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Natural Resources Committee
February 09, 2011

[LB340 LB578 LB629]

The Committee on Natural Resources met at 1:30 p.m. on Wednesday, February 9, 2011, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB340, LB578, and LB629. Senators present: Chris Langemeier, Chairperson; Ken Schilz, Vice Chairperson; Tom Carlson; Mark Christensen; Annette Dubas; Ken Haar; Beau McCoy; and Jim Smith. Senators absent: None.

SENATOR LANGEMEIER: Good afternoon and welcome to the Natural Resources Committee of the Nebraska Legislature. We'd like to welcome everybody here that's in the crowd that's going to participate in the hearing today as well as those that are watching us on the Internet, closed-captioned television, as well as NET2 across the state of Nebraska. My name is Chris Langemeier. I'm the Chairman of the Natural Resources Committee. I'd first like to start us off with introducing the committee members. And we'll start to my far left or to your far right, we have Senator Jim Smith from Papillion; then we have Senator Ken Haar from Malcolm; then we have Senator Mark Christensen coming into the hearing today from Imperial, Nebraska; we have Senator Ken Schilz who's the Vice Chair of the committee is from Ogallala; we have Laurie Lage who is the legal counsel for the Natural Resources Committee; and then to my immediate right or your...starting on your left we have Senator Annette Dubas from Fullerton; we have Senator Tom Carlson from Holdrege; and we have Senator Beau McCoy from the Elkhorn-Omaha area. At the end of the table we have Barb Koehlmoos who is committee clerk for our event today...hearing today. And we have two pages that will be assisting us through this process, we have Leslie Riekenberg from Omaha who is a senior at UNL; and we have Kate DeLashmutt from Burwell, Nebraska who is a senior at UNL. And they will be helping you as you have things to hand out. Today if you're going to come up and testify in front of us, in the corners of the room you'll see these green sheets. We ask that you fill this out in its entirety and mark the bills, as we're going to hear all three bills simultaneously today, we ask that you write on there what bills you are here for and whether you oppose, support or in neutral capacity on those. As you come forward to testify we ask that you give it to the committee clerk. It helps us keep a clear record of your testimony and your name correctly spelled. Then when you come in and sit down we ask that you state and spell your name for the record, first thing you do is state and spell your name. Then you can move on to your testimony. For those of you at this time that have been to Natural Resources Committee, we also have this spreadsheet-like form that is normally on the back tables that you can sign in on if you're not going to testify but you want to be part of the record as being here and having an opinion. The pages will pass around this on clipboards. We didn't want you to have to make a line at the door to get in to fill those out. So at this time, they will pass that out. And if you want...if you're not going to testify, you don't have to do both, but if you're not going to testify and use a green sheet and you want to be a part of the record as being here, we'd ask that you sign onto that and keep that moving throughout the hearing. We will get that at a later time. At this time, we ask that if you are going to give us anything for the

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record, we ask that you have 12 copies. And also the other thing is if you give it to us to let us look at it, we are going to keep it as part of the record. So if you have a family photo or something that you want us to see but you don't want us to keep, we ask that you just show it to us from the table. Because if you do give it to us it becomes part of the record and we will keep it. At this time I'd like everybody to take out your cell phone and please turn those off and have respect to those that are testifying beforehand. Again, this is a hearing. We give all our attention to the person testifying. We ask the crowd to remain quiet as we hear the testimony and everybody gets an opportunity. In the Natural Resources Committee we do use the light system. We will allow each testifier five minutes to testify. You'll get a green light at the little board in front of you and when it goes yellow you'll have one minute left. And then when it goes red we ask that you stop and open yourself up for questions from the committee. And at this time we have three bills before us today. We have LB340, we have LB578, and we have LB629. We are going to hear those all together as one hearing, so you'll only have to come up once. And so we will start off by having Senator Dubas open, then we will have Senator Haar open on his bill, and then we will have Senator Sullivan, who has joined us, open on hers. And then from that point we will move on to proponents. I do have a number of people that we are going to ask to come up in each category and testify first. And then once they are done in that category, we'll open it up to people to come up at your free will to testify. And then we'll go proponents, opponents, and then neutral testimony. And we'll talk about closing when we get to that. So with that, we'll open the start of today's hearings. Senator Dubas, you're recognized and welcome to your own committee. (Laughter)

SENATOR DUBAS: (Exhibit 1) Thank you very much, Senator Langemeier, members of the Natural Resources Committee. My name is Annette Dubas, D-u-b-a-s, and I represent Legislative District 34. I'd like to thank everyone who in any way, shape or form has had anything to do with these bills, these hearings, the interim study. This has been a long process, it's been a good process, it's been a very informative process. And it takes this kind of interaction to put together good legislation and good policy for our state. Today I bring to you LB340 which is the culmination of many months of research and study through LR435. That study concluded with a public hearing last December and ultimately a report that is available on the Legislature's Web site. The report made no specific recommendations. Hopefully, it was just a report that is full of very objective information which any senator is free to use in any way they see fit. The Keystone XL pipeline crosses through my district and so I began hearing from my constituents early on with concerns about the project and questioned what oversight the state has or should have. Since this is a federal project with international players, Nebraska does not have much ability to impact the permitting process. But does that mean we have no authority to become involved? I don't think so. It became apparent to me that we do have a right and a duty to protect our citizens and the natural resources of our state. Nebraska, compared to other states, has nothing in place that allows for citizen input or access to accurate information. In Montana the pipeline carrier must accept common carrier status and open their books to the Public Service

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Commission. Missouri requires reporting of the pipeline specs and an emergency response plan and that's presented to the Department of Natural Resources. Minnesota requires a routing permit, permission from the state to use eminent domain, and also distributes an information book to landowners which outlines the route of the pipeline and what their rights are. Minnesota's approach is what I used in large part to model my legislation off of. South Dakota requires a certified plat to be submitted to the register of deeds in each county that the pipeline runs through. Again, I want to emphasize Nebraska has nothing like this in place. I continue to hear from citizens wondering why we have no agency who represents our best interests. So from the very beginning of this discussion, I felt that the Public Service Commission was the logical state agency to empower to deal with these types of projects. To date, their jurisdiction is confined to common carriers engaged in intrastate commerce, but they have an understanding of how pipelines work and the details that surround their operations. The process laid out in LB340 is very similar to the permitting application for intrastate pipelines. LB340 creates the Hazardous Liquid Pipeline Notification Act. Within the act a hazardous liquid is defined. It requires an applicant to apply before construction, the beginning of the construction of the pipeline, and file that application with the register of deeds in each county where the pipeline is located, the name and applicant of the pipeline carrier, a description and route of the pipeline, the type of hazardous liquid to be transported, the estimated number of employees used for construction and operation of the pipeline. It should also include those employees who may not live in this state or the area of the pipeline, the reason for choosing the location, who owns the pipeline, who manages the pipeline, and an environmental impact statement. A hearing will then be required within 30 days after the notice is published. The commission will then evaluate the testimony to see if the carrier proved that they were in compliance with state statutes, rules and regulations and that they would be serving the public interest. They would also consider the environmental, economic and social impacts and the views of local governing bodies in the area and any other relevant factors. After the hearing then they would either grant or deny the application. Should the application be approved, the carrier would need to provide a status report with the commission every six months during the construction, and then notification 30 days after completion of the project. All costs associated with this process would be assessed to the applicant. So if you noticed with your fiscal note, there is no direct fiscal impact to the state. Everything that it would cost the Public Service Commission to do would be offset by the fees collected from the applicant. The final component of the bill deals with the granting of eminent domain authority and states that after the approval of the permit eminent domain may be exercised. I've also worked on an amendment that I would like to pass out to the committee. It doesn't deal with any changes to the substance of the bill, they're more technical, cleanup-type things. There probably will be some other things that come forward through the course of the hearing, but I think this is a start to just address some of those technicalities. So I wanted to give it to you for your information. This bill is not directed to any special interest group. This bill represents a great deal of time and research on my part and the part of legislative staff. I have approached this carefully and thoughtfully. This bill creates an opportunity at the state level for

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citizens to find objective answers to their questions and have input at a public hearing. We, in the state Legislature, value and cherish what public hearings provide for our citizens and for us as policymakers. The landowners that will be impacted by any proposed pipelines know their area of the state better than anyone in this room. Their questions and their concerns should not be dismissed by those who think they may know better. They have lived on this land for generations. They know what they're talking about. We're supposed to learn from history and we know in areas of the Sandhills, when we were looking at developing them for irrigation and parts of the Sandhills were disturbed to put pivots in, we suffered the consequences of those actions. And those landowners in that area know it, understand it, and in some respects are still recovering from that. The question I see before us today is, do we feel the state has any right to be involved with these types of projects? Should we follow the lead of some of our neighboring states and give a state agency the ability to interact with companies that want to do business in our state? Do we feel the state has any responsibility to protect our citizens and natural resources? And if we don't feel we at the state level have those rights and responsibilities, are we comfortable and confident that the federal government will look out for our best interests? This bill is not about whether I support or oppose this pipeline or any future pipelines. This is about giving our citizens a state agency that will look out for their best interests, that will allow them an opportunity to register their concerns and ask their questions, and hopefully find some objective information. I'll conclude my opening. I think Senator Langemeier mentioned that we have invited some specific people to come forward and testify. We have the Public Service Commission, the university, the natural gas industry who will come forward in a neutral capacity. We felt it was very important for you to have someone to kind of bounce some of your questions off of, that could give you information that doesn't come from any one particular perspective. And we've also invited some landowners who will be able to present their personal and specific experience with this project and how things have impacted them. So I would be happy to entertain any questions you may have. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good. Are there any questions for Senator Dubas? Senator Schilz. [LB340 LB578 LB629]

SENATOR SCHILZ: Thank you, Senator Langemeier. Senator Dubas, thank you for bringing this bill. I guess, can you kind of run through how this would all, I mean, how does this process start, when does it happen, and what is the process exactly? I mean, how does it come down to apply for it and what kind of hoops do you have to jump through to... [LB340 LB578 LB629]

SENATOR DUBAS: Basically, as I outlined, you know, through the Public Service Commission any company that was going to come through the state with this kind of a project would approach the Public Service Commission. I think most of the information that we're asking them to provide at the state level they are providing at the federal level. And so I have offered out, if there's a way that we can marry what's required at the federal level to what we may be asking at

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the state level, I would be more than willing to do that. You know, we don't need to duplicate things if we're asking for the same type of information. So I am open to looking at that. [LB340 LB578 LB629]

SENATOR SCHILZ: Sure. [LB340 LB578 LB629]

SENATOR DUBAS: But they would bring this...they would bring their permit application to the Public Service Commission. [LB340 LB578 LB629]

SENATOR SCHILZ: And when in the process of...let's say there's a pipeline that's thinking about coming in. When in that process does this process come into play? [LB340 LB578 LB629]

SENATOR DUBAS: It would be very early on in the process. If they know that they're planning on coming through the state of Nebraska, they would approach the Public Service Commission at the very beginning and looking at filling out and complying with the permitting process through the state. So I would see them doing it in conjunction with what they were doing at the federal level. [LB340 LB578 LB629]

SENATOR SCHILZ: Right, okay. Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Senator Haar. Seeing no other questions,...oh, Senator Smith has a question. [LB340 LB578 LB629]

SENATOR SMITH: Yes. Thank you, Senator Langemeier. Senator Dubas, is it...do I understand correctly that this legislative bill would exclude natural gas pipelines? [LB340 LB578 LB629]

SENATOR DUBAS: Correct. [LB340 LB578 LB629]

SENATOR SMITH: And what was the reasoning for that? [LB340 LB578 LB629]

SENATOR DUBAS: Natural gas pipelines fall under a different set of regulations and governing. Their govern and oversight falls under FERC. And we do have someone from the natural gas industry who will be able to kind of walk you through that process and explain their interaction with the public, the types of reclamation and things that they have to do after a project is completed. They fall under a completely different set of regulations and oversight. [LB340 LB578 LB629]

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SENATOR SMITH: Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good. Are there any other questions? Seeing none, did you have one? Seeing none, thank you very much, Senator Dubas. Senator Haar, you are recognized. Welcome back to your own committee too. [LB340 LB578 LB629]

SENATOR HAAR: (Laugh) Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: You're recognized to open on LB578. [LB340 LB578 LB629]

SENATOR HAAR: Mr. Chairman, members of the body, I would like to open my testimony with a quote from a politician that I respect a great deal. Trust, but verify, Ronald Reagan. The Keystone pipeline, as far as I know, will not pass through my district. However,...I'm in District 21 by the way, but it will pass through my state and so it becomes my responsibility as well. Furthermore, I would imagine, although I can't predict for sure, that this will not be the last pipeline that we deal with coming through our state. Part of...I didn't bring it up here but I have a Hula-Hoop on the side there. And if...I can't make it work any way, but that Hula-Hoop is actually smaller, it's only 32 inches in diameter. The pipe that will be coming through, the Keystone pipeline is 36-inch pipeline. So if you think for a minute about that Hula-Hoop, that's the size of the pipeline. And, if my calculations are correct, about 500,000 barrels per day which means 5 to 6 barrels per second will be coming through a hoop that size, a little bit bigger. So that's my concern. Now my bill very briefly requires hazardous liquid pipelines to provide proof of financial responsibility with the Public Service Commission. The company must have financial responsibility for corrective action or cleanup, for decontamination, decommissioning, site closure or stabilization of sites, and in the event that the company abandons, defaults or closes the pipeline. So...and there are places where my bill will overlap with the other two. And I'm sure in the committee we will work these things out. The proof of financial responsibility would include surety bonds, a deposit in an escrow account or a bond. And the PSC, in my bill, determines the amount necessary. Now one of the reasons that got me...I already expressed why I consider the problem of abandonment a big one or closing down or whatever because it's a huge pipeline and especially going through the Sandhills. So I want to make it very clear I'm not against the pipeline, I'm against the, as I've come out various places, I'm against going through the Sandhills. But no matter where it goes, I think that we have to have proof of financial responsibility. And this comes right after we passed what I consider the historic LB1048 last year which also has decommissioning requirements. They are somewhat different. LB1048 requires the applicant to submit a decommissioning plan, requires security for decommissioning posted to the commission no later than the tenth year of operation. Requires that the owner is solely responsible for decommissioning and has provisions that under a transfer or ownership that the new owner must follow the same rules. This is from LB1048. So I think we set the

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precedent last year that when we're talking about Nebraska projects and Nebraska landowners that when we put up these huge structures, whether it be a wind turbine or a 36-inch pipeline, bigger than a Hula-Hoop, that there be financial...that there be decommissioning plans and that there be financial responsibility shown by that company. With that, I would just one more time wind up with where I started. Trust but verify, that's what my bill is about. Thank you very much. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good. Are there any questions for Senator Haar? Senator Carlson. [LB340 LB578 LB629]

SENATOR CARLSON: Thank you, Senator Langemeier. As I look at Senator Dubas' bill, and I was going to ask her and then I changed my mind knowing she's sitting next to me, she can poke me with her elbow (laughter) if she thinks I'm getting off base here. But her's is the notification act. And as I'm understanding it, it doesn't require any additional research or testing or anything above and beyond what would be required at the federal level. But it's a matter of notifying the state through the Public Service Commission as to what's happening. Also, part of her bill includes the violation to be a Class III misdemeanor, which is going to be a potential fine. So on your bill what happens with noncompliance on proof of financial? [LB340 LB578 LB629]

SENATOR HAAR: Well, I think the project doesn't start. And by the way, although she's sitting there, I can get to you too. (Laugh) That would be my...and I think Senator Dubas made a good point that we don't have these hearings just to listen to ourselves, but to listen to other people so that the bills can be improved upon. And so I suspect there will be elements of the three bills today that are similar that might be not only improved upon, but maybe even combined in some way. A good example of that is that we got quite a large fiscal note back with it. Now in one of the bills, in fact in Senator Dubas' bill provides that the pipeline company is responsible for all costs associated with the process. And that would have to be included in my bill as well. [LB340 LB578 LB629]

SENATOR CARLSON: Okay. But her bill specifies if there's noncompliance with it what would happen. But it also appears to me it's not really holding up the project. But you've stated that the project wouldn't go on. But there's nothing in here that says that. [LB340 LB578 LB629]

SENATOR HAAR: Okay. We need to include that then. And again, that's an area where listening to what we're going to hear today, I know that it's a good bill but it needs improvement. [LB340 LB578 LB629]

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SENATOR CARLSON: Well, and I think that's a big difference in requiring notification that doesn't really stop the process versus something that does. And that's quite a difference. [LB340 LB578 LB629]

SENATOR HAAR: I agree, I agree. Thank you for that, appreciate that. [LB340 LB578 LB629]

SENATOR CARLSON: Okay, thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good. Are there any other questions at this time for Senator Haar? Seeing none, thank you. [LB340 LB578 LB629]

SENATOR HAAR: Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Senator Sullivan, welcome to the Natural Resources Committee again. [LB340 LB578 LB629]

SENATOR SULLIVAN: Thank you, Senator. [LB340 LB578 LB629]

SENATOR LANGEMEIER: And you're recognized to open on LB629. [LB340 LB578 LB629]

SENATOR SULLIVAN: (Exhibit 2) Thank you. Thank you very much, Senator and members of the Natural Resources Committee. I'm Senator Kate Sullivan, representing District 41. That's K-a-t-e S-u-l-l-i-v-a-n. LB629 was developed in response to the unanswered questions and concerns of Nebraskans, my constituents, your constituents, owners of the land through which the Keystone XL pipeline may be constructed and the many anxious citizens who have contacted me over the last two years. As you just heard from Senator Dubas, during the course of the summer and fall of 2010 we gathered a great deal of information in our work on LR435. Most of you were present for the public hearing last December. The two major issues that stood out from LR435 are the potential environmental impacts of an underground oil pipeline constructed through Nebraska's fragile Sandhills and directly over the Ogallala Aquifer and a glaring lack of state government oversight throughout the pipeline process, the use of eminent domain to acquire easements, permit issuance, construction, operation, and maintenance, and pipeline abandonment procedures. The Nebraska Department of Environmental Quality isn't actively involved until there is a spill, leak or accident that poses a hazard to the environment or public health. The green copy of LB629 was drafted because our state government doesn't have the statutory power and authority it needs to protect the most valuable assets of our state--our soil, our water, our citizens. Initially, my focus was on financial responsibility for reclamation and recovery. LB629 was intended to empower the Nebraska Public Service Commission to establish

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a level of financial responsibility sufficient to protect the state and its citizens from a pipeline carrier's failure to complete reclamation of the land through which the pipeline was constructed or to cover damages caused by the discharge or leaking of hazardous liquid from the pipeline, including recovery costs and administrative costs. Well, as you can see, the green copy of LB629 does all of these things but at a great cost--the fiscal note showing \$500,000 per year. We've also identified an unintended risk in the green copy. The financial responsibility determined as necessary by the PSC could potentially be interpreted as a cap on a pipeline carrier's liability rather than the minimum level needed to ensure financial security for the state and its citizens. So in light of those two situations, I decided the best option for me was to rethink my direction to LB629 which is represented in the amendment that was passed out to you. How could we best provide our citizens with protections at no cost to the state? We all know that a new program with a \$500,000 per year price tag is not going to fly, particularly this year, regardless of the merits of the program. AM238 is the direction that I've decided to take. It's an expansion of Section 5 in the green copy and essentially replaces the bill. As you can see, AM238 assigns strict liability to pipeline carriers for damages that arise out of or are caused by the discharge or leaking of any hazardous liquid from the pipeline. The pipeline carrier is responsible for reclamation necessary as a result of constructing or operating the pipeline and for the immediate cleanup of any discharge or leaking of any hazardous liquid from the pipeline. Damages include the cost of recovery and reclamation, economic losses resulting from destruction or injury to real or personal property and natural resources, rehabilitation of habitat or wildlife, costs related to assessing and valuing the destruction, injury or loss, attorney's fees, and costs for collecting damages. AM238 also contains a section that allows counties, cities or villages to pursue damages for maintenance and repair of roads, bridges and other infrastructures related to the construction, maintenance or operation of a pipeline. My philosophy behind the imposition of strict liability on pipeline carriers is that construction and operation of a pipeline is not wrong, but these activities are inherently hazardous. Now I'm also aware of a letter from DEQ that was sent to you, Senator. And I want to assure you that I am very willing to work with the agency and the committee's legal counsel to improve the language of AM238 and resolve any issues. My goal and intent is to hold pipeline carriers responsible for their operations. Strict liability directly benefits Nebraska and its citizens without adding another layer of rules, regulations and bureaucracy and at no cost to the state. I thank you for your time, your interest and your concern for Nebraska's citizens, her land and her water. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good. Are there any questions for Senator Sullivan? Seeing none, thank you very much. [LB340 LB578 LB629]

SENATOR SULLIVAN: Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Now we are...we have four invited testifiers that are not proponents, opponents or neutral. They were invited at our request. If we wouldn't have requested they

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probably wouldn't have come. But we're going to have those four testify now before we move on to proponents, opponents and neutral testimony. And the first one is Dr. Wayne Woldt, who's a UNL professor and water specialist at the University of Nebraska. Welcome. [LB340 LB578 LB629]

WAYNE WOLDT: Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: And you will get the lights, so that people will start to see the lights go on so. Welcome. [LB340 LB578 LB629]

WAYNE WOLDT: (Exhibit 3) Okay. Well, thank you to the committee for giving me the opportunity to speak here this afternoon. My name is Wayne Woldt, W-a-y-n-e W-o-l-d-t, and I teach in the area of groundwater engineering as well as conduct research in the area of groundwater modeling and a bit of teaching in groundwater modeling also. I'm here today just to add some comments to the three bills that have been introduced. My comments are presented from a neutral perspective without position on the referenced legislative bills and focused on some of the technical and logistical aspects of the proposed legislation. With regard to LB340, my comments are initially tied to the...given the fact that the pipeline is an interstate transport of material and it's in a manner similar to interstate highway system in which one commonly finds a federal and state partnership. I would like to encourage the consideration of the formation of a partnership with the federal Pipeline and Hazardous Materials Safety Administration or PHMSA, an agency within the U.S. Department of Transportation. And the PHMSA acts through the Office of Pipeline Safety. Again, it's important to note that the Office of Pipeline Safety does encourage state partnerships. I took a look at their information and some of their data files. And from what I could tell in my analysis it appears that Nebraska does have an active natural gas pipeline safety program in partnership with the Office of Pipeline Safety. It would also appear that this partnership is through the Nebraska State Fire Marshal. In addition, my evaluation tends to indicate that Nebraska does not have an active hazardous liquid partnership with OPS. Further, my research tends to indicate that almost 100 percent of the other state pipeline safety programs are administered by a public service commission or comparable state agency. So it would appear that a move toward the Nebraska PSC is kind of in line with what other states are doing in terms of hazardous material pipeline. There's additional material that I've presented, I'm just kind of highlighting. So in summary, I'd recommend that Nebraska consider the formation of a partnership with the federal Office of Pipeline Safety and that the Nebraska Public Service Commission play a significant role in this partnership. I'd further recommend the PSC invest in OPS-sponsored training to gain a greater understanding of the federal regulations pertaining to hazardous liquid pipelines and safety. Now getting into a little more specifics of the bill, in the discussion of the description of hazardous liquid to be transported I'm challenged a little bit by that as it's stated. And I would encourage the committee to think about that a little bit more because it's possible to transport different liquids in the same

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pipeline through time just by inserting what are commonly called pigs in the pipeline. They are actually separators. So the statement of what's being transported in the pipeline can change with time, depending on the will of the provider of the liquid as well as the pipeline company to accept that liquid. In addition to identifying the hazardous liquid to be transported, I recommend that liquid characteristics also be provided. And these could include constituents of the liquid, composition of the liquid, the hazardous rating, characteristics that allow for the prediction of the fate and transport of the liquids in both the surface and subsurface environment. And the reason I mention that is because at this point in time I'm not able to find, maybe it's out there, but I'm not able to find the kind of information that would help to predict where this fluid would go if a leak were to develop or a spill were to develop in the subsurface environment. In other words, how far would a contamination plume move. In terms of the description of environmental impact, in Section 4 (2)(h), might be enhanced to include evaluation of the environmental and ecological consequences that would result from the construction and operation, I think operation there is the key point, of the pipeline within Nebraska. So it's not just construction but as the pipeline is operated in the future. The application to be filed might be enhanced to include emergency response plans including groundwater and aquifer remediation plans. In the other two bills, LB578 and LB629, I was...my thought was to ask the pipeline carrier to develop estimates for the cost for remediation and ecological restoration and infrastructure relocation. So kind of place the ball in the carrier's court to come up with those estimates as part of the permit application filing and financial "assurability." There is other information, I see the red light is on here. I'd just conclude real quickly, if I could, by saying that it's my sense that at this time we're not very well prepared to deal with a moderate to large spill or leak in terms of the consequences and remediation of groundwater and aquifers. In order to deal with this lack of knowledge, I would recommend some sort of a public/private partnership, perhaps coordinated by the PSC, to develop a greater understanding of this fate and transport of the hazardous liquids that are most likely, realizing that they can change with time, to be transported in a pipeline with a consideration for Nebraska hydrogeology because of some of our unique features here. So with that, I'll wrap up. Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good. Are there any questions for Dr. Woldt? Senator Carlson. [LB340 LB578 LB629]

SENATOR CARLSON: Thank you, Senator Langemeier. On your last, just your last point here, my sense is that at this time we're not well prepared to deal with a moderate to large spill or leak. And I don't know a whole lot about this. But you have a liquid, and I haven't used this term for a long time so I hope it's still appropriate. Does it matter what the viscosity is of the liquid as to how important particular or how large a spill or a leak might be? [LB340 LB578 LB629]

WAYNE WOLDT: Yes, that would play into the fate and transport or the movement of the liquid in the subsurface environment. And the viscosity may well change with temperature. So if the

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liquid is being moved or pumped at a high temperature, and I understand that may or may not be the case here, it would have a different viscosity then as it cooled down and became more viscous, for example. But again, you just don't know what the viscosity of this fluid might be. I have not seen any sort of characteristics or descriptors of the fluid and the way it would move in the subsurface environment. But viscosity would play a role. [LB340 LB578 LB629]

SENATOR CARLSON: Now in discussion with another individual that I would consider a water expert, didn't seem to be alarmed by a leak off of this pipeline, even though it's close to the aquifer. Do you not share that view? [LB340 LB578 LB629]

WAYNE WOLDT: From my perspective I don't...it's an unknown to me, it's an unknown. And I don't have the tools or the capability or the information about the liquid to make any sort of determination of how far it might migrate off site. The liquid is more than likely a multiphase liquid. It may then separate into different phases in the natural environment. And some phases, parts of the liquid may move faster than other parts of the liquid. So it's a very complex process of multiphased flow. Also the fluid is probably what we'd call a nonaqueous phased liquid, in other words, it doesn't just blend with groundwater readily, but it will...it may sink or it may float on the water table. And that adds another significant dimension of complexity to try and understand how this would move in the environment, in the subsurface environment. [LB340 LB578 LB629]

SENATOR CARLSON: Okay, thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good. Senator Haar. [LB340 LB578 LB629]

SENATOR HAAR: Thank you for coming. The Office of Pipeline Safety, realizing you may not be an expert on this, but what...how do you see that the state of Nebraska could cooperate with them? [LB340 LB578 LB629]

WAYNE WOLDT: In your synopsis, correct, I'm not really an expert on that. It's something that I did a little bit of research on just in the context of the legislation, the proposed legislation. And one of the reasons why I mention that if a partnership were explored and developed there may be an opportunity for training to learn more about what OPS has to offer, the Office of Pipeline Safety. My sense is that they encourage state partnerships and they will try to help states understand how to operate...not operate but oversee the operation of pipelines and pipeline safety. For example, one of the opportunities that they provide is grants for it. They do offer some grants to help states deal with pipeline safety. In a sense it's an interstate commerce, it's moving material across the state. And so I think there's an inherent kind of recognition of a federal role in that, as well there should be. But also then the state partnership to help be kind of

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a little more close to the pipeline, the sites that are being managed and run by an entity. [LB340 LB578 LB629]

SENATOR HAAR: So now on the...a question of whether it would be heated or not, I've been told through a series of questions with Keystone that the oil is not heated as such but it's heated because of the friction. When you have, you know, five to six barrels moving through a Hula-Hoop per second there's friction there under pressure. And...but...so given, you know, one option for the state to do is to do nothing. But I understand, I guess to summarize, that you would think that's not a good option, that we need to have some kind of state involvement in the process. [LB340 LB578 LB629]

WAYNE WOLDT: Well, I'm basically responding to the legislation and offering thoughts relative to what has been placed in the three legislative bills. In terms of the...moving forward with them I'm...at this point I'm neutral on this position. [LB340 LB578 LB629]

SENATOR HAAR: Fair enough, fair enough. That's our decision actually, so. [LB340 LB578 LB629]

WAYNE WOLDT: Yeah. [LB340 LB578 LB629]

SENATOR HAAR: Okay, thanks. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Senator Dubas. [LB340 LB578 LB629]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Dr. Woldt. One of...your closing comment you talked about the uniqueness of this particular region of the state, the Sandhills region. Would you like to expand on that a little bit? Just how different is the Sandhills compared to other regions across our state as well as around the world? [LB340 LB578 LB629]

WAYNE WOLDT: Well, I would prefer to defer to some of my colleagues on that, Dr. Goeke being one of the premier experts on the Sandhills. And so I would speak maybe from a little different perspective in that in the work that I do and the research areas that I work in and the involvement that I have at the national level, for example, I am aware that there is a fair amount of interest in the Ogallala Aquifer as a very unique national resource, national treasure. And I think that that in and of itself speaks for itself in terms of what we have there. That what I'm speaking of comes from the...some of the work that I do in modeling, for example, and other institutions at the national level that have interest in trying out their models, for example, their newest and best model in a very challenging environment like the Ogallala Aquifer with its

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complexities and its uniqueness in terms of the geologic setting, the surface-groundwater interaction issues, all the things kind of come together in that system. It's very intriguing. [LB340 LB578 LB629]

SENATOR DUBAS: Thank you. [LB340 LB578 LB629]

WAYNE WOLDT: I would say at the...more at the geologic level I'll defer on that. [LB340 LB578 LB629]

SENATOR DUBAS: Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much for your testimony. [LB340 LB578 LB629]

WAYNE WOLDT: Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Thank you, Dr. Woldt. Our next testifier will be Dr. Dave Wedin who is a professor for land reclamation at the University of Nebraska. [LB340 LB578 LB629]

DAVE WEDIN: My form and 12 copies of this. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Welcome to the committee. [LB340 LB578 LB629]

DAVE WEDIN: (Exhibit 4) Thank you. I'm Dave, D-a-v-e Wedin, W-e-d-i-n. I'm a professor in the School of Natural Resources at the University of Nebraska-Lincoln. I've been studying the Sandhills for 12 years, so I'm not an expert; (laugh) that's not long enough. And I work in the area of grass and soils and have some, I guess, some thought on erosion and some of the ecology of the Sandhills that might be helpful. So the Sandhills have lost their grass cover and become mobile dunes several times in the last 10,000 years. The most recent period when the Sandhills were active was 800 to 1,000 years ago. But the Sandhills are almost completely stabilized by grassland today. There's better grass cover in the Sandhills today than in any time in the last 1,000 years, and that's been confirmed by research in the last decade. The grasslands do a remarkable job of protecting the fragile dunes from both wind and water erosion. In 2004, we began an experiment at the university's Barta Brothers Ranch in the eastern Sandhills, this would be about 35 miles west of the proposed pipeline route, to study what happens when grass cover is lost and the dunes become mobile. In 2010, we began a dune re-vegetation and stabilization study using some of the same plots. And I'm going to share some conclusions from that research. If you look at the photos you have, figure 1 is an aerial photograph showing some of the plots.

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And the plots labeled B in this photo were killed in 2004 and they were actually disked and raked following disturbance so that they were left with soil intact or soil disturbed but the topsoil was left and all vegetation had been removed. These plots began to seriously erode in about a year and a half and the point, one of the points, if you look at figure 3 and you'll see a terrace of sand underneath grass roots and some topsoil that's left. The remaining landscape has disappeared. And once that top 6 inches is broken through by the wind or by erosion, then that soil is relatively free to move. And we found that on average we're getting about 10 inches of wind erosion a year when those sand dunes have lost their topsoil. But many locations in our plots will lose or gain up to three feet of sand per year movement. If you look at that photo again, figure 1, and you can see the plots labeled B that have had some plumes of sand erosion coming off to the southeast. Winds in the Sandhills are bimodal with summer winds from the south, winter winds from the northwest, but the winter winds are stronger and more erosive. And the upshot of this is that there is the main direction of sand movement is modeled to be to the southeast and that's what we observed in the sand plumes coming off our disturbed research plots. Why is that relevant? Well, if the pipeline were perpendicular to the movement of sand, you would see most of that sand stopping within 50 yards or so, if there was any erosion, once it hit the adjacent rangeland. And that's what we see in this picture. The extent of those plumes, there's about 75 yards tops and then the sand is simply stopped in its movement by the adjacent grassland. But for better or for worse, the proposed pipeline route is parallel to the primary direction of sand movement in the Sandhills. And so unless there are...unless the surface is protected and sand movement stopped with, you know, snow fences or whatever else, if you have sand moving it can continue along that same route. So we're not getting the benefit of the grass stopping the sand movement. Figure 2 is some interesting climate that's impacted us. If you look at the green dots in figure 2, this is monthly averages, the potential of the wind to move sand. It's the erosive potential of the wind are the green dots. And what we'll see is they're very high in the spring, relatively low in the summer, springs are brutal for rainfall or for wind. And if you look at our data, and I won't explain the photos I have, but we easily lost over a foot of sand in some our seeding trials last spring just in four or five weeks. I have a couple of pictures here showing the importance of fluvial erosion or water erosion. That turns out to be much stronger than we thought it would be. We don't hear about water erosion as much in the Sandhills but that's because the grassland does a beautiful job in stopping land erosion. Our conclusion is anything with more than a 15 percent slope is going to develop gullies unless it's protected. And we have some pictures showing that. I think a final point, and then I can answer questions, and I'm not covering all this testimony, something that hasn't been discussed in what I've heard, the Sandhills when they're not green are incredibly flammable. Most people don't appreciate that. Brutal winds can push a fire at phenomenal speeds. The March, 1999 fire near Mullen burned 70,000 acres in about 24 hours. The January, 2006 fire near Halsey burned 6,000 acres in a few hours. I looked at the generic fire plan that the pipeline proposal had. I didn't think it was adequate to address the fire issues in the Sandhills. And remember that most of these fires will be fought by underpaid or nonpaid volunteer rural fire districts. And the resources they need to do an adequate job of

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protecting their landscapes from fire, I think, are an issue. And I have some specific recommendations regarding fire in my text there. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good. Are there any questions for Dr. Wedin? Senator Christensen. [LB340 LB578 LB629]

SENATOR CHRISTENSEN: Thank you for coming. Thank you, Chairman. Have you looked at the proposed pipeline project with the way they plan to put the seed down and the straw over and the matting down and the pinning of it? Have you done studies? You're showing here basically what I see without... [LB340 LB578 LB629]

DAVE WEDIN: Right. [LB340 LB578 LB629]

SENATOR CHRISTENSEN: ...protection. Have you done studies with the protections that's into the proposed project? [LB340 LB578 LB629]

DAVE WEDIN: If you look at figure 4f on the third page you'll see this strip of "uneroded" land. That is actually a spot where we had an erosion blanket... [LB340 LB578 LB629]

SENATOR CHRISTENSEN: Okay. [LB340 LB578 LB629]

DAVE WEDIN: ...in place in our experiment last summer. And, yeah, it works. And Jerry Volesky, who is a rain scientist out in North Platte with the university, and myself had talked about this. I think that the plans, in what I've seen from the pipeline company, to address erosion concerns, they look good. [LB340 LB578 LB629]

SENATOR CHRISTENSEN: Okay. [LB340 LB578 LB629]

DAVE WEDIN: It's a question again of how they're implemented. We have the technology to stop a sand dune from moving if we choose to. And so it's a question of recognizing the...I guess the humility to recognize how daunting this landscape is and that it requires a much different approach. [LB340 LB578 LB629]

SENATOR CHRISTENSEN: I would agree with you that it's very temperamental or very easily damaged. And that's why I wondered if... [LB340 LB578 LB629]

DAVE WEDIN: Yeah. [LB340 LB578 LB629]

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SENATOR CHRISTENSEN: ...you had looked at the netting process that's worked there.
[LB340 LB578 LB629]

DAVE WEDIN: Yeah, and if you just accept that you're going to have to anchor that stuff down or it's going to blow and you throw in water erosion. About 10 percent in our area, at the Barta Brothers Ranch, about 10 percent of that, and you'd never see these gullies with the grass in place. But about 10 percent of that landscape without the grass is very prone to gullies. And you can get significant washouts from that. [LB340 LB578 LB629]

SENATOR CHRISTENSEN: Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good. Are there any other questions? Senator Haar. [LB340 LB578 LB629]

SENATOR HAAR: Same problems in eastern Nebraska where the current pipeline is? [LB340 LB578 LB629]

DAVE WEDIN: I'm not sure. I don't think so. I don't think the heavier soils that you'd have in eastern Nebraska certainly aren't as vulnerable to the wind erosion as the sand is in the Sandhills. You'll also get on steeper slopes gullies and water erosion on those soils. But the...so yeah, and the water erosion question, I think some of that is going to hold regardless of the soil type if you get some of those steeper slopes. [LB340 LB578 LB629]

SENATOR HAAR: Sure, right. [LB340 LB578 LB629]

DAVE WEDIN: But the wind erosion I think is unique in the Sandhills. [LB340 LB578 LB629]

SENATOR HAAR: Okay. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good. Seeing no other questions, thank you very much for your testimony, we appreciate it. Our next testifier is going to be Commissioner Jerry Vap with the Nebraska Public Service Commission. Might have surprised him. While we're waiting, Mike Loeffler with Northern Natural Gas is next. (Laughter) So maybe we'll have an on-deck circle here. Welcome, Commissioner. [LB340 LB578 LB629]

JERRY VAP: As you can tell, I wasn't quite ready. [LB340 LB578 LB629]

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SENATOR LANGEMEIER: Welcome to the Natural Resources Committee. [LB340 LB578 LB629]

JERRY VAP: (Exhibit 5) Thank you, Mr. Chairman. Good afternoon, Mr. Chairman and members of the Natural Resources Committee. I'm Commissioner Jerry Vap of the Public Service Commission and I represent the fifth district, that's comprised of 51 counties north and west of Grand Island. I'm here to testify actually in a neutral capacity on LB340, LB578 and LB629. Currently, under the state Natural Gas Regulation Act, the commission regulates natural gas service provided by three jurisdictional natural gas utilities, 16 competitive natural gas providers and one aggregator. Such regulation includes certification and rate-making authority. Additionally, the commission responds to consumer complaints regarding natural gas service. Although the regulatory authority of the commission is broad, the natural gas department maintains a small full-time staff of two and relies on outside consultants for technical expertise as cases require. The three pipeline bills proposed as currently drafted would require a significant commitment of internal staff time and a dramatic increase in the amount and variety of technical expertise required by the department. Additionally, the commission recommends that the Legislature be explicit as to whether these bills are intended to be applied retroactively to the Keystone XL project or whether they are intended to be applied prospectively. LB340 would require approval by the commission prior to the construction of any pipeline transporting hazardous liquid defined as petroleum, crude oil or any fraction of crude oil. The factors to be considered by the commission in evaluating whether construction of the pipeline would serve the public interest are broad and implicate a wide variety of disciplines including engineering, economic, environmental, social, and industrial. To adequately evaluate the application, the commission would need to engage experts from each of these disciplines to advise the commission and to assist commission staff. Such an endeavor would be costly. Additionally, the assessment process, though preferred to a general funding approach, does require additional staff and time and resources to process. LB578 and LB629 require the filing with the commission a proof of financial responsibility by any person seeking to operate a pipeline to transport crude oil or any other hazardous liquid within certain limitations based upon...oh, excuse me...within Nebraska. Although similar, each bill's focus is slightly different. LB578 includes coverage for damages resulting from the abandonment or decommissioning of the pipeline. LB629 requires more detail in the filing. The proof of financial responsibility can be in the form of a surety bond, deposit of cash, negotiable bonds, CDs, letters of credit, or escrow accounts. The amount of bond or other proof is to be in the amount determined by the commission. The bills do not limit the amount of such security or the time period for which it must be maintained. Such a perpetual obligation will be difficult to secure by any pipeline operator. Although the bills set out conditions to be considered by the commission in establishing the amount, such as topography, geology, and hydrology of the area, and the prior environmental activity of the operator, such conditions provide no frame of reference from which the commission can draw to set an appropriate amount. Rules and regulations would be necessary, but the time involved in

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promulgating them would effectively delay implementation of the bill. The commission has experience in setting an appropriate security amount for grain warehouses and grain dealer licensees. However, the security amount is set within certain limitations based upon measurable grain volumes stored and/or sold and must be renewed annually. Also, should a grain warehouse or dealer fail to provide the appropriate security, the commission will not renew their license and they can no longer operate. No similar remedy exists in either bill in the event an operator allows its security to lapse. Finally, no process is set forth to put the issue of the amount of security before the commission prior to the operator having to make a filing. It is our understanding that a proposed amendment to LB629 has been filed. If that amendment...that amendment, if adopted, resolves the commission's concerns and would eliminate the fiscal note provided regarding the bill. The commission is happy to work with the committee regarding any of the bills related to pipelines. I'm available to answer any questions you may have. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good. Senator Haar. [LB340 LB578 LB629]

SENATOR HAAR: Thank you for being here. Do you...you know, it was talked about earlier that some public service commissions already work with these kinds of issues. Are you at all familiar with that? I'm not trying to put you on the spot. It just may be... [LB340 LB578 LB629]

JERRY VAP: No, I am not. I have heard that maybe South Dakota, North Dakota may be involved. Oklahoma is a different, totally different commission. It's a corporation commission that deals with all manners of pipelines and natural gas. But in this type of an approval process I'm not sure how the other states operate. [LB340 LB578 LB629]

SENATOR HAAR: Okay, thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Are there any other questions? Senator Dubas. [LB340 LB578 LB629]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Commissioner Vap, for coming today. In your testimony you talk about, with the Natural Gas Regulation Act, such regulation includes certification. What does certification mean? [LB340 LB578 LB629]

JERRY VAP: Well, we certify, for example, an aggregator, someone who wants to get several customers together and act on their behalf. We certify that they are an approved aggregator or natural gas provider or supplier. We certify them. The jurisdictional utilities already are certified utilities. They're serving communities in the state. And that's basically what the certification would be. [LB340 LB578 LB629]

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SENATOR DUBAS: Okay. And it's my understanding that natural gas pipelines fall under, at the federal level, under FERC. Do you have much interaction with FERC at all? [LB340 LB578 LB629]

JERRY VAP: We do not. The Public Service Commission has jurisdiction over intrastate natural gas pipelines. We approved one here three or four years ago that never came to fruition. Went through the process to do it, it's a costly process, and we did approve it. But intrastate is always the federal commission's authority. And so we don't really interact with them in that respect. [LB340 LB578 LB629]

SENATOR DUBAS: And even though the bills we're talking about today do take us into a different area than what you normally participate in, do you feel the commission, based on your involvement with the natural gas pipelines, at least has an understanding of what these proposed pipelines deal with, how they are put together, how they're regulated? Do you think it's taking you out of your normal comfort zone? [LB340 LB578 LB629]

JERRY VAP: Out of our comfort zone? (Laugh) Yeah. It probably is a little bit beyond that. Generally, if we're going to do a natural gas intrastate pipeline it's an entity who wants to build it between point A and point B in the state of Nebraska. And they have various communities that are committed to take or companies, industries that are committed to take a certain amount of that gas, which justifies the need for that. This would be a totally different set of circumstances where it's basically, in my understanding, a pipeline, whether it's the Keystone XL or another international line that may come through, it's going to be something that goes through the state, serves no one in the state as far as allowing them to take material off the pipeline, so it would be a different, I think, environmental study, a different economic study. It would be considerably different than what we do with a natural gas pipeline. [LB340 LB578 LB629]

SENATOR DUBAS: All right, thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good. Senator Haar. [LB340 LB578 LB629]

SENATOR HAAR: Well, the fine print in my bill, because we're giving you new duties there's an increase in salary. (Laugh) So maybe you didn't notice that. But probably a lot of the kind of work we're talking about in these bills would not be done so much by your staff, but by experts in the field. Would you agree with that? [LB340 LB578 LB629]

JERRY VAP: All the clerical work or a lot of it would be done by the staff which would increase their workload considerably. [LB340 LB578 LB629]

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SENATOR HAAR: Sure. [LB340 LB578 LB629]

JERRY VAP: The rest of it, as outlined in the first bill, would be done all by experts or consultants that the commission would hire to advise the commission on how this all would work, whether it's environmentally, or economically, socially, however it may play out. We would have to hire all...economists, all kinds of people to provide the commission with the proper amount of information to make an educated decision. [LB340 LB578 LB629]

SENATOR HAAR: Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, Commissioner, thank you very much for your testimony. [LB340 LB578 LB629]

JERRY VAP: Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: We have one more, Mike Loeffler with Northern Natural Gas, welcome. [LB340 LB578 LB629]

MIKE LOEFFLER: Good morning, good afternoon, excuse me. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Good afternoon. [LB340 LB578 LB629]

MIKE LOEFFLER: (Exhibit 6) First of all, I want to thank you for the opportunity to appear before the committee. My primary purpose is two things, number one, to be brief, and number two, to open myself to any questions that you might have regarding the governance or the regulation of natural gas interstate pipelines. My name is Mike Loeffler, spelled L-o-e-f-f-l-e-r, and I'm the senior director of certificates and external affairs for Northern Natural Gas, which is headquartered in Omaha. My duties for external affairs, that encompasses state government regulation. And in my duties for certificates, that encompasses preparing and monitoring the filings that we make with the Federal Energy Regulatory Commission, otherwise known as FERC. I do that for not only Northern Natural Gas Pipeline, but for our sister pipeline, Kern River Transmission, located in Salt Lake City. Most of the information that you need to know about the governance of natural gas pipelines as it pertains to the bills before these committees is on the sheet of paper that you've just been handed out. The point that I want to make is that unlike oil transportation pipelines, interstate natural gas transportation pipelines are heavily regulated by the Federal Energy Regulatory Commission, both in the construction, operation and rates of the pipeline. Through those regulations, interstate pipelines have a unique federal responsibility for landowner notification, for landowner involvement, and for environmental

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analysis, and environmental compliance, including post construction reclamation activities. You see highlighted there some of the things that are required by the Federal Energy Regulatory Commission of an interstate natural gas pipeline. It includes mandatory notification to stakeholders and landowners. It includes scoping meetings that are conducted by the FERC and invitations sent out by the FERC. And for larger projects we're also required to engage what's called the pre-filing process, which includes a component of public participation analysis which includes everything from open houses, a dedicated Web site, quarterly newsletters and all those other sorts of landowner outreach. More importantly, our construction also must follow a quite comprehensive environmental guidelines. We're required to look at 13 different issues including air quality, noise quality, socioeconomics and a variety of other issues and file reports about how our pipeline will have impacts in each of those areas and the measures that we're going to take to mitigate any impacts. Also, I want to point out that we are required, in rural areas and throughout wherever we do reclamation, a two-season follow up. That is after the construction of the pipeline is complete for two seasons we're required to go out and do monitoring and make reporting to the Federal Energy Regulatory Commission. Also during the period of construction, independent federal inspectors come on site and all of our construction projects are also watched over by an environmental inspector that must report to the FERC either on a weekly or biweekly basis, depending on the conditions of the order. Each order that allows us to construct a pipeline does include conditions. These conditions require us to mitigate the impacts that we've identified. With that, as I said, I've fulfilled hopefully my first objective, to be brief. But if you have any questions, I'll be more than happy to answer them. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Thank you very much. Are there any questions? Senator Haar.
[LB340 LB578 LB629]

SENATOR HAAR: Yes. Thank you. Your last point is that courts in Kansas and Iowa have found that state regulation of interstate natural gas pipelines is preempted by federal law. But that means if there's a conflict, right? Or does it prevent the states from having any kind of laws?
[LB340 LB578 LB629]

MIKE LOEFFLER: The two...first, I want to emphasize that, you know, that's a minor point because we've always worked with the states. Let me give you the two states in which the laws were overturned. One was in the state of Iowa, in which a whole body of construction was overturned because the federal courts found it to be duplicative and found that the federal government had indeed stood in with those environmental regulations. In the state of Kansas there were regulations over our storage facilities. And even though the federal regulation over storage facilities is usually related to the construction and operation, the state of Kansas had a whole set of regulations that were not within the federal purview. But nonetheless, the courts found that any state regulation, at least in the state of Kansas, was preempted by federal authority. [LB340 LB578 LB629]

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SENATOR HAAR: Now you said that you work with states a lot. [LB340 LB578 LB629]

MIKE LOEFFLER: Absolutely. [LB340 LB578 LB629]

SENATOR HAAR: Just give a few examples of what kind of state agencies you work with. [LB340 LB578 LB629]

MIKE LOEFFLER: Most of our construction in the past, oh I'd say a half dozen years, we do a lot of minor projects of expansion. But the major expansion project we've had is a project called the Northern Lights Expansion Project. And that's a multiyear expansion project up in the...to give additional energy to the Twin Cities. They use it for ethanol power generation, residential/commercial use. And we worked with the state Department of Environmental Quality and we work with all recognized federal, or excuse me, state permitting agencies. When we make application to the FERC we're required to identify all state agencies that have permitting authority. And that's a specific exhibit that goes with our application. To give you some idea, we just completed an application for Kern River Transmission of a five-mile lateral. And the paper stood...and the application was about this tall. So we do conduct an extensive analysis. We work with all of the state agencies. And we're required, as we're doing construction, to note any issues that they might bring up, whether it might be an issue of concern or noncompliance, and we're required to report those to the Federal Energy Regulatory Commission as we construct the project. [LB340 LB578 LB629]

SENATOR HAAR: Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Any other questions? Senator Schilz. We'll work our way around. [LB340 LB578 LB629]

SENATOR SCHILZ: Thank you, Senator Langemeier. Thanks for coming in today. I just want to clarify a statement that you made a little while ago when you talked about laws in Kansas and Iowa that were overturned because if I understand it right you said that if the process that you see as duplicative, explain that would you. [LB340 LB578 LB629]

MIKE LOEFFLER: It's...the legal theory is actually called preemption. And what that states is that where the federal government has specifically provided that they're going to take over the governance of a certain area, in this case the construction of interstate natural gas pipelines, the states are precluded in certain respects. What Senator Haar was pointing out is usually the courts will say that the states can occupy an area for which there is no federal law. For instance, let's say we were going to build interstate pipeline and we're going to build a bridge. Well, we don't

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do that. But the state could occupy that area because the federal government didn't have any regulations on that... [LB340 LB578 LB629]

SENATOR SCHILZ: If the federal government is silent on it then... [LB340 LB578 LB629]

MIKE LOEFFLER: ...if the federal government has not occupied that area. In the two court cases in which we were involved, and actually we were not involved in Kansas. Let me take that back. We were involved in the Iowa case. Another pipeline storage company brought the Kansas challenge. And in both cases they found that the Natural Gas Act, under which we're regulated, totally occupies the area of regulation of natural interstate...or interstate natural gas companies. [LB340 LB578 LB629]

SENATOR SCHILZ: Okay, appreciate it. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Senator Dubas. [LB340 LB578 LB629]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Mr. Loeffler. Could you give me an example, or how easy is it for citizen involvement and engagement before, during and after any kind of project that your companies work on? [LB340 LB578 LB629]

MIKE LOEFFLER: Yes, absolutely. One of the things that you have to understand is that it's a very landowner intensive process that the FERC engages in. There's no way that a pipeline can pop up in someone's backyard overnight. And that's because all of our processes are required to be very public from the time that we hold an open season which solicits requests for a project to the time that it's complete. All of our...all of the construction and everything is public record. We're required at the very beginning of a project to give all landowners and anybody who's made themselves known as an identified stakeholder to give them notice on our projects. And they become an actual party to the docket at the FERC. Then the FERC takes...requires us to give them a list of all the landowners. And they themselves undertake a separate mailing. And in that mailing they tell the landowners what their rights are with the FERC to both intervene or protest the docket to get all the information that might be submitted by the project sponsor. Then the FERC holds what they call scoping meetings. And these meetings are specifically designed and they hold them in the communities of the communities that are affected and they send out invitations. The pipeline is required to set them up and pay for them. But they send out invitations and they entertain comments from the public. So even before a project, the first shovel of dirt goes in, there's ample opportunity for the landowners to make themselves known. Now after the project is approved, even during that process, each pipeline is required to give to each landowner affected what's called an environmental complaint resolution process. And this is a very...it's supposed to be written in very clear English, and it's about a three-page document to

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them that says, if you have a problem, the FERC prefers that you try to solve it with the pipeline first and here's the way to do it. And we are provided...we have to provide our contact information. If you are not satisfied, then call us and we're required to give, in that complaint resolution process, the name and the address and how to contact the FERC representatives. Incidentally, the FERC enforces their authority not only through independent audits and on-site inspections, but they also have a fining mechanism of up to \$1 million per day per violation as long as the violation continues. [LB340 LB578 LB629]

SENATOR DUBAS: Thank you. Some people may say, well, why are you excluding natural gas pipelines from my particular bill, LB340? I think you've pretty much outlined why. But I'd just like to give you an opportunity to say the differences between. [LB340 LB578 LB629]

MIKE LOEFFLER: Yes. One of the differences is that oil pipelines, their rates are regulated by FERC. But for interstate natural gas pipeline it's not only our rates but it's also almost every way that we do business. It's from the time that we plan a project, we have to let them know through the open season. We have to go through all those landowner protections that I talked to you about, we have to submit a comprehensive environmental analysis. And they're there every step of the way. If we file something that they either don't understand or they think we've not been complete on, then what they will do is they will issue a set of data requests and we're required to respond to those data requests within the time line allotted, usually only 15 days. And some of these are very complicated issues. In addition, the FERC is also the lead agency for the enforcement of the natural...National Environmental Protection Act, the NEPA review. So as the lead agency for the NEPA review they're responsible for getting all this information and setting up conditions for the pipeline to follow to mitigate any environmental impacts [LB340 LB578 LB629]

SENATOR DUBAS: So what FERC deals with is specifically... [LB340 LB578 LB629]

MIKE LOEFFLER: Construction. [LB340 LB578 LB629]

SENATOR DUBAS: ...construction. [LB340 LB578 LB629]

MIKE LOEFFLER: Planning. [LB340 LB578 LB629]

SENATOR DUBAS: And so they have the expertise for these types of pipelines and the product that's transported through. [LB340 LB578 LB629]

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MIKE LOEFFLER: Absolutely. There is a department of...OEP, Office of Environmental Projects that governs our regulations. And they're involved with us every step of the way. If we were to undertake a large project, such as the one that's being proposed today, we would be required to do a pre-filing process, which is a process that extends anywhere from six to eight months, and that's before we file our application. [LB340 LB578 LB629]

SENATOR DUBAS: Okay, thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Senator Carlson. [LB340 LB578 LB629]

SENATOR CARLSON: Thank you, Senator Langemeier. Mr. Loeffler, you transport natural gas. I don't know, I don't have any idea. How many natural gas pipelines are there in Nebraska? [LB340 LB578 LB629]

MIKE LOEFFLER: Well, let me tell you just a tiny bit about my company. We have a 15,000-mile pipeline system, about 1,600 miles of that is in the state of Nebraska. Our pipeline goes from southwest Texas, where we get some of the gas supply, and we take it up to our market areas up in the Midwest, mostly the Twin City area but also up into Wisconsin and the upper peninsula of Michigan. I know of at least three interstate pipelines that are either close to or within the state of Nebraska. Now one of the things I should also point out too is that Nebraska...the Northern Natural Gas pipeline system is somewhat unique, is that as we built we didn't just have a single trunk line. We built out to the communities and that has allowed us to do things like serve ethanol plants on the tail end of our pipeline because we're right there in the communities. We're not like 40 or 50 miles away. [LB340 LB578 LB629]

SENATOR CARLSON: Okay, thank you. What's the diameter of your pipeline? [LB340 LB578 LB629]

MIKE LOEFFLER: Our diameter can range anywhere from two miles as we start to get into the town border stations or the...we call them meter stations, with a point of transfer to people like MUD, to Blackhills, to what we call the local distribution companies. We do not deliver gas to residences. We do do it to large projects, for instance, like ethanol production plants. But mostly we deliver to cities and we deliver to the end users. We...so we can go down to 2 inches in diameter but we also can go up to 42 inches of diameter. And our pipeline is regulated for safety...I've just been talking about construction, but safety, it's also further regulated by the Department of Transportation PHMSA Division. [LB340 LB578 LB629]

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SENATOR CARLSON: Okay, thank you. So 42 is the biggest. What's the thickness of the pipeline? [LB340 LB578 LB629]

MIKE LOEFFLER: You got me there. Usually...it's regulated by the DOT and we exceed DOT standards for thickness of pipe. [LB340 LB578 LB629]

SENATOR CARLSON: Okay. I don't have any idea, just guess. [LB340 LB578 LB629]

MIKE LOEFFLER: I would say that we're...for the larger pipe you're talking over 1.5 inches of thickness. But I...let me do that subject to check, and get back to you. [LB340 LB578 LB629]

SENATOR CARLSON: And at that kind of...1.5 inches or something close to that, and that's put in, in such a way, how deep? [LB340 LB578 LB629]

MIKE LOEFFLER: We're required to put all new pipelines in about 30 inches deep or deeper. We do have some older pipeline that predates the federal requirements for 30 inches deep. But we do have an active integrity management program to identify shallow pipe and to rectify the situation. [LB340 LB578 LB629]

SENATOR CARLSON: And what's the material in the pipeline? [LB340 LB578 LB629]

MIKE LOEFFLER: It's made out of...some of it's still what we call dresser-coupled steel, but most of it is now welded steel. [LB340 LB578 LB629]

SENATOR CARLSON: Okay. And an inch or 1.5 inch thickness can withstand not only a lot of pressure but...from the inside but from the outside as well, wouldn't it? [LB340 LB578 LB629]

MIKE LOEFFLER: Yes, it's true. One of the things that Northern Natural Gas and I think almost all interstate natural gas companies have is it's called a pigging tool. And it's called a pigging tool because as it goes through the pipeline it squeals. And as it goes through the pipeline it has electromagnetic things on it and it puts out a report when it comes back at the end of the pipeline and it tells us if there's any anomalies in the pipeline. In addition, we also do aerial inspection and annual walking of all of our lines for safety. [LB340 LB578 LB629]

SENATOR CARLSON: Okay. And so you've got...you would have concerns from pressure on the inside creating a leak or a problem. What's the biggest concern, might call it the enemy from the outside? [LB340 LB578 LB629]

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MIKE LOEFFLER: Third party damage. Usually, almost all the things that happen to a pipe that are bad are caused by people who are digging or excavating without making the proper one-call notification. [LB340 LB578 LB629]

SENATOR CARLSON: What are the kind of tools that would make that damage that would be concerning to you? [LB340 LB578 LB629]

MIKE LOEFFLER: Backhoes, generally. You need something...you could have backhoes. We have had a farmer who was using a tiller in Iowa that was digging pretty deep and disrupted one of our pipelines. [LB340 LB578 LB629]

SENATOR CARLSON: A tiller like a deep chisel or... [LB340 LB578 LB629]

MIKE LOEFFLER: It was probably deeper than that. [LB340 LB578 LB629]

SENATOR CARLSON: (Phone rings.) Oh, my goodness, I'm sorry. (Laughter) Mr. Chairman, I am sorry. [LB340 LB578 LB629]

MIKE LOEFFLER: I would guess that's my attorney calling you. (Laughter) [LB340 LB578 LB629]

SENATOR CARLSON: Okay. You've been helpful. That's my signal to shut up. (Laughter) [LB340 LB578 LB629]

SENATOR LANGEMEIER: That worked. No, just kidding. Senator Christensen. [LB340 LB578 LB629]

SENATOR CHRISTENSEN: Thank you, Mr. Chairman. Are you familiar with any of the gas pipelines that were put in, you know, we've had the caution, which is very appropriate, about potential fires, about making sure we get good cover and things this way. Do you know how the cover was done over the gas pipelines and how the success was? [LB340 LB578 LB629]

MIKE LOEFFLER: We...all of our natural gas pipelines, as we replace them and we do have a schedule during which we replace them, we put special coating. And from a lot of our pipelines we have cathodic protection. We also have a state of the art gas control system located in Omaha with an alternate one available at another location, in case there was a tornado or something. And what that does is it continually measures the pressure throughout our 15,000 miles of pipe. If the

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pressure starts to go bad on just one segment of the pipe, red lights and alarm go off. And so we're immediately notified. Also, throughout our state area we have local field offices, so we never have anyone that's very far from any part of our pipeline so that they can go out and take care of it. Fortunately, you know, we have very few incidents Most that happen are third-party damage. But a recent study by the Department of Transportation indicated that the transportation of natural gas by pipeline was the safest and most efficient delivery of energy in the country. [LB340 LB578 LB629]

SENATOR CHRISTENSEN: But did you guys have trouble when you go out and repair a pipeline or put it in, getting the Sandhills reestablished and covered? I'm just trying to compare for what they're proposing. [LB340 LB578 LB629]

MIKE LOEFFLER: And that's a good question, Senator. Most of the...we're not out in the Sandhills, we're mostly...in Nebraska we're in the eastern part of the section. But let me take it by analogy to the state of Minnesota. We go through a lot of wetlands there. And they preserve and they protect their wetlands just like we would our Sandhills. And when we go through the wetlands, we're governed by a whole different set of FERC regulations which, and I always forget the full name of it, it's in your thing on your piece of paper. It's the FERC's Water Body Construction and Mitigation Procedures. So that's a set of procedures about this thick to apply specifically when we're going to go through a wetland. So I can't...that's the closest analogy I can bring you to the Sandhills is that we're required to do a lot of extra things when we're in an environmentally sensitive area such as a wetland. [LB340 LB578 LB629]

SENATOR CHRISTENSEN: Okay, thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good. Seeing no other questions...oh, Senator Smith. Sorry. [LB340 LB578 LB629]

SENATOR SMITH: Thank you, Senator Langemeier. In your exchange with Senator Dubas, there is a portion of your application process where you talk about...where you mention that you try to work to resolve issues with the landowners before it goes back to FERC. Can you expand on that a little bit and speak on how you work on those resolutions. [LB340 LB578 LB629]

MIKE LOEFFLER: Absolutely. No pipeline or construction project, I think, can safely say that you can do a major construction project without some sort of incidences where you have something with landowners. We have a great, great record that I'm very proud of and good negotiation with landowners. When we were up in the state of Minnesota, 97 percent of all our acquisitions was through good faith negotiation. There was no large use of eminent domain or anything like that. But when we go through the...one of the things that the FERC requires us to

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do is to say, here is an environmental, to each landowner they send, to each stakeholder. For instance, let's say up in Minnesota the Sierra Club became involved and they made that known to FERC. They become a stakeholder and we're required to treat them just the same as a landowner. So we're required to give these landowners and say, here, if you have any problems, it's called environmental, but I got to tell you, we've done everything from, hey, I think my land is not settling right after you guys came through, the fence wasn't put back the right way, and we make that good because we don't want anything to get past us to the FERC because then we get what...we get their enforcement. And we rarely go that far. We don't want to go that far. But we get all sorts of landowner complaints. And then we are required, even if we fix it, we're required to report every landowner complaint that we get and how we resolved it and send that back to FERC all the way up to two years after we finish the construction of a project. Does that answer your question? [LB340 LB578 LB629]

SENATOR SMITH: Yes, thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good. Seeing no other questions, thank you very much for your testimony. [LB340 LB578 LB629]

MIKE LOEFFLER: Thank you for your time. [LB340 LB578 LB629]

SENATOR LANGEMEIER: That concludes our...that portion of our hearing. Now we'll move on to proponents. And I have three that we're going to start with, and then we'll take open proponents to the three bills. And we ask, when you come up to testify, that you tell us which of the three bills you're here to be a proponent for. And we'll start with Teri Taylor. Welcome. [LB340 LB578 LB629]

TERI TAYLOR: Thank you. I'm following five very intelligent, well versed individuals and makes me a little nervous because I'm just a rancher. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Don't be nervous. [LB340 LB578 LB629]

TERI TAYLOR: (Exhibit 7) Thank you, Senator Langemeier and members of the Natural Resources Committee. My name is Teri Taylor, T-e-r-i T-a-y-l-o-r. My family own and operate a ranch, a cattle ranch, in north central Nebraska. Over two years ago, we began hearing rumors of a Canadian company that had plans to construct a crude oil pipeline through the state of Nebraska and across our ranch. We began to seek what information we could about this pipeline project and just what effects it would have on our land and ultimately on the entire state. We have always believed that there is information available if you look hard enough. We were

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wrong. As independent as ranchers like to feel we are, it is often necessary for us to rely on many different entities to make a ranching business as successful as possible. We are fortunate to have a network of support systems at our disposal. For instance, whenever inclement weather threatens the National Weather Service immediately interrupts our local radio and television stations and issue their warnings and advisories. In the spring of 2009, when a cowherd in our area tested positive for tuberculosis the state Department of Veterinary Medicine was immediately on sight meeting local producers' concerns. When questions arise in our own area concerning conservation practices, the Lower Niobrara and Upper Elkhorn Natural Resource Districts have provided invaluable information and assistance. Yet when it came to a mega company seeking to gain easements with or without landowners approval to transport hundreds of thousands of barrels of tar sand oils across the fragile grazing land of our Sandhill pastures and through the fertile sub-irrigated meadows, submerged several times a year in the Ogallala Aquifer, we found ourselves completely and utterly alone with nowhere or no one to turn to for information and support. That, Senators, is a very frightening feeling. It is for this reason that I fully support all three bills that are introduced here today. Words like eminent domain, condemnation, reclamation, liability, and emergency response are not common words in a rancher's vernacular, but they have been spoken countless times in many ranch homes across the Sandhills and might I say across the entire state of Nebraska over the span of the last few years. Most often they are spoken with trepidation. But with the implementation of LB340, LB578, and LB629, perhaps we can relax knowing that once again the state of Nebraska has stepped up and not allowed the federal government to have all the say in a project that may have massive consequences to our own state. The journey that my family has taken over the past several years, since we heard of the Keystone XL pipeline, has not been an easy one. The ranch that has been home to five generations of the Taylors has at times been extremely demanding. It requires 7-hour-a-day...or 7 days a week, excuse me, work weeks, there's not paid vacations, but like many ranchers, the rewards have been priceless. To watch a new generation gain respect for the land, an appreciation, a love for it that has taken decades to accomplish more than makes up for the sacrifices. We want to protect the treasure for the next generation and hopefully for the generation after that. These three bills provide us with valuable tools to do that. I would like to thank the senators that introduced these bills and ask that you advance them for the good of the state of Nebraska. Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good. Are there any questions for Ms. Taylor? Senator Haar. [LB340 LB578 LB629]

SENATOR HAAR: Just a rancher doesn't work here. (Laugh) [LB340 LB578 LB629]

TERI TAYLOR: Okay, thank you. [LB340 LB578 LB629]

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SENATOR HAAR: No. I respect what you're doing. Thank you for coming. What frightens you most about what you've heard and what you see coming? [LB340 LB578 LB629]

TERI TAYLOR: My husband and I differ on that question. His main concern has always been the reclamation. He is 60, almost 61 years old and he has lived his lifetime on the ranch that we are on now, and he knows the damage that can occur to our Sandhills pastures. He knows what it takes to reclaim that ground. He has fenced out blowouts, he has bedded blowouts, he has practiced different grazing managements in order to keep our land productive, which it must be. The price of land has...we have to keep it in production to make a ranch successful. I, myself, look maybe a little farther. My pride and joy are four little grandchildren, three of them which reside on our ranch today. And I keep thinking, you know, maybe this pipeline won't cause my husband and I a major problem but I've got three grandchildren that someday will make that their home and I hate to have that be their legacy that someday that pipeline creates a devastating effect on the ranch, whether it be a spill or a deserted pipeline that causes problems or the constant vigilance that they have to take in keeping that pipeline covered and reclaimed. So those two, the reclamation and then the event of future catastrophes with the pipeline, are probably our two major concerns. [LB340 LB578 LB629]

SENATOR HAAR: Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Senator Dubas. [LB340 LB578 LB629]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you so much, Ms. Taylor, for coming, and you are not just a rancher. [LB340 LB578 LB629]

TERI TAYLOR: Thank you. [LB340 LB578 LB629]

SENATOR DUBAS: I'm a farmer; I'm not just a farmer. [LB340 LB578 LB629]

TERI TAYLOR: (Laugh) Okay. [LB340 LB578 LB629]

SENATOR DUBAS: So thank you for your...sharing your experience. You touched on the reclamation and I'd like to go back to that a little bit. Do you feel, and I know you aren't at liberty to talk about a lot of specifics so please don't go anywhere you're not comfortable, but do you feel the concerns that you've raised as far as what it takes to reclaim the Sandhills region, your particular ranch, have been taken seriously? [LB340 LB578 LB629]

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TERI TAYLOR: No, I absolutely do not, because when you discuss these issues you are immediately met with "we understand, we know," yet they do not know, you know? And I don't think they should pretend to know what my property, what it will take to reclaim my property because they've never seen my property, they haven't lived there a lifetime to know what it takes. They don't know that those northwestern winds that one of the professors spoke of can literally rip open the ground in a 24-hour period. As resilient as we like to think our ground is, it isn't. It's very, very fragile and it takes on-hands management all the time to keep it from blowing away. So, no, I do not...I honestly, in the bottom of my soul, do not believe that they understand what the undertaking they are taking when they talk about doing whatever it takes to reclaim the ground. I don't believe they understand what that "whatever it takes" will entail. [LB340 LB578 LB629]

SENATOR DUBAS: So you recognize that it takes day-to-day management to keep your land productive and we know the profit margin is very narrow and that's... [LB340 LB578 LB629]

TERI TAYLOR: Yes. [LB340 LB578 LB629]

SENATOR DUBAS: ...very key to what you have to do to make that profit margin work for you. [LB340 LB578 LB629]

TERI TAYLOR: Absolutely. It does, it takes day to day. Every decision we make, every decision you make on a ranch, there are only two things that make a ranch. It's the land and the water. You know, the cattle are the side effect, but the land and the water, both of which takes constant management to make those two things, because if you can make those two things work the rest will come. But, yes, it takes constant vigilance to keep that land. [LB340 LB578 LB629]

SENATOR DUBAS: Thank you very much. [LB340 LB578 LB629]

TERI TAYLOR: You're certainly welcome. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good. Any other questions for Mrs. Taylor? Seeing none... [LB340 LB578 LB629]

SENATOR SCHILZ: I got one more. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Oh, Senator Schilz. [LB340 LB578 LB629]

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SENATOR SCHILZ: Thank you. Thank you, ma'am for coming in today. [LB340 LB578 LB629]

TERI TAYLOR: Certainly. [LB340 LB578 LB629]

SENATOR SCHILZ: I just want to try to get an understanding for myself. As you talk about these issues with representatives from TransCanada, is that...I mean the "whatever it takes" kind of language, is that anywhere in a contract, in your easement, anything? I mean none of those words... [LB340 LB578 LB629]

TERI TAYLOR: No, this is verbal communications with land agents as well as with other individuals who have...we have visited with from TransCanada. That is their vernacular-- whatever it takes. You know, when... [LB340 LB578 LB629]

SENATOR SCHILZ: Right. [LB340 LB578 LB629]

TERI TAYLOR: ...when ranchers address issues like the blowouts, the fencing as far as cattle go, it's always, "well, whatever it takes, you know, we'll do." [LB340 LB578 LB629]

SENATOR SCHILZ: And then I don't know the process or the procedure. Did you get that in writing? [LB340 LB578 LB629]

TERI TAYLOR: We have not at the present time entered into an agreement with TransCanada so, therefore, what is and is not in writing... [LB340 LB578 LB629]

SENATOR SCHILZ: So that could very well be in the agreement when you get it. [LB340 LB578 LB629]

TERI TAYLOR: It very well could be, yes. [LB340 LB578 LB629]

SENATOR SCHILZ: If I were you, I would make sure that's in there. [LB340 LB578 LB629]

TERI TAYLOR: Absolutely. [LB340 LB578 LB629]

SENATOR SCHILZ: Thank you. [LB340 LB578 LB629]

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TERI TAYLOR: Yes. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good. Are there any other questions? Seeing none, thank you very much. You did a great job. [LB340 LB578 LB629]

TERI TAYLOR: Thank you very much. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Our next testifier will be Jay Wolf, also a landowner. Mr. Wolf, welcome. [LB340 LB578 LB629]

JAY WOLF: (Exhibit 8) Thank you, Senator Langemeier and Natural Resources Committee. I appreciate being here. I'm representing myself as a landowner, also the... [LB340 LB578 LB629]

SENATOR LANGEMEIER: Oh, got to stop you. I need you to say and spell your name first. [LB340 LB578 LB629]

JAY WOLF: Oh, name, yeah, sorry, forgot about that. It's J-a-y W-o-l-f. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Thank you. [LB340 LB578 LB629]

JAY WOLF: I'm representing myself as a landowner but also the Nebraska Cattlemen, for which I served as president in 2007. I'm testifying in support of all three bills. For three generations, my family has operated the Wagonhammer Ranch in Wheeler County, near Bartlett. The Keystone Pipeline XL will be built on about five miles of my ranch. And it's been a stressful time. It's been probably as difficult a business issue as I've dealt with. We spent a lot of effort and legal fees working out an agreement that I hope will give the land its best chance for growing grass again after the pipeline goes in. I appreciate the provisions in LB340 and LB629 that help balance the equation between landowners and pipeline companies. I'd like to talk more on those two bills, but in the interest of time I'm going to concentrate primarily on LB578. Pipelines carrying oil from the Canadian oil sands have unique risk factors that could lead to abandonment long before the pipe itself wears out. For instance, economics could shut down the pipeline prematurely. Traditional oil production and production from Canadian oil sands differ in some very key ways. Traditional oil is very expensive to discover and drill for, but once you have it, pumping it is relatively inexpensive. It's basically the opposite in the Canadian oil sands. They're easy to find but, you know, once...but the everyday process of strip-mining and cooking the oil out of shale is very expensive. It takes a lot of labor, equipment, natural gas, and environmental compliance, among other things. It is currently costing over \$36 a barrel to get that oil out of the rock and into liquid form. Future increases in Canadian oil sands production costs and/or a drop in oil

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prices could make production uneconomic. Another risk to Canadian oil sands is a strong movement to shut it down for environmental reasons, something you've probably heard a lot about. And my question is, what if that happens? My point is, if there's no oil coming from the Canadian oil sands, for whatever the reason, the owner of the pipeline will likely be broke. Could an abandoned pipeline partially filled with oil residue be left to rust away? And if that were to happen, who pays the cost to clean up the pipe? And isn't it the responsibility of governing authorities to ask those questions and have contingency plans in place? So I did. I asked the State Department when they were doing the environmental impact hearings, you know, well, you know, how is that going to be handled? State said not their responsibility; I should talk to the Department of Transportation. So I tried that; no response. Next I asked NDEQ, does the state of Nebraska have any responsibility in this area? No, but they would help me get an answer out of DOT. Finally, after months, I got that answer and it was: not our responsibility, ask State Department. The federal government does not give Nebraska a choice. The feds can issue a permit, the pipeline goes through. And if the pipeline is abandoned and the carrier does not have the resources to clean up the mess, the feds aren't planning to do it. The state of Nebraska automatically grants eminent domain, you know, to pipeline companies, so as a landowner I don't have a right to say no. Yet the state of Nebraska doesn't take responsibility for an abandoned pipeline either. So it looks to me like I could inherit the mess and I don't think that's fair. But worse, the landowners won't have financial ability to deal with the problem. That is a threat to the environment that should be seriously considered. It's not a question of if, but only a matter of when the pipeline will be abandoned and that could be sooner than we think. Regardless, it's irresponsible to build a pipeline without a plan for what happens if the line is decommissioned and the carrier has no financial interest in the cleanup or doesn't have the financial resources to do it. If Nebraska is going to grant eminent domain, then the state has an obligation to its citizens and impacted landowners to get this right. Nebraska should look to the carriers to cover the costs and the financial provisions should be made now while the resources are available. Don't wait until abandonment because there may not be anybody to get the cleanup dollars from when that day comes. I suggest the committee considering merging LB629 and LB340 to make reclamation and liability for cleanup of spill part of the application process. I also suggest that LB578 be included in LB340 in a way similar to last session's LB1048 where the permittee must provide the Public Service Commission a decommissioning plan and that the plan include financial assurance. I thank the committee for their time and I'll be glad to answer questions. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Carlson. [LB340 LB578 LB629]

SENATOR CARLSON: Thank you, Senator Langemeier. Jay, thanks for putting this together in a form that I can understand, and this is a pretty convincing letter and it will be interesting to see

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what kind of response we have from some other testifiers on this. Thank you. [LB340 LB578 LB629]

JAY WOLF: Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Are there any other questions? Senator Haar. [LB340 LB578 LB629]

SENATOR HAAR: Since you've thought about this, and I'll also ask the people later on, but how do you decommission a pipeline that's as big as a Hula-Hoop, bigger? [LB340 LB578 LB629]

JAY WOLF: Well, that's a tough one, but the first thing you need to do is clean the old oil out and they do have, in terms of the pipeline companies, they do file a plan that discusses that. It's just a matter of whether they'll have the money to do it when that day comes. [LB340 LB578 LB629]

SENATOR HAAR: Okay. Thank you very much. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Seeing no other questions, well done. [LB340 LB578 LB629]

JAY WOLF: Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Thank you very much, Mr. Wolf. Further testimony, we have one more and that's Mike, and I'm going to butcher this, Dunavan, Mike Dunavan, is a landowner. [LB340 LB578 LB629]

BILL DUNAVAN: There's a William Dunavan here. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Okay. Okay. I'm told you're him. (Laughter) That's not what they gave me, so welcome. [LB340 LB578 LB629]

BILL DUNAVAN: (Exhibit 9) Well, good afternoon, Senator. My name is William Dunavan, B-i-l-l D-u-n-a-v-a-n. Thank you, members of the Natural Resources Committee, Senator Langemeier, Senator Dubas. I live in York County, Nebraska, and I'm a landowner whose property is located along the proposed route of the Keystone XL. I am representing myself and my family, defending my property under my rights as a citizen guaranteed by the Fifth Amendment and the Fourteenth Amendment of the U.S. Constitution. One applies to federal

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eminent domain; one to state projects. I'm not a member of a special interest group. I support Senator Dubas' bill, LB340, since it will give the people of Nebraska time to examine this and other pipelines in a less hasty manner through the hearing and petition process. Examples of why this is necessary are shown by the easement negotiations, so called, involving our family's property. Just so you could be aware what it's like to have the red helicopters fly over and then a few months later be approached by, up till now, five different representatives from universal field services requesting us to sign an easement for the Keystone XL pipeline, three obstacles arose in examining the easement language, which have not been overcome. First is the reestablishment of native prairie grasses which will be destroyed during the construction. Second easement problem is the blocking of a proposed conservation structure on this property and a lake which would flood water over the top of the pipeline. Third, we need to specify whether landowners have any rights to compensation if an additional pipeline is constructed in the same right-of-way or if the easement is used for another lucrative purpose, for example, laying of fiberoptic cable or perhaps an aqueduct. These reasonable requests have all been denied. To focus on the one in particular, the grass establishment, I'm going to use some "R" words because there's a whole series of these that are sometimes used interchangeably. We asked for...that the grass would be reestablished. We did not ask for...that it be restored, which was a much higher level, but we're not even getting reclaimed land back or revegetated land, but the easement called for a reseeding. Perhaps this is cheatgrass, downy brome. Who's to say? In advance, my wife had sent a copy to probably the wrong senator's office. Senator Fischer's staff would have this same report. There's 33 different wildflower pictures. I could pass this around or the pages could show it to the staff. I only have two copies. You may keep this one. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Okay. Okay, that was my question. If you give it to us, we're going to keep it, so... [LB340 LB578 LB629]

BILL DUNAVAN: That's just fine. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Okay. [LB340 LB578 LB629]

BILL DUNAVAN: But these are present, the pictures were taken between last May and last July 1 in the same pasture. It's an actively grazed piece of ground. It's an example of what's there besides all the grass species. This pasture reestablishment problem, along with the obstruction of a reservoir project, along with the issues of possible multiple utilities, these three matters show one thing--the need for oversight. LB340 could help with this. As a conclusion, this may also make a difference in your deliberations over these three bills. TransCanada seems to be difficult to contact other than through universal field services who are very polite but whose actions were all the same and whose easement seldom changed or there is nothing there that they could do. They could only promise, but the in-writing part had nothing that was an improvement. We have

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no reply from certified mail to TransCanada nor to e-mails nor phone calls, so I guess when you live in one of the busiest seaports in the nation, which is the terminus of the pipeline down in Houston, perhaps you get out of touch with the people of the United States for whom we are bringing in all this oil from northern Canada. Thank you, all. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Haar. [LB340 LB578 LB629]

SENATOR HAAR: Thank you for coming. Now you're in York County. You don't touch the Sandhills then? [LB340 LB578 LB629]

BILL DUNAVAN: No, these are silt loam, clay loam areas, some on steep slopes, however. [LB340 LB578 LB629]

SENATOR HAAR: Okay. I'm very interested in...and I know it's different words, but you were offered reseeded for your...when they talked to you? [LB340 LB578 LB629]

BILL DUNAVAN: Yes. And when we said that wasn't good enough, they recopied and spliced in some paragraphs and it said exactly the same thing the second and third time. But there's no state agency. Again, like some of the other speakers have mentioned, we've contacted numerous state and federal agencies and public officials, the county to the federal level, and everyone wants you to talk to someone else about it. [LB340 LB578 LB629]

SENATOR HAAR: I'm glad you came and talked to us. Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good. Are there other questions? Senator Dubas. [LB340 LB578 LB629]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Mr. Dunavan, for coming today. So to date you have not entered into an agreement with TransCanada. Is that correct? [LB340 LB578 LB629]

BILL DUNAVAN: No, I have not. [LB340 LB578 LB629]

SENATOR DUBAS: Okay. Are you still negotiating or is it still kind of up in the air? And you don't have to answer that if you're not comfortable sharing that information. [LB340 LB578 LB629]

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BILL DUNAVAN: We would. We've been trying to negotiate. Rather than with universal field services where we're not getting anywhere, we've been trying to contact TransCanada, but it's a one-way attempt. There's no replies. [LB340 LB578 LB629]

SENATOR DUBAS: All right. Thank you very much. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much for your testimony. [LB340 LB578 LB629]

BILL DUNAVAN: Thank you, sir. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Now we'll continue with those who would like to testify as proponents for the three bills. Come on up. We need you to turn your green sheets in before you start. And, William, I think we still need yours, before he takes off. Maybe I lost him. Go ahead. [LB340 LB578 LB629]

BONNIE KRUSE: (Exhibits 10, 11, and 12) Thank you for the opportunity to testify to this committee. I apologize that I do not have 12 copies. I only have 1 copy, because I was not informed to this previous to this testimony. This is the first time I have testified. It is imperative that LB340 is passed and approved. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Ma'am. Ma'am. [LB340 LB578 LB629]

BONNIE KRUSE: There is no state regulatory agency for local county and city governments to go... [LB340 LB578 LB629]

SENATOR LANGEMEIER: Ma'am. Ma'am, I got to stop you. [LB340 LB578 LB629]

BONNIE KRUSE: Oh, I'm sorry. [LB340 LB578 LB629]

SENATOR LANGEMEIER: You need to say and spell your name before you start. [LB340 LB578 LB629]

BONNIE KRUSE: Okay. I'm sorry. Bonnie Kruse, B-o-n-n-i-e K-r-u-s-e. I'm a member of the League of Women Voters of Nebraska. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Thanks. [LB340 LB578 LB629]

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BONNIE KRUSE: I'm a member of the Water Guardian...Ground Guardian...Ground Water Guardian Team of Seward County, and I'm a member of the Seward County Citizens on Pipeline Route Committee. It is imperative that LB340 is passed and approved. There is no state regulatory agency for local county and city governments to go when municipal water supplies and the groundwater are being challenged by a pipeline carrier that is determined to put a pipeline carrying hazardous liquids through city-county wellhead protection areas. There's no state agency with regulatory authority for affected local county and city governments to go in order to present facts and documentation critical to the preservation of groundwater and the protection of municipal water supplies. As a result, it is difficult for local and city governments to implement protection. There's no state regulatory agency to back them when they are challenged by an interstate pipeline carrier transporting hazardous liquids. Clearly, looking around the country, states that implement authorities have more to say about pipelines coming through their states and are more apt to listen to and respond to local concerns, such as the Seward's water protection area. This alone would be a good step forward of over just letting the State Department make the decisions. Interstate pipeline carriers have no responsibility to the state to be transparent to any state regulatory agency regarding the impact of their hazardous liquid pipeline on local municipal water supplies, groundwater, and the quality of life for the people of Nebraska. If your interstate pipeline carrier complains that LB340 is not necessary because of increased cost or delay or contracts with welders that would provide jobs, this is the problem the interstate pipeline carrier created for itself by putting the cart in front of the horse and not taking responsibility and failing to be transparent. The salvation of the state is watchfulness of the citizen. Citizens are watchful. Without LB340, there is no regulatory body to provide oversight, and the voice and the watchfulness of the citizens of Nebraska is silenced. Salvation is LB340. LB340 levels the playing field. It is fair to all concerned. Documents included in your packet are: observation, Carl Weimer, executive director of Pipeline Safety Trust; statement paper, Richard Zwick; Senator Mike Johanns' letter to TransCanada; Senator Tony Fulton, letter to TransCanada; statement paper, Bonnie Kruse; TransCanada and Nebraska letter to the editor; questions formed from the second forum, TransCanada Keystone Pipeline and our Community; Keystone XL Oil Pipeline Politics and China; Work on Pipeline Hits License Snag; application by TransCanada, Keystone Pipeline, LP for a permit under South Dakota Energy Conversion and Transmission Act to Construct the Keystone Pipeline Project. You'll find all those documents in your packet. Now I'm going to speak to LB578. This bill is critical. In the event that a pipeline operator of a crude oil or any other hazardous liquid sells, transfers the pipeline or goes bankrupt and the pipeline breaks, leaks or spills, all bets are off as to who would be responsible for cleanup and compensation. Some companies will argue that bonds are not necessary because they have insurance and that they will take responsibility. Unfortunately, companies have fought taking responsibility. Enbridge, a Canadian pipeline carrier of crude tar sands oil, is currently arguing in Calhoun County Court that it is not legally liable for damages for spills of an estimated million gallons of crude oil into the Kalamazoo River system last July. Officials declared a state of emergency, recommended evacuation because

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of unsafe levels of benzene in the air, and closed the Kalamazoo River to the public. In numerous public statements, Enbridge CEO Pat Daniels apologized for the spill and promised to take responsibility. Six months after the spill, the river remains closed and Enbridge is fighting the claims. Enbridge argues that it cannot be held responsible for the oil spill because it followed all relevant laws, regulations, and industry standards, and the damage was not foreseeable. In addition, one pipeline carrier actually stated to a group of landowners that the company will comply with applicable legislative and regulatory requirements in force at the time of abandonment, and the costs associated with the abandonment are the responsibility of the pipeline owner. Right now, without LB578, the state of Nebraska has no regulatory requirements or recourse. My mother always said, "Get it in writing." Documents enclosed: Kessler Landowners Group 4 Q&A; State of South Dakota House Bill 1189; Enbridge denies responsibility for oil spill; Pipeline Damage Mitigation Fund, South Dakota. In support of LB629, two areas that the local and city governments face in dealing with pipeline carriers that transport hazardous liquids are groundwater and municipal water supplies and road damage. After demanding for two years after Keystone pipeline agreement with the Seward City Council was signed, February 15, 2008, TransCanada finally delivered their site-specific emergency response plan for the city of Seward on July 14, 2010. Unfortunately, there is no mention in the plan about who is to pay for it. Road damage can be relatively expensive. Barnes County, North Dakota, experienced road damage as a result of the Keystone pipeline. When highway superintendent Kerry Johnson told TransCanada about trucks violating a no-haul order, resulting in road damage, TransCanada spokesman Jeff Rahl said, it's TransCanada's responsibility to fix it. Border States Paving in Jamestown, North Dakota, estimated the damage on County Road 27 at \$311,000. TransCanada acknowledged the damage and offered a \$200,000 settlement, which the county commission unanimously rejected. They offered only half of what it costs, Johnson said. The county countered with a \$400,000 offer. A year later, TransCanada and Barnes County reached a settlement of \$350,000. The argument (sic) does not cover the possibility of future damages. North Dakota state attorney Brad Cruft responded, this is not a free pass. If the interstate pipeline carrier complains that legislation adds too much to the cost of a pipeline that transports hazardous liquid, then that pipeline carrier has no business building the pipeline in the first place. It's the cost of doing business. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Ms. Kruse, are you close to be... [LB340 LB578 LB629]

BONNIE KRUSE: Yes. [LB340 LB578 LB629]

SENATOR LANGEMEIER: You're well over your time. I need you to summarize very quickly. [LB340 LB578 LB629]

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BONNIE KRUSE: Just a last sentence: The burden of financial responsibility to protect water supplies, groundwater, and roads is that of the pipeline carrier. LB629 insists on that responsibility. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good. Very good. Well done. She breezed right through. Are there any questions before you take off? Seeing none, thank you. And we'll get your packets distributed momentarily. Thank you. Further testimony in support, proponents. Welcome. [LB340 LB578 LB629]

JOHN K. HANSEN: (Exhibit 13) Mr. Chairman, members of the committee, for the record, my name is John K. Hansen, J-o-h-n, Hansen, H-a-n-s-e-n. I'm the president of Nebraska Farmers Union and appear before you today as my organization's president and also our lobbyist. I have distributed to the committee a copy of the special orders of business that our organization passed at our most recent state convention last December and I would also read to you the policy that our members developed. And when all of this controversy that has developed and has really consumed an enormous amount of our organization's time, as we responded to our members' and landowners' phone calls during the past year, we really did not have a policy in place. And so after a very long policy development process, the longest in my memory, at our state convention, this is what our delegates said for the long term relative to pipelines. Nebraska Farmers Union believes that there is a compelling public interest to develop or create a state agency with equal landowner representation to regulate and oversee the planning, construction, and operation of underground pipelines. The Legislature should designate and authorize the creation of such an oversight agency as soon as possible. Landowners deserve an understandable process that clarifies when and how eminent domain can be used, who has what liability when there are damaged from pipeline failure, what the siting standards and routing criteria are, environmental considerations, and decommissioning expectations and costs. The process should provide for transparency in the planning and routing process, including public input, fair compensation to landowners, and a process to deal with landowner and public complaints and conflicts. Pipeline developers should be barred from using nondisclosure agreements prior to, during, and after contract negotiations. Nebraska Farmers Union proposes that privately owned pipeline companies must build an escrow based on percentage of dollars earned through the volume of the product transported to pay for all road construction, emergency response situations, training of local emergency response providers, fire department, hazmat, paramedics, etcetera. That is the policy that we developed, and as a result of this policy we are in support of LB340, LB578, and LB629. We have been doing this kind of service work for a very long time, myself, 21 years in this position. This is very different than any other pipeline issue that we have ever encountered. I've asked myself many times and thought about this with our board, trying to figure out why this is so different. I would offer these observations, that in part, this pipeline is very different in that it is a foreign pipeline that starts in Alberta, Canada. It goes to Port Arthur, Texas, or Houston. It goes through Nebraska, not to Nebraska. It delivers a very different product. Tar sands is

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different than natural gas or the normal crude oil or even gasoline that we're used to. The fact that the route goes through the Sandhills has clearly hit a hot button with a lot of our landowners and the fact that there is no clear, understandable state or regional economic benefit that accrues to Nebraska from this pipeline makes it different in many ways than what other folks perceive to be for other pipelines. They at least get it that we're bringing in fuel or we're bringing in things that benefit either us or our region, and they are concerned, and rightly so, by the fact that there are more pipelines to come. So it is not just this pipeline. It is also the fact that there are more to come. And I must, quite honestly, tell you that the company that has stirred up such a hornet's nest has but themselves to thank for a good deal of the unhappiness, given the lack of responsiveness and some of the tactics that they've used. And when you deal with landowners in that fashion, you're going to pet the hair on the dog backwards. The dog is not going to be happy. (Laughter) And we have a lot of landowners that know when they're being hustled, and when you don't shoot straight with folks it catches up with you. So there's been all those things in play. Do we at the end of the day need to develop a state response to this kind of issue? And we believe that the time has come that we should move forward. And we thank all three senators for bringing these bills forward and we'll be more than glad to work with the committee in their deliberations as in the days ahead. And I would conclude my testimony and be glad to answer any questions if I might be able to do so. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good. Are there any questions for...? Senator Carlson. [LB340 LB578 LB629]

SENATOR CARLSON: Thank you, Senator Langemeier. John, have you dealt directly with other pipeline companies, because on the other hand I read some rather glowing remarks about TransCanada, so there's that element too. But have you dealt with other pipeline companies and you know a difference? [LB340 LB578 LB629]

JOHN K. HANSEN: Yes, both different companies and also this same company, the last pipeline through was a very different experience. [LB340 LB578 LB629]

SENATOR CARLSON: Okay. Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Senator Haar. [LB340 LB578 LB629]

SENATOR HAAR: Well, just talk for a moment about that. Why is...you said even the last one coming through was different. What, just to follow up on Senator Carlson's question. [LB340 LB578 LB629]

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JOHN K. HANSEN: Well, I've thought about that and I...part of it is the route, part of it is what they were carrying, and there were specific incidents relative to I'd like to try to do something on down the road with that land in that particular area, dams, other kinds of things; could you move the route, could you move it around. And so it was more siting kinds of things. There were more...there were some resistance to a pipeline generally but not...you know, most folks were much more accepting of that pipeline. And so, you know, we just got scattered phone calls and you could see as...you knew where they were going based on where the landowners were calling. But they were just much more general questions and they were much more accepting of the pipeline. This pipeline, for whatever reason, and I've already offered my speculation on that, but a very different kind of response where a lot of folks were unhappy. And I think part of it is the route, but certainly the need for dispute resolution has really come to the fore. And so when there is a dispute, and it happens, then where do you go? And so the ring around the rosy, nobody is really responsible issue that was raised so well earlier in Jay Wolf's testimony is an ongoing...is an ongoing issue for us. Nobody seems to be in charge. What do you do when there is a conflict? All of those issues really percolate. And our landowners are reasonable folks, but they also have a reasonable expectation of how they should be treated. [LB340 LB578 LB629]

SENATOR HAAR: And is that true about dogs? (Laughter) [LB340 LB578 LB629]

JOHN K. HANSEN: Well, I think I'm in trouble already on that but... [LB340 LB578 LB629]

SENATOR LANGEMEIER: I would have to inject germaneness. (Laughter) John, let me ask you a little bit about your "whereas," your resolution that you provided us here from the Nebraska Farmers Union. If in every reference in here...well, let me back up. On these bills, they call it the Hazardous Liquid Pipeline Notification, and it's designed to, my understanding of the three bills, is to look at any hazardous liquid into the future on pipelines on all three bills. However, in your "whereas," in every reference it references tar sand, tar sand, tar sand, tar sand, every other word, every paragraph here. If this pipeline was not tar sand, does this go away or does it...if it was just crude? [LB340 LB578 LB629]

JOHN K. HANSEN: I think a very...thank you for the question. I think it's a very good question. The fact that these are tar sands is certainly a big part of why folks feel very differently about it. That's part of it. And so the members, as they crafted this special order of business, dealt with this particular pipeline. And what we wanted to do with the policy is to make sure that we had something that was enduring for pipelines generally. And so we didn't...they're really separate. One is the more permanent how do we engage on pipelines generally of all different kinds of pipelines, and so that's what the policy says. The special orders of business, as you can tell when you read all those "whereases," they were fairly unhappy campers (laugh) and... [LB340 LB578 LB629]

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SENATOR LANGEMEIER: I get that. [LB340 LB578 LB629]

JOHN K. HANSEN: ...it reflected in the special order of business. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Okay. Are there any other questions? Seeing none, thank you very much. Well done. [LB340 LB578 LB629]

JOHN K. HANSEN: And thank you and good luck to the committee. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Thank you. Further testimony as a proponent to one, two, or three of the bills? I need to have you give the green sheet to Barb, please. Thank you. [LB340 LB578 LB629]

BETH HAMILTON: Mr. Chairman, my name is Beth Hamilton, B-e-t-h H-a-m-i-l-t-o-n. Mr. Chairman and members of the committee, I am an environmental lawyer, mostly retired, not fully retired but mostly, and I practiced environmental law for 25 years in California. Most of the time I represented very large companies with very serious environmental problems. These companies were very responsible corporate citizens with large in-house environmental staffs and well-thought-out contingency plans in the event an accident occurred. Nevertheless, in spite of all that expensive preplanning, stuff happens and it did to my clients. All of these companies have the very best intentions and many of them are still cleaning up their problems. I think the moral of that experience is if anything can go wrong it will. Bearing that in mind, I urge your support of all three bills before you and I urge you to apply a basic premise of environmental protection called the precautionary principle. That means that where there is a chance of damage to a particularly fragile resource, the weight of the balance shifts towards protection of that resource, in this case, the Sandhills and the aquifer. Thank you for your attention. [LB340 LB578 LB629]

SENATOR SCHILZ: Thank you very much. Any questions from the committee? Seeing none, thank you. Next proponent, please. [LB340 LB578 LB629]

DUANE HOVORKA: (Exhibits 14, 15, and 16) Good afternoon. My name is Duane, D-u-a-n-e, Hovorka is H-o-v-o-r-k-a. I'm here on behalf of the Nebraska Wildlife Federation to testify in support of all three of the bills that you're hearing today. I've got letters of support from the federation for all three bills so I'm not going to read them, and to save you some time I'm just going to make a couple quick points that I think are things that I've learned over the last year. One is that the states that have been involved in this over the last year who had legislation in place like that proposed by Senator Dubas have fared better in terms of having their interests and

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the protection of their natural resources and the protection of their landowners in the process than states like Nebraska that have not. So I think it's important for it, that there is an important state role to play and I appreciate that we're bringing that here to the committee today. And the second thing I've learned is that, you know, promises are great but they don't pay the bills. And if you look at the situation and you look at Enbridge pipeline, which was mentioned, they had a spill last July into the Kalamazoo River of something over 800,000 gallons of oil from their pipeline, and at the time, right after that time their CEO came out and said, we promise, we're going to clean it up, we're going to pay for our liability, and he was very public about. And now, just months later, they're backtracking on that promise and they're saying, well, you know, we followed all the laws and we did the things we thought we were supposed to do so we don't think we're liable for at least some of those costs. And so I think to have the liability spelled out and unambiguous to make those clear and to make sure that the company has that kind of financial surety in place so that the state can be guaranteed that whoever is in place at the pipeline company in 5 or 10 or 40 or 50 years, that the money is there to take care of whatever liability is there. So I thank you. We urge your support for all three pieces of legislation. [LB340 LB578 LB629]

SENATOR SCHILZ: Thank you, Mr. Hovorka. Any questions for Mr. Hovorka? Thank you very much. [LB340 LB578 LB629]

DUANE HOVORKA: Thanks. [LB340 LB578 LB629]

SENATOR SCHILZ: Next proponent, please. [LB340 LB578 LB629]

LYNDA BUOY: (Exhibit 17) My name is Lynda Buoy, L-y-n-d-a B-u-o-y. Thank you, Chairman Langemeier, members of the Natural Resources Committee. As a rural landowner, as president of Holt/Rock County Farmers Union and a lifelong Nebraskan, I'm appalled at the heavy-handed tactics TransCanada, a foreign oil company, is inflicting on my friends and neighbors. My livelihood, my way of life, as well as my neighbors are being threatened. Because this is my home, I cannot just sit aside and let this go on. I can't watch good, hardworking Nebraskans be taken advantage of again. I have signed, notarized testimony I was asked to share with you by a friend in the route of the Keystone XL pipeline. Pat Karo was pressured into signing her easement, and I will just read the short. I was contacted...it says: Nebraska State Legislature, I was contacted by Rebecca Johnson, informed that the pipeline would be coming through my land and that TransCanada could be trying to purchase an easement from me. Rebecca would call and set up meetings regarding TransCanada's proposal. The meeting occurred at my home. I kept refusing to sign. I was getting ready to be gone for a month in June 2010 and I had told Rebecca that I had asked if all this needed to be finalized before then. She said, yes, because in the next week or two I am handing the easements back to TransCanada and then they will turn

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them over to the courts. When the courts rule on what you get for your land, it will be appraised value or less and we are offering more than that. Why would you want to wait? I felt pressured. I felt she was pressuring me into signing, because if I didn't sign before I was going to be gone then she would turn it over the courts and they would handle it. The Keystone XL Pipeline project, that has not been yet approved by State Department and carries no eminent domain privileges, has threatened county zoning boards with lawsuits, is not negotiating in good faith with Nebraska landowners, and is instead using threats of eminent domain to coerce landowners into signing easements, should not be allowed through the fragile Sandhills of Nebraska. I will never support this pipeline, but for the previously noted reasons, I do support LB340 because, yes, we do need a pipeline oversight agency to hold the pipelines accountable; LB578, because it holds companies accountable for problems that may arise in the future and take financial burden off of already physically challenged areas; LB629, because everyone should have a high set of standards just as we Nebraskans do. Thank you, Chairman Langemeier and committee members for hearing me on this very important issue. Do you have any questions? [LB340 LB578 LB629]

SENATOR SCHILZ: Thank you, Lynda. Any questions? Senator Carlson. [LB340 LB578 LB629]

SENATOR CARLSON: Thank you, Senator Schilz. Now this Patricia is a friend of yours, you know her well? [LB340 LB578 LB629]

LYNDA BUOY: Yes, I do and I... [LB340 LB578 LB629]

SENATOR CARLSON: What's...to this point, what's the end of the story? [LB340 LB578 LB629]

LYNDA BUOY: She did sign the...before she was going to be gone for a month, she went ahead and signed it. She was worried about even doing this and I...she finally said, yes, she would sign...give me a signed and notarized testimony. [LB340 LB578 LB629]

SENATOR CARLSON: Okay. [LB340 LB578 LB629]

LYNDA BUOY: And I would expect that if there is repercussions from this, that this group would hopefully help her. [LB340 LB578 LB629]

SENATOR CARLSON: Thank you. [LB340 LB578 LB629]

LYNDA BUOY: Thank you. [LB340 LB578 LB629]

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SENATOR LANGEMEIER: Any questions? Thank you very much. Further testimony as proponents? Good afternoon. Welcome. [LB340 LB578 LB629]

SUSAN STRAKA LUEBBE: (Exhibit 18) Good afternoon. My name is Susan Straka Luebbe, S-u-s-a-n S-t-r-a-k-a L-u-e-b-b-e. On February 7, 2011, at approximately 9:50 a.m., my father Bert Straka and I met with Rebecca Johnson and her daughter-in-law, Dawn, from TransCanada on the road east of my house. This location is two miles west and six miles south of Stuart. This is my home place where I grew up as a child and am currently living and ranching with my family. I intend to inherit this large ranch and pass it on to my children. My oldest son Lance is in the Army and is being deployed to Afghanistan this year. This information I'm about to share is to protect my family in a way that my son is protecting all of us. This is land that we worked so hard for all our lives and to be able to have a future third generation on it is truly a blessing. The site we met at is where the proposed Keystone XL pipeline is to be buried, crossing the road and on to our land. We were invited to sit in Rebecca's van. Both ladies seemed very nice and congenial people until the red flags started popping up. Right before they arrived, I called my neighbor, Connie Weichman at 9:49 a.m. I wanted to know if they had signed. She said yes and no. Connie stated that they were still negotiating the survey of some of the ground and had not signed all the papers yet. Connie also stated that they were told long time ago by Rebecca we had signed and settled our land contract. I told her that information was a lie. When I got into the van I asked Rebecca about our neighbors, Connie and Leon Weichman, if they had signed yet, and she stated they had. She must have seen the disbelief on my face so she dug out some papers and showed us a copy of the check she had wrote out for our neighbors and said they had met with them on December 20, 2010. We asked her if the check was cashed and she replied that she did not care whether they did or not, but the fact is they took the money and signed the land contracts. I cannot believe an employee of TransCanada or any company would stoop so low as to invade on anyone's privacy. However, it gets better. My dad wanted to know what they knew about Wednesday's meetings at the Capitol. She said that the bills did not matter because the oil company was bonded to the hilt and it would not affect the pipeline whatsoever. She seemed extremely cocky at this point, so another red flag. Rebecca stated that for five years the company would fix our ground back to its originality or until we sign that contract saying it was okay. At this point, she offered a ridiculous amount of money for our inconvenient progress and that it was the same amount that all our neighbors had already signed for. We already knew that the offer was not the same by visiting with our neighbors at a basketball game. Our neighbors to the south told us they had signed for ten times the money that was originally offered. She also stated that there is only four people left to sign from the South Dakota border to us, and that we were one of the four. We asked her directly if the Taylors had signed and she said, oh, yes, they did just last week. I knew that was an outright lie and I confirmed it later that night by calling and talking to Teri Taylor about all the lies and harassment we were both receiving to sign the paperwork. Teri also stated that there are several of their neighbors that had not signed yet either. We tried to discuss oil spills with Rebecca that happened on the east pipeline and about the slow

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response to cleanup, and she stated that she never heard of that or that the stories in the newspaper were not truthful. The money offered on Monday would not even begin to clean up a spill on our property. We ended our conversation at 12:30 p.m. Monday, February 7. Right away Tuesday morning Rebecca called my father and increased the funds by declaring our payment in her way of saying it was damage money, which means we won't have to pay the 39 percent tax bracket by declaring the payment as income. She threatened that if we did not sign, we would end up in court because of eminent domain and get paid pennies on the dollar or nothing at all. After finding out all the outright lies and lack of integrity, we postponed any future meetings indefinitely. How can we trust anything that is said or to be done on our land? We're extremely anxious and concerned. We cannot fight this alone. Will you please help us? Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, thank you very much. [LB340 LB578 LB629]

SUSAN STRAKA LUEBBE: Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Well done. Very well done. Further testimony in support or proponents? Good afternoon and welcome. [LB340 LB578 LB629]

JERI KUCHERA: (Exhibit 19) Good afternoon. Senator Langemeier and members of the Natural Resources Committee, my name is Jeri Kuchera, J-e-r-i K-u-c-h-e-r-a. Thank you for the opportunity to testify today in favor of the three pipeline bills before you. My interest in the bills today is a result of being power of attorney for my 96-year-old mother, a lifelong Rock County landowner affected by the proposed Keystone XL pipeline. My mother was born and lived almost 90 years on the property which has been in our family for over 110 years. She moved to a long-term care facility several years ago, but the family farm remains her home and her legacy. For the past few years I've been involved in the proposed pipeline development of the Keystone XL in regards to my mother's property. I have attended many meetings, read countless articles, and researched the many issues involved in this pipeline process. I have found that affected landowners ultimately have the responsibility to educate themselves because of the very limited resources available to them concerning condemnation, reclamation, and liability. I believe the creation of the Hazardous Liquid Pipeline Notification Act in LB340 would be a valuable resource. The criteria used for permitting or denying a pipeline would allow examination of the many different aspects and require a comprehensive checklist to be completed. One area of concern of the proposed Keystone XL has been the fear of condemnation. I believe requiring application approval before eminent domain can be initiated is a very important part of removing that threat. In my opinion, LB578 and LB629 are also vital parts of this comprehensive effort to address pipeline concerns. Financial responsibility, reclamation, and recovery are issues that

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should be of grave concern to everyone in the state. The past year has shown that there can be serious incidents involving pipelines. It should be verified that a pipeline company has the resources necessary to mitigate and reclaim property when the need arises. The landowners and the state of Nebraska should not be held responsible due to insufficient financial resources. Reclamation concerns have evolved with the Keystone XL because of the fragile ecosystem of the Sandhills. The multigenerational families who reside there are very aware what can happen to the fragile soil and the intensive efforts and time required to restore the land. I feel it is important to have the measures in place to ensure that reclamation from construction or in case of recovery is the liability of the pipeline company and not the affected landowner, the county, or the state of Nebraska. Another resource that needs the protection of these regulations is our water. It would be irresponsible to declare that there will never be a leak in a pipeline. We have seen in just the past year the effect that leaks can have on the waterways. Michigan and Utah have both experienced the catastrophic results of pipeline breaches in rivers. The responsibility for cleanup should not be passed on to the affected states. It is vital that the pipeline company bears that financial accountability. In conclusion, I would like to say thank you to the senators who introduced and cosponsored the bills being considered today. I am hopeful that this important issue will be advanced and offer the protections needed by landowners and Nebraska residents alike. Thank you for your time and your consideration. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good. Are there any questions for Ms. Kuchera? Senator Carlson. [LB340 LB578 LB629]

SENATOR CARLSON: Thank you, Senator Langemeier. You have power of attorney for your mother. [LB340 LB578 LB629]

JERI KUCHERA: Yes, I do. [LB340 LB578 LB629]

SENATOR CARLSON: So you've done the...you've been in the meetings and so forth with these people. [LB340 LB578 LB629]

JERI KUCHERA: Yes. [LB340 LB578 LB629]

SENATOR CARLSON: And did you sign the agreement? [LB340 LB578 LB629]

JERI KUCHERA: No, I have not. [LB340 LB578 LB629]

SENATOR CARLSON: You have not. Okay. Thank you. [LB340 LB578 LB629]

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SENATOR LANGEMEIER: Any other questions? [LB340 LB578 LB629]

JERI KUCHERA: Sorry. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Seeing none, we're going to let you go. [LB340 LB578 LB629]

JERI KUCHERA: Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: You look like you want to. Further testimony in support, proponent. [LB340 LB578 LB629]

JAREL VINDUSKA: Senator Langemeier, members of the Natural Resources Committee, my name is Jarel Vinduska, J-a-r-e-l, Vinduska is spelled V-i-n-d-u-s-k-a. I'm here in support of all three of these bills. I'll try to keep it short. I think there's a lot of people that need to talk. Even though I'm in support of this and I'm thankful that this is a first start toward doing something to protect Nebraskans against this proposed pipeline, but I hope you realize that this should be just the start. It's...these bills don't keep oil out of the water and they don't put prairie native grass, native vegetation back on the hills. And I can assure you that there's a lot the state can do. I worked on...I've got property in Alaska and I worked on the Trans Alaska pipeline when it was built, and the state of Alaska went through a lot of measures to ensure that that line was done as best as it could be, and there's a lot of measures that Nebraska can do. For instance, in Nebraska, service stations, any fuel tank, a 10,000-gallon gasoline or diesel tank, it has to be in a containment; our landfills have to have liners so that leachate doesn't go into the ground. If we have a fuel storage tank, a big tank outside, we have to put a dike around it and a liner to make sure if it ruptures, but...so it doesn't make any sense to me to have a several-hundred-mile-long pipeline built through sand and not have a redundancy where you have a containment around it. That can easily be accomplished, not easily, it's expensive, but if you're going to go through a fragile permeable soil like sand, it's only logical that that's done because, you know, financial liability, Exxon had lots of financial liability but that didn't keep oil off of a couple thousand miles of beaches in Alaska. BP has lots of financial responsibility but they didn't...they're not going to get the oil out of the Gulf. It's going to be nature to take care of that. Well, when you have oil get underground, nature can't take care of it very easily. It takes lots of years. We know that just from our Mead superfund site. The last I heard, last report I heard from the Corps of Engineers, they're talking about 300 to 600 years they're going to have to pump water out of that aquifer there and spray it into the air to try to get the chemicals out of it. So our number one priority should be to make sure we don't have a disaster. Yeah, we can have financial liability, but if it can't be fixed what good is it? Another example is the native prairie grass. You know we...I'm an excavator and, you know, you think, well, you bury a 30-inch pipe. Well, how much damage can that do? But it's not just the pipe. That soft soil, when you run heavy trucks, big

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equipment, you're going to disturb a big area, and not only that, you should consider, too, that if that oil is warm underneath there, those native vegetation needs a dormancy period. Maybe until we study that, those grasses will dry out because not going through the dormancy and if it's warm soil, won't freeze in the winter. There's another example I can give you. Oh, I had some property in which we didn't have mineral rights on and coalbed methane company was going to come on our land and we didn't have no say-so on it. And so I wanted to study what say we could have in the state of Alaska, so I went down to Ted Turner's ranch in New Mexico and asked to see his contract because he had the same situation down there with coalbed methane companies. Well, he wrote it into law. I mean he did it in his own contract, but it became part of his agreement that the vegetation had to be native seed, no introduced species or...because he was afraid of introducing nonnative species that wouldn't be adaptable to the area. So he went so far as to say, well, the company that was going to come on his property said, well, there is no seed available of native grass. Well, he said, tough, you get your guys out here and you hand strip this seed and you stockpile it. When you get done, you put this native vegetation back. So I'm just giving these examples to show that if we're really serious and tough, we can accomplish some protections but we have to do it quickly and get ahead of them. Otherwise, we might regret it later. So I appreciate you guys letting me speak today. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good. Are there any questions of Jarel? Seeing none, very good. Thank you very much. Further proponents? [LB340 LB578 LB629]

KEN WINSTON: (Exhibit 20) Good afternoon, Mr. Chairman, members of Natural Resources Committee. My name is Ken Winston, spell my last name W-i-n-s-t-o-n. I'm appearing on behalf of the Nebraska Sierra Club in support of LB340, LB578, and LB629. I'm not going to read my letter because it...obviously, you can read that and decide which parts are important. I guess I want to just comment on a couple of different things. First of all, I really appreciated Jay Wolf's testimony when he was talking about the circular contacts that he made in terms of trying to get information. And I guess I also wanted to point out the statement that Senator Johanns made which is the State Department is the entity which is going to decide this permit, whether to grant the permit or not, but they're not exactly an entity that we think about when we're thinking about protecting natural resources. And so we don't think it's a good idea for us to depend upon the federal government to protect Nebraska's natural resources. There's three different things I wanted to talk about. Mostly I want to address issues related to the protection of the Ogallala Aquifer in the Sandhills region. First of all, it's an extremely valuable resource. Secondly, it's extremely vulnerable. And third, hazardous pipelines, hazardous liquid pipelines present an extraordinary threat to the aquifer. There's a lot of information about how large the Ogallala Aquifer is, in particular focusing on the aquifer in the Sandhills area. In many areas of the Sandhills, the saturation of the aquifer is over 1,000 feet in depth; in many other places the aquifer is less than 100 feet. So this is really a large water source. And I also attached a map showing places where groundwater has been seriously depleted, including areas in Nebraska, but

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also areas in Kansas, Oklahoma, and Texas. Because it seems to me that because of the fact that this is such a large resource and it provides an opportunity to take care of our needs in coming years, and as if we're going to be facing droughts in the future it's going to become even more valuable. And if you look at literature about aquifers in developing countries, for example, in China and India, many of the aquifers in those countries are also suffering significant depletions and so people are depending upon irrigation in order to feed themselves. This aquifer will become much more valuable. I would submit that today it's more valuable than oil and in 50 years it will be immensely more valuable than any other resource. Then what is the threat to it? Well, first of all, I thought I was looking at the report that was given to this committee back in December and Professor Gates pointed out that it was very likely that an oil leak would reach the aquifer because we have shallow water tables and the soils are typically sandy. He also noted that the aquifer often discharges back to the surface and it's difficult to prevent pollution in those areas from reaching the surface. If this occurred, it would be likely that there would be far wider dispersion of the pollution than a typical leak into an aquifer. It's also notable, as someone else mentioned, that aquifers are extremely difficult to remediate and oftentimes they remain polluted for many years. And because of the depth of the aquifer in this area, it's likely that more water would be polluted than a leak into a typical aquifer. And finally, as Mr. Wolf indicated, there's some evidence...there's some new research that indicates that tar sands pipelines present a special threat. These findings indicate that tar sands are more corrosive and pipelines carrying them are more likely to leak than ordinary crude oil pipelines. And there's already been discussion about the Kalamazoo leak and so I won't talk any further about that. We believe that the Ogallala Aquifer is a uniquely valuable resource for Nebraska and the United States. It's extremely vulnerable and that tar sands pipelines represent an unusual and significant threat to that resource. One of the findings of the Gulf Oil Spill Commission was that the entire problem could have been prevented by oversight. We need to take the proper steps and we believe that this, the legislation being considered today, is part of that process. There are a couple of other things I just wanted to mention. There's been lots of good testimony today. Some of the suggestions that Mr. Loeffler mentioned relating to requirements of FERC may be worthwhile in considering that they would be included in the provisions of the legislation today and it probably makes some sense to blend some of the suggestions of the various bills in this process. And I would be glad to work with the committee and the introducers with regard to any of this legislation. Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Winston? Seeing none, thank you very much. Well done. [LB340 LB578 LB629]

KEN WINSTON: Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Further testimony in support or proponents. I need your green sheet before you sit down. Perfect. Welcome back. [LB340 LB578 LB629]

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WAYNE FROST: Welcome back. I won't talk very long. Wayne Frost, W-a-y-n-e F-r-o-s-t. I do have two or three things that I would like to reiterate from previous discussions I might have had with several of you people. I think that you're finding out, and I think we're finding out, that you got way more power than you really thought you had when this whole thing started. And I've felt that way all the time and you know that, that this Legislature has a lot of power if they use it. I am in favor of all three of these bills. I think they should be combined and worked out so that they make one bill that covers this whole range of problems that we have within it. If that don't work just like it should in order to get it worked out, well, then we'll have to have more than one bill. But I think all of the senators that introduced these need to be commended for sure. This pipeline thing is a big, big deal and what it has the possibility of doing for the state and what it might do as far as taking away a lot of the ability of this state economically, we don't need to take the chances on that. All the rivers in the northern part of this state, whether it's the Niobrara, the Cedar River, Loup River, Snake River, and all those rivers are spring fed, basically are fed with the runoff of the water out of this aquifer where it reaches the surface. I lived on a little spring creek when I started farming and we pumped 1,000 gallon a minute out of that creek just from spring water and the only time there was any other water than spring water in there is when it rained. It was all spring water. And that comes in from quite a long ways away from them rivers where them springs come from to feed in the small, little drainages that go into those creeks to make there. I know that if I would have had potential of getting oil into that water, it would have been like me dumping diesel fuel in there and then trying to irrigate with it, and I don't want that to happen to anybody. Right now, with the development of irrigation, there's probably only...get 250 gallon out of that creek right now, but it's still spring fed 100 percent. So all them rivers up there, when they say that the oil don't move very far in the aquifer, it goes into the springs and them springs move quickly from under the aquifer into those rivers, because they run all the time. And if they didn't move fairly quickly, it wouldn't do that. I didn't give you any letters to read or anything to take and have to read. Looks to me like somebody has given you plenty already. And I'm sure you'll read them all (laugh) or at least your staff will. But the fact is it's important. This thing is very, very important. And I appreciate the attention that everybody has shown for everybody that's been talking. Nobody has fell asleep up here in your committee. Everybody has listened all the time and that's been very, very appreciative. And I think all the people in the audience appreciate that too. I was also appreciative of the senators that sent letters into the...out of the Legislature sent them to Hillary Clinton, and even more appreciative of the somewhere between 80 and 90 organizations along this route sent in a letter to indicate that they were disapproving of what was happening here. Personally, I'm not so far against this pipeline, as it's just where they're putting it. But I don't think tar sands is a very good thing to be using to cut down on our pollution. Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Frost? Seeing none, very good. And for those of you in the audience, when the senators are leaving, they're

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introducing bills in other committees. So they do have to go do that and that's where Senator Christensen is now. I think he's in Judiciary. Come on up. Welcome. [LB340 LB578 LB629]

DOUGLAS COBB: I'm Douglas Cobb, D-o-u-g-l-a-s C-o-b-b. Mr. Chairman, members of the Natural Resources Committee, thank you for the opportunity to speak to you today. In December, I came before this committee indicating numerous concerns. You may remember, they were quite lengthy. For those of you new to the committee, the Keystone XL pipeline is prepared to cross our land in Holt County where the water table at the present time and for the past year is at ground level. The proposed pipeline is going to be located approximately 250 yards from my home in our domestic water supply. I spoke at that time in December and, obviously, you listened. These three bills can certainly help alleviate some of the concerns I have as a landowner. Those of you who sponsored the bills, my wife and I thank you. We encourage the committee to support all three bills and to do whatever you can to encourage your fellow legislators. Once again, thank you. We truly appreciate your efforts. Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Cobb? Seeing none, thank you very much. Further testimony in support. Don't fight, come on up. Welcome. [LB340 LB578 LB629]

MARIAN LANGAN: (Exhibits 21 and 22) Good afternoon. I'm Marian Langan, M-a-r-i-a-n L-a-n-g-a-n, and I want to especially thank Senators Dubas, Haar, and Sullivan for bringing forth this legislation and to everybody that worked on it. I have submitted testimony on behalf of Nebraska citizen Moni Usasz, who's in support of LB578, LB629, and LB340. I've also submitted testimony on behalf of Susan Seacrest, who's also in support of all three of these bills. I'd like to recognize Mrs. Seacrest's body of work in doing...her nationally recognized work in groundwater protection and groundwater education. She also submits her research on the necessity or the questionable necessity of this project to begin with, the Keystone pipeline, and her call for leadership to, at a very minimum, get that thing moved out of our Sandhills. I, myself, am testifying on behalf of Audubon members all across Nebraska. I won't reiterate. There's been great testimony. I do want to remind everyone this oil is...besides being just disastrous extraction technique, it is not guaranteed for the U.S. markets. The pipeline bypasses the Midwest refineries and takes it right to the coast, and there's some investigative journalism that has come out showing that it's possibly intended for Chinese markets to begin with. So there's no guarantee whatsoever that this is going to help us or any of our energy needs in the United States. On the other hand, our Nebraska citizens have been treated in an appalling manner. They're being asked to, the landowners and our citizens in general, being asked to take on huge environmental risks, huge financial risks without the direct payoff being to Nebraska, and I just cannot see how that can make sense in any measure. It doesn't help us develop our own ethanol business. It doesn't help us with our own wind...exciting wind energy developments. It's

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just a no-win for Nebraska. That being said, we do definitely support LB578, LB629, and LB340 in the strongest possible combination, including amendments, to protect our citizens. I'm happy to answer any questions. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good. Are there any questions for Ms. Langan? Seeing none, thank you very much. Well done. [LB340 LB578 LB629]

MARIAN LANGAN: Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Further testimony in support. Welcome. [LB340 LB578 LB629]

CARA BRENNER: (Exhibits 23, 24, and 25) Hi. Senator Langemeier and the members of the Natural Resources Committee. My name is Cara Brenner and that is spelled C-a-r-a B-r-e-n-n-e-r, and I am here on behalf of the Nebraska League of Conservation Voters to support LB340, LB578, and LB629. I have also submitted for the record a letter from Shirley Condon, who's a property owner affected by the Keystone XL pipeline and she's also a member of the NLCV. Requiring a pipeline carrier to provide proof of financial responsibility and a plan for the cleanup of any leaks, spills, or incident is merely a solidification of best practices to which many pipeline carriers already adhere. While pipeline carriers will always argue that incidents or spills are rare, they also admit that they can and do occur. As we have seen in previous testimony that discussed the Enbridge spill in Michigan, leaks often require thousands of people who are trained in the implementation of highly specialized methods required for toxic or hazardous materials cleanup. Even TransCanada recognizes that if and when a leak occurs, they would take financial responsibility for the cleanup. In a report commissioned by TransCanada on pipeline safety, it states cleanup would be conducted to ensure the protection of human health and the environment to meet state and federal standards. The important thing to note here is the line that states that cleanups must meet state and federal standards. Because hazardous materials pipelines are relatively new to Nebraska, we simply don't have state standards established for the remediation of leaks. These bills, especially LB629, are merely the first steps that we must take as Nebraskans to protect the health and well-being of our citizens, our farmland, our fragile ecosystems, our water resources, and our wildlife. These bills will give the state of Nebraska legal ground to stand on if these pipeline carriers fail to keep their word. While doing research on my testimony, I came across an organization called Focus Wildlife that specializes in emergency resource development and works collaboratively with government organizations, such as the Department of Natural Resources, Department of Environmental Quality, and the EPA, to address region-specific emergency wildlife issues. The very fact that a professional organization of this nature exists is cause for concern over the efficacy of an emergency resource response plan in case of a leak in the state of Nebraska. Requiring not only financial responsibility, but an emergency response plan is a must for a state that has no experience in

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dealing with hazardous and toxic waste spills of this nature. For example, if a leak were to occur along the proposed Keystone XL pipeline route, where would the manpower necessary to pull off a full-scale cleanup that includes land, water, and wildlife decontamination come from? In almost all other major pipeline leaks, dedicated and hardworking people have come out en masse to volunteer with the cleanup process. However, in Nebraska, where the proposed pipeline is, we simply don't have enough people to come out en masse to assist in cleanup efforts, let alone people who are trained in the methodology required for decontamination. If a leak were to occur, we would need thousands of highly trained people working long hours and we would need them immediately. I would bet that most Nebraskans would do everything in their power to help assist a cleanup effort, but who would organize them? Who would train them? Would we even have enough people to do the work required to mitigate the negative impacts of a leak? Simply put, we do not have an adequate emergency response plan in place to deal with a tar sands oil leak and our rural communities are not ready to shoulder this burden alone. A 66-page report commissioned by the Plains Justice Institute on the Keystone pipeline oil spill response plan highlights many of the inadequacies of an emergency action plan to contain and clean up a leak. This report states, "Plains Justice is also concerned that should a spill happen in a remote location in the northern Great Plains, the logistical challenges faced by TransCanada and its contractors would be substantially greater than those faced by Enbridge in southern Michigan. In much of the northern Great Plains, local businesses do not have the ability to shelter and feed thousands of workers at short notice, with the result that TransCanada and its contractors would be responsible not only for responding to an oil spill, but for caring for the needs of thousands of spill responders far from large commercial supply networks. Should a spill happen during harsh winter conditions, these logistical problems could turn into a nightmare. Unfortunately, TransCanada's FRP offers only lip service to these challenges. It should provide detailed planning and confirmation that logistical supplies and equipment, including large amounts of temporary shelters, are prepositioned and ready to go." And like I said, that's only 1 page of a 66-page report, which I'm also willing to put on the record. I believe you guys all have copies of it already but, if you need it, I have it here as well. These three bills--LB340, LB578, and LB629--are the first steps necessary in protecting the public health and well-being, as well as our land, water, and wildlife. These bills will establish the very standards to which pipeline carriers will be held accountable. I suggest we set that bar pretty high and that we do it quickly so we can ensure the stability, integrity, and beauty of Nebraska lands for generations to come. With that, I would like to thank Senator Dubas, Senator Haar, and Senator Sullivan for introducing these much needed bills, as well as the Natural Resources Committee for your time and attention. Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good. Are there any questions for Ms. Brenner? Senator Smith. [LB340 LB578 LB629]

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SENATOR SMITH: Thank you, Senator Langemeier. Is there any particular path that you would support other than the path that's proposed by TransCanada XL? [LB340 LB578 LB629]

CARA BRENNER: I mean potentially there could be. I think that having an integrated plan that works with the local communities, with the Department of Natural Resources, with the Department of Environmental Quality, I think that that's really important and as of yet I haven't seen much more detail from TransCanada as far as what that plan would include. I think that having local oversight over what that plan would be would be very important to making sure that it's effective. [LB340 LB578 LB629]

SENATOR SMITH: Okay. So in concept you're not opposed to the construction or the transport of the product; it's just the pathway. [LB340 LB578 LB629]

CARA BRENNER: Yes. [LB340 LB578 LB629]

SENATOR SMITH: Okay. Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much. Well done. Further testimony in support or proponents? Seeing none...oh, come on up. Don't be shy. Vern, welcome. [LB340 LB578 LB629]

VERN BARRETT: Thanks. I'm Vern Barrett, V-e-r-n B-a-r-r-e-t-t, and I'm here to support all three bills. And since you've heard a lot of the things that I would have said, just a couple things I want to lift up to you. Both Senator Langemeier and Haar are very aware of the superfund site that is in my home county of Saunders. That superfund site has cost we taxpayers millions and millions and millions of dollars, years and years and years. It still is not solved. And it was not in poor soil. So we're talking about, you know, a similar situation that could be a much bigger disaster in...where the Keystone pipeline is going than was in Saunders County. I've talked with engineers who are very familiar with steel in pipelines and they assured me there is...you can never guarantee that there will not be a leak. That's going to happen sometime. So when you talk about a leak, and there's been enough testimony before about the consequences what that might be, you're talking about another superfund kind of disaster that you can prevent from occurring. Some of the problem possibly could be resolved by rerouting it, maybe taking it farther east along the similar route that the other pipeline goes, away from the Ogallala Aquifer. Or better yet, don't build it at all. So my thoughts. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Barrett? Seeing none, thank you very much. [LB340 LB578 LB629]

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VERN BARRETT: All right. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Well done. Further testimony in support or proponents? Seeing none, I think seeing none, okay, I have a number of letters in support. (Exhibits 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36) I have one from Jane Kleeb with Bold Nebraska. I have one from Mary Pipher from Lincoln. I have one from Randy Thompson of Martell; Debbie Hunsberger from Omaha; Janet Carlson from Lincoln; Jane Wilson from Omaha; Lyle Vannier from Lincoln; Ray Capek from Fillmore County Board of Supervisors; Harry Bennett from Marion, Kansas; and Bruce Hanson from Stanton; and Gene Sengstake from Lincoln. Those are letters in support of all three: LB340, LB578, LB629. Now we're going to move to opponents of the three bills and I have a list of those we're going to go through first and then we'll move to open opponents. First person is Jim Krause gets to testify on behalf of TransCanada. Then we'll come back. [LB340 LB578 LB629]

JIM KRAUSE: Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: There's always a stack of pens left there at the end of the day so, yeah, welcome. [LB340 LB578 LB629]

JIM KRAUSE: (Exhibits 37, 38, 39, and 40) Thank you. I'll try to paraphrase and be brief. My name is Jim Krause, K-r-a-u-s-e. I've passed out some written testimony but I'll try to shorten that in my oral statement. I've also passed out three letters in opposition of these bills, one from the Nebraska (sic) Chamber of Commerce, Kinder Morgan, and I lost my copy so...there's another one there that I can't recall the name, but it's there. Good afternoon. Thank you for your time. My role in TransCanada, I'm an operations director in TransCanada pipelines and I have the responsibility for the general operations and maintenance of the Keystone pipeline system here in the United States. My responsibilities include ensuring the long-term integrity of the pipeline system and, most importantly, a major part of my role is to ensure that the emergency response plans are solid and that our employees and contractors are well-trained and prepared to take on any emergency that could impact our pipeline and the communities and land we're adjacent to. My family and I have been residents of Nebraska for four years and we make our home in Omaha. Our company also selected Omaha, Nebraska, to be the operations headquarters for Keystone pipelines in the U.S. To date we have hired or relocated approximately 20 personnel that are supporting the day-to-day operations of Keystone out of our Omaha office. We also have a handful of field employees working throughout the system in Nebraska and have a field office in Fairbury. I'd like to thank the committee for the opportunity to present this testimony in opposition to LB340, LB578, and LB629. Together we believe these three bills would delay or prevent construction of the Keystone pipeline. I will speak to you today regarding the Keystone XL Pipeline project and give you some facts about this pipeline, our company, and

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what this means to both Nebraska and the United States. Following my testimony, Mr. Paul Fuhrer from our company will speak specifically to each legislative bill that are up for consideration today. This project simply is about building a pipeline that can carry oil from Canada and the northern United States and deliver it to U.S. refineries. It's that simple. This project will not only bring Canadian oil to American refineries, it provides American producers with safe and affordable options to move the oil they produce in American refineries. As some of you may know, including the new discoveries of oil in North Dakota and Montana, ultimately about, we believe, 25 percent of the oil that will be transported on the XL system will come from U.S.-based producers. Keystone will take this American and Canadian oil and safely and reliably to help reduce America's dependency on oil from the Middle East and Venezuela and Africa by up to 40 percent. This will stabilize energy costs and reduce expensive price spikes at the pump. Keystone will play an important role in linking a secure and growing supply of Canadian oil with the largest refining markets in the United States, thus significantly improving United States energy security. It will also provide, again, the critical infrastructure to deliver U.S. crude from the northern states to the U.S. Gulf Coast. Importantly, a new report recently issued by the U.S. Department of Energy supports our view that the Keystone XL project will improve U.S. energy security. The study found that the Keystone XL pipeline would help reduce U.S. imports of foreign oil from sources outside of North America. We previously provided a copy of that report to this committee. Stable energy from a friendly neighbor, jobs and economic growth, that's what the TransCanada Keystone Pipeline will deliver. We oppose bills LB340, LB578, and LB629 and believe that the federal review of this pipeline need not be repeated by the state of Nebraska. Existing laws that cover the safe operation of hundred of thousands of miles of crude oil and other liquid pipelines in the U.S. and thousands of miles in Nebraska are adequate and do not need to be replicated. Simply put, we want to get the Keystone Pipeline working for America. Thank you, Mr. Chairman. Thank you, committee members. I'd be happy to answer any questions that you might have. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Smith. [LB340 LB578 LB629]

SENATOR SMITH: Yes, thank you, Senator Langemeier. And, Mr. Krause, there was someone here previously that commented that there was some investigative reporting or that there was going to be some of this shipped overseas, to oversea markets, as opposed to being used in the United States. Can you speak to that? [LB340 LB578 LB629]

JIM KRAUSE: I'll give you my opinion on that. The oil that is being moved is 80 percent contracted to refineries in the United States. And then I think more simply put, looking at a map it would make no sense at all to take a pipeline from Northern Alberta and take it down to Houston if the intent is merely just to ship it to China. That would be one of the poorest routes that one could select. [LB340 LB578 LB629]

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SENATOR SMITH: What are the typical lengths of those contracts? [LB340 LB578 LB629]

JIM KRAUSE: Twenty years. [LB340 LB578 LB629]

SENATOR SMITH: And that contract, of course, would begin the day that they would begin to receive or have they already begun to receive? [LB340 LB578 LB629]

JIM KRAUSE: It's once the people on the far end start to receive the oil, as they have already been doing since June on the first phase of the Keystone pipeline. [LB340 LB578 LB629]

SENATOR SMITH: One year, one year into it at this point. [LB340 LB578 LB629]

JIM KRAUSE: Yeah. Yep. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Senator Haar. [LB340 LB578 LB629]

SENATOR HAAR: Since you're in operations, actually how much does this oil heat up because of friction? [LB340 LB578 LB629]

JIM KRAUSE: That's a great question that has been going around a number of times, and as stated earlier in this committee, we provide no heat to the pipe. But you're correct, the pipe does heat up from the friction not only from the pumps, but from the pipe itself. Ultimately, the oil of...the temperature of the pipe and the oil is governed mainly by ground temperature. That has a huge impact on the temperature of the oil. So as the oil comes up to a pump station, it can be very close to what the current ground temperature is four feet below ground. As it exits the station, some of that pumping will heat it up a bit, but it's not like it gets really, really hot and changes the viscosity to a great amount. [LB340 LB578 LB629]

SENATOR HAAR: Now you may not be the person to answer this one, maybe the next person, but if there is decommissioning for whatever purpose, who pays for that and how are we guaranteed, for example, the landowners? [LB340 LB578 LB629]

JIM KRAUSE: Sure. It's an excellent question and it has come up a few times here. There will be some testimony later that will cover that in detail, but, again, my background and knowledge of this is we're required through a permitting process through PHMSA, the Department of Transportation, we are held liable for reclamation and restoration of any abandoned pipeline. In technical terms, what that would mean, if the pipeline is not needed for oil somewhere down the

road and there is no other use for any other product to go through that pipe, let's say gasoline, or maybe by that time in the future, water, then the pipeline needs to be...follow very stringent processes to be taken out of service. Cleaning pigs squeal down the pipeline and remove whatever oil is in the pipe. And then further pigs goes down and clean whatever residue is in there. And then, essentially, the pipe is closed at each end and the inert gas, such as nitrogen, is put into the pipe. The cathodic protection systems on the pipe continue to have the function, by law, to ensure the pipe doesn't corrode. And the nitrogen inside makes sure there's no internal corrosion taking place as well. [LB340 LB578 LB629]

SENATOR HAAR: So, but if some point, because everything eventually wears out, I mean, pipeline will last a lot longer than I will, but if it collapses at some point after it's decommissioned, how...who takes care of that? [LB340 LB578 LB629]

JIM KRAUSE: The owner of the pipeline, which is us. [LB340 LB578 LB629]

SENATOR HAAR: And if you're no longer the owner? [LB340 LB578 LB629]

JIM KRAUSE: Whoever takes ownership from us would have to carry on that liability. [LB340 LB578 LB629]

SENATOR HAAR: And if it's abandoned and just, you know, goes through bankruptcy or something, I still...at the end you could come up with someone with a situation where there's nobody financially capable of dealing with that. [LB340 LB578 LB629]

JIM KRAUSE: I can only speak for our company. And we would not let that happen. I think it's important to understand that the Keystone Pipeline is not our sole business. There will be a large deal of revenue from the pipeline, but we also have most of our business in natural gas pipelines, electrical energy production, hydroelectric energy production and wind energy production. So the Keystone Pipeline itself is but a piece of all the assets of TransCanada. [LB340 LB578 LB629]

SENATOR HAAR: Right. So do you actually set that money aside then for the eventual decommissioning of... [LB340 LB578 LB629]

JIM KRAUSE: We are insured for that. But in case of, let's say, another pipe, an older pipe, we have 60-year old pipe on the Canadian mainline, natural gas, however that pipe is still in very good condition because it's been maintained. If a hundred years down the road, let's say that pipe is no longer needed, then the tolls and tariffs on that pipe that are approved by the regulator have

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to collect enough money to insure the abandonment of that pipeline and that it's financed. It's not left to the landowner or the state to take care of our issue. [LB340 LB578 LB629]

SENATOR HAAR: But is that money actually put into a fund that's there to cover. [LB340 LB578 LB629]

JIM KRAUSE: I don't know the exact financial economics, but yes, that's my impression is that it's collected from the shippers on that pipeline and set aside for the abandonment or reclamation of that pipeline. [LB340 LB578 LB629]

SENATOR HAAR: So then how does that conflict with my bill which is...the one that talks about, you know, putting aside money for this? [LB340 LB578 LB629]

JIM KRAUSE: I believe the money that you're asking to be put aside is redundant to the money that we're already putting aside through our tolls. [LB340 LB578 LB629]

SENATOR HAAR: Okay. Might make us feel better here. [LB340 LB578 LB629]

JIM KRAUSE: I understand that. [LB340 LB578 LB629]

SENATOR HAAR: Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Senator Carlson. [LB340 LB578 LB629]

SENATOR CARLSON: Thank you, Senator Langemeier. I want to ask some questions about how people have been dealt with. Would that be better to ask somebody who comes behind you? [LB340 LB578 LB629]

JIM KRAUSE: Um, there will be somebody that comes behind that...I will say this, because I was expecting this question and I heard a long line of testimony from landowners today. I've been with the company for almost 30 years, most of the time in field operations. That's not how our company treats landowners, what I've heard today. I...in my business in a given year, I fire off very few e-mails that say urgent. Fifteen minutes ago I fired off one to the head of our land department for KXL entitled urgent. I want to get some information. If we have a pocket of land agents that are acting not in the spirit or values of TransCanada, then I'll ensure that gets fixed. I was disappointed hearing what I heard today. [LB340 LB578 LB629]

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SENATOR CARLSON: Okay. I'm glad to hear you say that and most of us are well acquainted with your advocates in Lincoln who are working for you and they are honorable people and I respect them. And this kind of thing that we've heard today, they're uncomfortable...they have to be uncomfortable with. And some of these people who have testified I know personally and they're not going to come up here and share falsehoods. So I'm glad that you're concerned about that and certainly I'm going to ask some more questions later on. [LB340 LB578 LB629]

JIM KRAUSE: Thank you. I imagine I will get another question. I just wonder if someone could bring me a glass of water because I've been sitting over there a long time sweating. I will share this, because in my job I'm not dealing with the landowner for a year or six months. I'm dealing with them for a long, long time. The landowners on our system, once we go into operations, are a key piece of our business. They...if we have some sort of problem in the pipeline, whether it's a leak, whether it's somebody doing an encroachment with heavy equipment, whether it's somebody who we think may be wanting to do a nasty thing to the pipeline, the landowner will be the first to know it and will get ahold of us. So we want to make sure that we have long-term, positive relations with the landowner. This isn't an asset that we're going to flip. This is a pipeline that we plan to operate for a long time and we can't do it without the successful participation of the landowners. And I will cite one example, because we did hear some examples that I was disappointed with earlier, but this example takes us into operations in early August of last year. I was called on Friday afternoon, I always seem to get the fun calls on Friday afternoon, routed to me from a landowner in Missouri who was on their tractor cutting grass on their acreage and they were pulling behind them one of those cutters that has the, you know, the two swirling blades. That landowner got stuck on our right-of-way. He's very familiar with the right-of-way because the pipeline isn't that old. He phoned us and said, my tractor is stuck, I'm in something, it's black and I don't want to move my tractor any more. And so we asked him does it smell like oil, does it smell like something unusual? And the gentleman replied, he said, well I'm up there in years, my nose isn't all that good. We immediately shut in 1,100 miles of pipeline instantly, halting production all the way from Alberta to St. Louis. We dispatched one of my technicians; he was there in an hour and a half, went out with the farmer, determined the puddle to be just oily water...oily, sorry, muddy water. He has very good topsoil and that's why the water was black. We thanked the farmer. We asked him to keep being vigilant to things on the pipeline. We gave him a souvenir gift and two hours later we started our pipeline back up again. That's how we operate our pipeline. And that's how we deal with our landowners. [LB340 LB578 LB629]

SENATOR CARLSON: Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Senator Dubas. [LB340 LB578 LB629]

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SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Mr. Krause, for being here today and a couple of comments that you made I'd like to pursue. You talked about, probably my particular bill, but maybe all three of them, duplicating what you may already be doing at the federal level and I stated in my opening anything that I could do to create a cooperative effort, I am definitely open to. I'm not looking to create additional, repetitive types of procedures here. So if there is some way that we can piggyback these or work together to create something at the state, as well as the federal, I'm definitely open to working with you on that. [LB340 LB578 LB629]

JIM KRAUSE: Thank you. [LB340 LB578 LB629]

SENATOR DUBAS: I've also been trying to put myself in your shoes today and I'm just going to guess that maybe you're feeling just a slight bit persecuted and a little bit on the defensive and I certainly understand that, but I'd like to take that, and I guess before I go on, I will agree with Senator Carlson, I'm very appreciative to hear what you just stated about sending out that urgent e-mail. That's very important to me. But I'd like to take what you're feeling right now and flip that over to the landowners that we've heard from today, as well as many others that I've heard from. They are feeling somewhat persecuted... [LB340 LB578 LB629]

JIM KRAUSE: Uh-hum. [LB340 LB578 LB629]

SENATOR DUBAS: ...and not respected with the things they are saying. I've also heard from landowners and know landowners personally who are very happy with their negotiated agreement. They have had no problems with their dealings with you, so I have heard on both sides of this. But I don't think those who are satisfied with their agreement should negate those who are concerned with how they've been treated to date. I know you probably don't appreciate having your integrity questioned, but neither do our landowners who are raising their concerns. So for these people that are coming forward today, you know, and again, it sounds like you've already addressed it, but I just hope that you won't continue to dismiss them. [LB340 LB578 LB629]

JIM KRAUSE: I've begun to address it. I'm the person who is staying here for the long term. And I want to make sure our landowners have a positive relationship with us. One of the other plans that we have coming out of our shop is to get the landowners help us with visual looks at the stations, our pump stations. We fly the pipeline every two weeks, looks for encroachments, looks for any signs of trouble, looks for any small leaks, and our technicians will visit a pump station maybe two times a week. But in between there, what we'd like to do is get the adjacent landowners, pay them some sort of a stipend per year, on a daily basis maybe just drive over to our station and have a look. They don't need to go inside, but they can have a look around. The

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other thing, the landowner knows the vehicles that go through that area whether somebody is supposed to be there or not. And if there is somebody digging a trench or digging a dugout where they shouldn't be, the landowner will be able to notice that right away and get a hold of us. That, again, is the relationship we want to build. And, again, I do feel terrible for the landowners who have come up here today, because, again, that's not the company I've worked with and that's not the values that we hold dear to the company and we will get that fixed. I can't kid the committee to think that every landowner is going to be on our happy face card or Facebook invite list. But we'll do all we can to make sure it's fair, and especially in the long-term and ongoing, make sure that we have positive relations. Again, the landowners are key for us to be successful. [LB340 LB578 LB629]

SENATOR DUBAS: Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good. Senator Haar. [LB340 LB578 LB629]

SENATOR HAAR: Yes, are there any Nebraska agencies that you deal with on a regular basis and who are they? [LB340 LB578 LB629]

JIM KRAUSE: Well we deal with the Department of Environmental Quality. If we have an issue at one of our stations, if we have a small spill, let's say we're doing maintenance work and we spill two gallons of oil on the ground, we telephone the Department of Environmental Quality of this state. The law doesn't require us to, but we've done that anyway just so they're aware of what is going on in case they hear about it from somebody else. Upcoming testimony will talk about the similarities of PHMSA and the Department of Transportation's oversight of our permitting construction and operations that I think you'll find parallel a lot of the testimony you heard from the gentleman from Northern Natural Gas. I, myself, have spent most of my life in the natural gas pipeline business. Before this job I managed the Northern Border Pipeline which is an interstate pipeline that goes through Montana, South Dakota, North Dakota, up into Minneapolis and the Chicago market. TransCanada has thousands of miles of interstate pipeline in this country so we're very familiar with the rules and regulations. And we're also familiar with the rules and regulations that bind us to the oil pipeline. There may be different regulatory agencies, but the oversight and intensity of those regulations are very, very similar. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good. Senator Smith. [LB340 LB578 LB629]

SENATOR SMITH: Thank you, Senator Langemeier. Mr. Krause, I'd like to make a tertiary remark on this issue Senator Carlson made and Senator Dubas made, that I too was alarmed by hearing some of the testimony tonight about the experiences some of the landowners have had

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with their interaction with TransCanada representatives. I've also...who hasn't been in that position before where they didn't feel like they were being heard and on a very serious issue to them. And also I appreciate your approach to addressing that...your urgent e-mail that went out, and I know as a business owner myself, a lot of times you rely on employees or you rely on subcontractors to represent your interests and it sounds like that may be the case that has happened here that you've relied on a third party to represent your core set of values and maybe those have not been represented, so it sounds like you're well on your way. And even tonight as you leave here tonight, shake a few hands and begin to mend those fences... [LB340 LB578 LB629]

JIM KRAUSE: Thank you. [LB340 LB578 LB629]

SENATOR SMITH: ...and make those improvements. But my question is, I've received a lot of information, some comments that have been made tonight and I don't know if you can...I'm going to try to wrap them all into one topic and see if you can begin to address that. If you need to defer it, that's okay as well. But Mr. Woldt from University of Nebraska noted that he had some concerns about the preparedness to deal with leaks. And Doctor Wedin talked about corrosion issues with the pipeline. And I've also seen some remarks that, and I don't know if this is accurate or not, please, this is the part that I really want you to address, that this is TransCanada's first oil pipeline. The one built in Nebraska was their first oil pipeline and that they're very new to oil pipelines and then also that there were three areas of the first pipeline that had to be dug up because of anomalies found in the steel. Anything to add on that? [LB340 LB578 LB629]

JIM KRAUSE: I can speak a bit to that. We do have an engineer coming up. Yes, it is our first major oil pipeline. But, why we're operating that pipeline is, generally, in fact almost exclusively, if we own something, we operate it. It's rare that we own something and don't operate it and it's equally rare that we'll operate something we don't own. If our name is on the fence, we're going to be taking care of it. We do have a lot of expertise in emergency response in our company, in pipe engineering, in pipe remediation, in pipe integrity, how to keep pipes safe in the communities, how to keep them working and functioning normally. That's why we chose to operate this pipeline. The oil does present different challenges and we've brought in experts; we've hired them into our company to bring some of that expertise in that we didn't necessarily have the deep enough bench-strength in to being with. So we brought that expertise in. On the anomalies on the initial phase, those anomalies are currently being investigated. They don't have any bearing on our ability to run at the 72 percent SMICE level, but they may have bearing on us to be able to run at the higher pressure and that's what we're addressing right now to see what next steps we need to take, if any. So we're working with PHMSA, the regulator on that and they're actually with us as we expose those three joints of pipe and see what their real characteristics are. We're hoping that problem will be solved soon. But again, we're not out there

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in the middle of the night trying to do something. The inspectors from PHMSA are there right with us and working on the technical details with us. [LB340 LB578 LB629]

SENATOR SMITH: And were the anomalies discovered through a preventative maintenance? [LB340 LB578 LB629]

JIM KRAUSE: Oh, we're required, not only by our practice, but by regulation to run these pigs down the line to inspect the inside of the pipeline immediately upon commissioning the pipeline and then every five years after. [LB340 LB578 LB629]

SENATOR SMITH: Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Senator Dubas. [LB340 LB578 LB629]

SENATOR DUBAS: Thank you, Senator Langemeier. I have one other question that was sparked by you mentioning PHMSA. I believe you or PHMSA, or maybe between the two, have the ability to designate areas as unusually sensitive areas where you would take extra precautions to protect wellheads or drinking water. Is that...am I correct in what I just said? And if so, is that something you are considering doing in any area of the Sandhills region that you're looking to go through? [LB340 LB578 LB629]

JIM KRAUSE: Well I think your statement is correct, there are sensitive areas such as the Sandhills, such as marshes, such as the city of Seward where we travel...traverse very close to their water supply. So we have special features and regulations that we put in place there. We do have an environmental engineer following me in testimony. But again, with the Sandhills we will do what we need to do to make that place recover quickly. We do have experience in sandhills. In the far eastern end of Alberta and the western end of Saskatchewan, there is a similar structure where we have six gas pipelines going through. So we do have some expertise in there. But frankly speaking, we may have a big test plot for the university to use to help us recover and rejuvenate that land. I mean, the plan is to work with the university to get them to help us. As been said a number of times, the landowners in that area, the people from the university, they have a lot of expertise and it would be foolish for us not to call upon that expertise and have them consult and help us out. [LB340 LB578 LB629]

SENATOR DUBAS: Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good. Are there any other questions? As you started your testimony, you referred to three letters that you wanted to submit. [LB340 LB578 LB629]

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JIM KRAUSE: Yes. [LB340 LB578 LB629]

SENATOR LANGEMEIER: (Exhibits 38, 39, and 40) And just to make sure that we get it right, one is from the Norfolk Area Chamber of Commerce; the other one is from Terry Dittmer, who is signed as owner, I assumed landowner after I read his letter; and then Kinder Morgan. [LB340 LB578 LB629]

JIM KRAUSE: Thank you for helping me out with that, Chairman. [LB340 LB578 LB629]

SENATOR LANGEMEIER: So, make sure we get that. Seeing no other questions, very good, thank you very much. [LB340 LB578 LB629]

JIM KRAUSE: Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Next is going to be...as Jim alluded to, Paul Fuhrer with TransCanada. Welcome back. Good evening. [LB340 LB578 LB629]

PAUL FUHRER: (Exhibits 41 and 42) Yes, good evening, Mr. Chairman. It has gotten close there. Mr. Chairman and members of the Natural Resources Committee, my name is Paul Fuhrer, P-a-u-l F as in Frank, u-h-r-e-r. I'm a manager with the TransCanada Pipelines. I have responsibility for U.S. new facility construction of certain portions of the Keystone XL Pipeline System. I am a native of Nebraska. My folks were living near Naper when I was born and moved from there to Bassett and then I grew up mostly in O'Neill through high school. I am a graduate of the University of Nebraska-Lincoln, so I have a lot of interest in what happens to resources and interests in the state of Nebraska. I've spent my life as a pipeliner, mostly based in Omaha, but traveled out of state for many of the projects that I worked on. In 2009, I was fortunate to oversee construction of the Keystone pipeline from the Canadian border to near Seneca, Kansas. So as for other pipeliners, Keystone represents an opportunity for me to use my skills and expertise here at home in Nebraska. A more detailed version of my experience is in the resume that was passed out along with my testimony. I would like to thank the committee for the opportunity to present testimony this afternoon in opposition to LB340, LB578 and LB629. In the time available to me, I would like to briefly address the legislative bills that are set for consideration today and why we must oppose them. One prefatory comment before I do so, and Jim kind of mentioned this, but my company has had a presence in Nebraska for over 25 years as the owner and more recently as the operator of the Northern Border Pipeline. So we share the interest of the Legislature in ensuring the safe operation of pipelines in this state. We have one of the best operating records in our industry because we take safety seriously. That is our approach with our existing pipelines and is our approach with Keystone and Keystone XL. LB340 would deny the right of eminent domain to a hazardous liquid pipeline which is defined in the act

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exclusively as a pipeline carrying petroleum including crude oil unless the pipeline first receives approval from the Nebraska Public Service Commission. The bill calls for filing a detailed application and requires the PSC to hold a public hearing on the application. Additional public meetings are also provided for. The bill calls for the PSC to make findings with respect to a number of issues, to consider evidence on those issues, and to enter an order granting or denying the application. These procedural aspects of the bill are essentially similar to the South Dakota Energy Conservation (sic) and Transmission Facilities Act. The bill has an emergency provision that makes it effective as of the date it is passed and approved. Keystone is opposed to LB340 as an eleventh hour creation of state regulatory review process for a pipeline project that has been in development for several years and is in the third year of a federal regulatory review process. The bill would also unnecessarily duplicate the ongoing exhaustive review being conducted at the federal level. This project has been under development since prospective shippers began expressing interest in a pipeline to the Gulf Coast refinery market several years ago. Keystone began its public outreach efforts for the Keystone XL pipeline in 2008. This included a series of public open houses in Nebraska and other project states. Keystone then filed its application with the State Department for a Presidential Permit in September of 2008. At the time the project was in the planning stages, Keystone acknowledged the South Dakota statute and filed a permit application with the South Dakota Public Utilities Commission under that statute in March of 2009. The South Dakota PUC conducted a year-long process including several public input hearings and a formal evidentiary hearing before the commission. And based on that public input and the evidence presented, the South Dakota PUC made the findings required by the statute and granted a permit for the Keystone XL project. While we believe the existing South Dakota process was duplicative of the federal review of the project, for the sake of expediency, we did not resist complying with the requirements of the existing state statute. Keystone participated fully in the permitting process and was pleased that the South Dakota PUC found the project met all the requirements and granted the permit. In contrast, however, applying the PSC process as outlined in LB340 to Keystone XL at this point in this development would jeopardize completion of the project. This is akin to a drastic change in the rules of the game late in the fourth quarter. The Keystone XL project has been public for almost three years and has been under regulatory review for much of that time. We are expecting the final major permits including the Presidential Permit from the State Department in the near term. The Keystone is scheduled to commence construction later this year. To impose new, major state permitting requirements on KXL at some point later this year, which would likely involve a lengthy PSC permitting process in an area where it has never had responsibility or experience would completely disrupt planning and construction of the project, unnecessarily delaying it and the many benefits that will provide to the state and the nation including over \$20 billion in jobs and other related economic benefits, as well as a greater assurance of a secure energy future. The permitting requirement in LB340 is tied to the right of eminent domain. Some may say if you don't want to get a permit, then don't use eminent domain. As we have said before, most recently before this committee on December 1, 2010, our strong preference is to work with the landowners to develop agreeable

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compensation and terms that would give us limited rights to construct and operate a pipeline below ground while landowners retain the rights to continue to use the ground in much the same way they have always done. We recognize that we're entering into a long-term relationship with landowners and our approach to easements reflects this reality. As a point of reference, the initial Keystone project we successfully negotiated easements with more than 98 percent of the affected landowners in Nebraska and throughout the rest of the project. Where it must be used, the eminent domain process protects the interests of those landowners who have negotiated and settled in good faith with energy and utility infrastructure project developers. However, the right of eminent domain is critical to ensure linear projects that will serve the public interest are not blocked by a small group of landowners. Keep in mind that these pipeline easements provide limited rights to construct and operate an underground pipeline. Except for small parcels acquired outright for pump stations and the like, the landowners retain ownership of the land and the right to continue to utilize the surface for most purposes including farming and ranching. Landowners receive compensation for the easements or property interests acquired based on the market value of the land, as well as compensation for the loss of use of the property during pipeline construction and for any related damages. Moreover, the eminent domain process as established by Nebraska state statute, provides a procedure in which the easement value is determined by Nebraska citizens. We have been negotiating in good faith with landowners in Nebraska along the Keystone XL route for two years. We have acquired easements from more than 75 percent of the 471 Nebraskans that are along the route in Nebraska. And we continue to work toward agreement on the outstanding easements. As required by Nebraska law, we will soon be making formal final offers by letter to those landowners with whom we have not yet been able to reach an agreement. Those final offers provide notice that if negotiations are unable to move forward, we will then turn to the process in place to resolve such differences. Even after we send those letters, however, we are still open to reaching a negotiated resolution with the landowners. Finally, it is important to recognize that the process in LB340 would unnecessarily duplicate at the state level reviews already required and ongoing for Keystone XL at the federal level. Since September, 2008, Keystone XL has been going through a review process at the federal level similar to those suggested in LB340. The federal review process led by the State Department under the National Environmental Policy Act has involved significant input from Nebraskans that continues to be considered by federal regulators. And public comments were held in Nebraska and elsewhere, as well as a 77-day public comment period. LB578 would require operators of crude oil or other hazardous pipelines to provide financial surety adequate to cover the costs of any necessary corrective action or cleanup in the event of a release and decommissioning in the event of abandonment or default. The PSC is charged with determining the appropriate amount of surety required. Several different forms are listed as acceptable. I think our main issue with LB578 and LB629 is the intentional maleficence or criminal act, you know, having...the amendment removes even that exception and our opposition is based on the fact that we...there's no opportunity. We're held accountable even if someone intentionally and

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maliciously would cause damage to the pipeline which would be the cause of the release. And I'll be happy to answer any questions that you might have. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good. We overshot our time, but somebody...we took somebody off the list, so you're doing just fine. [LB340 LB578 LB629]

PAUL FUHRER: Yep, I saw that. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Are there any questions? Senator Haar. [LB340 LB578 LB629]

SENATOR HAAR: Sure. So just to clarify, you're not saying that Keystone wouldn't build the pipeline if LB340 would delay it, or are you saying that Keystone probably wouldn't build the pipeline? [LB340 LB578 LB629]

PAUL FUHRER: Well, I don't really know the answer to that. It would certainly delay it beyond what our shippers that have signed up for the project expect from us. And whether they would stay with the project or abandon it at that point, we don't know. But it would jeopardize our ability to complete what we have committed to do to those shippers for those shippers. [LB340 LB578 LB629]

SENATOR HAAR: So there's a possibility that Keystone would just pull out of the whole project? [LB340 LB578 LB629]

PAUL FUHRER: There's no way to know the answer to that at this point. [LB340 LB578 LB629]

SENATOR HAAR: Okay. Do you consider LB340 the requirements more stringent than the federal, or just duplicative? [LB340 LB578 LB629]

PAUL FUHRER: Duplicative, and our biggest concern is simply that it does duplicate a process that's already in place that we've essentially already gone through and gathered that...the public input and also that this would have the potential to delay what we're trying to accomplish with Keystone XL. [LB340 LB578 LB629]

SENATOR HAAR: Well, one of the messages that comes from Nebraskans quite often is that we're not sure we trust what goes on in Washington. And then I really think that's part of the reason for all of these bills is the federal government is doing this and the federal government is

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doing that, but we might feel more comfortable, even if it is duplicative, if you went ahead with that process in South Dakota to go through that process with Nebraska. [LB340 LB578 LB629]

PAUL FUHRER: You know, I think the contrast that we're trying to point out is that that was in place in the project in time for that process to take place concurrently and that would not be the situation here. [LB340 LB578 LB629]

SENATOR HAAR: Well I think, you know, this was said at the December hearing, but I need to say it again, a number of really important things happened in the meantime and one was the spill in the Gulf and we heard that, you know, British Petroleum kept saying their...our highest priority is safety. And yet we find out when this spill started they really had no proven plan for fixing that. And then the whole thing in Enbridge Oil Company up in Kalamazoo River System, again, Enbridge had said, you know, safety is our highest priority, but now there's all kinds of legal tangle and they really don't wish to pay for some of those damages. So I think all of us are a little more trustful when...otherwise we might have done this beforehand, I think...and that's just for information. That some things have happened that make us a little more skeptical. It's that quote I started with from Ronald Reagan, trust, but verify. And I think, at least my bill, when you talk about proof of financial responsibility, what I hear is, basically, trust us; but my bill LB578 would actually verify that by putting the money aside. Then you said opposition to LB578 and the following bill were the criminal intent kinds of things. Mine is mainly about putting, you know, the proof of financial responsibility. Do you see that in my bill? [LB340 LB578 LB629]

PAUL FUHRER: Right, and I think Jim Krause addressed that from the standpoint that, you know, this is not our only business, although it is a big part of our business and we're not going anywhere. To have to...to have a separate requirement for some financial surety which, you know, there's no...at this point there's really no proven need for it and that's the basis for our opposition. [LB340 LB578 LB629]

SENATOR HAAR: Well the proven need, I guess, you know, it's not the first time with our big wind bill, LB1048, we actually have...we require also that kind of a surety and I guess that's up to us as a state to say whether we should just trust that you will always be in business, this will be a part of your business and so on or whether we would feel more comfortable to see something more. [LB340 LB578 LB629]

PAUL FUHRER: I understand that position. I guess the only thing I can say is, you know, having been involved in projects and...with and around TransCanada for some 25-plus years, you know, we would just have to say that our position, you know, our history is really what we stand on. [LB340 LB578 LB629]

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SENATOR HAAR: Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Senator Dubas. [LB340 LB578 LB629]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Mr. Fuhrer. Can you respond to the question that I asked Mr. Krause about this unusually sensitive area designation and is that a consideration for this project and what would happen if you place that designation? [LB340 LB578 LB629]

PAUL FUHRER: I think we have a...our environmental leader that will be better suited to address that. [LB340 LB578 LB629]

SENATOR DUBAS: Okay. Just not sure who I was supposed to ask it of. Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Senator Carlson. [LB340 LB578 LB629]

SENATOR CARLSON: Thank you, Senator Langemeier. In your statement here, you've indicated that you've acquired easements from more than 75 percent of 471 Nebraska landowners over a two-year period. What's the normal period of time to be able to reach almost 100? [LB340 LB578 LB629]

PAUL FUHRER: Well it depends. Acquiring easements and working with landowners, you know, you never cut that process off until it appears in your project schedule where you have to. So I mean, I don't want to make it sound like a year is the normal time or two years is the normal time. It depends on the project and it depends on the schedule. [LB340 LB578 LB629]

SENATOR CARLSON: Well you say that we've got more than 75 percent. I assume it's not much more than 75, so let's figure 76 or whatever it is, but then you say as required by Nebraska law we'll soon be making formal final offers. So if it doesn't change rather significantly between now and the time you follow Nebraska law, then 25 percent of the people that need to be in the fold are still not in it which is headed toward eminent domain. And I'm sure you were uncomfortable with some of the things that you've heard today in the prior testifiers. Now, in your position, I don't know what to call the people. Are the people that are supposed to negotiate these easements and agreements with the landowners, are they TransCanada employees or is that another business that you hired to do that? [LB340 LB578 LB629]

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PAUL FUHRER: That's from a business we hire, furnishes the agents that make the contacts with the landowner for the...and negotiate to acquire the easements. [LB340 LB578 LB629]

SENATOR CARLSON: Okay. So they're not TransCanada employees. It's another group. How are their people who meet face to face with the landowners paid? [LB340 LB578 LB629]

PAUL FUHRER: I'm not sure I...I'm not part of that contract. My experience has been that they are typically paid on a day rate. [LB340 LB578 LB629]

SENATOR CARLSON: Okay. Now I think that would be a pretty important thing to have an answer to, because if they're paid by the agreement is one thing; if they're paid by the day it's another. And by some of the things that we've heard that apparently went on, it's...it would make me think they're paid by the agreement. [LB340 LB578 LB629]

PAUL FUHRER: I can assure you they're not paid by the agreement. I just don't know how the exact compensation was structured under that contract. [LB340 LB578 LB629]

SENATOR CARLSON: Okay, so you don't know if they have a quota or anything like that to remain as an employee of their firm. [LB340 LB578 LB629]

PAUL FUHRER: No, I know they do not. [LB340 LB578 LB629]

SENATOR CARLSON: Okay. Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Senator Haar. [LB340 LB578 LB629]

SENATOR HAAR: Of course, my LB578 I feel really that we need proof of financial responsibility, but I'm skeptical so I might as well express that and get it out on the table. I don't understand with the Sandhills being such a fragile area with such a unique ecosystem why TransCanada is unwilling to go where it went to go east like the other pipeline. Wouldn't it be true, for example, that you have a lot less people to deal with if you go through the Sandhills because these are generally bigger ranches and stuff? [LB340 LB578 LB629]

PAUL FUHRER: I would say that the tracts of land we cross further west are larger than we would in the eastern part of the state, yes. But the driver of the route...if we were to follow the route of the original Keystone, it would increase the overall impacts of the project from an

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environmental standpoint and from the number of landowners affected from one end of the project to the other. [LB340 LB578 LB629]

SENATOR HAAR: But it would...it would go around the Sandhills which is, you know, so, yeah, it would affect more land, but we've already pretty much agreed, I think, that the land in eastern Nebraska is clay soil. At least on my property it's very, you know, we can't even get water to percolate. Whereas in the Sandhills, it's such a unique and different environment that the overall environmental impact would actually be much less if you went the route. Now I understand it would increase the length of the pipeline. But it would assuage my fears a great deal and I know you're not going to make a decision based on that. But that's what part of this is based on. [LB340 LB578 LB629]

PAUL FUHRER: I think we understand that basis and I think that as a pipeline company we have to look at the overall project from end and end and balance all of those issues as best we can and that resulted in the selection of this route. [LB340 LB578 LB629]

SENATOR HAAR: Okay. Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much for your testimony, well done. [LB340 LB578 LB629]

PAUL FUHRER: Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Further testifier we have Bill Sydow with the Nebraska Oil and Gas Commission. And then we're going to have Ron Sedlacek and then David Hayes on-deck you might say. [LB340 LB578 LB629]

BILL SYDOW: (Exhibits 43, 44, and 45) Well for the record my name is Bill Sydow, B-i-l-l S-as in Samuel, y-d as in David, o-w. I work for the Nebraska Oil and Gas Conservation Commission which is headquartered in Sidney, Nebraska. Our commission comes under the purview of this committee and we exist to regulate oil and gas exploration and production. So I'd just like to say first that crude oil has been successfully and safely produced in the state of Nebraska since 1939. Our opposition today, with all due respect, is more in wording for two bills, LB578 and LB629, although I can say we have some reservations about the ultimate effect of LB340 and that's for economic reasons that I'll share in a little bit. The ladies are distributing a letter. I've got one for each of these bills, but I'm going to roll my remarks first into LB578 and LB629. And in the first major problem we have at our commission is both bills define crude oil as a hazardous liquid. The fact is that crude oil is a naturally occurring material. We produce it, it is a natural resource

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and so the fact is it is not a hazardous liquid. Crude oil is combustible, I mean, we all know that it will burn, but it has been safely produced throughout the world for 150 years and men and women are around it every day. As far as regulation at a federal level and rules that we have, the U.S. EPA does not assign a hazardous designation to crude oil when it is in the oil field probably because it's not. But when it leaves the lease in a transportation device, whether it's a pipeline or a truck, now the federal government in their wisdom to categorize everything, had to come up with something. They call it combustible. I don't know if there's a DOT hazardous designation for crude oil, but it is combustible. The other fact is about crude oil there is no chronic health risks ever identified with coming into contact with crude oil and there's no adverse effects have been witnessed due to any kind of exposure from an exterior basis, skin contact or breathing it. Second, both of these bills, LB578 and LB629. address pipelines without regard, and when I read it, to the pipeline's use. We have small diameter pipelines in every oil field in the United States, certainly in every oil field in Nebraska. And those little two-inch pipelines transport crude oil from a wellhead to a separation facility or a free-water knockout. By definition, my pipelines will come under the purview of the Public Service Commission if these bills would pass because they're transporters of the now-defined hazardous liquid and that would immediately set us and our commission into a conflict with the Public Service Commission. The third thing about those bills, and I know that Senator Haar has addressed this, but they both address financial surety and bonding for the operators. Now our operators are bonded for their operations on oil and gas, and this, in fact, if taken to an nth degree could set up a double jeopardy where now they are going to have to double-bond something that really is a very minor detail. So if you have any questions on that, I'll just share later my experience with bonds and how sometimes they don't work very well. LB340, I want to be a positive about this project and maybe we wouldn't be here if it was a different route; I can't say that. But I will tell you that my looking at it is that this pipeline project, TransCanada XL, the Keystone XL could have a positive impact of about \$11 million a year to oil and gas producers in western Nebraska, 300 miles away. And the reason that could happen is that we produce about 3,000 barrels a day in western Nebraska. And when I first came to work at our commission, we had a differential below what is termed West Texas Intermediate crude of \$2 per barrel. In 2006, with the increase of the Bakken Production in North Dakota we went to an \$18 per barrel differential lower than West Texas Intermediate. Now that has come back to \$11.75 less. But our guys are getting beat up by purchasers because they can and they will put it on the Rocky Mountains, and you can't even see a mountain from Sidney, but we're classified in the Northern Rockies and there's a glut of crude oil and it can't be adequately taken away by pipelines or train. So the upshot of this could be that this Keystone project will come through the Williston Basin. They have gone from about 110,000 barrels a day to 350,000 barrels a day and it's going to go maybe to a half a million barrels per day. The fact is, that there will be Williston Basin, domestic crude oil, I believe, getting on this line and that may mitigate the ability for crude oil purchasers to get those large deducts., if you will, as well. There's a pipeline that comes through Nebraska and it has for almost...over 50 years, I'll say; it's called the Platte pipeline system. I've never seen it, I believe it's a 30-inch line. It's 50 years old; it probably puts

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through a couple hundred thousand barrels a day. And since 1997 that pipeline has transmitted crude oil from Alberta every day, 14 years. To my knowledge and Mike Linder's knowledge at DEQ there's never been a leak on that pipeline. It does go through the Ogallala, south of the Platte River, comes into Banner County and it goes down close to Holdrege and then goes east. There's a spur off of it, an 8-inch line that I believe goes down to the McPherson, Kansas, refinery of NCRA. So if we could get a differential back, we could save, potentially, \$9.75 a barrel. It would be increased revenue, would also mitigate trucking from trucking our crude oil in western Nebraska to Denver, a round-trip of 360 miles and we could go maybe 18 miles northeast of where I live in Sidney and put it in the Gurley pipeline system if it takes some pressure off that Alberta crude. I'll cease and ask for questions. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good. I'm sure there will be questions to let you keep expanding. Are there any questions? Senator Haar. [LB340 LB578 LB629]

SENATOR HAAR: So the federal word is combustible liquid and not hazardous. [LB340 LB578 LB629]

BILL SYDOW: To be honest, I don't know about transportation. I know that the placard is combustible, but it is...I have a real heartburn problem on calling crude oil hazardous, because the fact of the matter, it is not. And then...but with that particular wording and adjective for hazardous liquid in both of these...all three of these bills and then we begin to talk about pipelines with no deference to size or real, defined purpose, then I think it opens it up into a different arena and I'm not so naive to think that somebody wouldn't take that line and run with it sometime. [LB340 LB578 LB629]

SENATOR HAAR: Well I think, you know, as we expressed earlier, one of the purposes of these hearings is to get input to improve bills, and so I'm sure our legislative aides will be looking at that use of terminology. And that would make you feel better if it were called something other than... [LB340 LB578 LB629]

BILL SYDOW: For our commission it sure would, because then we would...we get out of the hazardous production business and get back to just natural resource of oil. [LB340 LB578 LB629]

SENATOR HAAR: Okay. Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Senator Carlson. [LB340 LB578 LB629]

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SENATOR CARLSON: Thank you, Senator Langemeier. I think...and thank you for your testimony here. I'm going to go back and refer to Jay Wolf's letter. I know Jay personally and I believe what he says. He's not against the pipeline. But he's got a ranch that's going to...go on five miles of his ranch and he talks about being stressful and he's spent a lot of time and legal fees in trying to work out an agreement. He says it costs \$36 a barrel to get oil out of the rock into liquid form and future increases in Canadian oil sands production costs or a drop in oil prices could make production unprofitable which means he's got stress worrying about how long they would continue to bring oil down that pipeline. And he says, if there's no oil coming from the Canadian oil sands for whatever reason, the owner of the pipeline will likely be broke. Now, I don't think after what I've heard TransCanada is going to be broke at that point. But his merry-go-round of trying to find out who is responsible, and the U.S. State Department is not responsible; DOT doesn't respond; Nebraska Department of Environmental Quality said they will find out and they got DOT to answer and DOT says, we're not responsible. DEQ says we're not responsible; state of Nebraska is not responsible; the federal government awards permits, but they're not responsible. So it's got to hinge on the financial condition of the company and that's a serious matter. He's got legitimate concerns, doesn't he? And then how do we assure the people that they don't need to worry about it? [LB340 LB578 LB629]

BILL SYDOW: Okay. Probably, ultimately we cannot, but I want to address a couple of things. In the so called tar sands bituman deposits of Northern Alberta and into Saskatchewan, there's probably over 160 billion barrels of recoverable crude oil and it is in a highly viscous state, it's over a million centipoise. And I've got to see how they upgrade that. They either take carbon out or they put hydrogen in and they make a synthetic crude oil, but it has a viscosity, and that came up, Senator, about viscosity. This crude oil, just as our crude oil, it is not like coffee or water, gasoline or diesel, there's no viscosity to that. And it goes exactly through the Vadose Zone to the water table. I would...I would affirm that crude oil with viscosity does not do that. It stays in the near surface and I think if we ever did an experiment, and we could, I think we could visually see a representation of that with some plexiglass and sandbox sand and we're going to dump some crude oil in the top and we're all going to see what happens. Aside from that, I believe that the tar sands is a huge reserve. It's a mining operation, 400-ton trucks are up there working every day with about 100 trucks. The reserve is so substantial, they look at it very long-term in a mining operation. Now the price of oil does affect that operation and I don't know what their break even is. So that's in the future, if Jay is here, we don't know that. But I believe that the reserve is so significant that there will be an operation there for a couple of hundred years. The other thing about this pipeline, and you've probably thought about it, this is a national security issue for the United States of America for pipelines and we're seeing right now where we could potentially have...or Europe would be most likely affected. If the Suez Canal, something happened to Suez Canal, we just started a problem. We see that the Somalian pirates have maybe hijacked two tankers in the last several days. We see as well that while we're susceptible, certainly, in high plains to blizzards and prairie fires, no doubt about that, we're not susceptible to hurricanes. And

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we import a lot of crude oil, it comes in the water, it comes in the Gulf of Mexico to our refining base there and so this line, in my opinion, has a national security value. It's in the heartland of North America with our blue-eyed neighbors to the north, if you put it that way. As far as continued operation, the Platte pipeline that is currently in operation, whenever that was built, and I do not know, it was a consortium of companies, it was operated by the Ohio Oil Company who became Marathon. Marathon sold their interests in...oh, probably around in 19...mid-1990s and so that pipeline is now operated by Kinder-Morgan Pipeline. So pipelines can, obviously, they will change hands because it's an asset. In Nebraska there was a pipeline, albeit it wasn't a big pipeline, but steel prices have fluctuated high and low. There was a pipeline, it was taken out of the ground from Brighton, Colorado, all the way to Gurley, probably 140 miles as the crow flies. It was 8-inch line. They took it out of the ground, they salvaged all that steel. In my mind, given...and I think the state of corrosion engineering and you can absolutely defer corrosion, that this pipeline will be there for a long time and it may ultimately end up someone will take it out of the ground and we'll reuse all that steel because that's a lot of steel. Now that doesn't do anything in the near term, I understand. [LB340 LB578 LB629]

SENATOR CARLSON: Okay. Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Senator Schilz. [LB340 LB578 LB629]

SENATOR SCHILZ: Thank you, Senator Langemeier. Mr. Sydow, thank you for coming in today. Let's move back to domestic production here in Nebraska. How many...can you tell me how many domestic oil wells we have in the state of Nebraska that are operating? [LB340 LB578 LB629]

BILL SYDOW: Okay. We have about 1,225 producing oil wells. We have about 400 water-injection wells which are in our water floods of which our daily production right now is about 6,500 barrels a day. About 68 percent of that is going to be from water floods where we inject water into the ground, sweep oil and water to the producing wells and produce it back. We have about 325 gas wells, natural gas wells. That's not a very big count. We have probably several hundred shut-in wells that are inactive oil wells and if we could ever get carbon dioxide into our oil fields, we could have tertiary recovery and it would work pretty well. I don't know if that happens, but I keep hoping for that. So that's, Senator, our well count. I'll tell you very quickly there's a new play, it's in the Niobrara Chalk and it is in northeastern Colorado going into southeastern Wyoming, it's oil. They're drilling horizontal wells and they're over a thousand barrels a day. Now I don't know how long it will last, but that play will come into Nebraska particularly in our Banner County. So, I mean, if we got lucky or blessed or whatever, that that oil right there in Banner County there is still a pumping station at Harrisburg. So if Keystone XL took some pressure off that market and we could get some more oil into the Platte pipeline, it's

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possible that we could have brand new production in the future taking a share in the Platte pipeline system. [LB340 LB578 LB629]

SENATOR SCHILZ: Thank you. And let's talk just a little bit of these wells that are producing now or new ones that are coming online, obviously, new ones you will put, as you said before, two-inch pipe...two-inch pipelines in on those. How often do you...or do you know, how often on existing wells are those pipelines changed out? [LB340 LB578 LB629]

BILL SYDOW: It's really not very often and it's really when you develop a leak. It's been talked about the pigs today, the smart pigs or whatever. Those are for big-inch lines, nothing will work in a two-inch line. And so once in a while, yes, you'll have a corrosion hole and it will come through. Our lines are buried at least below...they try to get below frost line. And so we never farm that deep over the top of them. But when that happens, that will generally come to the surface because crude oil is lighter than water. It, in fact, it floats. So the crude oil comes to the surface. So it's not a lot. We've not had any particular high number of spills in the last several years. I even had a question from CBS news about that. Anyway, I'm glad that phone call is over. But we do have them; they're dug up, get replaced and just go on down the line. [LB340 LB578 LB629]

SENATOR SCHILZ: Is there any sort of permitting for those pipelines? [LB340 LB578 LB629]

BILL SYDOW: No. The infrastructure that's required in an oil field is really governed by the oil and gas lease so that the owner of the oil and gas lease has the ability to conduct their operations on that surface. And sometimes...we don't have this problem very much in Nebraska and it can be a problem where you have severed minerals or minerals...are they part of the real estate? They can be severed, and so my problem...I'm looking forward to is when the Board of Educational Lands and Funds sells all of their surface and retains all the minerals and if somebody wants to drill a well, now I'll have a problem to deal with. And it won't be unlike this. So you just try to have people deal fairly with one another and it will happen. [LB340 LB578 LB629]

SENATOR SCHILZ: As you look at these bills then, if you were going to replace any of those lines, they would all fall under these bills at some point and you would have a permitting process going forward. [LB340 LB578 LB629]

BILL SYDOW: As these bills are written with crude oil defined as a hazardous liquid and if you want to take it to the extent that...what is transportation? It's moving something from here to here, then, yeah, I think somebody could make a case and say that's our jurisdiction. [LB340 LB578 LB629]

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SENATOR SCHILZ: Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Senator Smith. [LB340 LB578 LB629]

SENATOR SMITH: Thank you, Senator Langemeier. Mr. Sydow, thank you, just very informative testimony, it's been very helpful. You were talking about the Nebraska oil supplies and having an access point to improve the markets. Does this path of this XL pipeline aid in improving the access point? [LB340 LB578 LB629]

BILL SYDOW: Okay, I believe that it could impact it and the reason being is that it comes...it comes through North Dakota and that's where all the activity is right now and where they've increased...and it's staggering amount, 240,000 barrels a day, and they're looking at having a drilling program for 10 or 15 years. So if North Dakota can get their crude oil out, and that would be a viable thing would be on the Keystone XL line, then potentially the reason for the deduction of the price goes away. [LB340 LB578 LB629]

SENATOR SMITH: So this is definitely in favor. [LB340 LB578 LB629]

BILL SYDOW: So that's in favor. I think that this pipeline in a very obtuse way, 300 miles away, could have a definite impact on the revenues that really would flow to many people. The biggest gain would be to the operators, but there is a royalty paid, one-eighth royalty to the mineral owners or the landowners, so that's going to be \$1.2 million if it was, say, around \$10 million a year; \$1.2 million we receive when we tax in Nebraska, a severance tax, it's modest on stripper or non-stripper oil, 2 percent or 3 percent, but all of that severance tax goes to our permanent school trust fund in the state of Nebraska, whatever that balance is. It's probably \$500 million now that the principle cannot be touched, but it's always being added to and then the interest that's generated is by some method and design of a calculation is distributed to school districts based on per capita. So that would benefit a couple hundred thousand dollars a year. The other benefit here is that oil and gas on a leased basis is taxed as real estate on future value, fair market value. And so you can't...it's different than a farm or ranch because those would be comparables. The way a tax is taxed in Nebraska is an economic forecast is made for the ultimate life of that well projecting the rates, the price of oil, the operating cost, and then it's kind of boiled down into one number and handed off to the assessor and she makes a calculation based on the mill levies. But it really works out, I think, that while the mill levy is small, it's about 4 percent of that generated revenue is what comes back to the counties every year. And so that could be around a half a million dollars and that's just in western Nebraska, eight counties out there where we have oil production. [LB340 LB578 LB629]

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SENATOR SMITH: Given your knowledge of markets and supplies, and we heard Mr. Krause earlier say that it was his best opinion, given the 20-year contracts, that this was going to be for domestic use. What's your best opinion on that? [LB340 LB578 LB629]

BILL SYDOW: I think that our domestic use, ultimately, will continue to grow, or at least remain flat. We have a situation with Venezuela where politically Venezuela has obviously changed in the last ten years. They used to be our friend, now they're not our friend. They're the third biggest exporter of crude oil to the United States, about a million barrels a day. Mexico is second and our largest importing partner is Canada. If Venezuela went away, and that's a possibility with China, then this could stand to replace Venezuelan crude. You know, one of the things when we gave up the operation and management of the Panama Canal, Panama went and hired a replacement operator. It's the Chinese government, who...you know, we kind of want to say they're friends, but politically they're ideology is quite a bit different, but they control the Panama Canal. And if they could ever build a pipeline from across Columbia or some terminal where they could take Venezuelan crude that comes across the Gulf of Mexico on tankers, if they could go west and have a way to go across the isthmus and unload it, may very well go to China. And the Chinese government, as far as natural resources, they're very aggressive about natural resources in North America. They have purchased, probably, the eight or ten years of production of Molybdenum from the Climax Molybdenum Mine in Colorado. You got to have it to made high-speed steel. They bought it all. I know for a fact that...they look so big and out there so long, they went to the government of the Yukon Territory in Canada and said, we want to buy that oil and gas basin, the whole thing. And they said, well, but we can't sell it to you. But that's the way they think. China is going to be a powerhouse, they are. [LB340 LB578 LB629]

SENATOR SMITH: Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Senator Haar. [LB340 LB578 LB629]

SENATOR HAAR: By the same argument then, if they...if oil, it would make sense they would go through Panama and go to China, whoever owns this oil that's going through this pipeline could also go to China. [LB340 LB578 LB629]

BILL SYDOW: Oh, ultimately it could get unloaded or loaded and go that way. I think the point was well taken, though, that if they wanted to do that, the route, it would go across Alberta and British Columbia to the west coast of North America would be probably the better choice. [LB340 LB578 LB629]

SENATOR HAAR: Just one final...the Platte pipeline, does that, that you've talked about, the 30-inch pipeline, does that go through the Sandhills? [LB340 LB578 LB629]

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BILL SYDOW: It goes through the Ogallala Aquifer. And so my... [LB340 LB578 LB629]

SENATOR HAAR: But through the Sandhills? [LB340 LB578 LB629]

BILL SYDOW: No. The technicality, you know, it's like the Sandhills, it applies to the same sand dunes, and geologically they're really not the Ogallala in a geological sense. But, no, it does not. And I've never driven the route, but it does go through the Ogallala Formation which is a groundwater resource for us, that's our predominant one out there. When it comes and goes south and it could be around North Platte almost, where the river begins to bend and go east, that there's some real interesting country down in Frontier County, there's sand dunes down in there. And so it could go across that. And I guess in that vein is...when Jerry Vap testified today and Senator Dubas, we had a meeting that I got to go to last fall, where...it was a good meeting, we had about 12 agencies around the table. Jerry Vap, he lives in McCook, and the sand...there are Sandhills in parts of Hayes County, Frontier County. The Trailblazer pipeline, which is a 42-inch line, went through those Sandhills, and as I recall, Jerry Vap said, because that was my concern, he said, you ought to come look at what they did. You can't even tell it. And I look at what is being done predominantly by Department of Roads where they make road cuts and if you can get straw down and that netting and stake it down, you have a really good chance. Now your problem is water, honestly. You have a great chance, and I think the Department of Roads probably does the greatest job ever of right now of getting grass to...or vegetation to regrow in really some pretty tough conditions. So I think it can be done. [LB340 LB578 LB629]

SENATOR HAAR: Okay, I appreciate that. Thank you very much. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Senator Schilz. [LB340 LB578 LB629]

SENATOR SCHILZ: Thank you, Senator Langemeier. And just...and I'm going to ask for a little speculation now, and if you're not comfortable answering this, I understand. But let's say that this pipeline...the TransCanada XL pipeline would be delayed or perhaps they decide because of everything that's going on that they want to not do that. Well there's enough oil being produced, where will it go? What would they do with that oil then in your opinion? [LB340 LB578 LB629]

BILL SYDOW: Somebody would build another pipeline. I think we have to for the Williston Basin. You cannot have that much daily production and not be able to get it out. And so Enbridge, I mean Enbridge name came up, Enbridge has upgraded a pipeline there. I think they've extended to go east. I don't know if there are any other pipelines that would be on the board. And quite honestly, EOG Resources is big up there and they have...I don't know if they have their own railcars, but they send out unit trains of crude oil and it's getting on the rail

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system and get it out. But we don't have enough railroads to do certain things either. [LB340 LB578 LB629]

SENATOR SCHILZ: Right. And...okay...thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: I do have one questions. We've talked about the potential for this pipe to leak over the Ogallala Aquifer, but in your testimony you said we're driving good water in to push the oil out, so we're contaminating it in that process. [LB340 LB578 LB629]

BILL SYDOW: On some water we do do that, in the water floods. We have situations where the reservoir pressure just depletes as you've taken the oil out and so there must be a liquid volume injected back into that reservoir to begin to pressure the reservoir back up. So, yes, historically and depends on the water source, but historically we have used water to do that. On a daily basis our water floods, we would look...and so we can talk thousand-gallon a minute irrigation wells, 50 to 100 gallon a minute-type well would build that volume. Then once that water is in the reservoir and it's being...you pump it in every day and you pump some of it back out, but we separate that oil and water at the surface, sell the oil, take that water and we reinject it so it gets recycled, if you will, in that reservoir. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much for your testimony. [LB340 LB578 LB629]

BILL SYDOW: Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Our next is Ron Sedlacek, State Chamber. Good evening. [LB340 LB578 LB629]

RON SEDLACEK: Almost good evening, I guess. Good evening, Chairman Langemeier and members of the Natural Resources Committee. My name is Ron Sedlacek, it's R-o-n S-e-d-l-a-c-e-k and I'm here today on behalf of the Nebraska Chamber of Commerce. And I've been asked by the State Chamber to be on record and to register opposition to the bills being heard before the committee today. I feel that much of what I had written, as well as notes, continue to be repetitive as to some of the previous testimony. Our particular concern on many of the issues was the...being duplicative of the federal...or federal and state laws. Certainly we can point out some particular areas of concern regarding the bill, but our general policy that brought us to the table here today and to appear here today was the fact of that duplicative nature of the proposed legislation. While the State Chamber does share, of course, in the goal of ensuring that we have proper pipeline construction and safe operations, we also believe there are sufficient federal

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regulatory bodies, the bodies of regulation, ensuring that such occurs. One of the areas where we had particular concern were changing some of the rules on ultimate financial responsibility where damages may be incurred as a result of the negligent act of third parties. And the financial responsibility should ultimately rest with the party that caused the damages and current legal remedies are certainly available in that regard. And the pipeline should not be in the law in that regard relative to their liability should not really be changed and adjusted. The other area that we do have a bit of concern about deals with the financial responsibility...or proposal that you had mentioned and that you had introduced, Senator. The question that we have is in regard to the ultimate uncertainty involved particularly in the area of trying to find surety relative to reclamation when construction hasn't yet been completed. You take a look at this part of a whole pipeline and then try to assess those contingencies and the question becomes whether or not there's a competency of a body at this point to address it at this point in time prior to the construction. It seems that that has a problem...that is a problem that could be presented in that regard that's trying to find out exactly what we're talking about, how much and what are we facing in that regard. So the other issue dealing with LB340 was whether or not as constructed, this really has a retroactive application or not. There was some debate in our council meetings in regard to whether this would apply prospectively or retroactively. It wasn't completely clear in that regard. And there was a...just one other minor point and that...again, I'm trying not to be repetitive here before you today, but essentially, I think the bottom line is when we do have a situation where there may be duplicate regulatory schemes, then the question becomes, will there be inadvertent or unintended conflicts between and among state as well as federal regulatory bodies, and then how do we address those issues and does that cause further delay in the process? And with that I'll conclude my testimony, be happy to entertain or try to entertain questions. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good. Are there questions for Mr. Sedlacek? Senator Haar. [LB340 LB578 LB629]

SENATOR HAAR: So the State Chamber would believe that the federal government being in charge is just fine? [LB340 LB578 LB629]

RON SEDLACEK: What we're saying, and we have consistently said in not only issues such as what we have before us today, but in labor law issues, in healthcare issues, there needs to be...when it comes to...particularly in situations involving the interstate nature of the matter, then there needs to be one regulatory body. And what we're left with are not a myriad of various regulations, but we would defer to federal regulations. And we've been consistent on that, and certainly if you've heard our testimony in Business and Labor Committee when there are proposals of state regulations of duplicative-type issues, we do defer to the federal regulators. [LB340 LB578 LB629]

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SENATOR HAAR: Okay. Well I haven't had the pleasure to sit in on those hearings. (Laughter) And the thing about LB578 of trying to look into the future and see what, for example, decommissioning would cost, we are being told that they can handle it. That whoever is in charge at the time can handle that. So trying to figure that out up-front, I would think would give me a little bit more feeling of confidence than we can handle it when it happens. But that's just my... [LB340 LB578 LB629]

SENATOR LANGEMEIER: Any other questions? Mr. Sedlacek, I have one. [LB340 LB578 LB629]

RON SEDLACEK: Yes. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Not to prolong this any longer, and we're going to deviate off the subject matter here, but you just stated that if we have a similar-type regulatory body in the state that is similar to what is on the federal level, the Chamber would defer to the federal level. Is that correct? [LB340 LB578 LB629]

RON SEDLACEK: Well when there's...I said of an interstate nature, as when you have a, particularly, for example, and I'm going to defer, again, to, let's say what I'm comfortable with, employment laws, you may have an act dealing with...or for example, in Banking Committee, you're familiar with insurance mandates and there's a federal ERISA and then we have our group and individual policies that we can affect change to, but we can't really touch the ERISA plans. And our testimony has been pretty consistent, as you recall, in regard to that particular issue. And again, we're talking about something totally different here, but that we deal with a number of operators interstate, many of our members, and who have essentially migrated to ERISA-type programs and have deferred to the federal regulation because it's consistent and it doesn't have to worry about the specific state requirements and duplicating those, or even exceeding the federal and not get caught into, you know, those types of issues where one state covers this, one state covers that, and so on. So there's consistency and sometimes that predictability and consistency outweighs that type of regulation. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much for your testimony. [LB340 LB578 LB629]

RON SEDLACEK: Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Next testifier is David Hayes. Welcome. [LB340 LB578 LB629]

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DAVE HAYES: (Exhibit 46) Thank you. I have to admire your attentiveness to detail. You've put in a long day and it's appreciated by those of us that are presenting testimony. My name is David Hayes, D-a-v-i-d H-a-y-e-s. And good evening, Mr. Chairman and members of the Natural Resources Committee. I'm an international representative of the Laborers International Union of North America, and I appear here today on behalf of my business manager, Ron Kaminski and members of the Construction and General Laborers Local 1140. I would express our support for the construction of the Keystone XL pipeline in Nebraska and our opposition to LB340, LB578, and LB629. Since 2006, Local Union 1140 has trained hundreds of residents of Nebraska, South Dakota, and Iowa for pipeline work not only in Nebraska, but in other states of our country. We constructed both the Rockies Express natural gas pipeline and the first Keystone pipeline and both of which are now operational. In working on the Keystone pipeline, we worked with TransCanada and our relationship with TransCanada remains a good relationship. Since the beginning, TransCanada has invested in our people in Nebraska and as a result of that relationship, and the work we have done on the first Keystone pipeline, we were able to open a new training center located at 56th and Sorenson Parkway in Omaha. At this new facility we plan to expand our pipeline training to include not only residents of Nebraska, but also in South Dakota and Iowa, but those seeking training from other states. When we worked on the original Keystone project, the process was pretty cut and dried. We all understood what needed to do on that project and we took care of our responsibilities. The line of communication between our union and TransCanada was open and we accomplished construction of that pipeline without any major problems. The project was completed on time with skilled residents of the state of Nebraska. In the last few months we have heard numbers thrown around by some other groups about the number of Nebraska residents that will do work on the Keystone XL. Let's look at the numbers from recent pipeline work in Nebraska. The local union referred laborers to the Rockies Express pipeline in '07 and the Keystone pipeline in '09. In total, 661 laborers worked on those recent pipeline projects. The fact of the matter is also, with the Keystone in South Dakota, does...South Dakota does not have a lot of pipeline workers and our union took it upon ourselves here in Nebraska and we made an investment here to train our members in South Dakota, western Iowa, and Nebraska to do that work here in the Midwest. So we want to be clear on the point; we have Nebraska residents working in states all over the country that reside here in Nebraska, but they export their expertise and construct other pipelines all over the country because of the training we were able to provide them here in the Cornhusker state. In other words, these people are taxpayers of Nebraska and will continue to be. Let us be clear, we understand the people's concerns about their land and we care deeply about the environment. I mean, after all, we are Nebraska residents ourselves. Our members not only build safe pipelines, but they also build biodiesel plants in Nebraska and many of the wind turbines in western Iowa. The reality is that we, as a society, are not going to be energy independent in the next 25 years and the use of petroleum will continue to be a component of our national energy needs. Our union is not happy with the picture that has been painted of TransCanada by certain environmental groups. As our business manager for Local Union 1140 mentioned at the hearing

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on LR342 on December 1 and again last week when reiterating our support for this project, to kind of push TransCanada up against a wall like they've been a bad guy is pretty sad with the relationship we've built with them and the investment that they are willing to make for our state of Nebraska. Our union continues to stand by this position. We have a great relationship with TransCanada and the Keystone XL Pipeline. And in closing, I would like to ask you to join with me in supporting the construction of the Keystone pipeline and opposing LB340, LB578, LB629, because the potential of these bills to delay the project. If I can answer any questions, I'd be happy to. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Hayes? Senator Smith. [LB340 LB578 LB629]

SENATOR SMITH: Thank you, Senator Langemeier. So how many Nebraskan laborers do you believe are expected to be a part of the construction of the XL pipeline? [LB340 LB578 LB629]

DAVE HAYES: I believe we have the equivalent of two full spreads in the state of Nebraska. Generally, a spread is anywhere from 100 to 125 miles. We would expect to man that job just with our group, the laborers, at about 125 men per spread, so we would be looking going through Nebraska at about 250. There are some partial spreads that will come out of South Dakota and, generally, when we man a partial spread it is based on the mileage, a percentage of the mileage. So if we had 30 miles of a 100-mile spread in Nebraska, we'd get 30 percent of the manpower on that job. [LB340 LB578 LB629]

SENATOR SMITH: Okay. I'm not real familiar with the spreads that you're talking about there so, in terms of...is it the majority that will be Nebraska laborers? [LB340 LB578 LB629]

DAVE HAYES: Yes, I would expect 250 Nebraskans to be on the job. [LB340 LB578 LB629]

SENATOR SMITH: Okay, out of about how many total do you think? [LB340 LB578 LB629]

DAVE HAYES: It's difficult because the contractors that we'll deal with, TransCanada, as the owner, will contract the pipeline companies to come in. Those pipeline companies, by contract, have the ability to bring in about 30 percent of the work force. So if you take the 250 times 30 percent, you'll probably get a little bit more on that, but... [LB340 LB578 LB629]

SENATOR SMITH: Okay. I appreciate the information. I'm trying to balance it out with some other information I had seen that had speculated about 12 percent. [LB340 LB578 LB629]

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DAVE HAYES: Oh no. No, no. [LB340 LB578 LB629]

SENATOR SMITH: And it would be... [LB340 LB578 LB629]

DAVE HAYES: And in fact, going back and looking at our old numbers, when we did the Rockies Express, 71 percent of all the workers on three spreads...now two spreads were fully in our state and then we had two split spreads, one coming out of Colorado and one going into Kansas. But out of that, we had 71 percent of Nebraskans were working on that. [LB340 LB578 LB629]

SENATOR SMITH: And then on top of that we're going to be exporting outside of Nebraska our skilled labor. [LB340 LB578 LB629]

DAVE HAYES: We have 74 members of our local today working in pipeline construction in other states on that. [LB340 LB578 LB629]

SENATOR SMITH: Great. Thank you very much. [LB340 LB578 LB629]

DAVE HAYES: You're welcome. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Any other questions? Seeing none, thank you very much for your testimony. Well done. [LB340 LB578 LB629]

DAVE HAYES: Thank you, Senator. Appreciate your time. [LB340 LB578 LB629]

SENATOR LANGEMEIER: I hate to say these names because they keep being spelled wrong. Gary Stauffer with Nebraska Municipalities. We'll see how off I am on this one. [LB340 LB578 LB629]

GARY STAUFFER: Thank you, Senator Langemeier, Senators. I salute your stamina and perseverance as you try to adjudicate what's best for the health...excuse me. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Got to...name first. [LB340 LB578 LB629]

GARY STAUFFER: Name first. My name is Gary, almost forgot, Gary, G-a-r-y, Stauffer, S-t-a-u-f-f-er. I am the executive director/CEO of NMPP Energy and I'll describe our company in a

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second. But I think that I'd like to, as a citizen, salute your stamina and perseverance in protecting the health and well-being of citizens of Nebraska now and in the future. It's a tough job. I'm glad I'm on this side of the table. NMPP Energy, as you may or may not be aware, is an entity that is public, nonprofit, and we provide electricity, natural gas, and utility related services to over 200 member communities in six states. We believe in joint action and I underline local control. I won't repeat what's been stated over and over today, but I'll share with you some observations from my almost four decades. Actually, I was kind of heartened to hear that there are people that have been in business 25 and 30 years. I guess I've hung around long enough to say I've been here four decades. During that four decades, I've been involved in the energy strategy discussions in North America, having worked for investor-owned utilities in Canada, both in the pipeline, power business, and in the liquids fuels business in the United States also and overseas. I sit on the board of American Public Power and executive committee for the last six years. I've been involved on the Climate Change Task Force for American Public Power since its inception in 2006. The energy debate is ongoing, never ending, and vital to our national security. By the way, I'll point out that the pipeline system for crude oil was started over 60 years ago in response to the German torpedoing of vital oil supplies that were going off our East Coast. It was determined then that pipeline transfer of crude oil was in the best interest of national security. That was true 60 years ago; it's true today. I oppose LB340, LB568, and LB629 because they're duplicative, they're costly and, frankly, unnecessary at this stage and this project. I'll go back to local control. I want to assure you that every form of energy has its risks. There is not one form that we have dealt with that does not have its risk. Some have more risk than others and require more mitigation than others. The riskiest forms of energy generally have layer upon layer of oversight supervision and mitigation. We believe the very first and best layer of mitigation and risk response is at the local level, and I'm here simply because I was not invited by TransCanada. I'm here because we care very much about energy for local communities. I point out, over 50 percent of the natural gas that's used by communities in which we serve is supplied by Canada through pipelines generally operated by TransCanada. They've been a very good business partner for many, many years to help industries, homes, and businesses in this state and our neighbors. I'd also like to report that since we believe in local control, the good news is that Seward, our neighbor just here to the northwest--has been referred to several times, sometimes accurately, sometimes inaccurately--I can assure you that in even a discussion I had today with the Seward city manager, he is very, very generous in his praise with the negotiations with TransCanada Pipeline to mitigate their pipeline coming through their wellhead area. And as you're aware, Seward has very serious water concerns, and so to mitigate any possible risk there was an important issue for Seward. Mr. Berlowitz felt that he was dealt with in a professional manner and was able to resolve those concerns at a local level, including bonding and remediation and including training for their local first responders. He believes it was an exercise of local control to be proud of. That concludes my testimony. I'd be glad to take any questions. [LB340 LB578 LB629]

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SENATOR LANGEMEIER: Are there any questions? Senator Schilz. [LB340 LB578 LB629]

SENATOR SCHILZ: Thank you, Senator Langemeier. I guess thank you for coming in today. Appreciate it. I guess I'd like to ask you the question. Let's say that the Keystone XL pipeline would not be built. In your opinion, and I'm asking you to speculate as well, what do you think would happen to that oil? [LB340 LB578 LB629]

GARY STAUFFER: Well, on average, the United States uses about 20 million barrels of oil a day. Seven million barrels come from the United States. About another 11 million come from Canada and the balance is made up of Venezuela and Nigeria. We actually don't import any crude from the Middle East. The world, back at its peak use, used about 85 million barrels of oil a day and, by far, the largest user next to the United States was China. Behind that are the developing countries. So there's no question in my mind that if we don't have access to the oil that we need or energy in all forms, that the developing countries, and particularly those that are energy intensive, and you need to be in order to grow your economy, it's clear this oil, if we don't use it and if we don't accommodate it, it will go elsewhere for global competition. Today, for example, West Texas Intermediate traded at about \$88. Brent Crude, which is the European crude, traded for about \$100, and it's like Bonny Crude, in the same range. It's likely that this oil will demand because its lifting cost is less than \$50 a barrel. It will demand premium prices probably in Asia. [LB340 LB578 LB629]

SENATOR SCHILZ: Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Are there any other questions? Senator Haar. [LB340 LB578 LB629]

SENATOR HAAR: You talked about local control but some of the local control we're hearing are stories from local people in the Sandhills and so on, are very concerned. That's about as local as it gets. [LB340 LB578 LB629]

GARY STAUFFER: You're right, Senator, and I'd have to say that unbeknownst to TransCanada and certainly the operation personnel that sat next to me, he did, I saw him send an urgent message to his organization to follow up on that. Obviously, that was not a ploy. That was the facts. And obviously, in a complex project like this that involves lots of interactions with a lot of people, there can be misunderstandings. I personally, to prepare myself for this testimony, looked up all the public records I possibly could find relative to this project and I found there are over 13,000 individual logged written comments with answers provided by TransCanada and their contractors. There have been over 40 different agencies in the United States alone that have been involved. This is a complex, \$7 billion, multifaceted project. It's unfortunate that from time to

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time people are not treated appropriately, and I think it's important to know that when you have the commitment of the main operating personnel who are domiciled in Omaha, are willing to put their reputation on the line, I think that's something to be... [LB340 LB578 LB629]

SENATOR HAAR: I won't prolong this too much, but it would seem to me that, for example, Senator Dubas' bill, which gives local Nebraska control to the process over federal control, would seem to be local control. [LB340 LB578 LB629]

GARY STAUFFER: Once again, you know, I think it's layers of defense and I think that my observation is that there are plenty of layers of defense relative to this pipeline and this project. I would like to make a comment relative to your observation about the Deepwater Horizon. My observation there is, Senator, that was a tragic event. People lost their lives. It all woke us up to the fact that our hunger for hydrocarbons has risks. But what occurred there is under a different process; over a mile under the sea, three miles down below with pressure, with technology that is being applied in space and deep water. Frankly, the technology for a crude oil pipeline generally involves backhoes and bulldozers. [LB340 LB578 LB629]

SENATOR HAAR: But the point is that the American people, and this was even in Senator Nelson's letter to Secretary Clinton, that because of that we have all become more cautious and more skeptical when we hear about safety. [LB340 LB578 LB629]

GARY STAUFFER: That's certainly true, Senator, and it was...it was a difficult time for anybody in the energy industry. Having said that, I doubt very few people walked to this event tonight, so that while it's difficult and has risks, we all rely on the energy supplies that are necessary to maintain our position in the global economy and our personal lifestyle. [LB340 LB578 LB629]

SENATOR HAAR: No question, and I think that's why we're pushing development of our wind power. (Laughter) [LB340 LB578 LB629]

GARY STAUFFER: And we certainly support that. Our organization had the first utility scale windfarm in the state of Nebraska and we've certainly supported LB1048 and have participated in every other windfarm that's been available. But wind is not free and it has its risks too. [LB340 LB578 LB629]

SENATOR HAAR: Of course. Do you see much difference though, because I draw a parallel between, in LB1048 we actually have a decommissioning requirement that requires proof of financial responsibility and I fail to see that that's not a parallel situation here. [LB340 LB578 LB629]

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GARY STAUFFER: Well, I'm not an expert in how the tariff is established on this particular pipeline. I am, I'd consider an expert on natural gas tariffs. And in the collection of the interstate transportation tariff and the distribution tariffs and your retail rate, there is a small sliver that's set aside for decommissioning, completely. And that's synonymous to what we set aside in any of our power plants, be they conventional coal, natural gas, or in the case of a nuclear station, which Nebraska has two. We're obligated to have the funds and have the surety that we can handle decommissioning. So that's built into the system and I think that that has...to my knowledge, there has not been a failure to decommission in, you know, in modern history. [LB340 LB578 LB629]

SENATOR HAAR: So all we are requiring here is a proof of financial responsibility. Now if that is all in place and we can be assured that that money is there for decommissioning or for spills, then we just have to know about that. [LB340 LB578 LB629]

GARY STAUFFER: Well, I think the FERC tariffs are publicly identified. TransCanada is a publicly traded company, both in Canada and the United States. Their finances are available for scrutiny. Their contractual obligations relative to the landowners and the states that it passes through are available and public. I think anyone can do the due diligence and make their own assessment as to whether TransCanada has the wherewithal, and our oversight agencies have the capability to deal with decommissioning. I think that's adequately covered, Senator. [LB340 LB578 LB629]

SENATOR HAAR: I think we'll have to explore that, yeah. [LB340 LB578 LB629]

GARY STAUFFER: Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good. Seeing no other questions, thank you very much for coming in. [LB340 LB578 LB629]

GARY STAUFFER: Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Appreciate it. Now we'll move on to Mike Schmaltz, did I say that right, with TransCanada. He'll quickly correct me when he gets here. [LB340 LB578 LB629]

SENATOR HAAR: It was close. [LB340 LB578 LB629]

SENATOR LANGEMEIER: I didn't think it was very close. We'll see. Welcome. [LB340 LB578 LB629]

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MICHAEL SCHMALTZ: (Exhibits 47, 48, and 49) Good afternoon, Mr. Chairman and members of the Natural Resources Committee. My name is Michael Schmaltz, M-i-c-h-a-e-l S-c-h-m-a-l-t-z. I am an environmental manager with TransCanada Pipelines and responsible for the KXL, Keystone KXL project. I would like to thank the committee for the opportunity to present testimony this afternoon in opposition to LB340, LB578, and LB629, and to describe TransCanada's commitment to ensuring that construction impacts are mitigated, that appropriate remediation is carried out after construction in the Sandhills, and generally address the protection of the Ogallala Aquifer. TransCanada is committed to restoring the productive capability of all lands disturbed by pipeline construction. We implement a comprehensive program from project planning through construction to reclamation and postconstruction monitoring in order to ensure that disturbance is reduced as much as possible and to restore the lands crossed by our projects to their preconstruction productivity. To assist the project in corporate environmental governance, Keystone has established a Construction Mitigation and Reclamation Plan, a CMRP. The CMRP outlines all of the environmental protection measures to be employed during construction to avoid or manage the potential effects that could occur during pipeline construction. The CMRP has been filed with the Department of State and is expected to become a condition of a Presidential Permit, as was the case with the first Keystone project. In addition to protecting landowners' property and minimizing disturbance, it is in TransCanada's best interest to both ensure the right of way is reestablished to avoid any potential for loss of soil or vegetative cover, thus, avoiding pipeline integrity issues, but more importantly to ensure TransCanada complies with its contractual commitments with the landowners regarding land restoration within its easement agreements, thus, avoiding effects to land productivity and subsequent compensatory...compensation and additional reclamation efforts. With over 50 years of experience building and operating pipelines, TransCanada has successfully reclaimed thousands of acres of native rangelands throughout North America. Included in these efforts are successful pipeline reclamation projects in arid native prairie rangelands in southern Alberta, southwestern Saskatchewan, Manitoba, North Dakota, South Dakota, Arizona, Nevada, California, Texas, and Mexico. Additionally, specific construction and reclamation has been experienced in the Great Sand Hills of Saskatchewan. The Sandhills region of South Dakota and central Nebraska encompass approximately 23,000 square miles. Soils are typically sandy and possess a high erosion potential, vulnerable to forming blowouts and bare dunes where vegetation is not properly managed. Not only are we bringing our own expertise to bear, TransCanada also has conducted comprehensive assessments for the Sandhills region to understand measures required. This included: a literature search and data gathering of the Sandhills region to aid in the project's environmental desktop analysis; engaging in discussions with numerous regional experts on the Sandhills ecology and restoration at universities and government agencies, including experts at the University of Nebraska, University of South Dakota, Natural Resources Conservation Service, and the roads department; conducting field investigations of the entire route through the Sandhills to evaluate the landscape and vegetative species that are present and also to confirm the soil characteristics that were reported through the

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NRCS SUGRO soils data; and finally meeting the Upper Elkhorn Natural Resources District, Landowners for Fairness representatives, individual landowners, and regional experts, as mentioned above, to gain an understanding of the livestock, land management, and soil conservation practices commonly employed in the area. These actions have assisted us in understanding the soil and landscape characteristics and challenges in the region and, in turn, to establish the necessary construction and reclamation measures to be employed during and following pipeline construction to ensure the land's agricultural capability is maintained. Keystone will implement a number of best management practices in the Sand Hills region. Those consist of, and I'll move through these quickly, will move through these quite quickly. We'll revegetate the area with native rangeland seed mixes, as we have received local NRCS insight on those mixes and the...those mixes. Sorry. We'll use straw and other materials as mulch to apply to the right of way and crimp it into the soil to assist in reducing wind and water erosion potential of the lands. We will also use erosion control materials where appropriate to manage soil and maintain the soil and soils in place. We will also evaluate the need to implement fencing along the entire right of way within the Sandhills area to deter livestock grazing to occur for two to five years, depending on the agreement we can reach with the landowner. We are already seeing disturbed and reclaimed...we are already seeing land disturbed and reclaimed for the 2009 Keystone project successfully return to productivity. This reflects...this success reflects the same commitment to address landowner concerns and keep our word, and we will employ the same for construction of Keystone KXL. A similar comprehensive assessment was undertaken to evaluate potential impacts and mitigation for water resources, including the Ogallala Aquifer, along the pipeline corridor. The Ogallala Aquifer covers 174,000 square miles and over eight states, stemming from South Dakota to Texas. The Keystone XL pipeline would cross approximately 250 miles of the Ogallala Aquifer. To help put that number in perspective, there are currently almost 21,000 miles of pipeline crossing Nebraska, including almost 3,000 miles of hazardous liquid pipelines and numerous oil and gas wells which coexist with the Ogallala Aquifer. I've provided you a copy of that, of the map on the Ogallala handout there, and it shows the map of the Ogallala Aquifer and the extensive pipeline and oil and gas system that it covers. In December, the Natural Resources Committee heard from University of Nebraska experts that petroleum contaminants, if they do reach water, do not move fast and do not move far. Further, Keystone provided information, API 1998 studies, that have shown that within groundwater, movement of dissolved constituents typically is confined to approximately 300 feet from the source that is...from the source due to this natural attenuation. As a result of this assessment, Keystone's comprehensive construction and operations, protection measures, as well as state-of-the-art integrity management program and emergency response programs, every reasonable precaution has been taken to protect the aquifer. Nevertheless, in the event of an accidental release did occur anywhere within Nebraska, TransCanada would implement its emergency response measures and work cooperatively with state and federal regulatory agencies to utilize the appropriate site-specific methods for cleanup, monitoring, and reclamation methods. Cleanup would be conducted to ensure the protection of human health and the environment and to meet

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state and federal standards. As is true for all similar pipelines, even absent these bills, TransCanada has a responsibility to reclaim all affected lands and clean up any release of oil from the Keystone pipeline system. These bills duplicate existing protections and stand to delay or jeopardize our pipeline project. I appreciate your attention to discuss. I will try to answer any questions you may have. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Haar. [LB340 LB578 LB629]

SENATOR HAAR: Yes. Mr. Dunavan, who talked, I don't know, earlier in the afternoon said that he was only offered reseeding. He was the person in York County who showed us all the pictures of the apparently grassland that's grazed but all the beautiful flowers and that. And so will TransCanada actually restore? And terms are kind of important. Are they simply, in his contract it just said they'd reseed that area, but are they actually going to restore it to the original, you know, wildflowers and so on that grow in that area? [LB340 LB578 LB629]

MICHAEL SCHMALTZ: I guess the best way to explain that, and I'm not sure if his land is hay land or pasture land or what type of land type it is, but it's a perennial crop of some kind by the sounds of things. TransCanada's easement agreements aren't different from farmer to farmer or landowner to landowner. We make a commitment to salvage all the topsoil, which includes, if it's a native prairie or native pasture, that topsoil already possesses legumes of seed source that's been deposited there over the years, rhizomes, but all that material is salvaged, then spread back on the right of way. So those are the...those of the natural plants should still regrow. In addition to that, we want to ensure that we don't have any erosion potential, whether it's wind or water erosion. We want to get that soil revegetated and growing right away, as soon as possible, both for the good of our...and cover and integrity of our pipeline, but also for the landowner. So we sit down with the landowner and we go through...we have seed mixes, whether it's for hay lands, pasture lands, rangelands. We sit down with the landowner and determine what would be his most appropriate seed mix that he would appreciate to be sowed on his property and that whatever he requests is what we seed. [LB340 LB578 LB629]

SENATOR HAAR: So reseed means in his contract that he will get back what he had before. [LB340 LB578 LB629]

MICHAEL SCHMALTZ: We will...the mixes that we provide, if he wants a special mix that has a special variety of species, we would sit down and go through that and make sure they're commercially available and if we can get them. We'll sit down with him and ensure that he accepts the mix that we're providing and then that's what we would seed after construction. I think I answered your question. [LB340 LB578 LB629]

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SENATOR HAAR: Yeah. And that might provide him with some more better feelings about what you're going to do. [LB340 LB578 LB629]

MICHAEL SCHMALTZ: Uh-huh. [LB340 LB578 LB629]

SENATOR HAAR: Now I looked at the map here of all these pipelines and in the Sandhills, and that's really what I'm most concerned about at this point, I don't wish to stop the pipeline. I wish it were rerouted around the Sandhills because that is the most fragile environment and sand dunes and we heard someone earlier say that, really, you shouldn't have more than a 15 degree...it's not very much of a slope but in places this pipeline will probably require taking down sand dunes to get through there. Is that a concern or...? [LB340 LB578 LB629]

MICHAEL SCHMALTZ: As I mentioned, you know, we've constructed almost 37,000 miles of pipeline in Canada, United States, and Mexico. We've been through all different types of landscapes. Through the construction of a pipeline, you have to grade down slopes. You have to grade slopes down so you can only bend the pipe so much or you can only have land or machinery driving up a certain steep of a hill. You can't, or they'll be unsafe. So we have to grade down a pipeline...grade down the slopes or ridges, if you want to call them, knolls, but we have to grade those down so some of those will be removed. We'll dig the trench and put in the pipeline and then replace the landscape to its original topography. If on those sharp knolls or on those hills, that's where we would employ a lot of reclamation techniques to restabilize those rolling...that rolling terrain. [LB340 LB578 LB629]

SENATOR HAAR: So actually in the Sandhills, people might wind up with somewhat different terrain. [LB340 LB578 LB629]

MICHAEL SCHMALTZ: Probably not, and the reason, there's been a lot of questions for us to help flatten it out, but I guess the problem with that is now if we flatten it out or knolls are removed, the material is deposited in the depressional areas. Now we've affected the land's ability to...or the historical ability to...for its water to move during the spring runoff or during rains. So now there will be ponds where there was never ponds before and where there was ponds before there will never be again because we've altered the landscape. So that would affect the landowner's property or his neighbor's property. So the alteration of landscapes is something that we don't try to do at all because we want to reestablish that land to its natural condition as it was before we built the pipeline. [LB340 LB578 LB629]

SENATOR HAAR: Do landowners have a say in that? [LB340 LB578 LB629]

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MICHAEL SCHMALTZ: They can and we can evaluate it. The problem is that we can alter it, potentially alter it, if they really are adamant and would like that, but then we have to look off the right of way and we have to go off or to the next neighboring field and now how does that runoff affect his neighbor or his neighbor's neighbor. And if we alter it too much and there's backing up of water for an extended period of time, two weeks, a month, now I have...now we've created a major issue with a bunch of neighbors instead of on that particular piece of property. So it's a cascading effect. It can create issues with...between neighbors if we alter the drainage patterns. [LB340 LB578 LB629]

SENATOR HAAR: I guess one of the things that concerns me is, talking to people from the Sandhills in particular, that a sand dune may be important to them if they grew up there and it's part of the...it's part of what they've always seen when they...and that may change. [LB340 LB578 LB629]

MICHAEL SCHMALTZ: That may change because of...? [LB340 LB578 LB629]

SENATOR HAAR: Of the routing of the pipeline. [LB340 LB578 LB629]

MICHAEL SCHMALTZ: I don't know how it would change. We're going to replace the land to its preexisting topography. [LB340 LB578 LB629]

SENATOR HAAR: But you can't rebuild a sand dune, can you? [LB340 LB578 LB629]

MICHAEL SCHMALTZ: We can. We will rebuild it to the same topography and stabilize the sand dunes. [LB340 LB578 LB629]

SENATOR HAAR: Hmm. Okay. [LB340 LB578 LB629]

MICHAEL SCHMALTZ: And I guess if I can just add, I mean we experienced a very similar situation landscape type in Saskatchewan. They're aeolian dunes, dunes that were laid down through wind blowing materials back after the glaciers receded. They're exactly the same. We have six lines through there, equaling about 300 miles, and so there were six lines built over the last 50 years, so we've had some experience there. We've had some experience there. They get much less rainfall. They get a third of what you get here in Nebraska. The trick to reestablishing those sand dunes is to get moisture to have revegetation. We've been quite successful in Saskatchewan. We get a third of the rainfall and have a much shorter growing season. We've had a lot of successes down in the Baja portion of California. We have a lot of sand dunes that we cross in Oregon but they are a different kind of ecological regions with more rainfall. But I just

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wanted to mention the Saskatchewan because it's very similar. It's in the Great Plains region but we have even less rainfall, so that's usually the trick, is to get something reestablished. [LB340 LB578 LB629]

SENATOR HAAR: Well, I guess, you know, and it's he said/she said. But somebody earlier off the mike that came to my office, one of the people that lives on a...has a ranch in the Sandhills was saying it's hard enough to reclaim flatland and restore vegetation in the flatland in the Sandhills, a flat area, but to actually rebuild a dune and revegetate that...I guess we'll see. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Senator Smith. [LB340 LB578 LB629]

SENATOR SMITH: Thank you, Senator Langemeier. I'm looking at the brochure that was handed out and on the back page it looks like this is an example of the topography being retained. I'm assuming either the pipeline is following those hills or maybe it's going to vary at depth along that path. And this kind of what you're referring to, something like this, right? [LB340 LB578 LB629]

MICHAEL SCHMALTZ: Correct. That just shows you the undulating terrain. Still, the pipeline will be...in that case it was only three feet below the surface but...so the pipeline was bent and bent over those gentle terrain at a depth of three feet, yes. [LB340 LB578 LB629]

SENATOR SMITH: So would you say it would be rare that you would have to change the topography? [LB340 LB578 LB629]

MICHAEL SCHMALTZ: Very rare, unless you were on sharp escarpments, which we won't face in the Sandhills. [LB340 LB578 LB629]

SENATOR SMITH: And then you were mentioning earlier it looks like the excavation kind of takes two stages. You remove the top layer and then you excavate, put the pipeline in, you put the fill dirt back in, and then you replace that top layer of soil. Is that right? [LB340 LB578 LB629]

MICHAEL SCHMALTZ: Yes, that's correct. [LB340 LB578 LB629]

SENATOR SMITH: Okay. So that increases your success in the reclamation of the land? [LB340 LB578 LB629]

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MICHAEL SCHMALTZ: Absolutely. I mean salvaging the topsoil is of the utmost importance to us. In native prairie rangelands, salvaging it, and it also has additional value which are some seeds, seeds, rhizome, the species of grass that grow there. So there's the native species are easily reestablished in addition to seeding, overseeding to whatever species the landowner would request. [LB340 LB578 LB629]

SENATOR SMITH: Right. Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Senator Carlson. [LB340 LB578 LB629]

SENATOR CARLSON: Thank you, Senator Langemeier. And thank you for your testimony, coming here today. I'm not opposed to the pipeline. If it was starting from scratch and we were clear back to the beginning stages, then certainly I'd be, for one, that would try to encourage it to go further east. But we're past that point. And I am not in belief that there's enough danger to the aquifer that where it's going to go is a real problem, so I'm past that point. And what really bothered me was what appears to be the treatment of some people. And it would seem like TransCanada coming through Nebraska, aside from the permit, the most important people to TransCanada are the property owners whose pipeline this is going through. Now we find out today that those that went out to negotiate these agreements are not even employees of TransCanada, and I can see why that would be a problem. I also liked what I heard, that this is going to be addressed. But it's bothersome to think that the most important people, some of them are not satisfied with the way that they were being treated. So it's good that this is being addressed and it needs to be addressed. The other thing is, there needs to be, to this committee, an assurance of the financial ability to take care of things if it's ever abandoned. That's a key issue here. And so then I've got one other thing that has come up in testimony before. On page 4 of your statement here, on the bottom bullet point, "These practices include the following: Evaluate the need to implement fencing of the right of way." I understand why fencing would be important. You've got...you're coming across a pasture and you're replacing that. The project is over and you're returning that to its prior form. You can't have cattle running across that while this is taking place, but their water is on one side and they're on the other. So is fencing a problem? Is there a time you wouldn't do it, and then how do you get the cattle to the water source? [LB340 LB578 LB629]

MICHAEL SCHMALTZ: To answer your question, Senator, there isn't a time we wouldn't do it,... [LB340 LB578 LB629]

SENATOR CARLSON: Okay. [LB340 LB578 LB629]

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MICHAEL SCHMALTZ: ...unless the landowner flatly refuses and we can't convince him that it's needed to help restabilize those Sandhills. If there's, across right-of-way problems, as in their water is on one side or the farm is on the other side, we would work with them to either build alleyways across fencing where the cattle could migrate across the right-of-way to get to the other side of the pasture or the field. If that's not able or if we can't come to agreement on that, we would sit down with the landowner and figure out how big of a parcel did we sterilize or what's the corner of the field? Is it 2 acres, is it 22 acres? How do we...is there a need to go over there? Do we need to work with them and compensate them for that because it distracts from his natural grazing pattern or something? [LB340 LB578 LB629]

SENATOR CARLSON: Okay. And that was a complaint that an individual had that didn't feel like they were treated...they were told one thing and then when it came down to it, it wasn't going to be that way. So again, I think it gets back to somebody else maybe that's not an employee making some of these decisions and it has created a problem. But I thank you for your testimony and when we get into just the rest of the testifiers, it will be interesting to hear from those that are very pleased with...that are landowners that are very pleased with the way that they were treated. Thank you for being here. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Senator Haar. [LB340 LB578 LB629]

SENATOR HAAR: Mr. Krause earlier said, and this is a quote because I wrote it down, that "I guess we'll have a big test plot to work with, with the university." You can guarantee us, because we're going to hear about it if it doesn't happen, that this is not a big test plot, that this is something you know how to handle and you are going to make it right. [LB340 LB578 LB629]

MICHAEL SCHMALTZ: You know, with a pipeline company like TransCanada, we've had, as I mentioned and alluded to in my testimony, we've conducted pipeline construction all across Canada, North America...or all across Canada, the United States, and Mexico, in all different kinds of landscapes, land types, and sometimes we don't do ourselves the best service in including a lot of academics that we can help provide this insight and our learnings that we obtain through working with different experts across North America. An opportunity to work with the locals here, what I mean are the locals as in we've worked with...we've had lot of discussion with Dr. Jerry Volesky and some of the other notable individuals here in Lincoln. But to look at those and establish a long-term or a reclamation research plots or programs, I think it would be fantastic. [LB340 LB578 LB629]

SENATOR HAAR: Do you foresee that...I mean is this going to be perpetual care of that right of way land so that if it looks like it's working the first year or two or three years and then year six it's not working, will TransCanada come back and fix it then? [LB340 LB578 LB629]

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MICHAEL SCHMALTZ: Absolutely, and I'll explain why. The key to our...we have a very expensive piece of infrastructure that we just put into the ground and we want to continue to reap the benefits of that for many, many, many years to come. If we don't stabilize the soil surface and have that become exposed or become...the cover become shallower and there's third party...potential for more third-party damage to the pipe, we don't want to risk that infrastructure. So absolutely, we would, number one, do that. Number two, we would do it because we have a contractual arrangement with the landowner through his easement agreement. That easement agreement, if he doesn't get equivalent capability or productivity from his land, we have to compensate him for that. [LB340 LB578 LB629]

SENATOR HAAR: Well, unfortunately, we've heard, though, that there are different contracts with different people and that's still a concern to me. Thank you very much, though, for being here and we need to ask the tough questions. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Senator Dubas. [LB340 LB578 LB629]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Mr. Schmaltz. Are you the one that can answer my question about the high designation? [LB340 LB578 LB629]

MICHAEL SCHMALTZ: (Laugh) I'm the guy. [LB340 LB578 LB629]

SENATOR DUBAS: Okay. [LB340 LB578 LB629]

MICHAEL SCHMALTZ: I'm the one. [LB340 LB578 LB629]

SENATOR DUBAS: Okay. I guess again I'm just wondering about this designation for unusually sensitive area. How do you go about that? What's the criteria for making that designation? [LB340 LB578 LB629]

MICHAEL SCHMALTZ: Okay. PHMSA has a designation called high consequence areas, and high consequence areas, there's three points to high consequence areas, the way they define them. It's they're populated areas is the first one; commercially navigable waterways is the second one; and unusually sensitive areas, which are the USAs that I think you were referring to. Now under those USAs they kind of split it in two. One is ecologically important areas like for species, like I'd say vegetative or species, wildlife species. That's one way they look at it if there's an unusually sensitive area. The second one is drinking water wells and that could be wellhead protection areas, recharge areas, and source water or aquifers that there's no alternative source of water. And under the determination or definitions by PHMSA, the Ogallala Aquifer

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does not fit under that as a USA, and that's been...I mean that's been determined and filed with the Department of State and with PHMSA two years ago, I think that was. However, when TransCanada looks at that, we feel that through our evaluation and establishing our emergency response plan, it doesn't matter what PHMSA calls it. We want to make sure that we have the appropriate emergency response plan to deal with those issues. So with all the data collection that we've conducted on the Ogallala Aquifer, we understand where there's 10 feet of overburden or 10 feet between the surface of the soil and the aquifer, and the areas where there's 50 feet or 80 feet. So we understand all those locations and where we, as TransCanada have to do the right thing and focus on how we would implement our emergency response plan, where we'd have machinery or materials located, and Jim probably has spoken to this better, but where would focus on our efforts that need to be dealt with within days or, sorry, where we would have to deal with the pipeline that same day that we understand that there's a problem. We understand the infiltration rate and the recharge rate and the materials overlying the aquifer and how many...what's the time where the oil would seep into the soil and actually get into the aquifer. So we understand all that. So I guess my point was, regardless of what PHMSA and how they identify these HCAs, we just looked at it the same way regardless of their definition and we've established our ERP program to protect the aquifer. [LB340 LB578 LB629]

SENATOR DUBAS: Now you've referenced the drinking water but you also said ecological species, those types of things. And I know in the Sandhills region there's some pretty...there are some plants and insects and those types of things who are considered endangered. Has that come into consideration at all? [LB340 LB578 LB629]

MICHAEL SCHMALTZ: Yeah. And now I was just telling you the USAs, their definition of it. And, yeah, there are ecologically sensitive or vulnerable species like the spotted owl in Oregon or something. So in Nebraska there also are some species and one is called the American bearing beetle, which is a threatened endangered species. Our pipeline goes through a portion of its habitat. Also, the American bearing beetle habitat is in South Dakota and Nebraska and Oklahoma and Texas. So the bearing beetle lives in all those states and there's populations there so we have to work with the U.S. Fish and Wildlife Service to understand the necessary measures to mitigate or avoid effects to those species and that particular species, yes. [LB340 LB578 LB629]

SENATOR DUBAS: This is...the question I've asked you I'm sure has a much more detailed answer and so I would like to pursue just this high consequence area issue a little bit further with you off mike at another time. Any information that you could provide to my office in more detail about this type of designation, who gets to ask it, who gets to ask for it, who gets to make it, I'd just like to have more information so... [LB340 LB578 LB629]

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MICHAEL SCHMALTZ: Yeah, and there's some heavy controls on the information, how it's provided, because there's some issues of national interest. [LB340 LB578 LB629]

SENATOR DUBAS: Anything you can provide for me, I would appreciate. One other question: You did mention in your testimony that you had discussions with experts at the University of Nebraska. Now the people that I've had contact with, I haven't been under the impression that there's been a lot of interaction between your company and the university. And I know we have a wealth of information available at the university with people who fully understand this area so I guess maybe I'm just wanting to know specifically how much interaction you've had with the university and do you plan on having more in the future. [LB340 LB578 LB629]

MICHAEL SCHMALTZ: We've talked to Dr. Jerry Volesky, and I apologize, U of South Dakota, too, Dr. "Sandy" Smart was very helpful and Jerry kind of, I think Jerry mentioned that he was a key individual, a fellow by the name of Mike Kucera from the NRCS. And I know we had talked to Dr. Goeke that had helped us through. We had incorporated some of his insight over the last year. But we had a laugh the other day because some of the guys forgot that we talked to them because it's been...we've been talking to them for two and a half years, three years I guess through the permitting process and all this data collection, that they kind of...they forgot about us but...and there's so many of us calling some of these fellows that I know they're maybe forgetting a few of us but...and as I mentioned before, some of these individuals are very, very helpful to provide the local insights. [LB340 LB578 LB629]

SENATOR DUBAS: Thank you very much. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much for your testimony. [LB340 LB578 LB629]

MICHAEL SCHMALTZ: Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: We'll now go to Melody Sandell. Good evening and welcome to the committee. [LB340 LB578 LB629]

MELODY SANDELL: Thank you. It's been a long day. My day started this morning at Sam's Club and I hope my fruit hasn't frozen; otherwise, the Sandells will be having slushies for tonight's supper. Thank you for allowing us to come. My name is Melody Sandell, M-e-l-o-d-y S-a-n-d-e-l-l. I'm from the Polk area. Thank you, first of all, for allowing us to have this forum and to discuss this issue. And this is kind of new to me so please bear with me as we go through some of these things. We're from the Polk area. We farm three miles west and about two miles

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south of Polk. We have three pieces of ground that will have the TransCanada pipeline going through. Part of it will be going through, one piece will be skirting the edge on a corner. We started this process in 2008. We were contacted by an environmental advocate wanting to look at our properties, to take a look at it, and from there started the process that we started visiting with TransCanada. A couple...about a year later, someone came and continued to stop and ask us some questions and started the process of bringing us information and letting us know that there would be a pipeline or they were going to be starting a pipeline and land acquisition for a pipeline coming through our property. We are farmers. I'm proud to be a farmer. We're sixth-generation farmers. My children are the sixth generation. Actually, my six children will be the sixth-generation farmer, and we're proud to be a part of that 1 percent of our population who is involved in production agriculture. Our farmland and our farming is who we are, not just what we do. So when someone came to ask us about our property, we were a little nervous. But we have been treated with the most...utmost of respect. I feel sorry for the people that have had an issue in this process, because you know by the passion and the pain in their heart that something has gone wrong or has not gone well. Our process has been good. We were brought right to the table throughout the process. We had questions answered. We negotiated. They encouraged us to take a look, bring these things to our attorney. We had two different attorneys look at it. It involves my parents-in-law and myself, who are a little bit older. Sometimes that's a little harder for older people to want to deal with some of these things and with change. We felt that it was the best part of being an American, of providing for security, of providing for our security as a farmer. If we cannot have an input of oil and fuel that's at a reasonable cost, we will not be farming. And at this point in my history I know that we can produce food and fiber probably more economically than any place in the rest of the world. So when we had the opportunity to do this, we spent a lot of time looking into this. We were impressed that the footprint of this tract would be narrow, that our topsoil would be removed, that it would be put back, and all the questions that we had and any concerns we had were addressed and addressed clearly. This has been a good process for us. I remember sitting across the table of a Japanese student in Tokyo a number of years ago after the beef and citrus agreement trade talks and after the '80s grain embargoes and some of the things that went on, and I remember them saying, we do not want to be dependent on anybody for our food; we do not want to do necessarily business, all our business with you because we do not want to be dependent on you for our food. I still remember that, because I do not want to be dependent on someone, another foreign country other than a domestic neighbor, which can always change, but feel that that is a secure neighbor that's going to have the best ideas and the best standards for what we're doing with our production resources. That still sits in my mind and is still very important. So we had a very good process. And if you have any questions, I'd be more than happy to answer them. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Haar. [LB340 LB578 LB629]

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SENATOR HAAR: I just wanted to say hello. (Laugh) [LB340 LB578 LB629]

MELODY SANDELL: Hello, sir. How are you? [LB340 LB578 LB629]

SENATOR HAAR: I haven't seen you for quite a while. [LB340 LB578 LB629]

MELODY SANDELL: I know. It's good to see you, very good to see you. [LB340 LB578 LB629]

SENATOR HAAR: I thought you looked familiar. Melody and her family used to live across the street from my wife, my wife's... [LB340 LB578 LB629]

MELODY SANDELL: Uh-huh, a long time, three generations I think there. [LB340 LB578 LB629]

SENATOR HAAR: Yeah, we're both getting older. So anyway...(laughter) [LB340 LB578 LB629]

SENATOR LANGEMEIER: On that note, Senator... [LB340 LB578 LB629]

MELODY SANDELL: And you're looking very fine. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Senator Carlson. [LB340 LB578 LB629]

SENATOR CARLSON: Thank you, Senator Langemeier, and thank you for your testimony. You may be uncomfortable responding to this and, if so, don't. [LB340 LB578 LB629]

MELODY SANDELL: Yes, sir. [LB340 LB578 LB629]

SENATOR CARLSON: But I assume that you've got neighbors that have gone through a similar process. And to your knowledge, have they been treated well and felt good about the process? [LB340 LB578 LB629]

MELODY SANDELL: Yes, sir. Just kind of talking to several neighbors as we were talking about coming here and testifying, and I understood that at some point with one of the other landowners, and I truly ache for them that part of their...they were bullied into some of this and

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that they had their prices brought before them and had a negotiation for that, ours was all very private. We have no idea what another neighbor is getting. It's been very quiet. We felt very confident that they gave us adequate money for what our property was worth and then some, thankfully, because of the escalating prices of our property. We felt very comfortable with what we received. [LB340 LB578 LB629]

SENATOR CARLSON: Okay. Thank you. [LB340 LB578 LB629]

MELODY SANDELL: Yes, sir. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Senator Dubas. [LB340 LB578 LB629]

SENATOR DUBAS: Thank you, Senator Langemeier. Welcome. [LB340 LB578 LB629]

MELODY SANDELL: Thank you. [LB340 LB578 LB629]

SENATOR DUBAS: I'd be remiss if I didn't say hi to a constituent so... [LB340 LB578 LB629]

MELODY SANDELL: Yes. Yes. Thank you. [LB340 LB578 LB629]

SENATOR DUBAS: So I am appreciative of you coming down and waiting throughout the afternoon and evening to testify. And as I stated to a previous testifier, I have heard from landowners who have been very satisfied with the way they were treated. So, you know, I have gotten it from both sides. But I know you appreciate what the landowners who have gone through a negative experience... [LB340 LB578 LB629]

MELODY SANDELL: Yes, ma'am. [LB340 LB578 LB629]

SENATOR DUBAS: ...because of where we come from... [LB340 LB578 LB629]

MELODY SANDELL: Yes, ma'am. [LB340 LB578 LB629]

SENATOR DUBAS: ...and how much we are attached to the land... [LB340 LB578 LB629]

MELODY SANDELL: Uh-huh. [LB340 LB578 LB629]

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SENATOR DUBAS: ...that we farm and ranch. As you said, it's not just what we do, it's who we are. [LB340 LB578 LB629]

MELODY SANDELL: It's who we are. [LB340 LB578 LB629]

SENATOR DUBAS: And so I think, you know, speaking for myself, I didn't bring this bill forward because I wanted this project to stop. I brought this bill forward because there were some very serious concerns brought to my attention and I was hoping we'd be able to get them addressed. [LB340 LB578 LB629]

MELODY SANDELL: Very good. And we were opposed...I was mainly opposed to it because of the additional bureaucracy and the additional tax burden. Other than that, I understand, yes. [LB340 LB578 LB629]

SENATOR DUBAS: But thanks for coming down. [LB340 LB578 LB629]

MELODY SANDELL: Thank you. [LB340 LB578 LB629]

SENATOR DUBAS: Nice to see you. [LB340 LB578 LB629]

MELODY SANDELL: Good to see you. Thank you, Senator. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much for your testimony. [LB340 LB578 LB629]

MELODY SANDELL: Thank you very, very much. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Good luck with that fruit. [LB340 LB578 LB629]

MELODY SANDELL: Me too. Thank you. (Laugh) We may be eating smoothies. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Our next testifier in opposition is Dan Gunderson with the American Petroleum Institute. And that's all I have on my list. How many other opponents are out there that I don't know about? Just the one? Two? Okay. [LB340 LB578 LB629]

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DAN GUNDERSON: (Exhibit 50) Thank you, Mr. Chairman and members of the committee. It's indeed a pleasure to be here. My name is Dan Gunderson and I'm going to do something I've never done really in giving testimony. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Whoa, you're going to spell your name first. [LB340 LB578 LB629]

DAN GUNDERSON: G-u-n-d-e-r-s-o-n. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Thank you very much. [LB340 LB578 LB629]

DAN GUNDERSON: First name Dan. I represent the American Petroleum Institute and, on behalf of the major oil companies, I'll try and keep this short. I'm going to change the game plan a little so you probably don't want to follow along with my testimony simply because I think it's important at this late hour to address some questions that have come up that...with some answers, and most of them have been answered during the day. We represent, just to back up, 9.2 million U.S. jobs, 7.5 percent of the gross domestic product. It's an American industry; it was begun here, and now it's a North American industry with the introduction of oil sands crude. I think that we need to ask, what is the need? Indeed, Canada is the largest supplier of crude to the United States with about 20 percent. Over half of that now comes from the oil sands. The oil sands of Alberta rival Saudi Arabia in terms of known reserves. We are no longer Saudi Arabia's number one customer; China is. And demand is being driven worldwide by China and India and Brazil, by and large, while our demand is staying flat. Mexico, the supplies of Mexican crude, while they've been number two as an importer into the U.S., is...it's not drying up but it's not looking good. And Venezuela, Nigeria, and the Middle East, of course, have all played a role in various ways. But we've been lucky to have our friends in Canada with the oil sands crude, which has been pumping through pipelines in the United States for over ten years. This is not new. Matter of fact, it's kind of a misnomer to say it's oil sands. It's crude oil from an oil sands region. But it is already in the pipeline. It is being supplied, for example, to my home state of Minnesota. About 45 percent of all the crude consumed for various products in that state comes from the oil sands. We are seeing a reversal of the energy system, if you will, from south to north, the way it used to be, now from north to south, and the infrastructure that needs to get built to make that happen. It is, indeed, a national security issue and, for Nebraska, I would posit that because you're at the end of every pipeline, you don't have a refinery, you are probably more sensitive to the vagaries of supply and demand for crude than anyone. If you have a refinery and if you are near the source, you're in a much better position just logistically than you are here in Nebraska. And so having this new resource from a friendly neighbor, and from Bakken, by the way, is very valuable. A couple other points and then I'll answer any questions you might have. Crude from the oil sands on a wells-to-wheels basis, meaning from the oil well to the emission pipe of your

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car, or all the other products, which I won't talk about, that come from oil, is comparable to crude oil from California and Nigeria and Venezuela. And that's a study by the Cambridge Energy Research Associates and others. So it's a heavy crude. It's heavier than light, sweet Saudi crude but it's comparable to California and Nigeria and Venezuela. Production costs for oil sands crude are dropping; they have been over time. A very small area of the oil sands is mined. There's descriptions of mining and opponents of the oil sands will show you the mining operations, feeling that a picture paints, you know, a thousand words. About 3 percent of the area where oil sands is found is actually mined. The rest uses various other technologies, including injecting steam, and those are changing every day. The economics of oil sands--and I see my yellow light is on so I'll wrap it up here pretty quick--is such that if it doesn't come here, it's going to go to China or India or other markets. The Canadians are not the 51st state and we've dealt with them, I have personally, with the Ambassador Doer and others, and they will tell you that they would prefer to come to this market but it will go somewhere else. And it does not make sense for a company like, let's say, Exxon, which owns crude oil in Canada, to ship it through the United States to its facility in the Gulf port, to answer that question, in order to ship it elsewhere. Our demand is 60 percent for imported crude. It isn't going...it isn't going offshore. We need it here. And if it were out of the oil sands, it would be going west, and there's even been discussion of pipelines to do that to meet Chinese demand as well as Indian demand. And along that line, the Chinese are trying and have bought a small portion of the oil sands production. So I would trust that we will have a bright energy future when it comes to bringing in Canadian crude and it will be growing, and at some point it will be 37 percent of total U.S. energy supply, if studies are to be believed. The one point about the legislation, and again I'd take ten more seconds, to give you a sense of how the current regulatory environment is working for the industry, in a study done by the Pipeline Association from 1999 to 2001, there was a...that three-year period where in '99 to 2001 there were two incidents per 1,000 miles of pipeline. They did the same study between 2006 and 2008 and there are now .7 incidents per 1,000 miles of pipeline. And an incident can be as little as five gallons of crude or a sheen on a body of water. And we've seen the drop on a per-1,000-mile basis of over 600 barrels of oil in that first period to over 300 later. So the current regulatory environment is working. Adding another layer and maybe changing the rules of the game for Keystone, you know, creates some jeopardy for them, and I'm not going to project what they will do, but it certainly does change the rules at a time when the rules appear to be...current rules appear to be working. With that, I'll answer any questions you might have. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Senator Haar. [LB340 LB578 LB629]

SENATOR HAAR: My bill, LB578, is looking for proof of financial responsibility. And we heard from another testifier that actually that is in place, that oil companies have to put aside the kind of money that takes care of the issues I raised: corrective action or cleanup,

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decontamination, decommissioning, site closure, and so on. Would you agree with that, that that money is in place and it's in the bank? [LB340 LB578 LB629]

DAN GUNDERSON: I would agree. I would agree, Senator. Excuse me for cutting you off. I didn't mean to do that. [LB340 LB578 LB629]

SENATOR HAAR: No, that's okay. [LB340 LB578 LB629]

DAN GUNDERSON: Just to differentiate, though, let's make sure we keep in mind there's a difference between the oil companies that rent the space on the pipeline and the pipeline companies that act as an interstate transporter. The best example I can give you is Enbridge, which is another company that I happen to have worked for in Wisconsin. They had the spill that has been discussed here today and they have spent to date on the Marshall, Michigan, spill, \$550 million in remediation. They are buying homes. They are restoring. They're setting up barriers around trees near wetlands near the river. And if you recall when that first happened, there was discussion that this was going to reach Lake Michigan. Well, it never did. So a company like Enbridge, a company like TransCanada, publicly held companies have I think proven that they have the wherewithal and they are responsible for dealing with it. And if you have a doubt, I think that that can be found though the current process. [LB340 LB578 LB629]

SENATOR HAAR: Could you supply us with that because...so you're saying, if I hear you correctly, that the oil companies have that money put aside but not necessarily the pipeline companies. [LB340 LB578 LB629]

DAN GUNDERSON: Well, no, what I'm saying is Enbridge is a pipeline company and they've expended already \$550 million on cleanup of that spill alone. So they...that's a pipeline company with the resources. I can't speculate about TransCanada. I'll let them speak to their wealth or lack thereof. But I believe that they do have it; I believe that they've shown it. And the federal system that has resulted in really the greatest delivery system in the world, you know, appears to be working. [LB340 LB578 LB629]

SENATOR HAAR: But there's a difference between wherewithal, which is kind of a promise, versus proof of financial responsibility, which involves legal documentation and so on, to back up that promise. And it concerns me that we've heard quite a bit of this wherewithal, you know, that this company will not go under, somebody else will take it over, or in the end there's going to be, you know, there's going to be a happy ending. But if the money is not in the bank, if there's not proof of financial responsibility, then it's their word. [LB340 LB578 LB629]

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DAN GUNDERSON: Well, I think that they, as a publicly held company, they've gone through many of the hoops that all publicly held companies have to go through to show that they are and... [LB340 LB578 LB629]

SENATOR HAAR: But Enron, Enron went through all those hoops and people lost their pensions, they lost... [LB340 LB578 LB629]

DAN GUNDERSON: Yeah, and Enron... [LB340 LB578 LB629]

SENATOR HAAR: ...you know I'm sure they... [LB340 LB578 LB629]

DAN GUNDERSON: Enron... [LB340 LB578 LB629]

SENATOR HAAR: But wait, just a second. And I'm sure that Enron, that somebody took care of that building and some of the physical, you know, the physical assets that they had... [LB340 LB578 LB629]

DAN GUNDERSON: Uh-huh. [LB340 LB578 LB629]

SENATOR HAAR: ...but promises were made. They kept telling their employees that they had the wherewithal, this is a great place to invest, and a huge company like that went under. So I guess I would...my skepticism, I would like to see the proof of financial responsibility and that's LB578. It goes beyond a promise. [LB340 LB578 LB629]

DAN GUNDERSON: And I respect that, that intent certainly, and we do as well as an industry. You can't...I don't believe you can legislate human behavior in many respects and Enron is a completely different kettle of fish, if you will, from a pipeline company that's built 37,000 miles worth of pipe in North America. [LB340 LB578 LB629]

SENATOR HAAR: It's a different kettle of oil. (Laugh) [LB340 LB578 LB629]

DAN GUNDERSON: Yeah, barrel of oil. [LB340 LB578 LB629]

SENATOR HAAR: So is there some way that we can get this proof of financial responsibility for pipelines that I so badly want? [LB340 LB578 LB629]

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DAN GUNDERSON: I would argue that the proof is already in the current federal process and the fact that they are publicly held. I don't know if there was a privately held company that was a pipeline that might be a different situation, but I think in the case of TransCanada, their ability to stand for their word is as evident as you're going to find in any company. [LB340 LB578 LB629]

SENATOR HAAR: Again, it's a trust the financial markets. [LB340 LB578 LB629]

DAN GUNDERSON: You can't legislate human behavior, I guess. [LB340 LB578 LB629]

SENATOR HAAR: No, but you can (laugh)...you can legislate proof of financial responsibility and that's what LB578 is about. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Senator Schilz. [LB340 LB578 LB629]

SENATOR SCHILZ: Thank you, Senator Langemeier. Thanks for coming in today and I guess Senator Haar just triggered a question in my mind and I guess, you know, as we....and if you can't answer this, I understand, but I thought I would ask you. You know, a company like Enron did go bankrupt, did have some problems. Did they have any assets like pipelines or anything like that? [LB340 LB578 LB629]

DAN GUNDERSON: I, you know, I know what got them into trouble was trading BTUs. They had assets but I really don't know enough about Enron to be able to... [LB340 LB578 LB629]

SENATOR SCHILZ: Were any of those...and then I guess the next question that I would have is if they did have those assets, were they abandoned or did somebody take them over and continue operating them under the rules that you would have to do? [LB340 LB578 LB629]

DAN GUNDERSON: I would defer to someone else that could answer that question. [LB340 LB578 LB629]

SENATOR SCHILZ: I appreciate that. Okay. [LB340 LB578 LB629]

DAN GUNDERSON: I have a hunch but I wouldn't want to put that in the record. [LB340 LB578 LB629]

SENATOR SCHILZ: I appreciate that. Thank you. [LB340 LB578 LB629]

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SENATOR LANGEMEIER: There any other questions? Seeing none, thank you very much for your testimony. [LB340 LB578 LB629]

DAN GUNDERSON: Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Further testimony in opposition? Come on up. While you're waiting, if you want to come up and have a seat up here, come on down. Good evening and welcome to the Natural Resources Committee. [LB340 LB578 LB629]

DARWIN PIERSON: Yeah. Thank you, sir. My name is Darwin Pierson, P-i-e-r-s-o-n, and I represent Nebraska Independent Oil and Gas Association, and we are primarily concerned with people losing their wells and pipelines and everything else because of the number two hazardous liquid, petroleum, including crude oil or any fraction of crude oil that goes through a pipeline. Now every well is connected to a pipeline somewhere and if they're all shut down there won't be any more well...any oil produced in Nebraska. Now is that the intention of this bill? I direct that to Senator Dubas. Is this to shut down Nebraska production? [LB340 LB578 LB629]

SENATOR LANGEMEIER: Well, you don't get to ask questions, unfortunately. [LB340 LB578 LB629]

DARWIN PIERSON: Pardon? [LB340 LB578 LB629]

SENATOR LANGEMEIER: You don't get to ask questions, unfortunately,... [LB340 LB578 LB629]

DARWIN PIERSON: Oh, I don't get to ask questions, okay. [LB340 LB578 LB629]

SENATOR LANGEMEIER: ...so go ahead and keep going with your testimony. [LB340 LB578 LB629]

DARWIN PIERSON: (Laugh) All right, then I'll just throw that out and you can ask me questions. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Okay. Are there any questions? Senator Haar. [LB340 LB578 LB629]

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SENATOR HAAR: Okay. I would just make a statement. You didn't ask me the question, but, no, my purpose is not to shut down...to shut down gas production or to shut down the Keystone Pipeline. That's not been my intention. If I had my druthers, I'd like to see the pipeline rerouted around the Sandhills because I think that has great potential for harm in this situation. But none of these bills, as I see it, will shut down pipelines, nor is that the intention, although you can show up in our offices to ask us questions I guess. (Laugh) [LB340 LB578 LB629]

DARWIN PIERSON: Well, it states right here in this bill, it states that. [LB340 LB578 LB629]

SENATOR HAAR: Okay. Could you read that? I don't have that bill in front of me. [LB340 LB578 LB629]

DARWIN PIERSON: Okay. Hazardous liquid means petroleum, including crude oil or any fraction of crude oil in a pipeline. [LB340 LB578 LB629]

SENATOR HAAR: Okay. Well, I would welcome you to come in and sit down and talk with me or I suspect the others would as well, but the... [LB340 LB578 LB629]

DARWIN PIERSON: Well, that's why I spent six hours coming in here, to talk. [LB340 LB578 LB629]

SENATOR HAAR: But the intention is not to shut down pipelines and I, in my own opinion, that terminology doesn't shut down the pipelines. [LB340 LB578 LB629]

DARWIN PIERSON: Well, but it's right in the bill. If the bill goes through like that, it automatically shuts them down. [LB340 LB578 LB629]

SENATOR HAAR: Okay, I just see it differently but... [LB340 LB578 LB629]

SENATOR LANGEMEIER: Senator Dubas. [LB340 LB578 LB629]

SENATOR DUBAS: Thank you very much, Mr. Pierson, for being here. And as I stated in my opening, and I think you would find with any bill that gets introduced in the Legislature, these hearings are for a very specific purpose and that's for us to gather information and input. There's no way we can know everything about what we need to put into a bill when we put a bill together. We do our best to put together a responsible piece of legislation but the importance of these hearings is so we can get input such as you've brought forward. My intention is not to shut

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down pipelines. My intention is to give a public forum for these types of projects. I have stated to members of TransCanada as well as anybody else, I am open to making this a responsible piece of legislation if it's going to have the potential to be state policy. So your position is very well...point well taken. It's something I will definitely take into consideration as I continue to work on this bill. Should you have further information you'd like to share with me, I am definitely open to taking your thoughts into consideration. But you have just proven the point of the value of these public hearings. And the fact that you stayed as long as you have, I appreciate that because we do need your input. So thank you. [LB340 LB578 LB629]

DARWIN PIERSON: Uh-huh. Okay. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good. [LB340 LB578 LB629]

DARWIN PIERSON: Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much. Well done. Further testimony in opposition? Good evening. Welcome. [LB340 LB578 LB629]

RUSSELL SIGLER: My name is Russell Sigler, that's R-u-s-s-e-l-l S-i-g-l-e-r. I'm from Aurora, Nebraska, lived in Nebraska all my life, spent 17 years in the law enforcement field and got into a little bit of the telecommunications field and found a niche working in the pipeline industry. I work for different companies. I do office management for the inspection teams that watch over these projects. I have worked for TransCanada on projects the last three years. I just finished up my last project in Wyoming in December. I did work on the original Keystone project in North Dakota. I did the international crossing there. I worked in South Dakota and Nebraska on that line, and involved with...other pipelines have been gas pipelines. My original thing to come here was when this legislative session started, the big thing was how are we going to deal with this \$986 million deficit over the next three years, and then I see this come up and all I see is duplication of what's already being done. I have a big concern with that because I know the process that they go through and I realize not everybody does. And there's been a lot of poor communication on this all the way around, from what I see. And just the waste of everything, trying to duplicate things. You know, I wanted to put a hometown face. These pipelines are not that, you know, there's been a lot of crying wolf. If they're so dangerous, I have three grandchildren living a mile and a half from one just over here by Seward, I have. You know, I live in Nebraska. Why would I want that in my backyard? I have a lot of wildlife, hunting, fishing interests. If I thought it was going to jeopardize that, I sure wouldn't want it. And far as I, you know, I've been involved with TransCanada and I work with inspectors, and to become an inspector you've got to have been in the industry for some time and know the aspects of what you're inspecting, whether it be the welding, the crafts, the environmental, and every one of them

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has said TransCanada is way beyond everybody in the safety and environmental issues more than anybody. They've been the most...they've had the most rules of anybody I've ever worked with. So I believe their systems are the safest out there at this time in the industry. My other problem is this is just not a state of Nebraska issue. Last Friday President Obama met with the prime minister from Canada. This was one part of the issues that they were meeting over. This is not just security of our nation; this is economies of two neighboring, friendly nations. And I don't know if you noticed lately, we ain't the most popular nation in the world. We can't afford to be alienating our good neighbors, especially they're trying to help us out. As like the others have testified, this oil will go somewhere. A lot of jobs have been lost to China. Do we want to keep fueling that economy? No, I would just as soon that economy be our economy. I am one that benefits from...if I would get hired on a project going through our state. I would love to work close to my home state. I'm used to leaving my wife to be a pipeline widow for nine months a year. I would just as soon be close. I know two other people in my town, that's just the ones I know of, that are also...one is a union worker, he's a 798 welder, and another works for...with land acquisitions. So it's not...these jobs aren't going other places. You know, we'd like to have stuff that comes to Nebraska. I think when you look through the letters like the letter from Norfolk, the economic impact of these pipelines going through, it was pretty good and it...during bad economic times, it's going to help out. With that, I'll leave. Thank you for letting me testify. I appreciate it. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Well done. Are there any questions? Senator Dubas. [LB340 LB578 LB629]

SENATOR DUBAS: Thank you, Senator Langemeier. Welcome, Mr. Sigler. It's nice to see you. I didn't see you sitting back in there so the room has been full. I do appreciate you sticking around and sharing your testimony. I would like to have an extended conversation with you at some time about the work that you do so that I can learn more about it from your perspective. I appreciate you, again, sticking around and coming forward. [LB340 LB578 LB629]

RUSSELL SIGLER: Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Any other questions? Seeing none, thank you very much for your testimony. We appreciate that. Further testimony in opposition? I do have two letters. (Exhibits 51 and 52) I have one from Mayor Roger Glawatz, is the mayor of Seward, in opposition, and Gary Hedman with Southern Power District in opposition. Seeing no other testifiers in opposition, we'll move on to neutral testimony. How many do we have, just out of curiosity, in neutral? Just two? Okay. Thank you. [LB340 LB578 LB629]

SCOTT JOSIAH: So we're between you and dinner, so... [LB340 LB578 LB629]

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SENATOR LANGEMEIER: We might be past dinner. Go ahead. [LB340 LB578 LB629]

SCOTT JOSIAH: (Exhibit 53) My name is Scott Josiah, S-c-o-t-t J-o-s-i-a-h. Chairman Langemeier and members of the Natural Resources Committee, thank you for the opportunity to provide input today to the Natural Resources Committee on LB340, LB578, and LB629 regarding authorities over oil pipelines. I'm the state forester and director of the Nebraska Forest Service, which is part of the University of Nebraska. As a UNL employee, I am testifying in a neutral capacity and will confine my comments to pipeline impacts and mitigation, specifically as it affects our state's tree, shrub, and forest resources, which haven't been mentioned at all today so I'm glad I stuck it out. Regardless of which route the Keystone XL pipeline will take through Nebraska, large numbers of trees, and we're talking tens of thousands, perhaps hundreds of thousands of trees, will be removed and permanently kept from growing back in the pipeline right of way. Given that Nebraska has the largest numbers of miles of rivers of any state in the U.S., most of which flow west to east, the pipeline will have to cross many riparian forest corridors, for instance, the Niobrara corridor, the Elkhorn, the Platte, the Blue, perhaps other tributaries. These riparian forests provide critically important ecosystem services, including clean water, wildlife habitat, hunting opportunities, and many others. The pipeline will almost certainly cross conservation plantings, such as windbreaks, riparian buffers, hedgerows, those kinds of plantings. These plantings also provide critical services, such as crop and livestock protection from wind, reduced soil erosions, snow management, cleaner air and water, etcetera. Currently, TransCanada is not now required to mitigate these tree and shrub losses in Nebraska. We believe they have a clear responsibility to do so. North Dakota's Public Service Commission required TransCanada to replace all trees and shrubs lost to the first Keystone pipeline at full replacement cost on a two-to-one basis--two trees or shrubs planted for every one lost. TransCanada funded preconstruction inventories to determine which would be lost, what trees and shrubs would be lost, and transferred funds to the state in an account managed by the North Dakota Forest Service specifically to be used for funding tree and shrub mitigation activities on private and public lands. Importantly, the North Dakota Public Service Commission and TransCanada have both set a precedent: the Public Service Commission of North Dakota by negotiating the agreement, and TransCanada by acknowledging their responsibility to mitigate tree and shrub losses and reimburse those affected. We believe at the Nebraska Forest Service that Nebraska has an opportunity to put in place a very similar program. However, the Nebraska Public Service Commission needs the authority to regulate such pipelines and negotiate such agreements. The Nebraska Forest Service is probably the best suited to administer such a tree planting mitigation program given our many decades of dealing with tree planting cost-share programs, our networks of foresters officed around the state who have long-term relationships with landowners, and our close relationships with the other conservation organizations that we'd work with to implement such a program. There are many details regarding such a program that can be worked out, but the important point today is that this is an opportunity that will require the Nebraska Public Service Commission to have regulatory authority over these oil pipelines.

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As part of that authority, the Nebraska Public Service Commission should be directed to negotiate environmental mitigation agreements, including tree and shrub mitigation specifically, with the pipeline company. I should mention, too, it's important to emphasize that these costs would be borne entirely by the company, would not cost the state a dime. I'd be glad to take any questions. Thanks for the opportunity to testify today. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good. Are there questions? Senator Carlson. [LB340 LB578 LB629]

SENATOR CARLSON: Thank you, Senator Langemeier. Dr. Josiah, thanks for your patience in staying here. And through your testimony, I think that the answer to this could be that if TransCanada would hire you and me to route the pipeline, we'd take out only Russian olives and then they wouldn't have to replace them. (Laughter) [LB340 LB578 LB629]

SCOTT JOSIAH: I think they would still have to pay for it though. (Laugh) [LB340 LB578 LB629]

SENATOR LANGEMEIER: Senator McCoy. [LB340 LB578 LB629]

SENATOR McCOY: Thank you, Chairman Langemeier, and thank you, Doctor, for being here today. Previous testifiers have said many times over, you know, that we have 21,000 miles of pipeline across the state. Has this issue never come up in the past? I guess, I'm a little bit confused as to...and I appreciate your testimony. I'm just a little confused as to why now this...you bring up this issue of riparian...? [LB340 LB578 LB629]

SCOTT JOSIAH: It's a really good question. I've been State Forester for about six years. And the other Keystone pipeline, it sort of started before I really became State Forester. So, I guess, that's the first. Second is I didn't know, you know, I was talking with the state forester from North Dakota and he just happened to mention, oh, that they have this program and they negotiated with Keystone or TransCanada. And it really was a terrific program for TransCanada as well as for the state in terms of mitigating the loss for landowners, because they did lose some windbreaks and they lost especially native forest. It wasn't really being replaced. So that was mitigated. So all of those...it may not have restored the native forest exactly where it was lost, but it allowed for tree planting elsewhere, both in communities and on farms and elsewhere. So that's how it came about. [LB340 LB578 LB629]

SENATOR McCOY: So the practices that you're proposing haven't been done that you're aware of in any of the other... [LB340 LB578 LB629]

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SCOTT JOSIAH: I'm not... [LB340 LB578 LB629]

SENATOR McCOY: ...river bottoms or whatnot that have been crossed...across the state with the other miles of pipeline? [LB340 LB578 LB629]

SCOTT JOSIAH: Unless it was through some other type of mitigation agreement with the federal government or something like that. Army Corps of Engineers probably did some mitigation in the past. [LB340 LB578 LB629]

SENATOR McCOY: Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Senator Dubas. [LB340 LB578 LB629]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Dr. Josiah. So would you, through the Forestry Service, have any ability to negotiate with TransCanada, Keystone or any other pipeline that might come through and... [LB340 LB578 LB629]

SCOTT JOSIAH: We have the authority by statute to work with anyone we need to work with to achieve our mission, which is also laid out in statute, too, you know, protect and enhance our forests. We would...so in that sense, yes, we could sit down and work with TransCanada to negotiate that agreement. But it's actually...it was the Public Service Commission in North Dakota that actually negotiated the agreement. [LB340 LB578 LB629]

SENATOR DUBAS: Would you have the capacity to handle the financial transaction as far as the purchase of trees or paying for the trees or whatever? [LB340 LB578 LB629]

SCOTT JOSIAH: Sure. One...yeah, we do that all the time. We have...we manage several million dollars a year in cost share dollars that, you know, cost-share landowner, tree planting or, you know, "thinnings," or removals, planting, or whatever, both in the urban setting and in the rural setting. So, yeah, we have a long experience, probably 30 years of experience dealing with that. [LB340 LB578 LB629]

SENATOR DUBAS: So if we're able to get you and representatives from TransCanada or Keystone together at a table, we would maybe be able to negotiate something like this? [LB340 LB578 LB629]

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SCOTT JOSIAH: Oh yeah, well, I would hope they would be amenable to doing that. But yeah. And then we have the precedence set by the North Dakota PSC and the North Dakota Forest Service. So...and we have our agreements. And so it would be a very similar agreement I would expect. [LB340 LB578 LB629]

SENATOR DUBAS: All right, thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good. Senator Smith. [LB340 LB578 LB629]

SENATOR SMITH: Thank you, Senator Langemeier. Dr. Josiah, has this requirement been placed, to your knowledge, on any other gas pipeline companies or utility right-of-way transmission lines that have been constructed in the state of Nebraska? [LB340 LB578 LB629]

SCOTT JOSIAH: Not that I know of in the state of Nebraska. [LB340 LB578 LB629]

SENATOR SMITH: So at this point we would just be singling out the TransCanada at this point going forward? [LB340 LB578 LB629]

SCOTT JOSIAH: Well, I don't know if we'd be singling them out. I think we'd be setting a precedent that's already been set in another state or following that precedent that's been set in another state. [LB340 LB578 LB629]

SENATOR SMITH: Because if they do bear the burden of doing that and we do have public power in this state and we construct transmission lines to deliver the wind power we're going to be putting that cost back on the public utilities. And those public utilities will be looking to the ratepayers to pay those costs. So it will come out of the end user's pocket. [LB340 LB578 LB629]

SCOTT JOSIAH: Perhaps. [LB340 LB578 LB629]

SENATOR McCOY: Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Senator Haar. [LB340 LB578 LB629]

SENATOR HAAR: What I heard someone say earlier, from Keystone, is that they would work with each landowner to restore that land. So my assumption if they're willing to go two for one,

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that might be worth pursuing. But my assumption is that if they take down trees for this pipeline they will restore that treed area. That's what I heard anyway. [LB340 LB578 LB629]

SCOTT JOSIAH: Well, they can't restore the treed area over the pipeline itself. It has...they can't have trees growing back on the pipeline as far as I understand it. So they'd have to mitigate and plant those trees elsewhere. So if you have, say, the pipeline goes through...crosses the Platte River corridor there and crosses diagonally or, you know, just crosses it and takes out 20 acres of forest in that corridor, that 20 acres would have to be mitigated elsewhere. Could be planted back on the landowner's land if they wanted it. If they didn't then those funds could be used to plant trees elsewhere on others lands on other lands or in communities. [LB340 LB578 LB629]

SENATOR HAAR: Interesting point. Yeah, yeah. Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Senator Smith. [LB340 LB578 LB629]

SENATOR SMITH: I don't know, is that a fact that shallow-rooted shrubs or trees cannot be planted on those right-of-ways? I don't know if that's a... [LB340 LB578 LB629]

SCOTT JOSIAH: Well, we have a state property with an oil...in Plattsmouth with several oil pipelines, oil and gas pipelines. And neither of those allow trees to grow back on them. So it's my assumption and in the discussions with the North Dakota State Forester that they did not allow trees back on the pipeline right-of-way. Because I think they need to see, they need access for viewing. [LB340 LB578 LB629]

SENATOR SMITH: I'll follow off mike and find out for certain if that's the case. [LB340 LB578 LB629]

SENATOR LANGEMEIER: I'm sure you will, you'll find out. [LB340 LB578 LB629]

SENATOR McCOY: Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: I can see activity behind you. (Laughter) Are there any other questions? Seeing none, thank you very much for your testimony. [LB340 LB578 LB629]

SCOTT JOSIAH: Sure, thank you. [LB340 LB578 LB629]

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SENATOR LANGEMEIER: Further testimony in the neutral capacity. Welcome. You brought your paper with you. You were ready for the wait. [LB340 LB578 LB629]

LEON CEDERLIND: Yes, I am. (Laugh) Thank you. My name is Leon Cederlind, L-e-o-n C-e-d-e-r-l-i-n-d, and I'm testifying in a neutral capacity because there are a lot of pros and cons, I feel. I'll try to keep this very brief. I feel the pipeline is very important, especially in consideration of other alternate forms of transporting the oil. And I also feel that going through tillable cropland or clay soils, it's not a problem. But I do have concerns about the construction techniques or what I consider lack of safety backup for other areas. I live in Hamilton County. I have about 40 acres of native prairie. And I can state that I can understand the concern of those where it goes through grassland and pasture and so on, because this native prairie is not composed of just a dozen different varieties, there's hundreds of them. And it takes a long time and very difficult to get it back the way it was. Another point that I'm surprised hasn't come up in the testimony at all today is I think this should be built to handle a major catastrophe, specifically an earthquake. You might say that Nebraska is not susceptible to an earthquake. Well, in 1811-1812, they didn't have Richter scales back then, but what scientists consider the largest earthquake in North American history occurred in a neighboring state, namely Missouri. It was so bad that church bells rang in Boston. And in a case like that, no matter how well the pipeline is built, what grade of steel and everything else, the pipeline will leak. And so they need to prepare for what to do in a major rupture. In clay soil it won't go far. But in the Sandhills, most of it over the Ogallala, they need this potential leak contained with a containment layer of clay and bentonite. So when it does leak, and it will leak, it's contained and it won't go down into...in the sand. I've heard nothing that they have those plans to do it. This oil I've been told will flow at a rate of 20,417 gallons per minute. Now in case of a major rupture I've been told that the pumps can be shut off in 10 to 12 minutes. That means that a quarter million gallons would go into our ground before the pumps would even be shut off. This could be corrected. Pressure monitoring switches will shut off the pumps instantly in case of a rupture must be required. I've also been told the closest manned emergency station, response station, is planned for just outside of Omaha and with the response time, per federal law, of six hours. That means 75 percent of the amount of spill of the Exxon Valdez would spill into Nebraska's soil before crews could even respond. I feel they need to have emergency response stations manned 24/7, 365 all along the pipeline or within a reasonable response time difference. We cannot depend on the federal government to handle the safety issue. For instance, on September 9, 2010 there was a massive pipeline explosion near San Bruno, California that killed eight, injuring dozens and so on. Federal government said eight different times since 1969, we got to correct this before it happens. It still hasn't been done. The state of Nebraska must insist upon a leak containment layer under the pipeline, pressure-controlled pump shutoff switches and manned emergency switches along the pipeline before they are permitted to begin construction. We can't depend on the federal government to do it for us. Like was repeated before, I'll add one word to it, trust but verify locally. Thank you. [LB340 LB578 LB629]

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SENATOR LANGEMEIER: Very good. Are there any questions for Leon? I do have one, if nobody else does, I do. You said they should be within a reasonable distance. What is that? [LB340 LB578 LB629]

LEON CEDERLIND: Well, that could...that would have to be determined. But in...along the state of Nebraska north to south, I would think at least three different ones that could respond to something much more quickly than the federal requirement of six hours and much more quickly than the outside of Omaha. [LB340 LB578 LB629]

SENATOR LANGEMEIER: You said that they could determine that or that could be determined? Who should determine that? Obviously, if TransCanada made that decision... [LB340 LB578 LB629]

LEON CEDERLIND: Well, I would think the Public Service Commission is part what LB340 would cover. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Okay. Very good. Are there any other questions? Seeing none, thank you very much. Well done. [LB340 LB578 LB629]

LEON CEDERLIND: Thank you. [LB340 LB578 LB629]

SENATOR LANGEMEIER: (Exhibits 54 and 55) Is there anyone else that would like to testify in a neutral capacity? Seeing none, I do have two letters. I have one from Kenneth Frank and one from Bruce Grewcock with the Peter Kiewit in neutral capacity. With that, we'll go to Senator Dubas for her closing. [LB340 LB578 LB629]

SENATOR HAAR: Twenty minutes, you got it. (Laughter) [LB340 LB578 LB629]

SENATOR DUBAS: I will make this short and sweet. Three quick comments. Thank you, first of all, for your attention and your involvement in this discussion. I think it's been very, very important. I think this hearing if nothing else comes out of it, it provided an opportunity for some landowners and for TransCanada representatives to get together and hopefully work through some issues that seem to be very evident and very important to these landowners. I think that speaks to the fact that something needs to be in place as far as helping people get the information that they need and make the connections that they need to make. And third, I am committed to crafting an appropriate and an enforceable piece of state policy in cooperation with this committee. Not looking to make anything more burdensome, not looking to shut down this

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pipeline, just looking to be responsive to the citizens that I represent along with the rest of you. So thank you very much for your kind attention. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good. I'll now recognize Senator Haar. And while we wait for Senator Haar to get here, 60 Minutes, if you go to 60 Minutes tar sands, and Google that, they did a pretty nice documentary on this issue with the tar sands in Canada which is pretty balanced. Senator Haar. [LB340 LB578 LB629]

SENATOR HAAR: I see my Hula-Hoop is gone. I assume the lobbyist for the pipeline stole it. (Laughter) I'll expect it back in my office. Oh, there it is. (Laughter) They moved it. Okay. I feel better now. [LB340 LB578 LB629]

SENATOR LANGEMEIER: At the conclusion of this we're going to see a demonstration, maybe. (Laughter) [LB340 LB578 LB629]

SENATOR HAAR: You've got it, you've got it. (Laughter) [LB340 LB578 LB629]

SENATOR LANGEMEIER: I'm not staying to watch it, but probably a demonstration. [LB340 LB578 LB629]

SENATOR HAAR: My LA will demonstrate that Hula-Hoop. (Laughter) Okay. Trust but verify. I'm going to take just a couple more minutes than you did. But this is an article from the Michigan Messenger about the Enbridge oil spill. It starts out by saying, despite public promises to compensate residents of losses associated with the summer oil spill, in Calhoun County court Enbridge is arguing that it's not legally liable for damages from the spill. And then later it says, and though Enbridge repeatedly told residents it would pay all legitimate expenses, the Calhoun court...in Calhoun court the company says, "The statement at issue that were made in defendants' press releases and brochures were mere expressions of intention, not offers." So I would say one more time trust but verify. I heard at various times that because LB568 really has to do with the idea of proof of financial responsibility, and I heard the term wherewithal, they have the wherewithal to take care of this. I heard that there should be value in the company and they're a good company, and I don't question that at all. But trust but verify. Proof of financial responsibility, if it's there, if it's been put aside somewhere, I think we should be able to see that. And that's my challenge to the pipeline company. If there is proof of financial responsibility for this purpose, not just that they're a strong company, that they're a good company, nobody is arguing with that, but if there's proof of financial responsibility that money has been put aside and will be there for corrective action or cleanup, decontamination, decommissioning, those kinds of things, I would like to see it. And then there will be no need for LB578. Otherwise, I

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believe it's reasonable and responsible to say, trust...I trust you but I'd like to verify what you say. Thank you very much. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Very good, very good. [LB340 LB578 LB629]

SENATOR HAAR: Any questions? (Laughter) [LB340 LB578 LB629]

SENATOR LANGEMEIER: I don't believe so. [LB340 LB578 LB629]

SENATOR SULLIVAN: Thank you very much. I will be brief. Thank you, all committee members, for your dedication to hearing this all out today. I really appreciate that. But bear with me, I'd like to make at least one clarification with respect to a definition. It's too bad that the gentleman, who I think is an oil man himself, isn't still here. But the Code of Federal Regulations, Title 49, with respect to transportation, Part 195, Transportation of Hazardous Liquids by Pipeline, under the section definitions 49 CFR 195.2 defines a hazardous liquid means petroleum, petroleum products or anhydrous ammonia. So I thought that was important to get that in. We heard from citizens today. It was great. We heard from stakeholders, local people, some of whom really, sincerely don't think that they have a seat at the table. And it's quite apparent that Nebraska doesn't really have much state government authority when it comes to oil pipelines. The last testifier, it occurred to me that, you know, what happens in acts of God? And it was a little surprising to me, I was kind of hoping we might have heard from a Stanton County landowner. I don't think the pipeline even goes through his property. But apparently, in an e-mail from him, he said that because of the June 2010 floods earlier this year in that area the first TransCanada pipeline is totally exposed now and there is potential for some further erosion. So, you know, what do we do about that? It's clear also that TransCanada, we've focused a lot of our attention on it today, but there's going to probably be other pipelines. Nebraska's location is the geographical center of the country. It means that our state could actually be a crossroads for future oil pipelines. So it's, I think, incumbent on us that we address this issue. TransCanada even admits that they've entered into negotiations in other states. They prefer to start those negotiations before the process, not midway, like what's happening now. So if we do in fact anticipate future pipelines, I think time is of the essence in us dealing with it. With respect to my own legislation, AM238, it does not affect the progress or the process for TransCanada or any other pipeline carrier for that matter. It only comes into play if something goes drastically wrong with the pipeline. And it makes sure that there is suitable reclamation when a pipeline is put in place. So bottom line is my bill provides some degree of comfort for our citizens that we are taking care of Nebraska's assets. So I urge you to consider moving it forward. Thank you. [LB340 LB578 LB629]

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SENATOR LANGEMEIER: (Exhibits 56, 57, and 58) Very good. With that, that concludes the Natural Resources hearings on LB340, LB578 and LB629. And we would like to thank everybody that came or participated and those that have watched us statewide, we appreciate your input and have a great night. [LB340 LB578 LB629]