natural Resources too. Okay. So all right, I answered my own question. Thank you. (laugh) [LB880]

SENATOR LOUDEN: No more questions? Okay, thank you, Senator Kopplin. First testifier. Let's see how many are going to testify in favor of LB880? Okay, how many you got. Eight, did you count Dean? Okay. Eight, and one other there, nine. Okay. Okay we're going to...how many are going to testify against this bill? Okay, you're going to have to toughen it up, folks, because...if we're going to get out of here by 5:00 why, you're going to have to be quick. [LB880]

DEAN EDSON: (Exhibits 9 and 10) We'll go quick here. Senator Louden and members of the Committee. My name is Dean Edson, spelled D-e-a-n E-d-s-o-n. I'm executive director for the Nebraska Association of Resource Districts testifying in support today of legislation bill before you. I've got a couple of handouts out for you that they're routing around. I'll get to those in a little bit and will expedite this as much as I can. We've been before this committee a lot on water issues primarily trying to wrestle with water issues out west, and trying to figure out what we're going to do in a water shortage situation that we're in. And we've tried to address those issues proactively in the past and the room fills up when you start...the room used to fill up when you start about moratoriums or allocations, etcetera. We packed the rooms and they all came in talking about, you know, you're jeopardizing our property rights, etcetera. Well, what happened then, was the NRD was getting blamed for trying to be proactive. We get to a point we're at today with the Republican River Basin issues and Platte River Basin and now the NRDs are being blamed for not doing enough sooner. Even though we'd asked to try to do some of those things back in the early '90s. I've raised that point because I don't want the same thing happening here with this storm water issue. We've got a serious issue and some federal laws, state laws that we've got to comply with and if we don't figure out how we're going to do it, we're going to end up in lawsuits and we're going to end up with fines and penalties. What Senator Kopplin has laid before you is a legislation bill that would help finance these projects that we need to do in that watershed. What I routed around to you was Section 2-3229 in state statutes. It's the 12 purposes of the NRDs. These were what was established in 1969. They've been modified slightly a few times since. I want to point out that ten of the 12 purposes of the NRDs fit the storm water issue that we're talking about today. Ten of the 12 original items, erosion control,

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prevention of damages from flood water and sediment, flood prevention and control, soil conservation, water supply for any beneficial uses, development, management and conservation of ground water and surface water, pollution control, drainage improvement and channel rectification, development and management of fish and wildlife habitat and development and management of recreational and park facilities. That's ten of the 12 and they all fit into what we're trying to do with the storm water issue. The other thing I want to bring to your attention, I routed around a memo and it's a dated memo of November 5, 2007. We had been working with Natural Resource Commission members who oversee the state funding for a lot of these flood control projects and sat down with DNR staff, the NRDs and some other interested parties, and tried to identify the projects that are upcoming and what the demand's going to be just on the development fund alone. In this chart we'll just get right to the issue. The projects that have already been approved by the commission, we need funding of about \$6.9 million annually just for the ones that have been approved. Right now the current funding is about \$3.5 million, so we're \$3.5 million short already on funding so we've got to figure out some other way to finance this. Then you got another \$3.4 million on the drawing board yet in this fiscal year. When you start looking at your total costs of these, they run about \$10 million to \$11 million a year and the costs on these, just for the state portion alone which is just a percentage of the total project cost, is going to be about that \$10 million, \$11 million a year and we're only putting \$3.5 million in. What we're asking for you today is take a look at the state side of it on the financing but then also try to take a look at the local funding effort. And if we change some laws and we can put some more money into it locally, we're more than willing to do that to try to make sure that we don't end up with a bunch of fines and penalties and end up with some major problems down the road. That...I'll answer any questions you might have. [LB880]

SENATOR LOUDEN: Questions for Dean? Seeing none, thank you, Dean. [LB880]

JOHN WINKLER: (Exhibit 11) Good afternoon again, Senator Louden and members of the Natural Resources Committee. My name is John Winkler, J-o-h-n W-i-n-k-l-e-r. Again, I'm the general manager of the Papio-Missouri River Natural Resources District. Jim Thompson, the chairman of the Papio-Missouri River Natural Resources District Board of Directors is joining me. He can help answer any questions and he probably wants to make sure that this is where I am on a Friday afternoon so it's too cold to golf so this is as good a place as any. As many of you witnessed last fall during your tour of the district, the Papio Watershed continues to experience the conversion of farmland to urban concrete and rooftops at the rate of over three square miles per year. It is projected by the city of Omaha planning department and the Bureau of Business Research that the Papio Watershed within Douglas County will be fully developed by 2025. It is projected to be fully platted in another 17 years. Recently updated flood maps of the West Papio Creek show flood flows have increased by as much as 25 percent since 1970 and projected to increase by as much as 35 percent as development pressure continues. In addition, preliminary results from a separate study of the Big

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Papio Creek shows that flooding will now inundate 3,403 total acres and 758 homes and businesses. Future projections may increase that total to 3,572 acres and 851 total damaged structures. Annual damages are estimated at \$7.4 million today and \$12.7 million in the future. The question is raised, why should the Papio NRD coordinate these activities? As Dean discussed, one of the basic statutory objectives of the NRD is flood control and prevention and to protect life and property from flood damaging events. Therefore, to address this growing flood control problem and to assist the communities in our district to meet federal and state water quality mandates, the Papio NRD joined the Papillion Creek Watershed Partnership. The Papio Creek Watershed Partnership is a coalition of eight cities and two counties as well as the NRD. It was formed over seven years ago to proactively and cooperatively address the challenges of storm water management and flood control throughout the entire watershed. The Papio-Missouri River NRD is the only member of the partnership that has the technical expertise and regional authority to bridge political jurisdictions to coordinate the implementation and maintenance of a comprehensive integrated watershed management plan. All solutions, both structural and non-structural, are needed. However, a significant capital investment is required to implement them. Even immediate needs within the next two or three years will require a method of long-term financing. Pay as you go funding strategies will not be sufficient to properly meet this demand. We are not requesting state appropriations or asking for additional tax levying authority. All we are asking for are the tools necessary to allow the flexibility to locally plan, fund and manage a comprehensive approach to watershed management. In fact, the U. S. Environmental Protection Agency recommends that storm water management is best addressed by a regional holistic watershed based approach which can reduce costs and improve effectiveness. Therefore, the Papio NRD, as a partner with eight cities and two counties, seeks the ability to assume a greater proactive role in storm water and watershed management so that past problems are not repeated and future solutions are implemented but more importantly, implemented correctly. Bonding authority for the Papio NRD is critical and provides the Papio NRD and the watershed with a vital tool to implement storm water best management practices and to fulfill the NRD's basic statutory objectives of flood control, prevention and water quality. The NRD has a unique ability and statutory obligation to coordinate a truly comprehensive and integrated storm water management plan for the Papillion Creek Watershed. Our request in its simplest form is the NRD needs to have the ability to guarantee that whatever solutions are employed, reservoirs, LID, etcetera, to address water quality and flooding are implemented and that they work. The NRD has to have the ability to ensure that our communities and our citizens are safe. Protecting public health and welfare has to be paramount. We are running out of time. Federal requirements mandate that water quality be improved to protect public safety and that plans be implemented in 2009. Continued urban growth has and will lead to larger flood plains, increasing the risk of damaging flood to life and property. Once again, a majority of the land in the watershed will be developed in the next 30 years or less, causing existing problems to only get worse. Appropriate action needs to be taken now. I want to thank Senator Loudon and the Natural Resources Committee

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for your commitment to urban water quality issues again and I'll be happy to answer any questions you may have. [LB880]

SENATOR LOUDEN: Questions for John? Senator Dubas. [LB880]

SENATOR DUBAS: Thank you, Senator Louden. Thank you, Mr. Winkler. Where are...were is your NRD at as far as the levy limit right now? [LB880]

JOHN WINKLER: The levy limit. We dropped our levy to .034 cents per hundred of valuation this fiscal year. Our maximum under statutory authority is .045. [LB880]

SENATOR DUBAS: And so you are saying that you need this ability to issue bonds, you can't do the things you need to do now within your current... [LB880]

JOHN WINKLER: Correct. We don't have the funding capacity to implement a program fast enough to meet the development needs as well as the time we're up against. It's only enabling legislation to allow us to bond debt. It is not legislation to allow us to exceed anything that we cannot already do. [LB880]

SENATOR DUBAS: The funds that you have in reserve right now, do you have plans for that reserve? [LB880]

JOHN WINKLER: Yes. And I've prepared a budget detail for you. There's some confusion on reserve funds and cash carry-over funds and I broke them out per program for you and I discussed a little bit of what programs would be carried over and what funds would be reserve. Currently we have about \$4 million reserved for flood control projects. We're anticipating anywhere from \$80 million to \$82 million in future needs in the next two or three years so we probably don't have the ability to save with inflation and costs goes, you know, goes up so pay as you go isn't probably the option for us. The carryover money is funds that were budgeted to programs that weren't implemented for one reason or another, either additional funding wasn't available from one of our partners, for example, Corp of Engineers, or the project just got delayed for engineering or whatever project that may be. But there's still plans to be conducted so those funds are carried over to the next budget year and those projects will be completed as they become available. [LB880]

SENATOR DUBAS: If you went up to your maximum levy limit, where would that put you? [LB880]

JOHN WINKLER: We could, with our maximum levy limit and to continue the funding for the rest of our programs, we could anticipate collecting about \$8 million for watershed management bonds. [LB880]

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SENATOR DUBAS: Okay. Thank you very much. [LB880]

SENATOR LOUDEN: Other questions? Senator Christensen. [LB880]

SENATOR CHRISTENSEN: Thank you, Chairman Louden. Thank you, John. If you were allowed to bond, would this be able to go to a vote of the people? [LB880]

JOHN WINKLER: As it's current written, it is not...that's not the intent. [LB880]

SENATOR CHRISTENSEN: Would you be opposed to that? [LB880]

JOHN WINKLER: I think that our...we discussed this with our board and internally and I think that the position is that we've got a problem. It's an identified program and we want something that is obviously locally planned and implemented and currently there's no interest in doing that. Not never say never but that's the current position. [LB880]

SENATOR CHRISTENSEN: I guess the reason I bring that, my district can bond now but it's not vote of the people and it's caused quite dissention. And how are the bonds paid for, complete NRD district wide? If you bond, it's be paid off what? [LB880]

JOHN WINKLER: It would be district wide, correct. District wide, yes. [LB880]

SENATOR CHRISTENSEN: So is there ways of...if there's areas that want projects done and areas not, is there any way to keep areas out? That's the idea of having the vote. You could take local vote for different areas because some areas are going to develop much faster, and you can sell the need to the people where other areas it's going to be longer before it's done, and that's why I'm saying if there's a vote by the local people in the area, it might settle some of the disputes. [LB880]

JOHN WINKLER: I think in answer to your question, Senator Christensen, I think the position we've taken there, we need a watershed wide approach. What strategies may work or approved in one part of the watershed, for example, low impact development may be best suitable in certain parts of the watershed where maybe reservoirs are best in another. I think the idea is to work with the local jurisdictions and not force an NRD...this is not an NRD plan. This is a partnership plan in which all the communities are invited to participate and they're elected folks. And truly, they make the decision. If us...reservoirs weren't meant for that particular part or it wasn't politically saleable, then I think we need to look at other strategies. But we need to, we'll need to fund other things besides reservoirs and that's why we made this watershed enhancement bonds because other things will be required. And what we fund in one part of the watershed, we might not fund in another but in the end it may balance out where everybody is getting something. We haven't specifically looked at a vote to try to break that up. I that's a little bit, I don't...difficult. I haven't talked to the election commissioner how that

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would even be conducted. But we understand that, first, it's a watershed wide problem and that everybody needs to be involved but we haven't gotten into the specifics of a vote like that. But we know that every piece of the watershed is going to have to implement something. Some type of strategy to correct these problems. [LB880]

SENATOR CHRISTENSEN: Well, I guess the...lose my train of thought here. I know there's areas that because of all the buildup, we have increased our flood plain areas and there's areas that need to be addressed immediately versus those that aren't, and I know just being my second year here, you've been here before. We've had a study up at your location and you know, I guess that's the reason I asked about voting on it, things this way because I know there's a need for certain areas right now, and there's resistance in other areas, and I just wondered if there's a way to find some common ground. You know it, that last bill I tried to find some common ground. [LB880]

JOHN WINKLER: Sure, sure, right. And so are we and I...the problem with...you're right, correct. We have immediate needs now and after these...we have a, called a stage four study that's going on right now that will be completed in the next few months that looks at the entire watershed hydrology, hydrolic...that looks at the true science of what's going on and what kind of impacts we're having. And I think after that's completed, we'll have a better understanding of where our priorities are. Where those immediate needs need to occur and what we need to address first. The one thing of the danger of a vote is, you've got immediate needs and it doesn't get approved and you're back to square one. That's why we have an elected board that serves the NRD. They are local folks elected from their districts, one person, one vote, that has the ability to make that decision on where those funds should go and how they should be spent. [LB880]

SENATOR LOUDEN: Senator Carlson. [LB880]

SENATOR CARLSON: Senator Louden, John. I just need to clarify this in my mind. You're currently using 3.4 cents of your levy? [LB880]

JOHN WINKLER: Correct. [LB880]

SENATOR CARLSON: You can go to 4.5? [LB880]

JOHN WINKLER: Correct. [LB880]

SENATOR CARLSON: You're not asking for additional levy, you just need to bond the...what you're capable of doing? [LB880]

JOHN WINKLER: That's correct. Just the enabling legislation to bond. Not to exceed that amount. [LB880]

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SENATOR CARLSON: Okay. [LB880]

SENATOR LOUDEN: Senator Christensen. [LB880]

SENATOR CHRISTENSEN: Thank you, Chairman Louden. John, is...not possible right...sorry, it is possible right now for cities to bond to do this, correct? [LB880]

JOHN WINKLER: Cities and counties, yes. [LB880]

SENATOR CHRISTENSEN: They could do it without you guys doing it as long as they're under their jurisdiction. [LB880]

JOHN WINKLER: That's correct. [LB880]

SENATOR CHRISTENSEN: Has that approach been attempted? [LB880]

JOHN WINKLER: You know, that would fall from where the city stands on their current levy and what, you know, what ability they have to take on more debt and we haven't approached that yet. But again, we need to have the ability to do watershed. We need to cross those political jurisdictions. For example, Bellevue or Papillion or Sarpy County would only be able to bond for projects in their jurisdiction, would not be able to go outside that. Again, we may get a vote. Bellevue said yes. We want these projects and another community may say no. And what we have is a hodgepodge mixture of solutions that one, don't work. It don't compliment each other and again, it isn't a watershed wide approach. We have the ability at the NRD to do that and you'll hear testimony that other states don't do it this way, other cities don't do it this way. They don't have the ability to...they don't have an NRD to organize a watershed wide approach to cross those jurisdictional boundaries and to really implement an integrated plan that works for the entire watershed. We don't want something to occur in one part of the watershed that has a negative impact on the other and vice versus. We want to have that ability to ensure that whatever is done is done correctly and that again, public health and safety is paramount. And again you read the literature from the EPA, this is their recommendation. Do it regionally because it's the most cost effective and it's the most efficient, and that's why we propose that the NRD have bonding authority. [LB880]

SENATOR CHRISTENSEN: I don't disagree that it's better on a large scale. I'm just thinking...that's one way regionally of doing it to get it where it's needed now if we can't go this other direction. [LB880]

JOHN WINKLER: It's amazing trying to get eight cities, two counties and NRD to agree on a time to meet (laugh) let alone on a truly, a plan. [LB880]

SENATOR LOUDEN: Are there other questions for John? Seeing none, thank you for

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testifying. [LB880]

JOHN WINKLER: Thank you. I appreciate your time. [LB880]

DAVE PETROCCHI: Chairman Louden and members of the committee, my name is Dave Petrocchi, D-a-v-e P-e-t-r-o-c-c-h-i. I am the city engineer for the city of Bellevue. I'm here today to talk to you about two things. One is the unique position of Bellevue. We're at the very end of this watershed, this 380 square mile watershed, and you have heard about the updating of the maps just last year. Well, our...we have been conscientious in taking care of our watershed...I'm sorry, in our flood control area. Well, we are now wall-to-wall. With this last study, we are now edging into areas that we have developed and the city of Bellevue, which Papillion Creek splits, we can't take anymore flood water. If I get this, and this comes not only, it's very readily available on sarpy.com. You can look at our floodway and flood plain going through the middle of Bellevue and it is...I have gotten calls from people, from citizens who see that they are now in the floodway, or not a floodway, but a flood plain. You get the same kinds of questions. How did that happen? So we have a real need now and that's really the other thing that I'd like to speak of, is the uniqueness not only of Bellevue, but of time. Now's the time. We don't have any more time because now the flood plain is at our door and it's time to implement these. We have been a part of the Papillion Creek Watershed Partnership. We are intimately involved because of this very reason. We're at the end of the line and so we get whatever comes to us. And so we ask you, in respect of the people who do get impacted in Bellevue, and who will get impacted in the future, to limit that and to help us by supporting LB880 and moving it on. So with that, I would like to ask if there are any questions? [LB880]

SENATOR LOUDEN: Questions for Dave? Senator Christensen. [LB880]

SENATOR CHRISTENSEN: Did I understand correct now, you have areas getting into the flood plain which will require higher insurance, things this way because water's not controlled above? [LB880]

DAVE PETROCCHI: That's right. [LB880]

SENATOR CHRISTENSEN: Because I understand now... [LB880]

DAVE PETROCCHI: It's just getting into to. After this last study that was just spoken of, the last modeling, it widened it and it is now edging into areas that are developed, some residential and some commercial. And so now we have those to address and as an engineer, I can see what's on the horizon, that without flood control and without additional, this is modeling and this frankly, it will happen. It's only a matter of whether it happens in 2008 or 2018 and so that's why, you know, we see that. It's right there. Has it taken every little bit? No, but it is moving and has moved into that developed area.

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[LB880]

SENATOR CHRISTENSEN: I'll take your water down in my district, if you get it there.
(Laughter) [LB880]

DAVE PETROCCHI: Well, let's work a deal. (Laughter) [LB880]

SENATOR LOUDEN: Questions for Dave? Seeing none, thank you, Dave, for testifying.
[LB880]

DAVE PETROCCHI: Thank you. [LB880]

MARTY GRATE: (Exhibit 12) Senator Louden and members of the committee, my name's Marty Grate, M-a-r-t-y G-r-a-t-e. I'm the environmental services manager for the city of Omaha and I want to thank you for this opportunity to testify both on behalf of Omaha and on behalf of the Papillion Creek Watershed Partnership that John mentioned. Residents of the Omaha metropolitan area are facing some huge challenges in addressing the needs for flood control, storm water management and reducing overflows from our combined sewers. Meeting the federal water quality mandates and protecting area lives and property from flooding will require some major financial investments and Omaha and the partnership understand that there are very limited federal and state funds available to assist us with these costs. Urban water issues are as critical and urgent this year as the rural water issues were last year. Omaha has recently entered into an order on consent with the state of Nebraska binding us to implement a 15-year program to, at an estimated cost of \$1.5 billion, to control overflows from our combined sewers. These costs are separate and additional to Omaha's share of the statewide need to manage separate storm water and separate from the expenditures needed to maintain or reduce runoff and control flood waters. In June of 2006, to satisfy a state permit requirement, Omaha and most of the communities of the region formally adopted six policies recommended by the Papillion Creek Watershed Partnership. Omaha and the partnership believe that a watershed approach that includes a combination of structural practices and nonstructural management practices must be implemented in order to effectively meet the interrelated needs for flood control and water quality management. Similarly, a combination of funding sources and lead agencies make the most sense if we are to establish and maintain a watershed management plan that is both effective and sustainable. The adopted policies call for construction of additional regional water quality and flood control structures to be funded through development fees and NRD funds. A regional approach to storm water management will offer the same economy, efficiency and reliability that the region has enjoyed from regional sewage treatment, drinking water and solid waste landfills. Additional coordination is needed to determine exactly when, where and how many of these flood control structures will ultimately need to be constructed. However, we know that even the immediate needs will require a method of

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long-term financing. Omaha and the partnership believe that the Papio-Missouri River NRD is the most appropriate agency to coordinate the implementation of the necessary regional water quality and flood control structures. The NRD has the combination of technical expertise and regional jurisdiction that make it an obvious choice for implementing a regional storm water management plan. The Omaha Master Plan includes this philosophy, and by policy, the Papillion Creek Watershed supports bonding authority for the NRD. I want to thank Senator Kopplin and Gay for introducing LB880 and ask that this committee continue its commitment to Nebraska's water resources by placing an emphasis this year on urban water issues. With that, I'd be happy to answer any questions. [LB880]

SENATOR LOUDEN: Questions for Marty? Seeing none, thank you, Marty, for your testimony. [LB880]

JOHN FULLENKAMP: Mr. Chairman, members of the committee, my name is John Fullenkamp, J-o-h-n F-u-l-l-e-n-k-a-m-p, and I'm a real estate lawyer from Omaha and I also represent developers so I suppose that puts a pretty good sized bull's-eye right on my chest. But I guess I want to share with you some thoughts here. I'm here on behalf of a group called the Eastern Nebraska Development Council which is a party of a real estate developers, engineers and their clients in eastern Nebraska, and also on behalf of the Metropolitan Omaha Builders Association, which is the some 300 home builders and remodelers in the Omaha area. And to tell you that we have been part of this collaborative process for several years and have also offered financial support to the endeavor of the NRD. If you are building and developing and trying to do things in the Omaha, Sarpy County, Bennington area, it is unique in that there are several jurisdictions and you've heard about this partnership and those of you that are familiar with the area know that Bellevue is at the bottom and then you come up to Papillion, then you get to La Vista and then you get to Omaha and you go out a little bit, you go to Gretna. Then you go a little further north you go to Bennington and the rain, quite frankly, and the storm water doesn't give a darn where it falls. And in...Senator Christensen, I really appreciate say, your attempt of sort of "Solomonesquing" to try to do this. But what you have in each one of those jurisdictions is not only city limits, but you also have an extra territorial jurisdiction that's anywhere from one mile to three miles, and many of the facilities that have been talked about being built are within those extra territorial jurisdictions that nobody has the power to do anything about or to tax. And so that's why everybody seems to think that the NRD can sort of be the mother to us all here and come up with these...the best way to do this. And while I will tell you that the development community seems to think that the proposals that have come up so far, through very expensive and very major work done by HDR engineering firm in Omaha, and considering the way things are done nationally, thinks that this regional detention is the approach, we also understand the issue of private property rights. We understand the issue of taking people's property and it is unfortunate and certainly if I were one of the landowners, I would have concern. Many of the things I think you're

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going to hear when the opposition to this bill is going to come before you, is that it just doesn't work. And I guess I can't answer that question for you other than to tell you to rely on the experts and all the public works people and everybody that's spent hours and hours and probably \$1 million or so studying the issue have said this is the way. That being said, we also realize that the art of compromises (laugh) is good government and I want to tell you from the development community standpoint since this debate has occurred, has prompted us to look at the types of things that come with some of the right principles of low impact development of perhaps different ways of doing things. I believe that there still has to be a significant amount of this regional detention. Maybe there's another way to do it, but I guess I'm just here to say that to do nothing would be a disaster because we're facing...the federal government and our consciences here come in 2009 are beyond, and so somehow I would urge you to figure out who's the best party to do this. I think allowing the NRD to do it, with whatever way they come up with within their existing taxing authority, is the way to do it for watershed enhancement rather than earmarking it for the darn dams will...hopefully, is an attempt to try to compromise this thing and move it forward so there is some consensus. I just want to tell you on behalf of the people that I represent, that they will continue to be part of this process. They even were willing to be part of this process with their pocketbooks and what's happened with...by some increasing some fees that would occur on building. Had that been done a year ago, there would have been a lot more money in the pot today. If we continue to delay this, it will delay that alternative as well. So I know when you get back...get inundated with testimony here today. I listed to John Winkler's prepared statements and to Marty Grate's prepared statements and in your calmer moments (laugh) you get a chance to go back and read those things, I think you'll understand the magnitude of the fear of people with regard to the disaster that could occur if we didn't do something here. If I lived in Bellevue and I was in one of those soon to become larger flood plains, I would be concerned. I know that we have clients who developed subdivisions 15 years ago that all of a sudden the people are getting maps that now say that they're in a flood plain and they have to go out and get flood insurance. They never knew that. They didn't have any idea that that would happen. The best knowledge at the time was that it would never happen. So I'd be happen to answer any questions and would just urge you to take some action on this bill. Be happy to answer any questions. [LB880]

SENATOR LOUDEN: Okay. Questions for John? Seeing none, thank you for your testimony, John. [LB880]

JOHN FULLENKAMP: Thank you, very much. [LB880]

FRED UHE: Senator Louden, members of the committee, my name is Fred Uhe, the last name is spelled U-h-e. I'm the chief deputy county clerk for Sarpy County and also Sarpy County's registered lobbyist so I will be very, very brief. I think most of the points have been touched on. You know, we think that you...for years we've been hearing that,

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you know, government needs to work together. Cooperation is a greater, better use of taxpayer resources and I think this is a prime example of bringing the NRD two counties and eight cities together that each individual entity is not trying to create their own departments. So I think the partnership has been a great idea. I go a little bit with what the gentleman from Bellevue said, I mean since Sarpy County is at the bottom of the watershed and Senator Christensen, since I have family in your district, I have often thought about how to get water out to you guys. Probably any given spring in Sarpy County there is either a county road or some part of the city of Bellevue underneath water. And I remember back in the first flood I can remember when I was eight years old in Papillion in 1963, and so this is not a new issue on the volume. The federal mandates on the quality issues kind of brought it about but...and if there was no further development in the metro area, we'd still have a problem. So I think some of the efforts on the low impact developments and stuff are a great way to look at it. But there's definitely a problem. I think the previous testifiers have mentioned the time. We have actually been very, very lucky that we have not had the extreme instances of a 50-year or 100- year rain and...but I think it's a bullet that we've dodging, and it's not going to last long. And these previous floods have cost human lives and also millions of dollars in property damage. And Papillion, the city that actually where I reside, has seen several residences that thought they were very, very far away from the creek now being required to buy flood insurance. So it's an issue that you guys have been faced with. I know we have been here for several years in a row. Again, like I said, this problem is not new and...but we do feel this is a great tool that would allow it. It's reasonable to the taxpayers and I think also the spirit of cooperation is something this body has encouraged us to do for years. So with that I'll close and be willing to take any questions. [LB880]

SENATOR LOUDEN: Questions for Fred? Seeing none, thank you for your testimony. [LB880]

FRED UHE: Okay. Thank you. [LB880]

JERRY SLUSKY: (Exhibits 13 and 14) Mr. Chairman, Senators from the committee. Jerry Slusky, J-e-r-r-y S-l-u-s-k-y. I'm a real estate attorney in Omaha and I represent a group of property owners composed of some houses, office buildings, retail and industrial properties in and around the 144th and F and L Street area, about a mile south of the Oakview Mall. What's being handed out to you now is a aerial view of the properties and if ever a picture is worth \$10,000 words, you can see pretty clearly here the very dark lines coming through is in fact the West Papio through this area. This area has been substantially developed by developers over the last 10 to 15 years and there is approximately \$200 million worth of commercial, office, retail, industrial properties developed in that area. The light green at the bottom is Alltech business park and that is not fully developed yet. I'm going to come back to that in a minute. And the green shades are how much you are in the flood plain. How much you are under water should

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we have a 100-year event. And you are less under the water in the middle of blue and you are just a few inches into the flood plain at the lighter green, lighter blue at the bottom. What's interesting about this is that every one of these property owners, the \$200 million worth of property, hired an architect and an engineer and they went out and studied the flood plain in that area prior to building. And their lenders relied on that and their investors relied on that, and here we are in 2007 and 2008, and we have a new FIMA designation that essentially changed the flood plain elevations so people that were at least a foot above the flood plain and had built to that, are now on average of about a foot into the flood plain. And because of that, as a number of people have mentioned, these commercial property owners are facing \$30,000, \$40,000, \$50,000 a year premiums for flood insurance. Their lenders, if they go to refinance, are going to take this into account and it will be charged against the property and it'll drop the value. The taxing authorities...a number of these people will be going back to the Douglas County Board of Equalization this year to protest the value of their properties because it's been diminished by being now in the flood plain, and you will not be able to sell these properties very easily. And you won't be able to lease them because put yourself in the shoes of the first floor tenant at one of these office buildings, and you're going to say knowing this, that, gee, if we have a 100-year event or maybe even a 50-year event, my office space, my retail space, could have six to eight, twelve inches of water in it. Not a very good prospect. So that's the bad news. The good news is the second sheet I've handed out. And that is, that if the senators could see their way clear to support the legislation that's in front of you, I have used a little circle to circle dam 15 and dam 12 in the middle left portion and those are two of the twenty some dams that have been proposed by or talked about by the NRD. You'll note that those two dams are on a split of the West Papio up there and if you follow it down to see where it comes together, and then it comes past and through Zorinsky Lake, I've also circled just east of Zorinsky Lake and that is what you were looking at in the first page. That is the place where the large amount of commercial development has taken place. You got a letter, and I think, Mr. Chairman, you mentioned that, from Selma Kessler at Olson. Selma is an expert in this sort of mapping and flood and how waters flow through these channels. And Selma's statement, and she was engaged by our group and came up with her findings, essentially says that 40 or 50 percent of this with just the building of these two dams could be taken back out of the flood plain. So it's a huge incremental change if you could do these two dams, just two dams. And from talking to the NRD, it sounds like because of the danger to people and the damage to property that could happen in a flood area at 144th Street, those would have a high priority and could be built if, in fact, the bonding authority is granted. That's essentially my testimony. We would appreciate your support. I'm happy to answer any questions. [LB880]

SENATOR LOUDEN: Questions for Jerry? Senator Carlson. [LB880]

SENATOR CARLSON: Senator Louden. Jerry, you've mentioned a couple of figures about flood insurance, \$30,000, \$40,000 and \$50,000. Explain that a little bit, would

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you? [LB880]

JERRY SLUSKY: Yes. Well, the higher the value of the building, the more insurance costs. [LB880]

SENATOR CARLSON: That's got to be a big commercial building. [LB880]

JERRY SLUSKY: Yes, it is. And that's about 90 percent of these properties, Senator. There are some residences that are like \$2,000 but most of the commercial properties you get into a very substantial insurance cost. [LB880]

SENATOR LOUDEN: Senator Wallman. [LB880]

SENATOR WALLMAN: Jerry, have you ever been to San Antonio? [LB880]

JERRY SLUSKY: I have, sir. [LB880]

SENATOR WALLMAN: They kind of brag about their floods in some of these hotel lobbies and that so...(laughter) so it's good economic development. [LB880]

JERRY SLUSKY: I wasn't aware of that. (laughter) I will be in San Antonio in March, I'll look for that. (Laughter) [LB880]

SENATOR WALLMAN: And it's ironic, you know, that development really caused this...all this concrete pavement. It was not agriculture producers, was it? [LB880]

JERRY SLUSKY: No. [LB880]

SENATOR WALLMAN: Thank you. [LB880]

SENATOR LOUDEN: Other...Questions I would had, Jerry. Was your dam site 15 and dam site 12, what kind of country is that out there? Is that farm ground now or is that... [LB880]

JERRY SLUSKY: It is farmland, Senator. And you asked me this morning and one of the pieces, the bigger one is 200 acres, the other one is 50 acres. About an average of 100. [LB880]

SENATOR LOUDEN: For the size of the lakes? [LB880]

JERRY SLUSKY: Yes. But it would have a huge benefit. [LB880]

SENATOR LOUDEN: I was just wondering if these people that own that farm ground if

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they're willing to sell on that or where are they at on that or has anyone ever contacted them yet? [LB880]

JERRY SLUSKY: No, they have not been contacted. [LB880]

SENATOR LOUDEN: Okay. That was the questions I had. Other questions for Jerry? If not, seeing any, thank you for testifying. [LB880]

JERRY SLUSKY: Thank you all very much. [LB880]

SENATOR LOUDEN: (Exhibit 15) Next proponent? I guess then, I guess we're ready to go for opponents. First opponent? And we have one letter from Pam Daly of Fort Calhoun, in opposition and a letter from Ken Winston from Nebraska Sierra Club in opposition. [LB880]

MIKE RYAN: Again, my name is Mike Ryan, M-i-k-e R-y-a-n. Senators, what you've just heard is the bureaucratic equivalent of shouting fire in a crowded theater when there's no fire. What I'd like to get across to you would be one concept. This so-called pressing flood danger in the Papio Watershed does not exist, like I said in my testimony on the previous bill when I showed you the pictures down at the bottom of my street. Since then we've had the second wettest May, the wettest August since they've started keeping records in the Papio Watershed. It didn't flood this time. I give credit to the Papio NRD to the work that they've done on the creek. That stopped it from flooding. Sarpy County had a little bit of street flooding on the highway, I think it was Highway 370, down there in that last situation back last spring and the summer. All these studies that have been done that talk about this extreme flood danger were done by the same NRD that I feel is controlled by developers that want these dams...and they don't have to have property right on the edge of the dam, as the gentleman from the Sierra Club pointed out. Just having a view of that lake increases the property value of development so much it's that important to those developers to have these dams. Now back last summer, when members of this committee, some members of this committee, attended the interim study hearing at the NRD office, I testified about low impact development. I mentioned how low impact development is the method prescribed by the Environmental Protection Agency to deal with storm water. What's supposedly causing this big flooding scare? It's storm water. Low impact development, best management practices...low impact development is a subset of best management practices along with conservation design and that's another different concept that's being practiced throughout the country. These are designed to stop the flood water, to stop the rainwater where it falls before it gets into the stream. This is going to handle any flood danger in the future. All these studies that have been done by HDR chiefly have not taken into account that we're going to be using low impact development in the future. That's going to greatly lessen this flood threat. Those little blue flood areas that they draw on their map, I'm going to be there when they start using low impact development. And I'm talking about

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using it in new development and it's not going to be paid for by the taxpayer. It's going to be paid for by the developer and then retrofitting these features back into the currently developed area, you know, the heart of the city of Omaha in this case, the heart of the city of Bellevue. If you look at that map that you were just given, you look at the yellow area, that's basically the city of Omaha as it now exists and I think I used the same map during my power point presentation this last summer. And I drew my red line from dam to dam, you know, all these proposed dams that the NRD is proposing. And what you noticed was they were all above, upstream of the city of Omaha. So any rain that falls in the city of Omaha, these dams aren't going to affect them at all. What's going to affect that rain is conservation design, best management practices, low impact development, taking that storm water where it falls, holding it, allowing it to get into the groundwater rather than just rushing down into the creek and causing a flood. This is what's prescribed by the EPA. This isn't my idea. This is what's prescribed by the EPA for dealing with storm water under the Clean Water Act. They're not talking about dams. I talked to the chief, the chief storm water man at the Environmental Protection Agency, in Washington, D.C., and told him what was being proposed here and he laughed. He says we're not talking about those kind of dams. You know, maybe some little detention ponds on a development or something to temporarily store the water during a heavy rain event. But we're not talking about these big...these big dams do more harm to the water under the Clean Water Act than not having them. What are you doing? You're creating more surface water. You're not doing anything. If you're not doing low impact development you're not doing anything in the watershed above the dam so not only do you have a contaminated stream, but now you've got contaminated surface water sitting behind the dam. So I think, you know, what I'm trying to say is, the flood problem is exaggerated and it's exaggerated because the developers want these dams. They're going to buy the land, not necessarily right next to the dams, to have a view of this land. They're going to make big bucks. The flood problem, if there is one, will be handled by conservation design, low impact development, the methods prescribed by the EPA. Thank you. [LB880]

SENATOR LOUDEN: Thank you. By this map, offhand, can you tell me, you know, those pictures you took, can you tell me about where those pictures were taken on this map here? Are they... [LB880]

MIKE RYAN: If you know where the Westroads is... [LB880]

SENATOR LOUDEN: Okay. Just don't talk because you'll have to repeat it over the deal. Just show me about where it is. (Laughter) [LB880]

MIKE RYAN: Okay, here's Dodge Street. [LB880]

SENATOR LOUDEN: Here's a pencil. [LB880]

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MIKE RYAN: Okay. It's right here and then you go down here and there were some stores, a little shopping center and that's the creek that got a little water in those stores. [LB880]

SENATOR LOUDEN: Okay. Thank you. [LB880]

SENATOR LOUDEN: For the record, he noted on the map where the pictures were taken using testimony on the other bill and I'll pass this map around for other members to see where he so marked it. Questions for Mike? Senator Carlson. [LB880]

SENATOR CARLSON: Senator Louden. Maybe I'm...I don't want to use judging you wrong because that's not a good word, but I'm interpreting what I think maybe is going on in your mind as you're sharing this with us. And it sounds like you've got a whale of a lot of confidence in the EPA. [LB880]

MIKE RYAN: I got a whale of a lot of confidence in low impact development conservation design because it works in scientific studies. And you can find them all over the Internet show it works, you know, outside of the EPA. I sit on the Washington County, Douglas County storm water committee and we've drawn up these policies that were mentioned earlier and we're calling for, through the use of conservation design, 90 percent of the rainfall that hits a development, a piece of property, to stay on that piece of property. We're calling for only 10 percent runoff and this is achievable. [LB880]

SENATOR CARLSON: Well, and I'm not arguing with you but you used the terminology that people that went before you today it's like crying fire in a crowded theater and sometime I think that about the EPA and I guess I hope I'm wrong. [LB880]

MIKE RYAN: Any other questions? [LB880]

SENATOR LOUDEN: Other questions for Mike? Seeing none, thank you for testifying. [LB880]

MIKE RYAN: Thank you. [LB880]

SENATOR LOUDEN: Next testifier. [LB880]

LINDA RYAN: (Exhibit 16) Senator Louden and committee members, my name is Linda Ryan, L-i-n-d-a R-y-a-n, and I'm from Omaha and I'm here today to read the testimony of Dr. Pam Daley who could not be here today and I...she is passing out a copy of this letter. Dear Chairman Louden and committee members. LB880 is the thinly veiled enabler for the Papio NRD to achieve their goal of putting dams in Washington County and elsewhere for flood control without having to reach an equitable solution with local residents and officials. Their manipulation of information to accomplish their own ends is

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by now well known. Note their recent use of a marketing firm paid for by taxpayer money to sell the public on the dam projects. Also note their use of so-called research by HDR to support their assertion that dams are necessary for flood control. As a research scientist who has examined this study, I have found their methodology to be seriously flawed and thus, all conclusions should be regarded as invalid. The very premise of the study that traditional cookie-cutter development practices will continue to be used in Douglas, Washington and Sarpy counties over the next 40 years is in error. It is unconscionable that such poor science was used given that the study cost taxpayers over \$800,000. I stated this to the Papio NRD board last year and urged them to have an independent hydrology scientist review their study designs. This suggestion was ignored. Serious ethical questions arise when a political subdivision like the Papio NRD misuses taxpayer money to justify projects they want supported. Only careful monitoring and oversight of this particular NRD can avoid further abuse of the public trust and public purse. For this reason, I oppose giving them the bonding authority they seek in LB880, and recommend instead more careful scrutiny of all their activities by your committee. Thank you for the opportunity to provide input on this important issue. [LB880]

SENATOR LOUDEN: Questions for Linda? Senator Christensen. [LB880]

SENATOR CHRISTENSEN: What is Pam Daly's PhD in? [LB880]

LINDA RYAN: Well, I can tell you this. Pam Daly is a PhD, clinical psychologist. She completed three years of postgraduate statistical and research training for that degree, including both theoretical and mathematical application of research. She's also published articles in peer review journals and directed research and evaluation in both youth care and healthcare settings. Is that... [LB880]

SENATOR CHRISTENSEN: So she's basically not studied water, she's just... [LB880]

LINDA RYAN: But she is skilled in the theoretical and mathematical application of research. She knows what is involved in performing proper research. [LB880]

SENATOR CHRISTENSEN: Thank you. [LB880]

SENATOR LOUDEN: Other questions? Seeing none, thank you for your testimony. [LB880]

LINDA RYAN: Thank you. [LB880]

ANDY POLLOCK: (Exhibit 17) Chairman Loudon, members of the committee, I want to first thank you for your patience. I know it's late in the afternoon and I will keep my comments as brief as I can. My name is Andy Pollock, A-n-d-y P-o-l-l-o-c-k and as I

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mentioned before, I'm a registered lobbyist here on behalf of the Papio Valley Preservation Association. That association opposes LB880. I had some testimony about why LB880 is a bad idea and I will just defer to the witnesses that follow me on those. They're much more in tune with this from a personal level. I want to talk about the history behind LB880 and some of its predecessor pieces of legislation. But first before I do that, I do want to address a question that Senator Christensen asked earlier to one of the proponents for LB880, and that was along the lines of potential local projects. And I would simply point out, and I think this is relevant to an issue that Mr. Slusky raised as well, that under current law, in its Section 2-3252 and the laws following that, this NRD like all NRD has the ability to make special assessments for local projects and that's all detailed there. I won't go into detail about that but there is a provision that allows for that right now. LB880 and its history. In 2005, LB552 was introduced and it was very similar to LB880 with the exception of a 3 cent increase in the tax levy. I would point out that that bill was heard by the Natural Resources Committee and it was killed by that committee in 2006, a very similar bill. In 2007, LB272 was introduced just last year. Again, a very similar bill. At the hearing before the Revenue Committee which heard the bill, the sponsor asked to amend the bill to remove a 3 cent increase in the tax levy. With that change it was virtually identical to the bill that you have before you now. The Revenue Committee last year indefinitely postponed LB272. This issue has been proposed two times and killed by this Legislature two times and now the NRD is back again for a third time seeking the same authority, bonding authority. In addition to this general history, I think it is important for you to know that many of the questions asked last year by the Revenue Committee still have not been addressed by the NRD. First, there were a number of questions about financial management, financial controls and plans, plans for financial management. You heard a little testimony earlier about large sums of money not being paid on time and essentially the senators then wanted to know whether plans have been put in place. You've heard no testimony today that any financial management plans or controls have been put in place by the NRD. There were questions to Bellevue last year about zoning restrictions, setbacks from the creek, and other zoning restrictions like permeable parking lots. Again, there was no testimony that restrictions have been put in place this year. There weren't any last year. There's testimony to that effect. Bellevue said we're working on it. You heard no testimony that anything's been done to try to prevent the problems caused by floods. There were questions last year about putting the legislation to a vote to the people, vote of the people and as you heard in response to questions asked by Senator Christensen, again no vote of the people in LB880. Last year there were questions about whether the NRD would use competitive bidding for these lake projects. Again, the NRD policy remains, no competitive bidding for projects constructed by developers. Still no competitive bidding. That was an issue for the Revenue Committee last year. There were questions last year about whether there is any support from Washington County and again there remains no support from Washington County. Just a couple of other things that haven't changed from last year. One, there was testimony about the flood plain maps that's been in the news. I know you've all read about that. That they were expanded. There

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was testimony last year before the Revenue Committee that those flood plain maps had already been expanded maybe not officially by the federal government but government, but there was testimony before this Legislature last year that those flood plain maps had already been expanded 25 percent. And finally, the NRD's plans for the 29 or so dams that you've heard about a lot this evening and this afternoon remain the same. Nothing has changed since 2006. Nothing has changed from 2007. It was a bad idea then and we respectfully submit that it's a bad idea now. I'd be happy to answer any questions. [LB880]

SENATOR LOUDEN: Okay. Yeah, the first question I had, did you bring this letter? [LB880]

ANDY POLLOCK: I did. Yes, and I meant to mention that at the beginning. Douglas County asked me to bring that letter to you and submit that to you. It's a letter in opposition to LB880. They asked me to hand it out. [LB880]

SENATOR LOUDEN: Okay. And it's signed by Clare Duda, chairman of the Douglas County Board Commissioners? [LB880]

ANDY POLLOCK: That's correct. [LB880]

SENATOR LOUDEN: And this is their position? [LB880]

ANDY POLLOCK: That's their position that they oppose LB880. Yes. [LB880]

SENATOR POLLOCK: Well, when we get done here we'll do that then. [LB880]

ANDY POLLOCK: All right. [LB880]

SENATOR LOUDEN: Okay. Questions for Andy? Senator Dubas. [LB880]

SENATOR DUBAS: Thank you, Senator Louden. I do have a question regarding something in this letter and you may or may not be able to answer it. It references local governments are talking together and trying to develop a common plan. Who exactly are the local governments? [LB880]

ANDY POLLOCK: If I understand it right, and I understand that there's a representative from Washington County too, and he's probably in a better position to answer but as I understand it, the local governments that he's referring to in this letter are Douglas County and Washington County and both of those counties have adopted policies recently since last year's legislation to adopt low impact measures as opposed to dams. Yes. [LB880]

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SENATOR DUBAS: Thank you. [LB880]

SENATOR LOUDEN: Other questions for Andy. Senator Kopplin. [LB880]

SENATOR KOPPLIN: Thanks, Senator Louden. Andy, I was just curious. On the reference to the bill that was killed last year, would that have anything to do with the compromise that was made on the water project for this state? [LB880]

ANDY POLLOCK: I...Senator Kopplin, I do not know the answer to that question, I'm sorry. [LB880]

SENATOR KOPPLIN: Okay, thank you. [LB880]

SENATOR LOUDEN: Other questions for Andy? Seeing none, thank you for testifying, Andy. [LB880]

ANDY POLLOCK: Thank you. [LB880]

SENATOR LOUDEN: And then let the record show now that a letter has been submitted from the Board of Commissioners signed by Clare Duda, chairman, that they're opposed to LB880. [LB880]

SHAWN MELOTZ: (Exhibit 18) Good afternoon. My name is Shawn Melotz, S-h-a-w-n M-e-l-o-t-z, and I reside in Omaha, Nebraska. I'd like to again thank this general...excuse me...Chairman Louden and the members of the Natural Resource Committee for allowing me to express my opposition to LB880 and I urge this committee not to advance the bill to the floor. I have given you a few attachments as well as my written testimony with them. One thing before I begin, the NPDES permit, the Papio-Missouri River NRD is not required to fulfill any regulations set by the Clean Water Act. It is specifically with the cities and counties over 10,000 population so this bonding authority does not fulfill that act per se. And number two, the NPDES phase two permit is a water quality issue, not a water quantity issue. And it's frustrating to me, as someone who has sat on the sidelines for the last four years watching this evolve, that this NRD has entwined the two issues to some extent to confuse the public and to another extent possibly to confuse the senators. I'd like to continue now. As I understand, this bill will empower the Papio-Missouri River NRD the ability to issue bonds for watershed enhancement. Since this NRD has been persistent in its desire to build dams, it is safe to assume that these bonds will be used to construct reservoirs, detention structures, water quality basins or whatever other terminology they determine appropriate to use for the word, dams. To begin, I am not against flood control. Nor are the opponents of LB880, I would suspect. We believe...although we believe the threat of flooding has been greatly exaggerated. It is based on a 32 inch rain occurring over a 24-hour period according to HDR's study. And it is based on full buildout by the year

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2040 using outdated design measures. It does not incorporate any of the new low impact development, for example, that Douglas County has incorporated into its plan as well as Washington County. We believe less intrusive and less costly practices could be accomplished comparable results to building \$400 million worth of dams. The most recent \$800,000 tax funded study commissioned by this NRD reported the need for up to 44 dams within the Papio Creek Watershed. So when we began this process in 2004, there were nine dams and on Exhibit A, I put together the evolution of the NRD's plan to build dams. In 2004 we started with nine dams that would affect 7,500 acres at a cost of \$175 million. By now we're looking at the 2007 study that also adds to it the partnerships, 29 dam plan, and we're to the point of 44 dams at a cost of close to \$400 million. Keep in mind that these costs are based on somewhat archaic figures. I believe the Douglas County dams are based on 2004 numbers where I'm not sure what numbers were used for the Washington County dams because their study actually showed the land cost to be 50 percent of the 2004 study. Serving as a member of the Douglas County-Washington County Stormwater Management Committee, I learned that lower impact development and not allowing building up or building in the flood plain could accomplish the same results. And if this is truly a general obligation bonding authority to fulfill the NPDES permit, perhaps the language should be changed such that general obligation bonding can only be used for low impact development and specifically not used for the building of dams. What concerns me most about LB880 is that this bill will provide an open checkbook to the NRD. As a practicing CPA, I've studied, of course, the financial data of the Papio-Missouri River NRD and I'd like to share with this committee some of those statistics. From 2006 to its fiscal year 2008, this NRD has built up its cash reserves by \$9 million. Senator Dubas asked about the \$13 million reserve. General manager, Winkler mentioned that those were carryover programs. Of the \$13 million, the carryover portion is \$500,000. There is over \$8 million in their general fund and there's a \$4 million reserve for dams. They have increased their budgeted expenditures by \$20 million, from \$24 million to \$44 million and they have increased property taxes by \$4 million. In their fiscal year 2008 budget, they have budgeted \$9.5 million for dams. I'm not sure, but I would imagine that that could cover any dams they want to build without adding to that bucket more general obligation bondings and the need to pay them. Mr. Slusky mentioned that he felt that dam site 15 and dam site 12 were very important to this. That budgeted number does not include the building of those two dams. They were in the project or in their budget, I believe, one or two years ago. They have been removed this past year. In addition, based on my review of their budget, I believe their net watershed enhancement expenditures are \$24 million. Property tax valuations in this NRD is \$47 billion and with the tax levy cap, I believe, at 4.5 percent, that equates to \$21 million of property taxes that will be given to this NRD to build dams. And being the accountant, if you take \$21 million in taxes, that equates to \$325 million in bonds in one year. That gives them the ability to pay those. Now statistically the valuations in Douglas, and Sarpy, and Washington, and Thurston, Burt and Dakota counties, who are the counties that are served by this NRD, their property values have increased at a rate of 8 percent per year. So if you add the

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property taxes on 8 percent per year, there will be basically another \$25 million per year of bonds that could be issued by this NRD. So on the Exhibit D, people in our district could be looking at financing \$450 million in bonds by the year 2013 given the numbers provided in this audit, or excuse me, in this bill. All this, I want to keep reminding you, without the vote of the people. I believe LB880 provides an open checkbook to the Papio-Missouri River NRD which is funded by tax dollars. An NRD who historically overbudgets their numbers, who hold large excess cash reserves, who no longer require competitive bidding for dam projects, and who apparently answers to no one. I thank this committee to not advance this bill to the floor and if you have any questions, I'd be happy to answer them. I would like to maybe just address the exhibits that I presented. On Exhibit B it goes through the numbers that I addressed as far as the increases through the years. Exhibit C, where I find is very frightening is the fact that total budget has been very short. In fact this last fiscal year of 2007, they only used 53 percent of their budget and were able to bank, so to speak, \$6 million. Exhibit C deals with the property tax growth that would occur with LB880. And if you have any questions or if you would like me to provide any detail of where I got these numbers, I would sure be happy to share them with this board. [LB880]

SENATOR LOUDEN: I have a question. You mentioned that you're serving as a member of the Douglas County-Washington County Stormwater Management Committee? [LB880]

SHAWN MELOTZ: Yes, I am. [LB880]

SENATOR LOUDEN: How many people are on that committee? [LB880]

SHAWN MELOTZ: I think there were 12 perhaps. [LB880]

SENATOR LOUDEN: And are you still a committee, still formed? [LB880]

SHAWN MELOTZ: Yes. In fact I believe Supervisor Wilcox will address those kind of...evolution but we started this committee in November 2006. It was a committee designed by Senator, or excuse me, Supervisor Wilcox, and Commissioner Clare Duda. There were three, I believe, board members from each of their boards and then each of their boards brought in three people, outside experts or... [LB880]

SENATOR LOUDEN: And have you...you'll be at their, they talk about their February 2nd meeting or something like that? [LB880]

SHAWN MELOTZ: I was not invited but I understand that it's a public meeting so, yes, I will attend. [LB880]

SENATOR LOUDEN: Is any members of this committee going to be invited to give, to

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have discussion or whatever they're going to do there that day? [LB880]

SHAWN MELOTZ: Yes. I hope so. You might want to ask the NRD. It's their agenda. [LB880]

SENATOR LOUDEN: I see. Do they have any kind of a budget or anything? I mean, do they have any... [LB880]

SHAWN MELOTZ: You mean as far as tax dollars in the... [LB880]

SENATOR LOUDEN: Has this management committee got any funding of any kind to do anything with for research or to hire people or anything? [LB880]

SHAWN MELOTZ: Well, on the committee we're actually two biologists, Dr. Marianne Moss and George Cunningham and I'm not sure what their qualifications are but the way we wrote those policies is for new development. They are funded by developers. They are controlled at the time of development. The second part of the policies deal with retrofitting and what we voted on as a committee was to, perhaps, look to the storm water management fees that might be imposed under LB534. [LB880]

SENATOR LOUDEN: But at the present time do you have any kind of a budget so you can go out and hire research people or anything like that? This committee? [LB880]

SHAWN MELOTZ: I don't believe there's a need to but the answer to that is no. We used absolutely no tax dollars to meet or formulate these policies. [LB880]

SENATOR LOUDEN: Okay. Thank you. Questions for Shawn? Thank you for your testimony. [LB880]

SHAWN MELOTZ: Thank you. [LB880]

KEVIN PROPST: My name is Kevin Propst, K-e-v-i-n P-r-o-p-s-t. Thank you Chairman Louden and members of the Natural Resources Committee. It is an honor to be here before you today. As a property owner and taxpayer, I am opposed to LB880. As I read through this bill and ruminates over the overbroad and far reaching phrases such as watershed enhancement and multipurpose project and practices, these overbroad phrases should be a concern of this committee, as they could lead to an abuse of taxpayer dollars. Currently, the NRD's tax levy is 3.47 cents with the lid of 4.5 cents. If this levy is raised to the 4.5 cent max, it would equate to a 30 percent property tax increase. It would be naive to assume that this levy would not increase to the maximum should the NRD receive bonding authority and you would couple that with the rising costs. The estimated cost of a half a billion dollars to build watershed enhancements and multipurpose projects has many costs which are not included in the HDR study.

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HDR continues to use the phrase impact cost to describe costs that are not directly included in a project. These impact costs are a direct result of the projects but are not included in HDR study as to lessen the perceived cost to taxpayers. An example of this is the estimated 133 miles of paved road that would be needed for the proposed dams in Washington County. I would like to add that the estimated costs is \$1 million per mile. Washington County's total budget for all roads in the county are approximately \$1 million at the present time. As a taxpayer in Washington County, this is very frightening. Please remember one important fact. This bill does not preclude this NRD from returning to this very committee to ask for an increase in the levy. With rising costs, project overruns, coupled with paying bonds, this is a very likely scenario. I'm also concerned that this bill does not include a provision to protect taxpayers by allowing them to be able to vote on the bonds. Basically, it gives this board of directors an open checkbook and the ability to use the funds anywhere they see fit. I would also like to remind not only this committee, but our friends and neighbors downstream, that I am not against flood control. Flood control can be attained by implementing the Douglas and Washington counties stormwater policies, saving the taxpayers and local governments money. If this committee remembers nothing else from my testimony today, I would ask that you remember three words, higher property tax. That's what it will spell if the voters, for the voters in this NRD district should LB880 pass. I would like to thank this committee for its time and attention and I will entertain any questions now. [LB880]

SENATOR LOUDEN: Questions for Kevin? Seeing none, thank you for your testimony. [LB880]

KEVIN PROPST: Thank you. [LB880]

DUANE WILCOX: (Exhibits 19 and 20) Good afternoon. My name is Duane Wilcox. I reside at 111 West 4th Street, Kennard, Nebraska. Thank you, Senator Louden and Natural Resources Committee members for allowing me to express my opposition to LB880. I believe water quality and quantity are important issues to address. But I also believe that by granting NRD bonding authority for a watershed enhancement basically to build dams it is not the answer to these issues, especially when taxpayers will be paying for these bonds. As chair of the Washington County Board of Supervisors...by the way I do have handouts and copies here of our stormwater management policies. You'll note on them, if you would please, it says updated on, I believe, it's 11-27-07 and that is the latest one that was put out. I think we might be about short one of going around but you can pass them around. And if you need more, I'll certainly provide them to you at a later date. Getting to back where I was at here, as chairman of the Washington County Board of Supervisors, I helped organize a committee to address water quality and quantity issues by developing stormwater policies. Working with the Douglas County Board of Commissioners, the committee was organized in November of 2006 and was made up of representatives from both county boards, members of the public, including biologists, an attorney, an accountant, and several other

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knowledgeable individuals. I might add that no tax funds were used during this process. In November of 2007 we completed the Douglas, Washington County stormwater management policies. And please do not confuse these with those prepared by the Papio Creek Watershed Partnership. In December of 2007 both the Douglas County Board of Commissioners and the Washington County Board of Supervisors adopted these policies and we're very proud of them. I believe other jurisdictions should adopt them and developers and engineers should implement them. Another key point to our policies is that they can be accomplished at no cost to taxpayers. I also believe an implement of the Douglas, Washington counties stormwater policies by local jurisdictions would greatly reduce the threat of flooding in our part of the state. Among other things, our policies require no net increase in runoff during and after construction and do not allow filling in or building up of flood plains. They were developed to include a wide range of best management practices that begin at the lot level. No other policies will change the areas considered flood plain but neither will building of dams. The flood plain cannot be changed unless FEMA changes their maps. Lastly, I cannot begin to imagine the tax burden of a 5600 acre dam would create for Washington County taxpayers. Not only would we be paying \$500 million for the bonds, we'll be paying for all the services that go with them, police, fire, rescue, roads maintenance, and so on. I might also like to add I'm also sat on the NACO board of directors. This a.m. we met on...to go over legislative bills and went on record opposing LB880. And I guess with that, I would ask you entertain any questions you have and do my best to try to answer them. [LB880]

SENATOR LOUDEN: Questions for Duane? I...okay, on this Douglas County, Washington County management policy, am I to understand this right that the two counties are working together to do some type of a flooding plan or stormwater plan? [LB880]

DUANE WILCOX: What we done, Senator Louden, was put these policies together and have implemented them in our counties. Our zoning boards have implemented them and we are now asking that the developers follow suit on them. [LB880]

SENATOR LOUDEN: Where does the NRDs come down on this? [LB880]

DUANE WILCOX: I have no idea where the NRDs come down on this because truthfully at one time we were going to be part of the NRD's stormwater management policies. You will not find this in my testimony but beings you asked me, I'll tell you. We were going to join that partnership and the only reason we hadn't quite reached and signed an agreement, being a little bit of the Scottish ancestry, I was kind of working on the little better price for what it was going to cost Washington County to belong to the partnership. This was done on a Tuesday in July and I don't want to tell you the date. I might guess on it and tell you I think it was...I'm not going to tell you the date because I don't remember the exact year. We've been at this so long. But anyhow the following

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Sunday after Church, I retrieved my paper from the porch, opened up the paper, great huge story, pictures, front page, NRD announces plans to build two large dams in Washington County. So if you wonder why we're not part of the partnership, that is why. [LB880]

SENATOR LOUDEN: That was this last... [LB880]

DUANE WILCOX: That was back, I'm going to say it was in...I want to say 2003, 2004. [LB880]

SENATOR LOUDEN: Okay. Several years ago? [LB880]

DUANE WILCOX: Several years ago. I'm guessing on the exact year. [LB880]

SENATOR LOUDEN: Okay. And you guys haven't loved each other since, huh? [LB880]

DUANE WILCOX: I won't say we haven't loved each other. We probably haven't kissed or hugged or anything like that. (laughter) I don't disrespect them. I don't disrespect the NRD. They've done many wonderful things in Washington County. As I've said before, they've built thousands and thousands of miles of terraces and paid a big part of it. They've built small structures, I have no problem with this. But this is not the way to maintain the stormwater management runoff and I think we have found a way. And as you heard testimony earlier today of pro and con of how much problem actually exists today, right now this day, as a flood might come if we were warmer and had a temperature of where it was going to rain instead of the way it has been. But anyhow, our plan, our policies that we have put together, we're going to control it at the lot. We're not going to allow the runoff and we're not going to allow property to be built in lowlands that...and build it up so they can be built. [LB880]

SENATOR LOUDEN: Okay. Thank you. Other questions for Duane? I think you led us along. Thank you, Duane, for your testimony. [LB880]

DUANE WILCOX: Thank you very much. Thank you for listening to me. [LB880]

DONALD BARTLING: Thank you, Senator Louden and the committee. My name is Don Bartling, D-o-n B-a-r-t-l-i-n-g and I am listening to a lot of history this afternoon and I think I can safely say that I saw a lot of that history because there's more of my lifetime behind me than ahead of me. But I hope that we learnt in the past we can utilize for the benefit of those that come after us. I will read the testimony and make a few comments and take some questions. I am Don Bartling. I'm a member of the Washington County Farm Bureau and I'm here today on behalf of the Nebraska Farm Bureau Federation in opposition to LB880. I might also add that I formerly served on the board of the

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Papio-Missouri River NRD. I spent almost ten years there, the last two and a half years ending in December of 1992 as the chairman of that board and one of the guys I worked with is sitting right there. I also worked with Dean Edson in prior years when he was with the Farm Bureau so I've got people that I hope will be as friendly when I go out the door as they were when I came in. (laughter) Beyond that, Nebraska Farm Bureau policy opposes providing NRDs the authority to issue bonds for the purpose of constructing multipurpose projects. Our primary concern with giving an NRD such authority is that the funding will be used to construct structures where the primary goal is to assist private development and not flood control, stormwater management or recreation as such request the use of public funds for structures whose benefits are primarily private in nature. I and other members of Washington County Farm Bureau have been concerned with the proposed flood control structures for more than 20 years. We are interested because some of the structures are proposed to be built in Washington County. It is our sense in observing these issues over that period, that while flood control benefits do exist with these structures, flood control isn't the primary reason for the structure. In our opinion, if flood control is the underlying purpose for these structures, we believe it could better be achieved with zoning restrictions on a construction in a flood plain than providing green space areas. These activities can be done for less cost within existing NRD funding authorities. Again, Nebraska Farm Bureau opposes LB880. I'd be happy to answer any questions you might have. [LB880]

SENATOR LOUDEN: Questions for Don? Thank you, Don, for your testimony. [LB880]

DONALD BARTLING: I'd like to make one comment in regard to Senator Christensen. [LB880]

SENATOR LOUDEN: Go ahead. [LB880]

DONALD BARTLING: I remember back in the late 40's, the farmers in Washington County at that time we had a three commission, three districts, and we lived 20 miles from the county seat. The gravel never got that far (laughter). So a farmer said, we'll match you. If we put up half of the money, will you match us halfway. They did and the farmers graveled those roads twice as fast and it was paid for by the people who used it. So you have a possibility of developing something there. I'd like to see you follow that. And also you mentioned the fact that the NRDs were basically soil conservation to begin with and I still maintain that's their best reason for ever existing. And they still do a lot of good in that manner, in that area. And unfortunately, as we become more, I guess you'd say, densely populated because of the large increase in population in the metropolitan areas, the issue does change as time goes on. But I also maintain that I've lived on that spot since I was born there 80 years ago last May, and I don't see the flood water come down through those small creeks that I live on like they did in years past. It's because the terraces that sit up on the hill, we slow that runoff to the point where it doesn't get to do the damage that it used to do in the past. We used to replace pasture

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fences every time we had a heavy rain. Not any more. Well, I don't work anymore but (laughter) I haven't replaced a pasture fence in five or six years. So I think that we have made a lot of progress. I want to give them credit for that but so far as trying to build a big recreation facility, I have real objections to that and I also feel that if you do approve bonds for them, they're private activity bonds subject to the alternative minimum tax as long as we still have that. Now, but they didn't...obviously something I brushed around with investment communities for over 30 years and I'm not an expert but to me if you're helping a developer build something, that's private activity. Now whether the law says that, I don't know. But I think we need to look at it. And one other observation that I've made over the years that bureaucracies have a number of objectives. Two primary ones are perpetuate yourself and build yourself bigger if you can. (Laughter) [LB880]

SENATOR LOUDEN: Any questions for Don? Well thank you, old timer, for your testimony. (Laughter) [LB880]

DONALD BARTLING: Thank you. I could have talked about the flood in Kansas that they sent the river...they could only cash in on the water you sent down there in 1951 (inaudible). [LB880]

SENATOR LOUDEN: Okay. Is there...is this the last one. One more. Okay. [LB880]

GARY LAMBRECHT: My name is Gary Lambrecht. G-a-r-y L-a-m-b-r-e-c-h-t, 4604 County Road P25, Kennard, Nebraska. I passed around some photos here that you can take a look at and your committee can have, and I thank you for the time to address you today. It is very understandable that, as senators, you can never visit every aspect that you will have to make decisions on. Understanding this, I would want to take this time to supply you with a few pictures. NRDs across the state have done some very good things. Unfortunately, some recent decisions have gone the other way. I personally feel that tax dollars spent should be able to be used by the general public. These photos that I'm passing around are of Newport Landing dam site 6, right west of Bennington. I grew up within about five miles of there. These photos show a pumping station and the pumping station sits alongside the Papio. The Corps of Engineers at one time had this designated as a flood, as a dam, and the NRD came in and they reconfigured the dam and the dam does not consist of anything of the Papio. They have a pumping station. They have actually three pumping stations. They have one right along side the Papio that they have a 14-inch line going into the dam and they have a 13-inch line going to a dry piece of ground that they needed to convert into a wetlands area to be able to use this section as a development with Horigan. In all the water quality issues in the second photo, plant growth is a good thing to have. You will see a boat there that is used by the NRD to cut the growing weeds, algae and of that to keep the lake pretty for the people that are living around it which really does not pertain to water quality, and I believe that's one of the big issues that we're all looking at. The following pictures show how our money was used to the lake with only one access which has no public parking, no

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public ramps, and one dock to stand on with limited access. I won't take much of your time. I would like to say that I'm currently president of the Papio Valley Preservation Association. I'm on the Washington County Planning Commission. I sat on the two county committee for the last 14, 15 months, and I also sat on the steering committee for HDR from the planning commission. Mr. John Engle was the representative from HDR that was heading up that study and he stood there one night and explained to us that usually a rain event, most rain events...that area is usually five miles that receives the heaviest water and where these, where some of these structures are located is a good 20 miles as the crow flies from where the problems are in the Omaha area. Having the chance to sit on the two county meetings and having the chance to go down to the NRD and address them in their public meetings, I have mentioned to them and this is one of the reasons why I do not think that they are...they are thinking more towards the developing than they are flood control. There's an area in between Maple Street and Military. There is a nursery there. There is a city park there and that would gain them about ten miles closer to their problems if they would put a dam in there. And I do believe that the biggest reason that they have not looked at this location is not because of dollars. It's because they could not get the people to have the development and the views and the right clientele that they want around the lake. I thank you and I would entertain any questions. [LB880]

SENATOR LOUDEN: Any questions for Gary? Is this the lake where those million dollar houses around or... [LB880]

GARY LAMBRECHT: I believe some of them are, yes. [LB880]

SENATOR LOUDEN: Okay. I think we've toured that. Is that that lake, oh, when we have our map here, it's just south of the Washington County line? Is that... [LB880]

GARY LAMBRECHT: It's just south of the Washington County line and it's just west of Bennington. And actually it would fall from the big dam that they are proposing, it would only be about a mile and a half away from it, so... [LB880]

SENATOR LOUDEN: Okay. Thank you for your testimony. [LB880]

GARY LAMBRECHT: Thank you. [LB880]

SENATOR LOUDEN: Last testifier, I guess. [LB880]

KEN DREESSEN: My name is Ken Dreesen, K-e-n D-r-e-e-s-s-e-n. I live in Omaha and I like philosophy and I think we have plenty of it to go around, but the taxpayers of Omaha are looking at a federally mandated bill for sewer upgrading of \$150 billion, \$150 billion, in addition to the bills they've already acquired for past projects like the Qwest Center. They want to build a new baseball stadium now, whatever else. I just

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have a rhetorical question. What public entity...I got to get it straight in my mind first...what public entity has, you know, the where-with-all to tax as they do and without any accountability and well, I can't really remember. All I know is, a tax bill is going to be exceedingly high and the taxpayers I don't see how they can afford to pay it. [LB880]

SENATOR LOUDEN: Okay. Is that your testimony? [LB880]

KEN DREESSEN: That's it. [LB880]

SENATOR LOUDEN: Okay. Questions for Ken? Seeing none, thank you, Ken, for your testimony. Is that all of the opponents? Anyone wishing to testify in the neutral? Seeing none, I guess we...oh do you want to close, Senator Kopplin? Excuse me, Senator Kopplin will close. [LB880]

SENATOR KOPPLIN: Senator Louden, members of the committee, thank you for your patience today. Good testimony from both sides of the issue. I suppose flood control outlook or perceptions are a little bit different from people who live above the problem to those who live below the problem. It's been stated that there is no danger of flooding. I believe that to be entirely incorrect. Flooding is a big issue to those of us who live at the bottom end of the watershed. We have spent hours and hours over the past couple years talking about issues of water and problems of water in rural Nebraska. We spent very little talking about needs of urban areas where you can find a half a million people. I urge you to give serious consideration to this bill and serious consideration to the needs of urban Nebraska. Thank you very much. [LB880]

SENATOR LOUDEN: Thank you, Senator Kopplin. With that I close the hearing on LB880 and that closes the hearings today on Natural Resources Committee. Thank you all for attending. [LB880]

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Disposition of Bills:

LB880 - Advanced to General File, as amended.

LB945 - Indefinitely postponed.

Chairperson

Committee Clerk